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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 Hon. Kenneth R.
Freeman, SSC-14]*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT, CLASS
REPRESENTATIVE'S SERVICE AWARD,
AND ATTORNEYS' FEES AND COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: October 15, 2024
Time: 11:00 a.m.
Dept.: SSC-14

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

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on October 15, 2024 at 11:00 a.m. in Department SSC-14 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Laura Torres (“Plaintiff”), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

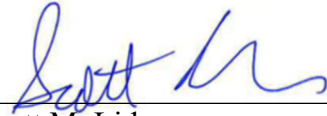
1. Confirming the certification of the Settlement Class for settlement purposes under Section 382 of the California Code of Civil Procedure;
2. Confirming the appointment of Plaintiff Laura Torres as Class Representative for settlement purposes;
3. Confirming the appointment of Scott M. Lidman and Milan Moore of Lidman Law, APC, and Paul Haines of Haines Law Group, APC, as Class Counsel for settlement purposes;
4. Granting final approval of the Amended Joint Stipulation and Settlement Agreement (herein “Settlement”);
5. Approving an award of \$147,687.06 in attorneys’ fees to Class Counsel;
6. Approving an award of \$27,222.80 in costs to Class Counsel;
7. Approving an award of \$10,000.00 in costs to Phoenix Class Action Administration Solutions for its settlement administration services;
8. Approving an incentive payment of \$5,000.00 to Plaintiff for her services as Class Representative;
9. Approving an award of \$22,500.00 to the Labor & Workforce Development Agency (“LWDA”); and
10. Entering final judgment in the form of the [Proposed] Order of Final Approval of Class Action Settlement and Final Judgment filed concurrently herewith.

This Motion is based on this notice of motion, the attached memorandum of points and authorities attached hereto, the declarations of Scott M. Lidman, Paul K. Haines, Milan Moore, Plaintiff Laura

1 Torres,¹ and Mayra Gonzalez of Phoenix Class Action Administration Solutions, and the exhibits
2 attached thereto, the pleadings and other papers filed in this action, and on any further oral or
3 documentary evidence or argument presented at the time of hearing.

4
5 Dated: September 11, 2024

Respectfully submitted,
LIDMAN LAW, APC

6
7 By: 

8 Scott M. Lidman
9 Attorney for Plaintiff
LAURA TORRES

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28 ¹ The declaration of Plaintiff Laura Torres was originally filed with this Court in connection with the Motion for Preliminary Approval. For the convenience of the Court, Plaintiff has re-filed her declaration with the instant Motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Laura Torres (“Plaintiff”) submits this memorandum of points and authorities in support
4 of her motion for final approval of the class action settlement (the “Settlement”) with Defendant R.A.
5 Phillips Industries, Inc. (hereinafter “RA Phillips” or “Defendant”). The Settlement Class is defined as:
6 all current and former hourly-paid or non-exempt employees of Defendant R.A. Phillips Industries, Inc.
7 in California at any time between November 10, 2017 and April 18, 2024.

8 In this non-reversionary Settlement, the average settlement payment to each Settlement Class
9 Member is approximately \$549.63. This is a favorable resolution of the highly disputed wage and hour
10 claims in this case and the significant litigation risks that Plaintiff faced. Since this Court granted
11 preliminary approval on April 30, 2024, nothing has changed to impact the propriety, fairness, adequacy
12 and reasonableness of the Settlement. In addition, after receiving notice of the Settlement and of their
13 projected Settlement payments, no one submitted a written objection to the Settlement and only four (4)
14 class members have opted out.

15 As explained below, the Court should grant Plaintiff’s motion in its entirety because: (1) the Class
16 continues to meet the requirements for class certification for settlement purposes under Code of Civil
17 Procedure section 382; (2) the Settlement warrants final approval because it is a fair, adequate, and
18 reasonable compromise of the disputed claims in this case; and (3) the amounts requested for Class
19 Counsel’s attorneys’ fees and costs, Plaintiff’s Service Award, payment to the Labor Workforce
20 Development Agency (“LWDA”), and settlement administration costs are all fair, adequate, and
21 reasonable. For these reasons, Plaintiff respectfully requests that this Court enter the [Proposed] Order
22 of Final Approval of Class Action Settlement and Final Judgment submitted concurrently herewith.

23 **II. FACTUAL AND PROCEDURAL BACKGROUND**

24 On November 10, 2021, Plaintiff filed the instant putative class action complaint. *See*
25 Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. On November 10, 2021, Plaintiff submitted a
26 letter to the California Labor & Workforce Development Agency (“LWDA”) and RA Phillips of her
27 intention of filing a Labor Code Private Attorneys General Act of 2004 (“PAGA”) claim based on the
28 Labor Code violations alleged in her complaint. *Id.* On April 22, 2022, after exhausting her

1 administrative remedies, Plaintiff filed a First Amended Class and Representative Action Complaint
2 adding a cause of action for civil penalties under the PAGA. *Id.* Plaintiff's primary claims/allegations
3 are that RA Phillips: (1) failed to provide all legally required meal periods; (2) failed to authorize and
4 permit all legally required rest periods; (3) failed to provide accurate, itemized wage statements; and (4)
5 engaged in unlawful business practices. Plaintiff also alleged that RA Phillips is liable for civil penalties
6 under the PAGA.

7 **A. Plaintiff's Claims**

8 As explained in detail in the Motion for Preliminary Approval, Plaintiff's primary theories of
9 liability are related to Defendant's alleged failure to provide Settlement Class Members all legally
10 compliant duty-free meal and rest periods. Lidman Decl., ¶ 11. Specifically, Plaintiff alleges that she
11 and Settlement Class members were not provided with all legally-compliant first meal periods beginning
12 before the end of the fifth hour of work. *Id.* Plaintiff alleges that RA Phillips utilized a bell signaling
13 system for meal periods, with the bell ringing exactly thirty minutes apart. *Id.* This means that Plaintiff
14 and the other non-exempt employees did not receive a full 30-minute meal period because they were
15 required to be back at their workstations ready to work before the second bell rang. *Id.* As such, Plaintiff
16 alleges that she and other non-exempt employees were not provided a full uninterrupted 30-minute meal
17 period because they had to return from their meal periods early and be at their workstations ready to
18 commence work. *Id.* Moreover, Plaintiff alleges that she and some other non-exempt employees were
19 required to wait in long lines to clock back in after their meal periods, which also resulted in meal periods
20 that were short or otherwise unlawful. *Id.* Lastly, Plaintiff alleges that she and some other non-exempt
21 employees were required to carry walkie talkie radios at all times, essentially being on call for their meal
22 periods and unable to have duty-free meal periods in violation of California law. *Id.*

23 Plaintiff alleges that she and Settlement Class Members were also not authorized and permitted
24 to take all required rest periods due to RA Phillips's rest period policies and practices. Lidman Decl., ¶
25 13. Specifically, Plaintiff alleges that RA Phillips utilized a bell ringing system for rest periods that rang
26 exactly 10-minutes apart. *Id.* As such, and similar to meal periods, Plaintiff and the other non-exempt
27 employees experienced at least one rest period violation on every shift worked in excess of 3.5 hours. *Id.*

28 As a result of the alleged unpaid meal period and rest period premium wages described above,

1 Plaintiff alleges that Defendant issued inaccurate wage statements in violation of Labor Code § 226 and
2 is thus liable for civil penalties under the Labor Code Private Attorney General Act (“PAGA”). Lidman
3 Decl., ¶ 15.

4 As explained *infra* and in Plaintiff’s Motion for Preliminary Approval, Defendant denies
5 Plaintiff’s claims and asserts several affirmative defenses, both on the merits and with respect to class
6 certification.

7 **B. Mediation and Settlement**

8 In advance of mediation, RA Phillips produced timekeeping and payroll data for Plaintiff and the
9 entire putative class, as well as its wage and hour policies and other relevant documents and information
10 relevant to the claims alleged. Lidman Decl., ¶ 19. With the information and data provided by RA
11 Phillips, Plaintiff was able to calculate the necessary metrics, including without limitation, class size,
12 number of workweeks, and pay periods. *Id.* After the detailed review of the documents and data produced
13 by RA Phillips, Class Counsel drew on their extensive experience in similar cases to assess the strengths
14 and weaknesses of Plaintiff’s case. *Id.* This discovery allowed the parties to assess the merits and value
15 of Plaintiff’s claims and RA Phillips’s defenses. *Id.*

16 On August 30, 2022, a mediation was held with Glenn Lerman, Esq., a well-respected ADR
17 mediator. Lidman Decl., ¶ 20. During mediation, the parties vigorously debated their opposing legal
18 positions, the likelihood of certification of Plaintiff’s claims, and the legal basis for the claims and
19 defenses. Ultimately, the Parties agreed on a class-wide resolution. *Id.*

20 **C. Preliminary Approval of Settlement**

21 Plaintiff submitted the Stipulation of Settlement to the Court with her Motion for Preliminary
22 Approval on March 31, 2023. Lidman Decl., ¶ 21. On February 26, 2024, Plaintiff filed a supplemental
23 brief in support of preliminary approval along with an amended settlement agreement. On April 30,
24 2024, the Court granted preliminary approval and signed an Order Granting Preliminary Approval of the
25 Settlement. *Id.*; Exh. A.

26 Plaintiff submitted the Settlement, the Amended Settlement, and the Court’s Order Granting
27 Preliminary Approval of the Settlement to the LWDA via the LWDA’s website on March 31, 2023,
28 February 23, 2024, and August 22, 2024, respectively. *See* Lidman Decl., ¶ 34; Exhs. C-E. Plaintiff

will also provide the LWDA with a copy of the instant motion for final approval and supporting documents after the instant motion is filed and will file a supplemental proof of service prior to the hearing. *See* Lidman Decl., ¶ 35.

On June 4, 2024, Phoenix mailed the Notice via U.S. first class mail, in English and Spanish, to all 410 Settlement Class members on the Class List who had until July 19, 2024 to request for exclusion, state objections, and/or submit disputes. *See* Declaration of Mayra Gonzalez of Phoenix Class Action Administration Solutions. (“Gonzalez Decl.”), ¶ 5. As of the date of this filing, there have been **no objections, no disputes**, and only four (4) requests for exclusion received. *Id.* at ¶¶ 8-10. Plaintiff now respectfully submits the Settlement for this Court’s final approval.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. Settlement Class Definition

The Settlement Class encompasses: all current and former hourly-paid or non-exempt employees of Defendant R.A. Phillips Industries, Inc. in California at any time between November 10, 2017 and April 18, 2024. Lidman Decl., ¶ 27.

B. Monetary Terms of the Settlement

The Settlement provides for Defendant to pay a Gross Settlement Amount of \$400,000.00. *See* Gonzalez Decl., ¶ 3. However, the Escalator Clause was triggered, and Defendant opted to extend the class period thus, the Gross Settlement Amount increased to \$443,061.17. *Id.* As such, the attorneys’ fees were adjusted to reflect one third of the new Gross Settlement Amount. Gonzalez Decl., ¶ 12. The Net Settlement Amount is the amount remaining from the Gross Settlement Amount after deducting requested Class Counsel attorneys’ fees (\$147,687.06), and Class Counsel costs (\$27,222.80), requested Service Award to Plaintiff (\$5,000.00), the payment to the LWDA for its share of civil penalties (\$22,500.00), and the requested Settlement Administration Costs (\$10,000.00). *Id.* Based on these requested amounts, the Net Settlement Amount is calculated to be approximately **\$230,651.31**. *Id.*

The Net Settlement Amount, shall be allocated to Settlement Class Members who worked during the Class Period, as follows: 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

1 during the Class Period. Settlement, ¶ 3.2.4.

2 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of
3 the Aggrieved Employees' 25% share of PAGA Penalties (\$7,500.00) by the total number of PAGA Pay
4 Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by
5 the total PAGA Pay Periods worked by each Aggrieved Employee. Aggrieved Employees assume full
6 responsibility and liability for any taxes owed on their Individual PAGA Payment. Settlement, ¶ 3.2.5.1.

7 For purposes of calculating applicable taxes and withholdings, 33% of each Participating Class
8 Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion").
9 The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The
10 remaining 67% of each Participating Class Member's Individual Class Payment will be allocated to
11 settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not
12 subject to wage withholdings and will be reported on IRS 1099 Forms. Settlement, ¶ 3.2.4.1.

13 Defendant will pay the employer's share of payroll taxes separately from, and in addition to, the
14 Gross Settlement Amount. Settlement, ¶ 1.23.

15 **C. Summary of Notice Process**

16 ***1. Mailing of Notice Packets***

17 On May 17, 2024, Defendant provided Phoenix with data files containing the names, last known
18 mailing addresses, Social Security numbers, and number of Class Period Workweeks and PAGA Pay
19 Periods. Gonzalez Decl., ¶ 3. After performing address updates and verifications, Phoenix mailed the
20 Class Notice to 410 Settlement Class Members on June 4, 2024 in English and Spanish. *Id.* at ¶¶ 3-5.
21 Following the initial mailing, 12 Class Notices were returned to Phoenix by the Post Office and 11 were
22 re-mailed. *Id.* at ¶ 6. As of the date of filing this final approval motion, one (1) Class Notice remains
23 undeliverable because no forwarding address was provided and/or no new address could be located
24 through Skip Trace. *Id.* at ¶ 7.

25 The deadline for Settlement Class Members to submit objections, requests for exclusion, or
26 disputes was July 19, 2024. Gonzalez Decl., ¶ 8. As of the date of this filing, there were four (4) requests
27 for exclusion, no objections, and no disputes. *Id.* at ¶¶ 8-10. Accordingly, as of the date of this Motion,
28 the participation rate amongst the Settlement Class Members is 99.02% and the average estimated

1 settlement payment is \$549.63, with the highest estimated payment to a Settlement Class Member being
2 \$1,078.86, the lowest estimated payment to a Settlement Class Member being \$549.63. *Id.* at ¶ 13.

3 **D. Timing of Payments**

4 Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to
5 fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator as follows:
6 The payment of \$443,061.17, including all amounts necessary to fully pay Defendant's share of payroll
7 taxes, shall be deposited with the Administrator no later than 10 business days after the Effective Date.
8 Settlement, ¶ 4.3. "Effective Date" means the earliest date by which both of the following have occurred:
9 (a) the Court enters a Judgment based on its Final Approval of the Settlement; and (b) the Judgment
10 becomes final. Settlement, ¶ 1.18. The Judgment becomes final as of the latest of the following
11 occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters
12 Judgment; or (b) if one or more Participating Class members object to the Settlement, the first day when
13 the Judgment can no longer be appealed, which is either (i) the day after the deadline for filing a notice of
14 appeal from the Judgment, if no timely appeal from the Judgment is filed, or (ii) the day after the appellate
15 court affirms the Judgment and issues a remittitur, if an appeal from the Judgment is timely filed. *Ibid.*

16 After disbursement, Settlement Class Members will have at least 180 days to cash their checks.
17 *See* Lidman Decl., ¶ 23; Settlement ¶ 4.4.1. Funds remaining unclaimed will be distributed to the
18 California State Controller's Office – Unclaimed Property Fund in the name of the Settlement Class
19 Member. *See* Lidman Decl., ¶ 23; Settlement ¶ 4.4.3.

20 **E. Notice of Judgment**

21 As stated on the Court Approved Notice of Class Action Settlement and Hearing Date for Final
22 Court Approval mailed to class members, the final judgment entered by the Court and any changes to the
23 Final Approval hearing date or location will be posted on the Settlement Administrator's website at torres-
24 v-ra-phillips-industries.phoenixcases.com. *See* Gonzalez Decl., ¶5, Exh. A.

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1 **IV. ARGUMENT**

2 **A. This Court Should Confirm its Conditional Certification of the Class for Settlement**
3 **Purposes Because It Meets All of the Requirements for Class Certification Under**
4 **Code of Civil Procedure § 382**

5 Under Code of Civil Procedure section 382, a class may be certified if: (1) it is ascertainable and
6 its members are too numerous for joinder to be practical; (2) the representative and absent class members
7 share a community of interest, and questions of law and fact common to the class predominate over
8 questions unique to individual class members; (3) the representative's claims are typical of the class'
9 claims; and (4) the representative will fairly and adequately represent the class' interests. *See Richmond*
10 *v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.

11 Here, this Court found that the Class meets all the requirements for class certification for
12 settlement purposes when it granted preliminary approval of the Settlement on April 30, 2024. *See*
13 *Lidman Decl.*, ¶ 21; Exh. A. After the Court entered an order granting preliminary approval, no events
14 have occurred to cast doubt on the propriety of this determination. *Id.* In fact, the reaction of the
15 Settlement Class Members thus far to the Settlement has been strongly in support of the Settlement. Only
16 four (4) Settlement Class Members (less than 1% of the Settlement Class Members) have requested for
17 exclusion from the Settlement, no Settlement Class Member has objected to any portion of the Settlement,
18 and no Settlement Class Member has disputed the Settlement. *See Gonzalez Decl.*, ¶¶ 8-10. This Court
19 should therefore confirm its conditional certification of the Settlement Class.

20 **B. This Court Should Finally Approve the Settlement Because it is a Fair, Adequate,**
21 **and Reasonable Compromise of Disputed Wage and Hour Claims**

22 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior*
23 *Court*, 62 Cal.App.3d 231, 236 (1976). Unlike individual settlements, class action settlements involve a
24 court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu*
25 *Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-79 (1980). This approval
26 process consists of preliminary settlement approval, notice being given to class members, and a final
27 fairness and approval hearing being held, at which class members have the opportunity to be heard with
28 respect to the settlement. *Id.* Now that notice has been provided to the Settlement Class, Plaintiff

respectfully requests that the Court finally approve the Settlement as fair, adequate, and reasonable.

1. The Settlement was Reached at Arm's Length, Through Experienced Counsel and An Experienced Mediator, and Was Based on Sufficient Information to Intelligently Negotiate a Fair Settlement in Light of the Claims Asserted and Risks of Continued Litigation

A settlement is presumptively fair where it is reached through arm's length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors to the settlement is small. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996). In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Superior Court*, 89 Cal.App.3d 434 (1979). In exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk, supra*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant factors for the Court to consider include, but are not limited:

[T]he strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Id. These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors to each case. *Id.* "In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because settlements inherently involve compromise, even settlements providing for substantially narrower relief than likely would be obtained if the suit were successfully litigated can be reasonable because, "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Id.* (quoting *Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)).

Here, the Settlement resulted from extensive arm's length settlement negotiations between qualified and experienced counsel, with the assistance of a well-respected mediator, and is fair, adequate, and reasonable for all Settlement Class Members. While Plaintiff maintains that her claims are meritorious, Plaintiff acknowledges that her position includes substantial risks and uncertainty, which

1 justifies a downward departure from the maximum exposure that Plaintiff’s calculated each claim carried.

2 As detailed in Plaintiff’s Preliminary Approval Motion, there is significant risk of non-certification
3 and/or not prevailing on the merits with respect to each of Plaintiff’s claims. For example, with respect
4 to Plaintiff’s meal period claims, RA Phillips contends that it has always maintained a lawful meal period
5 policy and provided non-exempt employees with an opportunity to take legally compliant meal periods,
6 and any non-compliant meal periods reflected in employee timekeeping records were solely the result of
7 employee choice, rather than any policy or practice of RA Phillips. Lidman Decl., ¶ 12. RA Phillips
8 contends from the records provided in connection with mediation that it had an approximate 98%
9 compliance rate. *Id.* RA Phillips also contends that it paid meal period premiums when a non-compliant
10 meal period was recorded. *Id.* Further, it points out that under *Brinker Restaurant Corp. v. Superior Court*
11 (2012) 53 Cal. 4th 1004, it is only required to “provide” the opportunity to take meal periods, not “ensure”
12 meal periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting
13 “ensure” standard). Finally, RA Phillips contends Plaintiff’s meal period claim is not suited for class
14 certification, since individual inquiries would be required to assess which employees took non-compliant
15 meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular
16 employee took a non-compliant meal period or missed a meal period during a particular shift. *Id.*

17 As for Plaintiff’s rest period claims, RA Phillips contends it has always maintained and enforced
18 lawful rest period policies and practices, and that Settlement Class Members were authorized and
19 permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 14. RA
20 Phillips also argues that Plaintiff’s rest period claim is inherently unsuited for class treatment as it requires
21 an individualized inquiry into whether each Settlement Class Member was in fact authorized and permitted
22 to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id.*

23 As for Plaintiff’s claim for wage statement violations, RA Phillips argues that meal and rest period
24 claims cannot support a claim for wage statement penalties. Lidman Decl., ¶ 16. RA Phillips further argues
25 that its alleged wage statement violations could not be shown to be “knowing and intentional,” and that
26 Plaintiff cannot show that she or any other employee “suffer[ed] injury” as a result of the alleged wage
27 statement violations, as required by Lab. Code § 226(e) for imposition of penalties. *Id.*

28 //

1 Lastly, since Plaintiff’s PAGA claim is a derivative claim based on the underlying claims, RA
2 Phillips argues that Plaintiff’s PAGA claim will fail for the same reasons that her underlying claims will
3 fail. Lidman Decl., ¶ 17; see *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the
4 underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). RA Phillips also
5 maintains that, given its good faith defenses, this Court would exercise its discretion to substantially
6 reduce any PAGA penalties if it were to find RA Phillips liable for any of Plaintiff’s claims. Lidman
7 Decl., 16; *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th
8 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case
9 No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million
10 to \$500,000).

11 These considerations not only bore heavily on the negotiations leading to the Settlement, but also
12 confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further
13 litigation. Lidman Decl., ¶ 18. As detailed in the Preliminary Approval Motion, Plaintiff carefully vetted
14 the claims at issue and conducted a detailed liability analysis of class-wide data to calculate the damages
15 figures. *Id.* Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair,
16 adequate, and reasonable in view of them. *Id.*

17 **2. *The Settlement Fairly, Reasonably, and Adequately Compensates Class***
18 ***Members Because Each Participating Class Member Will Be Paid Based on the***
19 ***Extent of His or Her Injury***

20 An Individual Class Payment is calculated by (a) dividing the Net Settlement Amount by the total
21 number of Workweeks worked by all Participating Class Members during the Class Period and (b)
22 multiplying the result by the total Workweeks worked by each Participating Class Member. *See*
23 Settlement, ¶ 3.2.4. This method of distribution compensates Settlement Class Members based on the
24 estimated extent of their injuries, as Settlement Class Members who worked more workweeks, would
25 have been subject to more of the alleged wage and hour violations than those who worked fewer weeks.
26 Thus, the formula for compensating Settlement Class Members is fair, adequate, and reasonable, as it is
27 tethered to the damages and penalties that could be recovered by them.

28 //

1 3. ***The 99.02% Participation Rate and Absence of Any Objections Further***
2 ***Confirms That the Settlement is Fair, Adequate, and Reasonable***

3 Class members' response to a settlement is relevant in evaluating whether it merits final approval.
4 *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a
5 fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
6 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a
7 “particularly impressive” favorable response from class members). Here, as of the filing of this Motion,
8 not a single Settlement Class Member has objected to the Settlement and only four (4) Settlement Class
9 Members have elected to opt-out of the Settlement. Gonzalez Decl., ¶¶ 8-9. In addition, only 1 of the
10 410 Notice Packets were returned undeliverable. Gonzalez Decl., ¶ 7. The extremely favorable response
11 of the Settlement Class further confirms that the Settlement is fair, adequate, and reasonable.

12 C. **The Requested Award of Attorneys' Fees is Reasonable as a Percentage of the**
13 **Common Fund Confirmed by a Lodestar Cross-Check**

14 Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to recover
15 their attorneys' fees and costs for their wage claims. *See* Lab. Code §§ 218.5, 226(e) and 2699(g). A fee
16 award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See,*
17 *e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living,*
18 *Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983). When a settlement results in a common fund for the benefit
19 of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*,
20 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method).

21 Plaintiff has provided written approval of the split of attorneys' fees in this action. Lidman Decl.,
22 ¶ 32.

23 The California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506
24 (2016), that “[t]he percentage of fund method survives in California class action cases.” Specifically, the
25 *Laffitte* Court held:

26 The recognized advantages of the percentage method—including relative ease of
27 calculation, alignment of incentives between counsel and the class, a better
28 approximation of market conditions in a contingency case, and the encouragement it
 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
 litigation—convince us the percentage method is a valuable tool that should not be denied
 our trial courts.

1 *Id.* at 503 (internal citation omitted); *see also, e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a
2 number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or
3 plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
4 may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in
5 awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its
6 equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v. Prudential-Bache*
7 *Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating
8 attorneys’ fees more accurately reflects the results achieved for the putative class than the lodestar method
9 and “establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery;
10 and it encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Securities*
11 *Litigation*, 396 F.3d 294, 300 (3rd Cir. 2005) (“The percentage-of-recovery method is generally favored
12 in common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards
13 counsel for success and penalizes it for failure.’”) (citation omitted).

14 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards with tools
15 such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s lodestar (hours
16 worked multiplied by hourly rate) and determines whether the “lodestar multiplier” needed to bring the
17 lodestar on par with the percentage of recovery is reasonable. *Laffitte* at 503-06. While a trial court may
18 utilize the lodestar cross-check, it need not do so. *Id.* at 506 (“[w]e hold further that trial courts have
19 discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the
20 discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a
21 requested percentage fee.”)

22 Here, Class Counsel’s fee request of \$147,687.06 (one-third of the Gross Settlement Amount) is
23 fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
24 “regardless of whether the percentage method or the lodestar method is used, fee awards in class actions
25 average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);
26 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,
27 2010) (observing that “30-50% [is] commonly awarded in cases in which the common fund is relatively
28 small” and that in California, “courts usually award attorneys’ fees in the 30-40% range in wage and hour

1 class actions...”); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452
2 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in
3 attorneys’ fees in wage and hour class actions). This is also consistent with Class Counsel’s experience
4 in similar wage and hour class action matters. *See* Lidman Decl., ¶ 30. Thus, the percentage sought by
5 Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

6 Next, as stated, under the lodestar method the court computes the “lodestar” amount by
7 multiplying the number of hours reasonably expended by each attorney or legal staff member by their
8 reasonable hourly rates. *See, e.g., Serrano v. Priest* 20 Cal.3d 25, 48 (1977). The court then enhances
9 this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and difficulty
10 of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*, 24
11 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) (“There is
12 no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or
13 decrease a lodestar calculation”).

14 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez,*
15 *supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland*
16 *Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34); *Coalition for L. County Planning*
17 *etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of ~2.04). In
18 class actions such as this one, where the value of the benefit conferred to the class “can be monetized
19 with a reasonable degree of certainty,” a court may “adjust the lodestar in comparison to a percentage of
20 the common fund to ensure that the fee awarded is reasonable and within the range of fees freely
21 negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th
22 545, 557 (2009). In doing so, “the court determines, retrospectively, whether the litigation involved a
23 contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in
24 order to approximate the fair market for such services.” *Id.* at 556; *see also Laffitte*, 1 Cal.5th at 503-05.

25 In this case, Class Counsel have a lodestar of \$201,932.50 which is 1.37 times more than the
26 \$147,687.06 fee request. *See* Lidman Decl., ¶ 28. A general summary showing the number of hours of
27 work performed by each attorney and paralegals is set forth below. *Id.*

28 //

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (26th Year Attorney)	\$900	72.3	\$65,070
Paul K. Haines (17th Year Attorney)	\$800	20.1	\$16,080
Milan Moore (9th Year Attorney)	\$650	87.7	\$57,005
Paralegals	\$175	22.5	\$3,937.50
Total Lodestar			\$201,932.50

Based on the lodestar analysis, Plaintiff's fee request is lower than the lodestar. Additionally, Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys' fees).

First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a current participation rate of 99.02%, and not a single Settlement Class Member has objected to the Settlement or to Class Counsel's requested fees as of the date of this filing. Gonzalez Decl., ¶ 9. Additionally, the *average* settlement payment in this case of approximately \$549.63 is in line with, and above, settlement payments in similar wage and hour class action settlements. *See, e.g., Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class action settlement approved where average class member recovery was approximately \$60); *Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *18 (E.D. Cal. 2012) (finding that average payment to class members of less than \$200 was a "good" result); *Williams v. Centerplate, Inc.*, Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting final approval of class action settlement where average recovery for each class member was approximately \$108). The fact that Class Counsel achieved these results without engaging in a protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength of the results achieved.

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1 As discussed above, this case presented significant risk as to both class certification and merits
2 considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class
3 Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation
4 and expending considerable effort, all while working on a pure contingency basis. Since undertaking
5 representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any
6 compensation for almost three years. Lidman Decl., ¶ 27. During this time, Class Counsel have expended
7 a total of \$26,772.80 in actual costs and have devoted substantial time to this litigation and expect to incur
8 approximately \$450.00 in future costs for filing the final declaration regarding distribution of settlement,
9 Case Anywhere fees through October 2024, service and messenger fees, postage fees, and/or online fees
10 to retrieve conformed copies of documents for a total of \$27,222.80.² Lidman Decl., ¶ 27; Exh. B. Class
11 Counsel's efforts have included conducting pre-filing investigation, analyzing Plaintiff's claims,
12 conducting legal research, analyzing timekeeping data and payroll records, preparing for and attending
13 mediation, negotiating and revising the long-form settlement agreement, preparing the Motion for
14 Preliminary Approval, preparing this Motion, and otherwise litigating the case. Lidman Decl., ¶ 25.
15 Moreover, Class Counsel have expended time, effort, and money that they could have expended on less
16 risky cases instead. Given the considerable potential for adverse outcomes in this case, including, but not
17 limited to losing on class certification and/or merits issues, the contingent risk borne by Class Counsel
18 was great. Lidman Decl., ¶ 27.

19 Class Counsel's previous experience in litigating wage and hour class actions also supports the
20 reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and
21 hour class action litigation, with substantial experience litigating claims for meal and rest period
22 violations, and related penalties. *See* Lidman Decl., ¶¶ 2-8; Declaration of Milan Moore ("Moore Decl."),
23 ¶¶ 2-5; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8. They have been certified as class counsel
24 in numerous other cases. *Id.* Their experience in similar matters was integral in evaluating the strengths
25 and weaknesses of the case against Defendants and the reasonableness of the Settlement. Lidman Decl.,
26 ¶ 26. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
27

28 ² This includes total costs incurred by both law firms.

1 the rapidly evolving substantive state and federal law, as well as the procedural law of class action
2 litigation. *Id.* Because it is reasonable to compensate Class Counsel commensurate with their skill,
3 reputation, and experience, a fee award of one-third of the Gross Settlement Amount is reasonable.

4 Other factors also show that the fee amount requested in this case is reasonable under the
5 circumstances. This case involved nuanced legal issues including questions surrounding Defendant's
6 requirement to "provide" meal periods and "authorize and permit" rest periods, and the propriety of
7 statutory penalties, to name just a few. Lidman Decl., ¶ 26. Thus, Class Counsel's requested fee award
8 is fair, reasonable, and adequate and should be approved.

9 **D. The Requested Cost Amount Warrants Final Approval as Fair, Adequate, and**
10 **Reasonable**

11 Class Counsel seek to be reimbursed a total of \$27,222.80³ in litigation costs. Class Counsel's
12 request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred.
13 *See* Lidman Decl., ¶ 27; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely
14 approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should rec
15 over "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v.*
16 *Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011) ("costs of reproducing pleadings,
17 motions and exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable);
18 *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253,
19 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities*
20 *Litigation*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert
21 fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).
22 Because the expense reimbursements requested by Class Counsel were reasonably incurred, and no
23 Settlement Class Member has objected to them, Plaintiff respectfully requests the Court should grant the
24 request for actual costs incurred.

25 //

26
27
28 ³ Class Counsel have expended a total of \$26,410.55 in actual costs and anticipates incurring costs in the amount
of \$300.00 for filing the final declaration regarding distribution of settlement, Case Anywhere fees, service and
messenger fees, postage fees, and/or online fees to retrieve conformed copies of documents.

1 **E. The Court Should Finally Approve the Requested Administration Costs**

2 Plaintiff also requests that the Court approve \$10,000.00 in administration costs to the Settlement
3 Administrator, Phoenix. As detailed in the Declaration of Mayra Gonzalez on Behalf of Phoenix Class
4 Action Administration Solutions submitted herewith, Phoenix performed duties in connection with this
5 Settlement that were integral in effectuating the Settlement and the Notice process. Among other things,
6 Phoenix calculated each Settlement Class Member's individual settlement payment, updated addresses
7 contained in the class data supplied by Defendant, formatted Class Notices for mailing, mailed Class
8 Notices to all 410 Settlement Class Members in English and Spanish, kept the parties informed of any
9 objections or requests for exclusion, and have otherwise administered the Settlement. *See Gonzalez Decl.*,
10 ¶¶ 2-16. For these reasons, Phoenix's requested costs are fair, reasonable, and adequate, and should be
11 finally approved.

12 **F. Plaintiff's Requested Service Award Is Fair, Adequate, and Reasonable in View of**
13 **Plaintiff's Efforts and the Risks that She Assumed on Behalf of the Class**

14 Courts routinely approve service payments to compensate named plaintiffs for the services they
15 provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange*,
16 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in
17 bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
18 \$50,000 service payment). In analyzing the requested service payment, courts consider the following
19 factors: the risk, both financial and otherwise, the class representative faced in bringing the suit; the
20 notoriety and personal difficulties encountered by the class representative; the actions the plaintiff has
21 taken to protect the interests of the class, the degree to which the class has benefitted from those actions,
22 and the amount of time and effort the plaintiff expended in pursuing the litigation. *See Golba v. Dick's*
23 *Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272; *Clark v. Am. Residential Servs. LLC* (2009) 175
24 Cal.App.4th 785, 804.

25 Here, analyzing those factors weigh in favor of approving Plaintiff's requested service award of
26 \$5,000.00 because the request is reasonable given Plaintiff's efforts in this case and the risks she
27 undertook on behalf of Settlement Class Members. *See Lidman Decl.*, ¶ 33; Declaration of Laura Torres
28 ("Torres Decl."), ¶¶ 5-8. Plaintiff gathered documents for use in the lawsuit, and worked with Class

1 Counsel on the case, including preparing for mediation and discussing the case, the merits, the defenses,
2 and settlement. *See* Lidman Decl., ¶ 33; Torres Decl., ¶ 7. The class has benefited from Plaintiff's actions
3 as the average settlement amount is \$549.63.

4 Further, Plaintiff understood that the lawsuit is a matter of public record and being part of the
5 lawsuit could stigmatize her and/or affect future employment. *See* Lidman Decl., ¶ 33; Torres Decl., ¶ 6.
6 Plaintiff also understood the risk that she could be liable for Defendant's costs if she lost the case. *See*
7 Lidman Decl., ¶ 33; Torres Decl., ¶ 6. Plaintiff accepted these risks and burdens because she wanted
8 Defendant to compensate its current and former employees for unpaid wages. Torres Decl., ¶ 6. Plaintiff
9 estimates she spent 8-10 hours on activities related to this case. *Id.* at ¶ 7.

10 Moreover, Plaintiff has agreed to release, in addition to the released claims included within the
11 Settlement, all claims, whether known or unknown, under federal, state, or local law against Defendant
12 and the Released Parties. Plaintiff's release includes unknown claims, and that she is, as a result, waiving
13 all rights and benefits afforded by Section 1542 of the California Civil Code. *See* Lidman Decl., ¶ 33;
14 Settlement ¶ 3.2.1.

15 Moreover, after receiving notice of the proposed Class Representative Service Award for Plaintiff,
16 no Settlement Class Member has objected to the proposed award, as of the date of this filing. *See*
17 Gonzalez Decl., ¶ 9. Thus, the service award to Plaintiff is appropriate and justified as part of the
18 Settlement and should be finally approved.

19 **V. CONCLUSION**

20 For the reasons stated herein, Plaintiff respectfully submits that this Court should grant Plaintiff's
21 motion in its entirety and adopt the [Proposed] Order of Final Approval of Class Action Settlement and
22 Final Judgment submitted herewith.

23
24 Dated: September 11, 2024

Respectfully submitted,
LIDMAN LAW, APC

25
26 By: 

Scott M. Lidman
Attorney for Plaintiff
LAURA TORRES