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ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

05/26/2020 at 08:00:00 AM

Clerk of the Superior Court
By Richard Day, Deputy Clerk

**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

**FIRST AMENDED CLASS ACTION
COMPLAINT:**

- (1) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);**
- (2) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (3) REST PERIOD VIOLATIONS
(LABOR CODE § 226.7, 516, 558);**
- (4) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203); and**
- (5) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Cristina Jimenez (“Plaintiff”), on behalf of herself and all others similarly
2 situated, hereby brings this First Amended Class Action Complaint (“Complaint”) against
3 Hocking International Laboratories Incorporated, a California corporation, and DOES 1 to 100,
4 inclusive (collectively “Defendants”), and on information and belief, alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business & Professions
8 Code § 17200 *et seq.*; Labor Code §§ 201-203, 226.7, 512, 516, 558, 1182.12, 1194, 1194.2,
9 1197; and Industrial Welfare Commission Wage Order No. 1-2001 (hereinafter, “Wage Order
10 1”), in addition to seeking injunctive relief, declaratory relief, and restitution.

11 2. This Complaint is brought pursuant to California Code of Civil Procedure § 382.
12 The monetary damages and restitution that Plaintiff seeks exceeds the minimal jurisdictional
13 limits of the Superior Court and will be established according to proof at trial.

14 3. This Court has jurisdiction over Defendants because, upon information and belief,
15 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
16 themselves to the California market so as to render the exercise of jurisdiction over them by the
17 California courts consistent with the traditional notions of fair play and substantial justice.

18 **VENUE**

19 4. Venue as to each Defendant is proper in this judicial district pursuant to California
20 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
21 complained of hereon occurred in the County of San Diego. Defendants own, maintain offices,
22 transact business, have agent(s) within the County of San Diego, and/or otherwise are found
23 within the County of San Diego, and Defendants are within the jurisdiction of this Court for
24 purposes of service of process.

25 **PARTIES**

26 5. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
27 Plaintiff was and currently is, a California resident. During the four years immediately preceding
28 the filing of this action and within the statute of limitations periods applicable to each cause of

1 action pled herein, Defendants employed Plaintiff as a non-exempt employee. Plaintiff was, and
2 is, a victim of Defendants' policies and/or practices complained of herein, lost money and/or
3 property, and has been deprived of the rights guaranteed by California Business & Professions
4 Code § 17200 *et seq.*; Labor Code §§ 201-203, 226.7, 512, 516, 558, 1182.12, 1194, 1194.2,
5 1197; and Wage Order 1, which sets employment standards for the "Manufacturing Industry."

6 6. Plaintiff is informed and believes, and based thereon alleges, that during the four
7 years preceding the filing of this action and continuing to the present, Defendants did (and
8 continue to do) business by providing chemical manufacturing and custom packaging services,
9 and employed Plaintiff and other similarly situated non-exempt employees within San Diego
10 County and the State of California and, therefore, were (and are) doing business in San Diego
11 County and the State of California.

12 7. Plaintiff does not know the true names, identities and capacities, whether
13 individual, corporate, associate or otherwise, of Defendants Does 1 through 100, inclusive, and
14 for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave
15 from this Court to amend this Complaint when such true names and capacities are discovered.
16 Plaintiff is informed, and believes, and based thereon alleges, that each of said fictitious
17 defendants, whether individual, partners, or corporate, were responsible in some manner for the
18 acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined
19 in Paragraph 16) to be subject to the unlawful employment practices, wrongs, injuries and
20 damages complained of herein.

21 8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
22 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

23 9. At all times herein mentioned, each of said Defendants participated in the doing
24 of the acts hereinafter alleged to have been done by the named Defendants. Furthermore, the
25 Defendants, and each of them, were the agents, servants, and employees of each and every one of
26 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
27 were acting within the course and scope of said agency and employment. Defendants, and each
28 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or

omissions complained of herein.

10. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Plaintiff further alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

GENERAL FACTUAL ALLEGATIONS

11. Defendants employed Plaintiff as a non-exempt Label Worker and Production Worker (or similarly titled positions) from approximately November 2010 to on or about October 3, 2018. Throughout Plaintiff's employment with Defendants, Plaintiff worked at Defendants' facility in San Marcos, California.

12. At all times relevant herein, Defendants failed to provide Plaintiff and other non-exempt employees with legally-compliant meal periods. Due to work demands that Defendants imposed, Plaintiff and other non-exempt employees often were unable to take a meal period prior to the completion of the fifth hour of work, and often received less than 30 minutes for their meal period. For instance, during the pay period from July 12, 2017 through July 25, 2017, each of Plaintiff's meal periods began after the fifth hour of work, and was less than 30-minutes. Plaintiff's corresponding wage statement with a pay date of July 28, 2017 does not reflect any payment of meal period premiums. Further, upon information and belief, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that Plaintiff and other non-exempt employees were not provided with a legally-compliant meal period.

13. Defendants also failed to authorize and permit Plaintiff and other non-exempt employees from taking all legally-compliant rest periods due to work demands. Specifically, on occasion, Plaintiff's supervisor, Rick Kennedy, instructed her to delay taking her rest period. Additionally, Plaintiff was occasionally required to clock out prior to receiving her second rest period, resulting in an unpaid rest period. Notwithstanding these violations, Defendants failed to compensate Plaintiff and other non-exempt employees with the required rest period premium for

each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7. Upon information and belief, Defendants maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that Plaintiff and other non-exempt employees were not provided with a legally-compliant rest period.

14. Further, Defendants implemented a policy and/or practice of failing to pay for all hours worked. Specifically, Defendants occasionally failed to compensate Plaintiff for her second rest period by requiring her to take said rest period off the clock. As a result of this policy and/or practice, Defendants failed to compensate Plaintiff for all hours worked at least at the minimum wage.

15. As a result of Defendants' failure to pay all minimum wages, and all meal and rest period premiums, Defendants failed to pay Plaintiff all wages owed at the time of her separation of employment with Defendants.

CLASS ACTION ALLEGATIONS

16. **Class Definitions:** Plaintiff brings this action on behalf of herself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- a. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours and received an unpaid rest period, during the four years immediately preceding the filing of this action through the present.
- b. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who worked a shift greater than 5.0 hours without a meal period of at least 30 minutes in duration commencing prior to the conclusion of the fifth hour of work reflected in their timekeeping records, and who do not have a corresponding meal period premium payment made for such shifts, during the four years immediately preceding the filing of this action through the present.
- c. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5

hours and received an unpaid rest period, during the four years immediately preceding the filing of this action through the present.

- d. The Waiting Time Class consists of all formerly employed members of the Minimum Wage Class, Meal Period Class, and/or Rest Period Class who separated their employment from Defendants in the three years immediately preceding the filing of this action through the present.

17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of each of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

18. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated non-exempt employees, which predominate over questions affecting only individual members including, without limitation to:

- a. Whether Defendants' policies and/or practices resulted in the failure to properly compensate Plaintiff and members of the Minimum Wage Class for all hours actually worked;
- b. Whether Defendants provided all legally-compliant meal periods to Plaintiff and members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- c. Whether Defendants authorized and permitted all legally-compliant rest periods to Plaintiff and members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516; and
- d. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to Plaintiff and members of the Waiting Time Class at the time of their separation of employment were lawful.

19. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common

1 questions of law set forth above are numerous and substantial and stem from Defendants' policies
2 and/or practices applicable to each individual class member, such as Defendants' uniform policies
3 and/or practices pertaining to compensation for all hours worked, meal and rest periods, and
4 timely paying all final wages upon separation of employment. As such, the common questions
5 predominate over individual questions concerning each individual class member's showing as to
6 their eligibility for recovery or as to the amount of their damages.

7 20. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
8 Defendants employed Plaintiff as a non-exempt employee in California during the statute(s) of
9 limitations period applicable to each cause of action pled in this Complaint. As alleged herein,
10 Plaintiff, like the members of the Classes, was not compensated for all hours worked, did not
11 receive all meal periods, was not authorized and permitted to take all rest periods, and did not
12 receive all final wages owed to her upon her separation of employment with Defendants.

13 21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
14 to represent fairly and adequately the interests of the members of the Classes. Moreover,
15 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of
16 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
17 and-hour class actions in state and federal courts in the past and are committed to vigorously
18 prosecuting this action on behalf of the members of the Classes.

19 22. **Superiority:** The California Labor Code is broadly remedial in nature and serves
20 an important public interest in establishing minimum working conditions and standards in
21 California. These laws and labor standards protect the average working employee from
22 exploitation by employers who have the responsibility to follow the laws and who may seek to
23 take advantage of superior economic and bargaining power in setting onerous terms and
24 conditions of employment. The nature of this action and the format of laws available to Plaintiff
25 and members of the Classes make the class action format a particularly efficient and appropriate
26 procedure to redress the violations alleged herein. If each employee were required to file an
27 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
28 would be able to exploit and overwhelm the limited resources of each individual plaintiff with

1 their vastly superior financial and legal resources. Moreover, requiring each member of the
2 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
3 employees who would be disinclined to file an action against their former and/or current employer
4 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
5 employment. Further, the prosecution of separate actions by the individual class members, even
6 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
7 with respect to the individual class members against Defendants herein; and which would
8 establish potentially incompatible standards of conduct for Defendants; and/or legal
9 determinations with respect to individual class members which would, as a practical matter, be
10 dispositive of the interest of the other class members not parties to adjudications or which would
11 substantially impair or impede the ability of the class members to protect their interests. Further,
12 the claims of the individual members of the Class are not sufficiently large to warrant vigorous
13 individual prosecution considering all of the concomitant costs and expenses attending thereto.
14 As such, the Classes are maintainable as classes under § 382 of the Code of Civil Procedure.

15 **FIRST CAUSE OF ACTION**

16 **MINIMUM WAGE VIOLATIONS**

17 **(AGAINST ALL DEFENDANTS)**

18 23. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 24. Wage Order 1, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
20 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
21 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
22 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
23 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
24 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
25 their pay practices to the requirements of the law by failing to pay Plaintiff and members of the
26 Minimum Wage Class for all hours actually worked including, but not limited to, all hours they
27 were subject to the control of Defendants and/or suffered or permitted to work under the
28 California Labor Code and Wage Order 1.

1 25. California Labor Code § 1198 makes unlawful the employment of an employee
2 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
3 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
4 those employees the balance of the unpaid wages as well as liquidated damages in an amount
5 equal to the wages due and interest thereon.

6 26. As a direct and proximate result of Defendants' unlawful conduct as alleged
7 herein, Plaintiff and members of the Minimum Wage Class have sustained economic damages,
8 including but not limited to, unpaid wages and lost interest in an amount to be established at trial,
9 and they are entitled to recover economic and statutory damages and penalties and other
10 appropriate relief as a result of Defendants' violations of the California Labor Code and Wage
11 Order 1.

12 27. Defendants' practice and uniform administration of corporate policy regarding
13 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
14 members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
15 liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs
16 of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198, and Code of
17 Civil Procedure § 1021.5.

18 **SECOND CAUSE OF ACTION**

19 **MEAL PERIOD VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

21 28. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

22 29. Defendants failed to provide Plaintiff and members of the Meal Period Class with
23 proper meal periods in accordance with the mandates of the California Labor Code and Wage
24 Order 1. As such, Defendants are responsible for paying premium compensation for meal period
25 violations pursuant to Labor Code §§ 226.7, 512, and 558, and Wage Order 1.

26 30. Plaintiff is informed and believes that Defendants maintained a policy and/or
27 practice of failing to pay meal period premiums at the employee's regular rate of pay, despite
28 Plaintiff not being provided with a legally-compliant meal period. As a result, Plaintiff is owed

unpaid wages per California Labor Code §§ 204, 210 and 558, and meal period premium payments per California Labor Code § 512 and 226.7, including interest thereon, statutory penalties, civil penalties, reasonable attorney's fees, and costs of suit.

THIRD CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

31. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

32. Wage Order 1, § 12 and Labor Code §§ 226.7 and 516 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

33. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take their legally entitled rest periods. Defendants also failed to compensate Plaintiff and members of the Rest Period Class for each rest period to which they were entitled while working.

34. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

35. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

36. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of their intent to quit. In the event the employee provides less than 72 hours of notice of their intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

1 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
3 at their separation from employment, including minimum wages for all hours worked.

4 38. Furthermore, Plaintiff is informed and believes, and based thereon alleges, that as
5 a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
6 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
7 to the requirements of Labor Code §§ 201-203.

8 39. Defendants' failure to pay all final wages was willful within the meaning of Labor
9 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
10 Time Class their earned wages upon separation from employment results in a continued payment
11 of wages up to thirty days from the time the wages were due.

12 40. Therefore, Plaintiff and members of the Waiting Time Class are entitled to
13 compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

14 **FIFTH CAUSE OF ACTION**

15 **UNFAIR COMPETITION**

16 **(AGAINST ALL DEFENDANTS)**

17 41. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 42. Defendants have engaged and continue to engage in unfair and/or unlawful
19 business practices in California in violation of Business and Professions Code § 17200 *et seq.* by:
20 (a) failing to compensate Plaintiff and members of the Minimum Wage Class for all hours worked;
21 (b) failing to provide Plaintiff and members of the Meal Period Class with all meal periods to
22 which they are entitled, or failing to pay them meal period premium payments in lieu thereof; (c)
23 failing to authorize and permit all required duty-free rest periods to Plaintiff and members of the
24 Rest Period Class, and/or failing to pay them rest period premiums payments in lieu thereof; and
25 (d) failing to timely pay all wages owed upon separation to Plaintiff and members of the Waiting
26 Time Class.

27 43. Defendants' utilization of these unfair and/or unlawful business practices deprived
28 Plaintiff and continues to deprive members of the Classes of compensation to which they are

legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

44. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

45. The acts complained of herein occurred within the last four years immediately preceding the filing of this action.

46. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which she is entitled to recover under Code of Civil Procedure § 1021.5.

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
6. Upon the Third Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
7. Upon the Fourth Cause of Action, for statutory waiting time penalties pursuant to

1 Labor Code §§ 201-203;

2 8. Upon the Fifth Cause of Action, for restitution to Plaintiff of all money and/or
3 property unlawfully acquired by Defendants by means of any acts or practices declared by this
4 Court to be in violation of Business and Professions Code § 17200 *et seq.*;

5 9. Prejudgment interest on all due and unpaid wages pursuant to California Labor
6 Code § 218.6, and Civil Code §§ 3287 and 3289;

7 10. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
8 1194, and Code of Civil Procedure § 1021.5; and

9 11. For such other and further relief the Court may deem just and proper.

10
11 Dated: March 25, 2020

HAINES LAW GROUP, APC

12
13 By: 

Paul K. Haines
Attorneys for Plaintiff

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16 **DEMAND FOR JURY TRIAL**

17 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

18 Dated: March 25, 2020

HAINES LAW GROUP, APC

19
20 By: 

Paul K. Haines
Attorneys for Plaintiff