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

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

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

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

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
3 September 5, 2023 at 10:00 a.m. in Department SSC-14 of the above-entitled Court, located at 312
4 North Spring Street, Los Angeles, California, 90012, Plaintiff Laura Torres (“Plaintiff”), individually
5 and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

- 6 1. Preliminary approval of the proposed class settlement of this lawsuit;
7 2. Pursuant to section 382 of the California Code of Civil Procedure, and for settlement
8 purposes only, provisional certification of the following Settlement Class defined as follows:

9 All current and former non-exempt, hourly employees of Defendant R.A. Phillips
10 Industries, Inc. who worked at any time in California between November 10,
11 2017 and the date of preliminary approval (unless the Escalator Clause is
triggered and Defendant elects to close the Class Period earlier).

- 12 3. Preliminary appointment of Plaintiff Laura Torres as Class Representative;
13 4. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
14 Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
15 5. The scheduling of a hearing to consider whether the Settlement should be finally approved
16 and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties
17 payable to the California Labor Workforce Development Agency, and attorneys’ fees and
18 costs to Class Counsel;
19 6. Appointment of Phoenix Class Action Administration Solutions as the third-party Settlement
20 Administrator for mailing notices; and
21 7. Approval of the proposed Notice of Class Action Settlement and Hearing Date for Final
22 Court Approval (“Class Notice”) and is attached to the Settlement as Exhibit A and an order
23 that it be disseminated to the proposed Settlement Class Members as provided in the
24 Settlement Agreement.

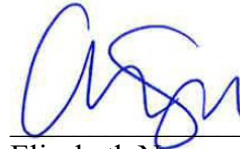
25 This Motion is based on this notice of motion, the memorandum of points and authorities, the
26 declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Laura
27 Torres, and Jodey Lawrence of Phoenix Class Action Administration Solutions, and the exhibits
28

1 attached thereto, the pleadings and other papers filed in this action, and on any further oral or
2 documentary evidence or argument presented at the time of hearing.

3
4 Dated: March 31, 2023

Respectfully submitted,
LIDMAN LAW, APC

5
6
7 By:



Elizabeth Nguyen
Attorney for Plaintiff
LAURA TORRES

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I. INTRODUCTION

Plaintiff Laura Torres (“Plaintiff”) brought this class and representative action against Defendant R.A. Phillips Industries, Inc. (hereinafter “R.A. Phillips” or “Defendant”) alleging various wage and hour and related violations. Plaintiff alleges that R.A. Phillips: (1) failed to provide all legally required meal periods; (2) failed to authorize and permit all legally required rest periods; (3) failed to provide accurate, itemized wage statements; (4) engaged in unlawful business practices; and (5) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, class action settlement,¹ in which R.A. Phillips has agreed to pay Four Hundred Thousand Dollars and Zero Cents (\$400,000.00) on behalf of the following Settlement Class:

All current and former non-exempt, hourly employees of Defendant R.A. Phillips Industries, Inc. who worked at any time in California between November 10, 2017 and the date of preliminary approval (unless the Escalator Clause is triggered and Defendant elects to close the Class Period earlier).

Significantly, Settlement Class Members do not need to file a claim to benefit from the Settlement because all Settlement Class Members will automatically receive a payment unless they affirmatively opt-out. After deducting administration costs, Plaintiff's service award, attorneys' fees and costs, and the PAGA Payment to the LWDA, the remaining Net Settlement Amount ("NSA") of approximately \$197,166.67 will be distributed to all Settlement Class Members who do not opt-out of the Settlement and \$7,500 will be distributed to the approximately 264 Aggrieved Employees. There were approximately 405 Settlement Class Members as of the date of mediation. The average payment to the 405 Settlement Class Members is estimated to be approximately **\$486.83** and the average Individual PAGA Payment is projected to be approximately **\$28.41**.

This proposed Settlement is well-within the range of possible approval in light of the significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff

¹ The Settlement is attached to the Declaration of Elizabeth Nguyen as Exhibit 2. The proposed Class Notice is attached to the Settlement as Exhibit A.

respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES

R.A. Phillips manufactures parts for the trucking industry. *See* Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶ 10. Plaintiff was employed by R.A. Phillips from November 2018 through January 2023. *See* Declaration of Laura Torres (“Torres Decl.”), ¶ 2.

B. BRIEF PROCEDURAL HISTORY

On November 10, 2021, Plaintiff filed the instant putative class action complaint and submitted a letter to the California Labor & Workforce Development Agency (“LWDA”) and R.A. Phillips of her intention of filing a PAGA claim based on the labor code violations alleged in the complaint. Nguyen Decl., ¶ 10, **Exh. 1**. On April 22, 2022, after exhausting her administrative remedies, Plaintiff filed a First Amended Class and Representative Action Complaint adding a PAGA claim. *Id.*

Plaintiff will serve the instant Motion and proposed Settlement Agreement on the LWDA on the same date she files this Motion and will submit a supplemental declaration showing the submission. Nguyen Decl., ¶ 30.

III. DUNK/KULLAR ANALYSIS

Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement agreement was negotiated at arm’s-length by class counsel and with the assistance of a mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

A. INVESTIGATION AND DISCOVERY

Prior to mediation, R.A. Phillips produced timekeeping and payroll data for Plaintiff and the entire putative class, as well as its wage and hour policies and other relevant documents and information. Nguyen Decl., ¶ 11. With the information and data provided by R.A. Phillips, Plaintiff was able calculate the necessary metrics, including without limitation, class size, number of workweeks and pay periods. After the detailed review of the documents and data produced by R.A. Phillips, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff’s

1 case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff’s claims and
2 R.A. Phillips’ defenses thereto.

3 **B. ARMS-LENGTH NEGOTIATIONS**

4 On August 30, 2022, a mediation was held with Glenn Lerman, Esq., an ADR mediator. Nguyen
5 Decl., ¶ 12. During mediation, the parties vigorously debated their opposing legal positions, the
6 likelihood of certification of Plaintiff’s claims, and the legal basis for the claims and defenses. *Id.*
7 Ultimately, through a mediator’s proposal, the Parties agreed on a class-wide resolution. *Id.*

8 **C. THE EXPERIENCE AND VIEWS OF COUNSEL**

9 “Parties represented by competent counsel are better positioned than courts to produce a
10 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
11 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,
12 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
13 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*
14 Nguyen Decl., ¶¶ 2-8; Lidman Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth
15 review of R.A. Phillips’ policies and timekeeping and payroll records, and drew on their extensive
16 experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *See* Nguyen Decl.,
17 ¶¶ 16-24. The Settlement was reached with the assistance of a mediator. *Id.* This factor strongly
18 supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

19 **D. AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF**
20 **CLAIMS**

21 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class in
22 the face of disputed claims. Plaintiff’s analysis of the maximum and realistic expected recoveries for
23 each of the theories of liability pled is set forth below:

24 R.A. Phillips Failed to Provide All Legally Required Meal Periods: Plaintiff alleges that she and
25 Settlement Class Members were not provided with all legally-compliant first meal periods beginning
26 before the end of the fifth hour of work. Nguyen Decl., ¶ 16. Specifically, Plaintiff alleges that R.A.
27 Phillips utilized a bell signaling system for meal periods, with the bell ringing exactly 30 minutes apart.
28 This means that Plaintiff and the other non-exempt employees did not receive a full 30-minute meal
period because they were required to be back at their workstations ready to work before the second bell

1 rang. *Id.* As such, Plaintiff alleges that she and other non-exempt employees were not provided a full
2 uninterrupted 30-minute meal period because they had to return from their meal periods early and be at
3 their workstations ready to commence work. *Id.* Moreover, Plaintiff alleges that she and the other non-
4 exempt employees had to wait in long lines to clock back in after their meal periods, which also resulted
5 in meal periods that were short or otherwise unlawful. *Id.* Lastly, Plaintiff alleges that she and some
6 other non-exempt employees were required to carry walkie talkie radios at all times, essentially being
7 on call for their meal periods and unable to have duty-free meal periods in violation of California law.
8 As such, Plaintiff contends that Settlement Class Members experienced at least one meal period violation
9 on every shift in excess of 6.0 hours. Accordingly, and taking into account the amount of meal period
10 premiums paid by R.A. Phillips, Plaintiff calculated its maximum exposure for the alleged meal period
11 violations at approximately \$4,086,462 ((246,779 shifts over 6.0 hours x \$16.85 average premium) -
12 \$71,764 meal premiums paid). *Id.*

13 R.A. Phillips counters that it has always maintained a lawful meal period policy and provided
14 non-exempt employees with an opportunity to take legally compliant meal periods, and any non-
15 compliant meal periods reflected in employee timekeeping records were solely the result of employee
16 choice, rather than any policy or practice of R.A. Phillips. Nguyen Decl., ¶ 17. R.A. Phillips contends
17 from the records provided in connection with mediation, that it had an approximate 98% compliance
18 rate. *Id.* R.A. Phillips also contends that it paid meal period premiums when a non-compliant meal
19 period was recorded. Further, it points out that under *Brinker Restaurant Corp. v. Superior Court* (2012)
20 53 Cal. 4th 1004, it is only required to “provide” the opportunity to take meal periods, not “ensure” meal
21 periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting
22 “ensure” standard). Finally, R.A. Phillips contends Plaintiff’s meal period claim is not suited for class
23 certification, since individual inquiries would be required to assess which employees took non-compliant
24 meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular
25 employee took a non-compliant meal period or missed a meal period during a particular shift. *Id.*
26 Accordingly, Plaintiff discounted the maximum exposure by 85% for the risk of non-certification, and
27 an additional 80% to account for R.A. Phillips defenses on the merits to arrive at an estimated exposure
28 of \$122,593.86. *Id.*

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

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

19 R.A. Phillips Issued Inaccurate Itemized Wage Statements: Plaintiff further alleges that R.A.
20 Phillips issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged
21 unpaid minimum wages and overtime wages, and meal and rest period premium wages described above.
22 Nguyen Decl., ¶ 20. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a)
23 because the wage statements issued to Settlement Class Members did not include all hours worked and
24 the rate at which they were being paid. *Id.* Plaintiff also alleges that R.A. Phillips faces independent
25 liability for failing to include the rate/hours for shift differentials on the wage statements issued to its
26 non-exempt employees. *Id.* Plaintiff's data analysis reflected that there were approximately 16,368
27 wage statements issued during the relevant time period. *Id.* Therefore, Plaintiff calculated R.A. Phillips'
28 maximum exposure for wage statement violations at approximately \$1,627,150 ((\$50.00 x 193 current

employees) + (\$100.00 x 16,175 subsequent wage statements)). *Id.*

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

R.A. Phillips is Liable for PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Nguyen Decl., ¶ 22. Plaintiff calculated R.A. Phillips’ maximum exposure at \$1,636,800 (16,368 pay periods x \$100 initial violation rate). *Id.*; see *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding “initial” violation rate applies until employer is notified that it is violating a Labor Code provision).

R.A. Phillips argues that Plaintiff’s PAGA claim will fail for the same reasons that his underlying claims will fail. Nguyen Decl., ¶ 23; see *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). R.A. Phillips also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find R.A. Phillips liable for any of Plaintiff’s claims. See Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 70% for a risk of being unsuccessful on the merits, and an additional 65% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of \$171,864.00. *Id.*

E. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL

Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately \$966,533.50. Nguyen Decl., ¶ 24. The proposed settlement of \$400,000.00 therefore represents approximately 41.4% of the

1 reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the
2 settlement will provide tangible monetary relief to Settlement Class Members, and will still provide an
3 average recovery to Settlement Class Members of over \$400.00.

4 The proposed settlement reflects approximately 41.4% of the estimated recovery the Settlement
5 Class could reasonably expect in light of the significant litigation risks, and will provide tangible
6 monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure
7 recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Dunleavy v. Nadler*
8 (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential
9 recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527. Thus,
10 Plaintiff submits that the proposed settlement is within the range of approval, such that notice should
11 be provided to the Settlement Class so that they can consider the Settlement. The Court will have the
12 opportunity to again assess the reasonableness of the Settlement after the time to opt-out or object has
13 expired.

14 **F. RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER** 15 **LITIGATION, AND RISK OF MARINATING CLASS ACTION STATUS**

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

23 **IV. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

24 California Rule of Court 3.769 conditions settlement of a class action on court approval, which
25 is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of
26 Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322.

27 As further explained below, the Settlement Class satisfies the criteria for certification of a
28 settlement class under California law because: (1) the Settlement Class is so numerous that joinder
would be impractical; (2) common questions of law/fact predominate over individual questions such

1 that class certification is the most efficient way to maintain this litigation; (3) Plaintiff's claims are
2 typical of the claims of absent Settlement Class Members; and (4) Plaintiff and her counsel will fairly
3 and adequately represent Settlement Class Members' interest. *See* Cal. Civ. Proc. § 382.

4 **A. NUMEROSITY IS SATISFIED.**

5 Here, the proposed Settlement Class consists of at least 405 members, and is therefore
6 sufficiently numerous as to make joinder impracticable. *See* Nguyen Decl., ¶ 14; *See, e.g., Bowles v.*
7 *Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently
8 numerous). Thus, numerosity is satisfied.

9 Further, the class is "ascertainable" because it is defined as "all current and former non-exempt,
10 hourly employees of Defendant R.A. Phillips Industries, Inc. who worked at any time in California
11 between November 10, 2017 and the date of preliminary approval" and such members can be identified
12 from Defendant's personnel/business records. Nguyen Decl., ¶ 14.

13 **B. COMMONALITY IS SATISFIED.**

14 The focus in a certification dispute is not the merits, but rather on what types of questions,
15 "common or individual," are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior*
16 *Court (Rocher)* (2004) 34 Cal.4th 319, 327.

17 Here, Plaintiff alleges Settlement Class Members' claims arise from R.A. Phillips' common,
18 uniform policies and practices that applied to Settlement Class Members during the class period.
19 Nguyen Decl., ¶ 15. Specifically, Plaintiff alleged that R.A. Phillips' common and uniform policies
20 and practices resulted in the following violations: (1) failure to provide all legally required meal
21 periods; (2) failure to authorize and permit all legally required rest periods; (3) failure to provide
22 accurate, itemized wage statements; (4) engagement in unlawful business practices; and (5) liability for
23 civil penalties under the PAGA. As a result of the common and uniform policies and practices that
24 applied to all Settlement Class Members, their claims involve common questions of law and fact as to
whether in fact R.A. Phillips committed these alleged violations.

25 These alleged practices result in common questions as to the affected Settlement Class
26 Members. *See e.g., Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

1 **C. TYPICALITY IS SATISFIED.**

2 The typicality requirement is satisfied where class representatives have claims that are typical
3 of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d
4 1341, 1347. Here, Plaintiff's claims are typical of those held by the members of the proposed
5 Settlement Class. Plaintiff has been employed by R.A. Phillips during the Class Period as a non-exempt
6 employee and is subject to R.A. Phillips' wage and hour policies at issue in this case. *See* Torres Decl.,
7 ¶ 2. Further, Plaintiff was allegedly injured by the same challenged policies that allegedly injured the
8 Settlement Class as a whole. *Id.* Given that R.A. Phillips' policies and practices applied to all non-
9 exempt employees, Settlement Class Members possess a similar interest and have suffered similar
10 alleged injuries as Plaintiff. Accordingly, typicality is satisfied.

11 **D. ADEQUACY IS SATISFIED.**

12 The adequacy requirement examines conflicts of interest between named parties and the
13 class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155
14 (2007) Cal.App.4th 676, 697. Here, there are no apparent conflicts of interest between Plaintiff and the
15 Settlement Class he seeks to represent. Nguyen Decl., ¶ 29, Torres Decl., ¶ 11. Indeed, Plaintiff's
16 interests are aligned with those of the Settlement Class Members, as they all seek monetary relief under
17 the same facts and legal theories. Additionally, Class Counsel does not have any conflict of interest
18 with the Settlement Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51.

19 Further, Class Counsel also have extensive experience in wage and hour class action litigation
20 and have vigorously litigated this case. *See* Nguyen Decl., ¶¶2-8; Declaration of Scott M. Lidman
21 ("Lidman Decl."), ¶¶ 2-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8; Declaration of Milan
22 Moore ("Moore Decl."), ¶¶ 2-4.

23 **V. SETTLEMENT AGREEMENT**

24 **A. THE BASICS**

25 1. Class Definition and Release Period

26 The proposed Settlement Class is defined as "all current and former non-exempt, hourly
27 employees of Defendant R.A. Phillips Industries, Inc. who worked at any time in California between
28 November 10, 2017 and the date of preliminary approval (unless the Escalator Clause is triggered and
Defendant elects to close the Class Period earlier)." Nguyen Decl., ¶ 14. For purposes of this Settlement

1 Agreement, the “Class Period” shall mean the time period of November 10, 2017 through granting of
2 preliminary approval of Class Action Settlement.” *Id.*

3 2. Aggrieved Employees and PAGA Period

4 The proposed Aggrieved Employees are defined as “all current and former non-exempt, hourly
5 employees of Defendant R.A. Phillips Industries, Inc. who worked at any time in California between
6 November 10, 2020 and the date of preliminary approval (unless the Escalator Clause is triggered and
7 Defendant elects to close the Class Period earlier).” Nguyen Decl., ¶ 14. For purposes of this Settlement
8 Agreement, the “PAGA Period” shall mean the time period of November 10, 2020 and the date of
9 preliminary approval.” *Id.*

10 **B. RELEASE OF CLAIMS**

11 2. Scope of Participating Class Members’ Release

12 All Participating Class Members Who Are Not Aggrieved Employees, on behalf of themselves
13 and their respective former and present representatives, agents, attorneys, heirs, administrators,
14 successors, and assigns, release and discharge Released Parties, in exchange for consideration provided
15 in this Agreement, from any and all causes of action, claims, rights, damages, punitive or statutory
16 damages, penalties, interest, attorneys’ fees, costs, liabilities, expenses, and losses arising from or
17 related to the acts, facts, transactions, theories, occurrences, representations, or omissions that were
18 alleged, or reasonably could have been alleged, in the Action based on the factual Class Period facts
19 alleged in the Action, including but not limited to: (a) any alleged failure by Phillips to provide meal or
20 rest periods or to pay meal or rest period premiums (including, but not limited to, failure to correctly
21 calculate the regular rate of pay used to calculate meal and/or rest period premium pay); (b) any alleged
22 failure by Phillips to provide compliant wage statements; (c) any right or claim for unfair business
23 practices in violation of California Business & Professions Code §§ 17200 *et seq.*; (d) any right or claim
24 for civil penalties (except PAGA Penalties) pursuant to the California Labor Code or Wage Order; (e)
25 any violation or breach of the California Labor Code arising from or related to the conduct or omission
26 alleged, or could have reasonably been alleged based on the Class Period facts alleged including without
27 limitation, any violation or breach of California Labor Code § 203 solely based on the failure to timely
28 pay all meal period and rest period premiums due at the time of separation of employment, 226, 226.7,
512, 516, 558, 1174, or any other similar state or local statute, wage order, rule, regulation, ordinance,

1 or authority, or similar causes of action arising from or relating to the conduct alleged. Settlement, ¶
2 5.2.

3 **3. Scope of Aggrieved Employees' Release**

4 All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on
5 behalf of themselves and their respective former and present representatives, agents, attorneys, heirs,
6 administrators, successors, and assigns, the Released Parties from all claims for PAGA civil penalties
7 that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the
8 Action and the PAGA Notice,, including, but not limited to, any right or claim for PAGA penalties
9 predicated on: (a) any alleged failure by Phillips to provide meal or rest periods or to pay meal or rest
10 period premiums (including, but not limited to, failure to correctly calculate the regular rate of pay used
11 to calculate meal and/or rest period premium pay); (b) any alleged failure by Phillips to provide
12 compliant wage statements; (c) any right or claim for civil penalties pursuant to the California Labor
13 Code or Wage Order; (e) any violation or breach of the California Labor Code arising from or related
14 to the conduct or omission alleged, or could have reasonably been alleged based on the PAGA Period
15 facts stated in the Action and the PAGA Notice and the conduct or omission ascertained in the course
16 of the Action, including without limitation, any violation or breach of California Labor Code §§ 203
17 solely based on the failure to timely pay all meal period and rest period premiums due at the time of
18 separation of employment, 204, 226, 226.7, 512, 516, 558, 1174, or any other similar wage orders.
Settlement, ¶ 5.3.

19 **4. Releases Effective Date**

20 The releases described above are effective on the date when Defendant fully funds the entire
21 Gross Settlement Amount, which includes all employer payroll taxes owed on the Wage Portion of the
22 Individual Class Payments. Settlement, ¶ 5.

23 **C. MONETARY TERMS OF SETTLEMENT**

24 **1. Gross Settlement Amount and Timing of Payment**

25 If the Court approves this Settlement, R.A. Phillips will pay a Gross Settlement Amount
26 (“GSA”) of \$400,000.00.² Nguyen Decl., ¶¶ 13 & Exh. 2 (Settlement, ¶ 3.1). Significantly, this

27 _____
28 ² Based on a review of its records to date, Phillips estimates that as of August 30, 2022 there were approximately
405 Class Members who collectively worked a total of 55,848 Workweeks during the Class Period, and 264

Settlement is non-reversionary, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. Settlement, ¶ 7.5.1. Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.*

Defendant shall fully fund the Gross Settlement Amount, including all amounts necessary to fully pay R.A. Phillips' share of payroll taxes, by transmitting such funds to the Administrator no later than 10 business days after the Effective Date. *See* Settlement, ¶ 4.3. Effective Date means the earliest date by which both of the following have occurred: (a) the Court enters a Judgment based on its Final Approval of the Settlement; and (b) the Judgment becomes final. The Judgment becomes final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; or (b) if one or more Participating Class Members object to the Settlement, the first day when the Judgment can no longer be appealed, which is either (i) the day after the deadline for filing a notice of appeal from the Judgment, if no timely appeal from the Judgment is filed, or (ii) the day after the appellate court affirms the Judgment and issues a remittitur, if an appeal from the Judgment is timely filed. Settlement, ¶ 1.18.

2. Deductions from Gross Settlement Amount

The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	\$400,000.00
Minus Court-approved attorneys' fees (update to 1/3 of GSA):	\$133,333.33
Minus Court-approved, verified costs (up to \$):	\$32,000.00
Minus Court-approved Class Representative Service Award:	\$5,000.00
Minus Settlement Administration Costs:	\$10,000.00
Minus PAGA payment to the LWDA:	\$22,500.00

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

Net Settlement Amount (“NSA”):	\$197,166.67
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Settlement Class Members	405
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Average Individual Payment: NSA/Settlement Class	\$486.83
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After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the Settlement results in a Net Settlement Amount (“NSA”) of at least \$197,166.67 to be paid out to all Settlement Class Members who do not timely opt out. Nguyen Decl., ¶ 13 & Exh. 2.

Therefore, this calculation of $\$197,166.67/405 = \486.83 , assumes the Court approves the requested attorneys’ fees, maximum attorneys’ costs, enhancement award, settlement administration costs, and payment to the LWDA. *Id.* This calculation also assumes that all 405 putative class members participate in the settlement and do not submit timely requests for exclusions. *Id.*

3. Class Representative Service Award

Incentive awards are typical in class action cases and are intended to compensate class representatives for work done on behalf of the class and to make up for reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94.

Plaintiff will separately apply for a service award at the time of seeking final approval in the amount of \$5,000.00. Nguyen Decl., ¶ 27 & Exh. 2 (Settlement, ¶ 3.2.1.); Torres Decl., ¶¶ 3-8. As will be fully briefed at the time of final approval, Plaintiff’s requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Nguyen Decl., ¶27; Torres Decl., ¶¶ 3-8; Settlement ¶ 3.2.1.

The Class Representative Service Payment awarded by the Court shall be paid by the Settlement Administrator to Plaintiff from the Gross Settlement Amount within 10 business days after Defendant funds the Gross Settlement Amount. Settlement, ¶ 4.4.

1 4. Attorneys' Fees and Costs

2 California courts recognize an appropriate method for awarding attorneys' fees in class actions
3 is to award a percentage of the "common fund" created as a result of a settlement. *See e.g., Laffitte v.*
4 *Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506. Class Counsel's request for fees of one-third of the
5 GSA is well within the range of reasonableness, and indeed is considered the typical rate for common
6 fund settlements.

7 Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which
8 is currently estimated to be \$133,333.33, and up to \$32,000.00 in verified costs reimbursement. *See*
9 Settlement, ¶ 3.2.2.; Nguyen Decl., ¶ 25. Plaintiff submits the requested fee is fair compensation for
10 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
11 *Id.* Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Nguyen
12 Decl., ¶ 26. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
13 analyzing Plaintiff's claims, conducting legal research, analyzing timekeeping data and payroll records,
14 preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this
15 Motion, and otherwise litigating the case. Nguyen Decl., ¶ 25. Class Counsel expect to expend
16 additional attorney time in attending the hearing on this Motion, overseeing the Notice process and
17 fielding questions from Settlement Class Members, preparing the final approval papers and attending
the Final Approval hearing. *Id.*

18 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys'
19 fees and verified litigation costs at the time of seeking final approval of the Settlement, which will
20 include a lodestar analysis. Class Counsel's fees and costs awarded by the Court shall be paid by the
21 Settlement Administrator to Class Counsel from the Gross Settlement Amount 10 business days after
22 Defendant funds the Gross Settlement Amount. Settlement, ¶ 4.4.

23 5. Payroll Taxes

24 The Settlement provides that R.A. Phillips' payroll taxes shall be paid separately from, and in
25 addition to, and the Class Settlement Amount. Settlement ¶ 4.3. The employer-side taxes shall be
26 deposited no later than 10 business days after the Effective Date. *Id.*

1 6. Payment Formula

2 There were approximately 405 total Settlement Class Members as of the date of mediation.
3 Nguyen Decl., ¶ 14.

4 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total
5 number of Workweeks worked by all Participating Class Members during the Class Period and (b)
6 multiplying the result by each Participating Class Member's Workweeks. Settlement, ¶ 3.2.4. Thus,
7 the average Individual Class Payment is \$486.83.

8 Additionally, there were approximately 264 Aggrieved Employees. Nguyen Decl., ¶ 14.

9 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of
10 the Aggrieved Employees' 25% share of PAGA Penalties \$7,500.00 by the total number of PAGA
11 Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying
12 the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full
13 responsibility and liability for any taxes owed on their Individual PAGA Payment. Settlement, ¶ 3.2.7.1.

14 Thus, the average Individual PAGA Payment is projected to be approximately **\$28.41**. *Id.*

15 7. Tax Allocation

16 33% of each Participating Class Member's Individual Class Payment will be allocated to
17 settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and
18 will be reported on IRS Form W-2. The remaining 67% of each Participating Class Member's Individual
19 Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage
20 Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS
21 Forms 1099. Settlement, ¶ 3.2.4.1.

22 8. PAGA Penalty

23 The parties have agreed to a PAGA award of \$30,000.00 and in accordance with California
24 Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties
25 – or \$22,500.00. Settlement ¶ 3.2.5. This \$30,000 represents roughly 7.5% of the \$400,000.00 Gross
26 Settlement Amount and is in line with the zero to two percent range for PAGA claims approved by
27 Courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864,
28 at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or \$20,000); *Nordstrom*

1 *Comm’n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action
2 claims and PAGA claims under which no money was allocated to the PAGA claims).

3 **VI. NOTICE ADMINISTRATION**

4 **A. SETTLEMENT ADMINISTRATOR**

5 Phoenix Class Action Administration Solutions’ costs are estimated not to exceed \$10,000.00.
6 *See* Declaration of Jodey Lawrence in support of Plaintiff’s Motion for Preliminary Approval filed
7 concurrently herewith (“Lawrence Decl.”). This request is reasonable in light of the proposed class size
8 of approximately 405 Settlement Class Members and the costs and expenses associated with
9 administering the notices and distributing the awards. Additionally, Phoenix will translate the Notice
10 Packets and mail the Notice Packets in both English and Spanish to Settlement Class Members.

11 Phoenix has extensive experience administering class action matters. Phoenix has administered
12 complex wage and hour, labor and employment, consumer/ product liability, TCPA, FLSA, FACTA,
13 ERISA and PAGA class action matters, though final approval and distribution. Phoenix has developed
14 a system of quality assurance measures, to ensure the highest quality service is provided in our cases
15 and to class members. Lawrence Decl., ¶ 5.

16 **B. CLASS LIST FROM DEFENDANT**

17 No later than 15 calendar days after entry of an order preliminarily approving the Settlement,
18 Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft
19 Excel spreadsheet. Settlement, ¶ 4.2.

20 To protect Class Members’ privacy rights, the Administrator must maintain the Class Data in
21 confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict
22 access to the Class Data to Administrator employees who need access to the Class Data to effect and
23 perform under this Agreement. *Id.*

24 **C. CLASS LIST UPDATED PRIOR TO INITIAL MAILING AND MAILING**

25 Before mailing Class Notices, the Administrator shall update Class Member addresses using the
26 National Change of Address database. Settlement, ¶ 7.4.2. The will send to all Class Members
27 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice
28 with Spanish translation within 14 days of receiving the Class Data *Id.*

1 **D. NOTICE COMPLIES WITH CAL. RULES OF COURT, RULE 3.766(D)**

2 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it
3 advises Settlement Class Members of the nature of the claims, basic contentions and denials of the
4 parties, and the key terms of the Settlement, the 45-day deadline to opt-out or object to the Settlement
5 and the procedures by which to do so, explains the recovery formula and expected recovery amount
6 for each Settlement Class Member, provides them the opportunity to contest their total workweeks
7 included in the notice, and advises them that they will be bound by the terms of the Settlement if they
8 do not opt-out. *See* Settlement, Exh. A. The proposed Class Notice will also notify Settlement Class
9 Members of the final approval hearing date and provides Settlement Class Members the contact
10 information for Class Counsel, and advises Settlement Class Members that they may enter an
11 appearance through counsel if they wish to. This manner of giving notice satisfies California Rule of
12 Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class Members.

13 Moreover, the Class Notice includes the sentence “To receive your check, you should
14 immediately notify the Administrator if you move or otherwise change your mailing address.”

15 **E. PROCESSING OF PAYMENTS**

16 Within 10 business days after Defendant funds the Gross Settlement Amount, the Administrator
17 will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA
18 Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel
19 Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class
20 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative
21 Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA
22 Payments. Settlement, ¶ 4.4.

23 Before mailing any checks, the Settlement Administrator must update the recipients’ mailing
24 addresses using the National Change of Address Database. Settlement, ¶ 4.4.1.

25 **F. UNDELIVERABLE SETTLEMENT NOTICES**

26 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by
27 the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address
28 provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall

1 conduct a Class Member Address Search, and re-mail the Class Notice to the most current address
2 obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice
3 to Class Members whose Class Notice is returned by the USPS a second time. Settlement, ¶ 7.4.3.

4 The Administrator will send checks for Individual Settlement Payments to all Participating Class
5 Members (including those for whom Class Notice was returned undelivered). The Administrator will
6 send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating
7 Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was
8 returned undelivered). Settlement, ¶ 4.4.1.

9 **VII. RESPONSES TO SETTLEMENT NOTICE**

10 **A. REQUESTS FOR EXCLUSION**

11 Class Members who wish to exclude themselves from (or opt-out of) the Settlement's release of
12 class action claims must send the Administrator, by fax, email, or mail, a signed written Request for
13 Exclusion no later than the Response Deadline – *i.e.*, 45 days after the Administrator mails the Class
14 Notice (plus an additional 14 days for any Class Member whose Class Notice is re-mailed). A Request
15 for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
16 the Class Member's choice to be excluded from the Settlement and includes the Class Member's name,
17 address, and email address or telephone number. Settlement, ¶ 7.5.1.

18 **B. RE-MAILED NOTICES**

19 For all Class Members whose Class Notices are re-mailed after having been returned to the
20 Administrative as undeliverable, their Response Deadline to submit written objections, challenges to
21 Workweeks and/or Pay Periods, and Requests for Exclusion will be extended by an additional 14 days
22 beyond the Response Deadline otherwise provided in the Class Notice. The Administrator shall inform
23 the Class Member in writing of the extended Response Deadline with the re-mailed Class Notice.
24 Settlement, ¶ 7.4.4.

25 **C. OBJECTION PROCEDURES**

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

1 Participating Class Members may send written objections to the Administrator, by fax, email,
2 or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to
3 appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class
4 Member who elects to send a written objection to the Administrator must do so not later than the
5 Response Deadline – *i.e.* 45 days after the Administrator’s mailing of the Class Notice (plus an
6 additional 14 days for Class Members whose Class Notice was re-mailed after having been returned as
7 undeliverable). Settlement, ¶ 7.6.2.

8 **VIII. DISTRIBUTION OF UNCASHED FUNDS**

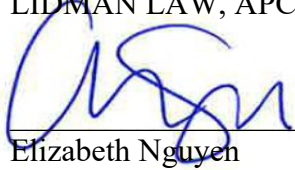
9 The face of each check shall prominently state the date (not less than 180 days after the date of
10 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the
11 void date. Settlement ¶ 4.4.1.

12 For any Class Member whose Individual Class Payment check or Individual PAGA Payment
13 check is uncashed and cancelled after the void date, the Administrator shall transmit the funds
14 represented by such checks to the California Controller's Unclaimed Property Fund in the name of the
15 Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of
16 Civil Procedure Section 384, subd. (b). Settlement ¶ 4.4.3.

17 **IX. CONCLUSION**

18 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve
19 the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order
20 Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

21
22 Dated: March 31, 2023

23
24
25
26
27
28
Respectfully submitted,
LIDMAN LAW, APC

By: _____
Elizabeth Nguyen
Attorney for Plaintiff
LAURA TORRES