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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

SERGIO CHAVEZ JR, as an individual and on behalf of all others similar situated,

Plaintiff,

vs.

DORADO HOLDINGS, LLC d.b.a. TOOLSHED EQUIPMENT RENTAL, a California limited liability company; and DOES 1 through 100,

Defendants.

Case No.: 37-2023-00048229-CU-OE-CTL

[*Case assigned for all purposes to the Hon. Gregory W. Pollack, Dept. C-71*]

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

Date: September 12, 2025
Time: 9:30 a.m.
Dept: C-71

Action Filed: November 2, 2022
Case Transferred: June 12, 2023
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 September 12, 2025, at 9:30 a.m. in Department C-71 of the above-entitled Court, located at 330 West Broadway, San Diego, California 92101, Plaintiff Sergio Chavez Jr. ("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 current and former non-exempt employees who worked for Dorado Holdings, LLC d.b.a Toolshed Equipment Rental in California from November 2, 2018, until December 31, 2021 (the "Class Period").

3. Preliminary appointment of Plaintiff Sergio Chavez Jr. as Class Representative;
4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Joel M. Gordon 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 Labor and Workforce Development Agency ("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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This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the supporting declarations of Paul K. Haines, Sean M. Blakely, Joel M. Gordon, Plaintiff Sergio Chavez Jr., and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto, the pleadings, and other papers filed in this Action, the Settlement Agreement, and on any further oral or documentary evidence or argument presented at the time of the hearing.

Respectfully submitted,

Dated: February 13, 2025 HAINES LAW GROUP, APC

By: ______________________

Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

TABLE OF CONTENTS

I. INTRODUCTION 1
II. SUMMARY OF THE LITIGATION 2
A. THE PARTIES AND BRIEF PROCEDURAL HISTORY 2
B. PLAINTIFF'S CLAIMS AND DORADO'S DEFENSES 3
1. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices 3
2. Meal Period Claims 4
3. Rest Period Claims 4
4. Wage Statement Claims 5
5. Waiting Time Penalties 5
6. PAGA Civil Penalties 6
C. DISCOVERY AND MEDIATION 6
III. THE PROPOSED SETTLEMENT 7
A. ESSENTIAL TERMS OF THE SETTLEMENT 7
1. The Settlement Provides for Reasonable Monetary Payments 7
2. Attorneys' Fees and Costs, Enhancement Payment, and PAGA Amount 8
IV. ARGUMENT 10
A. PRELIMINARY APPROVAL IS WARRANTED 10
1. Standard for Preliminary Approval 11
a. The Strength of Plaintiff's Case 11
b. Risk, Expense, Complexity, and Duration of Further Litigation 11
c. Risk of Maintaining Class Action Status 11
d. Amount Offered in Settlement Given Realistic Value of Claims 12
e. The Experience and Views of Counsel 16
2. The Preliminary Approval Standard Is Met 17

a. The Settlement Is Within the Range of Possible Approval 17
b. The Settlement Resulted from Serious, Informed Negotiations 18
c. The Settlement Is Devoid of Obvious Deficiencies 18
B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS 19
1. The Proposed Class Is Ascertainable and Numerous 19
2. Common Issues of Law and Fact Predominate 19
3. The Claims of the Named Plaintiff Are Typical 20
4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the Class 20
C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE 20
D. THE COURT SHOULD SET A FINAL APPROVAL HEARING 21
V. CONCLUSION 22

TABLE OF AUTHORITIES

Federal Cases

Dunleavy v. Nadler, 213 F.3d 454 (9th Cir. 2000) 17
Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974) 21
Hanlon v. Chrysler Corp., 150 F.3d 1011 (9th Cir. 1998) 10
In re Pacific Enterprises Securities Litigation 47 F.3d 373 (9th Cir. 1995) 16
In re Syncor ERISA Litig., 516 F.3d 1095 (9th Cir. 2008) 10
Nat'l Rural Telecomm. Coop. v. DirecTV, Inc., 221 F.R.D. 523 (C.D. Cal. 2004) 17

State Cases

Amaral v. Cintas Corp. No. 2, 163 Cal.App.4th 1157 (2008) 16
B.W.I. Custom Kitchen v. Owens-Illinois, Inc. 191 Cal.App.3d 1341 (1987) 20
Benton v. Telecom Network Specialists, Inc., 220 Cal.App.4th 701 (2013) 19
Bowles v. Sup. Ct., 44 Cal.2d 574 (1955) 19
Brinker Rest. Corp. v. Sup. Ct., 53 Cal.4th 1004 (2012) 4
Capital People First v. State Dept. of Developmental Services 155 Cal.App.4th 676 (2007) 20
Carrington v. Starbucks Corp., 30 Cal.App.5th 504 (2018) 6
Chindarah v. Pick Up Stix, Inc., 171 Cal.App.4th 796 (2009) 12
Dunk v. Ford Motor Co., 48 Cal.App.4th 1794 (1996) 11
In re Cellphone Fee Termination Cases, 186 Cal.App.4th 1380 (2010) 8
Kullar v. Foot Locker Retail, Inc., 168 Cal.App.4th 116 (2008) 10, 17, 18
Laffitte v. Robert Half Int'l, Inc., 1 Cal.5th 480 (2016) 9
Maldonado v. Epsilon Plastics, Inc., 22 Cal.App.5th 1308 (2018) 5
McGhee v. Bank of America 60 Cal.App.3d 442 (1976) 20
Price v. Starbucks Corp. 192 Cal.App.4th 1136 (2011) 6
Reed v. United Teachers Los Angeles, 208 Cal.App.4th 322 (2012) 10
Sav-On Drug Store, Inc. v. Superior Court (Rocher) 34 Cal.4th 319 (2004) 19
Sevidal v. Target Corp. 189 Cal.App.4th 905 (2010) 19

Thurman v. Bayshore Transit Mgmt., Inc. 203 Cal.App.4th 1112 (2012) 6
Wershba v. Apple Computer, Inc., 91 Cal.App.4th 224 (2001) 11

State Statutes and Rules

Cal. Civ. Proc. § 382 19
8 Cal. Code Regs. § 13520 5
Labor Code § 226(e) 15
Labor Code § 2699(e)(2) 6
Labor Code § 2699(i) 10
Cal. Rule of Court 3.769 22

Unpublished Cases

Bercea v. AE Retail West
Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) 17
Chu v. Wells Fargo Investments, LLC
Case No. C 05-4526 MHP, 2011 WL 672645 (N.D. Cal. 2011) 10
Doty v. Costco Wholesale Corp.
Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) 17
Fleming v. Covidien Inc.
Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047 (C.D. Cal. 2011) 6
Glass v. UBS Finan. Servs.
Case No. C-06-4068 MMC, 2007 WL 221862 (N.D. Cal. 2007) 17
Gomez v. Amadeus Salon, Inc.
Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) 18
Lazarin v. Pro Unlimited, Inc.
Case No. C11-03609 HRL, 2013 WL 3541217 (N.D. Cal. 2013) 10
Lim v. Victoria's Secret Stores, Inc.
Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) 18

Palencia v. 99 Cents Only Stores
Case No. 34-2010-00079619 (Sacramento County Super. Ct.)....................................... 17
Ressler v. Federated Department Stores, Inc.
Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009)............................... 17
Schiller v. David's Bridal, Inc.
Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 (E.D. Cal. June 11, 2012)...... 18
Sorenson v. PetSmart, Inc.
Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) 18
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) 18

Other Sources

Manual for Complex Litigation § 30.41(3rd Ed. 1995)... 17
4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013) 17
4 Newberg on Class Actions § 14.6 (4th Ed. 2013).. 9

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Sergio Chavez Jr. (hereinafter "Plaintiff") brought this class and representative action for various wage and hour violations on behalf of all current and former non-exempt employees who worked for Defendant Dorado Holdings, LLC d.b.a. Toolshed Equipment Rental ("Dorado"), in California at any time from November 2, 2018 through December 31, 2021 (the "Class Period"). Plaintiff's primary allegations are that Dorado failed to pay all minimum and overtime wages, and failed to provide all legally compliant meal and rest periods. As a result of these alleged violations, Plaintiff also brought derivative claims for Dorado's alleged failure to pay all final wages owed, failure to issue accurate and compliant wage statements, and for civil penalties under the Private Attorneys' General Act ("PAGA"). [1]

Plaintiff now respectfully requests that this Court preliminarily approve this <u>non-reversionary</u>, common-fund class action settlement,[2] in which Dorado has agreed to pay Two Hundred Thousand Dollars and Zero Cents ($200,000.00) to the following Settlement Class:

> All current and former non-exempt employees who worked for Dorado Holdings, LLC d.b.a Toolshed Equipment Rental in California from November 2, 2018, until December 31, 2021 (the "Class Period").

If the Settlement is approved, Dorado will pay a non-reversionary Maximum Settlement Amount of $200,000.00. After deducting administration costs, Plaintiff's requested class representative Enhancement Payment, the amount designated as PAGA civil penalties, and requested attorneys' fees and costs, the Net Settlement Amount of approximately $82,333.33 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

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[1] Plaintiff's operative First Amended Class and Representative Action Complaint ("FAC") pleads the following causes of action: (1) minimum wage violations; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) wage statement penalties; (6) waiting time penalties; (7) unfair competition; and (8) civil 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 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.

Period. Additionally, all Settlement Class members who were employed by Dorado at any time from November 2, 2021 to December 31, 2021 ("PAGA Period") will also receive a portion of the $1,250.00 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 50 Settlement Class members, and the average payment to participating Settlement Class members is projected to be approximately $1,646.67.

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 2008, Dorado was in the business of renting industrial construction equipment and construction tools. *See* Declaration of Sean M. Blakely ("Blakely Decl."), ¶ 8. On December 7, 2021, Dorado was acquired by Sunbelt Rentals, Inc., and Dorado ceased operating. *Id*. Plaintiff was employed by Dorado as a non-exempt "Driver" from approximately October 2019 until December 7, 2021. *See* Declaration of Sergio Chavez Jr. In Support of Approval of Class Action Settlement ("Chavez Decl."), ¶ 2. As a Driver, Plaintiff's primary job duties consisted of loading up a truck with equipment and/or tools for delivery to customers and picking up equipment and/or tools to bring back to Dorado's yard after the customer no longer needed the item(s). *Id.*

On November 2, 2022, Plaintiff filed his Complaint in Los Angeles County Superior Court, alleging several wage and hour violations. Blakely Decl., ¶ 9. On that same day, Plaintiff sent his PAGA notice letter to the Labor and Workforce Development Agency ("LWDA"). *Id.,*

Exhibit B. On January 9, 2023, Plaintiff filed the operative First Amended Class and Representative Action Complaint ("FAC") alleging that Dorado: (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 issue accurate, itemized wage statements; (vi) failed to pay all wages at the end of employment; (vii) engaged in unfair competition in violation of California Business & Professions Code § 17200 *et seq*.; and (viii) is liable for civil penalties under the PAGA. *Id*. On June 12, 2023, by stipulation of the Parties, the case was transferred for all purposes to the Superior Court of the State of California, County of San Diego. *Id.*

B. PLAINTIFF'S CLAIMS AND DORADO'S DEFENSES

1. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices

Plaintiff alleges that for a portion of the Class Period, Dorado underpaid Settlement Class members by rounding time punches, despite requiring employees to clock in on a system that recorded hours worked to the minute. Blakely Decl., ¶ 14. As a result of these policies/practices, Plaintiff alleges that Dorado failed to compensate Plaintiff and other non-exempt employees for all minimum and overtime wages owed. *Id.*

Dorado 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. Dorado further contends that it utilized an even-handed timekeeping system that, on balance, resulted in employees being paid for all hours actually worked. *Id*. Dorado further argues that it changed its timekeeping policies in or around April 2020 and began afterwards to compensate Settlement Class members to the minute, thereby cutting off any potential liability for this claim. *Id*. Finally, Dorado asserts that Plaintiff would be unable to certify this claim since its timekeeping policies/practices are facially neutral and individualized inquiries would be necessary as to whether employees were in fact underpaid for each workday in question (including whether they were actually working when they were clocked in), resulting in an unmanageable series of mini-trials. *Id.*

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2. **Meal Period Claims**

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

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

3. **Rest Period Claims**

Plaintiff alleges that Dorado failed to authorize and permit all required off-duty rest periods. Blakely Decl., ¶ 17. Specifically, Plaintiff alleges he was not authorized or permitted to take any off-duty rest period during his shifts due to work demands imposed by Dorado. *Id.*

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

4. Wage Statement Claims

As a result of the unpaid wages and unpaid meal and rest period premium wages described above, Plaintiff alleges that Dorado is liable for wage statement penalties. Blakely Decl., ¶ 18. However, Dorado argues that any alleged wage statement violations were not "knowing and intentional," and that Plaintiff cannot show he or other employees "suffer[ed] injury" due to the alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of penalties. Blakely Decl., ¶ 18. Further, Dorado contends its wage statements always accurately reflected hours worked and amounts paid as well as all other required information, precluding liability for wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (agreeing with employer's "commonsense position that the pay stubs were accurate in that they correctly reflected the hours worked and the pay received…The purpose of section 226 is to *document* the *paid wages* to ensure the employee is fully informed regarding the calculation of those wages.") (Italics in original). Blakely Decl., ¶ 18.

5. Waiting Time Penalties

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

Dorado argues that it possesses strong, good-faith defenses to Plaintiff's underlying claims, thus precluding recovery of waiting time penalties, which are only available for the "willful" failure to pay wages. Blakely Decl., ¶ 19; *see also* 8 Cal. Code Regs. § 13520 ("[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203 . . . A 'good faith' dispute that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee"). Dorado further asserts that Plaintiff's waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. Blakely Decl., ¶ 19.

6. PAGA Civil Penalties

As a result of the foregoing Labor Code violations, Plaintiff alleges that Dorado is liable for civil penalties under the PAGA. Blakely Decl., ¶ 20. Since Plaintiff's PAGA claim is derivative of Plaintiff's underlying wage claims, Dorado asserts the PAGA claim would fail with those claims. *Id.*; *see Price v. Starbucks Corp*. 192 Cal.App.4th 1136, 1147 (2011) ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail"). Dorado further maintains that, given its good-faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Dorado liable for any of Plaintiff's claims. Blakely Decl., ¶ 20; *see* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc*. 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc*., Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer "not aware" of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just $5 per pay period where employer made "good faith attempts" to comply with the law).

C. DISCOVERY AND MEDIATION

After filing the case, Plaintiff propounded Requests for Production and Special Interrogatories on Dorado. Blakely Decl., ¶ 10. In connection with mediation, Dorado provided Plaintiff's counsel with a random sampling of timekeeping and payroll records for Settlement Class members. *Id*. Dorado also provided Plaintiff with relevant data points, such as the total number of former employees and the number of aggregate workweeks and pay periods worked by employees during the Class Period. *Id.* Dorado also produced all of its relevant written policies and/or procedures in effect during the Class Period. *Id*. Plaintiff conducted a comprehensive analysis and extrapolation of the payroll and timekeeping data produced by Dorado to create a detailed exposure analysis for all claims at issue. *Id*. This discovery allowed the Parties to assess the merits and value of Plaintiff's claims, the chances of certification of Plaintiff's claims, and Dorado's potential defenses. *Id*.

On August 16, 2024, the Parties participated in a full-day mediation with the Hon. Joan M. Lewis (Ret.), a well-respected wage and hour class action mediator. Blakely Decl., ¶ 11. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Id*. With the assistance of Judge Lewis, the Parties agreed to a classwide settlement. *Id.* During the months that followed, the Parties finalized the terms of the Settlement and executed the long-form Settlement Agreement now before the court. *Id*.

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves the Settlement, Dorado will pay a Maximum Settlement Amount of $200,000.00. *See* Settlement, ¶ 3. Significantly, this Settlement is non-reversionary, and no Settlement Class member will have to submit a claim form to receive an Individual Settlement Payment. *Id*., at ¶ 4. Each Settlement Class member will automatically receive an Individual Settlement Payment unless they affirmatively opt out of the Settlement. *Id*. The monetary terms of the Settlement are summarized below:

• Maximum Settlement Amount:	$200,000.00
• Minus Court-approved attorneys' fees:	$66,666.67
• Minus Court-approved verified costs (up to):	$30,000.00
• Minus Court-approved Enhancement Payment:	$10,000.00
• Minus amount set aside as PAGA penalties:	$5,000.00
• Minus estimated settlement administration costs:	$6,000.00
Net Settlement Amount:	$82,333.33
• PLUS 25% "PAGA Payment" to Settlement Class:	$1,250.00
Total Amount Paid to Settlement Class members:	**$83,583.33**

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys' fees and costs, Class Representative Enhancement Payment to Plaintiff, the amount designated as PAGA civil penalties, and settlement administration costs, the Settlement requires Dorado to pay a Net Settlement Amount of at least $82,333.33 to all Settlement Class members who do not timely opt-out. *See* Settlement, ¶ 4(A). The Net Settlement Amount shall be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period. Settlement, ¶ 4(B)(i). Additionally, One Thousand Two Hundred and Fifty Dollars ($1,250.00) of the Maximum Settlement Amount has been designated as the "PAGA Amount" and shall be distributed to the Settlement Class 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., November 2, 2021, to December 31, 2021) proportionally based on the number of pay periods worked during the PAGA Period. Settlement, ¶ 4(C).

According to Dorado, there are approximately 50 Settlement Class members. Blakely Decl., ¶ 13. Therefore*,* the average Individual Settlement Payment from the Net Settlement Amount is projected to be approximately $1,646.67. *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 Dorado included within the Settlement. *See Id*., at ¶ 2(A).

2. <u>Attorneys' Fees and Costs, Enhancement Payment, and PAGA Amount</u>

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 $10,000.00 for his service to the Settlement Class. *See* Settlement, ¶¶ 3(C)(3), 6; Blakely Decl., ¶ 24. "[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., ¶ 24; *see also* Chavez Decl., ¶¶ 5-7.

Class Counsel will also apply for an attorneys' fees award of one-third of the Maximum Settlement Amount, which is currently estimated to be $66,666.67, and up to $30,000.00 in verified costs reimbursement. *See* Settlement, ¶¶ 3(C)(4), 5; Blakely Decl., ¶ 23. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id*. Class Counsel has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, propounding formal discovery, meeting and conferring with Dorado's counsel regarding purported deficiencies in Dorado's discovery responses, conducting extensive informal discovery, analyzing Settlement Class members' timekeeping and payroll records, creating a comprehensive damages model, preparing for and attending mediation, negotiating and preparing the long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. *Id*. Class Counsel expects to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class members, preparing the final approval papers, and attending the Final Approval hearing. *Id*.

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

Class Counsel submit their request for attorneys' fees is reasonable when viewed as an overall percentage of the Settlement and in light of the substantial risks and significant work undertaken, the results obtained, and the efficiency with which the litigation has been conducted.

Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified costs upon seeking final approval.

Additionally, the parties have agreed to designate $5,000.00 of the Maximum Settlement Amount as PAGA civil penalties, of which $3,750.00 (75%) will be paid to the LWDA, with the remaining $1,250.00 (25%) for distribution to certain Settlement Class members, as the PAGA requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, ¶ 3(C)(5). Plaintiff submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. 2011) (approving PAGA payment of $7,500 to LWDA out of $6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D. Cal. 2013) (approving PAGA payment of $7,500 to LWDA out of $1.25 million common-fund settlement).

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires trial 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 the trial 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 in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See* e.g., *Hanlon*, supra, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement was negotiated at arm's-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.*, *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

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1. <u>Standard for Preliminary Approval</u>

To make a fairness determination, the Court should consider several factors, including: "the strength of Plaintiffs' 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, 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. <u>The Strength of Plaintiff's Case</u>

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*, Dorado 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. <u>Risk, Expense, Complexity, and Duration of Further Litigation</u>

Although the parties engaged in significant informal discovery prior to mediation, the parties still had additional formal discovery to complete had the matter not been settled. Blakely Decl., ¶ 22. 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. <u>Risk of Maintaining Class Action Status</u>

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 Dorado with individual class members by way of *Pick-up-Stix* type settlement agreements[3]), and the expected recovery could be significantly reduced, given the settlement amounts that are typically offered through the *Pick-up-Stix* process. Thus, this factor, too, supports preliminary approval of the settlement.

d. <u>Amount Offered in Settlement Given Realistic Value of Claims</u>

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, wage statement penalties, waiting time penalties, and PAGA civil penalties. A summary of the results of Plaintiff's exposure analysis are discussed below:

<u>Unpaid Wages Due to Unlawful Timekeeping Policies/Practices</u>: **$4,144**

Plaintiff alleges that for a portion of the Class Period, Dorado underpaid Settlement Class members due to its unlawful timekeeping policies/practices. Blakely Decl., ¶ 14. Based on Plaintiff's review of Dorado's timekeeping and payroll records, Plaintiff estimated Dorado's alleged rounding practices resulted in approximately 296 hours of unpaid time. *Id.* Therefore, Plaintiff estimates Dorado's maximum exposure for this claim at approximately $7,400 (296 unpaid hours * $12.50 average weighted minimum wage * 2 for liquidated damages pursuant to Labor Code § 1194.2). *Id*.

However, as argued above, Dorado argues that its timekeeping policies/practices complied with California law and that it compensated Settlement Class members for all hours actually worked. Blakely Decl., ¶ 14. Dorado also asserts that Plaintiff would be unable to certify this claim since its timekeeping policies/practices are facially neutral and individualized inquiries

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[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.

would be necessary as to whether employees were in fact underpaid for each workday in question (including whether they were actually working when they were clocked in), resulting in an unmanageable series of mini-trials. *Id*. Given these defenses, Plaintiff discounted this maximum amount by 20% for risk of non-certification and an additional 30% for a risk of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated realistic exposure of approximately $4,144. *Id*.

<u>First Meal Period Violations</u>: **$110,065**

Based on Plaintiff's review and extrapolation of Dorado's timekeeping records, there are approximately 21,693 shifts that reflected a potential first meal period violation. Blakely Decl., ¶ 15. Therefore, Plaintiff estimates Dorado's maximum exposure for first meal period violations at approximately $444,707 (21,693 non-compliant first meal periods * $20.50 average meal period premium). *Id.*

However, Dorado contends that it has maintained compliant written meal period policies throughout the Class Period and has always provided its employees the *opportunity* to take legally compliant meal periods, and that it is not required to "ensure" meal periods are taken. Blakely Decl., ¶ 15. Dorado also argues this claim is not suited for class treatment, as individual inquiries would be needed to assess which employees took non-compliant meal periods or missed meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee did not take a compliant meal period on a particular shift. *Id.* Based on these defenses, Plaintiff discounted the maximum amount by 45% for risk of non-certification, and an additional 55% for risk of losing on the merits or failing to recover the full amount sought, to arrive at an estimated exposure of approximately $110,065. *Id*.

<u>Second Meal Period Violations</u>: **$20,124**

Plaintiff's analysis of the timekeeping data showed that during the Class Period, there were approximately 8,726 shifts worked in excess of 10.0 hours with a second meal period violation. Blakely Decl., ¶ 16. Therefore, Plaintiff calculates Dorado's maximum exposure for second meal period violations at approximately $178,883 (8,726 second meal period violations * $20.50 meal period premium). *Id*.

However, Plaintiff's theory of liability carried significant risks of both non-certification and on the merits if Plaintiff was able to certify this claim, based on, *inter alia*, Dorado's argument that it has maintained compliant written meal period policies throughout the Class Period, and Settlement Class members voluntarily waived their second meal period on shifts in excess of 10.0 hours but less than 12.0 hours per Labor Code § 512. Blakely Decl., ¶ 16. In light of these risks, Plaintiff discounted the maximum amount that the class could potentially recover by 55% for a risk of non-certification, and an additional 75% for a risk of losing on the merits, or having exposure reduced due to Dorado's waiver arguments, to arrive at estimated exposure of approximately $20,124. *Id*.

<u>Rest Period Violations</u>: **$63,675**

As indicated above, Plaintiff alleges that Dorado failed to authorize and permit Plaintiff and other non-exempt employees to take duty-free 10-minute rest periods for every four hours worked, or major fraction thereof, due to Dorado's work demands. Blakely Decl., ¶ 17. Based on Plaintiff's analysis and extrapolation of Dorado's timekeeping records, Plaintiff estimates there were approximately 25,356 shifts in excess of 3.5 hours during the Class Period, entitling employees to at least one (1) rest period. *Id.* Therefore, Plaintiff estimates Dorado's maximum potential exposure for rest period violations at approximately $519,798 (25,356 rest period violations * $20.50 average premium). *Id.*

However, Dorado contends it has maintained and enforced compliant written rest period policies/practices and has always authorized and permitted employees a 10-minute rest period for each 4 hours worked, and that any failure to take rest periods was as a result of employee choice, rather than any Dorado policy and/or practice. Blakely Decl., ¶ 17. Dorado further argues that Plaintiff's rest period claim is not amenable to class treatment, since individual inquiries would be required to determine which employees failed to take rest periods, how many rest periods they failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift. *Id.* These manageability concerns are especially present with respect to rest period claims, Dorado argues, given that rest periods are not recorded. *Id*. Given these defenses, Plaintiff discounted this maximum amount by 65% for risk of non-certification, and an additional 65% for a risk of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated realistic exposure of approximately $63,675. *Id*.

Wage Statement Penalties: **$735**

Plaintiff alleges that Dorado is liable for wage statement penalties as a result of the unpaid wages and unpaid meal and rest period premiums. Blakely Decl., ¶ 18. Those penalties are calculated as $50 for each "initial" violation and $100 for each "subsequent" violation, with a maximum of $4,000 per employee. *Id.; see* Labor Code § 226(e). Plaintiff's analysis reflected that there were approximately 28 unique employees and approximately 56 pay periods worked during the liability period applicable to Plaintiff's wage statement claim. *Id*. Therefore, Plaintiff calculated Dorado's maximum wage statement exposure at approximately $4,200 ([28 "initial" violations * $50] + [28 "subsequent" violations * $100]). *Id*.; *see also* Labor Code § 226(e).

In light of Dorado's arguments that no violations occurred, that employees suffered no "injury," that any alleged violations were not "knowing and intentional," that the wage statements always accurately reflected hours worked and amounts paid to employees, as well as risks associated with Plaintiff's underlying claims discussed above, Plaintiff discounted the maximum exposure by 50% for risk of non-certification, and by an additional 65% for risk of being unsuccessful on the merits, for an estimated realistic exposure of approximately $735. Blakely Decl., ¶ 18.

Waiting Time Penalties: **$30,750**

Dorado's records reflected approximately 50 former Settlement Class members who are eligible for waiting time penalties. Blakely Decl., ¶ 19. Based on an hourly rate of $20.50, Plaintiff estimated the average waiting time penalty per former employee to be approximately $4,920 ($20.50 * 8 hours per day * 30 days). *Id*. Therefore, Plaintiff calculated Dorado's maximum exposure for potential waiting time penalties to be approximately $246,000 (50 former employees * $4,920 average penalty). *Id*.

However, Dorado presented several defenses to this claim, most notably their assertion that because they possessed good-faith defenses to the underlying claims, any failure to pay wages was not "willful" as a matter of law. Blakely Decl., ¶ 19. Dorado further asserts that Plaintiff's waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. *Id*. Moreover, because the waiting time claim is derivative of Plaintiff's underlying wage claims, Plaintiff would need to overcome Dorado's defenses, both as to class certification and on the merits, as to his underlying claims. *Id*. To account for Dorado's defenses, Plaintiff discounted the maximum exposure by 50% for the risk of non-certification, and an additional 75% for the risk of losing on the merits and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of approximately $30,750. *Id*.

<u>PAGA Penalties</u>: **$5,600**

Plaintiff estimated a maximum total PAGA exposure of approximately $5,600 (56 pay periods * $100 "initial" penalty). Blakely Decl., ¶ 20; *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).

Using these estimated figures for each of the claims described above, Plaintiff predicted that the potential recovery for the Settlement Class would be approximately $235,093. Blakely Decl., ¶ 21. The proposed Settlement of $200,000.00 represents approximately 85% 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. <u>The Experience and Views of Counsel</u>

"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; Declaration of Joel M. Gordon ("Gordon Decl."), ¶¶ 2-4. Class Counsel conducted an in-depth review of Dorado's timekeeping and payroll records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *See* Blakely Decl., ¶¶ 14-21. The Settlement was also reached with the assistance of an experienced and respected wage-and-hour class action mediator. This factor strongly supports preliminary approval of the Settlement. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

2. The Preliminary Approval Standard Is Met

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

a. The Settlement Is Within the Range of Possible Approval

The proposed Settlement reflects approximately 85% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks and will provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial"). Further, the average Individual Settlement Payment of approximately $1,646.67 is in line with average payments achieved in other wage and hour class action settlements.[4] Thus, Plaintiff submits that the proposed settlement is within the

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[4] *See e.g.*, *Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average net recovery of approximately $105); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net recovery of approximately $90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately $80); *Doty v. Costco*

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

b. The Settlement Resulted from Serious, Informed Negotiations

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

c. The Settlement Is Devoid of Obvious Deficiencies

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

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

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 current and former non-exempt employees employed by Dorado in California during the Class Period. Therefore, Settlement Class members can be identified from Dorado's personnel and employment records. Dorado represents that the Settlement Class consists of approximately 50 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, Dorado'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).

3. <u>The Claims of the Named Plaintiff Are Typical</u>

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

4. <u>Plaintiff and Class Counsel Will Fairly and Adequately Represent the Class</u>

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

C. <u>THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE</u>

This Court should order distribution to the Settlement Class of the proposed Class Notice by U.S. Mail, postage prepaid, in English and Spanish, using the last known mailing address information provided by Dorado. *See* Settlement, ¶ 9. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin* 417 U.S. 156, 173 (1974). Here, the Parties have agreed that the Settlement be administered by Phoenix Settlement Administrators ("Phoenix"), an experienced class action settlement administrator. *See generally* Declaration of Jodey Lawrence ("Lawrence Decl.") and attached exhibits. Settlement Class members' addresses will be ascertainable through Dorado's personnel and payroll records, which Dorado will provide to Phoenix within ten (10) business days of preliminary approval of the Settlement. *See* Settlement, ¶ 9(A). Within ten (10) business days of receipt of the Settlement Class members' addresses, Phoenix will run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses, and mail the Class Notice to all Settlement Class members. *Id*., at ¶ 9(B). To the extent that any notices are returned, Phoenix will perform a "skip trace" to track any Settlement Class member's current mailing address. *Id*., at ¶ 9(F).

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

D. <u>THE COURT SHOULD SET A FINAL APPROVAL HEARING</u>

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

V. **CONCLUSION**

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

Dated: February 13, 2025

Respectfully submitted,
HAINES LAW GROUP, APC

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