

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Tuvia Korobkin (SBN 268066)
tkorobkin@haineslawgroup.com
Neil M. Larsen (SBN 276490)
nlarsen@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

MARIA PINA, as an individual, and on behalf of
all others similarly situated,

Plaintiff,

vs.

BEE INTERNATIONAL, INC, a California
Corporation; and DOES 1 through 100,

Defendants.

Case No. 37-2020-00001997-CU-OE-CTL

*[Assigned for all purposes to the
Honorable Richard S. Whitney, Dept. C-68]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: October 29, 2021
Time: 10:30 a.m.
Dept.: C-68

Complaint Filed: January 13, 2020
Trial Date: None set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on October 29, 2021, at 10:30 a.m., or as soon thereafter as the matter may be heard in Department C-68 of the above-entitled Court, located at 330 West Broadway, San Diego, California 92101, Plaintiff Maria Pina ("Plaintiff") will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Stipulation of Settlement ("Settlement");
2. Pursuant to Section 382 of the Code of Civil Procedure, provisional certification, for settlement purposes only, of the proposed Settlement Class, defined as follows:
All current and former non-exempt employees of Defendant Bee International who worked for Bee International in California at any time from January 13, 2016 to the date of preliminary approval of the settlement (the "Class Period").
3. Preliminary appointment of Plaintiff Maria Pina as Class Representative;
4. Preliminary appointment of Paul K. Haines, Tuvia Korobkin, and Neil M. Larsen of Haines Law Group as Class Counsel;
5. Appointment of Phoenix Settlement Administrators as the Settlement Administrator;
6. Approval of the proposed Notice, and an order that the Notice be disseminated to the proposed Settlement Class as provided in the Settlement; and
7. The scheduling of a hearing to consider whether the class settlement should be finally approved and to award an amount for enhancement payment to the Class Representative, and attorneys' fees and costs to Class Counsel.

This motion is based on this notice of motion; the attached memorandum of points and authorities; the declarations of Paul K. Haines, Tuvia Korobkin, and Neil M. Larsen and exhibits attached thereto; the declaration of Jodey Lawrence and exhibits attached thereto; the declaration of Maria Pina; the pleadings and other papers filed in this action; and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: June 29, 2021

Respectfully Submitted,
HAINES LAW GROUP, APC

By: _____


Paul K. Haines
Attorneys for Plaintiff

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

TABLE OF CONTENTS

I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION	2
A. FACTUAL AND PROCEDURAL BACKGROUND.....	2
B. PLAINTIFF’S CLAIMS AND BEE INTERNATIONAL’S DEFENSES	2
1. Unpaid Wages Due to Alleged Unlawful Time-Rounding.....	2
2. Meal Period Claim	3
3. Rest Period Claim	4
4. Wage Statement Penalties.....	4
5. PAGA Civil Penalties	4
C. DISCOVERY AND MEDIATION.....	5
III. THE PROPOSED SETTLEMENT.....	5
A. ESSENTIAL TERMS OF THE SETTLEMENT	5
1. The Settlement Provides for Reasonable Monetary Payments	6
2. Attorneys’ Fees, Costs, Enhancement Award, and PAGA Payment.....	7
IV. ARGUMENT.....	8
A. PRELIMINARY APPROVAL IS WARRANTED	8
1. Standard for Preliminary Approval.....	8
a. The Strength of Plaintiffs’ Case	9
b. Risk, Expense, Complexity, and Duration of Further Litigation	9
c. Risk of Maintaining Class Action Status.....	9
d. Amount Offered in Settlement Given Realistic Value of Claims	9
e. The Experience and Views of Counsel.....	12
2. The Preliminary Approval Standard Is Met	13
a. The Settlement Is Within the Range of Possible Approval	13
b. The Settlement Resulted from Serious, Informed Negotiations.....	13
c. The Settlement Is Devoid of Obvious Deficiencies	13
B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS	13

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

1. The Proposed Class Is Ascertainable and Numerous 14

2. Common Issues of Law and Fact Predominate 14

3. The Named Plaintiff’s Claims Are Typical..... 14

4. Plaintiff and Class Counsel Will Adequately Represent the Class 14

C. THE COURT SHOULD ORDER DISTRIBUTION OF CLASS NOTICE..... 15

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING 15

V. CONCLUSION 15

TABLE OF AUTHORITIES

State Cases

<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal.App.4th 1157 (2008)	12
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal.App.3d 1341 (1987)	14
<i>Benton v. Telecom Network Specialists, Inc.</i> , 220 Cal.App.4th 701 (2013)	14
<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal.4th 1004 (2012)	3, 10
<i>Capital People First v. State Dept. of Develop. Svcs.</i> , 155 Cal.App.4th 676 (2007)	14
<i>Carrington v. Starbucks Corp.</i> , 30 Cal.App.5th 504 (2018)	5
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	9
<i>In re Cellphone Fee Termination Cases</i> , 186 Cal.App.4th 1380 (2010)	7
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th 116 (2008)	8, 13
<i>Laffitte v. Robert Half Int’l, Inc.</i> , 1 Cal.5th 480 (2016)	7
<i>Naranjo v. Spectrum Security Servs., Inc.</i> , 40 Cal.App.5th 444 (2019)	4
<i>Price v. Starbucks Corp.</i> , 192 Cal.App.4th 1136 (2011)	4
<i>Reed v. United Teachers Los Angeles</i> , 208 Cal.App.4th 322 (2012)	8
<i>Sav-On Drug Store, Inc. v. Sup. Ct.</i> , 34 Cal.4th 319 (2004)	14
<i>See’s Candy Shops, Inc. v. Sup. Ct.</i> , 210 Cal.App.4th 889 (2012)	2
<i>Sevidal v. Target Corp.</i> , 189 Cal.App.4th 905 (2010)	14
<i>Thurman v. Bayshore Transit Mgmt., Inc.</i> , 203 Cal.App.4th 1112 (2012)	5
<i>Wershba v. Apple Computer</i> , 91 Cal.App.4th 224 (2001)	9

Federal Cases

<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156 (1974)	15
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	8
<i>In re Pac. Enter. Sec. Litig.</i> , 47 F.3d 373 (9th Cir. 1995)	12
<i>In re Syncor ERISA Litig.</i> , 516 F.3d 1095 (9th Cir. 2008)	8

State Statutes and Rules

Cal Rule of Court 3.766(d)	15
California Rule of Court 3.769	8, 15

1	Lab. Code §§ 226.....	4
2	Labor Code § 2699.....	5, 8, 12
3	Labor Code § 512.....	3
4	Federal Statutes and Rules	
5	Rule 23(e).....	8
6	Unpublished Cases	
7	<i>Alvarado v. Nederend,</i>	
8	Case No. 1:08-cv-01099-OWW-DLB, 2011 WL 90228 (E.D. Cal. Jan. 11, 2011)	8
9	<i>Chu v. Wells Fargo Investments, LLC,</i>	
10	Case No. C-05-4526-MHP, 2011 WL 672645 (N.D. Cal. 2011)	8
11	<i>Fleming v. Covidien, Inc.,</i>	
12	Case No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 (C.D. Cal. 2011)	5
13	<i>Green v. Lawrence Service Co.,</i>	
14	Case No. LA-CV-12-6155-JAK (VBKx), 2013 WL 3907506 (C.D. Cal. July 23, 2013)	12
15	<i>Tapia v. Zale Delaware Inc.,</i>	
16	Case No. 13-CV-1565-BAS, WL 1385181 (S.D. Cal. Apr. 6, 2016).....	14
17	Other Citations	
18	<i>Manual for Complex Litigation</i> , § 30.41 (3rd Ed. 1995)	13
19	<i>Newberg on Class Actions</i> § 14.6 (4th Ed. 2013)	7, 13
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Maria Pina (“Plaintiff”) seeks preliminary approval of a class action settlement
4 (“Settlement”) with Defendant Bee International, Inc. (“Bee International” or “Defendant”). The
5 Settlement resolves a class and representative action pending before this Court (the “Action”), in
6 which Plaintiff alleges that Bee International: (i) failed to pay all overtime wages; (ii) failed to
7 pay all minimum wages due; (iii) failed to provide meal periods; (iv) failed to authorize and permit
8 compliant rest periods; and (v) failed to issue accurate itemized wage statements. As a result of
9 these alleged violations, Plaintiff further alleges that Bee International engaged in unfair business
10 practices and is liable for civil penalties under the Private Attorneys General Act (“PAGA”),
11 Labor Code section 2698, *et seq.*

12 Plaintiff now respectfully requests that this Court preliminarily approve this non-
13 reversionary, common-fund class action Settlement¹, in which Bee International has agreed to pay
14 the gross settlement amount of \$300,000.00 (“GSA”) to the following Settlement Class,
15 consisting of approximately 149 individuals:

16 All current and former non-exempt employees of Bee International who
17 worked for Bee International in California at any time from January 13,
18 2016 to the date of preliminary approval of the settlement (the “Class
Period”).

19 The Settlement was reached after the parties engaged in mediation with Jeffrey A. Ross,
20 an experienced and well-respected wage and hour class action mediator. In connection with
21 mediation, Bee International provided Plaintiff with significant informal discovery, including its
22 relevant wage and hour policies; putative class member timekeeping and payroll records; and
23 other relevant data and documents. After extensive research and investigation, including a
24 detailed analysis of Bee International’s potential exposure made with the assistance of Plaintiff’s
25 expert economist who holds a Ph.D. in economics, the parties attended a full-day mediation with
26 Mr. Ross on November 2, 2020.

27 _____
28 ¹ The Stipulation of Settlement (“Settlement”) is attached as Exhibit 1 to the Declaration of Paul
K. Haines (“Haines Decl.”). The proposed Class Notice and Notice of Estimated Settlement
Award are attached as Exhibit A and B, respectively, to the Settlement.

Settlement Class members are not required to submit a claim to receive a payment (“Settlement Award”) from the Settlement. After deductions for proposed administration costs, attorneys’ fees and costs, Plaintiff’s enhancement payment, and the Labor & Workforce Development Agency’s (“LWDA”) share of PAGA civil penalties, the average individual Settlement Award is estimated to be approximately \$936.24. For the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. FACTUAL AND PROCEDURAL BACKGROUND

Bee International has operated a novelty candy business since 1970. Haines Decl., ¶ 10. Plaintiff worked for Bee International as a non-exempt employee from approximately October 2018 to approximately January 16, 2019. *Id.* Plaintiff and Settlement Class members are current and former non-exempt employees of Bee International who worked for Bee International in California during the Class Period. *Id.*; *see also* Settlement, § 1.

On January 13, 2020, Plaintiff filed the instant action, alleging claims for: (1) failure to pay overtime; (2) minimum wage violations; (3) meal period violations; (4) rest period violations; (5) wage statement violations; and (6) unfair competition. Haines Decl., ¶ 11. On March 19, 2020, after exhausting her administrative requirements with the Labor & Workforce Development Agency (“LWDA”), Plaintiff filed her operative First Amended Complaint, adding a cause of action for PAGA civil penalties. *Id.*

B. PLAINTIFF’S CLAIMS AND BEE INTERNATIONAL’S DEFENSES

1. Unpaid Wages Due to Alleged Unlawful Time-Rounding

Plaintiff contends that Bee International underpaid Settlement Class members due to its allegedly unlawful time-rounding practice. Haines Decl., ¶ 16. Plaintiff alleges that Bee International’s uneven timekeeping practice resulted in a systematic underpayment of wages to Settlement Class members. *Id.*; *see See’s Candy Shops, Inc. v. Superior Court*, 210 Cal.App.4th 889, 901-902 (2012) (“an employer’s rounding policy violates the DOL rounding regulation if it ‘systematically undercompensate[s] employees,’ such as where the defendant’s rounding policy ‘encompasses only rounding down.’”) (citations omitted).

1 Bee International contends it utilized an even-handed timekeeping system that on balance,
2 resulted in employees being paid for all hours actually worked, and that some employees were in
3 fact overpaid as a result of rounding. Haines Decl., ¶ 16. Furthermore, Bee International maintains
4 that when non-exempt employees clocked in early before their shift, they did not perform any
5 compensable work. *Id.* Bee International also asserts that Plaintiff would be unable to certify this
6 claim given the individualized inquiries that would be necessary to determine whether each
7 employee was underpaid or overpaid due to rounding for each workday, and whether an employee
8 was actually working on each day they clocked in before the beginning of their shift. *Id.*

9 **2. Meal Period Claim**

10 Plaintiff alleges Bee International failed to record meal periods for a portion of the Class
11 Period, and often failed to provide legally-compliant meal periods, such that meal periods were
12 regularly short and often commenced after the completion of the fifth hour of work, and that this
13 is reflected in employee timekeeping records that show many such non-compliant meal periods.
14 Haines Decl., ¶ 17. Plaintiff further alleges Bee International failed to provide legally-compliant
15 second meal periods on shifts in excess of 10.0 hours. *Id.*

16 Bee International argues it has always maintained legally-compliant meal period
17 policies/practices throughout the Class Period, that it has always provided meal periods
18 consistent with those policies, and that it is only required to “provide” the opportunity to take
19 meal periods, not “ensure” meal periods are taken. Haines Decl., ¶ 17; *Brinker Restaurant Corp.*
20 *v. Superior Court*, 54 Cal.4th 1004, 1038 (2012) (rejecting “ensure” standard and holding
21 employers only have to “provide” employees the opportunity to take meal periods). Bee
22 International further argues that operations shut down during meal periods and thus it did not
23 need to record meal periods. *Id.*; Wage Order 1, § 7(A)(3). Bee International also maintains any
24 short, missed, or late meal periods were a result of employee waiver or choice, including second
25 meal periods which may be waived under Labor Code § 512(a). Haines Decl., ¶ 17. Lastly, Bee
26 International argues that individualized inquiries would be required to determine why each meal
27 period was taken late or short or missed by each employee, and whether there was a valid waiver,
28 thereby making certification of this claim unlikely. Haines Decl., ¶ 17.

1 **3. Rest Period Claim**

2 Plaintiff alleges that Bee International failed to authorize and permit third rest periods on
3 shifts in excess of 10.0 hours, in that its written rest period policy only provided for two rest
4 periods per shift. Haines Decl., ¶ 18.

5 Bee International argues it has always maintained and enforced lawful rest period
6 practices during the Class Period, and has, in fact, authorized and permitted all required rest
7 periods to Class members. Haines Decl., ¶ 18. Additionally, Bee International maintains that any
8 failure to take third rest periods was the result of employee choice. *Id.* Bee International also
9 asserts this claim is not amenable to class treatment as individualized inquiries would be required
10 to determine which employees failed to take a third rest period, and the reasons why. *Id.* These
11 manageability concerns are especially present with respect to rest periods, Bee International
12 contends, since rest periods are not recorded. *Id.*

13 **4. Wage Statement Penalties**

14 As a result of these alleged violations, Plaintiff alleges that Bee International furnished
15 inaccurate wage statements in violation of Labor Code § 226. Haines Decl., ¶ 19. Bee
16 International argues any alleged wage statement violations were not “knowing and intentional,”
17 and Plaintiff cannot show she or other employees “suffer[ed] injury” due to alleged wage
18 statement violations, as required under Section 226(e) to recover penalties. *Id.* Bee International
19 further argues wage statement penalties are not recoverable for meal and rest period claims, a
20 view adopted by multiple Courts of Appeal and an issue set to be decided by the California
21 Supreme Court in *Naranjo v. Spectrum Security Servs., Inc.*, 40 Cal.App.5th 444 (2019) (*review*
22 *granted* Jan. 2, 2020). Bee International further argues that the same defenses to class certification
23 as to Plaintiff’s underlying claims apply equally to her derivative wage statement claim. *Id.*

24 **5. PAGA Civil Penalties**

25 As a result of the foregoing Labor Code violations, Plaintiff alleges Bee International is
26 liable for PAGA civil penalties. Haines Decl., ¶ 20. Since Plaintiff’s PAGA claim is derivative of
27 her underlying claims, Bee International asserts the PAGA claim would fail with those claims.
28 *Id.*; *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying causes

of action fail, the derivative UCL and PAGA claims also fail.”). Bee International further contends that, given its defenses, the Court would exercise its discretion to substantially reduce PAGA penalties if it found Bee International liable for any of Plaintiff’s claims. Haines Decl., ¶ 20; see Lab. Code § 2699(e)(2) (authorizing discretionary reduction in PAGA penalties); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming PAGA penalty reduction); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPX), 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties from \$2.8 million to \$500,000); *Carrington v. Starbucks*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just \$5 per pay period).

C. DISCOVERY AND MEDIATION

In connection with mediation, Bee International provided Plaintiff with significant informal discovery, including Settlement Class members’ timekeeping and payroll records; Bee International’s relevant wage and hour policies; and other relevant information. Haines Decl., ¶ 12. Plaintiff’s counsel also hired a labor economist with a Ph.D. in economics to assist with an analysis and extrapolation of the data produced by Bee International to calculate potential class-wide exposure for Plaintiff’s claims. *Id.*

On November 2, 2020, the Parties participated in a full-day mediation with Jeffrey A. Ross, Esq., an experienced and well-respected wage and hour class action mediator. Haines Decl., ¶ 13. During mediation, the parties vigorously debated their opposing positions, and the legal and factual bases of Plaintiff’s claims and Bee International’s defenses. *Id.* Although the parties did not reach settlement at mediation, they continued their negotiations in the ensuing months with Mr. Ross’ assistance. *Id.* The Parties eventually agreed to a settlement in principle, and over the following months they negotiated and formalized the Settlement now before the Court. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

Under the Settlement, Bee International will pay a non-reversionary Gross Settlement Amount of \$300,000.00. See Settlement, § 3. No Settlement Class member will need to file a claim to receive payment; all Settlement Class members will receive a Settlement Share unless they affirmatively opt-out. *Id.*; § 4. The Settlement’s monetary terms are summarized below:

• Gross Settlement Amount (“GSA”):	\$300,000.00
• Minus Court-approved attorneys’ fees (one-third):	\$100,000.00
• Minus Court-approved verified costs (up to):	\$25,000.00
• Minus Court-approved Class Enhancement Award:	\$5,000.00
• Minus PAGA Payment to LWDA:	\$22,500.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$8,000.00</u>
Net Settlement Amount (“NSA”):	\$139,500.00

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for a Court-approved enhancement payment, administration costs, attorneys’ fees and costs, and PAGA payment to the LWDA, Bee International will pay a Net Settlement Amount (“NSA”) of at least \$139,500.00 to Settlement Class members. *See Haines Decl., ¶ 14; see also Settlement, § 3(E)*. Bee International represents there are approximately 149 Settlement Class members. *Haines Decl., ¶ 15*. Thus, the average payment is projected to be approximately \$936.24. *Id.* Settlement Class members will have 45 days to opt-out or object, providing ample time to review the Notice without unduly delaying the Settlement. *Id.*, § 9(C)-(D). Settlement Class members who do not opt out will be bound by the Settlement, and will release all claims asserted in the operative Complaint, or that could have been pled based on the facts alleged therein, during the Class Period. *See Settlement, § 2*.

Bee International will pay employer-side payroll taxes on the wage portion of each payment separately from, and in addition to, the GSA. *See Settlement, § 3(E)*. Bee International shall deposit the GSA with the Settlement Administrator in two equal installments: (1) 50% of the GSA, i.e., \$150,000.00, will be deposited no later than 10 business days after Final Approval; and (2) the remaining \$150,000.00 will be deposited no later than February 1, 2022. *Id.*, § 3(C).

The NSA will be distributed as follows. First, \$7,500 of the NSA is designated the “PAGA Amount” and will be distributed to all Settlement Class members who worked for Bee International at any time from January 23, 2019 to the end of the Class Period (the PAGA Period”), based on their proportional number of pay periods worked during the PAGA Period. Next, the remainder of the NSA will be distributed to all participating Settlement Class members based on each participating Settlement Class Member’s proportionate number of workweeks worked during the Class Period. *See Settlement, § 4(B)-(C)*.

1 **2. Attorneys’ Fees, Costs, Enhancement Award, and PAGA Payment**

2 At final approval, Plaintiff’s counsel will request attorneys’ fees of one-third of the GSA
3 (estimated at \$100,000), and up to \$25,000 in costs. See Settlement, § 3(E)(4). Plaintiff submits
4 the requested fee is fair compensation for undertaking complex, risky, expensive, and time-
5 consuming litigation on a contingent basis. Counsel have incurred substantial attorney fees
6 conducting pre-filing investigation; analyzing Plaintiff’s claims; conducting legal research;
7 analyzing timekeeping, payroll, and other data with Plaintiff’s expert to create a damages model;
8 preparing for and attending mediation; negotiating and preparing the Settlement; preparing this
9 Motion; and otherwise prosecuting this case. Haines Decl., ¶ 22. Counsel anticipates incurring
10 additional attorney fees in overseeing the Notice process, fielding calls from Settlement Class
11 members, preparing the Final Approval Motion, and appearing at the Final Approval Hearing. *Id.*

12 It is appropriate to award attorney fees as a percentage of the “common fund” created by
13 the settlement. *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480 (2016) (holding “the percentage of
14 fund method survives in California class action cases”). Counsel’s fee request of one-third of the
15 GSA is well within the range of reasonableness and is typical for common fund settlements.
16 *Newberg on Class Actions* § 14.6 (4th Ed. 2013) (historically, courts have awarded percentage
17 fees in the range of 20% to 50%). Counsel submit their request for fees is reasonable in light of
18 the substantial risks and significant work undertaken, the results obtained, and the efficiency with
19 which counsel conducted the litigation.

20 At final approval, Plaintiff will apply for a Class Representative Enhancement Award of
21 \$5,000 for her services to the Settlement Class. Haines Decl., ¶ 23; see also Settlement, § 3(E)(3).
22 “[I]ncentive awards are fairly typical in class action cases...and are intended to compensate class
23 representatives for work done on behalf of the class [and] to make up for financial or reputational
24 risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th
25 1380, 1393-94 (2010). As will be fully briefed at final approval, Plaintiff’s requested
26 Enhancement Award is in recognition of the time and effort she expended on behalf of the
27 Settlement Class, including providing factual information and documents to counsel, identifying
28 potential witnesses, attending in-person and telephonic meetings with counsel, and otherwise

1 actively participating in the prosecution of this case. Haines Decl., ¶ 23. Plaintiff respectfully
2 submits that this requested payment is well within the range of approval. *See, e.g., Alvarado v.*
3 *Nederend*, No. 1:08-cv-01099-OWW, 2011 WL 1883188 at *10 (E.D. Cal. May 17, 2011)
4 (approving \$7,500 enhancement award to each of five plaintiffs from \$505,058.60 settlement).

5 The Settlement also designates \$30,000 as PAGA penalties, of which \$22,500 (75%) will
6 be paid to the LWDA, with the remaining \$7,500 distributed to the Settlement Class, consistent
7 with the requirements of Labor Code § 2699(i). *See* Settlement, § 3(E)(5). Plaintiff submits this
8 allocation is appropriate in light of other settlements allocating penalties to the LWDA. *See, e.g.,*
9 *Chu v. Wells Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011)
10 (approving PAGA payment of \$7,500 to LWDA from \$6.9 million settlement).

11 **IV. ARGUMENT**

12 **A. PRELIMINARY APPROVAL IS WARRANTED**

13 Cal. Rule of Court 3.769 conditions class action settlements on court approval, which is
14 generally evaluated under the same standards as Fed. R. Civ. Proc. 23. *See Reed v. United*
15 *Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires court to determine
16 “that the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.*,
17 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine “whether a proposed
18 settlement is fundamentally fair, adequate, and reasonable”). Settlement is the preferred means of
19 dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*,
20 516 F.3d 1095, 1101 (9th Cir. 2008). The Court’s role is to ensure the agreement taken as a whole
21 is fair and within the range of reasonableness. *Hanlon*, 150 F.3d at 1027. There is a presumption
22 of fairness when a settlement is negotiated at arm’s length by counsel. *See, e.g., Kullar v. Foot*
23 *Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

24 **1. Standard for Preliminary Approval**

25 In evaluating a settlement, the Court should consider several factors, including: “the
26 strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation,
27 the risk of maintaining class action status through trial, the amount offered in settlement, the
28 extent of discovery completed and the stage of the proceedings, [and] the experience and views

of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). “The list of factors is not exclusive and the Court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer*, 91 Cal.App.4th 224, 245 (2001). The Settlement is fair, adequate, and reasonable in light of the balance of factors in this case.

a. The Strength of Plaintiff’s Case

Although she maintains her claims are meritorious, Plaintiff acknowledges there were substantial risks and uncertainty in proceeding with class certification and eventual trial. As described in section II.B., *supra*, Bee International presented multiple defenses to Plaintiff’s claims, both on the merits and to class certification. Thus, success was far from certain and this factor supports preliminary approval.

b. Risk, Expense, Complexity, and Duration of Further Litigation

Although the Parties engaged in significant informal discovery prior to reaching the proposed Settlement, they had not completed formal written and deposition discovery, which would have required expenditure of substantial time and resources. Haines Decl., ¶ 25. Plaintiff also still had to file for class certification. *Id.* Even if Plaintiff obtained certification, the Parties would incur considerable attorneys’ fees and costs through a possible decertification motion, motions for summary judgment, trial, and potential appeals. *Id.* The Settlement avoids those risks and accompanying expense, while providing the Settlement Class with certain recovery. *Id.*

c. Risk of Maintaining Class Action Status

Absent settlement, there was a risk there would not be a certified class at trial, or if there were, that it would consist of a significantly smaller group of employees than the proposed Settlement Class, and the expected recovery could be significantly reduced. Thus, this factor supports preliminary approval.

d. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a fair and reasonable monetary recovery for the Settlement Class for disputed claims. With the assistance of a retained economist with a Ph.D., Plaintiff analyzed potential damages due to Bee International’s allegedly unlawful policies and practices. Plaintiff’s analyses of realistic expected recoveries for each theory of liability are set forth below:

1 Unpaid Wages Due to Time-Rounding: \$37,298

2 Based on Plaintiff's expert's review of employee timekeeping records, Plaintiff contends
3 Bee International's rounding practice resulted in approximately 2,427 net hours of unpaid wages.
4 Haines Decl., ¶ 16. Thus, and based on the average minimum wage of approximately \$11.30
5 during the Class Period, Plaintiff estimates Bee International's maximum exposure for this claim
6 at approximately \$54,850 (2,427 hrs. * \$11.30 * 2 (liq. damages per Labor Code § 1194.2). *Id.*
7 But as noted above, Bee International raised several defenses to this claim, including its argument
8 that it utilized an even-handed timekeeping system that, on balance, resulted in employees being
9 paid for all hours actually worked; that some employees were overpaid as a result its rounding
10 practice; that employees did not perform any work before the scheduled start of their shifts; and
11 that Plaintiff would be unable to certify this claim given the individualized inquiries as to whether
12 employees were in fact underpaid, or overpaid for each workday in question. *Id.* Based on these
13 defenses, Plaintiff discounted the maximum exposure by 15% to account for the risk of non-
14 certification, and an additional 20% to account for Bee International's defenses on the merits, to
15 arrive at an estimated exposure of approximately \$37,298. *Id.*

16 Meal Period Violations: 96,461

17 As discussed above, Plaintiff alleges Bee International failed to provide legally-compliant
18 meal periods, such that first meal periods were often short or commenced after the completion of
19 the fifth hour of work. Haines Decl., ¶ 17. Plaintiff further alleges that Bee International failed to
20 provide legally-compliant second meal periods during shifts in excess of 10.0 hours. *Id.* Based on
21 Plaintiff's expert's analysis and extrapolation of employee timekeeping and payroll records, there
22 were approximately 10,761 shifts reflecting a potential first and/or second meal period violations
23 during the Class Period, and employees' average hourly rate of pay was approximately \$14.94.
24 *Id.* Thus, Plaintiff estimated Bee International's maximum potential exposure on the meal period
25 claim at \$160,769. *Id.* But as noted above, Bee International argues it has always maintained
26 legally-compliant meal period policies/practices; that under *Brinker* it is only required to
27 "provide" the opportunity to take meal periods; that any short, missed, or late meal periods were
28 the result of lawful employee waiver or choice, thereby precluding liability that individualized

1 inquiries will be required to determine why each meal period was taken late, short, missed,
2 making certification of this claim unlikely. Haines Decl., ¶ 17. Based on these defenses, Plaintiff
3 discounted the maximum amount by 20% for risk of non-certification and an additional 25% for
4 risk of losing on the merits or failing to recover the full amount sought, to arrive at an estimated
5 exposure of \$96,461. *Id.*

6 **Rest Period Violations: \$2,704**

7 Plaintiff alleges that Bee International failed to authorize and permit third rest periods on
8 shifts over 10.0 hours. Haines Decl., ¶ 18. Plaintiff's expert's analysis of employee timekeeping
9 data revealed approximately 181 shifts over 10 hours during the Class Period. Plaintiff thus
10 estimates maximum exposure for rest period violations at \$2,704 (181 shifts * \$14.94). *Id.* As
11 noted *supra*, Bee International argues it has always maintained lawful rest period practices, and
12 has, in fact, authorized and permitted all required rest periods to Class Members. *Id.* Additionally,
13 Bee International maintains any failure to take third rest periods was the result of employee
14 choice. *Id.* Bee International also asserts the rest period claim is not amenable to class treatment
15 as individualized inquiries would be required to determine which employees failed to take a third
16 rest period, and the reasons why. *Id.* Although these defenses warranted discounting the value of
17 this claim, because of the relative low value of the claim Plaintiff did not discount this claim for
18 purposes of her damages analysis, resulting in an estimated exposure of \$2,704.

19 **Wage Statement Penalties: \$93,806**

20 Plaintiff's expert's review and extrapolation of the payroll data revealed there were
21 approximately 1,428 allegedly deficient wage statements issued during the relevant time period
22 and approximately 97 unique employees during the applicable time period. Haines Decl., ¶ 19.
23 Therefore, Plaintiff calculated Bee International's maximum exposure for wage statement
24 violations at \$137,950 [(97 "initial" violations * \$50 initial penalty) + (1,331 "subsequent"
25 violations * \$100 subsequent penalty) = \$137,950]. *Id.* As discussed above, however, Bee
26 International argues that any alleged wage statement violations were not "knowing and
27 intentional," that Plaintiff cannot show she or other employees "suffer[ed] injury" due to the
28 alleged wage statement violations, that wage statement penalties are not recoverable for alleged

meal and rest period violations, and that this claim is not amenable for class certification for the same reasons as Plaintiff's underlying claims. *Id.* Based on these defenses, Plaintiff discounted the calculated maximum exposure by 15% for a risk of non-certification, and an additional 20% for a risk of being unsuccessful on the merits, to arrive at an estimated total of \$93,806. *Id.*

PAGA Civil Penalties: \$74,970

Plaintiff estimated a maximum PAGA exposure of \$142,800, based on approximately 1,428 pay periods during the PAGA Period at the \$100 "initial" violation rate under Lab. Code § 2699(f). Haines Decl., ¶ 20; *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding "initial" PAGA violation rate applies until employer has been notified it violated the Labor Code). However, these penalties derive from Plaintiff's underlying claims, each of which are vigorously disputed. *Green v. Lawrence Service Co.*, No. LA-CV-12-6155-JAK (VBKx), 2013 WL 3907506 at *5, fn. 5 (C.D. Cal. July 23, 2013) (PAGA claim's success is determined by merits of underlying claims). The PAGA also grants trial courts discretion to reduce PAGA civil penalties (Lab. Code § 2699(e)(2)), and Bee International argues the Court would reduce penalties significantly given its good-faith defenses. Haines Decl., ¶ 20. Thus, Plaintiff discounted the maximum figure by 25% for risk of losing on the merits, and by an additional 30% for risk of the Court reducing penalties, to arrive at an estimated exposure of \$74,970. *Id.*

Using these estimated figures, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately \$305,239. Haines Decl., ¶ 21. The proposed settlement of \$300,000 therefore roughly approximates the full value (98.3%) of Plaintiff's reasonably forecasted recovery. *Id.* Thus, preliminary approval is appropriate as the Settlement will provide significant monetary relief to the Settlement Class.

e. The Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enter. Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff's counsel have extensive wage and hour class action experience, and have been appointed class counsel in numerous cases alleging similar claims. See Haines Decl., ¶¶ 2-8; Declaration of Tuvia Korobkin, ¶¶ 2-6; Declaration of

Neil. M. Larsen, ¶¶ 2-5. The Settlement was also reached with the assistance of a highly respected wage and hour class action mediator. Thus, this factor strongly supports preliminary approval.

2. The Preliminary Approval Standard Is Met

The Court can grant preliminary approval of a proposed settlement and direct that notice be given if the settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed negotiations; and (3) has no obvious deficiencies. *See Manual for Complex Litig.*, § 30.41 (3rd Ed. 1995); *Newberg on Class Actions*, §§ 11:24-25 (4th Ed. 2013).

a. The Settlement Is Within the Range of Possible Approval

As explained above, the proposed Settlement reflects over 98% of the estimated recovery the Settlement Class could realistically expect to recover in light of significant litigation risks, and will provide tangible and significant monetary recovery for the wage and hour claims in dispute. Plaintiff submits the Settlement is within the range of possible approval.

b. The Settlement Resulted from Serious, Informed Negotiations

The Settlement resulted from an exchange of substantial information, arm's-length negotiations, a full-day mediation and months of additional negotiations. Thus, the Settlement is entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130. Plaintiff carefully vetted the claims at issue, and worked with an expert to conduct a detailed data analysis to arrive at estimated damages. Haines Decl., ¶¶ 16-21. This factor supports preliminary approval.

c. The Settlement Is Devoid of Obvious Deficiencies

The Settlement contains no obvious deficiencies. The Settlement will provide tangible, significant monetary relief to the Settlement Class. The amounts proposed for attorney fees, costs, and enhancement award are reasonable. Thus, this factor supports preliminary approval.

B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

The Settlement Class satisfies the criteria for certification under C.C.P. § 382 because: 1) it is ascertainable and numerous; 2) common questions of law and fact predominate; 3) Plaintiff's claims are typical; and 4) Plaintiff and her counsel will adequately represent the Settlement Class.

///

///

1 **1. The Proposed Class Is Ascertainable and Numerous**

2 A class is “ascertainable” where members “may be readily identified without unreason-
3 able expense or time by reference to...[business] records.” *Sevidal v. Target Corp.*, 189
4 Cal.App.4th 905, 919 (2010). The Settlement Class includes current and former non-exempt
5 employees who worked for Bee International in California during the Class Period. Thus, they
6 can be identified from Bee International’s records. There are approximately 149 Settlement Class
7 members (Haines Decl., ¶ 15), making it impracticable to bring them all before the Court.

8 **2. Common Issues of Law and Fact Predominate**

9 The focus on certification is not on the merits, but rather on what types of questions,
10 “common or individual,” are likely to arise in the action. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34
11 Cal.4th 319, 327 (2004). Plaintiff’s claims are predicated on Bee International’s alleged unlawful
12 rounding practice and alleged failure to provide meal and rest periods. These claims are
13 commonly certified. *See, e.g., Tapia v. Zale Delaware Inc.*, No. 13-CV-1565-BAS, WL 1385181
14 at **3-4 (S.D. Cal. Apr. 6, 2016) (certifying rounding claim); *Benton v. Telecom Network*
15 *Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

16 **3. The Named Plaintiff’s Claims Are Typical**

17 Typicality is satisfied where a class representative’s claims are typical of those of the class.
18 *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). Here, Plaintiff
19 worked for Bee International as a non-exempt employee in California during the proposed Class
20 Period and was subject to the wage and hour policies and practices at issue in this lawsuit. *See*
21 Haines Decl., ¶ 10; Declaration of Maria Pina, ¶¶ 2-4. Thus, typicality is satisfied.

22 **4. Plaintiff and Class Counsel Will Adequately Represent the Class**

23 The adequacy requirement examines conflicts of interest between named parties and the
24 class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Svcs.*, 155
25 Cal.App.4th 676, 697 (2007). Plaintiff and her counsel will adequately represent the Settlement
26 Class, as there are no known conflicts between Plaintiff and the Settlement Class, and as noted
27 above, Plaintiff’s Counsel has significant relevant experience. Haines Decl., ¶¶ 2-8, 24.

28 ///

1 **C. THE COURT SHOULD ORDER DISTRIBUTION OF CLASS NOTICE**

2 The Court should order distribution of the proposed Notice by U.S. Mail, using last known
3 mailing addresses provided by Bee International. *See* Settlement, § 9(A)-(B). This is the “best
4 notice practicable” as it provides “individual notice to all members who can be identified through
5 reasonable effort.” *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff proposes
6 the Settlement be administered by Phoenix Settlement Administrators, an experienced class action
7 settlement administrator. *See* Declaration of Jodey Lawrence and exhibits. Settlement Class
8 members’ addresses will be ascertainable through Bee International’s employment records.
9 Phoenix will also run all addresses through the USPS National Change of Address database and/or
10 perform “skip traces” to obtain current addresses. *See* Settlement, § 9(B) and (F).

11 The Notices’ content satisfies Cal. Rule of Court 3.766(d) because it advises Settlement
12 Class members of the nature of the claims, the basic contentions and denials of the parties and the
13 key terms of the Settlement, the 45-day deadline to opt-out or object to the settlement and the
14 procedures by which to do so, explains the recovery formula and expected recovery amount for
15 each class member, and advises that they will be bound by the terms of the settlement if they do
16 not request exclusion. *See* Haines Decl., Exh. A to Exh. 1. The Notice also notifies Settlement
17 Class members of the final approval hearing and provides Class Counsel’s contact information.

18 **D. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

19 Finally, the Court should set a hearing for final approval of the settlement on a date
20 appropriately scheduled to follow the deadline by which Settlement Class members must file
21 objections to the settlement or opt-out. *See* Cal. Rule of Court 3.769.

22 **V. CONCLUSION**

23 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
24 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the
25 Proposed Order submitted concurrently herewith.

26 Dated: June 29, 2021

HAINES LAW GROUP, APC

27 By: 
28 _____

Paul K. Haines
Attorneys for Plaintiff