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

EDGAR MACABULIT, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

DMC POWER, INC., a Delaware corporation;
and DOES 1 through 100,

Defendants.

Lead Case No. 20STCV32034 [Related to
Case No. 20STCV05459]

*[Assigned for all purposes to the
Hon. William F. Highberger, Dept. SSC-10]*

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

Date: June 29, 2022
Time: 10:00 a.m.
Dept.: SSC-10

Complaint Filed: August 20, 2020
Trial Date: None set

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1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
2 on June 29, 2022 at 10:00 a.m. in Department SSC-10 of the above-entitled Court, located at 312
3 N. Spring Street, Los Angeles, California 90012, Plaintiffs Edgar Macabulit and San Antonio
4 Brock (“Plaintiffs”), individually and on behalf of a class of similarly situated individuals, will,
5 and hereby do, move this Court for:

- 6 1. Preliminary approval of the proposed settlement (“Settlement”) of this action;
7 2. Pursuant to section 382 of the California Code of Civil Procedure, provisional
8 certification of the following Settlement Class defined as follows:

9 All current and former non-exempt employees employed by Defendant
10 DMC Power, Inc. in California from February 10, 2016 until the date of
preliminary approval of this Settlement (the “Class Period”).

- 11 3. Preliminary appointment of Plaintiffs Edgar Macabulit and San Antonio Brock as
12 Class Representatives;
13 4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Neil M. Larsen of
14 Haines Law Group, APC, Raymond P. Boucher and Alexander Gamez of Boucher
15 LLP, and Sahag Majarian II of the Law Offices of Sahag Majarian II as Class Counsel;
16 5. The scheduling of a hearing to consider whether the Settlement should be finally
17 approved and to permit service awards to Plaintiffs, Settlement Administrator costs,
18 and attorneys’ fees and costs to Class Counsel;
19 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
20 Administrator for mailing notices; and
21 7. Approval of the proposed Notice Packet and an order that it be disseminated to the
22 proposed Settlement Class as provided in the Settlement.

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1 This Motion is based on this Notice of Motion; the attached memorandum of points and
2 authorities; the declarations of Paul K. Haines, Sean M. Blakely, Neil M. Larsen, Raymond P.
3 Boucher, and Sahag Majarian II, and exhibits attached thereto; the declaration of Jodey Lawrence
4 and exhibits attached thereto; the declarations of Plaintiffs Edgar Macabulit and San Antonio
5 Brock; the pleadings and other papers filed in this action; and on any further oral or documentary
6 evidence or argument presented at the time of hearing.

7 Respectfully Submitted,

8
9 Dated: June 7, 2022

HAINES LAW GROUP, APC
BOUCHER LLP

10 By:



11 Paul K. Haines
12 Sean M. Blakely
13 Neil M. Larsen
14 Raymond P. Boucher
15 Alexander Gamez
16 Attorneys for Plaintiffs Edgar Macabulit
17 and San Antonio Brock
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Edgar Macabulit and San Antonio Brock (“Plaintiffs”) seek preliminary
4 approval of a class action settlement (“Settlement”) with DMC Power, Inc. (“Defendant” or
5 “DMC Power”). The Settlement resolves a class and representative action pending before this
6 Court, in which Plaintiffs allege that DMC: (1) failed to pay all minimum and overtime wages;
7 (2) failed to provide all legally-compliant meal periods; (3) failed to authorize and permit all
8 legally-compliant rest periods; (4) failed to furnish accurate, itemized wage statements; and (5)
9 failed to timely pay final wages. Based on these alleged Labor Code violations, Plaintiffs
10 additionally seek civil penalties under the Private Attorneys’ General Act of 2004 (“PAGA”).

11 Plaintiffs now respectfully request that this Court preliminarily approve this non-
12 reversionary, common-fund class action settlement,¹ in which DMC Power has agreed to pay One
13 Million One Hundred Thousand Dollars and Zero Cents (\$1,100,000.00) on behalf of the
14 following Settlement Class, which is estimated to consist of 396 individuals:

15 All current and former non-exempt employees employed by Defendant
16 DMC Power, Inc. in California from February 10, 2016 until the date of
preliminary approval of this Settlement (the “Class Period”).

17 The Settlement was only reached after extensive formal and informal discovery, including
18 a detailed analysis of DMC Power’s potential exposure with the assistance of Plaintiffs’ experts,
19 and after mediation with Jeffrey Krivis, Esq., a well-respected wage and hour class action
20 mediator. In connection with mediation, DMC Power produced a 15% sampling of timekeeping
21 and payroll records for the Settlement Class, as well as applicable documents regarding DMC
22 Power’s wage and hour policies, and other relevant data and information.

23 Significantly, Settlement Class members do not need to file a claim to reap the financial
24 benefit from the Settlement, as all Settlement Class members will automatically receive a payment
25 unless they affirmatively opt-out. After deducting administration costs, Plaintiffs’ requested
26

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

1 service awards, and attorneys’ fees and costs, the remaining Net Settlement Amount (“NSA”)
2 will be distributed to all Settlement Class members who do not opt-out of the Settlement, based
3 on the proportionate number of workweeks worked by each participating Settlement Class
4 member during the Class Period. Former employees with standing for waiting time penalties and
5 employees with standing for wage statement and PAGA penalties will also receive additional
6 consideration for their release of these penalty claims.

7 As noted, there are approximately 396 Settlement Class members, and therefore the
8 average payment to participating Settlement Class members is projected to be approximately
9 \$1,580.39. This is a favorable result for Settlement Class members, as it provides significant,
10 tangible monetary relief for hotly disputed claims.

11 This proposed Settlement is well within the range of possible approval in light of the
12 significant legal and factual obstacles that Plaintiffs faced, the risks and costs of further litigation,
13 and the significant monetary benefits to be received by Plaintiffs and the Settlement Class. For
14 the reasons discussed herein, Plaintiffs respectfully request that the Court grant preliminary
15 approval of the Settlement.

16 **II. SUMMARY OF THE LITIGATION**

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

18 DMC Power is engaged in the business of manufacturing products for aviation and utility
19 companies around the globe. See Declaration of Paul K. Haines (“Haines Decl.”), ¶ 9. Plaintiffs
20 and Settlement Class members are current and former non-exempt employees employed by DMC
21 Power in the State of California during the Class Period. *Id.*; see also Settlement, § 1.

22 On February 10, 2020, Plaintiff Brock filed an action against DMC Power in the matter
23 entitled *San Antonio Brock v. DMC Power, Inc., et al.*, Los Angeles County Superior Court Case
24 No. 20STCV05459 (the “Brock Action”), asserting various individual claims and a claim for civil
25 penalties under PAGA. Haines Decl., ¶ 10.

26 On August 20, 2020, Plaintiff Macabulit filed a class action complaint against DMC
27 Power in Los Angeles County Superior Court, in the matter entitled *Edgar Macabulit v. DMC*
28 *Power, Inc.*, Case No. 20STCV32034 (the “Macabulit Action”). Haines Decl., ¶ 11. On December

28, 2020, Plaintiff Macabulit filed a First Amended Class and Representative Complaint to add a cause of action for civil penalties under the PAGA. *Id.*

On or about February 4, 2021, this Court related the *Macabulit* Action and the *Brock* Action, and designated the *Macabulit* Action the Lead Case. Haines Decl., ¶ 12.

On May 27, 2022, as part of the Parties’ global settlement, Plaintiffs filed the operative Second Amended Class and Representative Action Complaint (“SAC”) in this action to add Plaintiff Brock as a named Plaintiff and class representative, add all representative claims alleged in the *Brock* Action, and add a cause of action for waiting time penalties pursuant to Labor Code §§ 201-203. Haines Decl., ¶ 15.

B. PLAINTIFFS’ CLAIMS AND DMC POWER’S DEFENSES

1. Claims for Unpaid Wages Due to Rounding

Plaintiffs contend that DMC underpaid Settlement Class members due to its allegedly unlawful rounding practices. Haines Decl., ¶ 18. Specifically, Plaintiffs allege that DMC Power rounded its employees’ timekeeping entries to quarter-hour increments in a manner that consistently favors DMC Power and that, as a result, employees’ wages have been underpaid. *Id.* DMC argues that that it utilized an even-handed timekeeping system that, on balance, resulted in employees being paid for all hours actually worked. Haines Decl., ¶ 18; *See’s Candy Shops, Inc. v. Superior Court*, 210 Cal.App.4th 889, 901 (2012) (holding rounding policies lawful if they are consistently applied and, on average, favor neither overpayment nor underpayment of wages). DMC Power further argues that just because an employee is clocked in does not mean they are *working*. Haines Decl., ¶ 18. DMC Power also asserts that it ended its rounding policies/practices in June 2020, thereby cutting off its liability for this claim for a significant portion of the Class Period. *Id.* Finally, DMC Power argues that Plaintiffs would be unable to certify this claim given its rounding policies/practices are facially neutral and some employees were overpaid due to rounding, and individualized inquiries would be necessary as to whether employees were in fact underpaid, or overpaid 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.*

///

1 **2. Rest Period Claims**

2 Plaintiffs allege that DMC Power’s uniform written rest period policy fails to authorize
3 and permit non-exempt employees to take a ten-minute off-duty rest period for every four hours
4 worked, or major fraction thereof. Haines Decl., ¶ 19. DMC Power’s written rest period policy
5 states that, “[a]ll hourly employees are provided a paid 10-minute break during each 4-hour period
6 worked.” *Id.* Plaintiffs allege this language is clearly inconsistent with *Brinker’s* requirement that
7 rest periods be authorized and permitted every four hours, or major fraction thereof. *See Brinker*
8 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1033 (2012). Plaintiffs also contend that
9 Settlement Class members were not authorized and permitted to take all off-duty rest periods due
10 to work demands imposed by DMC Power’s managers and supervisors. Haines Decl., ¶ 19.

11 DMC Power asserts that it has always maintained and enforced lawful rest period practices
12 during the Class Period, and has, in fact, authorized and permitted all required rest periods to
13 Settlement Class members. Haines Decl., ¶ 19. DMC Power also maintains that any failure to
14 take rest periods was the result of employee choice. *Id.* Lastly, DMC Power contends that
15 Plaintiffs’ rest period claim is not amenable to class treatment as individualized inquiries would
16 be required to determine which employees failed to take rest periods, and the reasons why each
17 employee failed to take a rest period on a particular shift. *Id.* These manageability concerns are
18 especially present with respect to rest period claims, DMC Power argues, given that rest periods
19 are not recorded. *Id.*

20 **3. Meal Period Claims**

21 Plaintiffs allege that DMC Power failed to provide legally-compliant meal periods.
22 Haines Decl., ¶ 20. Specifically, throughout the Class Period, Plaintiffs allege that first meal
23 periods were often not provided until after the completion of five hours of work due to work
24 demands. *Id.* Plaintiffs further contend that meal periods were often short, as non-exempt
25 employees were often not provided full 30-minute meal periods. *Id.* Plaintiffs also maintain that
26 DMC Power failed to provide legally-compliant second meal periods during shifts in excess of
27 10.0 hours. Haines Decl., ¶ 21.

28 However, DMC Power contends that it has maintained compliant written meal period

1 policies throughout the Class Period, and that it provided all legally-compliant meal periods to
2 Settlement Class members. Haines Decl., ¶¶ 20-21. DMC Power argues that under *Brinker*, it is
3 only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are
4 taken. *Id.*; see *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard and holding
5 employers only have to “provide” employees the opportunity to take meal periods). DMC Power
6 also argues that any short, missed, or late first meal periods were the result of lawful employee
7 waiver or choice, thereby precluding liability. Haines Decl., ¶ 20 With respect to second meal
8 periods, DMC Power argues that second meal periods may lawfully be waived on shifts of more
9 than 10.0 hours but less than 12.0 hours per Labor Code § 512. *Id.*, at ¶ 21. Lastly, DMC Power
10 argues that individualized inquiries will be required to determine why each meal period was taken
11 late or short or missed by each employee, and whether there was a valid waiver, thereby making
12 certification of Plaintiffs’ meal period claim unlikely. *Id.*, at ¶¶ 20-21.

13 **4. Unpaid Overtime Wages Due to Regular Rate Miscalculations**

14 Plaintiffs allege that they and other Settlement Class members worked in excess of eight
15 (8) hours per workday and/or forty (40) hours per workweek, but were not compensated at one
16 and one-half times their regular rate of pay for such hours, as a result of DMC Power’s failure to
17 include non-discretionary bonuses when calculating an employee’s regular rate of pay. Haines
18 Decl., ¶ 22. As a result, Plaintiffs allege that they and other Settlement Class members were
19 systematically underpaid for their overtime hours worked, in violation of California law. *Id.*; see,
20 *e.g., Huntington Memorial Hospital v. Superior Court*, 131 Cal.App.4th 893, 902-903 (2005)
21 (discussing regular rate calculation requirements).

22 DMC Power contends that it properly included all forms of remuneration when calculating
23 the regular rate of pay, and therefore, paid all overtime wages to Settlement Class members.
24 Haines Decl., ¶ 22. DMC Power further contends that the bonus payments at issue were
25 discretionary and therefore excludable from the “regular rate.” *Id.*; see also 29 C.F.R. § 778.208
26 (discretionary bonuses excludable from regular rate). DMC Power further argues that Settlement
27 Class members received different types of bonuses throughout the Class Period, creating
28 substantive differences among the Settlement Class members with respect to the incentives

received, making class certification unlikely. Haines Decl., ¶ 22.

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

As a result of the unpaid wages and unpaid meal and rest period premiums discussed above, Plaintiffs assert that DMC Power failed to comply with its final payment and wage statement obligations, in violation of Labor Code §§ 203 and 226, respectively. Haines Decl., ¶¶ 23-24. Finally, Plaintiffs seek civil penalties under the PAGA based on the aforementioned claims. Haines Decl., ¶ 25.

DMC Power argues that it possesses strong, good faith defenses to Plaintiffs’ underlying claims, thus precluding recovery of waiting time penalties, which are only available for the “willful” failure to pay wages. Haines Decl., ¶ 23; *See* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” over employee’s exempt status precluded imposition of waiting time penalties over contested wages).

In addition, DMC Power argues that any alleged wage statement violations were not “knowing and intentional,” and that Plaintiffs cannot show they or other employees “suffer[ed] injury” due to alleged wage statement violations, as required to recover penalties under Section 226(e). Haines Decl., ¶ 24. Further, DMC Power 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*). DMC Power further argues the same defenses to class certification as to Plaintiffs’ underlying claims apply equally to his derivative waiting time and wage statement claims. Haines Decl., ¶¶ 23-24.

Finally, DMC Power asserts that the PAGA claim fails because Plaintiffs’ underlying claims fail. Haines Decl., ¶ 25; *see also Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also

fail.”). Additionally, DMC Power maintains that, given its good-faith defenses, the Court would substantially reduce any PAGA civil penalties if it were to find DMC Power liable for any of Plaintiffs’ claims. Haines Decl., ¶ 25; *see also* Lab. Code § 2699(e)(2) (authorizing reduction in PAGA penalties in court’s discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties) (*disapproved on other grounds* in *ZB, N.A. v. Sup. Ct.*, 8 Cal.5th 175, FN8 (2019)); *Fleming v. Covidien, Inc.*, No. ED-CV-10-01487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by over 82%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

C. DISCOVERY AND MEDIATION

After extensive meet and confer efforts between the Parties in this Action and the *Brock* Action, the Parties ultimately agreed to attend a global mediation in an effort to reach a classwide settlement of both actions. Haines Decl., ¶ 13. Prior to the February 24, 2022 mediation, the Parties engaged in significant formal and informal discovery, including DMC Power’s production of its applicable wage and hour policies, a 15% sampling of timekeeping and payroll data for the putative class, and other relevant data and information. *Id.*, at ¶ 14. This information allowed the parties to assess the merits and value of Plaintiffs’ claims, the chances for class certification, and DMC Power’s potential defenses. *Id.* Plaintiffs’ counsel also hired a labor economist with a Ph.D. in economics to assist with an analysis and extrapolation of the data provided by DMC Power to calculate potential classwide exposure for Plaintiffs’ claims. *Id.*

On February 24, 2022, the Parties attended a full-day mediation with Jeffrey Krivis, Esq., an experienced and well-respected wage and hour class action mediator. Haines Decl., ¶ 15. During mediation, the Parties vigorously debated their positions, the likelihood of certification, and the legal bases for the Parties’ claims and defenses. *Id.* At the conclusion of mediation, Mr. Krivis issued a mediator’s proposal for a global classwide settlement, which was ultimately accepted by all Parties. *Id.* During the months that followed, the Parties negotiated and finalized the long-form Settlement Agreement now before this Court. *Id.* As part of the Settlement, the

Parties stipulated to the filing of a Second Amended Class and Representative Action Complaint (“SAC”) in this action to add Plaintiff Brock as a named Plaintiff and class representative, add all representative claims alleged in the *Brock* Action, and add a cause of action for waiting time penalties pursuant to Labor Code §§ 201-203. *Id.* On May 27, 2022, Plaintiffs filed the SAC. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

Under the Settlement, DMC Power will pay a non-reversionary Gross Settlement Amount (“GSA”) of One Million One Hundred Thousand Dollars and Zero Cents (\$1,100,000.00). *See* Settlement, § 4. No Settlement Class member will need to submit a claim to receive an individual Settlement Award. *Id.*, at § 5. Each Settlement Class member will automatically receive a Settlement Award, unless he or she affirmatively opts out of the Settlement. *Id.*, at §§ 5, 11. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount (“GSA”):	\$1,100,000.00
• Minus Court-approved attorneys’ fees (1/3):	\$366,666.66
• Minus Court-approved verified costs (up to):	\$45,000.00
• Minus Court-approved Service Awards:	\$15,000.00
• Minus Amount Set Aside as PAGA penalties:	\$50,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$10,000.00</u>
Net Settlement Amount (“NSA”):	\$613,333.34
• PLUS 25% “PAGA Amount” to Settlement Class:	\$12,500.00
Total Amount Paid to Settlement Class members:	\$625,833.34

1. The Settlement Provides for Significant Monetary Payments

After deducting amounts for Court-approved attorneys’ fees and costs, Plaintiffs’ Class Representative Service Awards, the amount designated as PAGA civil penalties, and Settlement Administration costs, the Settlement requires DMC Power to pay a Net Settlement Amount (“NSA”) of at least \$613,333.34 to all Settlement Class members who do not opt out. *See* Settlement, §§ 4-5. Eighty percent (80%) of the NSA will be distributed to all participating Settlement Class members based on each participating Settlement Class member’s proportionate number of workweeks worked for DMC Power in California during the Class Period. *Id.*, § 5(B)(i). Ten percent (10%) of the Net Settlement Amount shall be designated as the “Waiting Time Amount” and will be distributed in equal, pro-rata shares to each participating Settlement

1 Class member who separated their employment with DMC Power at any time between February
2 10, 2017 and the end of the Class Period. *Id.* at § 5(B)(ii). Ten percent (10%) of the NSA has been
3 designated as the “Wage Statement Amount” and will be distributed to Settlement Class members
4 who worked for DMC Power at any time from February 10, 2019 through the end of the Class
5 Period based on the proportionate number of workweeks worked during that time period. *Id.*, at
6 § 5(B)(iii). Lastly, Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) has been
7 designated the “PAGA Amount,” and shall be distributed to all Settlement Class members
8 proportionally based on the number of workweeks worked from November 25, 2018 through the
9 end of the Class Period. *Id.*, at § 5(B)(iv).

10 According to DMC Power, there are approximately 396 Settlement Class members.
11 Haines Decl., ¶ 17. Therefore, the average Settlement Award is projected to be \$1,580.39. *Id.*
12 Settlement Class members will have sixty (60) calendar days from the mailing of the Class Notice
13 to opt-out or object to the Settlement, providing ample time to review the Class Notice without
14 unduly delaying the Settlement. *See* Settlement, §§ 11(C)-(D). Settlement Class members who do
15 not opt-out of the Settlement will be bound by its terms, and will release the claims pled against
16 DMC Power in the SAC or that could have been pled based on the facts alleged in the SAC. *Id.*,
17 at § 3(A).

18 **2. Attorneys’ Fees and Costs, Service Awards, and LWDA Payment**

19 At final approval, Plaintiffs’ counsel will request an attorneys’ fees award of one-third of
20 the GSA (estimated at \$366,666.66), and up to \$45,000.00 in costs. Haines Decl., ¶ 27; *see also*
21 Settlement, §§ 4(C)(4), 6. Plaintiffs’ Counsel submit that the requested fee is fair compensation
22 for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent
23 fee basis. Haines Decl., ¶ 27. Plaintiffs’ Counsel have incurred substantial attorneys’ fees
24 conducting pre-filing investigation, analyzing Plaintiffs’ claims, conducting legal research,
25 analyzing Settlement Class members’ payroll and timekeeping records with Plaintiffs’ expert to
26 create a damages model, preparing for and attending mediation, negotiating and preparing the
27 Settlement, preparing this Motion, and otherwise litigating the case. *Id.* Plaintiffs’ Counsel also
28 anticipates incurring additional fees in overseeing the Notice process, preparing the Final

1 Approval Motion, and attending the Final Approval hearing. *Id.*

2 It is appropriate to award attorney fees as a percentage of the “common fund” created by
3 the settlement. *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480 (2016) (holding “the percentage of
4 fund method survives in California class action cases”). Plaintiffs’ Counsel’s fee request of one-
5 third of the GSA is well within the range of reasonableness and is typical for common fund
6 settlements. *Newberg on Class Actions* § 14.6 (4th Ed. 2013) (historically, courts have awarded
7 percentage fees in the range of 20% to 50%). Thus, Plaintiffs’ Counsel submit that their request
8 for fees is reasonable in light of the substantial risks and significant work undertaken, the results
9 obtained, and the efficiency with which counsel conducted the litigation.

10 At final approval, Plaintiffs will also apply for Class Representative Service Awards of
11 \$7,500.00 to each Plaintiff, for their respective service to the Settlement Class. Haines Decl., ¶
12 28; see Settlement, §§ 4(C)(3), 7. “[I]ncentive awards are fairly typical in class action cases . . .
13 and are intended to compensate class representatives for work done on behalf of the class [and]
14 to make up for financial or reputational risk undertaken in bringing the action.” *In re Cellphone*
15 *Fee Termination Cases* 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the
16 time of final approval, Plaintiffs’ requested service awards are intended to recognize the time and
17 effort they expended on behalf of the Settlement Class, including providing substantial factual
18 information and documents to Plaintiffs’ Counsel, attending multiple meetings with Plaintiffs’
19 Counsel to discuss the claims and theories at issue in the litigation, and actively participating in
20 the prosecution of their claims, as well as the significant risks Plaintiffs undertook by agreeing to
21 serve as the named plaintiffs in this case. Haines Decl., ¶ 28.

22 The Settlement also designates \$50,000.00 as PAGA penalties, of which \$37,500.00
23 (75%) will be paid to the LWDA, with the remaining \$12,500.00 (25%) distributed to the
24 Settlement Class, consistent with the requirements of Labor Code § 2699(i). See Settlement, §
25 4(C)(5). Plaintiffs submit that this allocation is appropriate in light of other settlements allocating
26 penalties to the LWDA. See, e.g., *Chu v. Wells Fargo Investments, LLC* Case No. C 05-4526
27 MHP, 2011 WL 672645 at *1 (N.D. Cal. 2011) (approving PAGA payment of \$7,500 to LWDA
28 out of \$6.9 million common-fund settlement).

1 **IV. ARGUMENT**

2 **A. PRELIMINARY APPROVAL IS WARRANTED**

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

16 **1. Standard for Preliminary Approval**

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

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

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

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

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

Although the Parties engaged in significant formal and informal discovery in advance of mediation, the Parties still had significant formal written and deposition discovery to complete in formal litigation had the matter not settled. Haines Decl., ¶ 29. This would have required expenditure of substantial time and resources by both parties that would have very likely spanned several years. *Id.* Even if Plaintiffs were to certify the classes, the Parties would incur considerably more attorney's fees and costs through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the accompanying expense. *Id.*

c. Risk of Maintaining Class Action Status

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

d. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a substantial monetary recovery for the Settlement Class in the face of disputed claims. With the assistance of their retained economist, Plaintiffs conducted an analysis of potential damages due to DMC Power's allegedly unlawful policies and practices. Plaintiffs' analyses of realistic expected recoveries for each theory of liability are set forth below:

Unpaid Wages Due to Rounding: \$15,715

Based on Plaintiffs' expert's analysis of Settlement Class members' timekeeping records, Plaintiffs contend that DMC Power's rounding practice, which appears to have ended on or around June 29, 2020, resulted in approximately 2,049 net hours of unpaid wages. Haines Decl., ¶ 18. Thus, and based upon the average rate of pay during the Class Period, Plaintiffs estimate

1 that DMC Power's maximum exposure for this claim is approximately \$62,863 (2,049 hrs. *
2 \$15.34 average rate of pay * 2 (liquidated damages per Labor Code §1194.2). *Id.*

3 But as noted above, DMC Power raised several defenses to this claim, including its
4 argument that it utilized an even-handed timekeeping system that, on balance, resulted in
5 employees being paid for all hours actually worked; that some employees were *overpaid* as a
6 result its rounding practice; that employees did not perform any work before the scheduled start
7 of their shifts; and that Plaintiffs would be unable to certify this claim given the individualized
8 inquiries as to whether employees were in fact underpaid, or overpaid for each workday in
9 question. *Id.* Based on these defenses, Plaintiffs discounted the maximum exposure by 50% to
10 account for the risk of non-certification, and an additional 50% to account for DMC Power's
11 defenses on the merits, to arrive at an estimated exposure of approximately \$15,715. *Id.*

12 **Rest Period Violations: \$248,203**

13 Plaintiffs allege that DMC Power failed to authorize and permit all legally-compliant rest
14 periods. Haines Decl., ¶ 19. Plaintiffs' analysis of DMC Power's timekeeping data shows that
15 there were approximately 115,572 rest period eligible shifts. *Id.* Therefore, assuming Plaintiffs
16 could establish a rest period violation on each shift, Plaintiffs calculated DMC Power's maximum
17 exposure on this claim at \$1,772,874 (115,572 rest period violations * \$15.34 average rest period
18 premium). *Id.*

19 However, as stated above, DMC Power contends that it maintained legally-compliant rest
20 period policies throughout the Class Period, and in fact, authorized and permitted all rest periods
21 to Settlement Class members. *Id.* DMC Power also argues that any failure to take rest periods was
22 the result of employee choice. *Id.* DMC Power also asserts that this claim is not amenable to class
23 treatment as individualized inquiries would be required to determine which employees failed to
24 take a rest period, and the reasons why. *Id.* DMC Power further maintains that manageability
25 concerns are especially present with respect to Plaintiffs' rest period claim, given that rest periods
26 are not recorded. *Id.* In light of these defenses, Plaintiffs discounted DMC Power's maximum
27 exposure by 60% to account for the risk of non-certification, and an additional 65% to account
28 for DMC Power's defenses on the merits, to arrive at an estimated exposure of approximately

1 \$248,203. *Id.*

2 First Meal Period Violations: \$436,403

3 Plaintiffs allege that DMC Power failed to provide timely 30-minute meal periods before
4 the conclusion of the fifth hour of work. Haines Decl., ¶ 20. Based on Plaintiffs' expert's review
5 and extrapolation of the timekeeping data produced by DMC Power, 67,735 shifts during the
6 Class Period reflected a late, short, and/or missed first meal period *Id.* In addition, based on data
7 provided by DMC Power, Settlement Class members' average hourly rate of pay during the Class
8 Period was \$15.34 per hour. *Id.* Therefore, assuming each late, short, and/or missed meal period
9 reflected in the timekeeping records would result in a violation, Plaintiffs calculated DMC
10 Power's maximum exposure on this claim at approximately \$1,039,054 (67,735 non-compliant
11 first meal periods * \$15.34 average meal period premium). *Id.*

12 However, as noted above, DMC Power contends that it provided compliant meal periods
13 to Settlement Class members throughout the Class Period. Haines Decl., ¶ 20. DMC Power also
14 asserts that under *Brinker* it is only required to "provide" the opportunity to take meal periods,
15 not "ensure" meal periods are taken, and that, as described above, it has always done so, and any
16 non-compliant first meal periods in the timekeeping records were the result of employee choice.
17 *Id.*; see also *Brinker*, supra, 53 Cal.4th at 1038 (rejecting "ensure" standard and holding employers
18 only have to "provide" employees the opportunity to take meal periods). Finally, DMC Power
19 maintains that the first meal period claim is not suited for class certification, since individual
20 inquiries would be needed to assess which employees took non-compliant meal periods or missed
21 meal periods, how many meal periods were non-compliant or missed, and the reasons why a
22 particular employee did not take a compliant meal period on a particular shift. *Id.* In light of these
23 defenses and arguments, Plaintiffs discounted DMC Power's maximum exposure by 30% for the
24 risk of non-certification, and an additional 40% to account for DMC Power's defenses on the
25 merits, to arrive at an estimated total of approximately \$436,403. *Id.*

26 Second Meal Period Violations: \$36,282

27 Plaintiffs also allege that DMC Power failed to provide legally-compliant second meal
28 periods during shifts in excess of 10.0 hours. Haines Decl., ¶ 21. Based on Plaintiffs' expert's

review of employee timekeeping data, approximately 15,768 shifts during the Class Period reflected a potential second meal period violation. *Id.* Thus, Plaintiffs estimated a total maximum exposure for second meal period violations as \$241,881 (15,768 violations * \$15.34 average meal period premium). *Id.*

However, DMC Power argues that it has maintained compliant meal period policies throughout the Class Period, that under *Brinker* it is only required to “provide” the opportunity to take second meal periods, and that any missed second meal periods were the result of lawful employee waiver or choice. *Id.* DMC Power also contends that Settlement Class members voluntarily waived their second meal periods on shifts in excess of 10.0 hours but less than 12.0 hours, as they are entitled to do pursuant to Labor Code § 512. *Id.* DMC Power also contends that class certification would not be proper as individualized inquiries will be required to determine why each second meal period was missed, and whether there was a valid waiver. *Id.* In light of these arguments and defenses, Plaintiffs discounted the maximum amount that the class could potentially recover for second meal periods by 50% for a risk of non-certification, and an additional 70% for a risk of losing on the merits, or having exposure reduced due to DMC Power’s waiver arguments, to arrive at an estimated exposure amount of approximately \$36,282. *Id.*

Regular Rate Violations: \$15,469

Plaintiffs also allege that DMC Power miscalculated Settlement Class member’s regular rate of pay by failing to include non-discretionary bonuses into the “regular rate” when calculating overtime pay. Haines Decl., ¶ 22. Based on the data provided by DMC Power, Plaintiffs calculated DMC Power’s maximum potential liability to be approximately \$24,265 in unpaid overtime due to the regular rate violations during the Class Period. *Id.*

As stated above, DMC Power contends that it has paid all overtime wages to Settlement Class members, and further argues that Settlement Class members received different types of production bonuses throughout the Class Period, creating substantive differences among the Settlement Class members with respect to the incentives received, making class certification unlikely. Haines Decl., ¶ 22. In light of DMC Power’s defenses, Plaintiff discounted the maximum exposure by 15% for a risk of non-certification, and an additional 25% for a risk of

being unsuccessful on the merits, to arrive at an estimated exposure of \$15,469. *Id.*

Waiting Time Penalties: \$286,069

Plaintiffs alleges DMC Power is liable for waiting time penalties under Labor Code § 203 to former employees whose employment with DMC Power ended since February 10, 2017. Haines Decl., ¶ 23. DMC Power’s records reflected approximately 314 former Settlement Class members who separated their employment with DMC Power since February 10, 2017. *Id.* Plaintiffs estimates an average waiting time penalty of \$3,681 (\$15.34 average hourly rate * 8 hours per day * 30 days). *Id.* Therefore, Plaintiffs estimate DMC Power’s maximum waiting time penalty exposure at approximately \$1,155,834 (314 former employees * \$3,681 penalty). *Id.*

However, DMC Power argues that it possesses strong, good faith defenses to Plaintiffs’ underlying claims, thus precluding recovery of waiting time penalties, which are only available for the “willful” failure to pay wages. Haines Decl., ¶ 23; *see also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” over employee’s exempt status precluded imposition of waiting time penalties over contested wages). Moreover, DMC Power argues that because the waiting time claim is derivative of Plaintiffs’ underlying wage claims, Plaintiffs would need to overcome DMC Power defenses, both as to class certification and as to the merits, to their underlying claims. Haines Decl., ¶ 23. Based on these defenses, Plaintiffs discounted DMC Power’s maximum exposure by 45% for risk of non-certification, and an additional 55% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at an estimated total of approximately \$286,069. *Id.*

Wage Statement Penalties: \$204,479

As a result of the violations alleged above, Plaintiffs alleges that DMC Power furnished inaccurate wage statements in violation of Labor Code § 226. Haines Decl., ¶ 24. Plaintiffs’ analysis reflected approximately 9,411 pay periods and approximately 233 unique Settlement Class members during the relevant statutory period for the wage statement claim. *Id.* Plaintiffs calculated DMC Power’s maximum exposure for wage statement violations at \$929,450 (233 initial violations * \$50 for initial penalty = \$11,650) + (9,178 subsequent violations * \$100

subsequent violation penalty = \$917,800). *Id.*; see also Labor Code § 226(e) (providing for \$50 penalty for “initial” violations). *Id.*

As discussed above, DMC Power argues any alleged wage statement violations were not “knowing and intentional,” that Plaintiffs cannot show they or other employees “suffer[ed] injury,” that wage statements always included the actual amounts paid to employees, and that this claim is not amenable for class certification for the same reasons as Plaintiffs’ underlying claims. *Id.* Thus, Plaintiffs discounted the maximal exposure by 45% for risk of non-certification, and by an additional 60% for risk of being unsuccessful on the merits, to arrive at an estimated realistic total of \$204,479. *Id.*

PAGA Penalties: \$103,520

Finally, Plaintiffs allege a derivative claim for PAGA civil penalties. Plaintiffs estimated a maximum total PAGA exposure at \$1,035,200 for the relevant time period (10,352 pay periods * \$100 “initial” penalty). Haines Decl., ¶ 25; *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 DMC Power vigorously disputes. Haines Decl., ¶ 25; 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). DMC Power also asserts the Court would drastically reduce any award of PAGA penalties as “confiscatory.” Haines Decl., ¶ 25; see also *Thurman, supra*, 203 Cal.App.4th at 1135 (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 from \$2.8 million to \$500,000). Therefore, Plaintiffs discounted the maximum figure by 60% for risk of losing on the merits, and an additional 75% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of \$103,520. Haines Decl., ¶ 25.

Using these estimated figures for each of the claims described above, Plaintiffs calculate a maximum potential recovery to be approximately \$1,346,140. Haines Decl., ¶ 26. The proposed settlement of \$1,100,000 therefore represents approximately 82% of the reasonably forecasted

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

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

5 “Parties represented by competent counsel are better positioned than courts to produce a
6 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
7 *Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are
8 represented by competent, experienced counsel who possess extensive experience prosecuting
9 and defending wage-and-hour class actions, and who have been appointed as class counsel in
10 numerous cases alleging similar claims. *See* Haines Decl., ¶¶ 3-8; Declaration of Sean M. Blakely
11 (“Blakely Decl.”), ¶¶ 2-5; Declaration of Neil M. Larsen (“Larsen Decl.”), ¶¶ 2-6; Declaration of
12 Raymond P. Boucher (“Boucher Decl.”), ¶¶ 16-26; Declaration of Sahag Majarian II (“Majarian
13 Decl.”), ¶¶ 3-5.

14 Class Counsel conducted an in-depth review of DMC Power’s policies and timekeeping
15 and payroll records with the assistance of a retained expert with a Ph.D. in economics, and drew
16 on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiffs’
17 case. Haines Decl., ¶¶ 3-26. The Settlement was also reached with the assistance of an
18 experienced and respected wage and hour class action mediator. *Id.*, at ¶ 15. Thus, this factor
19 strongly supports preliminary approval of the Settlement. *Kullar, supra*, 168 Cal.App.4th at 130.

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

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

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

27 The proposed settlement reflects approximately 82% of the estimated recovery the
28 Settlement Class could reasonably expect in light of the significant litigation risks, and will

1 provide tangible, substantial monetary compensation for hotly disputed claims. Plaintiffs submit
2 the proposed Settlement is within the range of possible approval, such that notice should be
3 provided to the Settlement Class so that they may consider the Settlement. The Court will have
4 the opportunity to again assess the reasonableness of the Settlement after the Settlement Class has
5 had the opportunity to opt-out or object.

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

7 The Settlement resulted from an exchange of substantial information, arm's-length
8 negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and
9 additional months of negotiations. Thus, the Settlement is entitled to an initial presumption of
10 fairness. *Kullar, supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiffs carefully vetted
11 the claims at issue, reviewed extensive timekeeping, payroll, and other data, and conducted a
12 detailed statistical analysis of the data with the assistance of an expert economist to arrive at their
13 estimated classwide damages figures. *See Haines Decl.*, ¶¶ 18-26. Thus, this factor supports
14 preliminary approval.

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

16 Preliminary approval of the Settlement is warranted because there are no obvious
17 deficiencies. The Settlement will provide substantial monetary relief to the Settlement Class, and
18 the amounts proposed for attorneys' fees, costs, and service awards are all reasonable and
19 appropriate based on the facts of this case. Thus, this factor supports preliminary approval.

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

21 The Settlement Class satisfies the criteria for certification of a settlement class under
22 California law because: (1) the Settlement Class is numerous and ascertainable; (2) common
23 questions of law and fact predominate over individual questions such that class certification is the
24 most efficient and desirable way to maintain this litigation; (3) Plaintiffs' claims are typical of the
25 claims of absent Settlement Class members; and (4) Plaintiffs and their counsel will fairly and
26 adequately represent Settlement Class members' interest. *See Cal. Civ. Proc. § 382.*

27 ///

28 ///

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

2 A class is “ascertainable” where the members “may be readily identified without
3 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*
4 *Corp.*, 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is
5 defined as all current and former non-exempt employees employed by DMC Power in California
6 from February 10, 2016 until the date of preliminary approval of this Settlement. *See Settlement*,
7 § 1. Therefore, Settlement Class members can be identified from DMC Power’s personnel and
8 employment records. Defense counsel also represents that the Settlement Class consists of
9 approximately 396 individuals. Haines Decl., ¶ 17. It would therefore be impracticable for each
10 Settlement Class member to bring an individual lawsuit. The proposed Settlement Class therefore
11 satisfies numerosity. *See, e.g., Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (holding a class
12 representing 10 beneficiaries of a trust sufficiently numerous).

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

14 The focus in a certification dispute is not the merits, but rather on what types of questions,
15 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior*
16 *Court (Rocher)*, 34 Cal.4th 319, 327 (2004). Plaintiffs’ claims are predicated on, among other
17 issues, DMC Power’s timekeeping, and meal and rest period policies and practices. These types
18 of claims are commonly held to be proper for class certification. *See e.g., Williams v. Superior*
19 *Court* 221 Cal.App.4th 1353, 1371 (2013) (certifying class based on uncompensated work time);
20 *Benton v. Telecom Network Specialists, Inc.* 220 Cal.App.4th 701, 726 (2013) (certifying meal
21 and rest period claims).

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

23 The typicality requirement is satisfied where class representatives have claims that are
24 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191
25 Cal.App.3d 1341, 1347 (1987). Here, Plaintiffs’ claims are typical of those held by the members
26 of the proposed Settlement Class. Plaintiffs were employed by DMC Power during the Class
27 Period as non-exempt employees and were subject to DMC Power’s wage and hour policies at
28 issue in this case, and were injured by the same challenged policies that allegedly injured the

Settlement Class as a whole. *See* Haines Decl., ¶¶ 9, 30; Declaration of Edgar Macabulit, ¶¶ 2-3; Declaration of San Antonio Brock, ¶¶ 3-5. Thus, typicality is satisfied.

4. Plaintiffs and Plaintiffs’ Counsel Will Adequately Represent the Class

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Svcs.*, 155 Cal.App.4th 676, 697 (2007). Plaintiffs and their counsel will adequately represent the Settlement Class, as there are no known conflicts between Plaintiffs and the Settlement Class, and Plaintiffs’ Counsel have significant relevant experience. Haines Decl., ¶¶ 2-7, 30.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE

This Court should order distribution to the Settlement Class of the proposed Class Notice by U.S. Mail, postage prepaid, using last known mailing address information provided by DMC Power. *See* Settlement, § 11. This manner of giving notice is the “best notice practicable” under the circumstances because it provides “individual notice to all members who can be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Here, Plaintiffs propose that the Settlement be administered by Phoenix Settlement Administrators (“Phoenix”), an experienced class action settlement administrator. *See generally* Declaration of Jodey Lawrence and attached exhibits. Settlement Class members’ addresses will be ascertainable through DMC Power’s personnel and payroll records, which DMC Power will provide to Phoenix within ten (10) business days after preliminary approval of the Settlement. *See* Settlement, § 11(A). Phoenix will run the addresses through the U.S. Postal Service’s Notice of Change of Address database, and to the extent any Notices are returned, Phoenix will perform a “skip trace” to locate the Settlement Class member’s current mailing address. *Id.*, §§ 11(B), (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, the recovery formula and expected recovery amount for each Settlement Class member, and advises Settlement Class members that they will be bound by the terms of the Settlement if they do not opt-out. *See* Haines Decl., Exhs.

1 A and B to Exh. 1. The proposed Class Notice will also notify Settlement Class members of the
2 final approval hearing date, provides contact information for Class Counsel, and advises
3 Settlement Class members that they may enter an appearance through counsel if they wish to do
4 so. *Id.* This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable
5 and cost-effective method of reaching Settlement Class members.

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

7 Finally, this Court should set a hearing for final approval of the Settlement on a date
8 appropriately scheduled to follow the deadline by which Settlement Class Members must file
9 objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

10 **IV. CONCLUSION**

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

14 Respectfully submitted,

15 HAINES LAW GROUP, APC
16 BOUCHER LLP

17 By: _____

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