

1 Shaun Setareh (SBN 204514)
shaun@setarehlaw.com
2 Brian Louis (SBN 353058)
brian@setarehlaw.com
3 SETAREH LAW GROUP
9665 Wilshire Boulevard, Suite 430
4 Beverly Hills, California 90212
Telephone: (310) 888-7771
5 Facsimile: (310) 888-0109

6 Attorneys for Plaintiff
VICTOR GUERRA

7 Grace Y. Horoupian (SBN 180337)
8 E-Mail: ghoroupian@fisherphillips.com
FISHER & PHILLIPS LLP
9 2050 Main Street, Suite 1000
Irvine, California 92614
10 Telephone: (949) 851-2424
Facsimile: (949) 851-0152

11 Areen Babajanian (SBN 290130)
12 E-Mail: ababajanian@fisherphillips.com
FISHER & PHILLIPS LLP
13 444 South Flower Street, Suite 1500
Los Angeles, California 90071
14 Telephone: (213) 330-4500
Facsimile: (213) 330-4501

15 Attorneys for Defendant
16 TRANQUILITY, INCORPORATED

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF CONTRA COSTA, COMPLEX CIVIL LITIGATION**
19

20 VICTOR GUERRA, on behalf of himself and
21 all others similarly situated,

22 *Plaintiff,*

23 v.

24 TRANQUILITY, INCORPORATED, a
California corporation; and DOES 1 through
25 50, inclusive,

26 *Defendants.*
27
28

Case No. C220-02688

Assigned for All Purposes to the
Honorable Edward G. Weil, Department 39

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND RELEASE
OF CLAIMS**

Action Filed: December 16, 2022
FAC Filed: February 22, 2023
Trial Date: Not Set

1 This Joint Stipulation of Class Action Settlement and Release of Claims ("Settlement
2 Agreement" or "Agreement") is made and entered into by and between Plaintiff Victor Guerra
3 ("Plaintiff" or "Class Representative"), individually and on behalf of all putative class members,
4 on the one hand, and Defendant Tranquility, Incorporated ("Defendant"). Plaintiff and Defendants
5 are collectively referred to herein as the "Parties."

6
7 **RECITALS**

8 A. On December 16, 2022, Plaintiff filed a class action complaint in the Contra Costa
9 County Superior Court alleging causes of action for: (1) Failure to Provide Meal Periods (Lab.
10 Code Section 204, 223, 226.7, 512 and 1198; (2) Failure to Provide Rest Periods (Lab. Code
11 Section 204, 223, 226.7 and 1198); (3) Failure to Pay Hourly Wages (Lab. Code Section 223, 510,
12 1194, 1194.2, 1197, 1197.1 and 1198; (4) Failure to Pay Sick Time (Lab. Code Section 246 *et*
13 *seq.*; (5) Failure to Indemnify (Lab. Code Section 2802); (6) Failure to Provide Accurate Written
14 Wage Statements (Lab. Code Section 226(a); (7) Failure to Timely Pay All Final Wages (Lab.
15 Code Sections 201, 202 and 203); and (8) Unfair Competition (Bus. & Prof. Code Sections 17200
16 *et seq.*). Plaintiff filed a First Amended Complaint alleging an additional cause of action for Civil
17 Penalties under the Private Attorneys General Act of 2004, Labor Code Sections 2698, *et seq.*

18
19 B. Defendant denies all of Plaintiff's material allegations. Specifically, Defendant
20 denies that Plaintiff and putative class members are entitled to additional wages. Defendant denies
21 their employees were deprived of meal and rest periods, aver that they had meal and rest break
22 policies and procedures in place to ensure compliance with California law, and aver that
23 employees were not impeded from taking their lawful rest and meal periods. Defendant further
24 avers that the rest and meal period claims are not amenable to class treatment because common
25 issues do not predominate. Defendant believes that the stand-alone wage statement claim will fail
26 because there was no knowing and intentional violation and that the derivative wage statement
27 claim will fail for the reasons stated above. Defendant believes that the claim for failure to
28 maintain complete and accurate payroll records will fail, because it keeps complete payroll and

1 timekeeping records for all of its employees as required by law. Defendant believes that
2 Plaintiff's claim for failure to pay sick time will fail because at all relevant times Defendant had a
3 compliant sick time policy. Defendant also believes that all underlying claims related to PAGA
4 will fail.

5
6 C. The Parties engaged in an informal, voluntary exchange of information in the
7 context of privileged settlement discussions to facilitate an early mediation. Defendant produced
8 Plaintiff's entire personnel file, payroll and timekeeping records, including policies and
9 agreements she signed and acknowledged, copies of its relevant company written policies, and
10 time-keeping records and paycheck data and records. Defendant also produced payroll and time
11 records for several putative class members.

12
13 D. On February 29, 2024, the Parties participated in a mediation before mediator
14 Michael D. Young, Esq. During the mediation, the Parties had a full day of productive
15 negotiations and reached agreement on a class-wide settlement. During the mediation, each party,
16 represented by its respective counsel, recognized the risk of an adverse result in the Action and
17 agreed to settle the Action and all other matters covered by this Agreement pursuant to the terms
18 and conditions of this Agreement.

19
20 E. Based on their own thorough, independent investigation and evaluation of this case,
21 Class Counsel (as defined in paragraph 6 below) are of the opinion that the settlement with
22 Defendant for the consideration and on the terms set forth in this Agreement is fair, reasonable,
23 adequate, and in the best interest of the Settlement Class (as defined in paragraph 5 below) in light
24 of all known facts and circumstances, including the risk of significant costs and delay, the risk of
25 non-certification of the Class, the defenses asserted by Defendant, the risks of adverse
26 determinations on the merits, and numerous potential appellate issues. Although Defendant
27 contends they have no liability in this case, Defendant's counsel shares Class Counsel's belief that
28 the Agreement represents a fair and adequate settlement given the respective risks associated with

1 the Action.

2
3 F. This Agreement represents a compromise and settlement of highly disputed claims.
4 Nothing in this Agreement is intended or will be construed as an admission by Defendant that
5 Plaintiff's claims in the Action have merit or that it has any liability to Plaintiff or the Class on
6 those claims or the State, or as an admission by Plaintiff that Defendant's defenses raised in the
7 Action have merit. This Agreement is intended to fully, finally, and forever compromise, release,
8 resolve, discharge, and settle the released claims subject to the terms and conditions set forth in
9 this Agreement.

10
11 **AGREEMENT**

12
13 Subject to the approval of the Court, the Parties agree as follows:

14
15 1. **"Action"** shall mean the civil action commenced on December 16, 2022, by
16 Plaintiff against Defendant in the Superior Court of California, County of Contra Costa, Case No.
17 C22-02688, entitled: *"Victor Guerra v. Tranquility, Incorporated"*.

18
19 2. **"Court"** shall mean the Superior Court for the County of Contra Costa.

20
21 3. **"Settlement"** shall mean the disposition of the Action and all related claims
22 effectuated by this Agreement, including not limited to claims under California Labor Code
23 Sections 201, 202, 203, 204, 210, 216, 218, 222, 223, 225.5, 226 *et. seq.*, 226.3, 226.7, 227.3, 233,
24 234, 246, 246.5, 432, 510, 512, 516, 551, 552, 558, 558.1, 1174, 1182.12, 1193, 1193.6, 1194,
25 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and 2810.5 and CA's Unfair Competition
26 Law.

27
28 4. **"Class Period"** shall mean the period of time from December 16, 2018, through

1 February 29, 2024.

2
3 **5. “Class,” “Class Members,” or “Settlement Class”** shall mean all persons who
4 did not sign arbitration agreements and who, during the Class Period, have previously been or
5 currently are employed in California by Defendant as hourly-paid or “non-exempt” employees
6 from December 16, 2018 through February 29, 2024. (“Employees”).

7
8 **6. “Aggrieved Employees” or “PAGA Members”** shall mean all non-exempt hourly
9 employees who worked for Defendant in California from December 16, 2021 through February
10 29, 2024.

11
12 **7. “Class Counsel”** shall mean the attorneys representing Plaintiff in the Action:
13 Shaun Setareh and William M. Pao with the firm of Setareh Law Group.

14
15 **8. “Defense Counsel”** in respect to counsel for Defendant shall mean the attorneys
16 representing Defendant Tranquility, Incorporated in the Action: Grace Y. Horoupian and Areen
17 Babajanian with the firm of Fisher & Phillips, LLP.

18
19 **9. “Claims Administrator”** shall mean the administrator proposed by the Parties and
20 appointed by the Court to administer the Settlement.

21
22 **10. “Preliminary Approval of the Settlement”** shall mean the Court’s preliminary
23 approval of the Settlement without material change.

24
25 **11. “Final Approval Hearing”** shall mean the hearing to be conducted by the Court to
26 determine whether to approve finally, and implement the terms of, this Agreement.

27
28 **12. “Judgment”** shall mean the Order of Final Judgment entered by the Court that the

1 Parties anticipate will be entered following a Final Approval Hearing on the Settlement in this
2 Action.

3
4 **13. “Effective Date”** shall mean the date by which this Agreement is approved by the
5 Court by entry of the Judgment and the Judgment becomes Final. The Judgment becomes “Final”
6 when the later of the following events occurs: (a) the period for filing any appeal, writ, or other
7 appellate proceeding opposing the Settlement has elapsed without any appeal, writ, or other
8 appellate proceeding having been filed; (b) any appeal, writ, or other appellate proceeding
9 opposing the Settlement has been dismissed finally and conclusively with no right by any
10 appellant or objector to pursue further remedies or relief; or (c) any appeal, writ, or other appellate
11 proceeding has upheld the Judgment with no right by any appellant or objector to pursue further
12 remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not
13 become effective until the Court’s Judgment granting final approval of the Settlement is
14 completely final, and no further recourse exists by an appellant or objector who seeks to contest
15 the Settlement. The occurrence of the Effective Date is a prerequisite to any obligation of
16 Defendant to pay any funds into the Settlement Account, as set forth in paragraph 40.

17
18 **14. “Maximum Settlement Number”** In consideration for the Settlement and the
19 release of claims set forth below, Defendant agrees to pay a maximum of Three Hundred and
20 Seventy-Four Thousand Dollars and No Cents (\$374,000.00) (“the Maximum Settlement
21 Number” or “MSN”). The MSN is the maximum total amount that Defendant may be required to
22 pay for all claims of Class Members that are alleged, or that could have been brought, in the
23 Action arising from the allegations made therein, and also including reimbursement and
24 enhancement to the Class Representative, all amounts payable to the Labor Workforce
25 Development Agency (“LWDA”), all Court-approved attorneys’ fees of Class Counsel, all costs
26 and expenses incurred or advanced by Class Counsel related to the Lawsuit, and the fees and costs
27 of the Claims Administrator. In no event will Defendant be required to pay more than the MSN.
28

1 **15. “Net Settlement Number”** The Net Settlement Number (“NSN”) shall mean the
2 MSN payable by Defendant pursuant to this Settlement, less the following sums set forth in
3 subsections (a) through (e) of this section 14:
4

5 **a. Class Counsel Fees Payment.** Class Counsel will apply to the Court for an
6 award of not more than One Hundred Twenty-Four Thousand Six Hundred Sixty-Six Dollars and
7 No Cents (\$124,666.00) (which is 33% of the MSN) as their Class Counsel Fees Payment. The
8 Claims Administrator will pay the amount approved by the Court from the MSN (but not more
9 than \$124,666.00 in Class Counsel Fees Payment.) Withholding and deductions will not be taken
10 from the Class Counsel Fees Payment and one or more Forms 1099 will be issued to Class
11 Counsel with respect to that payment. Any fees not awarded shall remain part of the MSN for
12 inclusion in the NSN.
13

14 **b. Class Counsel Litigation Expenses Payment.** Class Counsel will apply to
15 the Court for an award of not more than Fourteen Thousand Dollars and No Cents (\$14,000.00) to
16 compensate them for out of pocket costs and expenses actually incurred in connection with the
17 Action. The Claims Administrator will pay the amount approved by the Court from the MSN (but
18 not more than \$14,000.00 in Class Counsel Litigation Expenses). Withholding and deductions
19 will not be taken from the Class Counsel Litigation Expenses Payment and one or more Forms
20 1099 will be issued to Class Counsel with respect to that payment. Any portion of the allocation
21 for costs and expenses not awarded shall remain part of the MSN for inclusion in the NSN.
22

23 **c. Class Representative Payment.** Plaintiff will apply to the Court for an
24 award of not more than Five Thousand Dollars and No Cents (\$5,000.00) as his Class
25 Representative Payment, made in his capacity as Class Representative to compensate him for
26 initiating the Action, performing work in support of the Action, and undertaking the risk of
27 liability for attorneys’ fees and expenses in the event he was unsuccessful in the prosecution of the
28 Action. Defendant will not oppose a Class Representative Payment of not more than \$5,000.00.

1 The Claims Administrator will pay the Class Representative Payment approved by the Court from
2 the MSN. Payroll taxes, withholdings, and deductions will not be taken from the Class
3 Representative Payment, and instead a Form 1099 will be issued to Plaintiff with respect to that
4 payment. Plaintiff agrees to assume all responsibility and liability for the payment of taxes due on
5 the Class Representative Payment. Any portion of the Class Representative Payment not awarded
6 shall remain part of the MSN for inclusion in the NSN.

7
8 **d. Payment to Claims Administrator.** The Claims Administrator will be
9 paid from the MSN its reasonable fees and expenses as approved by the Court in an amount
10 currently estimated to not exceed Five Thousand Nine Hundred and Fifty Dollars and No Cents
11 (\$5,0950.00).

12
13 **e. Payment to the LWDA.** The Parties will jointly apply to the Court for
14 approval of a settlement of claims under PAGA for Twenty Five Thousand Dollars (\$25,000.00),
15 of which, payment from the MSN to the Labor Workforce Development Agency ("LWDA")
16 made in the amount of Eighteen Thousand Seven Hundred and Fifty Dollars and No Cents
17 (\$18,750.00), which is 75% of the PAGA settlement. Six Thousand Two Hundred and Fifty
18 Dollars and No Cents (\$6,250.00), 25% of the PAGA settlement, will remain in the NSN for
19 distribution.

20
21 **16. Additional Class Members.** It is currently estimated that there are 20,893 Work
22 Weeks in the Class Period through February 29, 2024 based upon the information provided by
23 Defendant and 13,083 Pay Periods in the PAGA Period through February 29, 2024. If the Work
24 Weeks and Pay Periods increase by more than ten (10%) percent to 22,983 or 14,391, respectively,
25 through February 29, 2024, Defendant shall have the option to either: (a) end the release period on
26 the date the Work Weeks reach 22,983 or PAGA Pay Periods reach 14,391, or (b) increase the
27 Gross Settlement Amount by the percentage difference beyond 22,983 and the actual number of
28 Work Weeks or 14,391 and the actual number of Pay Periods.

1 **17. Allocation of NSN and Calculation of Settlement Shares.** Subject to the terms
2 and conditions of this Agreement, the Claims Administrator will calculate a settlement share from
3 the NSN for each Class Member. The Settlement Share for each Class Member will be calculated
4 as follows, understanding that the formula below does not constitute an admission by Defendant,
5 and is intended only to provide a practical means to simplify and administer the claims process:

6
7 **a. Allocation.** Each settlement share is allocated ten percent to wages (for
8 which employment taxes will be deducted and W-2s issued), and ninety percent to penalties (for
9 which 1099s will be issued).

10
11 **b. Settlement Ratio Calculation.** The Claims Administrator shall assign to
12 each Class Member a "Settlement Ratio," which shall be a fractional number comprised of (i) that
13 Class Member's Individual Work Weeks as the numerator, and (ii) the aggregate total of all Class
14 Members' Individual Work Weeks as the denominator. The Claims Administrator shall assign to
15 each Class Member the "Settlement Share" which shall be calculated by multiplying that Class
16 Member's Settlement Ratio by the amount allocated to Class Members from the NSN.

17
18 **18. Settlement Share Worksheet.** Upon calculation of the Class Members'
19 Settlement Share, the Claims Administrator shall furnish to Class Counsel and Defense counsel a
20 worksheet containing a list of the names of the Class Members with their corresponding Individual
21 Work Weeks and Settlement Shares.

22
23 **19. Taxes and Withholdings.** Each Settlement Share is intended, in part, to settle the
24 Class Members' claims for unpaid wages. Each Class Member shall be individually responsible
25 for the employee's share of applicable payroll tax withholdings and deductions. Accordingly,
26 each Settlement Share allocated to wages will be reduced by applicable payroll tax withholdings
27 and deductions, and the Claims Administrator will issue a Form W-2 to each Participating Class
28 Member. The employer's share of any payroll tax attributable to the Settlement Share payments

1 will be paid from the MSN.

2

3 **20. Release of Claims by Plaintiff and Class Members.** Upon the entry of an order

4 by the Court granting final approval of this Stipulation of Settlement, and except as to such rights

5 or claims as may be created by this Stipulation of Settlement, the Settlement Class and Each Class

6 Member who has been identified on the Class List submitted by Defendant to the Claims

7 Administrator, and who has not properly submitted a timely and valid request to “opt-out” or be

8 excluded from the Action, in exchange for the consideration recited in this Stipulation of

9 Settlement, on behalf of himself or herself and on behalf of his/her current, former, and future

10 heirs, executors, administrators, attorneys, agents, and assigns, shall fully release and discharge

11 Defendant Tranquility, Incorporated and its parents, predecessors, successors, subsidiaries,

12 affiliates, partners, and trusts, employment agencies and professional employer organizations, and

13 its employees, officers, agents, attorneys, stockholders, fiduciaries, other service providers, and

14 assigns (collectively hereinafter the “Releasees”), from any and all claims, demands, rights,

15 liabilities, and causes of action of any kind whatsoever, that have been, or that could have been,

16 asserted against the Releasees, whether or not presented, based on the primary rights or the facts

17 alleged at any point in time in this Action (the “Released Claims”). The Released Claims

18 expressly include, without limitation, all claims for unpaid wages, including without limitation

19 overtime wages, off-the-clock claims, minimum wage claims, claims for failure to pay sick time,

20 claims for failure to timely pay wages, both during employment and after termination of

21 employment, claims for failure to keep accurate and complete payroll records, claims for failure to

22 provide accurate and complete wage statements, claims relating to meal periods and rest breaks,

23 claims related to purported accrued vacation, claims for wage premiums, penalties, and interest;

24 claims for penalties, including, but not limited to, recordkeeping penalties, wage statement

25 penalties, minimum-wage penalties, missed meal-period and rest-break penalties, waiting-time

26 penalties, penalties under the Private Attorneys General Act; premiums or costs and attorneys’

27 fees and expenses, and any claim arising from the claims described above under applicable

28 federal, state, local or territorial law; all such claims arising under the California Labor Code

(including not limited to claims under California Labor Code Sections 201, 202, 203, 204, 210, 216, 218, 222, 223, 225.5, 226 *et seq.*, 226.3, 226.7, 227.3, 233, 234, 246, 246.5, 432, 510, 512, 516, 551, 552, 558, 558.1, 1174, 1182.12, 1193, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and 2810.5); the wage orders of the California Industrial Welfare Commission (including the Minimum Wage Order and Wage Orders 1, 5 and 15); the Private Attorneys General Act, California Labor Code section 2698, *et seq.*; California Business and Professions Code section 17200 *et seq.*; the California common law of contract; the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*; and federal common law.

21. Waiver of Known and Unknown Claims. Plaintiff waives all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, and does so understanding the significance of that waiver, which states:

“A general release does not extend to claims which 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.”

22. Class Counsel. As of the date the Judgment becomes Final, and except as otherwise provided by this Agreement and awarded by the Court, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys’ fees and expenses against Defendants or the Releasees arising from or related to the Action, including but not limited to claims based on the California Labor Code, the California Civil Code, the California Code of Civil Procedure, the Fair Labor and Standards Act, or any other statute or law (the “Class Counsel Released Claims”).

23. Certification for Settlement Purposes. Solely for the purposes of effectuating this Settlement, and subject to Court approval, the Parties hereby stipulate to the conditional

1 certification of the following Settlement Class:

2
3 **“All persons who, from December 16, 2018 to February 29, 2024, have**
4 **previously been or currently are employed in California by Defendants as a**
5 **non-exempt or hourly employee of Defendant and who did not sign**
6 **arbitration agreements.”**
7

8 The Parties agree that if for any reason the Settlement is not preliminarily and finally approved, the
9 conditional certification of the Settlement Class will be of no force or effect, does not constitute an
10 admission by Defendant that class certification is proper, and will not be deemed admissible in this
11 or any other proceeding, and that the Parties will litigate the issue of class certification.
12

13 **24. Motion for Preliminary Approval of Settlement by the Court.** Class Counsel
14 will move the Court for an order granting Preliminary Approval of the Settlement (the “Motion for
15 Preliminary Approval”), setting a date for the Final Approval Hearing, and approving the Class
16 Notice. At the hearing on the Motion for Preliminary Approval, Class Counsel will submit an
17 Order Granting Preliminary Approval of Settlement, Approval of Notice to Class and Setting
18 Hearing for Final Approval of Settlement. Should the Court decline to approve the Settlement in
19 its entirety, the Settlement will be null and void and the Parties will have no further obligations
20 under it.
21

22 **25. Duties of the Claims Administrator.** The Parties have agreed to the appointment
23 of ILYM Group, Inc., (the “Claims Administrator”) or such other independent administrator as the
24 Court might appoint to mail the Notice and Employment Information Sheet, to independently
25 review and verify documentation associated with any submitted opt-out requests, and to compute
26 and pay the appropriate sums from the MSN. The Claims Administrator’s estimate of its
27 costs/fees for the administration of the settlement is \$5,950.00. The actual fees and costs of the
28 Claims Administrator which will be paid out of the MSN, will not be known until all claims are

administered, and could vary materially from the estimate.

26. List of Class Members. Within thirty (30) days after the Court grants Preliminary Approval of the Settlement, Defendant shall provide to the Claims Administrator:

a. An electronic database of all Class Members, last known mailing address, Social Security number and/or Defendant's employee identification number as applicable ("Class Members' Data").

b. Corresponding to each Class Member's name, Defendant shall provide a figure indicating the total number of Work Weeks during the Class Period in which that Class Member performed any work for Defendant as an hourly or non-exempt employee in California. That number of Work Weeks shall be referred to as that Class Member's "Individual Work Weeks." If any of the Class Members' Data are unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Members' Data prior to when it must be submitted to the Claims Administrator. Class Members' Data will otherwise remain confidential and will not be disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant to Defendant's express written authorization or by order of the Court.

27. Notice to Class Members. Upon receipt of the Names and addresses, the Administrator will run the same through the NCOA database to obtain current address information. Within fifteen (15) days of its receipt of the Class Data, the Claims Administrator will mail to each Class Member by first-class mail a Notice packet containing a Notice of Pendency of Class Action Settlement, Proposed Settlement, and Hearing Date for Final Court Approval ("Notice") in the form attached hereto as **Exhibit "1"** and approved by the Court. Included in the Notice packet will be a Class Member Settlement Information Sheet, which shall include the Class Member's first and last name, last known address, employee identification

1 number, Class Member's Individual Work Weeks during the Class Period, and the estimated
2 amount of the Class Member's Settlement share, in the form attached hereto as **Exhibit "2."**

3
4 **a. Mailing of Class Notice.** Within fourteen (14) days after receiving the
5 Class Members' Data, or as soon thereafter as it can do so, the Claims Administrator will mail the
6 Class Notice Packets to all identified Class Members via first-class U.S. mail using the mailing
7 address information provided by Defendant, unless modified by any updated address information
8 that the Claims Administrator obtains in the course of administration of the Settlement.

9
10 **b. Returned Class Notice.** If a Class Notice Packet is returned because of an
11 incorrect address, the Claims Administrator will promptly, and not later than ten (10) days from
12 receipt of the returned packet, search for a more current address for the Class Member and re-mail
13 the Class Notice Packet to the Class Member. The Claims Administrator will use the Class
14 Members' Data and otherwise work with Defendant's Counsel and Class Counsel to find a more
15 current address. The Claims Administrator will be responsible for taking reasonable steps,
16 consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing address
17 of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as
18 undeliverable. These reasonable steps shall include the tracking of all undelivered mail;
19 performing address searches for all mail returned without a forwarding address; and promptly re-
20 mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-
21 mailed, the Claims Administrator will note for its own records and notify Class Counsel and
22 Defendant's Counsel of the date and address of each such re-mailing as part of a weekly status
23 report provided to the Parties.

24
25 **28. Request for Exclusion from Settlement.** A Class Member may request to be
26 excluded from the effect of this Agreement, and any payment of amounts under this Agreement by
27 timely mailing a letter to the Claims Administrator stating that the Class Member wants to be
28 excluded from this Action. This letter must include the Class Member's name, address, telephone

number, and signature. To be valid and timely, the request to be excluded must be postmarked by the date specified in the Class Notice (no less than forty-five (45) days from the initial mailing of the Class Notice by the Claims Administrator). A Class Member who properly submits a valid and timely request to be excluded from the Action shall not receive any payment of any kind in connection with this Agreement or this Action, shall not be bound by or receive any benefit of this Agreement, and shall have no standing to object to the Settlement. A request for exclusion must be mailed to the Claims Administrator (who shall transmit the request for exclusion to counsel for the Parties) as follows:

To Claims Administrator

Victor Guerra vs.
Tranquility, Inc.
Claims Administrator
c/o ILYM Group, Inc.
2832 Walnut Ave. Ste C.
Tustin, CA 92780

To Class Counsel:

Shaun Setareh, Esq.
William M. Pao, Esq.
Setareh Law Group
9665 Wilshire Boulevard,
Suite 430
Beverly Hills, CA 90212-
4309

To Defense Counsel:

Grace Y. Horoupian
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614

Areen Babajanian
FISHER & PHILLIPS LLP
444 South Flower Street,
Suite 1500
Los Angeles, California
90071

29. Objections to Settlement. The Class Notice will provide that any Class Member who does not request exclusion from the Action and who wishes to object to the Settlement must submit an objection in writing to the Claims Administrator not later than forty-five (45) days after the Claims Administrator mails the Class Notice, a written objection to the Settlement which sets forth the grounds for the objection and the other information required by this paragraph and paragraph 28. The objection must be mailed to the Claims Administrator (who shall transmit the objections to counsel for the Parties).

30. The written objection must state the objecting Class Member's full name, address, and the written basis for each specific objection and any legal support in clear and concise terms. The written objection also shall state whether the Class Member intends to formally intervene and become a party of record in the action as now required under the California Supreme Court

1 decision of *Hernandez v. Restoration Hardware*, 4 Cal. 4th 260, 228 Cal. Rptr. 3d 106 (2018), and
2 upon formally intervening, appear and argue at the Final Approval Hearing; the failure to so state
3 will constitute a waiver of the right to appear and argue at the Final Approval Hearing. A Class
4 Member who does not file and serve a written objection in the manner and by the deadline
5 specified above, in addition to formally intervening in the action as required under *Hernandez v.*
6 *Restoration Hardware*, 4 Cal. 4th 260, 228 Cal. Rptr. 3d 106 (2018), will be deemed to have
7 waived any objections and will be foreclosed from making any objections (whether at the Final
8 Approval Hearing, by appeal, or otherwise) to the Settlement. If the objecting Class Member does
9 not formally intervene in the action and/or the Court rejects the Class Member's objection, the
10 Class Member will still be bound by the terms of this Agreement.

11
12 **31. Disputed Class Member Settlement Shares.** If a Class Member disputes his/her
13 Settlement Share, the Class Member may produce evidence to the Claims Administrator for the
14 Class Period. In order for the dispute to be considered, he/she must follow the directions on the
15 Class Notice. To be valid and timely, all disputes and supporting documents must be postmarked
16 by the date specified in the Class Notice (no less than forty-five (45) days from the initial mailing
17 of the Class Notice by the Claims Administrator). Any disputes concerning administration of the
18 settlement not resolved by the Parties will initially be decided by the Claims Administrator. If the
19 Claims Administrator's decisions are not mutually accepted by all Parties, the dissatisfied party
20 may request that the Court make a final decision. The Court's decision shall be final and binding
21 on the Parties.

22
23 **32. Report.** Not later than fourteen (14) days after the deadline for submission of
24 requests for exclusion, the Claims Administrator will provide the Parties with a complete and
25 accurate list of all Class Members who sent timely requests to be excluded from the Action and all
26 Class Members who objected to the settlement.

27
28 **33. Declaration of Claims Administrator.** Not later than seven days (7) days prior to

1 the Final Approval Hearing, the Claims Administrator will provide the Parties for filing with the
2 Court a declaration of due diligence setting forth its compliance with its obligations under this
3 Agreement. Prior to the Final Approval Hearing, the Claims Administrator will supplement its
4 declaration of due diligence if any material changes occur from the date of the filing of its prior
5 declaration.

6
7 **34. No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
8 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member to
9 seek exclusion from the Settlement, object to the Settlement, or to appeal from the Judgment. If
10 five percent (5%) or more of the Class Members submit a valid request to be excluded from the
11 Settlement, then Defendant shall have the unilateral right to void this Settlement. Defendant may
12 do so by giving notice to Class Counsel and the Court of its election to void the Settlement not
13 later than seven (7) days before the Final Approval Hearing as contingent upon Paragraph 31,
14 *supra*. No sums shall be payable by Defendant if this Agreement is voided as provided for herein
15 with one exception: Defendant agrees to pay any fees owing to the Claims Administrator for
16 services rendered in the event Defendant exercises its right to void the Settlement.

17
18 **35. Additional Briefing and Final Approval.** Plaintiff will file with the Court a
19 motion for final approval of the Settlement and payment of the Claims Administrator's reasonable
20 fees and expenses and a memorandum in support of their motion; and Plaintiff and Class Counsel
21 will serve on Defendant and file with the Court a motion for awards of the Class Representative
22 Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment
23 pursuant to this Settlement, and memoranda in support of their motions.

24
25 **36. Right to Respond to Objections.** Before the Final Approval Hearing, the Parties
26 shall be entitled to file and serve a response to any Class Member's objection to the Settlement
27 and/or reply in support of their motion for final approval of the Settlement, and payment of the
28 Claims Administrator's reasonable fees and expenses to the extent that any opposition to the

1 motion is filed; and Plaintiff and Class Counsel may file replies in support of their motions for the
2 Class Representative Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation
3 Expenses Payment.

4
5 **37. Right to Void Settlement Agreement.** If the Court ultimately does not grant final
6 approval of the Settlement or grants final approval conditioned on any material change to the
7 Settlement, then either Party will have the unilateral right to void the Settlement in its entirety; if
8 that occurs, the Parties will have no further obligations under the Settlement, including any
9 obligation by Defendant to pay the MSN, NSN or any amounts that otherwise would have been
10 payable under this Agreement, except that Defendant and Plaintiff will jointly and equally pay the
11 Claims Administrator's reasonable fees and expenses incurred as of the date that the Party
12 exercises the right to void the Settlement under this paragraph. However, an award by the Court
13 of a lesser amount than that sought by Plaintiff and Class Counsel for the Class Representative
14 Payment, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment,
15 will not constitute a material modification to the Settlement within the meaning of this paragraph
16 and shall not render the Settlement voidable. Plaintiff and Class Counsel shall retain the right to
17 appeal awards of attorneys' fees and costs less than requested.

18
19 **38. Final Judgment.** Upon final approval of the Settlement by the Court at or after the
20 Final Approval Hearing, the Parties will present for the Court's approval and entry a Proposed
21 Final Order and Judgment. The Final Order and Judgment shall permanently bar all Class
22 Members (other than those who have submitted timely and valid requests to be excluded from the
23 Action as provided in this Agreement) from prosecuting against Defendant any claims within the
24 scope of the Releases contained in this Agreement.

25
26 **39. Continuing Jurisdiction.** After entry of the Judgment, the Court will have
27 continuing jurisdiction over the Action and the Settlement solely for purposes of (a) enforcing this
28 Agreement, (b) addressing claims administration matters, and (c) addressing such post-Judgment

1 matters as may be appropriate under court rules or applicable law.

2
3 **40. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the
4 terms and conditions of this Agreement, Plaintiff, Class Members who did not submit a valid and
5 timely objection to the Settlement and also formally intervene into the action as now required
6 under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 4th
7 260, 228 Cal. Rptr. 3d 106 (2018), Defendant, and their respective counsel hereby waive, except
8 as provided for in this Agreement or prohibited by law, any and all rights to appeal from the
9 Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as
10 a motion to vacate judgment, a motion for new trial, any extraordinary writ, and any appeal, and
11 the Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal
12 does not include any waiver of the right to oppose any appeal, appellate proceedings or post-
13 judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the
14 Settlement (including making any payments under the Settlement) will be suspended until the
15 appeal is fully and finally resolved and the Judgment, consistent with the terms of this Agreement,
16 becomes Final.

17
18 **41. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
19 **Review.** If, after a notice of appeal, a petition for review, or a petition for certiorari, or any other
20 motion, petition, writ, application, or appeal, the reviewing court vacates, reverses, or modifies the
21 Judgment such that there is a material modification to the Settlement, and that court's decision is
22 not completely reversed and the Judgment is not fully affirmed on review by a higher court, then
23 either Plaintiff or Defendant will have the unilateral right to void the Settlement, which the Party
24 must do by giving written notice to the other Parties, the reviewing court, and the Court, not later
25 than fourteen (14) days after the reviewing court's decision vacating, reversing, or materially
26 modifying the Judgment becomes final. The Party exercising its right to unilaterally void the
27 Settlement pursuant to this provision agrees to pay any fees owing to the Claims Administrator for
28 services rendered. An order vacating, reversing or modifying the Court's award of the Class

1 Representative Payment or the Class Counsel Fees Payment and/or Class Counsel Litigation
2 Expenses Payment will not constitute a vacation, reversal, or material modification of the
3 Judgment within the meaning of this paragraph, and shall not render the Settlement voidable.
4

5 **42. Establishment of Settlement Account.** The Claims Administrator will establish a
6 Settlement Account for the purpose of administering the funds described in this Stipulation of
7 Settlement. Within thirty (30) calendar days of the later of (a) the Court's final approval of
8 settlement if no objection by any Class Member has been filed, (b) the time for appeal has expired
9 if an objection has been filed, or (c) the final resolution of any appeal that has been filed, including
10 any subsequent proceedings on remand and appeals and remands thereof, if any, Defendant shall
11 pay into the Settlement Account (via wire transfer) an amount equal to the sum of the following:
12 (i) all gross individual settlement amounts due to Class Members; (ii) court-approved
13 enhancement to the Class Representative; (iii) court-approved attorneys' fees and costs of Class
14 Counsel; (iv) Claims Administrator fees and costs and (v) payment to the LWDA.
15

16 **43. Payment of Settlement Shares.** The Claims Administrator shall pay Settlement
17 Shares, from the Settlement Account, to all Class Members who have not opted out of the
18 settlement. The Claims Administrator shall pay each Settlement Share by sending a check in the
19 appropriate amount to the Class Member at the address indicated in the list of Class Member
20 names and addresses provided by Defendant, or as subsequently determined by the Claims
21 Administrator to be the correct address. Such payment shall be sent by the Claims Administrator
22 via U.S. Mail within ten (10) days of its receipt from Defendants of the sums described above in
23 paragraph 40 above.
24

25 **44. Uncashed Settlement Share Checks.** Any checks issued by the Claims
26 Administrator to Class Members who do not timely and validly opt out shall be negotiable for one
27 hundred and eighty (180) calendar days. Those funds represented by checks returned as
28 undeliverable and those checks remaining un-cashed for more than 180 days after issuance

1 (collectively, "Voided Settlement Checks") will be sent to the Controller of the State of California,
2 in the name of that Class Member, to be held pursuant to the Unclaimed Property Law for the
3 benefit of the Class Member until such time as they claim their property, as allowed by law.
4 California Civil Code § 1500 et seq. The Parties agree this disposition results in no "unpaid
5 residue" under California Civil Procedure Code § 384 (b), as the entire Net Settlement Amount
6 will be paid to Settlement Class members, whether or not all checks are cashed. Because no
7 unpaid residue will exist, Defendant will not be required to pay any interest on the uncashed
8 checks.

9
10 **45. Final Report by Claims Administrator to Court.** Within ten (10) days after final
11 disbursement of all funds from the Settlement Account, the Claims Administrator will serve on the
12 Parties for filing with the Court a declaration providing a final summary report on the
13 disbursements of all funds from the Settlement Account.

14
15 **46. Non-Publicity Provision.** The Parties and their counsel agree that they will not
16 issue any press releases, initiate any contact with the press, respond to any press inquiry or have
17 any communication with the press about the fact, amount or terms of the Settlement. In addition,
18 the Parties and their counsel agree that they will not engage in any advertising or distribute any
19 marketing materials relating to the Settlement of this case in any manner that identifies the
20 Defendant, including but not limited to any postings on any websites maintained by Class
21 Counsel. Neither Plaintiff nor Class Counsel will discuss the terms or the fact of the Settlement
22 with third parties other than (1) their immediate family members, (2) their respective accountants
23 or lawyers as necessary for tax purposes; or (3) other Class Members. Plaintiff and Class Counsel
24 agree not to publish any of the terms or conditions of this Settlement in any manner that identifies
25 Defendant. However, Class Counsel may identify this Settlement in other matters to demonstrate
26 their adequacy as counsel in such other matters.

27
28 **47. No Effect on Other Benefits.** The Settlement Shares will not result in any

1 additional employee benefit payments (such as pension, ERISA, 401(k), vacation, or bonus) and
2 shall not have any effect on the eligibility for, or calculation of, any employee benefit. Plaintiff
3 and Class Members are deemed to have waived all such claims, whether known or unknown by
4 them, as part of their release of claims under this Agreement.

5
6 **48. No Admission of Liability.** Defendant denies it engaged in any unlawful activity,
7 failed to comply with the law in any respect, or have any liability to anyone under the claims
8 asserted in the Action. This Agreement is entered into solely for the purpose of compromising
9 highly disputed claims. Nothing in this Agreement is intended or will be construed as an
10 admission of liability or wrongdoing by Defendant, or an admission by Plaintiff that any of his
11 claims was non-meritorious or any defense asserted by Defendant was meritorious. This
12 Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no
13 bearing on, and will not be admissible in connection with, any litigation (other than solely in
14 connection with the Settlement).

15
16 **49. Improper Use of Settlement.** Whether or not the Settlement becomes final, this
17 Stipulation of Settlement is a settlement document and shall, pursuant to California Evidence
18 Code section 1152 and Federal Rule of Evidence 408(a), be inadmissible in evidence. The
19 preceding sentence shall not apply to an action or proceeding to approve, interpret, or enforce this
20 Stipulation of Settlement.

21
22 **50. Integrated Agreement.** After this Agreement is signed and delivered by all
23 Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement
24 between the Parties relating to the Settlement, and it will then be deemed that no oral
25 representations, warranties, covenants, or inducements have been made to any Party concerning
26 this Agreement or its exhibits other than the representations, warranties, covenants, and
27 inducements expressly stated in this Agreement and its exhibits.

1 **51. Modification.** This Stipulation of Settlement may not be changed, altered, or
2 modified, except in a writing signed by the Parties hereto and approved by the Court. This
3 Stipulation of Settlement may not be discharged except by performance in accordance with its
4 terms or by a writing signed by all of the Parties hereto.

5
6 **52. Attorney Authorization.** Class Counsel and Defense Counsel warrant and
7 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
8 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
9 its terms, and to execute any other documents required to effectuate the terms of this Agreement.
10 The Parties and their counsel will cooperate with each other and use their best efforts to effect the
11 implementation of the Settlement. In the event the Parties are unable to reach agreement on the
12 form or content of any document needed to implement the Agreement, or on any supplemental
13 provisions that may become necessary to effectuate the terms of this Agreement, the Parties will
14 seek the assistance of the Court, and in all cases, all such documents, supplemental provisions and
15 assistance of the court will be consistent with this Agreement.

16
17 **53. Modification of Agreement.** This Agreement, and all parts of it, may be amended,
18 modified, changed, or waived only by an express written instrument signed by all Parties or their
19 successors-in-interest.

20
21 **54. Agreement Binding on Successors.** This Agreement will be binding upon, and
22 inure to the benefit of, the successors of each of the Parties.

23
24 **55. Applicable Law.** All terms and conditions of this Agreement and its exhibits will
25 be governed by and interpreted according to the laws of the State of California, without giving
26 effect to any conflict of law principles or choice of law principles.

27
28 **56. Cooperation in Drafting.** The Parties have cooperated in the drafting and

1 preparation of this Agreement. This Agreement will not be construed against any Party on the
2 basis that the Party was the drafter or participated in the drafting.

3
4 **57. Fair Settlement.** The Parties and their respective counsel believe and warrant that
5 this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived
6 at this Agreement through arms-length negotiations, considering all relevant factors, current and
7 potential.

8
9 **58. Headings.** The descriptive heading of any section or paragraph of this Agreement
10 is inserted for convenience of reference only and does not constitute a part of this Agreement.

11
12 **59. Notice.** All notices, demands or other communications given under this Agreement
13 will be in writing and deemed to have been duly given as of the third business day after mailing by
14 United States mail, addressed as follows:

15
16 **To Class Counsel:**

17 Shaun Setareh, Esq.
18 William M. Pao, Esq.
19 Setareh Law Group
9665 Wilshire Boulevard, Suite 430
Beverly Hills, CA 90212-4309

To Defense Counsel:

Grace Y. Horoupian
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614

Areen Babajanian
FISHER & PHILLIPS LLP
444 South Flower Street, Suite 1500
Los Angeles, California 90071

20
21
22 **60. Execution in Counterpart.** This Agreement may be executed in one or more
23 counterparts. All executed counterparts and each of them will be deemed to be one and the same
24 instrument provided that counsel for the Parties will exchange between themselves original signed
25 counterparts. Facsimile signatures will be presumptive evidence of execution of the original,
26 which shall be produced on reasonable request. Any executed counterpart will be admissible to
27 prove the existence and contents of this Agreement.

1 **61. No Assignments.** The Parties hereto represent, covenant, and warrant that they
2 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
3 or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
4 action, or rights herein released and discharged.

5
6 **62. Class Counsel Signatories.** It is agreed that, because the members of the
7 Settlement Class are so numerous, it is impossible or impractical to have each such Class Member
8 execute this Stipulation of Settlement. The Notice will advise all Class Members of the binding
9 nature of the release, and such shall have the same force and effect as if this Stipulation of
10 Settlement were executed by each Member of the Settlement Class.

1 DATED: _____, 2024 TRANQUILITY, INCORPORATED

2
3 By: _____

4
5 DATED: ^{11/14/24}_____, 2024

6
7 By: _____



ID GrmNDB9wVZ6QJDSG6GP|po2

VICTOR GUERRA

8
9 **APPROVED AS TO FORM AND CONTENT:**

10 DATED: 11-14-24, 2024 SETAREH LAW GROUP
11 Attorneys at Law

12
13 By: _____

SHAUN SETAREH
BRIAN LOUIS

14
15 Attorneys for VICTOR GUERRA

16
17 DATED: _____, 2024 FISHER & PHILLIPS LLP
18 Attorneys at Law

19
20 By: _____

GRACE Y. HOROUPIAN
AREEN BABAJANIAN

21
22 Attorneys for TRANQUILITY INCORPORATED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: September 19, 2024

TRANQUILITY, INCORPORATED

By: Forest Allen

DATED: July _____, 2024

By: _____
VICTOR GUERRA

APPROVED AS TO FORM AND CONTENT:

DATED: July _____, 2024

SETAREH LAW GROUP
Attorneys at Law

By: _____
SHAUN SETAREH
WILLIAM PAO

Attorneys for VICTOR GUERRA

DATED: September 19, 2024

FISHER & PHILLIPS LLP
Attorneys at Law

By: Areen Babajanian
GRACE Y. HOROUPIAN
AREEN BABAJANIAN

Attorneys for TRANQUILITY INCORPORATED