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

JULIA BOJORQUEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

JIPC VENTURES, INC., a California
corporation; JIPC MANAGEMENT, INC., a
California Corporation; and DOES 1 through
100,

Defendants.

Case No. 37-2020-00029943-CU-OE-CTL

*[Assigned for all purposes to the Honorable
Gregory W. Pollack, Dept. C-71]*

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

Date: July 29, 2022

Time: 9:30 a.m.

Dept.: C-71

Complaint Filed: August 26, 2020

Trial Date: None set

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
2 on July 29, 2022 at 9:30 a.m., or as soon thereafter as the matter may be heard in Department C-
3 71 of the above-entitled Court, located at 330 W. Broadway, San Diego, California 92101,
4 Plaintiff Julia Bojorquez (“Plaintiff”) will, and hereby does, move this Court for:

5 1. Preliminary approval of the proposed class action Settlement Agreement
6 (“Settlement”) between Plaintiff and Defendants JIPC Ventures, Inc. and JIPC
7 Management, Inc. (“Defendants”);

8 2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional
9 certification, for settlement purposes only, of the proposed Settlement Class, defined
10 as follows:

11 All current and former non-exempt employees who worked for Defendants at the
12 John’s Incredible Pizza location in National City, California at any time from
13 August 26, 2016 through March 16, 2020 (“Class Period”).

14 3. Preliminary appointment of Plaintiff as Class Representative;

15 4. Preliminary appointment of Paul K. Haines and Neil M. Larsen of Haines Law Group,
16 APC as Class Counsel;

17 5. The scheduling of a hearing to consider whether the Settlement should be finally
18 approved and to award an amount for an enhancement award to the Class
19 Representative, and attorneys’ fees and costs to Class Counsel;

20 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
21 Administrator for mailing notices; and

22 7. Approval of the proposed Notice Packet, and an order that it be disseminated to the
23 proposed Settlement Class as provided in the Settlement Agreement.

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1 This motion is based on this notice of motion; the attached memorandum of points and
2 authorities; the declarations of Paul K. Haines and Neil M. Larsen and exhibits attached thereto;
3 the declaration of Jodey Lawrence of Phoenix Settlement Administrators and exhibits attached
4 thereto; the declaration of Plaintiff; the pleadings and other papers filed in this action; and any
5 further oral or documentary evidence or argument presented at the time of hearing.

6
7 Dated: July 7, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

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9 By: _____


Paul K. Haines
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Julia Bojorquez (“Plaintiff”) seeks preliminary approval of a class action
4 settlement (“Settlement”) with Defendants JIPC Ventures, Inc. and JIPC Management, Inc.
5 (“Defendants” or “JIPC”). In her lawsuit, Plaintiff primarily alleges that Defendants failed to
6 provide all required meal periods; and failed to authorize and permit all required rest periods;
7 and failed to pay all overtime wages owed, by failing to incorporate the value of discounted meals
8 into Plaintiff’s and other Settlement Class members “regular” rate of pay. Based on these alleged
9 wage and hour violations, Plaintiff also alleges derivative claims for Defendants’ alleged failure
10 to timely pay all wages at termination, failure to issue accurate itemized wage statements, unfair
11 business practices, and for civil penalties under the Private Attorneys General Act (“PAGA”),
12 Labor Code § 2698 *et seq.*

13 Plaintiff now respectfully requests that this Court preliminarily approve this non-
14 reversionary, common-fund class action settlement,¹ in which Defendants have agreed to pay
15 \$200,000.00 to the following Settlement Class, which is estimated to consist of 392 individuals:

16 All current and former non-exempt employees who worked for Defendants at the
17 John’s Incredible Pizza location in National City, California at any time from
18 August 26, 2016 through March 16, 2020 (“Class Period”).

19 The Settlement was reached after the parties engaged in mediation with Lisa Klerman,
20 Esq., an experienced wage and hour class action mediator. In connection with mediation, JIPC
21 provided Plaintiff with extensive informal discovery, including timekeeping and payroll records
22 for putative class members, JIPC’s relevant written policies, and other information and
23 documents. JIPC also provided Plaintiff with extensive documentation regarding its financial
24 condition. After extensive research and analysis, including a detailed evaluation of JIPC’s
25 potential exposure, the Parties attended a full-day mediation on November 29, 2021. Although
26 the Parties did not reach a settlement at the mediation, they continued their negotiations with Ms.
27 Klerman’s assistance and eventually reached a settlement in the weeks following the mediation.

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 Exhibits A and B, respectively, to the Settlement Agreement.

1 The \$200,000.00 Gross Settlement Amount (“GSA”) will be deposited with the
2 Settlement Administrator in 20 monthly installments, with the first installment of \$10,000.00 due
3 30 days after execution of the Settlement, and the remaining 19 installments of \$10,000.00 due
4 every 30 days thereafter until the GSA is fully funded. Settlement Class members’ individual
5 payments (“Settlement Awards”) will be mailed approximately twenty (20) business days after
6 JIPC deposits the entirety of the GSA with the Settlement Administrator.² See Settlement, § 4(B).
7 Funds from checks not cashed within 180 days will be sent to *cy pres* recipient, Legal Aid Society
8 of San Diego. *Id.*, § 4(D).

9 Settlement Class members do not need to file a claim; Settlement Awards will be
10 distributed to all Settlement Class members who do not opt out. After deductions for proposed
11 administration costs, attorneys’ fees and costs, PAGA payment to LWDA, and Class
12 Representative Service Award, the average Settlement Award is estimated to be at least \$224.06.
13 For the reasons stated herein, Plaintiff respectfully requests the Court grant preliminary approval.

14 **II. SUMMARY OF THE LITIGATION**

15 **A. FACTUAL AND PROCEDURAL BACKGROUND**

16 JIPC operates John’s Incredible Pizza Company, a chain of all-you-can-eat family buffet
17 restaurants. *See* Declaration of Paul K. Haines (“Haines Decl.”), ¶ 11. Plaintiff and other
18 Settlement Class members worked as non-exempt employees at the John’s Incredible Pizza
19 location in National City, California, which closed its doors in March 2020 during the COVID-
20 19 pandemic. *Id.*

21 On August 26, 2020, Plaintiff filed the instant action against JIPC, alleging claims for
22 failure to pay overtime wages, failure to authorize and permit rest periods, failure to provide meal
23 periods, failure to issue accurate itemized wage statements, failure to timely pay all final wages,
24 and unfair competition. *Id.*, ¶ 12. On November 9, 2020, Plaintiff filed her operative First
25 Amended Class and Representative Action Complaint to add a cause of action for PAGA civil
26 penalties. *Id.*

27 ///

28 ² As noted below and in the Haines Declaration, this payment plan was warranted based on
Defendants’ financial condition. *See* Haines Decl., ¶ 13.

1 **B. PLAINTIFF’S CLAIMS AND JIPC’S DEFENSES**

2 **1. Unpaid Overtime Wages Based on Miscalculation of “Regular Rate”**

3 Plaintiff alleges that JIPC provided discounted meals to her and other Settlement Class
4 members, but failed to include the value of those discounted meals in their “regular rate” of pay
5 for purposes of calculating overtime compensation, and that this resulted in an underpayment of
6 overtime wages. Haines Decl., ¶ 17; *see also* 29 U.S.C. § 207(e) (requiring overtime to be paid
7 at 1.5 times the “regular rate” of pay, which includes “all remuneration for employment paid to,
8 or on behalf of, the employee”); DLSE Manual at § 49.1.2 (California has “adopt[ed] the
9 definition of ‘regular rate’ set out in the [FLSA]”).

10 JIPC points to 29 C.F.R. § 778.217(a), which allows an employer to exclude
11 reimbursements for expenses incurred “for the convenience of [the] employer” from the regular
12 rate. Haines Decl., ¶ 17. JIPC also contends that discounted meals were provided on JIPC’s
13 premises and for JIPC’s convenience, and therefore did not need to be included in the regular rate.
14 *Id.* JIPC also argues that not all employees partook in discounted meals, and thus the frequency
15 and value of discounted meals received by different employees, as well as significant issues with
16 calculating classwide damages, would preclude class certification of this claim. *Id.*

17 **2. Rest Period Claim**

18 Plaintiff alleges that JIPC failed to authorize and permit off-duty rest periods, because
19 JIPC required her and other employees to remain on company premises during rest periods.
20 Haines Decl., ¶ 18; *Augustus v. ABM Sec. Servs., Inc.*, 5 Cal.5th 257, 272 (2016) (during rest
21 periods employers must “relieve their employees of all...employer control...”).

22 JIPC argues that it always maintained and enforced lawful rest period policies and
23 practices during the Class Period, and never required employees to remain on premises during
24 rest periods. *Id.* In fact, JIPC asserts that many employees would testify that they did, in fact,
25 leave the premises during rest periods. *Id.* JIPC further contends that, even if it (or individual
26 managers) had required employees to remain on premises, *Augustus* rejected Plaintiff’s “on
27 premises” theory when it observed that “one would expect that employees will ordinarily have to
28 remain onsite or nearby. This constraint, which is of course common to all rest periods, is not

sufficient to establish employer control.” *Augustus*, 2 Cal.5th at 270. Finally, JIPC argues that individual inquiries would be required to determine whether each employee was in fact allowed to leave the premises during each rest period on each shift, precluding class certification. *Id.*

3. Meal Period Claim

Plaintiff alleges that JIPC failed to provide her and other employees with legally-compliant meal periods. Haines Decl., ¶ 19. Specifically, throughout the Class Period, Plaintiff alleges that first meal periods were at times not provided until after the completion of five hours of work due to work demands. *Id.* Plaintiff further contends that meal periods were at times short (i.e., less than 30 minutes). *Id.* Plaintiff also maintains that JIPC failed to provide legally-compliant second meal periods during shifts in excess of 10.0 hours. *Id.*

JIPC contends that it maintained compliant written meal period policies throughout the Class Period, and provided legally-compliant meal periods in line with those policies. *Id.* Indeed, JIPC points to a very high compliance rate reflected in employee timekeeping records as evidence that it did, in fact, provide legally compliant meal periods. *Id.* JIPC also argues that under *Brinker*, it was only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken. *Id.*; *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting “ensure” standard). JIPC also argues that any short, missed, or late first meal period was the result of lawful employee waiver or choice, thereby precluding liability. Haines Decl., ¶ 19. With respect to second meal periods, JIPC argues that second meal periods may lawfully be waived on shifts of more than 10.0 hours but less than 12.0 hours per Labor Code § 512, and that employees did so. *Id.* Lastly, JIPC argues individualized inquiries would be needed to determine why each meal period was taken late or short or missed by each employee, and whether there was a valid waiver, making certification of the meal period claim unlikely. *Id.*

4. Claims Under Lab. Code §§ 203, 226, and the PAGA

As a result of these alleged wage and hour violations, Plaintiff asserts that JIPC failed to comply with its final wage payment and wage statement obligations, in violation of Labor Code §§ 203 and 226, respectively. Haines Decl., ¶¶ 20-21. Finally, Plaintiff seeks civil penalties under the PAGA, based on the aforementioned claims. Haines Decl., ¶ 22.

JIPC asserts it has strong, good-faith defenses to Plaintiff's underlying claims, precluding imposition of waiting time penalties. Haines Decl., ¶ 21; see 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding "good faith dispute" precluded imposition of waiting time penalties). JIPC further contends that any alleged wage statement violations could not be shown to be "knowing and intentional," particularly given its good-faith defenses; that Plaintiff cannot show she or other employees "suffer[ed] injury" due to alleged wage statement violations, as required by Lab. Code § 226(e); and that wage statements always accurately reflected amounts *paid* to employees. Haines Decl., ¶ 20 ; *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1337 (2018) ("The purpose of section 226 is to 'document the paid wages to ensure the employee is fully informed regarding the calculation of those wages'").

Finally, JIPC contends the PAGA claim fails because the underlying claims fail. See *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."). JIPC further maintains that given its good-faith defenses, the Court would substantially reduce any PAGA penalties awarded. Haines Decl., ¶ 22; Lab. Code § 2699(e)(2) (authorizing reduction in PAGA penalties in court's discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just \$5 per pay period where employer made "good faith attempts" to comply with the law).

C. DISCOVERY AND MEDIATION

The Parties engaged in extensive informal discovery. JIPC provided Plaintiff with timekeeping and payroll records for Settlement Class members as well as its wage and hour policies. Haines Decl., ¶ 13. JIPC also provided Plaintiff with relevant financial records, including Profit & Loss Statements from 2019 and 2020 and other documents reflecting business debts and other financial obligations. *Id.* This discovery allowed the parties to assess the merits and potential value of Plaintiff's claims, as well as JIPC's financial condition. *Id.*

The Parties attended a full-day mediation on November 29, 2021 with Ms. Klerman. Haines Decl., ¶ 14. The Parties vigorously debated their legal positions, the likelihood of certification of Plaintiff’s claims, and the legal bases for the claims and defenses. *Id.* The Parties also discussed JIPC’s financial condition and ability to pay. *Id.* Following the mediation, the Parties continued to negotiate and eventually reached a settlement in principle, eventually resulting in the Settlement before the Court. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

Under the Settlement, JIPC will pay a non-reversionary Gross Settlement Amount (“GSA”) of \$200,000.00. *See* Settlement, § 3. No Settlement Class member will need to file a claim form; each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount (“GSA”):	\$200,000.00
• Minus Court-approved attorneys’ fees (one-third):	\$66,666.66
• Minus Court-approved, verified costs (up to):	\$25,000.00
• Minus Court-approved Service Award (up to):	\$5,000.00
• Minus Amount designated as PAGA penalties:	\$10,000.00
• Minus estimated settlement administration costs:	\$8,000.00
Net Settlement Amount (“NSA”):	\$85,333.34
PLUS 25% of PAGA penalties (“PAGA Amount”)	\$2,500.00
TOTAL Amount Paid to Settlement Class:	\$87,833.34

1. The Settlement Provides for Reasonable Monetary Payments

After deducting administration costs, enhancement award to Plaintiff, PAGA payment to the LWDA, and attorneys’ fees and costs, JIPC will pay at least \$87,833.34 to the Settlement Class. Haines Decl., ¶ 15; *see also* Settlement, § 3(C). According to JIPC there are approximately 392 Settlement Class members. Haines Decl., ¶ 16; Settlement § 1. Thus, the average Settlement Award is estimated to be \$224.06. *Id.*

The NSA will be distributed proportionally among participating Settlement Class members based on the number of workweeks worked by each Settlement Class member during the Class Period, and the number of pay periods (if any) worked during the PAGA Period. *See* Settlement, § 4(A). JIPC will pay employer-side payroll taxes on the wage portion of each payment in addition to the GSA. *Id.*, § 3(E).

1 JIPC will provide class data to the Settlement Administrator within 10 business days of
2 preliminary approval, and Notices will be mailed 10 business days thereafter. *See* Settlement, §
3 9(A)-(B). Settlement Class members will have 60 days from mailing to opt-out or object. *Id.*, §
4 9(C)-(D). Settlement Class members who do not opt out will be bound by the Settlement, and will
5 release all claims against JIPC that were alleged, or could have been alleged based on the facts
6 alleged in, Plaintiff’s operative Complaint. *Id.*, § 2(A). In addition, all Settlement Class members
7 (regardless whether they opt out) who worked for JIPC during the PAGA Period will release all
8 claims for PAGA civil penalties based on those alleged violations. *Id.*

9 As noted, the Settlement will be funded in 20 monthly installments, beginning 30 days
10 after the execution of the Settlement. *Id.*, § 3(B). Settlement Class members’ Settlement Awards
11 will be mailed approximately twenty (20) business days after JIPC deposits the entirety of the
12 GSA with the Settlement Administrator. *Id.*, § 4(B).

13 **2. Enhancement Award, Attorneys’ Fees and Costs**

14 Plaintiff will apply for a Service Award at final approval in the amount of \$5,000 for her
15 services to the Settlement Class. Haines Decl., ¶ 26; *see also* Settlement, § 6. “[I]ncentive awards
16 are fairly typical in class action cases...and are intended to compensate class representatives for
17 work done on behalf of the class [and] to make up for financial or reputational risk undertaken in
18 bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94
19 (2010). As will be fully briefed at final approval, the requested Service Award is intended to
20 recognize the substantial time and effort Plaintiff expended on behalf of the Settlement Class,
21 including providing factual information and documents to counsel, identifying potential
22 witnesses, attending meetings with counsel to discuss the claims and theories at issue in the
23 litigation, and otherwise actively participating in the prosecution of her claims. *Id.* Plaintiff
24 respectfully submits that this requested payment is well within the range of permissible approval.
25 *See, e.g., Alvarado v. Nederend*, No. 1:08-cv-01099-OWW-DLB, 2011 WL 1883188 at *10 (E.D.
26 Cal. May 17, 2011) (approving \$7,500 enhancement award to each of five named plaintiffs from
27 \$505,058.60 settlement).

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1 At final approval, Plaintiff’s counsel will request an attorneys’ fees award of one-third of
2 the GSA, and up to \$25,000 in verified costs. Haines Decl., ¶ 24; *see also* Settlement, § 5. Plaintiff
3 submits the requested fee is fair compensation for undertaking complex, risky, expensive, and
4 time-consuming litigation on a contingent basis. Plaintiff’s counsel has expended significant time
5 conducting pre-filing investigation; legal research; analyzing Plaintiff’s claims; analyzing
6 employee timekeeping and payroll records and other data and documents with the help of a
7 retained expert; preparing for and attending mediation; negotiating the Settlement; preparing this
8 Motion; and otherwise prosecuting this case. Haines Decl., ¶ 24. Counsel anticipate incurring
9 additional fees in appearing at the hearing on this Motion, supervising the Notice process, and
10 preparing the Final Approval motion and appearing at the Final Approval Hearing. *Id.*

11 It is appropriate to award attorneys’ fees in class actions is as a percentage of the “common
12 fund” created by a settlement. *See Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480 (2016) (holding
13 “the percentage of fund method survives in California class action cases”). Counsel’s fee request
14 of one-third of the GSA is well within the range of reasonableness, and is typical for common
15 fund settlements, and in fact was the percentage approved in *Laffitte*.

16 **IV. ARGUMENT**

17 **A. PRELIMINARY APPROVAL IS WARRANTED**

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

1 **1. Standard for Preliminary Approval**

2 To make a fairness determination, a court should consider several factors, including: “the
3 strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation,
4 the risk of maintaining class action status through trial, the amount offered in settlement, the
5 extent of discovery completed and the stage of the proceedings, [and] the experience and views
6 of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). “The list of factors is
7 not exclusive and the Court is free to engage in a balancing and weighing of the factors depending
8 on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245
9 (2001). The proposed Settlement is fair, adequate, and reasonable in light of these factors.

10 **a. The Strength of Plaintiff’s Case**

11 Although she steadfastly maintains her claims are meritorious, Plaintiff acknowledges
12 there were substantial risks and uncertainty in proceeding with class certification and eventual
13 trial on the merits. As described in section II.B., *supra*, JIPC presented multiple defenses to
14 Plaintiff’s claims, both on the merits and to class certification. While Plaintiff was prepared to
15 litigate her claims through class certification and ultimately trial, success was far from certain.

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

17 Although the Parties had engaged in significant informal discovery, the Parties had not
18 yet completed formal written and deposition discovery, which would have required the
19 expenditure of substantial time and resources by all parties. Haines Decl., ¶ 25. Even if Plaintiff
20 obtained class certification, the Parties would incur considerable attorneys’ fees and costs through
21 a possible decertification motion, trial, and possible appeal. *Id.* The Settlement avoids those risks
22 and the accompanying delay and expense, and thus this factor supports preliminary approval.

23 **c. Risk of Maintaining Class Action Status**

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

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1 **d. Amount Offered in Settlement Given Realistic Value of Claims**

2 The Settlement provides fair and reasonable monetary recovery for Settlement Class
3 members concerning heavily disputed claims where the law is in a state of frequent change. Based
4 on a review of the data produced by JIPC in connection with mediation, Plaintiff conducted the
5 following exposure analyses:

6 **Unpaid Overtime Wages from Miscalculation of Regular Rate: \$1,582**

7 Plaintiff's analysis of timekeeping and pay data revealed that as a result of JIPC's failure
8 to include the value of discounted meals in the regular rate, Settlement Class members were
9 shorted approximately \$1,582 in overtime wages, assuming that the value of all discounted meals
10 should have been included in the regular rate. Haines Decl., ¶ 17. Plaintiff did not discount this
11 amount for purposes of her damages analysis. *Id.* However, as stated above, JIPC presented
12 multiple defenses to this claim, both on the merits and as to certification.

13 **Rest Period Premium Wages: \$104,659**

14 Plaintiff alleges that JIPC failed to authorize and permit her and other Settlement Class
15 members to take off-duty rest periods, because JIPC required them to remain on premises during
16 rest periods. Haines Decl., ¶ 18. Based on Plaintiff's expert's analysis of employee timekeeping
17 records, there were approximately 58,822 shifts of 3.5 hours or more worked by Settlement Class
18 members during the Class Period. *Id.* Plaintiff's experts' analysis also revealed that approximately
19 91 rest period premiums were paid during the Class Period, and that Settlement Class members'
20 average rate of pay was approximately \$13.20 per hour. *Id.* Thus, assuming a 100% violation rate
21 for those shifts, and taking into account the rest period premiums already paid by JIPC, Plaintiff
22 estimated the maximum potential exposure for this claim as approximately \$775,249 (58,822
23 shifts – 91 premiums paid) * \$13.20 avg. hourly rate). *Id.*

24 But as noted above, JIPC argues that it always maintained and enforced lawful rest period
25 practices during the Class Period; that it did not, in fact, require employees to remain on premises
26 during rest periods; that employees would attest that they left the premises during rest periods;
27 and that even if JIPC did require employees to remain on premises during rest periods, this would
28 not violate California law under *Augustus*. *Id.* Finally, JIPC argues that individual inquiries would

1 be required to determine whether each employee was in fact allowed to leave the premises during
2 each rest period on each shift. *Id.* In light of these defenses, Plaintiff discounted the maximum
3 amount by 55% for risk of non-certification and an additional 70% for risk of being unsuccessful
4 on the merits or failure to recover the full amount sought, to arrive at an estimated realistic
5 exposure of \$104,659. *Id.*

6 Meal Period Premium Wages: \$6,191

7 Plaintiff alleges that JIPC failed to provide her and other Settlement Class members with
8 legally-compliant meal periods. Haines Decl., ¶ 19. Specifically, throughout the Class Period,
9 Plaintiff alleges that first meal periods were at times not provided until after the completion of
10 five hours of work due to work demands and that they were sometimes less than 30 minutes. *Id.*
11 Plaintiff also maintains that JIPC failed to provide legally-compliant second meal periods on
12 shifts over 10.0 hours. *Id.* Based on Plaintiff's expert's analysis of employee timekeeping records
13 produced by Defendants, there were approximately 469 instances of potential non-compliant meal
14 periods reflected in the data. Thus, Plaintiff estimated the maximum potential exposure as: $469 * \$13.20 = \$6,191$. *Id.* Although as noted above, JIPC presented multiple defenses to this claim that
15 warranted discounting its potential value, because of the relatively low value of the claim, Plaintiff
16 did not apply any discounts for purposes of her damages analysis. *Id.*

17 Wage Statement Penalties: \$19,231

18 Plaintiff's expert's analysis reflected that there were approximately 2,442 pay periods
19 worked by Settlement Class members within the one-year liability window under Labor Code §
20 226. Haines Decl., ¶ 20. In calculating JIPC's exposure, Plaintiff assumed she could recover the
21 "initial" \$50 penalty under Section 226(e) for each violation, for a total of \$122,100 (2,442 pay
22 periods * \$50) in potential penalties. *Id.*; see also *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th
23 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified it violated
24 Labor Code); *Patel v. Nike Retail Svcs., Inc.*, 58 F.Supp.3d 1032, 1042-43 (N.D. Cal. 2014) (citing
25 *Amaral* and applying "initial" \$50 penalty to all pay periods in calculating amount-in-controversy
26 for wage statement claim). However, given JIPC's arguments that no violations occurred, that
27 class members suffered no "injury," that any violations were not "knowing and intentional," as
28

well as risks associated with Plaintiff's underlying claims discussed above, Plaintiff discounted the maximum exposure by 55% for risk of non-certification, and by an additional 65% for risks on the merits, for an estimated realistic exposure of \$19,231. Haines Decl., ¶ 20.

Waiting Time Penalties: \$98,842

Based on data produced by Defendants, there are approximately 390 Settlement Class members who worked for Defendants on or after April 6, 2017, and are therefore eligible for waiting time penalties. Haines Decl., ¶ 21. Plaintiff estimated an average waiting time penalty of \$3,168 (\$13.20/hr * 8 hrs * 30 days), and calculated JIPC's maximum waiting time penalty exposure as approximately \$1,235,520 (390 * \$3,168). *Id.* However, JIPC asserts it has strong, good-faith defenses to Plaintiff's underlying claims and thus, even if Plaintiff were able to recover on her underlying claims, she would not be able to recover waiting time penalties. *Id.* Moreover, Plaintiff would need to overcome JIPC's defenses, both as to class certification and as to the merits, to her underlying claims. Based on these defenses, Plaintiff discounted JIPC's maximum exposure by 60% for risk of non-certification and by an additional 80% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at an estimated total of \$98,842. *Id.*

PAGA Civil Penalties: \$25,641

Plaintiff estimated a maximum PAGA exposure of \$244,200 based on 2,442 pay periods during the PAGA Period at the \$100 "initial" violation rate under Lab. Code § 2699(f). Haines Decl., ¶ 22; *Amaral*, 163 Cal.App.4th at 1209. However, these penalties derive from Plaintiff's underlying claims, each of which JIPC vigorously disputes. The PAGA also grants trial courts discretion to reduce PAGA civil penalties (Lab. Code § 2699(e)(2)), and JIPC argued the Court would reduce penalties significantly given its good-faith defenses and its financial condition. *Id.* Thus, Plaintiff discounted the maximum figure by 65% for risk of losing on the merits, and by an additional 70% for risk of the Court reducing penalties, for an estimated exposure of \$25,641. *Id.*; *see also Fleming*, 2011 WL 7563047 at *4 (reducing PAGA civil penalties by over 82%); *Carrington*, 30 Cal.App.5th at 529 (affirming PAGA civil penalty of just \$5 per pay period).

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Using these figures, Plaintiff estimated the realistic total recovery for the Settlement Class would be approximately \$256,146. Haines Decl., ¶ 23. Thus, the proposed \$200,000.00 settlement represents over 78% of the reasonably forecasted recovery. *Id.* Particularly in light of JIPC’s financial condition, the Settlement amount is substantial, and preliminary approval is appropriate.

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. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by competent counsel with extensive experience litigating wage and hour class actions from both the plaintiff and defense side and have been appointed class counsel in numerous cases with similar claims. Haines Decl., ¶¶ 3-8; Declaration of Neil M. Larsen, ¶¶ 2-5.

2. The Preliminary Approval Standard Is Met

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

a. The Settlement Is Within the Range of Possible Approval

The Settlement reflects over 78% of the estimated recovery the Settlement Class could realistically expect in light of the significant litigation risks, and will provide tangible, monetary compensation for hotly disputed wage claims. In addition, the Settlement represents a significant recovery in light of JIPC’s financial condition. Plaintiff submits the Settlement is within the range of possible approval, such that notice should be provided to the Settlement Class.

b. The Settlement Resulted from Serious, Informed Negotiations

The Settlement is a result of extensive informal discovery, a full-day mediation, and months of negotiations. Thus, it is entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130. Plaintiff carefully vetted the claims at issue, and conducted detailed data analyses to arrive at estimated potential damages. Haines Decl., ¶¶ 13, 17-22. The Parties then worked together to finalize the Settlement. *Id.*, ¶ 14. This factor thus supports preliminary approval.

1 **c. The Settlement Is Devoid of Obvious Deficiencies**

2 The Settlement contains no obvious deficiencies. The Settlement will provide tangible
3 monetary relief to Settlement Class members. The amounts proposed for attorneys’ fees, costs,
4 and service payment are reasonable. Thus, this factor supports preliminary approval.

5 **B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS**

6 The Settlement Class satisfies the criteria for certification because: 1) it is sufficiently
7 numerous; 2) common questions of law and fact predominate; 3) Plaintiff’s claims are typical;
8 and 4) Plaintiff and her counsel will adequately represent them. Cal. Code Civ. Proc. § 382.

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

10 A class is “ascertainable” where members “may be readily identified without unreason-
11 able expense or time by reference to...[business] records.” *Sevidal v. Target*, 189 Cal.App.4th
12 905, 919 (2010). Here, the Settlement Class includes non-exempt employees who worked for
13 JIPC at the John’s Incredible Pizza location in National City, California during the Class Period.
14 The Settlement Class can therefore be identified from JIPC’s records. JIPC represents that there
15 are approximately 392 Settlement Class members (see Settlement, § 1), making it impracticable
16 to bring them all before the Court. Thus, numerosity is satisfied.

17 **2. Common Issues of Law and Fact Predominate for Settlement Purposes**

18 The focus on certification is what types of questions, “common or individual,” are likely
19 to arise. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiff’s claims are
20 predicated primarily on JIPC’s alleged failure to pay overtime wages at the correct regular rate of
21 pay and failures to provide meal and rest periods. These claims are commonly held proper for
22 class certification. See, e.g., *Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701
23 (2013) (certifying meal & rest period claims); *Faulkinbury v. Boyd & Assoc., Inc.*, 216
24 Cal.App.4th 220, 240 (2013) (certifying regular rate claim).

25 **3. The Claims of the Named Plaintiff Are Typical**

26 Typicality is satisfied where a class representative’s claims are typical of those of the class.
27 *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). Plaintiff’s
28 claims are typical of the Settlement Class. Plaintiff worked for JIPC during the Class Period at

the National City location, and was injured in the same manner as Settlement Class members. See Declaration of Julia Bojorquez, ¶¶ 2-4. Typicality is thus satisfied.

4. Plaintiff and Her Counsel Will Adequately Represent the Class

The adequacy inquiry examines conflicts of interest between a named plaintiff and the class she seeks to represent. *Capital People First v. State Dept. of Develop. Svcs.*, 155 Cal.App.4th 676, 697 (2007). Plaintiff and her counsel will adequately represent the Settlement Class as there are no known conflicts between Plaintiff and Settlement Class members, and Plaintiff’s counsel have extensive relevant experience. See Haines Decl., ¶¶ 3-8, 27.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE CLASS NOTICE

This Court should order distribution of the Notice by U.S. Mail, using last known mailing addresses provided by JIPC. See Settlement, § 9. This is the “best notice practicable” under the circumstances because it provides “individual notice to all members who can be identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff proposes the settlement be administered by Phoenix Settlement Administrators (“Phoenix”), an experienced settlement administrator. See Declaration of Jodey Lawrence and exhibits. To the extent Settlement Class members’ addresses have changed, Phoenix will run all addresses through the National Change of Address database to obtain current address information, and Phoenix will run a skip trace on Notices returned as undeliverable. See Settlement, § 9(B), (F).

The Notice satisfies Cal. Rule of Court 3.766(d) because it advises Settlement Class members of the basic contentions and denials of the parties, the key terms of the Settlement, the 60-day deadline to opt-out or object, the recovery formula, and advises they will be bound by the Settlement if they do not opt-out. See Haines Decl., Exh. A to Exh. 1. The Notice also notifies Settlement Class members of the final fairness hearing and provides Class Counsel’s contact information. *Id.* The Notice satisfies Rule 3.766 as the most reliable and cost-effective method of reaching Settlement Class members.

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1 **V. CONCLUSION**

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

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6 Dated: July 7, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

7 By: 

Paul K. Haines
Attorneys for Plaintiff