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

CRISTINA JIMENEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

HOCKING INTERNATIONAL
LABORATORIES INCORPORATED, a
California corporation; and DOES 1 through 100,

Defendants.

Case No. 37-2020-00001478-CU-OE-CTL

*[Assigned for all purposes to the Hon.
Kenneth J. Medel, Dept. C-66]*

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

Date: June 17, 2022
Time: 9:30 a.m.
Dept: C-66

Complaint Filed: January 9, 2020
Trial Date: None set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on June 17, 2022, at 9:30 a.m., or as soon thereafter as the matter may be heard in Department C-66 of the above-entitled Court, located at 330 West Broadway, San Diego, CA 92101, Plaintiff Cristina Jimenez ("Plaintiff") will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Stipulation of Settlement ("Settlement") between Plaintiff and Defendant Hocking International Laboratories, Inc. ("Hocking");
2. Pursuant to Section 382 of the Code of Civil Procedure, provisional certification, for settlement purposes only, of the proposed Settlement Class, defined as follows:
All current and former non-exempt employees who worked for Hocking in California at any time from January 9, 2016 through the date of preliminary approval of the Settlement (the "Class Period").
3. Preliminary appointment of Plaintiff as Class Representative;
4. Preliminary appointment of Paul K. Haines, Tuvia Korobkin, and Neil M. Larsen of Haines Law Group, APC as Class Counsel;
5. Appointment of Phoenix Settlement Administrators as the Settlement Administrator;
6. Approval of the proposed Notice, and an Order that the Notice be disseminated to the proposed Settlement Class as provided in the Settlement; and
7. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award an amount for a service award to the Class Representative, and attorneys' fees and costs to Class Counsel.

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

Dated: February 3, 2022

Respectfully Submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Cristina Jimenez (“Plaintiff”) seeks preliminary approval of a class action
4 settlement (“Settlement”) with Defendant Hocking International Laboratories, Inc. (“Hocking” or
5 “Defendant”). The Settlement resolves a class and representative action pending before this Court
6 (the “Action”), in which Plaintiff alleges that Hocking: (i) failed to provide compliant meal
7 periods; (ii) failed to authorize and permit rest periods; and (iii) failed to pay all wages due, as
8 a result of requiring employees to take rest periods off-the-clock. As a result of these alleged
9 violations, Plaintiff further alleges that Hocking is liable for waiting time penalties and wage
10 statement penalties, engaged in unfair business practices, and is liable for civil penalties under
11 the Private Attorneys General Act (“PAGA”), Lab. Code section 2698, *et seq.*

12 Plaintiff now respectfully requests that this Court preliminarily approve this non-
13 reversionary, common-fund class action Settlement¹, in which Hocking has agreed to pay the
14 Gross Settlement Amount (“GSA”) of \$464,100.00 to the following Settlement Class, consisting
15 of approximately 145 individuals:

16 All current and former non-exempt employees who worked for Hocking in
17 California at any time from January 9, 2016 through the date of preliminary
approval of the Settlement (the “Class Period”).

18 The Settlement was reached after the parties engaged in mediation with Jeffrey A. Ross,
19 Esq., an experienced and well-respected wage and hour class action mediator, and after Hocking
20 produced a significant amount of data and information in informal discovery, including
21 timekeeping and payroll records for all non-exempt employees for a majority of the putative class
22 period. After extensive research and investigation, including a detailed analysis of Hocking’s
23 potential exposure made with the assistance of Plaintiff’s expert economist who holds a Ph.D. in
24 economics, the parties attended a full-day mediation with Mr. Ross on September 14, 2021. At
25 the conclusion of mediation Mr. Ross made a mediator’s proposal that was accepted by the parties.
26 The parties then spent the following months negotiating the long-form Settlement.

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

1 Notably, Settlement Class members are not required to submit a claim to receive a
2 payment (“Settlement Award”) from the Settlement. After deductions for proposed administration
3 costs, attorneys’ fees and costs, Plaintiff’s Class Representative Service Award, and the Labor &
4 Workforce Development Agency’s (“LWDA”) share of PAGA civil penalties, the average
5 individual Settlement Share is estimated at approximately **\$1,647.59**. For the reasons discussed
6 herein, Plaintiff respectfully requests that the Court preliminarily approve the Settlement.

7 **II. SUMMARY OF THE LITIGATION**

8 **A. FACTUAL AND PROCEDURAL BACKGROUND**

9 Based in San Marcos, California, Hocking manufactures specialty chemical products and
10 provides custom packaging solutions for the agriculture, turf and ornamental, and other industries.
11 Declaration of Paul K. Haines (“Haines Decl.”), ¶ 10. Plaintiff and Settlement Class members are
12 current and former non-exempt employees of Hocking who worked for Hocking in California at
13 any time during the Class Period. *See* Settlement, § 1.

14 On January 6, 2020, Plaintiff filed the instant action, alleging claims for: (1) minimum
15 wage violations, (2) meal period violations, (3) rest period violations, (4) waiting time penalties,
16 and (5) unfair competition. Haines Decl., ¶ 11. Plaintiff filed a First Amended Complaint, alleging
17 substantially the same claims, on May 26, 2020. *Id.* As part of the parties’ Settlement, on
18 December 3, 2021, after exhausting her administrative requirements with the LWDA, Plaintiff
19 filed her operative Second Amended Complaint, adding a cause of action for PAGA civil penalties
20 as well as for overtime violations and wage statement penalties. *Id.*

21 **B. PLAINTIFF’S CLAIMS AND HOCKING’S DEFENSES**

22 **1. Meal Period Claim**

23 Plaintiff contends that Hocking failed to provide legally-compliant meal periods, such that
24 the meal periods were often late, in that they were provided after the completion of the fifth hour
25 of work; and/or short, in that they were provided for less than 30 minutes. Plaintiff contends this
26 is reflected in employee timekeeping records reflecting many non-compliant meal periods. Haines
27 Decl. ¶ 16. Plaintiff also alleges Hocking fails to provide second meal periods on shifts of over
28 10.0 hours. *Id.*

1 Hocking argues it maintains a legally-compliant meal period policy, that it has always
2 provided meal periods consistent with that policy, and that it is only required to “provide” the
3 opportunity to take meal periods, not “ensure” meal periods are taken. Haines Decl. ¶ 16; *Brinker*
4 *Restaurant Corp. v. Superior Court*, 54 Cal.4th 1004, 1038 (2012) (rejecting “ensure” standard
5 and holding employers only have to “provide” employees the opportunity to take meal periods).
6 Hocking further maintains that any meal period violations reflected in timekeeping records were
7 the result of lawful employee choice, thereby precluding liability. Haines Decl. ¶ 16. Similarly,
8 Hocking contends that employees waived second meal periods on shifts over 10 hours, as they
9 are entitled to do under Lab. Code § 512. *Id.* Moreover, Hocking asserts that it has paid hundreds
10 of meal period premiums during the Class Period, which reflects the fact that Hocking takes its
11 meal period obligations seriously and takes remedial action when necessary. *Id.* Hocking also
12 argues individualized inquiries will be required to determine why each meal period was late, short,
13 or missed, whether there was a valid waiver, and whether a premium was paid on each such shift,
14 thereby precluding class certification of this claim and rendering a PAGA trial unmanageable. *Id.*

15 **2. Rest Period Claim**

16 Plaintiff alleges Hocking failed to authorize and permit compliant rest periods because on
17 some shifts, Hocking required Plaintiff and other employees to take their second rest period at the
18 end of the shift, after clocking out. Haines Decl. ¶ 17. Plaintiff contends this practice violates
19 California law, which requires employers to authorize and permit rest periods in the middle of
20 each work period, and to pay employees for rest period time. *See* Wage Order 1, § 12(A)
21 (providing that rest periods “insofar as practicable shall be in the middle of each work period,”
22 and that “[a]uthorized rest period time shall be counted as hours worked.”)

23 Hocking argues it maintains a facially compliant written rest period policy, and that it has
24 always authorized and permitted rest periods in compliance with that policy. Haines Decl. ¶ 17.
25 Hocking further maintains it does not, in practice, require employees to take rest periods off-the-
26 clock or at the end of their shifts, and that any such instances were rare and aberrational. Haines
27 Decl., ¶ 17. Finally, Hocking argues this claim is not amenable to class treatment, as individual
28 inquiries would be required to determine whether each employee was in fact required to take their

rest period off-the-clock and/or at the end of the shift, on each particular shift, resulting in an unmanageable series of mini-trials. *Id.* This manageability concern is especially present for the rest period claim, Hocking asserts, since rest periods are not recorded. *Id.*

3. Unpaid Wages Due to Alleged Off-the-Clock Rest Periods

Plaintiff contends that, as a result of failing to authorize and permit *paid* rest periods as noted above, Hocking underpaid employees because, as noted above, rest periods must be paid under California law. Haines Decl. ¶ 18.

Hocking asserts many of the same defenses to this claim as it asserts in response to the rest period claim, discussed *supra*. Haines Decl., ¶ 18. Hocking further contends that Plaintiff's off-the-clock rest period claim fails for the same reason as her rest period claim, in that Hocking does not have a policy or systematic practice of requiring employees to take off-the-clock rest periods, and this claim would not be amendable to class treatment or a manageable trial. *Id.*

4. Claims for Wage Statement, Waiting Time, and PAGA Penalties

As a result of its alleged failure to pay all wages and failure to provide meal and rest periods, Plaintiff asserts Hocking failed to comply with its final payment and wage statement obligations, in violation of Lab. Code §§ 203 and 226, respectively; and that Hocking is liable for PAGA civil penalties based on the aforementioned claims. Haines Decl., ¶¶ 19-21.

Hocking argues Plaintiff's derivative claims fail for the same reasons her underlying claims fail. *See, e.g., Price v. Starbucks*, 192 Cal.App.4th 1136, 1147 (2011) ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Hocking further maintains that given its good-faith defenses, the Court would substantially reduce PAGA civil penalties even if it found for Plaintiff on her underlying claims. Haines Decl., ¶ 21; Lab. Code § 2699(e)(2) (authorizing reduction in penalties in court's discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because "the evidence showed...defendants took their obligations...seriously and attempted to comply with the law"); *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% in part because employer was "not aware" of violations); *Carrington v. Starbucks*, 30 Cal.App.5th 504, 529 (2018)

1 (affirming PAGA penalty of just \$5 per pay period where employer made “good faith attempts”
2 to comply with law).

3 Hocking further asserts it has strong, good-faith defenses to Plaintiff’s underlying claims,
4 precluding imposition of waiting time penalties. *See* 8 Cal. Code Regs. § 13520 (a “good faith
5 dispute that any wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy*
6 *Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” precluded imposition of
7 waiting time penalties). Hocking further contends any alleged wage statement violations could
8 not be shown to be “knowing and intentional,” particularly given its good-faith defenses; that
9 Plaintiff cannot show she or other employees “suffer[ed] injury” due to alleged wage statement
10 violations, as required by Lab. Code § 226(e); and that the wage statements always accurately
11 reflected amounts *paid* to employees. Haines Decl., ¶ 20; *see also Maldonado v. Epsilon Plastics,*
12 *Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (“The purpose of section 226 is to ‘document the paid
13 wages to ensure the employee is fully informed regarding the calculation of those wages.’”) (citing
14 *Soto v. Motel 6 Operating, L.P.*, 4 Cal.App.5th 385, 392 (2016)).

15 Finally, Hocking contends that to the extent any meal period, rest period, or off-the-clock
16 violations may have occurred, they did not occur pursuant to any uniform policy or systematic
17 practice, such that an individualized inquiry would be necessary to establish each and every
18 alleged violation, rendering trial unmanageable. *See Wesson v. Staples the Office Superstore,*
19 *LLC*, 68 Cal.App.5th 746 (2021) (holding that trial courts possess the discretion to strike PAGA
20 claims that cannot be manageably tried on a representative basis).

21 **C. DISCOVERY AND MEDIATION**

22 In advance of mediation the parties engaged in extensive informal discovery, including
23 Hocking’s production of a class list with putative class members’ hire and termination dates, rates
24 of pay, and other information; timekeeping and payroll records for all employees for a majority
25 of the putative class period; and Hocking’s relevant wage and hour policies. Haines Decl. ¶ 12.
26 Plaintiff’s counsel also hired a labor economist with a Ph.D. in economics to assist with analyzing
27 the data provided by Hocking to calculate potential classwide exposure for Plaintiff’s claims. *Id.*

28 ///

On September 14, 2021, the parties engaged in mediation with Jeffrey A. Ross, an experienced and well-respected wage and hour class action mediator. Haines Decl. ¶ 13. During mediation, the parties vigorously debated their opposing positions, the chances of certification, and the legal and factual bases of the parties' claims and defenses. *Id.* At the conclusion of mediation Mr. Ross issued a mediator's proposal, which was ultimately accepted by the parties. *Id.* Over the following months the parties negotiated and finalized the Settlement. *Id.*

III. THE PROPOSED SETTLEMENT

A. Essential Terms of the Settlement

Under the Settlement, Hocking will pay a non-reversionary GSA of \$464,100. See Settlement, § 3. No Settlement Class member will need to file a claim to receive payment; all Settlement Class members will receive a Settlement Award unless they affirmatively opt-out. *Id.*; § 4. The Settlement's monetary terms are summarized below:

• Gross Settlement Amount ("GSA"):	\$464,100.00
• Minus Court-approved attorneys' fees (one-third):	\$154,700.00
• Minus Court-approved verified costs (up to):	\$25,000.00
• Minus Court-approved Service Award:	\$7,500.00
• Minus Amount Set Aside as PAGA penalties:	\$40,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$8,000.00</u>
Net Settlement Amount ("NSA"):	\$228,900.00
PLUS 25% of PAGA penalties ("PAGA Amount"):	\$10,000.00
Total Paid to Settlement Class members:	\$238,900.00

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for a Court-approved service award, attorneys' fees and costs, administration costs, and PAGA payment to the LWDA, Hocking will pay at least \$238,900.00 to the Settlement Class. Haines Decl., ¶ 14; Settlement, §§ 3(D), 4(A). Hocking represents there are approximately 145 Settlement Class members. See Settlement, § 1. Thus, the average payment is projected to be approximately \$1,647.59. Haines Decl., ¶ 15. Settlement Class members will have 60 days to opt-out or object, providing ample time to review the Notice. Settlement, § 9(C)-(D). Settlement Class members who do not opt out will release all claims asserted in the operative Complaint that arose during the Class Period. *Id.*, § 2(A).

///

1 The NSA will be distributed proportionally among participating Settlement Class
2 members based on the number of workweeks worked by each Settlement Class member during
3 the Class Period. *See* Settlement, § 4(A)(i). The PAGA Amount will be distributed to all
4 Settlement Class members who worked for Hocking at any time from September 27, 2020 to the
5 end of the Class Period (the “PAGA Period”), proportionally based on the number of pay periods
6 worked during the PAGA Period. *Id.*, § 4(A)(ii). Payments from the PAGA Amount will be
7 treated as 100% penalties, and payments from the NSA will be treated as one-third wages, one-
8 third interest, and one-third penalties. *Id.*, § 4(D).

9 Hocking will pay employer-side payroll taxes on the wage portion of each payment in
10 addition to the GSA. *See* Settlement, § 3(E). Hocking shall deposit the GSA with the Settlement
11 Administrator within ten (10) Court days after Final Approval, or, in the event there are any
12 objections to the Settlement, within ten (10) Court days after an appeal may be filed with no
13 appeal filed, or after the successful resolution of any appeals. *Id.*, § 3(B)-(C).

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

15 At final approval, Plaintiff’s counsel will request attorneys’ fees of one-third of the GSA
16 (estimated at \$154,700.00), and up to \$25,000 in costs. *See* Settlement, § 5. Plaintiff submits the
17 requested fee is fair compensation for undertaking complex, risky, expensive, and time-
18 consuming litigation on a contingent basis. Counsel have incurred substantial attorney fees
19 conducting pre-filing investigation; analyzing Plaintiff’s claims; conducting legal research;
20 conducting formal discovery; analyzing timekeeping and other data with Plaintiff’s expert to
21 create a damages model; preparing for and attending mediation; negotiating and preparing the
22 Settlement; preparing this Motion; and otherwise litigating this case. Haines Decl., ¶ 23. Counsel
23 anticipate incurring additional fees in overseeing the Notice process, preparing the Final Approval
24 Motion, and appearing at the Final Approval Hearing. *Id.*

25 It is appropriate to award attorney fees as a percentage of the “common fund” created by
26 the settlement. *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480 (2016) (holding “the percentage of
27 fund method survives in California class action cases”). Counsel’s fee request of one-third of the
28 GSA is well within the range of reasonableness and is typical for common fund settlements.

1 *Newberg on Class Actions* § 14.6 (4th Ed. 2013) (historically, courts have awarded percentage
2 fees in the range of 20% to 50%). Counsel submit their request for fees is reasonable in light of
3 the substantial risks and significant work undertaken, the results obtained, and the efficiency with
4 which counsel conducted the litigation.

5 At final approval, Plaintiff will apply for a Class Representative Service Award of \$7,500
6 for his services to the Settlement Class. Haines Decl., ¶ 24; *see also* Settlement, § 6. “[I]ncentive
7 awards are fairly typical in class action cases...and are intended to compensate class
8 representatives for work done on behalf of the class [and] to make up for financial or reputational
9 risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th
10 1380, 1393-94 (2010). As will be fully briefed at final approval, Plaintiff’s requested Service
11 Award is in recognition of the time and effort she expended on behalf of the Settlement Class,
12 including providing factual information and documents to counsel, identifying potential
13 witnesses, attending in-person and telephonic meetings with counsel, and otherwise actively
14 participating in the prosecution of this case. Haines Decl., ¶ 24. Plaintiff respectfully submits that
15 this requested payment is well within the range of approval. *See, e.g., Alvarado v. Nederend*, No.
16 1:08-cv-01099-OWW, 2011 WL 1883188 at *10 (E.D. Cal. May 17, 2011) (approving \$7,500
17 enhancement award to each of five plaintiffs from \$505,058.60 settlement).

18 The Settlement also designates \$40,000 as PAGA penalties, of which \$30,000 (75%) will
19 be paid to the LWDA, with the remaining \$10,000 distributed to the Settlement Class, consistent
20 with the requirements of Lab. Code § 2699(i). *See* Settlement, § 3(D)(5). Plaintiff submits this
21 allocation is appropriate in light of other settlements allocating penalties to the LWDA. *See, e.g.,*
22 *Chu v. Wells Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011)
23 (approving PAGA payment of \$7,500 to LWDA from \$6.9 million settlement).

24 **IV. ARGUMENT**

25 **A. PRELIMINARY APPROVAL IS WARRANTED**

26 Cal. Rule of Court 3.769 conditions class action settlements on court approval, which is
27 generally evaluated under the same standards as Fed. R. Civ. Proc. 23. *See Reed v. United*
28 *Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires court to determine

“that the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine “whether a proposed settlement is fundamentally fair, adequate, and reasonable”). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court’s role is to ensure the agreement taken as a whole is fair and within the range of reasonableness. *Hanlon*, 150 F.3d at 1027. There is a presumption of fairness when a settlement is negotiated at arm’s length by counsel. *See, e.g., Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1. Standard for Preliminary Approval

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

a. The Strength of Plaintiff’s Claims

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

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

Although the Parties engaged in significant informal discovery prior to reaching the proposed Settlement, they had not completed formal written and deposition discovery, which would have required expenditure of substantial time and resources. Haines Decl., ¶ 26. The

1 Settlement avoids the attorneys' fees and costs associated with completing discovery, moving for
2 class certification and summary judgment, and ultimately trial, as well as the risks and the
3 accompanying burden on the Court of continued litigation. *Id.* Thus, this factor supports
4 preliminary approval.

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

6 Plaintiff had not yet filed her class certification motion, and as such, the extent to which
7 Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there
8 was a risk there would not be a certified class at trial, or if there were, that it would consist of a
9 significantly smaller group of employees than the proposed Settlement Class, and the expected
10 recovery would be significantly reduced. Thus, this factor supports preliminary approval.

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

12 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class
13 for disputed claims. With the assistance of a retained expert economist, Plaintiff analyzed
14 potential damages due to Hocking's allegedly unlawful policies and practices. Plaintiff's analyses
15 of realistic expected recoveries for each theory of liability are set forth below:

16 **Meal Period Violations: \$192,054**

17 As discussed above, Plaintiff alleges Hocking failed to provide legally-compliant meal
18 periods, such that the meal periods often commenced after the completion of the fifth hour of
19 work and/or were less than 30 minutes, and that Hocking failed to provide second meal periods
20 on shifts over 10.0 hours. Haines Decl., ¶ 16. Based on Plaintiff's expert's analysis and
21 extrapolation of employee timekeeping and payroll records, there were approximately 31,095
22 shifts in the Class Period reflecting a short, missed, or late meal period, and Hocking had paid
23 approximately 362 premiums, for a total of approximately 30,733 potential violations without a
24 paid premium. *Id.* The records also reflected that putative class members' average rate of pay was
25 approximately \$17.48. *Id.* Therefore, Plaintiff estimated Hocking's maximum potential exposure
26 for meal period violations as: $30,733 * \$17.48 = \$537,213$. *Id.* But as noted above, Hocking argues
27 it has always maintained legally-compliant meal period policies/practices; that under *Brinker* it is
28 only required to "provide" the opportunity to take meal periods; that any non-compliant meal

periods were the result of lawful employee waiver or choice; that it has paid hundreds of premiums, demonstrating its commitment to meeting its meal period obligations; and that individualized inquiries will be required to determine whether an employee missed or took a non-compliant meal period on each shift, why they did so, and whether a premium was paid, precluding certification and/or manageability of this claim. *Id.* In light of these defenses, Plaintiff discounted the maximum amount by 35% for risk of non-certification and an additional 45% for risk of losing on the merits or failing to recover the full amount sought, to arrive at an estimated realistic exposure of \$192,054. *Id.*

Rest Period Violations: \$96,322

Plaintiff contends that Hocking failed to authorize and permit legally-compliant rest periods by occasionally requiring employees to clock out and take their second rest period after clocking out at the end of their shift. Haines Decl., ¶ 17. Plaintiff estimates this happened to her and other employees on about 40% of all shifts (twice per week), and Plaintiff's expert's analysis and extrapolation of the timekeeping data revealed approximately 45,920 shifts of over 6.0 hours (where a second rest period is required) during the Class Period. *Id.* Thus, Plaintiff estimated Hocking's potential maximum exposure for this claim as: $45,920 * .4 * \$17.48 = \$321,073$. *Id.* As noted *supra*, however, Hocking argues that it has always authorized and permitted rest periods in accordance with California law and that it has never required employees to take rest periods at the end of the shift or off-the-clock, and any instances of a supervisor engaging in such a practice would be rare and aberrational. Haines Decl. ¶ 17. Hocking further argues that a determination of which individuals were required to take rest periods at the end of the shifts and/or off-the-clock during each individual shift would require a multitude of individualized inquiries, particularly given that rest periods are not recorded, making the claim unmanageable on a class or representative basis. *Id.* In light of these defenses, Plaintiff discounted the maximum exposure by 40% to account for the risk of non-certification, and an additional 50% to account for risk of losing on the merits, to arrive at an estimated realistic exposure of \$96,322. *Id.*

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1 Unpaid Wages Due to Alleged Off-the-Clock Rest Periods: \$24,129

2 As noted above, Plaintiff contends Hocking's alleged practice of having employees take
3 their second rest periods off-the-clock resulted in 10 minutes (.167 hours) of unpaid wages on
4 each such shift. Haines Decl., ¶ 18. As also noted above, Plaintiff estimates this affected
5 approximately 40% of all shifts over 6.0 hours, and that there were approximately 45,920 such
6 shifts during the Class Period. *Id.* Thus, and assuming the unpaid wages were generally overtime
7 wages since they occurred at the end of shifts that were often over 8.0 hours, Plaintiff estimates
8 Hocking's maximum potential exposure for this claim as: $45,920 * .4 * .167 \text{ hrs/shift} * \$17.48 * 1.5$ (OT premium) = \$80,429. *Id.* But as noted *supra*, Hocking raised the same defenses to this
9 claim as it did to the rest period claim, including that its rest period policies and practices comply
10 with California law; that Hocking does not have a policy or systemic practice of requiring
11 employees to take off-the-clock rest periods; and that Plaintiff would be unable to certify this
12 claim given the individualized inquiries as to whether employees were in fact required to take off-
13 the-clock rest periods for each workday in question, particularly since rest periods are not
14 recorded. *Id.* In light of these defenses, Plaintiff discounted the maximum exposure by 40% for
15 the risk of non-certification and an additional 50% to account for risk of losing on the merits or
16 failure to recover the full amount sought, to arrive at an estimated realistic exposure of \$24,129.

18 Wage Statement Penalties: \$38,399

19 Based on Plaintiff's expert's review of the data provided by Hocking, there were
20 approximately 2,363 pay periods worked by Settlement Class members within the one-year
21 liability window under Lab. Code § 226. Haines Decl., ¶ 19. In calculating Hocking's exposure,
22 Plaintiff assumed she could recover the "initial" wage statement penalty of \$50 for each violation,
23 for a total of \$118,150 ($2,363 \text{ pay periods} * \50) in potential penalties. *Id.*; *see also* Lab. Code §
24 226(e) (providing \$50 penalty for "initial" violations); *Amaral v. Cintas Corp. No. 2*, 163
25 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer has been
26 notified it violated Labor Code); *Patel v. Nike Retail Svcs., Inc.*, 58 F.Supp.3d 1032, 1042-43
27 (N.D. Cal. 2014) (citing *Amaral* and applying "initial" \$50 penalty to all pay periods in calculating
28 amount-in-controversy for wage statement claim). However, given Hocking's arguments that no

violations occurred, that class members suffered no “injury,” and that any alleged violations were not “knowing and intentional,” as well as risks associated with Plaintiff’s underlying claims discussed above, Plaintiff discounted the maximum exposure by 35% for risk of non-certification, and by an additional 50% for risk of being unsuccessful on the merits, for an estimated realistic exposure of \$38,399. Haines Decl., ¶ 19.

Waiting Time Penalties: \$114,524

Based on Plaintiff’s expert’s analysis of the data provided by Hocking, there were approximately 105 employees who separated their employment with Hocking since January 9, 2017. Haines Decl., ¶ 20. Plaintiff further estimated an average waiting time penalty of \$4,195 (\$17.48 * 8 hours * 30 days), and thus calculated Hocking’s maximum waiting time penalty exposure as approximately \$440,475 (105 * \$4,195). *Id.* As noted above, however, Hocking asserts it has strong, good-faith defenses to Plaintiff’s underlying claims, and that any failure to pay wages was therefore not “willful” as a matter of law. *Id.* Hocking further contends Plaintiff’s meal and rest period claims cannot support a claim for waiting time penalties, as multiple courts have held (and which issue is going to be decided by the California Supreme Court in *Naranjo v. Spectrum Security Services*, Case No. S258966 (review granted Jan. 2, 2020)). *Id.* Moreover, because the waiting time claim is derivative of Plaintiff’s underlying wage claims, Plaintiff would need to overcome Hocking’s defenses, both as to class certification and as to the merits, to her underlying claims. Based on these defenses, Plaintiff discounted Hocking’s maximum exposure by 35% for risk of non-certification and by an additional 60% for risk of being unsuccessful on the merits, to arrive at an estimated total of \$114,524. *Id.*

PAGA Civil Penalties: \$55,770

Plaintiff estimated a maximum PAGA exposure of \$143,000, based on approximately 1,430 pay periods worked by Settlement Class members during the PAGA Period at the \$100 “initial” violation rate under Lab. Code § 2699(f). Haines Decl., ¶ 21; *see also Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding “initial” PAGA violation rate applies until employer has been notified it violated the Labor Code). However, these penalties derive from Plaintiff’s underlying claims, each of which Hocking vigorously disputes. *See, e.g., Green*

1 v. *Lawrence Service Co.*, No. LA-CV-12-6155-JAK (VBKx), 2013 WL 3907506 at *5, fn. 5 (C.D.
2 Cal. July 23, 2013) (PAGA claim’s success is determined by merits of underlying claims).
3 Hocking further argues that a PAGA trial would not be manageable on Plaintiff’s claims, for the
4 same reasons a class action would not be manageable. *Id.* Further, the PAGA grants trial courts
5 discretion to reduce PAGA civil penalties (Lab. Code § 2699(e)(2)), and Hocking argues the
6 Court would reduce penalties significantly given its good-faith defenses, as courts have done in
7 many cases. Haines Decl., ¶ 21. Thus, Plaintiff discounted the maximum figure by 40% for risk
8 of losing on the merits, and by an additional 35% for risk of the Court reducing penalties, to arrive
9 at an estimated exposure of \$55,770. *Id.*

10 Thus, after taking into account Hocking’s affirmative defenses, difficulties of proof, and
11 other risks, Plaintiff predicted the potential likely realistic recovery for the Settlement Class would
12 be approximately \$521,198. Haines Decl. ¶ 22. The proposed settlement of \$464,100 equals over
13 89% of the value of Plaintiff’s reasonably forecasted recovery. *Id.* Thus, preliminary approval is
14 appropriate, as the Settlement will provide significant monetary relief to the Settlement Class.

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

16 “Parties represented by competent counsel are better positioned than courts to produce a
17 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter.*
18 *Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by competent counsel
19 with extensive experience litigating wage and hour class actions from both the plaintiff and
20 defense side, and who have been appointed class counsel in numerous cases alleging similar
21 claims. *See* Haines Decl., ¶¶ 3-8; Declaration of Tuvia Korobkin, ¶¶ 2-6; Declaration of Neil M.
22 Larsen, ¶¶ 2-5. The Settlement was also reached with the assistance of a highly respected wage
23 and hour class action mediator. Thus, this factor strongly supports preliminary approval.

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

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

1 **a. The Settlement is Within the Range of Possible Approval**

2 As explained above, the proposed Settlement reflects over 89% of the estimated recovery
3 the Settlement Class could realistically expect to recover in light of significant litigation risks,
4 and will provide tangible and significant monetary recovery for the wage and hour claims in
5 dispute. Plaintiff submits the Settlement is within the range of possible approval.

6 **b. The Settlement Resulted from Serious, Informed Negotiations**

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

13 **c. The Settlement is Devoid of Obvious Deficiencies**

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

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

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

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

23 A class is "ascertainable" where members "may be readily identified without unreason-
24 able expense or time by reference to...[business] records." *Sevidal v. Target Corp.*, 189
25 Cal.App.4th 905, 919 (2010). The Settlement Class includes current and former non-exempt
26 employees who worked for Hocking in California during the Class Period. Thus, they can be
27 identified from Hocking's records. As noted, there are approximately 145 Settlement Class
28 members, making it impracticable to bring them all before the Court.

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

2 The focus on certification is not the merits, but rather what types of questions, “common
3 or individual,” are likely to arise in the action. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th
4 319, 327 (2004). Plaintiff’s claims are predicated primarily on Hocking’s alleged failure to
5 provide meal and rest periods. These claims are commonly certified. *See, e.g., Benton v. Telecom*
6 *Network Specialists*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

7 **3. The Named Plaintiff’s Claims are Typical**

8 Typicality is satisfied where a class representative’s claims are typical of those of the
9 class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). Here,
10 Plaintiff worked for Hocking as a non-exempt employee in California during the proposed Class
11 Period and was subject to the wage and hour policies and practices at issue in this lawsuit. *See*
12 *Declaration of Cristina Jimenez*, ¶¶ 2-5. Thus, typicality is satisfied.

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

14 The adequacy requirement examines conflicts of interest between named parties and the
15 class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Svcs.*, 155
16 Cal.App.4th 676, 697 (2007). Plaintiff and her counsel will adequately represent the Settlement
17 Class, as there are no known conflicts between Plaintiff and the Settlement Class, and as noted
18 above, Plaintiff’s Counsel has significant relevant experience. *Haines Decl.*, ¶¶ 3-8, 25.

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

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

1 The Notice's content satisfies Cal. Rule of Court 3.766(d) because it advises Settlement
2 Class members of the nature of the claims, the basic contentions and denials of the parties and the
3 key terms of the Settlement, the 60-day deadline to opt-out or object to the settlement and the
4 procedures by which to do so, explains the recovery formula and expected recovery amount for
5 each Settlement Class member, and advises that they will be bound by the terms of the settlement
6 if they do not request exclusion. *See* Haines Decl., Exh. A to Exh. 1. The Notice also notifies
7 Settlement Class members of the final approval hearing and provides Class Counsel's contact
8 information. *Id.*

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

10 Finally, the 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* Cal. Rule of Court 3.769.

13 **V. CONCLUSION**

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

17 Dated: February 3, 2022

HAINES LAW GROUP, APC

18
19 By:



20 Paul K. Haines
21 Attorneys for Plaintiff
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