

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
sblakely@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JOSE CUELLAR, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

BEE IMAGINE LLC, a Delaware Limited
Liability Company; and DOES 1 through 100,

Defendants.

Case No. 21STCV07867

*[Assigned for all purposes to Hon. Stuart M.
Rice; Dept. SSC-1]*

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

Date: May 17, 2023
Time: 10:30 a.m.
Dept.: SSC-1

Action Filed: February 26, 2021
Trial Date: None Set

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
2 on May 17, 2023 at 10:30 a.m. in Department SSC-1 of the above-entitled Court, located at 312
3 North Spring Street, Los Angeles, California 90012, Plaintiffs Jose Cuellar and Manuel Miranda
4 (“Plaintiffs”) individually and on behalf of a class of similarly situated individuals, will and
5 hereby do 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, provisional
8 certification of the following Settlement Class defined as follows:

9 All current and former non-exempt, hourly employees of Bee Imagine
10 LLC who worked at any of Bee Imagine LLC’s California facilities at
11 any time from February 26, 2017 through December 19, 2022 (the
“Class Period”).

- 12 3. Preliminary appointment of Plaintiffs Jose Cuellar and Manuel Miranda as Class
13 Representatives;
14 4. Preliminary appointment of Paul K. Haines and Sean M. Blakely of Haines Law
15 Group, APC as Class Counsel;
16 5. The scheduling of a hearing to consider whether the Settlement should be finally
17 approved and to permit Service Enhancements to Plaintiffs, Settlement Administrator
18 costs, and attorneys’ fees and costs to Class Counsel;
19 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
20 Administrator for mailing notices; and
21 7. Approval of the proposed Class Notice and an order that it be disseminated to the
22 proposed Settlement Class as provided in the Settlement Agreement.

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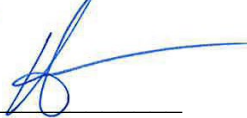
1 This Motion is based on this Notice of Motion, the attached Memorandum of Points and
2 Authorities, the declarations of Paul K. Haines, Sean M. Blakely, Plaintiffs Jose Cuellar and
3 Manuel Miranda, Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits
4 attached thereto, the pleadings and other papers filed in this action, and on any further oral or
5 documentary evidence or argument presented at the time of hearing.

6
7 Respectfully submitted,

8 Dated: April 25, 2023

HAINES LAW GROUP, APC

9
10 By:



11 Paul K. Haines
12 Sean M. Blakely
13 Attorneys for Plaintiffs
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Jose Cuellar and Manuel Miranda (“Plaintiffs”) seek preliminary approval of a
4 class action settlement (“Settlement”) reached with Defendant Bee Imagine LLC (“Bee
5 Imagine”). The Settlement resolves the class and representative action pending before this Court
6 (the “Action”), in which Plaintiffs allege that Bee Imagine failed to pay all overtime wages, failed
7 to provide all legally compliant meal periods or make meal period premium payments in lieu
8 thereof, and failed to authorize and permit all legally-compliant rest periods or make rest period
9 premium payments in lieu thereof. Plaintiffs further allege that as a result of these violations, Bee
10 Imagine failed to issue accurate itemized wage statements, failed to timely pay all final wages,
11 and is liable for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”).

12 Plaintiffs now respectfully request that this Court preliminarily approve this non-
13 reversionary, common-fund class action settlement,¹ in which Bee Imagine has agreed to pay
14 Nine Hundred Fifty Thousand Dollars and Zero Cents (\$950,000.00) to the following Settlement
15 Class:

16 All current and former non-exempt, hourly employees of Bee Imagine
17 LLC who worked at any of Bee Imagine LLC’s California facilities at
18 any time from February 26, 2017 through December 19, 2022 (the
“Class Period”).

19 The Settlement was only reached after extensive informal discovery and two full-day
20 mediations. Prior to mediation, Bee Imagine produced timekeeping and payroll records for a 15%
21 sampling of the putative class, as well as applicable documents regarding Bee Imagine’s wage
22 and hour policies and practices, and other information. After extensive research and analysis,
23 including Plaintiffs’ detailed analysis of Bee Imagine’s potential exposure, a second full-day
24 mediation was held on October 19, 2022 with Francis J. Ortman, III, Esq, a well-respected wage
25 and hour class action mediator, where the parties ultimately agreed to a classwide settlement.

26 _____
27 ¹ The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Paul K. Haines as
28 Exhibit A. The proposed Class Notice and Notice of Estimated Settlement Payment are attached
as Exhibits 1 and 2, respectively, to the Settlement. All defined terms in this motion have the
same definition as that in the Settlement.

1 If the Settlement is approved, Bee Imagine will pay a non-reversionary Gross Settlement
2 Amount of \$950,000.00. After deducting settlement administration costs, Plaintiffs' requested
3 service enhancements, the amount set aside as PAGA civil penalties, and attorneys' fees and
4 costs, the remaining Net Settlement Amount ("NSA") will be distributed to all Settlement Class
5 members who do not opt out of the Settlement based on the proportionate number of workweeks
6 worked by each Settlement Class member during the Class Period. Former employees with
7 standing for waiting time penalties, and employees with standing for wage statement and PAGA
8 civil penalties (subject to a 1-year statute of limitations) will also receive consideration for their
9 release of these penalty claims.

10 Significantly, Settlement Class members do not need to file a claim to reap the financial
11 benefits of the Settlement, as all Settlement Class members will automatically receive a payment
12 unless they affirmatively opt-out. There are approximately 964 Settlement Class members, and
13 the average payment to participating Settlement Class members is projected to be approximately
14 \$527.32. This is a favorable result for Settlement Class members, who will be agreeing to a release
15 of only those claims that were asserted in this litigation.

16 The proposed Settlement is within the range of possible approval in light of the significant
17 legal and factual obstacles that Plaintiffs faced, the risks and costs of further litigation, and the
18 tangible monetary benefits to be received by Plaintiffs and the Settlement Class. For the reasons
19 discussed herein, Plaintiffs respectfully request that this Court grant preliminary approval of the
20 Settlement.

21 **II. SUMMARY OF THE LITIGATION**

22 **A. THE PARTIES AND BRIEF PROCEDURAL HISTORY**

23 Bee Imagine is a third-party logistics provider that distributes cargo to local, national, and
24 international destinations for both domestic and international companies. *See* Declaration of Paul
25 K. Haines ("Haines Decl."), ¶ 10. Plaintiff Cuellar worked for Bee Imagine as a non-exempt
26 "warehouse associate" employee from approximately November 21, 2018 to February 12, 2020.
27 *See* Declaration of Jose Cuellar ("Cuellar Decl."), ¶ 2. Plaintiff Miranda worked for Bee Imagine
28 as a non-exempt "mechanic" and "driver" from approximately October 2016 to March 2017 and

1 also from approximately January 2018 to April 2019. *See* Declaration of Manuel Miranda
2 (“Miranda Decl.”), ¶ 2. Both Plaintiffs worked for Bee Imagine at its Irwindale, California
3 location. *Id.*

4 On February 26, 2021, Plaintiff Cuellar filed a Class Action Complaint against Bee
5 Imagine in Los Angeles Superior Court, in the matter entitled *Jose Cuellar v. Bee Imagine LLC*,
6 Case No. 21STCV07867 (the “Action”). Haines Decl., ¶ 11. On May 3, 2021, Plaintiff Cuellar
7 filed a First Amended Class and Representative Action Complaint (“FAC”) to add a cause of
8 action for civil penalties under the Private Attorneys General Act (“PAGA”). *Id.* On January 14,
9 2022, Plaintiffs filed the operative Second Amended Class and Representative Action Complaint
10 (“SAC”). *Id.* The SAC alleges the following causes of action: (i) meal period violations; (ii) rest
11 period violations; (iii) minimum wage violations; (iv) failure to pay all overtime wages; (v) wage
12 statement violations; (vi) failure to pay all wages owed upon termination; (vii) unfair competition;
13 and (viii) civil penalties under the PAGA. *Id.*

14 **B. PLAINTIFFS’ CLAIMS AND BEE IMAGINE’S DEFENSES**

15 **1. Arbitration Agreements**

16 As an initial matter, Bee Imagine asserts that approximately 25% of Settlement Class
17 members signed valid and enforceable arbitration agreements with class action waivers. Haines
18 Decl., ¶ 23. Setting aside any arguments as to the merits of Plaintiffs’ claims, Bee Imagine
19 contends that absent settlement, a class-wide recovery for all Settlement Class members was not
20 possible given that some Settlement Class members signed valid and enforceable arbitration
21 agreements with class action waivers. *Id.*

22 **2. Meal Period Claims**

23 Plaintiffs allege that Bee Imagine failed to provide legally compliant first meal periods.
24 Haines Decl., ¶ 16. Specifically, Plaintiffs allege that Settlement Class members in the position
25 of “driver” and “helper” were required to take on-duty meal periods. *Id.* Plaintiffs allege that Bee
26 Imagines’ on-duty meal period agreements for its “drivers” and “helpers” were unlawful as the
27 nature of their work did not necessitate on-duty meal periods. *Id.*; *See* Wage Order 7, § 11(C)
28 (“[A]n “on duty” meal period shall be permitted only when the nature of the work prevents an

1 employee from being relieved of all duty and when by written agreement between the parties an
2 on-the-job paid meal period is agreed to.”). Plaintiffs further allege that other Settlement Class
3 members who clocked out/in for their meal periods were often provided with first meal periods
4 after the completion of five hours of work and were less than a full 30-minutes. Haines Decl., ¶
5 16. Additionally, Plaintiffs allege that Bee Imagine failed to provide second meal periods on shifts
6 over 10.0 hours. *Id.*, at ¶ 17.

7 However, Bee Imagine contends that it maintained compliant written meal period policies
8 throughout the Class Period and provided meal periods in line with those compliant policies.
9 Haines Decl., ¶ 16. Bee Imagine also argues that under *Brinker*, it is only required to “provide”
10 the opportunity to take meal periods, not “ensure” meal periods are taken. *Id.*; see *Brinker*
11 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting “ensure” standard
12 and holding employers only have to “provide” employees the opportunity to take meal periods).
13 With respect to its “drivers” and “helpers,” Bee Imagine contends that it utilized lawful on-duty
14 meal period agreements which meet the requirements of the Wage Order. Haines Decl., ¶ 16.
15 Bee Imagine also maintains that any short, missed, or late first meal periods were the result of
16 lawful employee waiver or choice, thereby precluding liability. *Id.* With respect to second meal
17 periods, Bee Imagine argues that second meal periods may lawfully be waived on shifts of more
18 than 10.0 hours but less than 12.0 hours per Labor Code § 512, and that employees regularly did
19 so. *Id.*, at ¶ 17. Lastly, Bee Imagine argues that individualized inquiries will be required to
20 determine why each meal period was taken late or short or missed by each employee, and whether
21 there was a valid waiver, thereby making certification of this claim unlikely. *Id.*, at ¶¶ 16-17.

22 **3. Rest Period Claims**

23 Plaintiffs allege that Bee Imagine’s uniform written rest period policy in effect from the
24 beginning of the Class period until approximately March 2021 failed to authorize and permit non-
25 exempt employees to take a ten-minute off-duty rest period for every four hours worked, or major
26 fraction thereof. Haines Decl., ¶ 18. Specifically, Bee Imagine’s written rest period policy during
27 this time stated that, “all non-exempt employees are entitled to one 10-minute paid break for every
28 four (4) hours of scheduled work.” *Id.* Plaintiffs allege this language is inconsistent with rest

1 period requirements under California law in that: (1) it failed to authorize and permit rest periods
2 on shifts of 3.5-3.99 hours, (2) failed to authorize and permit a second rest period for shifts
3 between 6.01 and 7.99 hours, and (3) failed to authorize and permit third rest periods on shifts
4 over 10.0 hours. *Id.*; see also *Brinker, supra*, 53 Cal.4th 1004 at 1028-30 (discussing rate at which
5 rest periods must be provided).

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

14 **4. Claim for Unpaid Overtime Wages**

15 Plaintiffs contend that Bee Imagine underpaid certain Settlement Class members due to
16 its failure to pay daily overtime wages. Haines Decl., ¶ 19. Bee Imagine counters that it has always
17 paid Settlement Class members for all hours worked, including all overtime hours for work
18 performed in excess of 8.0 hours per workday. *Id.* Bee Imagine also argues that any unpaid time
19 could have only amounted to a few minutes per day, at most, and was thus *de minimis*. *Id.* While
20 Plaintiffs point to *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018), where the California
21 Supreme Court held California’s labor laws generally do not recognize a *de minimis* defense, Bee
22 Imagine argues *Troester* should be limited to its facts. (“[W]e decide only whether the *de minimis*
23 rule is applicable to the facts of this case as described by the Ninth Circuit.” *Troester*, 5 Cal.5th
24 at 829.).

25 **5. Claims Under Labor Code §§ 203, 226, and the PAGA**

26 As a result of the unpaid wages and unpaid meal and rest period premiums discussed
27 above, Plaintiffs assert that Bee Imagine failed to comply with its final payment and wage
28 statement obligations, in violation of Labor Code §§ 203 and 226, respectively. Haines Decl., ¶¶

20-21. Finally, Plaintiffs seek civil penalties under the PAGA based on the aforementioned claims. Haines Decl., ¶ 22.

Bee Imagine argues that it possesses strong, good faith defenses to Plaintiffs’ underlying claims, thus precluding the recovery of waiting time penalties, which are only available for the “willful” failure to pay wages. Haines Decl., ¶ 20; *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” over employee’s exempt status precluded imposition of waiting time penalties over contested wages). Moreover, because the waiting time claim is derivative of Plaintiffs’ underlying wage claims, Plaintiffs would need to overcome Bee Imagine’s defenses, both as to class certification and on the merits, as to their underlying claims. Haines Decl., ¶ 20. Bee Imagine further asserts Plaintiffs’ waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. *Id.*

In addition, Bee Imagine argues that any alleged wage statement violations were not “knowing and intentional,” and that Plaintiffs cannot show they or other employees “suffer[ed] injury” due to alleged wage statement violations, as required to recover penalties under Section 226(e). Haines Decl., ¶ 21. Further, Bee Imagine contends its wage statements always accurately reflected hours worked and amounts paid as well as all other required information, precluding liability for wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (agreeing with employer’s “commonsense position that the pay stubs were accurate in that they correctly reflected the hours worked and the pay received...The purpose of section 226 is to *document the paid wages* to ensure the employee is fully informed regarding the calculation of those wages.”) (*italics in original*). Bee Imagine further argues the same defenses as to Plaintiffs’ underlying claims apply equally to Plaintiffs’ derivative waiting time and wage statement claims. Haines Decl., ¶¶ 20-21.

Finally, Bee Imagine asserts that the PAGA claim fails because Plaintiffs’ underlying claims fail. Haines Decl., ¶ 22; *see also 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.”). Additionally, Bee Imagine maintains that, given its good-faith defenses, the Court would substantially reduce any PAGA civil penalties if it were to find Bee Imagine liable for any of Plaintiffs’ claims. Haines Decl., ¶ 22; *see also* 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) (*disapproved on other grounds* in *ZB, N.A. v. Sup. Ct.*, 8 Cal.5th 175, FN8 (2019)); *Fleming v. Covidien, Inc.*, No. ED-CV-10-01487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by over 82%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

C. DISCOVERY AND MEDIATION

In connection with mediation, Bee Imagine provided Plaintiffs with a 15% sampling of timekeeping and payroll records, as well as several classwide data points. Haines Decl., ¶ 12. Bee Imagine also provided all relevant wage and hour policy documents applicable during the Class Period. *Id.* On December 9, 2021, the parties participated in a full-day mediation with Todd A. Smith, Esq., a well-respected wage and hour class action mediator, however, the parties did not reach a settlement. *Id.* Following the December 9, 2021 mediation, Plaintiffs propounded their first set of Special Interrogatories and Requests for Production of Documents. *Id.* While meeting and conferring regarding Plaintiffs’ first set of discovery, the parties agreed to attend a second mediation. *Id.* In connection with the second mediation, Plaintiffs hired a labor economist with a Ph.D. in economics to assist Plaintiffs in conducting a comprehensive analysis and extrapolation of the data produced by Bee Imagine to calculate Bee Imagine’s potential exposure for each of Plaintiffs’ claims. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiffs’ claims, the chances of certification of Plaintiffs’ claims, and Bee Imagine’s potential defenses. *Id.*

On October 19, 2022, the parties participated in a second mediation with Francis J. Ortman, III, a well-respected wage and hour class action mediator. Haines Decl., ¶ 13. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of

certification of Plaintiffs' claims, and the legal basis for the claims and defenses. *Id.* At the conclusion of mediation, Mr. Ortman issued a mediator's proposal for a classwide settlement, which was ultimately accepted by all parties and documented in a Memorandum of Understanding ("MOU"). *Id.* During the months that followed, the parties negotiated and finalized the long-form Settlement Agreement now before this Court. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves the Settlement, Bee Imagine will pay a Gross Settlement Amount ("GSA") of \$950,000.00. *See* Settlement, ¶ 3. Significantly, this Settlement is non-reversionary, and no Settlement Class member will have to submit a claim form to receive an Individual Settlement Payment. *Id.*, at ¶¶ 3-4. Each Settlement Class member will automatically receive a Settlement Payment unless he or she affirmatively opts out of the Settlement. *Id.*

The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount ("GSA"):	\$950,000.00
• Minus Court-approved attorneys' fees (up to 1/3):	\$316,666.66
• Minus Court-approved verified costs (up to):	\$45,000.00
• Minus Court-approved Service Enhancements:	\$15,000.00
• Minus Amount Set Aside as PAGA penalties:	\$50,000.00
• <u>Minus estimated settlement administration costs (up to):</u>	<u>\$15,000.00</u>
Net Settlement Amount ("NSA"):	\$508,333.34
• PLUS 25% "PAGA Amount" to Settlement Class:	\$12,500.00
• <u>Total Amount Paid to Settlement Class members:</u>	<u>\$520,833.34</u>

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys' fees and costs, Class Representative Service Enhancements to Plaintiffs, the amount set aside as PAGA civil penalties, and Settlement Administrator costs, the Settlement requires Bee Imagine to pay a Net Settlement Amount ("NSA") of at least \$508,333.34 to all Settlement Class members who do not timely opt out. *See* Settlement, ¶¶ 3-4. Eighty percent (80%) of the NSA shall be distributed to all participating Settlement Class members based on the proportionate number of workweeks each participating Settlement Class member worked during the Class Period. Settlement, ¶ 4(B)(i).

1 Fifteen percent (15%) of the NSA shall be designated as the “Waiting Time Amount” and will be
2 distributed in equal, pro-rata shares to each participating Settlement Class member who separated
3 their employment with Bee Imagine at any time from February 26, 2018 through December 19,
4 2022. *Id.*, at ¶ 4(B)(ii). Five percent (5%) of the NSA shall be designated as the “Wage Statement
5 Amount” and will be paid to each participating Settlement Class member who worked for Bee
6 Imagine at any time from February 2, 2020 through December 19, 2022 based on the
7 proportionate number of workweeks worked during that time period. *Id.*, at ¶ 4(B)(iii). Finally,
8 Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) shall be designated as the
9 “PAGA Amount,” and shall be distributed to all Settlement Class members (regardless of whether
10 they opt-out) proportionately based on the number of workweeks worked at any time from
11 February 26, 2020 through December 19, 2022 (“PAGA Period”). *Id.*, at ¶ 4(B)(iv).

12 According to Bee Imagine, there are approximately 964 total Settlement Class members.
13 Haines Decl., ¶ 15. Therefore, the average Settlement Award from the NSA is projected to be
14 approximately \$527.32. *Id.* There are also approximately 411 “PAGA Aggrieved Employees”
15 who worked during the PAGA Period, and therefore, the average payment from the PAGA
16 Amount is estimated to be approximately \$30.41. *Id.* Settlement Class members will have sixty
17 (60) calendar days from the mailing of the Class Notice to opt-out or object to the Settlement,
18 thereby providing ample time to review the Class Notice without unduly delaying the Settlement.
19 *See* Settlement, ¶¶ 9(C)-(D). Those Settlement Class members who do not opt-out of the
20 Settlement will be bound by its terms and will release all claims against Bee Imagine included
21 within the Settlement. *See Id.*, at ¶ 2(A). In addition, all Settlement Class members (whether or
22 not they opt out) who worked for Bee Imagine during the PAGA Period will release all related
23 PAGA claims against Bee Imagine during the PAGA Period (“Released PAGA Claims”). *Id.*, at
24 ¶ 2(B). Plaintiffs have also agreed to a general release of claims, including a waiver of Cal. Civil
25 Code § 1542. *Id.*, ¶ 2(C).

26 Settlement payments will be valid for 180 days after issuance. *See* Settlement, ¶ 4(E).
27 After 180 days, funds from uncashed checks will be distributed to the Controller of the State of
28 California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et*

1 *seq.*, in the name of the Settlement Class member to whom the check was issued, until such time
2 that they claim their property. *Id.* Lastly, Bee Imagine’s share of employer-side payroll taxes will
3 be paid by Bee Imagine separately, and in addition to, the GSA. *See* Settlement, at ¶ 3(D).

4 **2. Attorneys’ Fees and Costs, Service Enhancements, and LWDA Payment**

5 Plaintiffs will apply for Class Representative Service Enhancements at the time of seeking
6 final approval in the amount of \$7,500 each, for a total of \$15,000.00, for their services to the
7 Settlement Class. *See* Settlement, ¶¶ 3(C)(3), 6. “[I]ncentive awards are fairly typical in class
8 action cases . . . and are intended to compensate class representatives for work done on behalf of
9 the class [and] to make up for financial or reputational risk undertaken in bringing the action.” *In*
10 *re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully
11 briefed at the time of final approval, Plaintiffs’ requested Service Enhancements are intended to
12 recognize the time and effort Plaintiffs expended on behalf of the Settlement Class, including
13 providing substantial factual information and documents to Class Counsel, attending multiple
14 meetings with Class Counsel to discuss the claims and theories at issue in the litigation, actively
15 participating in the prosecution of their claims, as well as the significant risks Plaintiffs undertook
16 by agreeing to serve as the named Plaintiffs in this case, and the fact that Plaintiffs agreed to a
17 general release of all claims subject to a waiver of Civil Code § 1542. *See* Settlement, ¶¶ 2(C), 6;
18 Cuellar Decl., ¶¶ 4-5, 7; Miranda Decl., ¶¶ 4-5, 7.

19 Class Counsel will also apply for an attorneys’ fees award of one-third of the Gross
20 Settlement Amount, which is currently estimated to be \$316,666.66, and up to \$45,000.00 in
21 verified costs reimbursement. *See* Settlement, ¶¶ 3(C)(4), 5; *see also* Haines Decl., ¶ 26. Plaintiffs
22 submit the requested fee is fair compensation for undertaking complex, risky, expensive, and
23 time-consuming litigation on a purely contingent fee basis. Haines Decl., ¶ 26. Class Counsel has
24 incurred substantial attorneys’ fees conducting pre-filing investigation, analyzing Plaintiffs’
25 claims, conducting legal research, engaging in informal written discovery, analyzing Settlement
26 Class members’ payroll and timekeeping records, working with its expert to conduct a detailed
27 analysis and extrapolation of the timekeeping and payroll records in order to develop a
28 comprehensive damages model, preparing for and attending two mediation sessions, negotiating

1 and preparing the long-form Settlement Agreement, preparing this Motion, and otherwise
2 litigating the case. *Id.* Class Counsel expects to expend additional attorney time in attending the
3 hearing on this Motion, overseeing the Notice process and fielding questions from Settlement
4 Class members, preparing the final approval papers, and attending the Final Approval hearing.
5 *Id.*

6 California courts recognize an appropriate method for awarding attorneys' fees in class
7 actions is to award a percentage of the "common fund" created as a result of a settlement. *See*
8 *e.g., Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506 (2016) (holding "the percentage of fund
9 method survives in California class action cases"). Class Counsel's request for fees of one-third
10 of the Gross Settlement Amount is well within the range of reasonableness, and indeed is
11 considered the typical rate for common fund settlements. Historically, courts have awarded
12 percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See*
13 *Newberg on Class Actions* § 14.6 (4th Ed. 2013).

14 Class Counsel submit their request for attorneys' fees is reasonable when viewed as an
15 overall percentage of the Settlement and in light of the substantial risks and significant work
16 undertaken, the results obtained, and the efficiency with which the litigation has been conducted.
17 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees
18 and verified costs upon seeking final approval.

19 Additionally, the parties have agreed to designate \$50,000.00 of the GSA as PAGA civil
20 penalties, of which \$37,500.00 (75%) will be paid to the LWDA, with the remaining \$12,500.00
21 (25%) for distribution to the Settlement Class, as the PAGA requires such penalties to be allocated
22 per Labor Code § 2699(i). *See* Settlement, ¶ 3(C)(5). Plaintiffs submit this allocation to the
23 LWDA for PAGA civil penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC*
24 (N.D. Cal. 2011) Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (approving PAGA payment
25 of \$7,500 to LWDA out of \$6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.*
26 (N.D. Cal. 2013) Case No. C11-03609 HRL, 2013 WL 3541217 (approving PAGA payment of
27 \$7,500 to LWDA out of \$1.25 million common-fund settlement).

28 ///

1 **IV. ARGUMENT**

2 **A. PRELIMINARY APPROVAL IS WARRANTED**

3 California Rule of Court 3.769 conditions settlement of a class action on court approval,
4 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
5 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
6 (2012) (Rule 3.769 requires trial court to determine “that the settlement is fair, reasonable and
7 adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)
8 (Rule 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally
9 fair, adequate, and reasonable”). Settlement is the preferred means of dispute resolution,
10 particularly in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101
11 (9th Cir. 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that
12 the agreement taken as a whole is fair. *See e.g., Hanlon*, supra, 150 F.3d at 1027. There is an
13 initial presumption of fairness where, as here, the Settlement was negotiated at arm’s-length by
14 class counsel and with the assistance of an experienced wage and hour class action mediator. *See*
15 *e.g., Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

16 **1. Standard for Preliminary Approval**

17 To make a fairness determination, the Court should consider several factors, including:
18 “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further
19 litigation, the risk of maintaining class action status through trial, the amount offered in
20 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
21 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
22 “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of
23 the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*, 91
24 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and
25 reasonable in light of the overall balance of factors in this case.

26 **a. The Strength of Plaintiffs’ Case**

27 Although Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs
28 acknowledge that there were substantial risks and uncertainty in proceeding with litigation. As

described above in section II.B., *supra*, Bee Imagine presented multiple defenses to Plaintiffs' claims, both on the merits and with respect to class certification. Thus, while Plaintiffs were prepared to litigate these claims through class certification, and ultimately trial, success was far from certain.

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

Although the parties engaged in significant informal discovery in advance of mediation, the parties still had substantial discovery to complete in formal litigation had the matter not settled. Haines Decl., ¶ 25. This would have required expenditure of substantial time and resources by both parties that would have very likely spanned several years. *Id.* Even if Plaintiffs were to certify the classes, the parties would incur considerably more attorney's fees and costs through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the accompanying expense. *Id.*

c. Risk of Maintaining Class Action Status

Plaintiffs had not yet filed their motion for class certification, and as such, the extent to which Plaintiffs' proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it would consist of a significantly smaller group of employees than the proposed Settlement Class (either due to a narrowing of the class definition in a Court order on a contested motion for class certification, or through settlement agreements entered into by Bee Imagine with individual class members by way of *Pick-Up-Stix* type settlement agreements²) and the expected recovery could be significantly reduced, given the settlement amounts that are typically offered through the *Pick-Up-Stix* process. Thus, this factor, too, supports preliminary approval of the Settlement.

² In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an employer may enter into pre-certification settlement agreements with individual putative class members in which the putative class members release claims for past unpaid wages and penalties in exchange for consideration. The Court further held that such settlements could preclude those individual employees from recovery in class action litigation against the employer for the same wage claims.

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

2 The Settlement provides a positive recovery for the Settlement Class in the face of
3 disputed claims. Plaintiffs' expert conducted a detailed analysis of the meal and rest period
4 premiums owing, unpaid overtime wages, wage statement penalties, waiting time penalties, and
5 civil penalties under the PAGA. The results of the damages analysis are discussed below:

6 First Meal Period Violations: \$155,002

7 Based on Plaintiffs' expert's analysis and extrapolation of the timekeeping data produced
8 by Bee Imagine, there were approximately 41,656 meal period eligible shifts worked by "drivers"
9 and "helpers" that were taken "on-duty." Haines Decl., ¶ 16. As argued above, Plaintiffs contend
10 that Bee Imagine's on-duty meal period agreements for its "drivers" and "helpers" were unlawful,
11 and therefore, Plaintiffs assumed a meal period violation for each of these 41,656 shifts. *Id.*
12 Furthermore, for employees who recorded their meal periods, Plaintiffs' analysis and
13 extrapolation of the timekeeping records revealed approximately 16,260 non-compliant first meal
14 periods. *Id.* In addition, based on data provided by Bee Imagine, Settlement Class members'
15 average hourly rate of pay during the Class Period was \$17.16 per hour. *Id.* Bee Imagine also paid
16 approximately \$25,078 in meal period premiums during the Class Period. *Id.* Therefore, Plaintiffs
17 calculated Bee Imagine's maximum exposure on this claim at approximately \$968,761 ([41,656
18 non-compliant meal periods * \$17.16 average premium] + [16,260 first meal period violations *
19 \$17.16 average premium] - \$25,078 in meal period premiums). *Id.*

20 However, as noted above, Bee Imagine contends that it provided compliant first meal
21 periods to Settlement Class members throughout the Class Period. Haines Decl., ¶ 16. Bee
22 Imagine also asserts that under *Brinker* it is only required to "provide" the opportunity to take
23 meal periods, not "ensure" meal periods are taken, and that, as described above, it has always
24 done so. *Id.*; see also *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard and holding
25 employers only have to "provide" employees the opportunity to take meal periods). Finally, Bee
26 Imagine maintains that the first meal period claim is not suited for class certification, since
27 individual inquiries would be needed to assess which employees took non-compliant meal periods
28 or missed meal periods, how many meal periods were non-compliant or missed, and the reasons

1 why a particular employee did not take a compliant meal period on a particular shift. Haines Decl.,
2 ¶ 16 In light of these defenses and arguments, as well as the risk that the estimated exposure
3 could be reduced due to the existence of arbitration agreements, Plaintiffs discounted Bee
4 Imagine's maximum exposure by 60% for the risk of non-certification, and an additional 60% to
5 account for Bee Imagine's defenses on the merits and/or failure to recover the full amount sought,
6 to arrive at an estimated total of approximately \$155,002. *Id.*

7 Second Meal Period Violations: \$42,966

8 Plaintiffs' expert's analysis and extrapolation of the timekeeping data revealed that there
9 were approximately 15,649 shifts in excess of 10.0 hours without a compliant second meal period
10 during the Class Period. Haines Decl., ¶ 17. Therefore, Plaintiffs calculated Bee Imagine's
11 maximum exposure for this claim at approximately \$268,537 (15,649 second meal period
12 violations * \$17.16 average premium). *Id.*

13 However, Bee Imagine argues that it has maintained compliant meal period practices
14 throughout the Class Period and that Settlement Class members voluntarily waived their second
15 meal periods on shifts in excess of 10.0 hours but less than 12.0 hours, as they are entitled to do
16 pursuant to Labor Code § 512. Haines Decl., ¶ 17. Bee Imagine also contends that class
17 certification would not be proper as individualized inquiries will be required to determine why
18 each second meal period was missed, and whether there was a valid waiver. *Id.* In light of these
19 arguments and defenses, as well as the risk that Plaintiffs' estimated exposure could be reduced
20 by the existence of arbitration agreements, Plaintiffs discounted Bee Imagine's maximum
21 exposure by 60% for the risk of non-certification, and an additional 60% for a risk of losing on
22 the merits, or having exposure reduced due to Bee Imagine's waiver arguments, to arrive at an
23 estimated exposure amount of approximately \$42,966. *Id.*

24 Rest Period Violations: \$235,555

25 Plaintiffs allege that Bee Imagine's written rest period policies in effect from the
26 beginning of the Class period until approximately March 2021 failed to authorize and permit non-
27 exempt employees to take a ten-minute off-duty rest period for every four hours worked, or major
28 fraction thereof. Haines Decl., ¶ 18. Within these parameters, Plaintiffs' expert's analysis revealed

1 that there were approximately 41,597 shifts with potential non-compliant rest periods. *Id.*
2 Therefore, Plaintiffs calculated Bee Imagine's maximum exposure on this claim at approximately
3 \$713,804 (41,597 rest period violations * \$17.16 average premium). *Id.*

4 However, as stated above, Bee Imagine contends that it maintained legally compliant rest
5 period policies/practices throughout the Class Period, and in fact, authorized and permitted all
6 rest periods to Settlement Class members. Haines Decl., ¶ 18. Bee Imagine also argues that any
7 failure to take rest periods was the result of employee choice. *Id.* Bee Imagine also asserts that
8 this claim is not amenable to class treatment as individualized inquiries would be required to
9 determine which employees failed to take a rest period, and the reasons why. *Id.* Bee Imagine
10 further maintains that manageability concerns are especially present with respect to Plaintiffs'
11 rest period claim, given that rest periods are not recorded. *Id.* In light of these defenses, as well
12 as the risk that Plaintiffs' estimated exposure could be reduced by the existence of arbitration
13 agreements, Plaintiffs discounted Bee Imagine's maximum exposure by 40% to account for the
14 risk of non-certification, and an additional 45% to account for Bee Imagine's defenses on the
15 merits, to arrive at an estimated exposure of approximately \$235,555. *Id.*

16 Unpaid Overtime Wages: \$115,423

17 Based on Plaintiffs' expert's review of employee timekeeping and payroll records,
18 Plaintiffs estimate that Bee Imagine underpaid overtime wages by approximately \$205,196.
19 Haines Decl., ¶ 19. But as noted above, Bee Imagine contends that it properly paid all overtime
20 wages to Settlement Class members. *Id.* Based on these defenses, as well as the risk that
21 Plaintiffs' class claims could be reduced due to the existence of the arbitration agreements,
22 Plaintiffs discounted the maximum exposure by 25% to account for the risk of non-certification,
23 and an additional 25% to account for Bee Imagine's defenses on the merits, to arrive at an
24 estimated exposure of approximately \$115,423. *Id.*

25 Wage Statement Penalties: \$121,625

26 Plaintiffs' analysis reflected that there were approximately 8,893 pay periods worked by
27 Settlement Class members within the liability period applicable to Plaintiffs' wage statement
28 claim. Haines Decl., ¶ 21. Plaintiffs' calculated Bee Imagine's maximum exposure at a total of

1 approximately \$868,750 ([411 “initial” violations * \$50] + [8,482 “subsequent” violations *
2 \$100]) in potential penalties. *Id.*; *see also* Lab. Code 226(e). As discussed above, Bee Imagine
3 argues any alleged wage statement violations were not “knowing and intentional,” that Plaintiffs
4 cannot show they or other employees “suffer[ed] injury,” that wage statements always included
5 the actual amounts *paid* to employees, and that this claim is not amenable for class certification
6 for the same reasons as Plaintiffs’ underlying claims. Haines Decl., ¶ 21. Thus, in light of these
7 arguments, as well as the risk that Plaintiffs’ exposure could be reduced due to the existence of
8 arbitration agreements, Plaintiffs discounted the maximal exposure by 60% for risk of non-
9 certification, and by an additional 65% for risk of being unsuccessful on the merits, to arrive at
10 an estimated realistic total of approximately \$121,625. *Id.*

11 Waiting Time Penalties: \$349,371

12 Plaintiffs allege Bee Imagine is liable for waiting time penalties under Labor Code § 203
13 to former employees whose employment with Bee Imagine ended since February 26, 2018.
14 Haines Decl., ¶ 20. Bee Imagine’s records reflected approximately 606 former Settlement Class
15 members who separated their employment with Bee Imagine since February 26, 2018. *Id.*
16 Moreover, Plaintiffs estimate an average waiting time penalty of \$4,118 (\$17.16/hr. * 8 hours per
17 day * 30 days). *Id.* Therefore, Plaintiffs estimated Bee Imagine’s maximum waiting time penalty
18 exposure at approximately \$2,495,508 (606 former employees * \$4,118 average penalty). *Id.*

19 However, Bee Imagine argues that it possesses strong, good faith defenses to Plaintiffs’
20 underlying claims, thus precluding recovery of waiting time penalties, which are only available
21 for the “willful” failure to pay wages. Haines Decl., ¶ 20; *see also* 8 Cal. Code Regs. § 13520 (a
22 “good faith dispute that any wages are due will preclude imposition of waiting time penalties”);
23 *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” over
24 employee’s exempt status precluded imposition of waiting time penalties over contested wages).
25 Moreover, because the waiting time claim is derivative of Plaintiffs’ underlying wage claims,
26 Plaintiffs would need to overcome Bee Imagine’s defenses, both as to class certification and as
27 to the merits, to their underlying claims. Haines Decl., ¶ 20. Bee Imagine further asserts Plaintiffs’
28 waiting time penalty exposure was grossly inflated as not every former employee experienced the

1 alleged Labor Code violations. *Id.* Based on these defenses, as well as the risk that Plaintiffs’
2 exposure could be reduced by the presence of arbitration agreements, Plaintiffs discounted Bee
3 Imagine’s maximum exposure by 60% for risk of non-certification, and an additional 65% for
4 risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at
5 an estimated total of approximately \$349,371. *Id.*

6 **PAGA Penalties: \$77,814**

7 Plaintiffs’ analysis reflected there were approximately 8,893 pay periods worked in the
8 PAGA Period (i.e., February 26, 2020, through December 19, 2022). Haines Decl., ¶ 22.
9 Therefore, Plaintiffs estimated a maximum total PAGA exposure of approximately \$889,300
10 (8,893 pay periods * \$100 “initial” penalty). *Id.*; see also *Amaral v. Cintas Corp. No. 2*, 163
11 Cal.App.4th 1157, 1207 (2008) (finding “initial” violation rate applies until employer is notified
12 that it is violating a Labor Code provision).

13 However, these penalties derive from the underlying wage and hour violations discussed
14 above, which Bee Imagine vigorously disputes. Haines Decl., ¶ 22; see e.g., *Green v. Lawrence*
15 *Service Co.*, 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining that a PAGA claim’s success
16 was determined by the merits of its underlying claims). Bee Imagine also asserts that, given its
17 good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA
18 penalties if it were to find Bee Imagine liable for any of Plaintiffs’ claims. Haines Decl., ¶ 22; see
19 also *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming
20 reduction of PAGA penalties); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx)
21 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties from \$2.8 million to
22 \$500,000). Therefore, based on these risks, Plaintiffs discounted the maximum figure by 65% for
23 risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period,
24 and an additional 75% to account for the possibility of this Court reducing penalties, to arrive at
25 an estimated exposure of approximately \$77,814. Haines Decl., ¶ 22.

26 Using these estimated figures for each of the claims described above, Plaintiffs calculate
27 a maximum potential recovery to be approximately \$1,097,756. Haines Decl., ¶ 24. The proposed
28 settlement of \$950,000 therefore represents approximately 86.5% of the reasonably forecasted

1 recovery for the Settlement Class. *Id.* Preliminary approval is appropriate since the Settlement
2 will provide significant monetary relief to the Settlement Class, which is consistent with what
3 Plaintiffs’ counsel believes could have been recovered had the case proceeded through trial.

4 **e. The Experience and Views of Counsel**

5 “Parties represented by competent counsel are better positioned than courts to produce a
6 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
7 *Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are
8 represented by competent, experienced counsel who possess extensive experience prosecuting
9 and defending wage-and-hour class actions, and who have been appointed as class counsel in
10 numerous cases alleging similar claims. *See* Haines Decl., ¶¶ 2-7; Declaration of Sean M. Blakely
11 (“Blakely Decl.”), ¶¶ 2-6. Class Counsel conducted an in-depth review of Bee Imagine’s
12 timekeeping and payroll records and drew on their extensive experience in similar cases to assess
13 the strengths and weaknesses of Plaintiffs’ case. *See* Haines Decl., ¶ 12. The Settlement was also
14 reached with the assistance of well-respected wage-and-hour class action mediators. *Id.* This
15 factor strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168
16 Cal.App.4th at 130.

17 **2. The Preliminary Approval Standard Is Met**

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

23 **a. The Settlement Is Within the Range of Possible Approval**

24 The proposed settlement reflects approximately 86.5% of the estimated recovery the
25 Settlement Class could reasonably expect in light of the significant litigation risks, and will
26 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
27 percentage of the liability exposure recovered in this case far exceeds percentages routinely
28 approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL

221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial”).

Further, the average Settlement Payment of approximately \$527.32 is in line with average payments achieved in other wage and hour class action settlements.³ Thus, Plaintiffs submit that the proposed settlement is within the range of possible approval, such that notice should be provided to the Settlement Class members so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class members have had the opportunity to opt-out or object.

b. The Settlement Resulted from Serious, Informed Negotiations

The Settlement resulted from an exchange of substantial information, arm’s-length negotiations by counsel, and two full-day mediations before experienced wage and hour mediators. Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar, supra*,

³ See e.g., *Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of approximately \$65); *Lim v. Victoria’s Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average recovery was approximately \$60); *Schiller v. David’s Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 at *17 (E.D. Cal. June 11, 2012) (“Class Members will receive an average of approximately \$198.70...[T]his is a substantial recovery where Defendants asserted compelling defenses to liability; Plaintiff also notes several similar actions where the gross recoveries per class member were less than \$90...[T]he Court finds that the results achieved are good”); and *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately \$108).

1 168 Cal.App.4th at 130. As discussed above, Plaintiffs carefully vetted the claims at issue,
2 reviewed extensive timekeeping and payroll data, and conducted a detailed statistical analysis of
3 the data to arrive at the estimated class-wide damages figures. *See* Haines Decl., ¶¶ 16-24. The
4 parties attended two full-day mediations, and worked collaboratively to finalize the Settlement.
5 *Id.*, at ¶¶ 12-13. Thus, this factor supports preliminary approval.

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

7 Preliminary approval of the Settlement is also warranted because there are no obvious
8 deficiencies. The Settlement will provide substantial monetary relief to Settlement Class
9 members. The amounts proposed for Class Counsel’s attorneys’ fees and costs, settlement
10 administration, LWDA payment, and Plaintiffs’ Class Representative Service Enhancements are
11 all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of
12 obvious deficiencies, this factor supports preliminary approval.

13 **B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS**

14 The Settlement Class satisfies the criteria for certification of a settlement class under
15 California law because: (1) the Settlement Class is so numerous that joinder would be impractical;
16 (2) common questions of law and fact predominate over individual questions such that class
17 certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiffs’
18 claims are typical of the claims of absent Settlement Class members; and (4) Plaintiffs and their
19 counsel will fairly and adequately represent Settlement Class members’ interest. *See* Cal. Civ.
20 Proc. § 382.

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

22 A class is “ascertainable” where the members “may be readily identified without
23 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*
24 *Corp.*, 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is
25 defined as all current and former non-exempt, hourly employees who worked for Bee Imagine at
26 any of its California facilities during the Class Period. *See* Settlement, ¶ 1. Therefore, Settlement
27 Class members can be identified from Bee Imagine’s personnel and employment records. Bee
28 Imagine represents that the Settlement Class consists of approximately 964 current and former

1 non-exempt employees. *See* Haines Decl., ¶ 15. It would therefore be impracticable to bring all
2 Settlement Class members before the Court, or for each Settlement Class member to bring an
3 individual lawsuit. The proposed Settlement Class therefore satisfies numerosity. *See, e.g.,*
4 *Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust
5 sufficiently numerous).

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

7 The focus in a certification dispute is not the merits, but rather on what types of questions,
8 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior*
9 *Court (Rocher)*, 34 Cal.4th 319, 327 (2004). Plaintiffs’ claims are predicated on, among other
10 issues, Bee Imagine’s meal and rest period policies and/or practices. These types of claims are
11 commonly held to be proper for class certification. *See e.g., Benton v. Telecom Network*
12 *Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

13 **3. The Claims of the Named Plaintiffs Are Typical**

14 The typicality requirement is satisfied where class representatives have claims that are
15 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191
16 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the
17 same goods as the putative class in a consumer class action). Here, Plaintiffs’ claims are typical
18 of those held by the Settlement Class members. First, Bee Imagine employed Plaintiffs as non-
19 exempt, hourly employees during the Class Period, and Plaintiffs were subject to Bee Imagine’s
20 wage and hour policies at issue in this case. *See* Cuellar Decl., ¶ 2; Miranda Decl., ¶ 2. Second,
21 Plaintiffs were injured by the same challenged policies/practices that allegedly injured the
22 Settlement Class as a whole. *Id.*, at ¶ 3. For example, Plaintiffs contend that Bee Imagine failed
23 to provide them with legally compliant meal periods and failed to authorize and permit all legally
24 entitled rest periods. *Id.* Because Plaintiffs have suffered the same injuries as the other members
25 of the Settlement Class, the typicality requirement is satisfied.

26 **4. Plaintiffs and Class Counsel Will Fairly and Adequately Represent**
27 **the Class**

28 The adequacy requirement examines conflicts of interest between named parties and the
class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental*

Services, 155 Cal.App.4th 676, 697 (2007). Plaintiffs and their counsel will adequately represent the Settlement Class, as there are no conflicts between Plaintiffs and the proposed Settlement Class, and Plaintiffs possess claims that are in line with those of the Settlement Class. *See McGhee v. Bank of America*, 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation. *See Haines Decl.*, ¶¶ 2-7; *Blakely Decl.*, ¶¶ 2-6.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE

This Court should order distribution to the Settlement Class of the proposed Class Notice in English and Spanish by U.S. Mail, using last known mailing address information provided by Bee Imagine. *See Settlement*, ¶ 9(B). This manner of giving notice is the “best notice practicable” under the circumstances because it provides “individual notice to all members who can be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Here, Plaintiffs propose that the Settlement be administered by Phoenix Settlement Administrators (“Phoenix”), an experienced class action settlement administrator. *See generally* Declaration of Jodey Lawrence and attached exhibits. Settlement Class members’ addresses will be ascertainable through Bee Imagine’s records, which Bee Imagine will provide to Phoenix within ten (10) business days after entry of an order preliminarily approving this Settlement. *See Settlement*, ¶ 9(A). Within ten (10) business days of receipt of the Settlement Class members’ addresses, Phoenix will run the addresses through the National Change of Address (“NCOA”) database (which provides updated addresses for any individual who has moved in the previous four years and has notified the U.S. Postal Service of a forwarding address) and mail the Class Notice to all Settlement Class members. *See Settlement*, ¶ 9(B). To the extent that any notices are returned, Phoenix will perform a “skip trace” to track any Settlement Class member’s current mailing address. *Id.*, at ¶ 9(F).

The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises Settlement Class members of the nature of the claims, basic contentions and denials of the parties and the key terms of the Settlement, the 60-day deadline to opt-out or object

1 to the Settlement and the procedures by which to do so, explains the recovery formula and
2 expected recovery amount for each Settlement Class member, and advises them that they will be
3 bound by the terms of the Settlement if they do not opt-out. *See* Haines Decl., Exhs. 1, 2 to Exh.
4 A. The proposed Class Notice will also notify Settlement Class members of the final approval
5 hearing date and provides the Settlement Class contact information for Class Counsel and advises
6 Settlement Class members that they may enter an appearance through counsel if they wish to. *Id.*
7 This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and
8 cost-effective method of reaching Settlement Class members.

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

10 Finally, this Court should set a hearing for Final Approval of the Settlement on a date
11 appropriately scheduled to follow the deadline by which Settlement Class members must file
12 objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

13 **V. CONCLUSION**

14 For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily
15 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the
16 Proposed Order submitted concurrently herewith.

17
18 Respectfully submitted,

19 Dated: April 25, 2023

HAINES LAW GROUP, APC

20
21 By:



22 Paul K. Haines
23 Sean M. Blakely
24 Attorneys for Plaintiffs
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