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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

OSMIN CALDERON, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

DYNAMO AVIATION, INC., a California
corporation; ADP TOTALSOURCE, INC., a
Florida corporation; and DOES 1 through 20,
inclusive,

Defendants.

Case No.: 21STCV17630

*[Case assigned for all purposes to the Hon.
Alison Mackenzie, Dept. 55]*

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

Date: June 11, 2024
Time: 8:30 a.m.
Dept.: 55

Reservation ID: 409140653587

Complaint Filed: May 11, 2021
Trial Date: None Set

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on June 11, 2024, at 8:30 a.m. in Department 55 of the above-entitled Court, located at 111 N. Hill Street, Los Angeles, California 90012, Plaintiff Osmin Calderon (“Plaintiff”) individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Settlement Class defined as follows:

All former non-exempt employees who worked for Defendant Dynamo Aviation, Inc., in California at any time from November 2, 2018 through March 16, 2023 (the “Class Period”), and who did not sign an arbitration agreement.
3. Preliminary appointment of Plaintiff Osmin Calderon as Class Representative;
4. Preliminary appointment of Paul K. Haines and Sean M. Blakely of Haines Law Group, APC, as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit a Class Representative Enhancement Payment to Plaintiff, civil penalties payable to the LWDA, settlement administration costs, and attorneys’ fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Class Notice and an order that it be disseminated to the 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 supporting declarations of Paul K. Haines, Sean M. Blakely, Plaintiff Osmin
3 Calderon, and Kevin Lee of Phoenix Settlement Administrators, and the exhibits attached thereto,
4 the pleadings, and other papers filed in this Action, and on any further oral or documentary
5 evidence or argument presented at the time of the hearing. Defendant does not intend to oppose
6 this Motion, and given the multiplicity of issues addressed in this Motion, has indicated its
7 approval of Plaintiff's expressed need to exceed the 20-page limit set forth in California Rule of
8 Court 3.764(c)(2). Therefore, Plaintiff requests the Court's consideration of Plaintiff's
9 memorandum of points and authorities, which is 24 pages in length.

10
11 Respectfully submitted,

12 Dated: February 15, 2024

HAINES LAW GROUP, APC

13
14 By: 
15 Paul K. Haines
16 Sean M. Blakely
17 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Osmin Calderon (hereinafter “Plaintiff”) brought this class and representative
4 action for various wage and hour violations on behalf of former non-exempt employees who
5 worked for Defendant Dynamo Aviation, Inc. (“Dynamo”), in California at any time from
6 November 2, 2018 through March 16, 2023 (the “Class Period”), and who did not sign an
7 arbitration agreement. Plaintiff’s primary allegations are that Dynamo failed to pay all minimum
8 and overtime wages, failed to provide all legally compliant meal and rest periods, and failed to
9 reimburse employees for necessary business expenditures. As a result of these alleged violations,
10 Plaintiff also brought derivative claims for Dynamo’s alleged failure to pay all final wages owed,
11 failure to issue accurate and compliant wage statements, and for civil penalties under the Private
12 Attorneys’ General Act (“PAGA”).¹

13 Plaintiff now respectfully requests that this Court preliminarily approve this non-
14 reversionary, common-fund class action settlement,² in which Dynamo has agreed to pay Two
15 Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) to the following Settlement Class:
16 All former non-exempt employees who worked for Defendant Dynamo
17 Aviation, Inc., in California at any time from November 2, 2018 through
18 March 16, 2023 (the “Class Period”), and who did not sign an arbitration
19 agreement.

20 If the Settlement is approved, Dynamo will pay a non-reversionary Maximum Settlement
21 Amount (“MSA”) of \$250,000.00. After deducting administration costs, Plaintiff’s requested
22 class representative Enhancement Payment, the amount designated as PAGA civil penalties, and

23 ¹ Plaintiff’s operative First Amended Class and Representative Action Complaint (“FAC”) pleads
24 the following causes of action: (1) minimum wage violations; (2) failure to pay all overtime
25 wages; (3) meal period violations; (4) rest period violations; (5) waiting time penalties; (6) wage
26 statement penalties; (7) failure to reimburse employees for necessary business expenditures; (8)
27 failure to permit inspection of personnel and payroll records; (9) unfair competition; and (10) civil
28 penalties under the PAGA.

² The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Sean M. Blakely
as **Exhibit A**. The proposed Class Notice and Notice of Estimated Individual Settlement Payment
are attached to the Settlement as **Exhibits 1** and **2**, respectively. All defined terms in this motion
have the same definition as that in the Settlement.

requested attorneys' fees and costs, the Net Settlement Amount ("NSA") of approximately \$94,166.67 will be distributed to all Settlement Class members who do not opt-out of the Settlement based on the proportionate number of workweeks worked by each Settlement Class member during the Class Period. Additionally, all non-exempt, hourly-paid employees of Dynamo who worked in California from January 8, 2020 through March 16, 2023 ("PAGA Period") (these employees will be referred to as "PAGA Group") will also receive a portion of the \$5,000 PAGA Amount based on the proportionate number of pay periods worked during the PAGA Period.

Significantly, Settlement Class members do not need to file a claim to reap the financial benefits of the Settlement, as all Settlement Class members will automatically receive a payment unless they affirmatively opt-out. There are approximately 130 Settlement Class members, and the average payment to participating Settlement Class members is projected to be approximately \$724.36.

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

II. SUMMARY OF THE LITIGATION

A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

In operation since 1986, Dynamo is an FAA approved manufacturer of custom engineered products serving aircraft manufacturers, airlines, and aircraft operators. *See* Declaration of Sean M. Blakely ("Blakely Decl."), ¶ 8. Dynamo operates out of two facilities in Chatsworth, California, and manufactures refrigerators, wine chillers, cold storage units, microwaves, coffee makers and other products for aircraft use. *Id.* Plaintiff worked for Dynamo as a non-exempt employee in the position of "Store Clerk" from approximately May 2014 until approximately July 2020. *See* Declaration of Osmin Calderon In Support of Approval of Class Action Settlement ("Calderon Decl."), ¶ 2.

On May 11, 2021, Plaintiff filed his Complaint in Los Angeles County Superior Court, alleging several wage and hour violations. Blakely Decl., ¶ 9. On January 8, 2021, Plaintiff sent his PAGA notice letter to the Labor and Workforce Development Agency (“LWDA”). *Id.*, Exhibit B. On November 2, 2022, Plaintiff filed the operative First Amended Class and Representative Action Complaint (“FAC”) alleging that Dynamo: (i) failed to pay all minimum wages; (ii) failed to pay all overtime wages; (iii) failed to provide all lawful meal periods; (iv) failed to authorize and permit all rest periods; (v) failed to pay all final wages due upon separation of employment; (vi) failed to issue accurate, itemized wage statements; (vii) failed to reimburse employees for necessary business expenditures; (viii) failed to permit inspection of personnel and payroll records; (ix) engaged in unfair competition in violation of California Business & Professions Code § 17200 *et seq.*; and (x) is liable for civil penalties under the PAGA. *Id.*

B. PLAINTIFF’S CLAIMS AND DYNAMO’S DEFENSES

1. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices

Plaintiff alleges that Dynamo’s timekeeping policies and/or practices resulted in Plaintiff and other non-exempt employees not being compensated for all hours actually worked. Blakely Decl., ¶ 14. Specifically, Plaintiff alleges Dynamo required employees to undergo temperature checks during the COVID-19 pandemic prior to clocking into their shift. *Id.* As a result of these policies/practices, Plaintiff alleges Dynamo failed to compensate Plaintiff and other non-exempt employees for all minimum and overtime wages owed. *Id.*

However, Dynamo counters that its timekeeping policies/practices complied with California law and that it has always properly compensated Settlement Class members for all hours worked throughout the Class Period. Blakely Decl., ¶ 14. Dynamo further contends that Settlement Class members did not work off-the-clock and that its policies specifically disavow such off-the-clock work. *Id.* Dynamo further argues that Plaintiff’s off-the-clock claim is not appropriate for class treatment. *Id.*; *see, e.g., Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1052 (2012) (affirming denial of off-the-clock subclass, “[p]roof of off-the-clock liability would have had to continue in an employee-by-employee fashion, demonstrating who worked off the clock, how long they worked, and whether Brinker knew or should have known

1 their work.”).

2 **2. Meal Period Claims**

3 Plaintiff alleges Dynamo failed to provide legally compliant first meal periods because
4 Dynamo’s policies/practices failed to provide Plaintiff and other non-exempt employees with a
5 timely, duty-free, and uninterrupted 30-minute meal period commencing before the end of the
6 fifth hour of work. Blakely Decl., ¶ 15. Plaintiff further alleges that Settlement Class members
7 were not provided with second meal periods when they worked shifts in excess of 10.0 hours in
8 a workday. *Id.*, at ¶ 16.

9 Dynamo counters it has maintained compliant written meal period policies throughout the
10 Class Period and has always provided compliant meal periods in line with those policies. Blakely
11 Decl., ¶ 15. Dynamo further contends that it always *provides* employees the opportunity to take
12 meal periods and is not required to *ensure* they are taken. *Id.*; see *Brinker Rest. Corp. v. Sup. Ct.*,
13 53 Cal.4th 1004, 1034 (2012) (rejecting “ensure” standard). Thus, Dynamo argues that any
14 missed, late or short meal periods resulted from lawful employee choice rather than any policy
15 and/or practice of Dynamo. Blakely Decl., ¶ 15. Additionally, Dynamo maintains that employees
16 voluntarily waived their second meal period when they worked shifts in excess of 10.0 hours (but
17 less than 12.0 hours), as they are entitled to do under Labor Code § 512. *Id.*, at ¶ 16. Finally,
18 Dynamo argues that these claims are not suited for class treatment, as individual inquiries would
19 be needed to assess which employees took non-compliant meal periods or missed meal periods,
20 how many meal periods were non-compliant or missed, and the reasons why a particular
21 employee did not take a compliant meal period on a particular shift. *Id.*, at ¶¶ 15-16.

22 **3. Rest Period Claims**

23 Plaintiff alleges Dynamo failed to authorize and permit all required off-duty rest periods.
24 Blakely Decl., ¶ 17. Specifically, Plaintiff alleges he was not authorized or permitted to take any
25 off-duty rest period during his work shifts due to work demands imposed by Dynamo. *Id.*
26 Additionally, Plaintiff alleges that Dynamo’s written rest period policy was unlawful in that it
27 prohibited employees from leaving Dynamo’s premises during off-duty rest periods. *Id.*

28 Dynamo counters that it has maintained compliant written rest period policies throughout

1 the Class Period and has always authorized and permitted employees a 10-minute rest period for
2 each four (4) hours worked, or major fraction thereof, as required under the Wage Order, and that
3 any failure to take rest periods was a result of employee choice, rather than any Dynamo policy
4 and/or practice. Blakely Decl., ¶ 17. Dynamo also argues that Plaintiff's rest period claim is not
5 amenable to class treatment, since individual inquiries would be required to determine which
6 employees failed to take rest periods, how many rest periods they failed to take, and the reasons
7 why each employee failed to take rest period(s) on a particular shift. *Id.* These manageability
8 concerns are especially present with respect to rest period claims, Dynamo argues, given that rest
9 periods are not recorded. *Id.*

10 **4. Unreimbursed Business Expenses**

11 Plaintiff alleges that Dynamo required Plaintiff and other non-exempt employees to use
12 their personal cellular phones to perform essential job duties. Blakely Decl., ¶ 18. Despite
13 requiring Plaintiff and other non-exempt employees to incur these expenses on a daily basis,
14 Plaintiff alleges that Dynamo failed to reimburse Settlement Class members for these necessary
15 business expenses, in violation of Labor Code § 2802(a) ("An employer shall indemnify his or
16 her employee for all necessary expenditures or losses incurred by the employee in direct
17 consequence of the discharge of his or her duties.") Blakely Decl., ¶ 18; *see also Cochran v.*
18 *Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014) (holding employer must reimburse
19 use of personal cell phone, even where employee already has "unlimited" plan).

20 Dynamo maintains that Settlement Class members were not required to use their personal
21 cellular phones as part of their job. Blakely Decl., ¶ 18. Dynamo further argues that any expenses
22 incurred by Settlement Class members were extremely minimal, given the wide availability of
23 low-cost cellular phone plans. *Id.* Dynamo further contends that this claim would require
24 individual inquiries into whether Settlement Class members actually used their personal cellular
25 phones for work purposes, how much expense they incurred, whether they submitted a request
26 for reimbursement, and the reasonableness of that expense, thus precluding class certification.
27 *Id.*; *see also, e.g., Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007) ("In
28 calculating the reimbursement amount due under section 2802, the employer may consider not

1 only the actual expenses that the employee incurred, but also whether each of those expenses was
2 ‘necessary,’ which in turn depends on the reasonableness of the employee’s choices”).

3 **5. Wage Statement Claims**

4 As a result of the unpaid wages and unpaid meal and rest period premium wages described
5 above, Plaintiff alleges that Dynamo is liable for wage statement penalties. Blakely Decl., ¶ 19.

6 However, Dynamo argues any alleged wage statement violations were not “knowing and
7 intentional,” and Plaintiff cannot show he or other employees “suffer[ed] injury” due to the
8 alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of
9 penalties. Blakely Decl., ¶ 19. Further, Dynamo contends its wage statements always accurately
10 reflected hours worked and amounts paid as well as all other required information, precluding
11 liability for wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th
12 1308, 1336-37 (2018) (agreeing with employer’s “commonsense position that the pay stubs were
13 accurate in that they correctly reflected the hours worked and the pay received...The purpose of
14 section 226 is to *document the paid wages* to ensure the employee is fully informed regarding the
15 calculation of those wages.”) (Italics in original). Blakely Decl., ¶ 19.

16 **6. Waiting Time Penalties**

17 As a further result of the unpaid wages and unpaid meal and rest period premium wages
18 described above, Plaintiff alleges that Dynamo failed to comply with its final pay obligations set
19 forth in Labor Code §§ 201-203. Blakely Decl., ¶ 20.

20 Dynamo argues that it possesses strong, good faith defenses to Plaintiff’s underlying
21 claims, thus precluding recovery of waiting time penalties, which are only available for the
22 “willful” failure to pay wages. Blakely Decl., ¶ 20; see *also* 8 Cal. Code Regs. § 13520 (“[A]
23 good faith dispute that any wages are due will preclude imposition of waiting time penalties under
24 Section 203 . . . A ‘good faith’ dispute that any wages are due occurs when an employer presents
25 a defense, based in law or fact which, if successful, would preclude any recovery on the part of
26 the employee.”). Dynamo further asserts that Plaintiff’s waiting time penalty exposure was
27 grossly inflated as not every former employee experienced the alleged Labor Code violations.
28 Blakely Decl., ¶ 20.

1 **7. PAGA Civil Penalties**

2 As a result of the foregoing Labor Code violations, Plaintiff alleges that Dynamo is liable
3 for civil penalties under the PAGA. Blakely Decl., ¶ 21. Since Plaintiff's PAGA claim is
4 derivative of Plaintiff's underlying wage claims, Dynamo asserts the PAGA claim would fail with
5 those claims. *Id.*; see *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011) ("Because the
6 underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Dynamo
7 further maintains that, given its good faith defenses, this Court would exercise its discretion to
8 substantially reduce any PAGA penalties if it were to find Dynamo liable for any of Plaintiff's
9 claims. Blakely Decl., ¶ 21; see Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt.,*
10 *Inc.* 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v.*
11 *Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011)
12 (reducing PAGA penalties by over 82% in part because employer "not aware" of violations);
13 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty
14 of just \$5 per pay period where employer made "good faith attempts" to comply with the law).

15 **C. DISCOVERY AND MEDIATION**

16 In connection with mediation, Dynamo provided Plaintiff's counsel with a random
17 sampling of timekeeping and payroll records for its former employees. Blakely Decl., ¶ 10.
18 Dynamo also provided relevant data points such as the total number of former employees and the
19 number of aggregate workweeks worked by its former employees during the Class Period, as well
20 as Dynamo's written policies and other information. *Id.* Plaintiff hired a labor economist with a
21 Ph.D. to assist Plaintiff in conducting a comprehensive analysis and extrapolation of the payroll
22 and timekeeping data produced by Dynamo to create a detailed exposure analysis for all claims
23 at issue. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiff's claims,
24 the chances of certification of Plaintiff's claims, and Dynamo's potential defenses. *Id.*

25 On February 14, 2023, the Parties participated in a full-day mediation with Jeffrey A.
26 Ross, Esq., a well-respected wage and hour class action mediator. Blakely Decl., ¶ 11. During
27 mediation, the Parties vigorously debated their opposing legal positions, the likelihood of
28 certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Id.* Mr. Ross

1 issued a mediator’s proposal for a classwide settlement, which was ultimately accepted by the
2 Parties. *Id.* During the months that followed, the Parties finalized the terms of the Settlement and
3 executed the long-form Settlement Agreement now before the court. *Id.*

4 **III. THE PROPOSED SETTLEMENT**

5 **A. ESSENTIAL TERMS OF THE SETTLEMENT**

6 If the Court preliminarily approves the Settlement, Dynamo will pay a Maximum
7 Settlement Amount (“MSA”) of \$250,000.00. *See* Settlement, ¶ 3. Significantly, this Settlement
8 is non-reversionary, and no Settlement Class member will have to submit a claim form to receive
9 a Settlement Payment. *Id.*, at ¶ 4. Each Settlement Class member will automatically receive a
10 Settlement Payment unless they affirmatively opt out of the Settlement. *Id.* The monetary terms
11 of the Settlement are summarized below:

12	• Maximum Settlement Amount (“MSA”):	\$250,000.00
13	• Minus Court-approved attorneys’ fees:	\$83,333.33
14	• Minus Court-approved verified costs (up to):	\$35,000.00
15	• Minus Court-approved Enhancement Payment:	\$7,500.00
16	• Minus amount set aside as PAGA penalties:	\$20,000.00
17	• <u>Minus estimated settlement administration costs:</u>	<u>\$10,000.00</u>
18	Net Settlement Amount (“NSA”):	\$94,166.67
19	• PLUS 25% “PAGA Payment” to Settlement Class:	\$5,000.00
20	Total Amount Paid to Settlement Class members:	\$99,166.67

21 **1. The Settlement Provides for Reasonable Monetary Payments**

22 After deducting amounts for the Court-approved attorneys’ fees and costs, Class
23 Representative Enhancement Payment to Plaintiff, the amount designated as PAGA civil
24 penalties, and settlement administration costs, the Settlement requires Dynamo to pay a Net
25 Settlement Amount (“NSA”) of at least \$94,166.67 to all Settlement Class members who do not
26 timely opt-out. *See* Settlement, ¶ 4(A). The NSA shall be distributed to each participating
27 Settlement Class member based on their proportionate number of workweeks worked during the
28 Class Period. Settlement, ¶ 4(B)(i). Additionally, Five Thousand Dollars (\$5,000.00) of the
Maximum Settlement Amount has been designated as the “PAGA Amount” and shall be
distributed to the PAGA Group members (including those who submit a valid and timely Request
for Exclusion from the class action settlement) who were employed during the PAGA Period (i.e.,

January 8, 2020 through March 16, 2023) proportionally based on the number of pay periods worked during the PAGA Period. Settlement, ¶¶ 1, 4(B)(ii).

According to Dynamo, there are approximately 130 Settlement Class members. Blakely Decl., ¶ 13. Therefore, the average Settlement Payment from the NSA is projected to be approximately \$724.36. *Id.* Settlement Class members will have sixty (60) calendar days from the mailing of the Notice Packets to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, ¶¶ 9(C)-(D). Those Settlement Class members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Dynamo included within the Settlement. *See Id.*, at ¶ 2(A).

2. Attorneys' Fees and Costs, Enhancement Payment, and PAGA Payment

Plaintiff will apply for Class Representative Enhancement Payment at the time of seeking final approval of the proposed class action settlement in the amount of \$7,500.00 for his service to the Settlement Class. *See* Settlement, ¶¶ 3(C)(3), 6; Blakely Decl., ¶ 25. “[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the time of final approval, Plaintiff’s requested Enhancement Payment is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, discussing the claims and theories at issue in the litigation, actively participating in the prosecution of his claims, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Settlement, ¶¶ 3(C)(3), 6; Blakely Decl., ¶ 25; *see also* Calderon Decl.

Class Counsel will also apply for an attorneys’ fees award of one-third of the Maximum Settlement Amount, which is currently estimated to be \$83,333.33, and up to \$35,000.00 in verified costs reimbursement. *See* Settlement, ¶¶ 3(C)(4), 5; Blakely Decl., ¶ 24. Plaintiff submits

1 the requested fee is fair compensation for undertaking complex, risky, expensive, and time-
2 consuming litigation on a purely contingent fee basis. *Id.* Class Counsel has incurred substantial
3 attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal
4 research, conducting extensive informal discovery, analyzing Settlement Class members'
5 timekeeping and payroll records with the help of its retained expert, creating a comprehensive
6 damages model, preparing for and attending mediation, negotiating and preparing the long-form
7 Settlement Agreement, preparing this Motion, and otherwise litigating the case. *Id.* Class Counsel
8 expects to expend additional attorney time in attending the hearing on this Motion, overseeing the
9 Notice process and fielding questions from Settlement Class members, preparing the final
10 approval papers, and attending the Final Approval hearing. *Id.*

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

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

24 Additionally, the parties have agreed to designate \$20,000.00 of the Maximum Settlement
25 Amount as PAGA civil penalties, of which \$15,00.00 (75%) will be paid to the LWDA, with the
26 remaining \$5,000.00 (25%) for distribution to the PAGA Group members, as the PAGA requires
27 such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, ¶ 3(C)(5). Plaintiff
28 submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v.*

1 *Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal.
2 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund
3 settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D.
4 Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund
5 settlement).

6 **IV. ARGUMENT**

7 **A. PRELIMINARY APPROVAL IS WARRANTED**

8 California Rule of Court 3.769 conditions settlement of a class action on court approval,
9 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
10 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
11 (2012) (Rule 3.769 requires trial court to determine “that the settlement is fair, reasonable and
12 adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule
13 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally fair,
14 adequate, and reasonable”). Settlement is the preferred means of dispute resolution, particularly
15 in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
16 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the
17 agreement taken as a whole is fair. *See e.g., Hanlon*, supra, 150 F.3d at 1027. There is an initial
18 presumption of fairness where, as here, the Settlement was negotiated at arm’s-length by class
19 counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.,*
20 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

21 **1. Standard for Preliminary Approval**

22 To make a fairness determination, the Court should consider several factors, including:
23 “the strength of Plaintiffs’ case, the risk, expense, complexity and likely duration of further
24 litigation, the risk of maintaining class action status through trial, the amount offered in
25 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
26 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
27 “The list of factors is not exclusive, and the court is free to engage in a balancing and weighing
28 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,

91 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

a. The Strength of Plaintiff's Case

Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described above in section II.B., *supra*, Dynamo presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. Thus, while Plaintiff was 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 prior to mediation, the parties still had significant formal discovery to complete had the matter not been settled. Blakely Decl., ¶ 23. This would have required the expenditure of substantial time and resources by both Parties that would have very likely spanned several years. *Id.* Even if Plaintiff were to certify the proposed classes, the parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id.* The Settlement avoids those risks and the accompanying delay and expense, and thus this factor supports preliminary approval. *Id.*

c. Risk of Maintaining Class Action Status

Plaintiff has not yet filed his motion for class certification, and as such, the extent to which Plaintiff's 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 Dynamo with individual class members by way of *Pick-up-Stix* type settlement agreements³), and the expected recovery could

³ 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.

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.

d. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a positive recovery for the Settlement Class in the face of disputed claims. Plaintiff conducted a detailed analysis of underpaid wages, potential meal and rest period premium payments owing, failure to reimburse employees for necessary business expenditures, wage statement penalties, waiting time penalties, and PAGA civil penalties. A summary of the results of Plaintiff's exposure analysis are discussed below:

Unpaid Wages: \$9,335

Plaintiff alleges that Dynamo required Plaintiff and other non-exempt employees to undergo temperature screenings off-the-clock, resulting in Plaintiff and other non-exempt employees not being compensated for all hours actually worked. Blakely Decl., ¶ 14. Plaintiff estimated that the failure to compensate employees for required temperature checks resulted in approximately 1,210 hours of unpaid time. *Id.* Because employees generally worked shifts of at least eight (8) hours, Plaintiff contends that these unpaid wages must be paid at an overtime rate of pay. *Id.* Therefore, Plaintiff estimates Dynamo's maximum exposure for this claim at approximately \$41,491 (1,210 unpaid hours * \$34.29 average overtime rate of pay). *Id.*

As noted above, Dynamo counters that its timekeeping policies/practices complied with California law and that it has always properly compensated Settlement Class members for all hours worked throughout the Class Period. Blakely Decl., ¶ 14. Dynamo further contends that Settlement Class members did not work off-the-clock and that its policies specifically disavow such off-the-clock work. *Id.* Dynamo further argues that Plaintiff's off-the-clock claim is not appropriate for class treatment. *Id.* Based on these defenses, Plaintiff discounted the estimated maximum amount by 55% for risk of non-certification, and by an additional 50% to account for risk of losing on the merits or failure to recover the maximal amount sought, to arrive at an estimated exposure of approximately \$9,335. *Id.*

First Meal Period Violations: \$24,514

Based on Plaintiff's expert's review and extrapolation of Dynamo's timekeeping records,

1 there are approximately 4,766 shifts that reflect a potential first meal period violation. Blakely
2 Decl., ¶ 15. Therefore, Plaintiff estimates Dynamo’s maximum exposure for first meal period
3 violations at approximately \$108,951 (4,766 non-compliant first meal periods * \$22.86 average
4 meal period premium). *Id.*

5 However, Dynamo contends that it has maintained compliant written meal period policies
6 throughout the Class Period and have always provided its employees the *opportunity* to take
7 legally compliant meal periods, and that it is not required to “ensure” meal periods are taken.
8 Blakely Decl., ¶ 15. Dynamo also argues this claim is not suited for class treatment, as individual
9 inquiries would be needed to assess which employees took non-compliant meal periods or missed
10 meal periods, how many meal periods were non-compliant or missed, and the reasons why a
11 particular employee did not take a compliant meal period on a particular shift. *Id.* Based on these
12 defenses, Plaintiff discounted the maximum amount by 55% for risk of non-certification, and an
13 additional 50% for risk of losing on the merits or failing to recover the full amount sought, to
14 arrive at an estimated exposure of approximately \$24,514. *Id.*

15 **Second Meal Period Violations: \$10,755**

16 Plaintiff’s expert’s analysis of the timekeeping data showed that during the Class Period,
17 there were approximately 2,987 shifts worked in excess of 10.0 hours where a second meal period
18 violation occurred without a first meal period violation. Blakely Decl., ¶ 16; *see United Parcel*
19 *Service, Inc. v. Superior Court*, 196 Cal.App.4th 57, 70 (2011) (“[E]mployees in this case may
20 recover up to two additional hours of pay on a single work day for meal period and rest period
21 violations – one for failure to provide a meal period and another for failure to provide a rest
22 period”). Therefore, Plaintiff calculates Dynamo’s maximum exposure for second meal period
23 violations at approximately \$68,283 (2,987 second meal period violations * \$22.86 meal period
24 premium). Blakely Decl., ¶ 16.

25 However, Plaintiff’s theory of liability carried significant risks of both non-certification
26 and on the merits if Plaintiff was able to certify this claim, based on, *inter alia*, Dynamo’s
27 argument that it has maintained compliant written meal period policies throughout the Class
28 Period, and Settlement Class members voluntarily waived their second meal period on shifts in

1 excess of 10.0 hours but less than 12.0 hours per Labor Code § 512. Blakely Decl., ¶¶ 15-16. In
2 light of these risks, Plaintiff discounted the maximum amount that the class could potentially
3 recover by 55% for a risk of non-certification, and an additional 65% for a risk of losing on the
4 merits, or having exposure reduced due to Dynamo's waiver arguments, to arrive at estimated
5 exposure of approximately \$10,755. *Id.*

6 Rest Period Violations: \$98,700

7 As indicated above, Plaintiff alleges Dynamo failed to authorize and permit Plaintiff and
8 other non-exempt employees to take duty-free 10-minute rest periods for every four hours
9 worked, or major fraction thereof, due to Dynamo's work demands, and because Dynamo
10 prevented employees from leaving the premises during off-duty rest periods. Blakely Decl., ¶ 17.
11 Based on Plaintiff's expert's analysis and extrapolation of Dynamo's timekeeping records,
12 Plaintiff estimates there were approximately 30,840 shifts in excess of 3.5 hours during the Class
13 Period, entitling employees to at least one (1) rest period. *Id.* Therefore, Plaintiff estimates
14 Dynamo's maximum potential exposure for rest period violations at approximately \$705,002
15 (30,840 rest period violations * \$22.86 average premium). *Id.*

16 However, Dynamo contends it has maintained and enforced compliant written rest period
17 policies/practices and has always authorized and permitted employees a 10-minute rest period for
18 each 4 hours worked, and that any failure to take rest periods was as a result of employee choice,
19 rather than any Dynamo policy and/or practice. Blakely Decl., ¶ 17. Dynamo further argues that
20 Plaintiff's rest period claim is not amenable to class treatment, since individual inquiries would
21 be required to determine which employees failed to take rest periods, how many rest periods they
22 failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift.
23 *Id.* These manageability concerns are especially present with respect to rest period claims,
24 Dynamo argues, given that rest periods are not recorded. *Id.* Given these defenses, Plaintiff
25 discounted this maximum amount by 65% for risk of non-certification, and an additional 60% for
26 a risk of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive
27 at an estimated realistic exposure of approximately \$98,700. *Id.*

28 ///

1 Failure to Reimburse Necessary Business Expenditures: \$7,710

2 Plaintiff alleges that Dynamo failed to reimburse Plaintiff and other Settlement Class
3 members for personal cellular phone expenses. Blakely Decl., ¶ 18. Based on Plaintiff's analysis
4 and extrapolation of Dynamo's records, Plaintiff estimates that Settlement Class members have
5 worked a total of approximately 1,542 aggregate months during the Class Period. *Id.* Using a
6 conservative estimate of \$20 per month in reasonable work-related personal cellular phone use,
7 Plaintiff calculates Dynamo's maximum exposure for this claim at approximately \$30,840
8 (\$20.00/month * 1,542 months). *Id.*

9 As noted above, Dynamo maintains that Settlement Class members were not required to
10 use their personal cellular phones as part of their job. Blakely Decl., ¶ 18. Dynamo further argues
11 that any expenses incurred by Settlement Class members were minimal, given the wide
12 availability of low-cost cellular phone plans. *Id.* Dynamo further argues that this claim would
13 require individual inquiries into whether Settlement Class members actually used their personal
14 cellular phones for work purposes, how much expense they incurred, whether they submitted a
15 request for reimbursement, and the reasonableness of that expense, thus precluding class
16 certification. *Id.* Based on these defenses, Plaintiff discounted the estimated maximum amount
17 by 50% for risk of non-certification, and by an additional 50% to account for risk of losing on the
18 merits or failure to recover the maximal amount sought, to arrive at an estimated exposure of
19 approximately \$7,710. *Id.*

20 Wage Statement Penalties: \$26,396

21 Plaintiff alleges that Dynamo is liable for wage statement penalties as a result of the
22 unpaid wages and unpaid meal and rest period premiums. Blakely Decl., ¶ 19. Those penalties
23 are calculated as \$50 for each "initial" violation and \$100 for each "subsequent" violation, with
24 a maximum of \$4,000 per employee. *Id.*; see Labor Code § 226(e). Plaintiff's analysis reflected
25 that there were approximately 83 unique employees and approximately 1,345 pay periods worked
26 during the liability period applicable to Plaintiff's wage statement claim. *Id.* Therefore, Plaintiff
27 calculated Dynamo's maximum wage statement exposure at approximately \$130,350 ([83
28 "initial" violations * \$50] + [1,262 "subsequent" violations * \$100]). *Id.*; see also Labor Code §

1 226(e).

2 In light of Dynamo's arguments that no violations occurred, that employees suffered no
3 "injury," that any alleged violations were not "knowing and intentional," that the wage statements
4 always accurately reflected hours worked and amounts paid to employees, as well as risks
5 associated with Plaintiff's underlying claims discussed above, Plaintiff discounted the maximum
6 exposure by 55% for risk of non-certification, and by an additional 55% for risk of being
7 unsuccessful on the merits, for an estimated realistic exposure of approximately \$26,396. Blakely
8 Decl., ¶ 19.

9 Waiting Time Penalties: \$77,764

10 Dynamo's records reflected approximately 126 former Settlement Class members who
11 are eligible for waiting time penalties. Blakely Decl., ¶ 20. Based on an hourly rate of \$22.86,
12 Plaintiff estimated the average waiting time penalty per former employee to be approximately
13 \$5,486 ($\$22.86 \times 8 \text{ hours per day} \times 30 \text{ days}$). *Id.* Therefore, Plaintiff calculated Dynamo's
14 maximum exposure for potential waiting time penalties to be approximately \$691,236 (126
15 former employees * \$5,486 average penalty). *Id.*

16 However, Dynamo presented several defenses to this claim, most notably their assertion
17 that because they possessed good-faith defenses to the underlying claims, any failure to pay wages
18 was not "willful" as a matter of law. Blakely Decl., ¶ 20. Dynamo further asserts that Plaintiff's
19 waiting time penalty exposure was grossly inflated as not every former employee experienced the
20 alleged Labor Code violations. *Id.* Moreover, because the waiting time claim is derivative of
21 Plaintiff's underlying wage claims, Plaintiff would need to overcome Dynamo's defenses, both
22 as to class certification and on the merits, as to her underlying claims. *Id.* To account for
23 Dynamo's defenses, Plaintiff discounted the maximum exposure by 55% for the risk of non-
24 certification, and an additional 75% for the risk of losing on the merits and/or not receiving the
25 maximum penalties sought, to arrive at an estimated exposure of approximately \$77,764. *Id.*

26 PAGA Penalties: \$27,696

27 Plaintiff estimated a maximum total PAGA exposure of approximately \$461,600 (4,616
28 pay periods * \$100 "initial" penalty). Blakely Decl., ¶ 21; *Amaral v. Cintas Corp. No. 2*, 163

Cal.App.4th 1157, 1207 (2008) (finding “initial” violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derive from the underlying wage and hour violations discussed above, which Dynamo disputes vigorously. Blakely Decl., ¶ 21; *see e.g., Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining that a PAGA claim’s success was determined by the merits of its underlying claims). Dynamo also asserts that the Court would drastically reduce any award of PAGA penalties as “confiscatory.” Blakely Decl., ¶ 21; *see also Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiff discounted the maximum figure by 70% for the risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and an additional 80% to account for the possibility of this Court reducing penalties to arrive at an estimated exposure of approximately \$27,696. Blakely Decl., ¶ 21.

Using these estimated figures for each of the claims described above, Plaintiff predicted that the potential recovery for the Settlement Class would be approximately \$282,870. Blakely Decl., ¶ 22. The proposed Settlement of \$250,000 represents approximately 88.4% of the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Settlement Class, which is consistent with what Plaintiff’s counsel believes could have been recovered had the case proceeded through trial.

e. The Experience and Views of Counsel

“Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions and who have been appointed as class counsel in numerous cases alleging similar claims. *See* Blakely Decl., ¶¶ 2-6. *see also* Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 2-8; Class Counsel, with the help of a retained expert, conducted an in-depth review

1 of Dynamo’s timekeeping and payroll records and drew on their extensive experience in similar
2 cases to assess the strengths and weaknesses of Plaintiff’s case. *See* Blakely Decl., ¶¶ 14-21. The
3 Settlement was also reached with the assistance of an experienced and respected wage-and-hour
4 class action mediator. This factor strongly supports preliminary approval of the Settlement. *See*
5 *Kullar, supra*, 168 Cal.App.4th at 130.

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

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

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

13 The proposed Settlement reflects approximately 88.4% of the estimated recovery the
14 Settlement Class could reasonably expect in light of the significant litigation risks and will
15 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
16 percentage of the liability exposure recovered in this case far exceeds percentages routinely
17 approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL
18 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential
19 damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement
20 representing about one-sixth of potential recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV,*
21 *Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“it is well-settled law that a proposed settlement may
22 be acceptable even though it amounts to only a fraction of the potential recovery that might be
23 available to the Settlement Class members at trial”). Further, the average Individual Settlement
24 Payment of approximately \$724.36 is in line with average payments achieved in other wage and
25 hour class action settlements.⁴ Thus, Plaintiff submits that the proposed settlement is within the

26 _____
27 ⁴ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct.
28 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

1 range of possible approval, such that notice should be provided to the Settlement Class members
2 so that they can consider the Settlement. The Court will have the opportunity to again assess the
3 reasonableness of the Settlement after the Settlement Class members have had the opportunity to
4 opt-out or object.

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

6 The Settlement resulted from an exchange of substantial information, arm's-length
7 negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and
8 additional months of negotiating the long-form settlement agreement. Thus, the Settlement is
9 entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As
10 discussed above, Plaintiff carefully vetted the claims at issue, reviewed extensive timekeeping
11 and payroll data, and conducted a detailed statistical analysis of the data with the help of its
12 retained expert to arrive at his estimated class-wide damages figures. *See Blakely Decl.*, ¶¶ 14-
13 21. Thus, this factor supports preliminary approval.

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

15 Preliminary approval of the Settlement is also warranted because there are no obvious
16 deficiencies. The Settlement will provide substantial monetary relief to Settlement Class
17 members. The amounts proposed for Class Counsel's attorneys' fees and costs, LWDA payment,
18 and Plaintiff's class representative Enhancement Payment, are all reasonable and appropriate
19 based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this

20
21 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco*
22 *Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery
23 of approximately \$65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange
24 County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus*
25 *Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net
26 recovery of approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-
27 DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average
28 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).

factor supports preliminary approval.

B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

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

1. The Proposed Class Is Ascertainable and Numerous

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is defined as all former non-exempt employees employed by Dynamo in California during the Class Period, and who did not sign an arbitration agreement. Therefore, Settlement Class members can be identified from Dynamo's personnel and employment records. Dynamo represents that the Settlement Class consists of approximately 130 former non-exempt employees. *See* Blakely Decl., ¶ 13. It would therefore be impracticable to bring all Settlement Class members before the Court or for each Settlement Class member to bring an individual lawsuit. Thus, the proposed Settlement Class satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

2. Common Issues of Law and Fact Predominate

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

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

2 The typicality requirement is satisfied where class representatives have claims that are
3 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191
4 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the
5 same goods as the putative class in a consumer class action). Here, Plaintiff's claims are typical
6 of those held by the Settlement Class members. First, Dynamo employed Plaintiff as a non-
7 exempt employee during the Class Period, and Plaintiff was subject to Dynamo's wage and hour
8 policies at issue in this case. *See* Calderon Decl., ¶ 2. Second, Plaintiff was injured by the same
9 challenged policies/practices that allegedly injured the Settlement Class as a whole. For example,
10 Plaintiff asserts that he was deprived of all wages and contends that he was deprived of all legally
11 compliant meal and rest periods. Plaintiff further asserts that he did not receive accurate and
12 compliant wage statements and did not receive all wages at the time of separation of employment.
13 *See generally*, Calderon Decl. Because Plaintiff has suffered the same injuries as the other
14 members of the Settlement Class, the typicality requirement is satisfied.

15 **4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the**
16 **Class**

17 The adequacy requirement examines conflicts of interest between named parties and the
18 class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services*
19 155 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the
20 Settlement Class, as there are no conflicts between Plaintiff and the proposed Settlement Class,
21 and Plaintiff possesses claims that are in line with those of the Settlement Class. *See McGhee v.*
22 *Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no
23 indication that Class Counsel were not qualified and the named plaintiff had no interests
24 antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage
25 and hour class action litigation. *See* Blakely Decl., ¶¶ 2-6; Haines Decl., ¶¶ 2-8.

26 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE**

27 This Court should order distribution to the Settlement Class of the proposed Class Notice
28 by U.S. Mail, postage prepaid, in English and Spanish, using the last known mailing address

1 information provided by Dynamo. *See* Settlement, ¶ 9. This manner of giving notice is the “best
2 notice practicable” under the circumstances because it provides “individual notice to all members
3 who can be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin* 417 U.S. 156,
4 173 (1974). Here, the Parties have agreed that the Settlement be administered by Phoenix
5 Settlement Administrators (“Phoenix”), an experienced class action settlement administrator. *See*
6 *generally* Declaration of Kevin Lee (“Lee Decl.”) and attached exhibits. Settlement Class
7 members’ addresses will be ascertainable through Dynamo’s personnel and payroll records,
8 which Dynamo will provide to Phoenix within ten (10) business days of preliminary approval of
9 the Settlement. *See* Settlement, ¶ 9(A). Within ten (10) business days of receipt of the Settlement
10 Class members’ addresses, Phoenix will run the names of all Settlement Class members through
11 the National Change of Address (“NCOA”) database to determine any updated addresses, and
12 mail the Class Notice to all Settlement Class members. *Id.*, at ¶ 9(B). To the extent that any notices
13 are returned, Phoenix will perform a “skip trace” to track any Settlement Class member’s current
14 mailing address. *Id.*, at ¶ 9(F).

15 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)
16 because it advises Settlement Class members of the nature of the claims, basic contentions and
17 denials of the parties, and the key terms of the Settlement, the 60-day deadline to opt-out or object
18 to the Settlement and the procedures by which to do so, explains the recovery formula and
19 expected recovery amount for each Settlement Class member, and advises them that they will be
20 bound by the terms of the Settlement if they do not opt-out. *See* Blakely Decl., Exhs. 1-2 to Exh.
21 A. The proposed Class Notice will also notify Settlement Class members of the final approval
22 hearing date and provides the Settlement Class contact information for Class Counsel and advises
23 Settlement Class members that they may enter an appearance through counsel if they wish to. *Id.*
24 This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and
25 cost-effective method of reaching Settlement Class members.

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

27 Finally, this Court should set a hearing for Final Approval of the Settlement on a date
28 appropriately scheduled to follow the deadline by which Settlement Class members must file

1 objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

2 **V. CONCLUSION**

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

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7 Dated: February 15, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

8
9 By:



10 Paul K. Haines
11 Sean M. Blakely
12 Attorneys for Plaintiff
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Journal Technologies Court Portal

Court Reservation Receipt

Reservation			
Reservation ID: 409140653587		Status: RESERVED	
Reservation Type: Motion re: (Preliminary Approval of Class Action Settlement)		Number of Motions: 1	
Case Number: 21STCV17630		Case Title: OSMIN CALDERON vs DYNAMO AVIATION, INC., A CALIFORNIA CORPORATION, et al.	
Filing Party: Osmín Calderon (Plaintiff)		Location: Stanley Mosk Courthouse - Department 55	
Date/Time: June 11th 2024, 8:30AM		Confirmation Code: CR-EPPNMKZ4MUE4XZ76F	
Fees			
Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65
Payment			
Amount: \$61.65		Type: Visa	
Account Number: XXXX6940		Authorization: 04953G	
Payment Date: 2024-02-13			