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LAURA TORRES

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

LAURA TORRES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

R. A. PHILLIPS INDUSTRIES, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 21STCV41572

*[Assigned for all purposes to the Hon. Kenneth R.
Freeman, Dept. SSC-14]*

**DECLARATION OF ELIZABETH
NGUYEN IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: September 5, 2023
Time: 10:00 a.m.
Dept.: SSC-14

Action Filed: November 10, 2021
Trial Date: None Set

1 I, ELIZABETH NGUYEN, declare as follows:

2 1. I am a shareholder of the law firm Lidman Law, APC, and counsel for the named Plaintiff
3 Laura Torres (“Plaintiff”) and the proposed Settlement Class in the above-captioned matter. I am a
4 member in good standing of the bar of the State of California and am admitted to practice in this Court.
5 I have personal knowledge of the facts stated in this declaration and could testify competently to them
6 if called upon to do so.

7 2. I am a 2005 graduate of Loyola Law School. During law school, I worked as an extern
8 for the Honorable Erithe A. Smith, U.S. Bankruptcy Court for the Central District of California. During
9 law school, I also worked as a law clerk in the Enforcement Unit of the Office of the Chief Trial Counsel
10 for the State Bar of California.

11 3. Since graduating from law school, my practice has focused almost exclusively on
12 employment litigation. In October 2007, I began working as an associate attorney at the international
13 law firm of Littler Mendelson P.C., at its Los Angeles office, which according to its website is the
14 “largest law firm in the world exclusively devoted to representing management in employment,
15 employee benefits and labor law matters.”

16 4. In June 2012, I left Littler Mendelson to work at the Los Angeles office of Reed Smith
17 LLP. During my employment at Reed Smith, I worked exclusively in the labor and employment
18 practice group. In June 2013, I returned to Littler Mendelson as an associate attorney, was promoted to
19 Shareholder in 2015, and was elevated to participating Shareholder in 2017. Since October 2007, my
20 practice has been and continues to be exclusively labor and employment law, with a strong emphasis
21 on wage and hour class actions venued in both state and federal courts. During this time period and my
22 legal career in general, I also worked on a number of single and multi-plaintiff wage and hour matters
23 as well. During my employment at Littler Mendelson, I was a member of its Class Action Practice
24 Group.

25 5. During my employment at Littler Mendelson, I played a significant role in the class
26 actions that I was staffed on, and was primarily responsible for managing the litigation both in my role
27 as a Senior Associate and as a Shareholder. In particular, I received a wide-array of wage and hour
28

1 class action experience performing the following types of tasks: drafting demurrers, motions to strike
2 and/or dismiss; removing actions from state court to federal court; drafting and responding to written
3 discovery; drafting and opposing discovery related motions; arguing discovery related motions; drafting
4 motions to consolidate related matters; interviewing putative class members and obtaining declarations
5 in connection with class certification; drafting oppositions to motions for class certification; conducting
6 exposure analyses to assess the strengths and weaknesses of asserted claims, the likelihood of prevailing
7 at class certification and potential damages resulting from such claims; drafting mediation briefs;
8 serving as the primary contact to in-house counsel; deposing named plaintiffs and putative class
9 members; deposing retained expert witnesses; and defending the depositions of corporate witnesses. I
10 also was involved in the negotiations and settlements of many large wage and hour class actions. In
11 short, I played an integral role in all aspects of litigation from the inception of a matter through and
12 beyond class certification. I also supervised the work of several associate attorneys who were staffed
13 on the same wage and hour class actions.

14 6. Although not exhaustive, below is a list of many of the wage and hour class and PAGA
15 actions that I performed substantial work on while I was an Associate and/or Shareholder at Littler
16 Mendelson:

- 17 ► *Branch v. PM Realty Group, Inc.* Case No. BC575759, Los Angeles Superior
18 Court, County of Los Angeles, Honorable Ann Jones, presiding.
- 19 ► *Herrera v. Pharmavite, LLC*, Case No. BC599201, Los Angeles Superior Court,
20 County of Los Angeles, Honorable Judge Carolyn Kuhl, presiding.
- 21 ► *Dugan v. Stoneledge Furniture, LLC*, Case No. 16-cv-01125-PA-FFMx, United
22 States District Court, Central District of California, Honorable Judge Percy
23 Anderson, presiding.
- 24 ► *Klune v. Stoneledge Furniture, LLC*, Case No. 14-cv-03986-PA-FFMx, United
25 States District Court, Central District of California, Honorable Judge Percy
26 Anderson, presiding.

- 1 ▶ *Diaz v. ABM Industries, Inc.; Ampco Parking*, Case No. BC362932, California
2 Superior Court, County of Los Angeles, Honorable Judge Jane Johnson,
3 presiding.¹
- 4 ▶ *Adams v. Luxottica Retail North America, Inc.*, Case No. 07CC01346, California
5 Superior Court, County of Orange, Honorable Judge Thierry Patrick Colaw,
6 presiding.
- 7 ▶ *Page v. Luxottica Retail North America, Inc.*, Case No. FCS041512, California
8 Superior Court, County of Solano, Honorable Judge Paul Berman, presiding.
- 9 ▶ *Parker v. FedEx National LTL, Inc.*, Case No. 11-CV-006380-DSF-FFM, United
10 States District Court, Central District of California, Honorable Judge Dale
11 Fischer, presiding.
- 12 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
13 States District Court, Central District of California, Honorable Judge Margaret
14 Morrow, presiding.
- 15 ▶ *Bernal v. Comerica Bank, et al.*, Case No. 11-cv-01298-JAH-BGS, United States
16 District Court, Central District of California, Honorable Judge Margaret Morrow,
17 presiding.
- 18 ▶ *Granata v. Comerica Bank, et al.*, Case No. 37-2011-00086316-CU-OE-CTL,
19 California Superior Court, County of San Diego, Honorable Judge Jeffrey B.
20 Barton, presiding.
- 21 ▶ *Mathews v. Comerica Bank, et al.*, Case No. 111CV194781, California Superior
22 Court, County of Santa Clara.
- 23 ▶ *Gallegos v. Comerica Bank, et al.*, Case No. BC455515, California Superior
24 Court, County of Los Angeles, Honorable Judge Terry Green, presiding.
- 25 ▶ *Rumohr v. Comerica Bank, et al.*, Case No. CGC-11-508433, California Superior
26 Court, County of San Francisco.

¹ This matter was consolidated and litigated collectively with Case Nos. BC380923, BC 381523 and BC 406663.

1 ▶ *Robertson v. FedEx National LTL, Inc.*, Case No. 09-CV-05016-DSF-FFM,
2 United States District Court, Central District of California, Honorable Judge Dale
3 Fischer, presiding.

4 ▶ *Wittman v. FedEx National LTL, Inc.*, Case No. 09-CV-03663-DSF-FFM, United
5 States District Court, Central District of California, Honorable Judge Dale
6 Fischer, presiding.

7 7. In January 2018, I voluntarily resigned from Littler Mendelson in order to start a law
8 firm with another former Littler Mendelson Shareholder, Scott M. Lidman, to represent employees
9 with work-related claims, including primarily wage and hour claims and almost exclusively on a class-
10 action basis. I am currently a Shareholder of Lidman Law, APC. Currently, over ninety percent (90%)
11 of my practice is dedicated exclusively to the prosecution of wage and hour class actions, and I am
12 currently responsible for prosecuting over sixty-five (65) wage and hour class actions filed in State
13 courts throughout California, with several of them having been removed to Federal courts. I believe
14 that my professional experience renders me more than qualified to serve as class counsel in this lawsuit
15 involving claims of underpaid overtime and minimum wages, meal and rest period violations, and
16 derivative penalty claims. Not only have I litigated dozens of wage and hour cases throughout my
17 career involving similar claims, including the wage and hour class actions identified above, I have
18 litigated similar claims from both plaintiff and defense perspectives. As a result, I am able to
19 realistically assess and evaluate the facts and legal arguments that can be made in pursuit and defense
20 of similar wage and hour claims, as well as those facts and arguments in support and in opposition to
21 class certification. Consequently, I am able to appreciate the significant risks, uncertainties, and delay
22 involved in wage and hour class action litigation.

23 8. I have been appointed Class Counsel in: *Guardado v. Wesley Allen, Inc.*, Case No.
24 BC683027, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl
25 presiding; *Rodriguez v. Satco, Inc.*, Case No. BC682137, California Superior Court, County of Los
26 Angeles, Honorable Judge Ann I. Jones presiding; *Ong v. Howard's Appliances, Inc.*, Case No. 30-
27 2017-00964213-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge
28

1 William Claster presiding; *Hanke v. C&W Facility Services, Inc.*, Case No. CIVDS1814412,
2 California Superior Court, County of San Bernardino, Honorable Judge David Cohn presiding; *Molina*
3 *v. Mader News, Inc.*, Case No. BC685960, California Superior Court, County of Los Angeles,
4 Honorable Judge Yvette M. Palazuelos presiding; *Alvarez v. Salamander Fire Protection, Inc.*, Case
5 No. BC688326, California Superior Court, County of Los Angeles, Honorable Judge William F.
6 Highberger presiding; *Rodriguez v. H.F. Cox, Inc.*, Case No. BC653164, California Superior Court,
7 County of Los Angeles, Honorable Judge Carolyn B. Kuhl presiding; *Fregoso v. Amerigas Propane,*
8 *Inc.*, Case No. BC697973, California Superior Court, County of Los Angeles, Honorable Judge Rafael
9 A. Ongkeko presiding; *Teran v. Western Plastics, Inc.*, Case No. RIC1722619, California Superior
10 Court, County of Riverside, Honorable Judge Sunshine Sykes presiding; *Villegas de Torres v. El*
11 *Monte Superstore Inc.*, Case No. BC688477, California Superior Court, County of Los Angeles,
12 Honorable Judge Daniel J. Buckley presiding; *Huynh v. Polypeptide Laboratories, Inc.*, Case No.
13 BC680872, California Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko
14 presiding; *Guzman v. Century Blinds*, Case No. RIC1723654, California Superior Court, County of
15 Riverside, Honorable Judge Sunshine S. Sykes presiding; *George v. Convergence Marketing*, Case
16 No. CIVDS1901039, California Superior Court, County of San Bernardino, Honorable Judge David S.
17 Cohn presiding; *Coffee, et al. v. Flyers Transportation Energy, LLC*, Case No. 34-2017-00222084,
18 California Superior Court, County of Sacramento, Honorable Judge Alan G. Perkins presiding; *Romero*
19 *v. Fillmore Hospitality, LLC*, Case No. BC705667, California Superior Court, County of Los Angeles,
20 Honorable Judge Maren E. Nelson presiding; *Wennerstrom, et al. v. Giant Inland Empire R.V. Center,*
21 Case No. CIVDS1617291, California Superior Court, County of San Bernardino, Honorable Judge
22 David S. Cohn presiding; *Contreras, et al. v. Letter Ride, LLC*, Case No. 37-2018-00020841-CU-OE-
23 CTL, California Superior Court, County of San Diego, Honorable Judge Eddie C. Sturgeon presiding;
24 *Davis v. WeDriveU*, Case No. 18CV322578, California Superior Court, County of Santa Clara,
25 Honorable Judge Brian C. Walsh presiding; *Acuna v. Canton Food Co., Inc.*, Case No. BC685001,
26 California Superior Court, County of Los Angeles, Honorable Judge David S. Cunningham presiding;

1 and *Contreras v. Worldwide Flight Services, Inc.*, Case No. 2:18-cv-06036-PSG-SS, United States
2 District Court for the Central District of California, the Honorable Judge Philip S. Gutierrez presiding.

3 9. As co-counsel for Plaintiff and the proposed Settlement Class, I have been intimately
4 involved in every aspect of this case from its inception through the present, and I believe that the
5 proposed Settlement is a favorable result for the Settlement Class under the circumstances presented.

6 10. I am, informed and believe, and on that basis state, that Defendant R.A. Phillips
7 Industries, Inc. (hereinafter “R.A. Phillips” or “Defendant”) manufactures furniture for the restaurant
8 industry. On November 10, 2021, Plaintiff filed the instant putative class action complaint. On
9 November 10, 2021, Plaintiff submitted a letter to the California Labor & Workforce Development
10 Agency (“LWDA”) and R.A. Phillips of her intention of filing a PAGA claim based on the labor code
11 violations as alleged in her complaint. A true and correct copy of Plaintiff’s letter to the LWDA and
12 R.A. Phillips is attached hereto as **Exhibit 1**. Thereafter, on April 22, 2022, after exhausting her
13 administrative remedies, Plaintiff filed a First Amended Class and Representative Action Complaint
14 adding a cause of action for civil penalties under the PAGA. Plaintiff’s primary claims/allegations are
15 that R.A. Phillips: (1) failed to provide all legally required meal periods; (2) failed to authorize and
16 permit all legally required rest periods; (3) failed to provide accurate, itemized wage statements; (4)
17 engaged in unlawful business practices; and (5) is liable for civil penalties under the Labor Code Private
18 Attorneys General Act of 2004 (“PAGA”).

19 11. In advance of mediation, R.A. Phillips produced timekeeping and payroll data for
20 Plaintiff and the entire putative class, as well as its wage and hour policies and other relevant documents
21 and information relevant to the claims alleged. With the information and data provided by R.A. Phillips,
22 Plaintiff was able calculate the necessary metrics, including without limitation, class size, number of
23 workweeks and pay periods. After the detailed review of the documents and data produced by R.A.
24 Phillips, Class Counsel drew on their extensive experience in similar cases to assess the strengths and
25 weaknesses of Plaintiff’s case. This discovery allowed the parties to assess the merits and value of
26 Plaintiff’s claims and R.A. Phillips’ defenses thereto.

27 12. On August 30, 2022, a mediation was held with Glenn Lerman, Esq., a well-respected
28 wage and hour class action mediator. During mediation, the parties vigorously debated their opposing

1 legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims
2 and defenses. Ultimately, through a mediator's proposal, the Parties agreed on a class-wide resolution.
3 In the weeks that followed, the parties finalized the terms of settlement and executed the Stipulation of
4 Settlement ("Settlement"). A true and correct copy of the Settlement is attached hereto as **Exhibit 2**.
5 The proposed Notice Packet is attached as Exhibit A to the Settlement. A true and correct copy of
6 redline comparing the LASC's model agreement with the Settlement in this matter is attached hereto
7 as **Exhibit 3**.

8 13. The monetary terms of the Settlement are summarized below:

9	Gross Settlement Amount ("GSA"):	\$400,000.00
10	Minus Court-approved attorneys' fees (update to 1/3 of GSA):	\$133,333.33
11	Minus Court-approved, verified costs (up to \$):	\$32,000.00
12	Minus Court-approved Class Representative Service Award:	\$5,000.00
13	Minus Settlement Administration Costs:	\$10,000.00
14	Minus PAGA payment to the LWDA:	\$22,500.00
15	Net Settlement Amount ("NSA"):	\$197,166.67
16		
17	Settlement Class Members	405
18	Average Individual Payment: NSA/Settlement Class	\$486.83

19 Defendant shall fully fund the Gross Settlement Amount, including all amounts necessary to
20 fully pay R.A. Phillips' share of payroll taxes, by transmitting such funds to the Administrator no later
21 than 10 business days after the Effective Date. *See* Settlement, ¶ 4.3. Effective Date means the earliest
22 date by which both of the following have occurred: (a) the Court enters a Judgment based on its Final
23 Approval of the Settlement; and (b) the Judgment becomes final. The Judgment becomes final as of the
24 latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the
25 day the Court enters Judgment; or (b) if one or more Participating Class Members object to the
26 Settlement, the first day when the Judgement can no longer be appealed, which is either (i) the day after
27 the deadline for filing a notice of appeal from the Judgment, if no timely appeal from the Judgement is
28

1 filed, or (ii) the day after the appellate court affirms the Judgment and issues a remittitur, if an appeal
2 from the Judgment is timely filed. Settlement, ¶ 1.18.

3 After deducting amounts for the Court-approved attorneys' fees and verified costs, Service
4 Award to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the
5 Settlement results in a Net Settlement Amount ("NSA") of at least \$197,166.67 to be paid out to all
6 Settlement Class Members who do not timely opt out. Nguyen Decl., ¶ 13 & Exh. 2.

7 Therefore, the calculation of $\$197,166.67/405 = \486.83 is the average Individual Class
8 Payment assuming the Court approves the requested attorneys' fees, maximum attorneys' costs,
9 enhancement award, settlement administration costs, and payment to the LWDA. This calculation also
10 assumes that all 405 putative class members participate in the settlement and do not submit timely
11 requests for exclusions.

12 14. According to R.A. Phillips, there were approximately 405 total Settlement Class
13 Members as of the date of mediation defined as: All current and former non-exempt, hourly employees
14 of Defendant R.A. Phillips Industries, Inc. who worked at any time in California between November
15 10, 2017 and the date of preliminary approval (unless the Escalator Clause is triggered and Defendant
16 elects to close the Class Period earlier)." Thus, the average Individual Class Payment is \$486.83, as
17 explained above.

18 The proposed 264 Aggrieved Employees are defined as "all current and former non-exempt,
19 hourly employees of Defendant R.A. Phillips Industries, Inc. who worked at any time in California
20 between November 10, 2020 and the date of preliminary approval (unless the Escalator Clause is
21 triggered and Defendant elects to close the Class Period earlier)." Thus, the average Individual PAGA
22 Payment is projected to be approximately **\$28.41** ($\$7,500/264 = \28.41).

23 15. Settlement Class members' claims arise from R.A. Phillips' common, uniform policies
24 and practices that applied to Settlement Class Members during the class period. Specifically, Plaintiff
25 alleged that R.A. Phillips' common and uniform policies and practices resulted in the following
26 violations: (1) failure to provide all legally required meal periods; (2) failure to authorize and permit
27 all legally required rest periods; (3) failure to provide accurate, itemized wage statements; (4)
28 engagement in unlawful business practices; and (5) liability for civil penalties under the PAGA.

1 16. As described in the accompanying Motion for Preliminary Approval, Plaintiff alleges
2 that she and Settlement Class Members were not provided with all legally-compliant first meal periods
3 beginning before the end of the fifth hour of work. Specifically, Plaintiff alleges that R.A. Phillips
4 utilized a bell signaling system for meal periods, with the bell ringing exactly 30 minutes apart. This
5 means that Plaintiff and the other non-exempt employees did not receive a full 30-minute meal period
6 because they were required to be back at their workstations ready to work before the second bell rang.
7 As such, Plaintiff alleges that she and other non-exempt employees were not provided a full
8 uninterrupted 30-minute meal period because they had to return from their meal periods early and be
9 at their workstations ready to commence work. Moreover, Plaintiff alleges that she and the other non-
10 exempt employees had to wait in long lines to clock back in after their meal periods, which also resulted
11 in meal periods that were short or otherwise unlawful. Lastly, Plaintiff alleges that she and some other
12 non-exempt employees were required to carry walkie talkie radios at all times, essentially being on call
13 for their meal periods and unable to have duty-free meal periods in violation of California law. As
14 such, Plaintiff contends that Settlement Class Members experienced at least one meal period violation
15 on every shift in excess of 6.0 hours. Accordingly, and taking into account the amount of meal period
16 premiums paid by R.A. Phillips, Plaintiff calculated its maximum exposure for the alleged meal period
17 violations at approximately \$4,086,462 ((246,779 shifts over 6.0 hours x \$16.85 average rate of pay) -
18 \$71,764 meal premiums paid).

19 17. R.A. Phillips counters that it has always maintained a lawful meal period policy and
20 provided non-exempt employees with an opportunity to take legally compliant meal periods, and any
21 non-compliant meal periods reflected in employee timekeeping records were solely the result of
22 employee choice, rather than any policy or practice of R.A. Phillips. R.A. Phillips contends from the
23 records provided in connection with mediation, that it had an approximate 98% compliance rate. R.A.
24 Phillips also contends that it paid meal period premiums when a non-compliant meal period was
25 recorded. Further, it points out that under it is only required to “provide” the opportunity to take meal
26 periods, not “ensure” meal periods are taken, and that they have always done so. Finally, R.A. Phillips
27 contends Plaintiff’s meal period claim is not suited for class certification, since individual inquiries
28

1 would be required to assess which employees took non-compliant meal periods, how many meal
2 periods were non-compliant or missed, and the reasons why a particular employee took a non-
3 compliant meal period or missed a meal period during a particular shift. Accordingly, Plaintiff
4 discounted the maximum exposure by 85% for the risk of non-certification, and an additional 80% to
5 account for R.A. Phillips defenses on the merits to arrive at an estimated exposure of \$122,593.86.

6 18. Plaintiff alleges that she and Settlement Class Members were also not authorized and
7 permitted to take all required rest periods due to R.A. Phillips rest period policies and practices.
8 Specifically, Plaintiff alleges that R.A. Phillips utilized a bell signaling system for rest periods that
9 rang exactly 10-minutes apart. As such, and similar to meal periods, Plaintiff and the other non-exempt
10 employees had to be back at their workstations before the second bell rang. Thus, Plaintiff alleges the
11 rest periods were less than the requisite 10 minutes. Thus, Plaintiff alleges that she and other non-
12 exempt employees experienced at least one rest period violation on every shift worked in excess of 3.5
13 hours. Therefore, Plaintiff calculated R.A. Phillips' maximum exposure for the alleged rest period
14 violations at approximately \$4,231,187 (251,109 shifts over 3.5 hours x \$16.85 average rate of pay).

15 19. R.A. Phillips contends it has always maintained and enforced lawful rest period policies
16 and practices, and that Settlement Class Members were authorized and permitted to take all off-duty
17 rest periods in compliance with California law. R.A. Phillips also argues that Plaintiff's rest period
18 claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether
19 each Settlement Class Member was in fact authorized and permitted to take a compliant rest period,
20 which would devolve into an unmanageable series of mini-trials. Accordingly, Plaintiff discounted the
21 maximum exposure by 65% for the risk of non-certification, and an additional 70% to account for R.A.
22 Phillips' defenses on the merits to arrive at an estimated exposure of \$444,274.64.

23 20. Plaintiff further alleges that R.A. Phillips issued inaccurate wage statements in violation
24 of Labor Code § 226 as a result of the alleged unpaid minimum wages and overtime wages, and meal
25 and rest period premium wages described above. Specifically, Plaintiff contends that this conduct
26 violated Labor Code § 226(a) because the wage statements issued to Settlement Class Members did
27 not include all hours worked and the rate at which they were being paid. Plaintiff also alleges that R.A.
28

1 Phillips faces independent liability for failing to include the rate/hours for shift differentials on the
2 wage statements issued to its non-exempt employees. Plaintiff's data analysis reflected that there were
3 approximately 16,368 wage statements issued during the relevant time period. Therefore, Plaintiff
4 calculated R.A. Phillips' maximum exposure for wage statement violations at approximately
5 \$1,627,150 (($\50.00×193 current employees) + ($\$100.00 \times 16,175$ subsequent wage statements)).

6 21. R.A. Phillips argues that meal and rest period claims cannot support a claim for wage
7 statement penalties. R.A. Phillips further argues that its alleged wage statement violations could not
8 be shown to be "knowing and intentional," and that Plaintiff cannot show that she or any other
9 employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab.
10 Code § 226(e) for imposition of penalties. As such, Plaintiff discounted the calculated exposure by
11 60% for a risk of non-certification and an additional 65% for a risk of being unsuccessful on the merits,
12 to arrive at an estimated total of \$227,801.00.

13 22. Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged
14 Labor Code violations. Plaintiff calculated R.A. Phillips' maximum exposure at \$1,636,800 (16,368
15 pay periods x \$100 initial violation rate).

16 23. R.A. Phillips argues that Plaintiff's PAGA claim will fail for the same reasons that his
17 underlying claims will fail. R.A. Phillips also maintains that, given its good faith defenses, this Court
18 would exercise its discretion to substantially reduce any PAGA penalties if it were to find R.A. Phillips
19 liable for any of Plaintiff's claims. Therefore, Plaintiff discounted the maximum exposure figure by
20 70% for a risk of being unsuccessful on the merits, and an additional 65% to account for the possibility
21 of this Court reducing penalties, to arrive at an estimated exposure of \$171,864.00.

22 24. Using these estimated figures for each of the claims described above, Plaintiff predicted
23 the realistic total recovery for the Settlement Class would be approximately \$966,533.50. The
24 proposed settlement of \$400,000.00 therefore represents approximately 41.4% of the reasonably
25 forecasted recovery for the Settlement Class. Preliminary approval is appropriate as the settlement will
26 provide tangible monetary relief to Settlement Class Members, and will still provide an average
27 recovery to Settlement Class Members of over \$400.00.

1 25. Here, Class Counsel will also apply for an attorneys' fees award of one-third of the
2 GSA, which is currently estimated to be \$133,333.33, and up to \$32,000.00 in verified costs
3 reimbursement. Class Counsel has incurred substantial attorney fees conducting pre-filing
4 investigation, analyzing Plaintiff's claims, conducting legal research, analyzing timekeeping data and
5 payroll records, preparing for and attending mediation, negotiating and revising the long-form
6 Settlement, preparing this Motion, and otherwise litigating the case. Class Counsel expect to expend
7 additional attorney time in attending the hearing on this Motion, overseeing the Notice process and
8 fielding questions from Settlement Class Members, preparing the final approval papers and attending
9 the Final Approval hearing.

10 26. Plaintiff has provided written approval of the split of attorneys' fees in this action.

11 27. Plaintiff will seek a service award of \$5,000.00 at the time of seeking final approval,
12 and I believe this is reasonable given Plaintiff's efforts in this case and the risks she undertook on
13 behalf of the Settlement Class members, including the risk that he could be liable for R.A. Phillips'
14 costs if this case was unsuccessful. Plaintiff was integral in the prosecution of this action, by, among
15 other things, providing substantial factual information and documents to Class Counsel, attending
16 multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, and
17 otherwise actively participating in the prosecution of their claims.

18 28. Although the parties engaged in informal discovery throughout this action, the parties
19 still had significant discovery to complete in formal litigation had the matter not settled. Moreover,
20 Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake of a
21 disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. Even if
22 the classes sought to be certified by Plaintiff were in fact certified, the parties would incur considerably
23 more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal.
24 This Settlement avoids those risks and the accompanying expense.

25 29. I do not have any conflicts of interest with the class. I have also made reasonable inquiry
26 of other members of my firm and my co-counsel's firm, Haines Law Group, APC, and no one have any
27 conflicts of interest with the class.

30. Plaintiff will serve the Motion for Preliminary Approval and proposed Settlement Agreement on the LWDA on the same date she files his Motion for Preliminary Approval.

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

Executed on March 30, 2023, at El Segundo, California.


Elizabeth Nguyen

EXHIBIT 1

EXHIBIT 1

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

November 10, 2021

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

R.A. Phillips Industries, Inc.
12012 Burke Street
Santa Fe Springs CA 90670

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

R.A. Phillips Industries, Inc.
c/o Anthony Chaidez, Agent for Service of Process
12012 Burke Street
Santa Fe Springs CA 90670

Re: *Laura Torres v. R.A. Phillips Industries, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Laura Torres in claims arising from her employment with R.A. Phillips Industries, Inc., a California corporation (“Defendant”). Ms. Torres is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Ms. Torres intends to pursue a lawsuit on behalf of other “Aggrieved Employees”, which should be considered to include all current and former hourly employees who worked in California who worked, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Ms. Torres, a current non-exempt employee, has been employed by Defendant since November 2018 to approximately February 2021, at which time she began a medical leave of absence. During her employment, Ms. Torres performed various job duties, including without limitation, performing quality control and receiving orders for Defendant’s customers.

During her employment with Defendant, Ms. Torres was generally scheduled to work from 1:30 p.m. to 10:05 p.m. Monday through Friday. Defendant required Ms. Torres to clock in and out by scanning her finger and entering the last four digits of her social security number into the timekeeping system to keep track and record her work time.

Throughout her employment with Defendants, Ms. Torres and other Aggrieved Employees were not provided all required meal periods due to Defendant's meal period policies/practices which fail to provide uninterrupted, duty-free 30-minute meal periods prior to the start of the fifth hour of work. Specifically, during at least a portion of the relevant time period, Defendant had a policy/practice of notifying Ms. Torres and other Aggrieved Employees of the time to take a meal period by ringing a bell to signal the commencement of the meal period. Defendant had a policy of requiring Ms. Torres and other Aggrieved Employees to be at their work stations ready to re-commence work by the time the second bell rang, which was 30 minutes after the first bell. As such, Defendant had a policy and/or practice of requiring Ms. Torres and other Aggrieved Employees to return from their meal periods at least five minutes early to clock back in (given the long lines at the time clock) and be at their workstations ready to recommence work. Therefore, Defendant provided short or otherwise unlawful meal periods to Ms. Torres and other Aggrieved Employees because they would be required to cut their 30 minutes short in order to be back at their workstations ready to commence work. Additionally, Defendant required Ms. Torres and some other Aggrieved Employees to carry walkie talkie radios at all times, even during her meal periods. As a result, Ms. Torres and other Aggrieved Employees were essentially on-call during their meal periods, and often interrupted and unable to have duty-free meal periods in violation of California law.

Although Ms. Torres and other Aggrieved Employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Ms. Torres and other Aggrieved Employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendant maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Ms. Torres and other Aggrieved Employees.

Ms. Torres and other Aggrieved Employees were also not authorized and permitted to take all legally required and compliant rest periods due to Defendant's rest period policies and practices. Specifically, Defendant required employees to be back at their workstations and working at the 10-minute mark. As such, Defendant had a policy and/or practice of requiring Ms. Torres and other Aggrieved Employees to return from their rest periods before the full 10 minutes had elapsed and be at their workstations ready to recommence work. Thus, Defendant's rest period policies and practices did not authorize and permit Ms. Torres and other Aggrieved Employees a net ten-minute rest period for every four hours worked, or *major fraction thereof*.

On those occasions when Ms. Torres and other Aggrieved Employees were not authorized and permitted to take all legally-compliant rest periods to which they were

entitled, Defendant failed to compensate Ms. Torres and other Aggrieved Employees with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief during at least a portion of the class period, Defendant maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to Ms. Torres and other Aggrieved Employees.

As a result of Defendant's failure to pay all meal period premium wages and rest period premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Torres and other Aggrieved Employees.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 1 ("Wage Order 1"):

Meal Period Violations

As alleged above, Defendant failed to provide Ms. Torres and other Aggrieved Employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. Throughout Ms. Torres' employment with Defendant, Ms. Torres and other Aggrieved Employees were not provided all required meal periods due to Defendant's meal period policies/practices which fail to provide uninterrupted, duty-free 30-minute meal periods prior to the start of the fifth hour of work. As a result, Ms. Torres and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."). Although Torres and other Aggrieved Employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Ms. Torres and other Aggrieved Employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit Ms. Torres and other Aggrieved Employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As described above, Defendant's rest period policies/practices fail to authorize and permit all rest periods for every four hours worked, or *major fraction thereof*. Defendant had a policy and/or practice of requiring Ms. Torres and other Aggrieved Employees to return from their rest periods before the full 10 minutes had elapsed and be at their workstations ready to recommence work, thus resulting in rest periods less than the legally required net 10 minutes. As a result, Ms. Torres and other Aggrieved Employees are owed an additional hour of wages at their regular rate of

compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”)

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Ms. Torres and other Aggrieved Employees with accurate and complete, itemized wage statements that included, among other requirements, accurate meal and rest period premiums, rates of pay, hours worked at each rate of pay, and total hours worked, in violation of Labor Code § 226 *et seq.* Defendant’s failure to furnish Ms. Torres and other Aggrieved Employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant’s reported data.

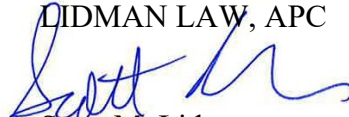
As an “aggrieved employee,” Ms. Torres will initiate a civil action on behalf of herself and other Aggrieved Employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Torres’ own investigation, and on information and belief, Defendant committed the following Labor Code violations:

- a) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Ms. Torres and other Aggrieved Employees;
- b) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Ms. Torres and other Aggrieved Employees;
- c) Defendant violated Labor Code § 226 by failing to furnish Ms. Torres and other Aggrieved Employees with accurate and compliant itemized wage statements;
- d) Defendant violated Labor Code § 204 by failing to pay Ms. Torres and other Aggrieved Employees all earned wages at least twice during each calendar month;
- e) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Ms. Torres and other Aggrieved Employees; and

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,

LIDMAN LAW, APC



Scott M. Lidman

EXHIBIT 2

EXHIBIT 2

JOINT STIPULATION AND SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Laura Torres (“Plaintiff”), individually and on behalf of the putative class, the State of California, and the allegedly aggrieved employees, and defendant R.A. Phillips Industries, Inc. (“Phillips”). The Agreement refers to Plaintiff and Phillips collectively as “Parties,” or individually as a “Party.”

1. DEFINITIONS.

- 1.1. **“Action”** means Plaintiff’s lawsuit alleging wage and hour violations against Phillips, captioned *Laura Torres v. R.A. Phillips Industries, Inc.*, Case No. 21STCV41572, initiated on November 10, 2021, and pending in the Superior Court of California, County of Los Angeles.
- 1.2. **“Administrator”** means Phoenix Class Action Administration Solutions, the neutral third-party administrator which the Parties have agreed to appoint to administer the Settlement, pursuant to Court approval.
- 1.3. **“Administration Expenses Payment”** means the amount the Administrator will be paid from the Gross Settlement Amount (subject to Court approval) to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. **“Aggrieved Employees”** means all current and former hourly, non-exempt employees employed by Phillips in California and worked for Phillips during the PAGA Period.
- 1.5. **“Class”** means all current and former hourly-paid or non-exempt employees of Phillips in California at any time during the Class Period.
- 1.6. **“Class Counsel”** means Lidman Law, APC; and Haines Law Group, APC.
- 1.7. **“Class Counsel Litigation Expenses Payment”** means the Court approved amount allocated to Class Counsel for reimbursement of reasonable and actual litigation costs incurred to prosecute the Action.
- 1.8. **“Class Data”** means Class Member identifying information in Phillips’ possession, including each Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. **“Class Member”** means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. **“Class Member Address Search”** means the Administrator’s investigation and search for current Class Member 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 Class Members.

- 1.11. **“Class Notice”** means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English, with a Spanish translation, in the form, without material variation, attached as **Exhibit A** to this Agreement, and incorporated by reference into this Agreement.
- 1.12. **“Class Period”** means the period from November 10, 2017, to and including the earlier date of Preliminary Approval (unless the Escalator Clause is triggered and Defendant elects to close the Class Period earlier under Paragraph 8 below).
- 1.13. **“Class Representative”** means the named Plaintiff in the First Amended Complaint filed in the Action seeking Court approval to serve as a Class Representative.
- 1.14. **“Class Representative Service Payment”** means the payment to the Class Representative for initiating the Action and providing services in support of the Action, which will not exceed Five-Thousand Dollars (\$5,000.00).
- 1.15. **“Court”** means the Superior Court of California, County of Los Angeles.
- 1.16. **“Phillips”** means defendant R.A. Phillips Industries, Inc.
- 1.17. **“Defense Counsel”** means Sabrina L. Shadi, Nicholas D. Poper, and Matthew J. Goodman of Baker & Hostetler LLP.
- 1.18. **“Effective Date”** means the earliest date by which both of the following have occurred: (a) the Court enters a Judgment based on its Final Approval of the Settlement; and (b) the Judgment becomes final. The Judgment becomes final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; or (b) if one or more Participating Class Members object to the Settlement, the first day when the Judgment can no longer be appealed, which is either (i) the day after the deadline for filing a notice of appeal from the Judgment, if no timely appeal from the Judgment is filed, or (ii) the day after the appellate court affirms the Judgment and issues a remittitur, if an appeal from the Judgment is timely filed.
- 1.19. **“Fee Award”** means the Court-approved award of attorneys’ fees to be paid to Class Counsel for the services they rendered on behalf of Plaintiff, the Class, and the Aggrieved Employees. Class Counsel will not seek, and Defendant will not oppose, attorneys’ fees of more than one-third (1/3) of the Gross Settlement Amount (include one-third (1/3) of an increase pursuant to the Escalator Clause at Paragraph 8 below) as their Fee Award.
- 1.20. **“Final Approval”** means the Court’s order granting final approval of the Settlement and entering judgment.
- 1.21. **“Final Approval Hearing”** means the Court’s hearing on the Motion for Final Approval of the Settlement.

- 1.22. **“Final Judgment”** means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.23. **“Gross Settlement Amount”** means the non-reversionary total amount that Phillips shall pay in connection with this Settlement, in exchange of the release of claims described in Paragraph 5 of this Agreement. The Gross Settlement Amount is the gross sum of Four Hundred Thousand Dollars and Zero Cents (\$400,000.00), plus Phillips’ share of payroll taxes on the portions of the Gross Settlement Amount attributed to wages (which shall be paid separately). The Gross Settlement Amount and Phillips’ share of payroll taxes comprises the total amount Phillips agrees to pay, can ever be required to pay, or can ever cause to be paid, under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to fund the following payments: (a) the Individual Class Payments, (b) the Individual PAGA Payments, (c) the LWDA PAGA Payment, (d) the Fee Award, (d) the Class Counsel Litigation Expenses Payment, (f) the Class Representative Service Payment, and (g) the Administration Expenses Payment. No portion of the Gross Settlement Amount will revert to Phillips for any reason. Under no circumstances will Phillips be required to pay or cause to be paid greater than the Gross Settlement Amount and Phillips share of payroll taxes under this Settlement, except as provided in Paragraph 9 below.
- 1.24. **“Individual Class Payment”** means each Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked by the participating Class Member during the Class Period.
- 1.25. **“Individual PAGA Payment”** means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA period by each Aggrieved Employee.
- 1.26. **“Judgment”** means the judgment entered by the Court upon granting Final Approval.
- 1.27. **“LWDA”** means the California Labor and Workforce Development Agency.
- 1.28. **“LWDA PAGA Payment”** means the 75% of the PAGA Penalties paid to the LWDA pursuant to California Labor Code § 2699(i).
- 1.29. **“Net Settlement Amount”** means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: (a) the Individual PAGA Payments, (b) the LWDA PAGA Payment, (c) the Class Representative Service Payments, (d) the Fee Award, (e) the Class Counsel Litigation Expenses Payment, and (f) the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.30. **“Non-Participating Class Member”** means any Class Member who opts out of the Settlement’s release of class action claims by sending the Administrator a valid and timely Request for Exclusion.
- 1.31. **“PAGA Pay Period”** means any pay period during which an Aggrieved Employee worked for Phillips for at least one day during the PAGA Period.

- 1.32. **“PAGA Period”** means the period from November 10, 2020 up to and including the date of Preliminary Approval (unless the Escalator Clause is triggered and Defendant elects to close the PAGA Period earlier).
- 1.33. **“PAGA”** means the Private Attorneys General Act of 2004, at California Labor Code §§ 2698 *et seq.*
- 1.34. **“PAGA Notice”** means Plaintiff’s November 10, 2021 notice to Phillips and the LWDA providing notice pursuant to California Labor Code § 2699.3(a).
- 1.35. **“PAGA Penalties”** means the total amount of \$30,000 in PAGA penalties to be paid from the Gross Settlement Amount, 25% of which (\$7,500) shall be paid to the Aggrieved Employees, and 75% of which (\$22,500) shall be paid to the LWDA in settlement of the Released PAGA Claims.
- 1.36. **“Participating Class Member”** means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37. **“Plaintiff”** means Laura Torres, the named Plaintiff in the Action.
- 1.38. **“Preliminary Approval”** means the Court’s Order Granting Preliminary Approval of the terms and conditions of this Settlement.
- 1.39. **“Preliminary Approval Order”** means the proposed Order Granting Preliminary Approval of the Settlement.
- 1.40. **“Released Class Claims”** means the claims being released as described in Paragraphs 5.2 and 5.4 below.
- 1.41. **“Released PAGA Claims”** means the claims being released as described in Paragraph 5.3 and 5.4 below.
- 1.42. **“Released Parties”** means R.A. Phillips Industries, Inc. and any of its past, present, and future parents, subsidiaries, divisions, and/or affiliated companies and entities, and each of its/their past, present, and future owners, officers, directors, members, consultants, partners, subsidiaries, shareholders, attorneys, insurers, joint venturers, agents, successors, assigns, and legal representatives.
- 1.43. **“Request for Exclusion”** means a Class Member’s timely and valid submission of a written request to be excluded from the Settlement’s release of class action claims signed by the Class Member.
- 1.44. **“Response Deadline”** means 45 days after the Administrator mails Class Notices to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Released Class Claims of the Settlement, or (b) fax, email, or mail written objections to class components of the Settlement. For Class Members to whom Class Notices are re-mailed after having been returned undeliverable to the Administrator, the Response Deadline shall be extended by an additional 14 days.

- 1.45. “**Settlement**” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.46. “**Workweek**” means any week during which a Class Member worked for Phillips for at least one day during the Class Period.

2. **RECITALS.**

- 2.1. On November, 10 2021, Plaintiff filed a putative class action against Phillips in this Court captioned *Laura Torres v. R.A. Phillips Industries, Inc.*, Case No. 21STCV41572.
- 2.2. On April 22, 2022, Plaintiff filed a First Amended Complaint (“Operative Complaint”) alleging the following putative class action and representative claim against Phillips: (1) Failure to Provide Meal Periods under California Labor Code §§ 226.7, 512, and 558; (2) Failure to Authorize and permit Rest Periods under California Labor Code §§ 226.7 and 516; (3) Failure to Provide Accurate Itemized Wage Statements under California Labor Code § 226; (4) Unfair Competition under California Business & Professions Code §§ 17200 *et seq.*; and (5) Civil Penalties under California Private Attorneys General Act of 2004, §§ 2698, *et seq.*
- 2.3. Pursuant to California Labor Code § 2699.3(a), Plaintiff gave written notice to Phillips and the LWDA by sending the PAGA Notice.
- 2.4. On September 30, 2022, the Parties participated in an all-day mediation presided over by mediator Glenn Lerman, Esq., which led to this Agreement to settle the Action. The Parties represent that, prior to mediation, they conducted significant investigation of the facts and law through informal discovery. Phillips produced documents relating to its policies, practices, and procedures regarding its wage and hour practices, paying non-exempt employees for all hours worked, meal and rest period policies, meal premiums paid, and payroll and operational policies. As part of Phillips’ production, Class Counsel represent they also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Class Counsel to understand the number of workweeks and pay periods in the Class Period and the PAGA Period. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged within the course and scope of the Parties’ mediation, are more than sufficient to assess the merits of the respective Parties’ positions and to compromise the issues on a fair and equitable basis. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).
- 2.5. The Parties, Class 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. Phillips agrees to pay a total sum of Four Hundred Thousand Dollars and Zero Cents (\$400,000.00) as the Gross Settlement Amount.

Under no circumstances will Phillips be required to pay or cause to be paid greater than the Gross Settlement Amount under the terms of this Settlement, except as to Phillips' share of payroll taxes for that portion of the Gross Settlement Amount attributed as wages (which shall be paid separately). Phillips has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or 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 Plaintiff: Class Representative Service Payment, subject to Court approval, of no more than Five Thousand Dollars (\$5,000.00) to the Class Representative in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member and/or Aggrieved Employee. Phillips will not oppose Plaintiff's request for Class Representative Service Payment that does not exceed this amount. Plaintiff will seek Court approval for any Class Representative Service Payment. Plaintiff and Class Counsel shall file this motion no later than 16 court days prior to the Final Approval Hearing. If the Court approves an amount of Class Representative Service Payment that is less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for all employee taxes owed on her Class Representative Service Payment.

3.2.2. To Class Counsel: A Fee Award, subject to Court approval, in an amount up to one-third (1/3) of the Gross Settlement Amount (including one-third of an increase pursuant to Paragraph 9, which will compensate Class Counsel for all work performed and to be performed in the Action. The Fee Award is currently estimated to be \$133,333.33, In addition, Class Counsel shall, subject to Court approval, request reimbursement of the Class Counsel Expense Payment. Phillips will not oppose requests for these payments that do not exceed these amounts. The Administrator will pay the Fee Award and Class Counsel Litigation Expense Payment using IRS Forms 1099. Class Counsel assumes full responsibility and liability for taxes owed on the Fee Award and the Class Counsel Litigation Expenses Payment and holds Released Parties harmless, and indemnifies Released Parties, from any dispute or controversy regarding any division or sharing of these Payments.

3.2.3. To the Administrator: Settlement Administration costs shall not exceed \$10,000, except for a showing of good cause and as approved by the Court. To the extent the Settlement Administration costs are less, or the Court

approves payment of less than \$10,000, the Administrator will allocate the remainder to the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the total Workweeks worked by each Participating Class Member during the Class Period.

3.2.4.1. Tax Allocation of Individual Class Payments. 33% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on IRS Form W-2. The remaining 67% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS Forms 1099. Each Participating Class Member assumes full responsibility and liability for any employee taxes owed on his or her Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. However, Non-Participating Class Members will still receive an Individual PAGA Payment (to the extent otherwise applicable based on the terms of this Settlement) regardless of whether they submit a valid and timely Request for Exclusion).

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the total amount of \$30,000 to be paid from the Gross Settlement Amount. 75% of PAGA Penalties (\$22,500) shall be allocated to the LWDA PAGA Payment, and 25% of PAGA Penalties (\$7,500) shall be allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$7,500) by the total number of PAGA Pay Periods worked by all Aggrieved Employees, and (b) multiplying the result by the total PAGA Pay Periods worked by each Aggrieved Employee. Each Aggrieved Employee assumes full responsibility and liability for any taxes owed on his or her Individual PAGA Payment.

3.2.5.2. 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 Forms 1099.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Estimated Class Workweeks and PAGA Pay Periods. Based on a review of its records to date, Phillips estimates that as of August 30, 2022 there were approximately 405 Class Members who collectively worked a total of 55,848 Workweeks during the Class Period, and 264 Aggrieved Employees who collectively worked a total of 16,368 PAGA Pay Periods during the PAGA Period.
- 4.2. Delivery of Class Data. Within 15 days after the Order granting Preliminary Approval is entered and served, Phillips will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Phillips has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data to the Administrator as soon as reasonably feasible. Without any extension of the deadline by which Phillips must send the Class 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 Class Data.
- 4.3. Funding of Gross Settlement Amount. Phillips shall fully fund the Gross Settlement Amount, including all amounts necessary to fully pay Phillips' share of payroll taxes, by transmitting such funds to the Administrator no later than 10 business days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within 10 business days after Phillips funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fee Award, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fee Award, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - 4.4.1. The Administrator will issue checks for the Individual Class Payments and Individual PAGA Payments and send them to all Participating Class Members and 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. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members, including those whose Class Notices were returned undeliverable. The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees, including Non-Participating Class Members who qualify as Aggrieved Employees, and including those Aggrieved Employees

whose Class Notices were returned undeliverable. The Administrator may send Participating Class Members who are also Aggrieved Employees a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database.

- 4.4.2. The Administrator must conduct a Class Member Address Search for all other Participating Class Members and Aggrieved Employees whose checks are returned undeliverable without USPS forwarding addresses. Within 3 business days of receiving a returned check, the Administrator must re-mail checks to the forwarding address provided by USPS, or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Participating Class Members and Aggrieved Employees whose re-mailed checks are returned as undeliverable. The Administrator shall promptly send a replacement check requested by any Participating Class Member or Aggrieved Employee whose original check was lost or misplaced prior to the check void date.
- 4.4.3. For any Participating Class Member whose Individual Class Payment check is uncashed and cancelled after the void date, and 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 Controller's Unclaimed Property Fund, in the name of the Participating Class Member and/or Aggrieved Employee, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b). Participating Class Members whose Individual Class Payment checks are cancelled shall, nevertheless, be bound by the Class Settlement. Aggrieved Employees whose Individual PAGA Payment checks are cancelled shall, nevertheless, be bound by the Released PAGA Claims.
- 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Phillips to confer any additional benefits or make any additional payments to Class Members or 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, which includes all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Participating Class Members, Aggrieved Employees, and Class Counsel will release claims against all Released Parties as follows:

- 5.1. Plaintiff's Release. Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties, in exchange for consideration provided in this Agreement, from any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest, attorneys' fees, costs, liabilities, expenses, and losses arising from or related to all facts, transactions, and occurrences which occurred during the Class Period, including, but not limited to:

(a) all claims that were, or reasonably could have been, alleged based on the facts alleged in the Action and facts alleged in Plaintiff's PAGA Notice; (b) all claims that were, or reasonably could have been, ascertained during the Action, and (c) all claims released pursuant to Paragraph 5.4 below ("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 to claims or actions based on occurrences outside the Class Period. Plaintiff acknowledges that she may discover facts or law different from, or in addition to, the facts or law that she 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, her discovery of those facts.

5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release only, 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 Participating Class Members: All Participating Class Members Who Are Not Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release and discharge Released Parties, in exchange for consideration provided in this Agreement, from any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest, attorneys' fees, costs, liabilities, expenses, and losses arising from or related to the acts, facts, transactions, theories, occurrences, representations, or omissions that were alleged, or reasonably could have been alleged, in the Action based on the factual Class Period facts alleged in the Action, including but not limited to: (a) any alleged failure by Phillips to provide meal or rest periods or to pay meal or rest period premiums (including, but not limited to, failure to correctly calculate the regular rate of pay used to calculate meal and/or rest period premium pay); (b) any alleged failure by Phillips to provide compliant wage statements; (c) any right or claim for unfair business practices in violation of California Business & Professions Code §§ 17200 *et seq.*; (d) any right or claim for civil penalties (except PAGA Penalties) pursuant to the California Labor Code or Wage Order; (e) any violation or breach of the California Labor Code arising from or related to the conduct or omission alleged, or could have reasonably been alleged based on the Class Period facts alleged including without limitation, any violation or breach of California Labor Code §§ 203 solely based on the failure to timely pay all meal period and rest period premiums due at the time of separation of employment, 226, 226.7, 512, 516, 558, 1174, or any other similar state or local statute, wage order, rule, regulation, ordinance, or authority, or similar causes of action arising from or relating to the conduct alleged ("Released Class Claims"). Except as set forth in Paragraph 5.4 of this Agreement, Participating Class Members

do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3. Release by Aggrieved Employees: All Non-Participating Class Members who are 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 civil penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Action and the PAGA Notice,, including, but not limited to, any right or claim for PAGA penalties predicated on: (a) any alleged failure by Phillips to provide meal or rest periods or to pay meal or rest period premiums (including, but not limited to, failure to correctly calculate the regular rate of pay used to calculate meal and/or rest period premium pay); (b) any alleged failure by Phillips to provide compliant wage statements; (c) any right or claim for civil penalties pursuant to the California Labor Code or Wage Order; (e) any violation or breach of the California Labor Code arising from or related to the conduct or omission alleged, or could have reasonably been alleged based on the PAGA Period facts stated in the Action and the PAGA Notice and the conduct or omission ascertained in the course of the Action, including without limitation, any violation or breach of California Labor Code §§ 203 solely based on the failure to timely pay all meal period and rest period premiums due at the time of separation of employment, 204, 226, 226.7, 512, 516, 558, 1174, or any other similar wage orders ("Released PAGA Claims").

5.4. Release by Participating Class Members Who Are Aggrieved Employees: All Participating Class Members who are Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release and discharge Released Parties, in exchange for consideration provided in this Agreement, from all Released Class Claims set forth in Paragraph 5.2 above and all Released PAGA Claims set forth in Paragraph 5.3 above.

6. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

6.1. Phillip's Declaration in Support of Preliminary Approval. Within 10 business days of the full execution of this Agreement, Phillips will prepare and deliver to Class Counsel a signed Declaration from Phillips and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and Phillips 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. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the

notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code § 2699 (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) 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 Class 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 any Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve as Class Representative and disclosing all facts relevant to any actual or potential conflicts of interest with any Class Members and/or the Administrator; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class; its timely transmission to the LWDA of all necessary PAGA documents, including Plaintiff’s PAGA Notice, the Operative Complaint, this Agreement; (vii) a redlined version of the parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (viii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator. In their respective Declarations, Plaintiff and Class Counsel shall state whether they are aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval, which they expect will occur no later than 30 days after the full execution of this Agreement. Class Counsel are responsible for obtaining from the Court a prompt hearing date for the Motion for Preliminary Approval and appearing in Court to advocate in favor of the Motion for Preliminary Approval, delivering the Court’s Preliminary Approval to the Administrator, and submitting copies of the Motion for Preliminary Approval of the Settlement to the LWDA on the same day that it is filed with the Court.
- 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class 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 Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class 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. Notice to Class Members.
 - 7.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.
 - 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice, with Spanish translation, substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate (1) the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and (2) the number of Workweeks and/or PAGA Pay Periods used to calculate these amounts. Before mailing Class Notices, the Administrator shall update the Class Members’ addresses using the National Change of Address database.
 - 7.4.3. No later than three (3) business days after the Administrator’s receipt of any Class Notice returned by the USPS as undeliverable, the Administrator shall re-mail the Class Notice, via first-class USPS mail, using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notices are returned by the USPS a second time.
 - 7.4.4. For all Class Members whose Class Notices are re-mailed after having been returned to the Administrative as undeliverable, their Response Deadline to submit written objections, challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended by an additional 14 days beyond the

Response Deadline otherwise provided in the Class Notice. The Administrator shall inform the Class Member in writing of the extended Response Deadline with the re-mailed Class Notice.

- 7.4.5. If the Administrator, Phillips, or Class Counsel are contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement no later than 14 days after their respective receipt of the Class Notices, or the Response Deadline provided in the Class Notices, whichever is later.

7.5. Class Members' Requests for Exclusion (Opt-Outs).

- 7.5.1. Class Members who wish to exclude themselves from (or opt-out of) the Settlement's release of class action claims must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion no later than the Response Deadline – *i.e.*, 45 days after the Administrator mails the Class Notice (plus an additional 14 days for any Class Member whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's choice to be excluded from the Settlement and includes the Class Member's name, address, and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. A Class Member who does not request timely exclusion from the Class Settlement will be deemed a Settlement Class Member and will be bound by all terms of the Class Settlement, if the Settlement is granted Final Approval by the Court.
- 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all of the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 7.5.3. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under

Paragraphs 5.2, 5.3 and 5.4 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are also Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and will still receive an Individual PAGA Payment based on the terms of this Agreement.

7.5.5. Challenges to Calculation of Workweeks and PAGA Pay Periods. Each Class Member and Aggrieved Employee shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed after having been returned undeliverable to the Administrator) to challenge the number of Workweeks and/or PAGA Pay Periods allocated to the Class Member in the Class Notice. The Class Member and/or Aggrieved Employee may communicate such challenge with the Administrator via fax, email, or mail. The Administrator must encourage the challenging Class Member and/or Aggrieved Employee to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks and/or PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or each Aggrieved Employee's allocation of PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.6. Objections to Class Action Components of the Settlement.

7.6.1. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Fee Award, Class Counsel Litigation Expenses Payment, and Class Representative Service Payment.

7.6.2. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline – *i.e.* 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members

whose Class Notice was re-mailed after having been returned as undeliverable).

7.6.3. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.7. 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.

7.7.1. Website, Email Address, and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time, and location for the Final Approval Hearing, and copies of the Settlement Agreement, the Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fee Award, Class Counsel Litigation Expenses Payment, and Class Representative Service Payment, the Final Approval, and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

7.7.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. No later than five (5) days after the expiration of the Response Deadline, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (the “Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion submitted (whether valid or invalid).

7.7.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned as undeliverable, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

7.7.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges to the calculation of Workweeks and/or all Aggrieved Employee challenges to the calculation of Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

7.7.5. Administrator's Declaration. No later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undeliverable, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.7.6. Final Report by Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. **CLASS ESTIMATES AND ESCALATOR CLAUSE.** Based on a review of its records to date, Phillips estimates that as of August 30, 2022 there were approximately 405 Class Members who collectively worked a total of 55,848 Workweeks during the Class Period, and 264 Aggrieved Employees who collectively worked a total of 16,368 PAGA Pay Periods during the PAGA Period. If the number of workweeks during the Class Period increases by more than 10% above 55,848 (i.e., if there are 61,432 or more workweeks worked by the Class Members), Defendant will at its option either (a) agree to increase the Gross Settlement Amount on a proportional basis (i.e., if there was 10% increase in the number workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 10%), or (b) agree to shorten and close the Class Period on the date that is closest to without exceeding 61,432 workweeks worked by the Class Members so as to eliminate the need to increase the Gross Settlement Amount. If Defendant elects to shorten the Class Period if this provision is triggered, the PAGA Period will also close on the date that the Class Period closes. Defendant will notify Plaintiff's counsel of its election after the hearing date of the preliminary hearing motion is known and within seven (7) days of being notified by the Administrator that the Escalator Clause has been triggered.

9. **PHILLIPS' RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the Class, Phillips may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Phillips withdraws, the Settlement shall be void *ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement, except that Phillips will remain responsible for paying all Settlement Administration Expenses actually incurred up to that time. Phillips must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. MOTION FOR FINAL APPROVAL. No later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code § 2699(l), a Proposed Final Approval Order, and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel no later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

- 10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fee Award, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 10.3. 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 the Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fee Award and Class Counsel Litigation Expenses Payment set forth in this Agreement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, 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 an objector 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.
- 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to

address the reviewing Court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after any such remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. **AMENDED JUDGMENT.** If any amended judgment is required under California Code of Civil Procedure § 384, the Parties will work together in good faith to jointly submit a proposed amended judgment.

12. **ADDITIONAL PROVISIONS.**

12.1. **No Admission of Liability, Class Certification 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' defenses in the Action have merit. The Parties agree that class certification and representative treatment are for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval, or enter Judgment, Phillips reserves the right to contest certification of any class, and the manageability of any representative claim, for any reasons, and Phillips reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Phillips' 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

12.2. **Confidentiality Prior to Preliminary Approval.** Plaintiff, Class Counsel, Phillips and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; (5) in response to an inquiry or subpoena issued by a state or federal government agency; or (6) to the extent disclosure is required, as determined by a Party's counsel, by applicable law or regulation. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Phillips and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement

except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

- 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of the Settlement, to object to the Settlement, or appeal from the Judgment. Nothing in this Paragraph shall be construed to restrict Class Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members
- 12.5. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibit(s) 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 concerning the Settlement or the Action.
- 12.6. Attorney Authorization. Class 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.
- 12.7. 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 Mr. Lerman and/or the Court for resolution.
- 12.8. 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.
- 12.9. No Tax Advice. Neither Plaintiff, Class Counsel, Phillips, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.
- 12.10. 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. A waiver or amendment of any provisions of this Agreement will not constitute a waiver of any other

provision.

- 12.11. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.12. Applicable Law. All terms and conditions of this Agreement and its exhibit(s) will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.
- 12.13. 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 its drafter or participated in its drafting.
- 12.14. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during the Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.15. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class 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 date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final disbursement of the Gross Settlement Amount, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Phillips unless, prior to the Court's discharge of the Administrator's obligation, Phillips makes a written request to Class Counsel for the return, rather than the destructions, of Class Data, except that Class Counsel may keep one copy for their files.
- 12.16. 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.
- 12.17. 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.
- 12.18. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed delivered by United States mail, by overnight mail, by email, or by messenger, to the addresses set forth below:

To Plaintiff Laura Torres: **LIDMAN LAW, APC**

Scott M. Lidman (slidman@lidmanlaw.com)

Elizabeth Nguyen (enguyen@lidmanlaw.com)

Milan Moore (mmoore@lidmanlaw.com)

2155 Campus Drive, Suite 150
El Segundo, CA

HAINES LAW GROUP, APC

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El Segundo, CA

To Phillips:

BAKER & HOSTETLER LLP

Sabrina L. Shadi (sshadi@bakerlaw.com)
Nicholas D. Poper (npoper@bakerlaw.com)
Matthew J. Goodman (mgoodman@bakerlaw.com)
11601 Wilshire Boulevard, Suite 1400
Los Angeles, CA 90025-0509

- 12.19. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (e.g., DocuSign), or scanned copies of the signature page which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be on 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.
- 12.20. Stay of Litigation. The Parties agree to hold in abeyance all proceedings in the Action (including with respect to California Code of Civil Procedure § 583.310), except such proceedings necessary to implement and complete the Settlement. The Parties further agree that upon the signing of this Agreement that pursuant to California Code of Civil Procedure § 583.310 to extend the date to bring this case to trial under California Code of Civil Procedure § 583.310 for the entire period of this settlement process.
- 12.21. No Signature Required by Class Members. Only the Plaintiff will be required to execute this Settlement Agreement. The Settlement Notice will advise all Class Members of the binding nature of the release, and such shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member.
- 12.22. Submissions to the LWDA. At the same time as they submit this Settlement Agreement to the Court for Preliminary Approval, Class Counsel shall submit a copy of this Agreement to the LWDA, as required by California Labor Code § 2699(1)(2). Within ten (10) days following the Effective Date, Class Counsel shall submit a copy of the Final Approval Order and Judgment entered by the Court to the LWDA, as required by California Labor Code § 2699(1)(3).

12.23. Invalidity of Any Provision; Severability. Before declaring any provision of this Settlement invalid, the Parties request that the Court first attempt to construe the provisions valid, to the fullest extent possible, consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected.

IT IS SO AGREED.

For Plaintiff Laura Torres:

Dated: 02/28, 2023


laura torres (Feb 28, 2023 10:44 PST)
LAURA TORRES

For Defendant:

Dated: _____, 2023

R.A. PHILLIPS INDUSTRIES, INC.

By: _____
Its: _____

APPROVED AS TO FORM

Dated: February 28, 2023

LIDMAN LAW, APC
By: 

Scott M. Lidman
Elizabeth Nguyen
Attorneys for Plaintiff

BAKER & HOSTETLER LLP

Dated: _____, 2023

By: _____
Sabrina L. Shadi
Nicholas D. Poper
Attorneys for Defendant

For Defendant:

Dated: 3-3-23, 2022

R.A. PHILLIPS INDUSTRIES, INC.

By: 
Its: DAVID PHILLIPS

APPROVED AS TO FORM

Dated: _____, 2022

LIDMAN LAW, APC

By: _____
Scott M. Lidman
Elizabeth Nguyen
Attorneys for Plaintiff

BAKER & HOSTETLER LLP

Dated: 3/8/2023, 2023

By: 
Sabrina L. Shadi
Nicholas D. Poper
Attorneys for Defendant

EXHIBIT A

EXHIBIT A

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

Laura Torres v. R.A. Phillips Industries, Inc., Case No. 21STCV41572

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against R.A. Phillips Industries, Inc. (“Phillips”) for alleged wage and hour violations. The Action was filed by a former employee Laura Torres (“Plaintiff”) and seeks payment of unpaid wages and penalties for Phillips alleged failure to provide meal periods, failure to authorize and permit rest periods, and failure to provide accurate itemized wage statements for a class of all current and former hourly-paid or non-exempt employees (“Class Members”) who worked for Phillips during the Class Period from November 10, 2017 to [date of Preliminary Approval (unless the Escalator Clause is triggered and Defendant elects to close the Class Period earlier)] and (2) penalties under the California Private Attorney General Act (“PAGA”) for all current and former hourly-paid or non-exempt employees who worked for Phillips during the PAGA Period from November 10, 2020 to [date of Preliminary Approval (unless the Escalator Clause is triggered and Defendant elects to close the PAGA Period earlier)] (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Phillips to fund Individual Class Payments, and (2) a PAGA Settlement requiring Phillips to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Phillips’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Phillips’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Phillips’ records showing that **you worked _____ workweeks** during the Class Period and **you worked _____ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Phillips to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Phillips.

If you worked for Phillips during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Phillips.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Phillips, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Phillips will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Phillips that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is _____	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Phillips must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the _____ Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Phillips’ records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former Phillips employee. The Action accuses Phillips of violating California labor laws by failing to provide meal periods, rest breaks and accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: Scott M. Lidman, Elizabeth Nguyen and Milan Moore of Lidman Law, APC and Paul Haines of Haines Law Group, APC (“Class Counsel.”)

Phillips strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Phillips or Plaintiff is correct on the merits. In the meantime, Plaintiff and Phillips hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to

jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Phillips have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Phillips does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Phillips has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Phillips Will Pay \$400,000 as the Gross Settlement Amount (Gross Settlement). Phillips has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Phillips will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$133,333.33 (1/3 of the Gross Settlement] to Class Counsel for attorneys' fees and up to \$32,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$5,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$10,000 to the Administrator for services administering the Settlement.
 - D. Up to \$30,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiff and Phillips are asking the Court to approve an allocation of 33% of each Individual Class Payment to taxable wages (“Wage Portion”) and 67% to the Non-Wage Portion. The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Phillips will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Phillips have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Phillips.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against

Phillips based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Phillips have agreed that, in either case, the Settlement will be void: Phillips will not pay any money and Class Members will not release any claims against Phillips.
8. Administrator. The Court has appointed a neutral company, Phoenix Class Action Administration Solutions (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re- mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and Phillips has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Phillips or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest, attorneys’ fees, costs, liabilities, expenses, and losses arising from or related to the acts, facts, transactions, theories, occurrences, representations, or omissions that were alleged, or reasonably could have been alleged, in the Action based on the factual Class Period facts alleged in the Action, including but not limited to: (a) any alleged failure by Phillips to provide meal or rest periods or to pay meal or rest period premiums (including, but not limited to, failure to correctly calculate the regular rate of pay used to calculate meal and/or rest period premium pay); (b) any alleged failure by Phillips to provide compliant wage statements; (c) any right or claim for unfair business practices in violation of California Business & Professions Code §§ 17200 *et seq.*; (d) any right or claim for civil penalties (except PAGA Penalties) pursuant to the California Labor Code or Wage Order; (e) any violation or breach of the California Labor Code arising from or related to the conduct or omission alleged, or could have reasonably been alleged based on the Class Period facts alleged including without limitation, any violation or breach of California Labor Code §§ 203 solely based on the failure to timely pay all meal period and rest period premiums due at the time of separation of employment, 226, 226.7, 512, 516, 558, 1174, or any other similar state or local statute, wage order, rule, regulation, ordinance, or authority, or similar causes of action arising from or relating to the conduct alleged (“Released Class Claims”). Except as set forth in Section 5.4 of the Settlement Agreement, Participating Class Members do not release any other

claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.^{viii}

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Phillips has paid the Gross Settlement and separately paid the employer-side payroll taxes, all Aggrieved Employees will be barred from asserting PAGA claims against Phillips, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Phillips or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are 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 civil penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Action and the PAGA Notice, and ascertained in the course of the Action, including, but not limited to, any right or claim for PAGA penalties predicated on: (a) any alleged failure by Phillips to provide meal or rest periods or to pay meal or rest period premiums (including, but not limited to, failure to correctly calculate the regular rate of pay used to calculate meal and/or rest period premium pay); (b) any alleged failure by Phillips to provide compliant wage statements; (c) any right or claim for civil penalties pursuant to the California Labor Code or Wage Order; (e) any violation or breach of the California Labor Code arising from or related to the conduct or omission alleged, or could have reasonably been alleged based on the PAGA Period facts stated in the Action and the PAGA Notice, in the Action and the conduct or omission ascertained in the course of the Action, including without limitation, any violation or breach of California Labor Code §§ 200, 201, 201.3, 202, 203, 203 solely (limited to claims for penalties under Labor Code section 203 based on the failure to timely pay all meal period and rest period premiums due at the time of separation of employment), 204, 226, 226.7, 512, 516, 558, 1174, 1198, or any other similar wage orders ("Released PAGA Claims").

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$_____ by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of

PAGA Period Pay Periods worked by each individual Aggrieved Employee.

3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Phillips's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Phillips' calculation of Workweeks and/or Pay Periods based on Phillips' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Phillips' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).
3. **Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.**

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as _____, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Phillips are asking the Court to approve. At least _____ days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ (url) or the Court's website _____ (url).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action _____ and include your name, current address, telephone number, and approximate dates of employment for Phillips and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at (time) _____ in Department 14] of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Phillips and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____ (specify entity) _____'s website at _____ (url) _____. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No.21STCV41572. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

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Milan Moore
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Telephone: (424) 292-2350
Facsimile: (424) 292-2355
Email: phaines@haineslawgroup.com

Settlement Administrator: Name
of Company:
Email Address:
Mailing Address:
Telephone:
Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT 3

EXHIBIT 3

~~[MODEL] CLASS ACTION~~**JOINT STIPULATION AND PAGA SETTLEMENT
AGREEMENT AND CLASS NOTICE¹**

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between ~~plaintiff~~ Laura Torres (“Plaintiff”), individually and on behalf of the putative class, the State of California, and the allegedly aggrieved employees, and defendant ~~XYZ~~ (“XYZ”)-R.A. Phillips Industries, Inc. (“Phillips”). The Agreement refers to Plaintiff and ~~XYZ~~Phillips collectively as “Parties,” or individually as a “Party.”

1. DEFINITIONS.

- 1.1. “**Action**” means ~~the~~ Plaintiff’s lawsuit alleging wage and hour violations against ~~XYZ~~Phillips, captioned Laura Torres v. R.A. Phillips Industries, Inc., Case No. 21STCV41572, initiated on November 10, 2021, and pending in the Superior Court of ~~the State of~~ California, County of Los Angeles.
- 1.2. “**Administrator**” means Phoenix Class Action Administration Solutions, the neutral ~~entity~~third-party administrator which the Parties have agreed to appoint to administer the Settlement, pursuant to Court approval.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount (subject to Court approval) to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved EmployeeEmployees” means ~~[e.g., a person]~~ all current and former hourly, non-exempt employees employed by ~~XYZ~~Phillips in California and ~~classified as a~~ who worked for ~~XYZ~~Phillips during the PAGA Period~~].~~
- 1.5. “**Class**” means ~~[define class e.g., all persons employed by XYZ]~~ current and former hourly-paid or non-exempt employees of Phillips in California ~~and classified as~~ who worked for XYZ at any time during the Class Period~~].~~
- 1.6. “**Class Counsel**” means Lidman Law, APC; and Haines Law Group, APC.

- 1.7. ~~“Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”~~ mean means the ~~amounts~~ Court approved amount allocated to Class Counsel for reimbursement of reasonable ~~attorneys’ fees and expenses, respectively, and actual litigation costs~~ incurred to prosecute the Action.
- 1.8. **“Class Data”** means Class Member identifying information in ~~XYZ’s~~ Phillips’ possession, including ~~the~~ each Class Member’s name, last-known mailing address, Social Security number, ~~;~~ and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. ~~“Class Member” or “Settlement~~ **“Class Member”** means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- ~~1.1.~~ **“Class Member Address Search”** means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available

- 1.10. sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. **“Class Notice”** means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English, with a Spanish translation, in the form, without material variation, attached as Exhibit A to this Agreement, and incorporated by reference into this Agreement.
- mailed to Class Members in English [with a Spanish translation, if applicable] in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. **“Class Period”** means the period from November 10, 2017, to and including the earlier date of Preliminary Approval (unless the Escalator Clause is triggered and Defendant elects to close the Class Period earlier under Paragraph 8 below).
- 1.13. **“Class Representative”** means the named Plaintiff in the operative complaint ~~First Amended Complaint filed~~ in the Action seeking Court approval to serve as a Class Representative.
- 1.14. **“Class Representative Service Payment”** means the payment to the Class Representative for initiating the Action and providing services in support of the Action, which will not exceed Five-Thousand Dollars (\$5,000.00).
- 1.15. **“Court”** means the Superior Court of California, County of Los Angeles.
- 1.16. ~~“XYZ”~~ **“Phillips”** means ~~named Defendant~~ defendant R.A. Phillips Industries, Inc.
- 1.17. **“Defense Counsel”** means Sabrina L. Shadi, Nicholas D. Poper, and Matthew J. Goodman of Baker & Hostetler LLP.
- ~~1.2.~~ **“Effective Date”** means the earliest date by ~~when~~ which both of the following have occurred:
- 1.18. (a) the Court enters a Judgment based on its ~~Order Granting~~ Final Approval of the Settlement; and (b) the Judgment is becomes final. The Judgment is becomes final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; or (b) if one or more

Participating Class Members ~~objects~~object to the Settlement, the first day when the Judgement can no longer be appealed, which is either (i) the day after the deadline for filing a notice of appeal from the Judgment~~;~~ or, if ~~an~~o timely appeal from the ~~Judgment~~Judgement is filed, or (ii) the day after the appellate court affirms the Judgment and issues a remittitur, if an appeal from the Judgment is timely filed.

1.19. **“Fee Award”** means the Court-approved award of attorneys’ fees to be paid to Class Counsel for the services they rendered on behalf of Plaintiff, the Class, and the Aggrieved Employees. Class Counsel will not seek, and Defendant will not oppose, attorneys’ fees of more than one-third (1/3) of the Gross Settlement Amount (include one-third (1/3) of an increase pursuant to the Escalator Clause at Paragraph 8 below) as their Fee Award.

~~1.19.~~1.20. **“Final Approval”** means the Court’s order granting final approval of the Settlement~~;~~ and entering judgment.

~~1.20.~~1.21. **“Final Approval Hearing”** means the Court’s hearing on the Motion for Final Approval of the Settlement.

~~1.21.~~1.22. **“Final Judgment”** means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

~~1.3.~~ **“Gross Settlement Amount”** means \$ _____ ~~which is the~~ non-reversionary total amount ~~XYZ~~that Phillips shall pay in connection with this Settlement, in exchange of the release of claims described in Paragraph 5 of this Agreement. The Gross Settlement Amount is the gross sum of Four Hundred Thousand Dollars and Zero Cents (\$400,000.00), plus Phillips’ share of payroll taxes on the portions of the Gross Settlement Amount attributed to wages (which shall be paid separately). The Gross Settlement Amount and Phillips’ share of payroll taxes comprises the total amount Phillips agrees to pay, can ever be required to pay, or can ever cause to be paid, under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to ~~pay~~fund the following payments: (a) the Individual Class Payments, (b) the Individual

~~1.22.1.23.~~ **PAGA Payments**, (c) the LWDA PAGA Payment, (d) the Fee Award, (d) the Class Counsel Fees, Class Counsel Litigation Expenses, Payment, (f) the Class Representative Service Payment, and (g) the Administrator's Administration Expenses. Payment. No portion of the Gross Settlement Amount will revert to Phillips for any reason. Under no circumstances will Phillips be required to pay or cause to be paid greater than the Gross Settlement Amount and Phillips share of payroll taxes under this Settlement, except as provided in Paragraph 9 below.

~~1.23.1.24.~~ **"Individual Class Payment"** means ~~the~~each Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked by the participating Class Member during the Class Period.

~~1.24.1.25.~~ **"Individual PAGA Payment"** means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of ~~Workweeks~~PAGA Pay Periods worked during the PAGA ~~Period~~period by each Aggrieved Employee.

~~1.25.1.26.~~ **"Judgment"** means the judgment entered by the Court ~~based~~ upon ~~the~~granting Final Approval.

~~1.26.1.27.~~ **"LWDA"** means the California Labor and Workforce Development Agency; ~~the agency entitled, under Labor Code section 2699, subd. (i).~~

~~1.27.1.28.~~ **"LWDA PAGA Payment"** means the 75% of the PAGA Penalties paid to the LWDA ~~under~~pursuant to California Labor Code ~~section~~§ 2699, ~~subd. (i).~~

~~1.28.1.29.~~ **"Net Settlement Amount"** means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: (a) the Individual PAGA Payments, (b) the LWDA PAGA Payment, (c) the Class Representative Service Payment, Class Counsel Fees Payment, Payments, (d) the Fee Award, (e) the Class Counsel Litigation Expenses Payment, and (f) the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

~~1.29.1.30.~~ **"Non-Participating Class Member"** means any Class Member who opts out of the ~~Settlement~~Settlement's release of class action claims by sending the Administrator a valid and timely Request for Exclusion.

~~1.30.~~1.31. “PAGA Pay Period” means any ~~Pay Period~~pay period during which an Aggrieved Employee worked for ~~XYZ~~Phillips for at least one day during the PAGA Period.

~~1.31.~~1.32. “PAGA Period” means the period from ~~November 10, 2020~~ up to ~~_____~~ⁱⁱⁱand including the date of Preliminary Approval (unless the Escalator Clause is triggered and Defendant elects to close the PAGA Period earlier).

~~1.32.~~1.33. “PAGA” means the Private Attorneys General Act ~~(of 2004, at California Labor Code §§ 2698; et seq.)~~.

~~1.33.~~1.34. “PAGA Notice” means Plaintiff’s ~~letter to XYZ~~November 10, 2021 notice to Phillips and the LWDA ~~[and Plaintiff’s letter to XYZ and the LWDA]~~ providing notice pursuant to California Labor Code ~~section~~§ 2699.3, ~~subd. (a).~~

~~1.4.~~ “PAGA Penalties” means the total amount of \$30,000 in PAGA ~~civil~~ penalties to be paid from the Gross Settlement Amount, ~~allocated 25%~~25% of which (\$7,500) shall be paid to the Aggrieved Employees

~~1.34.~~1.35. ~~(_____)~~, and ~~the~~ 75% of which (\$22,500) shall be paid to ~~the~~ LWDA ~~(_____)~~ in settlement of ~~the Released~~ PAGA ~~claims~~Claims.

~~1.35.~~1.36. **“Participating Class Member”** means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

~~1.36.~~1.37. **“Plaintiff”** means —Laura Torres, the named ~~plaintiff~~Plaintiff in the Action.

~~1.37.~~1.38. **“Preliminary Approval”** means the Court’s Order Granting Preliminary Approval of the terms and conditions of this Settlement.

~~1.38.~~1.39. **“Preliminary Approval Order”** means the proposed Order Granting Preliminary Approval ~~and Approval~~ of ~~PAGA~~the Settlement.

~~1.39.~~1.40. **“Released Class Claims”** means the claims being released as described in ~~Paragraph 6.2~~Paragraphs 0 and 5.4 below.

~~1.40.~~1.41. **“Released PAGA Claims”** means the claims being released as described in Paragraph ~~6.2~~5.3 and 5.4 below.

~~1.41.~~1.42. **“Released Parties”** means:~~XYZ R.A. Phillips Industries, Inc. and any of its past, present, and future parents, subsidiaries, divisions, and/or affiliated companies and entities, and each of its former and/or their past, present, and future owners, officers, directors, officers, members, consultants, partners, subsidiaries, shareholders, owners, [members], attorneys, insurers, predecessors joint venturers, agents, successors, assigns [subsidiaries] [affiliates], and legal representatives.~~

~~1.42.~~1.43. **“Request for Exclusion”** means a Class Member’s timely and valid submission of a written request to be excluded from the ~~Class Settlement~~Settlement’s release of class action claims signed by the Class Member.

~~1.43.~~1.44. **“Response Deadline”** means ~~[e.g., 60]~~45 days after the Administrator mails ~~Notice~~Class Notices to Class Members and Aggrieved Employees; and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Released Class Claims of the Settlement, or (b) fax, email, or mail ~~his or her Objection~~written objections to class components of the Settlement. ~~For~~ Class Members to whom ~~Notice Packets~~Class Notices are ~~resent~~re-mailed after having been returned undeliverable to the Administrator-, the Response Deadline shall ~~have~~be extended by an additional 14 ~~calendar~~ days ~~beyond the Response Deadline has expired.~~

~~1.44.~~1.45. “**Settlement**” means the disposition of the Action effected by this Agreement and the Judgment.

~~1.45.~~1.46. “**Workweek**” means any week during which a Class Member worked for XYZPhillips for at least one day; during the Class Period.^{iv}

2. RECITALS.

~~2.1.~~ On November, 10 2021, Plaintiff ~~commenced this Action by filing~~filed a ~~Complaint alleging causes of~~putative class action against XYZ for _____. ~~[The Complaint is the operative complaint~~Phillips ~~in the Action (the “Operative Complaint.”)]~~{this Court captioned *Laura Torres v. R.A. Phillips Industries, Inc.*, Case No. 21STCV41572.

~~2.1.2.2.~~ On April 22, 2022, Plaintiff filed a ~~{e.g., First Amended Complaint}~~(“Operative Complaint”) alleging ~~causes of the following putative class action and~~representative claim against XYZ for _____. The ~~{e.g., First Amended} Complaint~~is the operative complaint in the Action (the “OperativePhillips: (1) Failure to Provide Meal Periods under California Labor Code §§ 226.7, 512, and 558; (2) Failure to Authorize and permit Rest Periods under California Labor Code §§ 226.7 and 516; (3) Failure to Provide Accurate Itemized Wage Statements under California Labor Code § 226; (4) Unfair Competition under California Business & Professions Code §§ 17200 et seq.; and (5) Civil Penalties under California Private Attorneys General Act of 2004, §§ 2698, et seq.

~~Complaint.”)] XYZ 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.~~

2.2.2.3. ~~_____ Pursuant to California Labor Code section § 2699.3, subd. (a), Plaintiff gave timely written notice to XYZPhillips and the LWDA by sending the PAGA Notice.~~

1.5. ~~On _____ (type in additional dates) _____, [the September 30, 2022, the Parties participated in an all-day mediation presided over by _____ mediator Glenn Lerman, Esq., which led to this Agreement to settle the Action (describe alternative means of negotiation). _____ (describe alternative means of negotiation) _____]~~

1.6. ~~_____ Prior to ☐. The Parties represent that, prior to mediation ☐ negotiating the Settlement, Plaintiff obtained, they conducted significant investigation of the facts and law through~~

2.3.2.4. ~~☐ formal ☐ informal discovery, ~~(. Phillips produced documents, testimony relating to its policies, practices, and procedures regarding its wage and hour practices, paying non-exempt employees for all hours worked, meal and rest period policies, meal premiums paid, and payroll and operational policies. As part of Phillips’ production, Class Counsel represent they also reviewed time records, pay records, and information obtained) relating to the size and scope of the Class, as well as data permitting Class Counsel to understand the number of workweeks and pay periods in the Class Period and the PAGA Period. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged within the course and scope of the Parties’ mediation, are more than sufficient to assess the merits of the respective Parties’ positions and to compromise the issues on a fair and equitable basis.~~ Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).~~

1.7. ~~The Court ☐ has ☐ has not granted class certification. _____ (insert details as needed) _____~~

2.4.2.5. ~~_____ The Parties, Class 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, XYZ promises~~ Phillips agrees to pay \$_____ a total sum of Four Hundred Thousand Dollars and ~~no more~~ Zero Cents (\$400,000.00) as the Gross Settlement Amount ~~{and. Under no circumstances will Phillips be required to separately pay any and all employer or cause to be paid greater than the Gross Settlement Amount under the terms of this Settlement, except as to Phillips' share of payroll taxes owed on the Wage Portions of the Individual Class Payments.} XYZ for that portion of the Gross Settlement Amount attributed as wages (which shall be paid separately).~~ Phillips has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph ~~6.14.3~~ 6.14.3 of this Agreement.^v The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to ~~XYZ~~ 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:

~~1.7.1.~~ ~~_____~~ To Plaintiff: Class Representative Service Payment, subject to Court approval, of no more than Five Thousand Dollars (\$5,000.00) to the Class Representative ~~of not more than \$_____ (in addition to any Individual Class Payment {and any Individual PAGA Payment} the Class Representative is~~

3.2.1. ~~entitled to receive as a Participating Class Member).~~ ~~XYZ and/or Aggrieved Employee. Phillips~~ will not oppose Plaintiff's request for ~~a~~ Class Representative Service Payment that does not exceed this amount. ~~As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment,~~ Plaintiff will seek Court approval for any Class Representative Service ~~Payments~~Payment. ~~Plaintiff and Class Counsel shall file this motion~~ no later than ~~[16 court]~~ days prior to the Final Approval Hearing. If the Court approves ~~an amount of~~ Class Representative Service Payment ~~that is~~ less than the amount requested, the Administrator will ~~retain~~allocate the remainder ~~into~~ the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for ~~all~~ employee taxes owed on ~~the~~her Class Representative Service Payment.

3.2.2. To Class Counsel: A Fee Award, subject to Court approval, in an amount up to one-third (1/3) of the Gross Settlement Amount (including one-third of an increase pursuant to Paragraph 9, which will compensate Class Counsel Fees Payment of not more than ___%, which for all work performed and to be performed in the Action. The Fee Award is currently estimated to be \$___ and ~~a~~133,333.33. In addition, Class Counsel ~~Litigation Expenses Payment of not more than \$_____.~~ XYZ~~shall, subject to Court approval, request reimbursement of the Class Counsel Expense Payment. Phillips~~ will not oppose requests for these payments ~~provided~~ that do not exceed these amounts. ~~Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than [16 court] days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class 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 Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment.~~ The Administrator will pay the ~~Class Counsel Fees Payment~~Fee Award and Class Counsel ~~Expenses~~Litigation Expense Payment using ~~one or more~~ IRS ~~1099~~ Forms. 1099. Class Counsel assumes full responsibility and liability for taxes owed on the ~~Class Counsel Fees Payment~~Fee Award and the Class Counsel Litigation Expenses Payment and holds ~~XYZ Released Parties~~ harmless, and indemnifies ~~XYZ Released Parties,~~ from any dispute or controversy regarding any division or sharing of ~~any of~~ these Payments.

~~1.7.2. _____~~ To the Administrator: ~~An Administrator Expenses Payment~~Settlement Administration costs shall not ~~to~~ exceed

3.2.3. \$_____ \$10,000, except for a showing of good cause and as approved by the Court. To the extent the Settlement Administration ~~Expenses~~costs are less, or the Court approves payment of less than \$10,000, the Administrator will ~~retain~~allocate the remainder ~~into~~ the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period ~~and, and (b) multiplying the result by the total Workweeks worked by each Participating Class Member during the Class Period.~~

~~(b) multiplying the result by each Participating Class Member's Workweeks.~~

~~1.7.2.1.~~ Tax Allocation of Individual Class Payments. ~~%~~ 33% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on ~~an~~ IRS ~~W-2~~ Form W-2. The

3.2.4.1. ~~%~~ remaining 67% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for ~~[e.g., interest and penalties] (the~~ interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS Forms 1099. Each Participating Class Member assumes full responsibility and liability for any employee taxes owed on his or her Individual Class Payment.

~~“Non-Wage Portion”).^{vi} The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.~~

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. ~~The Administrator~~ However, Non-Participating Class Members will retain amounts equal to the ~~still receive an Individual Class Payments in PAGA Payment (to the Net extent otherwise applicable based on the terms of this Settlement Amount) regardless of whether they submit a valid and timely Request for distribution to Participating Class Members on a pro-rata basis.~~ Exclusion).

~~1.7.3. ——— To the LWDA and Aggrieved Employees: PAGA Penalties in the total amount of \$ ——— 30,000 to be paid from the Gross Settlement Amount, with 75%~~

3.2.5. ~~(\$ ———) of PAGA Penalties (\$22,500) shall be allocated to the LWDA PAGA Payment, and 25% (\$ —) of PAGA Penalties (\$7,500) shall be allocated to the Individual PAGA Payments.~~

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties \$ ~~———— (\$7,500)~~ by the total number of PAGA ~~Period~~ Pay Periods worked by all Aggrieved Employees ~~during the PAGA Period,~~ and (b) multiplying the result by the total PAGA Pay Periods worked by each Aggrieved ~~Employee’s PAGA Period Pay Periods.~~ Employee. ~~Each~~ Aggrieved ~~Employees assume~~ Employee assumes full responsibility and liability for any taxes owed on ~~their~~ this or her Individual PAGA Payment.

3.2.5.2. 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 1099.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. ~~——— Estimated Class Workweeks and Aggrieved Employee PAGA Pay Periods.~~ Based on a review of its records to date, XYZPhillips estimates that as of August 30, 2022 there ~~are~~ ———— were approximately 405 Class Members who collectively worked a total of 55,848 Workweeks during the Class Period, and ——

~~of~~264 Aggrieved Employees who collectively worked a total _____ of
16,368 PAGA Pay Periods during the PAGA Period.

1.8. _____ Delivery of Class Data. ~~Not later than [e.g., Within 15]~~ days after the ~~Court grants Order granting Preliminary Approval of the Settlement, XYZ is entered and served, Phillips~~ will ~~simultaneously~~ deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. ~~XYZ Phillips~~ has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data to the Administrator as soon as reasonably feasible. Without any extension of the deadline by which ~~XYZ Phillips~~ must send the Class Data

- 4.2. 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 Class Data.
- 4.3. ~~_____~~ Funding of Gross Settlement Amount. XYZPhillips shall fully fund the Gross Settlement Amount, ~~and also fund the~~ including all amounts necessary to fully pay XYZ'sPhillips' share of payroll taxes, by transmitting ~~the~~ such funds to the Administrator no later than ~~[14]~~ 10 business days after the Effective Date.
- 4.4. ~~_____~~ Payments from the Gross Settlement Amount. Within ~~[14]~~ 10 business days after XYZPhillips funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel ~~Fees~~ PaymentFee Award, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel ~~Fees~~ PaymentFee Award, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1. The Administrator will issue checks for the Individual Class Payments and ~~or~~ Individual PAGA Payments and send them to ~~the~~ all Participating Class Members and 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. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members ~~(, including those for whom whose Class Notice was Notices were returned undelivered)-undeliverable.~~ The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees, including Non-Participating Class Members who qualify as Aggrieved Employees ~~(, and including those for whom Aggrieved Employees whose Class Notice was Notices were returned undelivered)-undeliverable.~~ The Administrator may send Participating Class Members who are also Aggrieved Employees a single check combining the Individual Class Payment and the Individual PAGA Payment. 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 a Class Member Address Search for all other Participating Class Members and Aggrieved Employees whose checks are returned ~~undeliveredundeliverable~~ without USPS forwarding ~~addressaddresses.~~ Within ~~[7]~~ 3 business days of receiving a returned check, the Administrator must re-mail checks to the ~~USPS~~ forwarding address

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

- 4.4.3. For any Participating Class Member whose Individual Class Payment check ~~is~~ is uncashed and cancelled after the void date, and 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~~ to the Controller's Unclaimed Property Fund, in the name of the Participating Class Member and/or Aggrieved Employee, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b). Participating Class Members whose Individual Class Payment checks are cancelled shall, nevertheless, be bound by the Class Settlement. Aggrieved Employees whose Individual PAGA Payment checks are cancelled shall, nevertheless, be bound by the Released PAGA Claims.

~~Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).] [or to a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) ("Cy Pres Recipient") _____]. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.~~

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

5. RELEASES OF CLAIMS. Effective on the date when XYZPhillips fully funds the entire Gross Settlement Amount ~~and funds, which includes~~ all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Participating Class Members, Aggrieved Employees, and Class Counsel will release claims against all Released Parties as follows:

4.5.5.1. ~~Plaintiff's Release.~~ Plaintiff and ~~his or~~ her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties, in exchange for consideration provided in this Agreement, from any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest, attorneys' fees, costs, liabilities, expenses, and losses arising from or related to all facts, transactions, or and occurrences [that which] occurred during the Class Period], including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, alleged in the Operative Complaint and Action and facts alleged in Plaintiff's PAGA Notice; (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, [or] ascertained during the Action, and (c) all claims released under 6.2, pursuant to Paragraph 5.4 below. ("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 to claims or actions based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff she may discover facts or law different from, or in addition to, the facts or law that Plaintiff she 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, her~~ discovery of them those facts.

4.5.1.5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release only, 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~~released party.

4.6.5.2. Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members Who Are Not Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint [and ascertained in the course of the Action] [including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.”]. Except as set forth in Section 6.3 and discharge Released Parties, in exchange for consideration provided in this Agreement, from any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest, attorneys’ fees, costs, liabilities, expenses, and losses arising from or related to the acts, facts, transactions, theories, occurrences, representations, or omissions that were alleged, or reasonably could have been alleged, in the Action based on the factual Class Period facts alleged in the Action, including but not limited to: (a) any alleged failure by Phillips to provide meal or rest periods or to pay meal or rest period premiums (including, but not limited to, failure to correctly calculate the regular rate of pay used to calculate meal and/or rest period premium pay); (b) any alleged failure by Phillips to provide compliant wage statements; (c) any right or claim for unfair business practices in violation of California Business & Professions Code §§ 17200 *et seq.*; (d) any right or claim for civil penalties (except PAGA Penalties) pursuant to the California Labor Code or Wage Order; (e) any violation or breach of the California Labor Code arising from or related to the conduct or omission alleged, or could have reasonably been alleged based on the Class Period facts alleged including without limitation, any violation or breach of California Labor Code §§ 203 solely based on the failure to timely pay all meal period and rest period premiums due at the time of separation of employment, 226, 226.7, 512, 516, 558, 1174, or any other similar state or local statute, wage order, rule, regulation, ordinance, or authority, or similar causes of action arising from or relating to the conduct alleged (“Released Class Claims”). Except as set forth in Paragraph 5.4 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

4.7.5.3. Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are 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 [and ascertained in the course of the Action][including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.”] civil penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Action and the PAGA Notice,, including, but not limited to, any right or claim for PAGA penalties predicated on:

(a) any alleged failure by Phillips to provide meal or rest periods or to pay meal or rest period premiums (including, but not limited to, failure to correctly calculate the regular rate of pay used to calculate meal and/or rest period premium pay); (b) any alleged failure by Phillips to provide compliant wage statements; (c) any right or claim for civil penalties pursuant to the California Labor Code or Wage Order; (e) any violation or breach of the California Labor Code arising from or related to the conduct or omission alleged, or could have reasonably been alleged based on the PAGA Period facts stated in the Action and the PAGA Notice and the conduct or omission ascertained in the course of the Action, including without limitation, any violation or breach of California Labor Code §§ 203 solely based on the failure to timely pay all meal period and rest period premiums due at the time of separation of employment, 204, 226, 226.7, 512, 516, 558, 1174, or any other similar wage orders (“Released PAGA Claims”).

5.4. Release by Participating Class Members Who Are Aggrieved Employees: All Participating Class Members who are Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release and discharge Released Parties, in exchange for consideration provided in this Agreement, from all Released Class Claims set forth in Paragraph 0 above and all Released PAGA Claims set forth in Paragraph 5.3 above.

5.6. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

5.1.6.1. ———XYZ’sPhillip’s Declaration in Support of Preliminary Approval. Within ———10 business days of the full execution of this Agreement, XYZPhillips will prepare and deliver to Class Counsel a signed Declaration from XYZPhillips and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their Declarations, Defense Counsel and XYZPhillips 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.

6.1 ———Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section § 2699, subd. (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) 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 Class 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 any Class Members ~~and/or the proposed Cy Pres~~; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration

5.2.6.2. from Plaintiff confirming willingness and competency to serve as Class Representative and disclosing all facts relevant to any actual or potential conflicts of interest with any Class Members, ~~[- and/or]~~ the Administrator ~~[-and/or the proposed Cy Pres];~~ ~~(v; (vi))~~ a signed declaration from each Class Counsel firm attesting to its competency to represent the Class ~~Members~~; its timely transmission to the LWDA of all necessary PAGA documents ~~(initial notice of violations (Labor Code section 2699.3, subd. (a)),~~ including Plaintiff's PAGA Notice, the Operative Complaint ~~(Labor Code section 2699, subd. (1)(1)),~~ this Agreement ~~(Labor Code section 2699, subd. (1)(2));~~ ~~(vi; (vii))~~ a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and ~~(vii(viii))~~ all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator ~~and/or the Cy Pres Recipient.~~ In their respective Declarations, Plaintiff and Class Counsel ~~Declaration~~ shall aver that state whether they are ~~not~~ aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

5.3.6.3. ~~Responsibilities of Counsel.~~ Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval, which they expect will occur no later than ~~{30}~~ days after the full execution of this Agreement; ~~Class Counsel are responsible for~~ obtaining from the Court a prompt hearing date for the Motion for Preliminary Approval; and ~~for~~ appearing in Court to advocate in favor of the Motion for Preliminary Approval. ~~Class Counsel is responsible for,~~ delivering the Court's Preliminary Approval to the Administrator, and submitting copies of the Motion for Preliminary Approval of the Settlement to the LWDA on the same day that it is filed with the Court.

5.4.6.4. ~~Duty to Cooperate.~~ If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class 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 Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class 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.

6.7. SETTLEMENT ADMINISTRATION.

6.2 ~~Selection of Administrator.~~ The Parties have jointly selected

6.1.7.1. ~~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.

~~6.2.7.2.~~ 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.

~~6.3.7.3.~~ 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.

6.4.7.4. Notice to Class Members.

~~6.4.1.7.4.1.~~ No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, ~~PAGA Members~~ Aggrieved Employees, Workweeks, and ~~PAGA~~ Pay Periods in the Class Data.

~~6.4.2.7.4.2.~~ Using best efforts to perform as soon as possible, and in no event later than ~~{14}~~ days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice ~~f~~, with Spanish translation, ~~if applicable~~ substantially in the form attached to this Agreement as **Exhibit —A**. The first page of the Class Notice shall prominently estimate (1) the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and (2) the number of Workweeks and/or PAGA Pay Periods ~~(if applicable)~~ used to calculate these amounts. Before mailing Class Notices, the Administrator shall update the Class ~~Member~~ Members’ addresses using the National Change of Address database.

~~6.4.3.7.4.3.~~ ~~Not~~No later than ~~{three (3)}~~ business days after the Administrator’s receipt of any Class Notice returned by the USPS as ~~undelivered~~ undeliverable, the Administrator shall re-mail the Class Notice, via first-class USPS mail, using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class ~~Notice is~~ Notices are returned by the USPS a second time.

~~6.4.4.7.4.4.~~ ~~The deadlines for Class Members’~~For all Class Members whose Class Notices are re-mailed after having been returned to the Administrative as undeliverable, their Response Deadline to submit written objections, ~~Challenges~~ challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended by an additional ~~{14}~~ days beyond the ~~{60} days~~ Response Deadline otherwise provided in the Class Notice ~~for all Class Members whose notice is re-mailed.~~ The Administrator ~~will~~ shall inform the Class Member in writing of the extended ~~deadline~~ Response Deadline with the re-mailed Class Notice.

6.4.5.7.4.5. ——— If the Administrator, ~~XYZ~~Phillips, or Class Counsel ~~is~~are contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement ~~not~~no later than ~~[14]~~ days after their respective receipt of the Class Notices, or the Response Deadline provided in the Class Notices, whichever is later.

~~receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.~~

~~6.5.7.5.~~ Members' Requests for Exclusion (Opt-Outs).

~~6.5.1.7.5.1.~~ Class Members who wish to exclude themselves ~~from (or opt-out of)~~ the ~~Class Settlement~~ Settlement's release of class action claims must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion ~~not no~~ later than ~~{60}the Response Deadline – i.e., 45~~ days after the Administrator mails the Class Notice (plus an additional ~~{14}~~ days for any Class ~~Members~~ Member whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's ~~election~~ choice to be excluded from the Settlement and includes the Class Member's name, address, and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. A Class Member who does not request timely exclusion from the Class Settlement will be deemed a Settlement Class Member and will be bound by all terms of the Class Settlement, if the Settlement is granted Final Approval by the Court.

~~6.5.2.7.5.2.~~ The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all of the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

~~6.2.1~~ Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs ~~6.2 and 6.5.3.7.5.3.~~ 6.30, 5.3 and 5.4 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

~~6.5.4.7.5.4.~~ Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to

claim preclusion upon entry of the Judgment, Non-Participating Class Members who are also Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and will still receive an Individual PAGA Payment based on the terms of this Agreement.

6.4 of this Agreement and are eligible for an Individual PAGA Payment.

6.3 ~~Challenges to Calculation of Workweeks and PAGA Pay Periods.~~ Each Class Member and Aggrieved Employee shall have ~~{60}~~45 days after the Administrator mails the Class Notice (plus an additional ~~{14}~~ days for Class Members whose Class Notice is re-mailed after having been returned undeliverable to the Administrator) to challenge the number of ~~Class~~ Workweeks and/or PAGA Pay Periods ~~(if any)~~ allocated to the Class Member in the Class Notice. The Class Member and/or Aggrieved Employee may communicate such challenge ~~the allocation by communicating~~ with the

~~6.5.5.7.5.5.~~ Administrator via fax, email, or mail. The Administrator must encourage the challenging Class Member and/or Aggrieved Employee to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks and/or PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or each Aggrieved Employee's allocation of PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

~~6.6.7.6.~~ Objections to Class Action Components of the Settlement.

~~6.6.1.7.6.1.~~ ——— Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment Fee Award, Class Counsel Litigation Expenses Payment, and/or Class Representative Service Payment.

~~6.6.2.7.6.2.~~ ——— Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than ~~{60}~~the Response Deadline – i.e. 45 days after the Administrator's mailing of the Class Notice (plus an additional ~~{14}~~ days for Class Members whose Class Notice was re-mailed after having been returned as undeliverable).

~~6.6.3.7.6.3.~~ ——— Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

~~6.7.7.7.~~ ——— 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.

~~6.7.1.7.7.1.~~ ——— Website, Email Address, and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time, and location for the Final Approval Hearing, and copies of the Settlement

Agreement, the Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel ~~Fees Payment~~ Fee Award, Class Counsel Litigation Expenses Payment, and Class Representative Service Payment, the Final Approval, and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

~~6.3.1~~ Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their

~~6.7.2.7.7.2.~~ validity. ~~Not~~No later than ~~{five (5)}~~ days after the expiration of the ~~deadline for submitting Requests for Exclusion~~Response Deadline, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ~~(“the “Exclusion List”)~~; (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion ~~from Settlement~~ submitted (whether valid or invalid).

~~6.7.3.7.7.3.~~ ~~Weekly Reports.~~ The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned ~~undelivered~~as undeliverable, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include ~~provide~~ the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

~~6.7.4.7.7.4.~~ ~~Workweek and/or Pay Period Challenges.~~ The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges ~~overt~~o the calculation of Workweeks and/or all Aggrieved Employee challenges to the calculation of Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

~~6.7.5.7.7.5.~~ ~~Administrator’s Declaration.~~ ~~Not~~No later than ~~{14}~~ days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as ~~undelivered~~undeliverable, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

~~6.7.6.7.7.6.~~ ~~Final Report by Settlement Administrator.~~ Within ~~{10}~~ days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a

final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

~~7. CLASS SIZE ESTIMATES [and ESCALATOR CLAUSE]~~ Based on its records, XYZ estimates that, as of the date of this Settlement Agreement, (1) there are _____ Class Members and _____ Total Workweeks during the Class period and (2) there were _____ Aggrieved Employees who worked _____ Pay Periods during the PAGA Period.^{vii}

8. XYZ'S CLASS ESTIMATES AND ESCALATOR CLAUSE. Based on a review of its records to date, Phillips estimates that as of August 30, 2022 there were approximately 405 Class Members who collectively worked a total of 55,848 Workweeks during the Class Period, and 264 Aggrieved Employees who collectively worked a total of 16,368 PAGA Pay Periods during the PAGA Period. If the number of workweeks during the Class Period increases by more than 10% above 55,848 (i.e., if there are 61,432 or more workweeks worked by the Class Members), Defendant will at its option either (a) agree to increase the Gross Settlement Amount on a proportional basis (i.e., if there was 10% increase in the number workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 10%), or (b) agree to shorten and close the Class Period on the date that is closest to without exceeding 61,432 workweeks worked by the Class Members so as to eliminate the need to increase the Gross Settlement Amount. If Defendant elects to shorten the Class Period if this provision is triggered, the PAGA Period will also close on the date that the Class Period closes. Defendant will notify Plaintiff's counsel of its election after the hearing date of the preliminary hearing motion is known and within seven (7) days of being notified by the Administrator that the Escalator Clause has been triggered.

7.9. PHILLIPS' RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds %-10% of the ~~total of all~~ Class ~~Members, XYZ, Phillips~~ may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if ~~XYZ~~Phillips withdraws, the Settlement shall be void *ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; ~~provided, however, XYZ, except that Phillips~~ will remain responsible for paying all Settlement Administration Expenses actually incurred up to that ~~point. XYZ~~time. Phillips must notify Class Counsel and the Court of its election to withdraw not later than ~~seven~~ days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

8.10. MOTION FOR FINAL APPROVAL. ~~Not~~No later than ~~16~~ court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code ~~section §~~ 2699, ~~subd.~~(1), a Proposed Final Approval Order, and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel ~~not~~no later than ~~seven~~ days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

8.1.10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file

responsive documents in Court no later ~~that [than~~ five} (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

8.2.10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material ~~change~~modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel ~~Fees Payment~~Fee Award, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

~~7.1~~ 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 the Judgment, (ii) addressing

8.3.10.3. settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

8.4.10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel ~~Fees Payment~~Fee Award and Class Counsel Litigation Expenses Payment ~~reflected~~ set forth in this Settlement Agreement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, 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 an objector 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.

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

9.11. **AMENDED JUDGMENT.** If any amended judgment is required under California Code of Civil Procedure ~~section-§~~ 384, the Parties will work together in good faith to jointly submit ~~and~~ a proposed amended judgment.

10.12. **ADDITIONAL PROVISIONS.**

~~7.2~~ No Admission of Liability, Class Certification 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 XYZPhillips that any of the allegations in the Operative Complaint have merit or that XYZPhillips has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that XYZ'sPhillips' defenses in the

Action have merit. The Parties agree that class certification and representative treatment ~~is~~are for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval, or enter Judgment, ~~XYZ~~Phillips reserves the right to contest certification of any class, and the manageability of any representative claim, for any reasons, and ~~XYZ's~~Phillips reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest ~~XYZ's~~Phillips' defenses. The Settlement, this Agreement and ~~Parties'~~Parties' willingness to

~~10.1.12.1.~~ 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).~~

~~7.3~~ Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, ~~XYZ~~Phillips and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; ~~or~~ (5) in response to an inquiry or subpoena issued by a state or federal government agency;

~~10.2.12.2.~~ ; or (6) to the extent disclosure is required, as determined by a Party's counsel, by applicable law or regulation. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, ~~XYZ~~Phillips and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

~~10.3.12.3.~~ No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of ~~or the Settlement, to~~ object to the Settlement, or appeal from the Judgment. Nothing in this ~~paragraph~~Paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

~~10.5.12.5.~~ Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached ~~exhibit~~exhibit(s) 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 concerning the Settlement or the Action.

~~10.6.12.6.~~ Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and ~~XYZ~~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.

~~7.4~~ 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

~~10.7.~~12.7. 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~~Mr. Lerman and/or the Court for resolution.

~~10.8.~~12.8. 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.

~~10.9.~~12.9. No Tax Advice. Neither Plaintiff, Class Counsel, ~~XYZ~~Phillips, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this ~~Settlement~~Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 ~~CFR~~C.F.R. Part 10, as amended) or otherwise.

~~10.10.~~12.10. 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. A waiver or amendment of any provisions of this Agreement will not constitute a waiver of any other provision.

~~10.11.~~12.11. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

~~10.12.~~12.12. Applicable Law. All terms and conditions of this Agreement and its ~~exhibits~~exhibit(s) will be governed by and interpreted according to the internal laws of the ~~state~~State of California, without regard to conflict of law principles.

~~10.13.~~12.13. 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~~its drafter or participated in ~~the~~its drafting.

~~10.14.~~12.14. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during ~~the~~ Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

~~10.15.~~12.15. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data

provided to Class Counsel by XYZPhillips 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 date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final ~~pay-out~~disbursement of ~~all~~the Gross Settlement fundsAmount, Plaintiff shall destroy, all paper and electronic versions of Class Data received from XYZPhillips unless, prior to the Court's discharge of the Administrator's obligation, XYZPhillips makes a written request to Class Counsel for the return, rather than the destructions, of Class Data, except that Class Counsel may keep one copy for their files.

~~10.16.12.16.~~ 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.

~~10.17.12.17.~~ 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.

~~10.18.12.18.~~ 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~~delivered by United States mail, ~~or the day sent by overnight mail,~~ by email, or by messenger, ~~addressed as follows to the addresses set forth below:~~

~~To Plaintiff:~~

~~To XYZ:~~

To Plaintiff Laura Torres: **LIDMAN LAW, APC**
Scott M. Lidman (slidman@lidmanlaw.com)
Elizabeth Nguyen (enguyen@lidmanlaw.com)
Milan Moore (mmoore@lidmanlaw.com)
2155 Campus Drive, Suite 150
El Segundo, CA

HAINES LAW GROUP, APC
Paul K. Haines (phaines@haineslawgroup.com)
2155 Campus Drive, Suite 180
El Segundo, CA

To Phillips: **BAKER & HOSTETLER LLP**
Sabrina L. Shadi (sshadi@bakerlaw.com)
Nicholas D. Poper (npoper@bakerlaw.com)
Matthew J. Goodman (mgoodman@bakerlaw.com)
11601 Wilshire Boulevard, Suite 1400
Los Angeles, CA 90025-0509

provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected.

IT IS SO AGREED.

For Plaintiff Laura Torres:

Dated: _____, 2022

LAURA TORRES

For Defendant:

Dated: _____, 2022

R.A. PHILLIPS INDUSTRIES, INC.

By: _____
Its: _____

APPROVED AS TO FORM

Dated: _____, 2022

LIDMAN LAW, APC

By: _____
Scott M. Lidman
Elizabeth Nguyen

Attorneys for Plaintiff

BAKER & HOSTETLER LLP

Dated: _____, 2022

By: _____
Sabrina L. Shadi
Nicholas D. Poper

Attorneys for Defendant

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

~~(case name and number)~~

Laura Torres v. R.A. Phillips Industries, Inc., Case No. 21STCV41572

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against _____ (abbreviate name; “XYZ” is used herein as a placeholder) R.A. Phillips Industries, Inc. (“Phillips”) for alleged wage and hour violations. The Action was filed by a ~~[n] former~~ XYZ employee _____ Laura Torres (“Plaintiff”) and seeks payment of (1) ~~backunpaid~~ wages ~~[and other relief]~~ penalties for Phillips alleged failure to provide meal periods, failure to authorize and permit rest periods, and failure to provide accurate itemized wage statements for a class of ~~[e.g., all current and former hourly]~~ paid or non-exempt employees (“Class Members”) who worked for XYZPhillips during the Class Period (~~_ to _____~~); from November 10, 2017 to [date of Preliminary Approval (unless the Escalator Clause is triggered and Defendant elects to close the Class Period earlier)] and (2) penalties under the California Private Attorney General Act (“PAGA”) for all ~~[e.g., current and former hourly]~~ paid or non-exempt employees who worked for XYZPhillips during the PAGA Period (~~_____ to _____~~) from November 10, 2020 to [date of Preliminary Approval (unless the Escalator Clause is triggered and Defendant elects to close the PAGA Period earlier)] (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring XYZPhillips to fund Individual Class Payments, and (2) a PAGA Settlement requiring XYZPhillips to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on ~~XYZ's~~Phillips's records, and the Parties' current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____.** The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to ~~XYZ's~~Phillips's records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

The above estimates are based on XYZ's Phillips' records showing that **you worked _____ workweeks** during the Class Period and **you worked _____ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully

read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires XYZPhillips to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against XYZPhillips.

If you worked for XYZPhillips during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against XYZPhillips.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against XYZPhillips, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

XYZPhillips will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against <u>XYZPhillips</u> that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is _____	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. <u>XYZPhillips</u> must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.

| the proposed Settlement is a compromise of disputed claims. By agreeing to settle, ~~XYZ~~Phillips does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) XYZPhillips has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. XYZ Phillips Will Pay \$400,000 as the Gross Settlement Amount (Gross Settlement). XYZPhillips has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, XYZPhillips will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$ (%133,333.33 (1/3 of the Gross Settlement] to Class Counsel for attorneys' fees and up to \$ 32,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$ 5,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$ 10,000 to the Administrator for services administering the Settlement.
 - D. Up to \$ 30,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

~~4.~~ Net Settlement Distributed to Class Members. After making the above deductions in

| amounts approved by the Court, the Administrator will distribute the rest of the Gross

3. Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

- ~~2. Taxes Owed on Payments to Class Members. Plaintiff and XYZPhillips are asking the Court to approve an allocation of % 33% of each Individual Class Payment to taxable wages (“Wage Portion”) and % 67% to ~~[e.g., interest, etc.] (“the Non-Wage Portion”).~~ The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. ~~[Option 1: (XYZPhillips will separately pay employer payroll taxes it owes on the Wage~~~~
4. ~~Portion-)].~~ The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.
~~Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.~~

Although Plaintiff and XYZPhillips have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

~~☐ will be deposited with the California Controller's Unclaimed Property Fund in your name.~~

~~☐ will irrevocably lost to you because they will be paid to a non-profit organization or foundation (“Cy Pres”).~~

If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against XYZPhillips.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against

| ~~XYZ~~Phillips based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and XYZPhillips have agreed that, in either case, the Settlement will be void: XYZPhillips will not pay any money and Class Members will not release any claims against XYZPhillips.
3. ~~Administrator.~~ The Court has appointed a neutral company,
8. ~~Phoenix Class Action Administration Solutions~~ (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re- mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and XYZPhillips has fully funded the Gross Settlement ~~[Option 1: (and separately paid all employer payroll taxes)]~~, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against XYZPhillips or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from ~~(i)any and all~~ causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest, attorneys’ fees, costs, liabilities, expenses, and losses arising from or related to the acts, facts, transactions, theories, occurrences, representations, or omissions that were alleged, or reasonably could have been alleged, in the Action based on the factual Class Period facts ~~stated in the Operative Complaint [and ascertained alleged in the course of the Action]~~, including, ~~e.g., “(but not limited to: (a) any and all claims involving any-alleged failure by Phillips to provide meal or rest periods or to pay minimum meal or rest period premiums (including, but not limited to, failure to correctly calculate the regular rate of pay used to calculate meal and/or rest period premium pay); (b) any alleged failure by Phillips to provide compliant wage; etc.] statements; (c) any right or claim for unfair business practices in violation of California Business & Professions Code §§ 17200 et seq.; (d) any right or claim for civil penalties (except PAGA Penalties) pursuant to the California Labor Code or Wage Order; (e) any violation or breach of the California Labor Code arising from or related to the conduct or omission alleged, or could have reasonably been alleged based on the Class Period facts alleged including without limitation, any violation or breach of California Labor Code §§ 203 solely based on the failure to timely pay all meal period and rest period premiums due at the time of separation of employment, 226, 226.7, 512, 516, 558, 1174, or any other similar state or local statute, wage order, rule, regulation, ordinance, or authority, or similar causes of action arising from or relating to the conduct alleged (“Released Class Claims”). Except as set~~

forth in Section ~~6.3~~5.4 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.^{viii}.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and ~~XYZPhillips~~ has paid the Gross Settlement ~~(and separately paid the employer-side payroll taxes)~~,¹² all Aggrieved Employees will be barred from asserting PAGA claims against ~~XYZPhillips~~, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against ~~XYZPhillips~~ or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are 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 civil 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 [and ascertained in the course of the Action][including, e.g., (a) any and all claims involving any alleged failure to pay minimum wage; etc.]-~~Action and the PAGA Notice, and ascertained in the course of the Action, including, but not limited to, any right or claim for PAGA penalties predicated on: (a) any alleged failure by Phillips to provide meal or rest periods or to pay meal or rest period premiums (including, but not limited to, failure to correctly calculate the regular rate of pay used to calculate meal and/or rest period premium pay); (b) any alleged failure by Phillips to provide compliant wage statements; (c) any right or claim for civil penalties pursuant to the California Labor Code or Wage Order; (e) any violation or breach of the California Labor Code arising from or related to the conduct or omission alleged, or could have reasonably been alleged based on the PAGA Period facts stated in the Action and the PAGA Notice, in the Action and the conduct or omission ascertained in the course of the Action, including without limitation, any violation or breach of California Labor Code §§ 200, 201, 201.3, 202, 203, 203 solely (limited to claims for penalties under Labor Code section 203 based on the failure to timely pay all meal period and rest period premiums due at the time of separation of employment), 204, 226, 226.7, 512, 516, 558, 1174, 1198, or any other similar wage orders ("Released PAGA Claims").

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$ _____ by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in ~~XYZ's~~Phillips's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept ~~XYZ's~~Phillips' calculation of Workweeks and/or Pay Periods based on ~~XYZ's records~~Phillips' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and ~~XYZ's~~Phillips' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).
3. **Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.**

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as _____, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and ~~XYZ~~Phillips are asking the Court to approve. At least _____ days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ (url) or the Court's website _____ (url).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action _____ and include your name, current address,

telephone number, and approximate dates of employment for XYZPhillips and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at (time) in Department 714 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything XYZPhillips and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____ (specify entity) _____'s website at _____ (url) _____. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. 21STCV41572. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:
Name of Attorney:
Email Address:
Name of Firm:
Mailing Address:
Telephone:

Scott M. Lidman

Paul K. Haines

Elizabeth Nguyen
Milan Moore
Lidman Law, APC
2155 Campus Drive, Suite 150
El Segundo, California 90245
Telephone: (424) 322-4772
Facsimile: (424) 322-4775
Email: slidman@lidmanlaw.com
enguyen@lidmanlaw.com
mmoore@lidmanlaw.com

Haines Law Group, APC
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Telephone: (424) 292-2350
Facsimile: (424) 292-2355
Email: phaines@haineslawgroup.com

Settlement Administrator: Name
of Company:

Email Address:
Mailing Address:
Telephone:
Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

- ☐ ~~you should consult the Unclaimed Property Fund _____ for instructions on how to retrieve the funds~~
- ☐ ~~you will have no way to recover the money.~~

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

ⁱ ~~This Model Class Action and 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 case. It is written for settlements of single plaintiff wage and hour actions asserting class claims and PAGA claims against a single employer (XYZ). 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 do not include PAGA claims, please use the Model Class Action Settlement Agreement and Class Notice. THE COURT ASKS ALL COUNSEL USING THIS MODEL AGREEMENT TO ATTACH A REDLINED VERSION TO THEIR MOTIONS FOR APPROVAL SO THAT THE COURT CAN EASILY SEE EXACTLY HOW THE PARTIES HAVE MODIFIED THIS MODEL AGREEMENT.~~

ⁱⁱ ~~Whether the “date of preliminary approval” yields a fair and adequate payment to Class Members may depend on whether the Class Members, in exchange for their releases of claims, receive consideration for time worked between the date when parties reached a settlement and the date of preliminary approval. The Parties’ *Kullar* analysis must give the Court sufficient information to allow the Court to determine whether the Gross Settlement Amount “represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation.” (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 94–95, internal quotation marks omitted.)~~

ⁱⁱⁱ ~~See endnote ii above.~~

^{iv} ~~The Parties may need to tailor this language to pay periods or shifts depending on the facts of the case.~~

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

^{vi} ~~Note that this is not the only possible appropriate breakdown depending on the claims at issue in the case (e.g. a settlement that is solely a Labor Code Section 226(a) claim.)~~

^{vii} ~~Insert negotiated terms, if any, addressing the possibility that XYZ’s estimates of class size, Workweeks 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 XYZ’s promise to increase the Gross Settlement Amount in an agreed upon proportion to the percentage by which the calculated class size, Workweeks, or Pay Periods exceeds XYZ’s estimates.~~

~~^{viii} Releases in Notice should track the releases in the Settlement Agreement.~~