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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]*

**DECLARATION OF PAUL K.
HAINES IN SUPPORT OF
PLAINTIFFS' 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 I, PAUL K. HAINES, declare as follows:

2 1. I am a shareholder and principal of Haines Law Group, APC, and co-counsel for
3 the named Plaintiffs Edgar Macabulit and San Antonio Brock (“Plaintiffs”) and the proposed
4 Settlement Class in the above-captioned matter. I am a member in good standing of the bar of the
5 State of California and am admitted to practice in this Court. I have personal knowledge of the
6 facts stated in this declaration and could testify competently to them if called upon to do so.

7 2. I am a 2006 graduate of Pepperdine University School of Law, where I graduated
8 cum laude. During law school, I worked as a law clerk for the appellate firm of Horvitz & Levy,
9 located in Encino, California. I also spent a semester in law school working as an extern for the
10 Honorable Edward Rafeedie, District Judge for the United States District Court for the Central
11 District of California.

12 3. Since graduating from law school, my practice has focused almost exclusively on
13 employment litigation. In September 2007, I began working as an associate attorney at the
14 international law firm of Littler Mendelson P.C., at its Los Angeles office, which according to its
15 website is the “largest U.S.-based law firm exclusively devoted to representing management in
16 every aspect of labor and employment law.” While at Littler Mendelson, I was primarily staffed
17 on wage and hour class actions venued in both state and federal courts, and I also worked on a
18 number of single and multi-plaintiff wage and hour matters as well.

19 4. During my employment at Littler Mendelson, I played a significant role in the
20 class actions that I was staffed on, as I was often the only associate staffed on such cases. In
21 particular, I received a wide-array of wage and hour class action experience performing the
22 following types of tasks: drafting demurrers, motions to strike and/or dismiss; removing actions
23 from state court to federal court; drafting and responding to written discovery; drafting and
24 opposing discovery related motions; arguing discovery related motions; drafting motions to
25 consolidate related matters; interviewing putative class members and obtaining declarations in
26 connection with class certification; drafting oppositions to motions for class certification; drafting
27 motions for decertification following class certification; conducting exposure analyses to assess
28 the strengths and weaknesses of asserted claims, the likelihood of prevailing at class certification

1 and potential damages resulting from such claims; drafting mediation briefs; serving as the
2 primary contact to in-house counsel; deposing named Plaintiff and putative class members;
3 deposing retained expert witnesses; and defending the depositions of corporate witnesses. In
4 short, I played an integral role in all aspects of litigation from the inception of a matter through
5 and beyond class certification. I also supervised the work of several junior attorneys who were
6 staffed on the same wage and hour class actions.

7 5. In June 2011, I voluntarily resigned from Littler Mendelson in order to accept an
8 associate attorney position with the international law firm of Morgan, Lewis & Bockius LLP, at
9 its Los Angeles office, where I began working in July 2011. During my employment at Morgan,
10 Lewis & Bockius LLP, I worked exclusively on the defense of wage and hour class and collective
11 actions. For the vast majority of these cases, I was the only associate staffed on the matter, and I
12 performed the same job duties as described in the immediately preceding paragraph. In addition
13 to working on wage and hour class actions, at Morgan, Lewis & Bockius I also worked on a
14 number of “hybrid” actions asserting nationwide wage and hour claims under the Fair Labor
15 Standards Act (“FLSA”), as well as California-specific claims under Rule 23 of the Rules of Civil
16 Procedure.

17 6. In July 2012, I transitioned into litigating wage and hour class actions from the
18 Plaintiff’s side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since
19 February 2016, as a Shareholder of the Haines Law Group, APC. Currently, over ninety percent
20 (90%) of my practice is dedicated exclusively to the prosecution of wage and hour class actions,
21 and I am currently responsible for prosecuting over thirty (30) wage and hour class actions filed
22 in both State and Federal courts throughout California. Below are some of the matters in which I
23 have been appointed as Class Counsel, all of which have been granted final approval: *Hilberger*
24 *v. Eisenhower Medical Center*, Case No. INC1204915, California Superior Court, County of
25 Riverside, Honorable Judge John G. Evans, presiding, (in which I was approved for an hourly
26 rate of \$500 for work performed in 2012 and 2013); *Lopez v. Cornucopia Tools and Plastics, Inc.*,
27 Case No. CV138049, California Superior Court, County of San Luis Obispo, Honorable Judge
28 Martin J. Tangeman, presiding, (in which I was approved for an hourly rate of \$425 for work

performed in 2013 and 2014); *Tacker v. Compass Health, Inc.*, Case No. CV13-02261 BRO (JCG), United States District Court, Central District of California, Honorable Judge Beverly Reid O’Connell, presiding, (in which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Noell v. American Professional Ambulance Corporation, Inc.*, Case No. BC499345, California Superior Court, County of Los Angeles, Honorable Judge Kenneth R. Freeman, presiding, (in which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Bautista v. Harvest Management Sub LLC*, Case No. CV12-10004 FMO (CWx), United States District Court, Central District of California, Honorable Judge Fernando M. Olguin, presiding (in which I was approved for an hourly rate of \$500 for work performed in 2012, 2013 and 2014); *Davila v. OCB Restaurant Co.*, Case No. CV13-5403 PA (JCG), United States District Court, Central District of California, Honorable Judge Percy Anderson, presiding (in which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Abad v. Waste Connections, Inc.*, Case No. CV12-06708 DDP (PJWx), United States District Court, Central District of California, Honorable Judge Dean D. Pregerson, presiding (in which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Plantillas v. Snap-On Incorporated*, Case No. CV13-05153 DDP (VBKx), United States District Court, Central District of California, Honorable Judge Dean D. Pregerson, presiding (in which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Theodore v. Keyes European, LLC*, Case No. BC521395, California Superior Court, County of Los Angeles, Honorable Judge Elihu Berle, presiding (in which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Morales v. Sunset Tower Hotel LLC*, Case No. BC511924, California Superior Court, County of Los Angeles, Honorable Judge John Shepard Wiley Jr., presiding (in which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Gonzalez v. Universal Alloy Corp.*, Case No. SACV13-00807 JVS (MRWx), United States District Court, Central District of California, Honorable Judge James V. Selna, presiding (in which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Morawski v. Milt Guggia Enterprises, Inc.*, Case No. CV13-2349 ABC (RZx), United States District Court, Central District of California, Honorable Judge Andre Birotte, Jr., presiding (in which I was approved for an

hourly rate of \$500 for work performed in 2013 and 2014); *Thorp v. Alcal Industries, Inc., et al.*, Case No. CV13-02289 YGR, United States District Court, Northern District of California, Honorable Judge Yvonne Gonzalez Rogers, presiding (in which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Myles v. College Hospital*, Case No. BC487206, California Superior Court, County of Los Angeles, Honorable Judge John Shepard Wiley, Jr., presiding (in which I was approved for an hourly rate of \$500 for work performed in 2013, 2014 and 2015); *Sarinana v. DS Waters of America, Inc.*, Case No. C13-0905 EMC, United States District Court, Northern District of California, Honorable Edward M. Chen, presiding (in which I was approved for an hourly rate of \$550 for work performed in 2014 and 2015); *Julio v. Anthony, Inc.*, Case No. CV14-03172 AB (SHx), United States District Court, Central District of California, Honorable Judge Andre Birotte Jr., presiding (in which I was approved for an hourly rate of \$550 for work performed in 2014 and 2015); *Litt v. Western Stone & Metal Corp.*, Case No. 3:14-cv-02804-PJH, United States District Court, Northern District of California, Honorable Judge Phyllis J. Hamilton, presiding (in which I was approved for an hourly rate of \$550 for work performed in 2014 and 2015); *Rubalcava v. United Towing and Transport Burbank, et al.*, Case No. BC518468, California Superior Court, County of Los Angeles, Honorable Judge Kenneth Freeman, presiding (in which I was approved for an hourly rate of \$550 for work performed in 2013, 2014 and 2015); *Sanchez v. Res-Care, Inc.*, Case No. BC526175, California Superior Court, County of Los Angeles, Honorable John S. Wiley, presiding (in which I was approved for an hourly rate of \$550 for work performed in 2013, 2014 and 2015); *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter, presiding (in which I was approved for an hourly rate of \$550 for work performed in 2014 and 2015); *Rivera Regalado v. Jaguar Farm Labor Contracting*, Case No. CV 130569, California Superior Court, County of San Luis Obispo, Honorable Martin J. Tangeman, presiding (in which I was approved for an hourly rate of \$550 for work performed in 2014 and 2015); *Rodas v. Gateways Hospital and Mental Health Center*, Case No. BC503179, California Superior Court, County of Los Angeles, Honorable Judge Amy D. Hogue, presiding (in which I was approved for an hourly rate of \$550 for work performed in

2014 and 2015); *Escobar v. Century West, LLC*, Case No BC564873, California Superior Court, County of Los Angeles, Honorable Judge Jane L. Johnson, presiding (in which I was approved for an hourly rate of \$550 for work performed in 2014 and 2015 and 2016); *Shaw v. Conant Auto Retail, San Diego*, Case No. 37-2014-00044052-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Judge Joan M. Lewis, presiding (approving an hourly rate of \$575 for work performed in 2014, 2015, and 2016); *Tirado v. Ricon Corp.*, Case No. BC537042, California Superior Court, County of Los Angeles, Honorable John S. Wiley, presiding (approving an hourly rate of \$575 for work performed in 2014, 2015, and 2016); and *Horta v. Searles Valley Minerals, Inc.*, Case No. CIVDS 1507615, California Superior Court, County of San Bernardino, Honorable Donald Alvarez presiding (approving an hourly rate of \$575 for work performed in 2015 and 2016); *Cristobal v. Koos Manufacturing, Inc.*, Case No. BC591484, California Superior Court, County of Los Angeles, Hon. William F. Highberger presiding (approving an hourly rate of \$575 for work performed in 2015 and 2016); *Rodriguez v. Spartan, Inc.*, Case No. BCV-15-100007-DRL, California Superior Court, County of Kern, Honorable David R. Lampe presiding (approving hourly rate of \$575 for work performed in 2015, 2016, and 2017); *Kostyuk, et al. v. Golden State Overnight Delivery Service, Inc.*, Case No. RG14727191, California Superior Court, Alameda County, Honorable Winifred Y. Smith presiding (approving an hourly rate of \$575 for work performed in 2015, 2016, and 2017); *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior Court, County of Los Angeles, Honorable Judge John Shepard Wiley, Jr., presiding (approved at an hourly rate of \$600 for work performed in 2016 and 2017); *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior Court of California, County of Los Angeles, Honorable Judge Elihu M. Berle presiding (approved at an hourly rate of \$600 for work performed in 2016 and 2017); and *Morales v. Caremeridian, LLC, et al.*, Case No. BC593191, California Superior Court, County of Los Angeles, Judge William F. Highberger presiding (granting final approval of settlement on behalf of direct support professionals involving claims for unpaid wages, meal and rest period violations, wage statement violations, and other claims).

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1 7. I have also moved to certify and have received an order certifying a class action
2 and/or conditionally certifying a collective action, in the following cases:

- 3 • *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-
4 CXC, California Superior Court, County of Orange, Honorable Judge Gail A. Andler,
5 presiding (certifying a class of employees who were misclassified as independent
6 contractors);
- 7 • *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United
8 States District Court, Central District of California, Honorable Judge Beverly Reid
9 O'Connell, presiding (conditionally certifying an unpaid FLSA overtime wage class);
- 10 • *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States
11 District Court, Central District of California, Honorable Judge John F. Walter, presiding
12 (certifying a rest period violation class and conditionally certifying an FLSA unpaid
13 overtime wage class);
- 14 • *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court,
15 Northern District of California, Honorable Judge Haywood S. Gilliam, Jr., presiding
16 (conditionally certifying an unpaid FLSA overtime wage class);
- 17 • *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States
18 District Court, Eastern District of California, Honorable Jennifer L. Thurston, presiding
19 (conditionally certifying an unpaid FLSA overtime wage class);
- 20 • *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC,
21 California Superior Court, County of Orange, Honorable Judge William Claster, presiding
22 (certifying unpaid overtime wage class and waiting time penalty class);
- 23 • *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx), United
24 States District Court, Central District of California, Honorable Dolly M. Gee presiding
25 (certifying six classes of employees for rest period violations, wage statement violations,
26 meal period violations, and overtime and double-time violations);
- 27 • *Vazquez, et al v. Kraft Heinz Foods Company*, Case No. 16-cv-2749-WQH-BLM, United
28 States District Court, Southern District of California, Honorable William Q. Hayes

presiding (certifying six classes of employees for unpaid wages, meal period violations, wage statement violations, and waiting time penalties);

- *Caudle, et al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-WHA, United States District Court, Northern District of California, Honorable William H. Alsup presiding (certifying three classes of employees for unlawful wage deduction violations, wage statement violations, and waiting time violations);
- *Staublein v. Wells Fargo Bank, N.A.*, Case No. CIVDS1712267, San Bernardino County Superior Court, Honorable David S. Cohn presiding (certifying wage statement class);
- *Perez v. Sunbelt Rentals, Inc.* Case No. 37-2018-00026405-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Eddie C. Sturgeon presiding (certifying one class of employees for wage statement violations); and
- *Bowlin-Burdick, et al v. Life Care Centers of America, Inc.*, Case No. BC657139, Los Angeles County Superior Court, Honorable Maren E. Nelson presiding (certifying four classes for meal period violations, rest period violations, wage statement violations, and waiting time penalties).

8. As co-counsel for Plaintiffs and the proposed Settlement Class, I have been intimately involved in every aspect of this case from its inception through the present, and I believe that the proposed Settlement is a favorable result for the Settlement Class.

9. Defendant DMC Power, Inc. (“DMC Power”) is engaged in the business of manufacturing products for aviation and utility companies around the globe. Plaintiff Macabulit worked for DMC Power as a non-exempt employee in California from approximately February 2007 until approximately February 2022. Plaintiff Brock worked for DMC Power as a non-exempt employee in California from approximately August 21, 2018 until June 27, 2019.

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

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1 11. On August 20, 2020, Plaintiff Macabulit filed a class action complaint against
2 Defendant in Los Angeles County Superior Court, in the matter entitled *Edgar Macabulit v. DMC*
3 *Power, Inc.*, Case No. 20STCV32034 (the “*Macabulit Action*”). On December 28, 2020, Plaintiff
4 Macabulit filed a First Amended Class and Representative Complaint to add a cause of action for
5 civil penalties under the PAGA.

6 12. On February 4, 2021, this Court related the *Macabulit Action* and the *Brock*
7 *Action*, and designated the *Macabulit Action* the Lead Case.

8 13. After extensive meet and confer efforts between the Parties in this Action and the
9 *Brock Action*, the Parties ultimately agreed to attend a global mediation in an effort to reach a
10 classwide settlement of both actions..

11 14. Prior to mediation, the Parties engaged in significant formal and informal
12 discovery, including DMC Power’s production of its applicable wage and hour policies; a 15%
13 sampling of timekeeping and payroll data for the putative class, and other relevant data and
14 information. Plaintiffs’ counsel also hired a labor economist with a Ph.D. in economics to assist
15 with an analysis and extrapolation of the data provided by DMC Power to calculate potential
16 classwide exposure for Plaintiffs’ claims. This information allowed the parties to assess the merits
17 and value of Plaintiffs’ claims, the chances for class certification, and DMC Power’s potential
18 defenses.

19 15. On February 24, 2022, the Parties attended a full-day mediation with Jeffrey
20 Krivis, Esq., an experienced and well-respected wage and hour class action mediator. During
21 mediation, the Parties vigorously debated their positions, the likelihood of certification, and the
22 legal bases for the Parties’ claims and defenses. At the conclusion of mediation, Mr. Krivis issued
23 a mediator’s proposal for a global classwide settlement, which was ultimately accepted by all
24 Parties. During the months that followed, the parties negotiated and finalized the long-form
25 Settlement Agreement now before this Court. A true and correct copy of the Settlement
26 Agreement is attached hereto as **Exhibit 1**. The proposed Class Notice and Notice of Estimated
27 Settlement Award are attached as **Exhibits A and B**, respectively, to the Settlement Agreement.
28 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. On May 27, 2022, Plaintiffs filed the SAC.

16. 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

17. According to DMC Power, there are approximately 396 total Settlement Class members. Therefore, the average individual Settlement Award is projected to be approximately \$1,580.39.

18. As described in the accompanying Motion for Preliminary Approval of Class Action Settlement, Plaintiffs contend that DMC Power underpaid Settlement Class members due to its allegedly unlawful rounding practices. 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. Plaintiffs’ expert’s analysis also revealed that DMC Power’s rounding practice resulted in approximately 2,049 net hours of unpaid wages. Thus, and based upon the average rate of pay during the Class Period, Plaintiffs estimate that DMC Power’s maximum exposure for this claim is approximately \$62,863 (2,049 hrs. * \$15.34 average rate of pay * 2 (liquidated damages per Labor Code §1194.2). DMC Power argues that that it utilized an even-handed timekeeping system that, on balance, resulted in employees being paid for all hours actually worked. DMC Power further argues that just because an employee is clocked in does not mean they are *working*. 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. Finally, DMC Power argues

1 that Plaintiffs would be unable to certify this claim given its rounding policies/practices are
2 facially neutral and some employees were overpaid due to rounding, and individualized inquiries
3 would be necessary as to whether employees were in fact underpaid, or overpaid for each workday
4 in question (including whether they were actually working when they were clocked in), resulting
5 in an unmanageable series of mini-trials. Based on these defenses, Plaintiffs discounted the
6 maximum exposure by 50% to account for the risk of non-certification, and an additional 50% to
7 account for DMC Power's defenses on the merits, to arrive at an estimated exposure of
8 approximately \$15,715.

9 19. Plaintiffs allege that DMC Power's uniform written rest period policy fails to
10 authorize and permit non-exempt employees to take a ten-minute off-duty rest period for every
11 four hours worked, or major fraction thereof. DMC Power's written rest period policy states that,
12 "[a]ll hourly employees are provided a paid 10-minute break during each 4-hour period worked."
13 Plaintiffs allege this language is clearly inconsistent with *Brinker's* requirement that rest periods
14 be authorized and permitted every four hours, or major fraction thereof. Plaintiffs also contend
15 that Settlement Class members were not authorized and permitted to take all off-duty rest periods
16 due to work demands imposed by DMC Power's managers and supervisors. Plaintiffs' analysis
17 of DMC Power's timekeeping data shows that there were approximately 115,572 rest period
18 eligible shifts. Therefore, assuming Plaintiffs could establish a rest period violation on each shift,
19 Plaintiffs calculated DMC Power's maximum exposure on this claim at \$1,772,874 (115,572 rest
20 period violations * \$15.34 rest period premium). DMC Power asserts that it has always
21 maintained and enforced lawful rest period practices during the Class Period, and has, in fact,
22 authorized and permitted all required rest periods to Settlement Class members. DMC Power also
23 maintains that any failure to take rest periods was the result of employee choice. Lastly, DMC
24 Power contends that Plaintiffs' rest period claim is not amenable to class treatment as
25 individualized inquiries would be required to determine which employees failed to take rest
26 periods, and the reasons why each employee failed to take a rest period on a particular shift. These
27 manageability concerns are especially present with respect to rest period claims, DMC Power
28 argues, given that rest periods are not recorded. In light of these defenses, Plaintiffs discounted

DMC Power's maximum exposure by 60% to account for the risk of non-certification, and an additional 65% to account for DMC Power's defenses on the merits, to arrive at an estimated exposure of approximately \$248,203.

20. Plaintiffs allege that DMC Power failed to provide legally-compliant meal periods. Specifically, throughout the Class Period, Plaintiffs allege that first meal periods were often not provided until after the completion of five hours of work due to work demands. Plaintiffs further contend that meal periods were often short, as non-exempt employees were often not provided full 30-minute meal periods. Based on Plaintiffs' expert's review and extrapolation of the timekeeping data produced by DMC Power, 67,735 shifts during the Class Period reflected a late, short, and/or missed first meal period. In addition, based on data provided by DMC Power, Settlement Class members' average hourly rate of pay during the Class Period was \$15.34 per hour. Therefore, assuming each late, short, and/or missed meal period reflected in the timekeeping records would result in a violation, Plaintiffs calculated DMC Power's maximum exposure on this claim at approximately \$1,039,054 (67,735 non-compliant meal periods * \$15.34 average meal period premium). However, DMC Power contends that it has maintained compliant written meal period policies throughout the Class Period, and that it provided all legally-compliant meal periods to Settlement Class members. DMC Power also asserts that under *Brinker* it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken. DMC Power also argues that any short, missed, or late first meal periods were the result of lawful employee waiver or choice, thereby precluding liability. Lastly, DMC Power argues that individualized inquiries will be required to determine why each meal period was taken late or short or missed by each employee, and whether there was a valid waiver, thereby making certification of Plaintiffs' meal period claim unlikely. In light of these defenses and arguments, Plaintiffs discounted DMC Power's maximum exposure by 30% for the risk of non-certification, and an additional 40% to account for DMC Power's defenses on the merits, to arrive at an estimated total of approximately \$436,403.

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

1 employee timekeeping data, approximately 15,768 shifts during the Class Period reflected a
2 potential second meal period violation. Thus, assuming that each late, short, or missed second
3 meal period reflected in the timekeeping records would result in a violation, Plaintiffs estimated
4 a total maximum exposure for second meal period violations as \$241,881 (15,768 violations *
5 \$15.34 premium). However, DMC Power argues that it has maintained compliant meal period
6 practices throughout the Class Period, that under *Brinker* it is only required to “provide” the
7 opportunity to take second meal periods, and that any missed second meal periods were the result
8 of lawful employee waiver or choice. DMC Power also contends that Settlement Class members
9 voluntarily waived their second meal periods on shifts in excess of 10.0 hours but less than 12.0
10 hours, as they are entitled to do pursuant to Labor Code § 512. DMC Power also contends that
11 class certification would not be proper as individualized inquiries will be required to determine
12 why each second meal period was missed, and whether there was a valid waiver. In light of these
13 arguments and defenses, Plaintiffs discounted the maximum amount that the class could
14 potentially recover for second meal periods by 50% for a risk of non-certification, and an
15 additional 70% for a risk of losing on the merits, or having exposure reduced due to DMC Power’s
16 waiver arguments, to arrive at an estimated exposure amount of approximately \$36,282.

17 22. Plaintiffs also allege that they and other Settlement Class members worked in
18 excess of eight (8) hours per workday and/or forty (40) hours per workweek, but were not
19 compensated at one and one-half times their regular rate of pay for such hours, as a result of DMC
20 Power’s failure to include non-discretionary bonuses when calculating an employee’s regular rate
21 of pay. As a result, Plaintiffs allege that they and other Settlement Class members were
22 systematically underpaid for their overtime hours worked, in violation of California law. Based
23 on the data provided by DMC Power, Plaintiffs calculated DMC Power’s maximum potential
24 liability to be approximately \$24,265 in unpaid overtime due to the regular rate violations during
25 the Class Period. DMC Power contends that it properly included all forms of remuneration when
26 calculating the regular rate of pay, and therefore, paid all overtime wages to Settlement Class
27 members. DMC Power further contends that the bonus payments at issue were discretionary and
28 therefore excludable from the “regular rate.” DMC Power further argues that Settlement Class

1 members received different types of bonuses throughout the Class Period, creating substantive
2 differences among the Settlement Class members with respect to the incentives received, making
3 class certification unlikely. In light of DMC Power’s defenses, Plaintiff discounted the maximum
4 exposure by 15% for a risk of non-certification, and an additional 25% for a risk of being
5 unsuccessful on the merits, to arrive at an estimated exposure of \$15,469.

6 23. As a result of these alleged violations, Plaintiffs alleges DMC Power is liable for
7 waiting time penalties under Labor Code § 203 to former employees whose employment with
8 DMC Power ended since February 10, 2017. DMC Power’s records reflected approximately 314
9 former Settlement Class members who separated their employment with DMC Power since
10 February 10, 2017. Therefore, and based on an estimated average waiting time penalty of \$3,681
11 ($\$15.34 * 8 \text{ hours per day} * 30 \text{ days}$), Plaintiffs estimate DMC Power’s maximum waiting time
12 penalty exposure at approximately \$1,155,834 ($314 \text{ former employees} * \$3,681 \text{ penalty}$).
13 However, DMC Power argues that it possesses strong, good faith defenses to Plaintiffs’
14 underlying claims, thus precluding recovery of waiting time penalties, which are only available
15 for the “willful” failure to pay wages. Moreover, DMC Power argues that because the waiting
16 time claim is derivative of Plaintiffs’ underlying wage claims, Plaintiffs would need to overcome
17 DMC Power’s defenses, both as to class certification and as to the merits, to their underlying
18 claims. Based on these defenses, Plaintiffs discounted DMC Power’s maximum exposure by 45%
19 for risk of non-certification, and an additional 55% for risk of being unsuccessful on the merits
20 or failure to recover the full amount sought, to arrive at an estimated total of approximately
21 \$286,069.

22 24. As a further result of the violations alleged above, Plaintiffs alleges that DMC
23 Power furnished inaccurate wage statements in violation of Labor Code § 226. Plaintiffs’ analysis
24 reflected approximately 9,411 pay periods and approximately 233 unique Settlement Class
25 members during the relevant statutory period for the wage statement claim. Plaintiffs calculated
26 DMC Power’s maximum exposure for wage statement violations at \$929,450 (233 initial
27 $\text{violations} * \$50 \text{ for initial penalty} = \$11,650$) + ($9,178 \text{ subsequent violations} * \100 subsequent
28 $\text{violation penalty} = \$917,800$). DMC Power argues any alleged wage statement violations were

1 not “knowing and intentional,” that Plaintiffs cannot show they or other employees “suffer[ed]
2 injury,” that wage statements always included the actual amounts paid to employees, and that this
3 claim is not amenable for class certification for the same reasons as Plaintiffs’ underlying claims.
4 Thus, Plaintiffs discounted the maximal exposure by 45% for risk of non-certification, and an
5 additional 60% for risk of being unsuccessful on the merits, to arrive at an estimated total of
6 \$204,479.

7 25. Finally, Plaintiffs allege a derivative claim for PAGA civil penalties. Plaintiffs
8 estimated a maximum total PAGA exposure at \$1,035,200 for the relevant time period (10,352
9 pay periods * \$100 “initial” penalty). However, these penalties derive from the underlying wage
10 and hour violations discussed above, which DMC Power vigorously disputes. DMC Power also
11 asserts the Court would drastically reduce any award of PAGA penalties as “confiscatory.
12 Therefore, Plaintiffs discounted the maximum figure by 60% for risk of losing on the merits, and
13 an additional 75% to account for the possibility of this Court reducing penalties, to arrive at an
14 estimated exposure of \$103,520.

15 26. Using these estimated figures for each of the claims described above, Plaintiffs
16 calculate a maximum potential recovery to be approximately \$1,346,140. The proposed
17 settlement of \$1,100,000 therefore represents approximately 82% of the reasonably forecasted
18 recovery for the Settlement Class. Preliminary approval is appropriate since the Settlement will
19 provide significant monetary relief to the Settlement Class, which is consistent with what
20 Plaintiffs’ counsel believes could have been recovered had the case proceeded through trial.

21 27. Plaintiffs’ Counsel will also apply for an attorneys’ fees award of one-third of the
22 Gross Settlement Amount, which is currently estimated to be \$366,666.66, and up to \$45,000.00
23 in verified costs reimbursement. Plaintiffs submit that the requested fee is fair compensation for
24 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee
25 basis. Plaintiffs’ Counsel have incurred substantial attorneys’ fees conducting pre-filing
26 investigation, analyzing Plaintiffs’ claims, conducting legal research, analyzing Settlement Class
27 members’ payroll and timekeeping records with Plaintiffs’ expert to create a damages model,
28 preparing for and attending mediation, negotiating and preparing the Settlement, preparing this

1 Motion, and otherwise litigating the case. Plaintiffs' Counsel also anticipates incurring additional
2 fees in overseeing the Notice process, preparing the Final Approval Motion, and attending the
3 Final Approval hearing.

4 28. Plaintiffs will also apply for a Class Representative Service Award in the amount
5 of \$7,500.00 for each Plaintiff, for their respective services to the Settlement Class. I believe this
6 is reasonable given Plaintiffs' efforts in this case and the risks they undertook on behalf of the
7 Settlement Class, including the risk that they could be liable for DMC Power's costs if this case
8 were unsuccessful. As will be fully briefed at the time of final approval, Plaintiffs' requested
9 service awards are intended to recognize the time and effort they expended on behalf of the
10 Settlement Class, including providing substantial factual information and documents to Plaintiffs'
11 Counsel, attending multiple meetings with Plaintiffs' Counsel to discuss the claims and theories
12 at issue in the litigation, and actively participating in the prosecution of their claims, as well as
13 the significant risks Plaintiffs undertook by agreeing to serve as the named plaintiffs in this case.

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

21 30. Plaintiffs are typical of the classes they seek to represent, as they experienced the
22 same harms alleged in the action and resolved as part of the Settlement. I am not aware of any
23 conflicts that my law firm has with any Settlement Class member that would prevent my office
24 from serving as Class Counsel.

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1 31. Attached hereto as **Exhibit 2**, is a true and correct copy of Plaintiff Macabulit's
2 notification letter submitted to the Labor and Workforce Development Agency ("LWDA") on
3 October 21, 2020.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct. Executed on June 7, 2022, at El Segundo, California.

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Paul K. Haines

EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiffs Edgar Macabulit and San Antonio Brock (“Plaintiffs”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant DMC Power, Inc. (hereinafter “Defendant”), on the other hand. Plaintiffs and Defendant are referred to herein collectively as the “Parties.” Plaintiffs and the Settlement Class are represented by Paul K. Haines, Sean M. Blakely, and Neil Larsen of Haines Law Group, APC; Raymond P. Boucher and Alexander Gamez of Boucher LLP; and Sahag Majarian II of the Law Offices of Sahag Majarian II (“Class Counsel”). Defendant is represented by John L. Barber, John Haubrich, Jr., and Armine Antonyan of Lewis Brisbois Bisgaard & Smith LLP.

On February 10, 2020, Plaintiff San Antonio Brock filed an action against Defendant in the matter entitled *San Antonio Brock v. DMC Power, Inc., et al.*, Los Angeles County Superior Court Case No. 20STCV05459 (the “*Brock Action*”), asserting various individual claims and a claim for civil penalties under the Private Attorneys General Act (“PAGA”). On August 20, 2020, Plaintiff Macabulit filed a class action complaint against Defendant in Los Angeles County Superior Court, in the matter entitled *Edgar Macabulit v. DMC Power, Inc.*, Case No. 20STCV32034 (the “*Macabulit Action*”). On February 1, 2021, Plaintiff Brock filed a first amended complaint to add class allegations in the Brock Action. On or about February 4, 2021, the Court related the *Brock Action* and the *Macabulit Action* and designated the *Macabulit Action* the lead case. The *Brock Action* and the *Macabulit Action* are collectively referred to herein as “the Action.” The Parties agree to move for approval of this Settlement Agreement in the *Macabulit Action*.

As part of this Settlement, the Parties stipulate to the filing of a Second Amended Class and Representative Action Complaint in the *Macabulit Action* which adds Plaintiff San Antonio Brock as a named Plaintiff and proposed Class Representative and adds all representative allegations alleged in the *Brock Action*.

Given the uncertainty of litigation, Plaintiffs and Defendant wish to settle each individually and on behalf of the Settlement Class. Accordingly, Plaintiffs and Defendant agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiffs and Defendant stipulate to the certification of the following Settlement Class:

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

The Parties agree that certification for purposes of this Settlement Agreement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure or under Rule 23 of the Federal Rule of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **Amendment of Complaint in the Action.** This Settlement Agreement is intended to resolve all claims within the scope of the proposed Second Amended Class and Representative Action Complaint. In connection with the settlement, Plaintiffs shall amend the operative pleading in the *Macabulit* Action and Defendant will stipulate to this amendment in connection with the settlement.

3. **Release by Settlement Class Members and Plaintiffs.** Plaintiffs and every member of the Settlement Class (except those who opt out and except as to the PAGA claims specified below) will fully release and discharge Defendant, and all of its past and present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, (collectively the “Released Parties”), as follows:

- A. Settlement Class members will release all claims, demands, rights, liabilities and causes of action that were pled in the operative Second Amended Class and Representative Action Complaint, or which could have been pled in the Second Amended Class and Representative Action Complaint, that arose during the Class Period, including: the failure to pay minimum wage, the failure to pay all overtime wages, failure to authorize and permit rest periods, or premium pay for non-compliant rest periods, failure to provide proper meal periods, or premium pay for non-compliant meal periods, failure to furnish complete and accurate wage statements, waiting time penalties and civil penalties under the Private Attorneys General Act (Lab. Code section 2698, et seq.), all related statutory claims including, but not limited to, alleged violations of California Labor Code sections 201-204, 210, 226, 226.3, 226.7, 256, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 1199, and California Business and Professions Code section 17200, et. seq., the applicable Wage Order of the Industrial Welfare Commission, and all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above (the “Released Claims”). The period of the Released Claims shall extend to the limits of the Class Period.
- B. **Release of PAGA Claims.** In addition, all Settlement Class members (regardless of whether they opt out) who worked for Defendant at any time from November 25, 2018 through the date of preliminary approval of the Settlement (the “PAGA Period”) are “Aggrieved Employees” and shall release the Released Parties from all claims for civil penalties that could have been premised on the facts alleged within the exhaustion letters filed with the Labor and Workforce Development Agency (“LWDA”) by Plaintiff Brock and Plaintiff Macabulit. (“the PAGA Released Claims”).
- C. **Plaintiffs’ Released Claims.** Plaintiff Brock and Plaintiff Macabulit will release any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against the Released Parties (as defined above), of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, whether known or unknown, and whether anticipated or unanticipated, including unknown claims covered by Civil Code § 1542, by

Plaintiffs arising during the period from the beginning of the Plaintiffs' dates of employment with Defendant to the date on which the Court enters the Order of Preliminary Approval of this Settlement, for any type of relief, including, without limitation, claims for wages, damages, unpaid costs, penalties (including civil, PAGA, and waiting time penalties), liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief with the sole exception of any claims which cannot be released as a matter of law. Plaintiffs' Released Claims include but are not limited to the Released Claims. Plaintiffs' Released Claims exclude claims for workers' compensation or unemployment insurance benefits.

4. **Gross Settlement Amount.** As consideration, Defendant agrees to pay a non-reversionary "Gross Settlement Amount" of One Million One Hundred Thousand Dollars and Zero Cents (\$1,100,000.00) in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrators as the "Settlement Administrator" to administer this Settlement.
- B. The Gross Settlement Amount shall be deposited with the Settlement Administrator within thirty (30) calendar days of the Effective Date (which, for this purpose, shall be defined as the later of (1) date on which the Court enters an Order granting Final Approval of the Settlement Agreement or, (2) solely in the event that there are any objections to the Settlement Agreement (the filing of an objection being a prerequisite to the filing of an appeal), the later of: (i) the last date on which any appeal might be filed or (ii) the successful resolution of any appeal(s) – including expiration of any time to seek reconsideration or further review.
- C. This is a non-reversionary settlement. The Gross Settlement Amount includes:
 - (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Twelve Thousand Dollars and Zero Cents (\$12,000.00);
 - (3) Up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to each Plaintiff, for a total of Fifteen Thousand Dollars and Zero Cents (\$15,000.00), for Plaintiffs' Class Representative Service Awards, in recognition of their contributions to the Lawsuit and their service to the Settlement Class. Even in the event that the Court reduces or does not approve the requested Class Representative Service Awards, Plaintiffs shall not have the right to revoke this Settlement Agreement, and it will remain binding;
 - (4) Up to one-third of the Gross Settlement Amount in Class Counsel's attorneys' fees, plus actual costs and expenses incurred by Class Counsel related to the Lawsuit as supported by declaration, which are currently

estimated to be no greater than Forty-Five Thousand Dollars and Zero Cents (\$45,000.00). In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees or costs, Class Counsel shall not have the right to revoke this Settlement Agreement, and it will remain binding; and

- (5) Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00) will be payable to the Labor & Workforce Development Agency ("LWDA"), and the remaining twenty-five percent (25%), or Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00), will be payable to certain Settlement Class members as the "PAGA Amount," which PAGA Amount will be distributed as described below.

D. **Blow Up Clause.** The Parties and their counsel agree that they will not solicit or encourage individuals to opt out of the Settlement or to assert or pursue objections to the Settlement. However, if more than five percent (5%) of the Settlement Class members submit timely Requests for Exclusion, Defendant shall have the exclusive right to void this Settlement at its option. Defendant shall make its election within thirty (30) calendar days after the Settlement Administrator notifies the Parties of the number of Requests for Exclusion received, which the Settlement Administrator shall do within ten (10) calendar days after the Response Deadline. If Defendant exercises this right to rescind the Settlement, it shall pay all reasonable settlement administration costs incurred by the Settlement Administrator to that date.

F. **Escalator Clause.** The Gross Settlement amount is based on Defendant's representations that there are approximately 32,190 workweeks during the Class Period. If, at the time of preliminary approval, the number of workweeks has increased by 10% or more (i.e., if there are 35,410 or more workweeks), Defendant, at its option, can either choose to: (1) end the Class Period as of the date on which the number of workweeks reaches 35,410, or (2) increase the Gross Settlement Amount on a proportional basis equal to the percentage increase in number of workweeks worked by Settlement Class members above the 10% (i.e., if there was 11% increase in the number of workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 1%).

G. Defendant's share of payroll taxes shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount.

5. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment ("Individual Settlement Award") from the Settlement. Individual Settlement Awards will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class

Counsel's costs and expenses, Plaintiffs' Class Representative Service Awards, the Settlement Administrator's fees and expenses for administration, and the total amount designated as PAGA civil penalties. The remaining amount shall be known as the "Net Settlement Amount."

- B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Individual Settlement Award based on the following formula:
- i. Payments to all participating Settlement Class members: Eighty percent (80%) of the Net Settlement Amount will be distributed to all participating Settlement Class members based on each participating Settlement Class member's proportionate Workweeks worked during the Class Period, and will be calculated by multiplying 80% of the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member's number of Workweeks worked during the Class Period, and the denominator of which is the total Workweeks worked by all participating Settlement Class members during the Class Period.
 - ii. Waiting Time Amount: Ten Percent (10%) of the Net Settlement Amount shall be designated as the "Waiting Time Amount." Each participating Settlement Class member whose employment with Defendant ended at any time from February 10, 2017 to the date of preliminary approval of this Settlement, shall receive an equal, pro-rata share of the Waiting Time Amount. In other words, the Waiting Time Amount will be divided equally among all participating Settlement Class members whose employment with Defendant ended at any time from February 10, 2017 through the date of preliminary approval of this Settlement.
 - iii. Wage Statement Amount: Ten percent (10%) of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating Settlement Class member who was employed by Defendant at any time from February 10, 2019 through the date of preliminary approval of this Settlement shall receive a portion of the Wage Statement Amount proportionate to the number of Workweeks that he or she worked during the period from February 10, 2019 through the date of preliminary approval of this Settlement, and which will be calculated by multiplying 10% of the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member's number of Workweeks worked from February 10, 2019 through the date of preliminary approval of this Settlement, and the denominator of which is the total number of Workweeks worked by all participating Settlement Class members during the time period from February 10, 2019 through the date of preliminary approval of this Settlement.
 - iv. In addition to the Net Settlement Amount, the PAGA Amount will be allocated as follows. Each Settlement Class member who was employed by

Defendant at any time from November 25, 2018 through the date of preliminary approval of this Settlement (including those who submit a valid and timely Request for Exclusion from the class action settlement), shall receive a portion of the PAGA Amount proportionate to the number of Workweeks worked during the period of November 25, 2018 through the date of preliminary approval of this Settlement, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Settlement Class member's gross number of Workweeks worked during this period, and the denominator of which is the total number of Workweeks worked by all participating Settlement Class members (including those who submit a valid and timely Request for Exclusion from the class action settlement) during this period.

- C. Within ten (10) calendar days following Defendant's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Individual Settlement Award amounts and provide the same to the Parties' counsel for review and approval. Within seven (7) calendar days of approval by the Parties' counsel, the Settlement Administrator will prepare and mail Individual Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant's counsel.
- D. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: Eighty Percent (80%) as penalties and interest; and Twenty Percent (20%) as wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- E. Each member of the Settlement Class who receives an Individual Settlement Award must cash the check(s) within 180 days from the date the Settlement Administrator mails it/them. Any funds associated with a check that is not negotiated within one hundred eighty (180) days of mailing to a Settlement Class member shall be distributed to Children's Law Center of California pursuant to California Code of Civil Procedure § 384 as the *cy pres* beneficiary designated by the Parties. Pursuant to California Code of Civil Procedure § 384(b), the Court shall set a deadline for the Parties to submit a final distribution report after the check-cashing deadline which includes the total amount that was paid to Settlement Class members and the number and amount of any uncashed checks. After the report is received, the Court shall amend the judgment to direct the Settlement Administrator to submit the funds

from any uncashed checks to the Children's Law Center of California, including any interest accrued on said uncashed funds.

- F. Neither Plaintiffs nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

6. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of one-third of the Gross Settlement Amount, which is currently estimated to be Three Hundred Sixty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$366,666.66). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Forty-Five Thousand Dollars and Zero Cents (\$45,000.00) from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court.

7. **Class Representative Service Awards.** Defendant will not object to a request for a Class Representative Service Award of up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for each Plaintiff, for a total of Fifteen Thousand Dollars and Zero Cents (\$15,000.00), for their time and risk in prosecuting this case, and their service to the Settlement Class. These awards will be in addition to Plaintiffs' respective Settlement Awards as Settlement Class members, and shall be reported on an IRS Form 1099 issued by the Settlement Administrator. In the event that the Court reduces or does not approve the requested Service Awards, Plaintiffs shall not have the right to revoke this Settlement, and it will remain binding.

8. **Release of Claims.** Upon full and final payment by Defendant of the Gross Settlement Amount consistent with Section 4, payment of the Defendant's Share of Payroll Taxes and the Settlement Administrator has received all information from Defendant that it requires to complete its duties under this Agreement (e.g., Defendant's tax information): (1) Plaintiffs and every member of the Settlement Class shall be deemed to have fully, finally, and forever released the Releasees from all Released Claims; and (2) Class Representatives and each PAGA Member shall be deemed to have fully, finally, and forever released the Releasees from all PAGA Released Claims.

In addition, for each Plaintiff who receives a Class Representative Service Award in any amount, the following shall occur upon the Effective Date, Plaintiffs shall be deemed to have fully, finally, and forever released the Released Parties from Plaintiffs' Released Claims excepting the right to enforce the terms of the Settlement. With respect to Plaintiffs' Released Claims only, Plaintiffs shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits they may otherwise have had pursuant to § 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

9 Settlement Administrator. Defendant will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiffs' request to the Court to pay up to Twelve Thousand Dollars and Zero Cents (\$12,000.00) for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Individual Settlement Awards and preparing all checks and mailings, calculating Defendant's share of taxes payable on the wages, which shall be deducted from the Gross Settlement Amount, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Individual Settlement Awards have been mailed to all participating Settlement Class members. The Settlement Administrator shall also be responsible for posting the Final Judgment to its website.

10. Preliminary Approval. Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Paul K. Haines, Sean M. Blakely, and Neil Larsen of Haines Law Group, APC; Raymond P. Boucher and Alexander Gamez of Boucher LLP; and Sahag Majarian II of the Law Offices of Sahag Majarian II as Class Counsel;
- C. Appointing Plaintiffs Edgar Macabulit and San Antonio Brock as Class Representatives for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Estimated Settlement Award, drafts of which are attached hereto as Exhibits A and B, respectively), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

11. Notice to Settlement Class. Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within ten (10) business days after entry of an order preliminarily approving this Settlement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, the dates of

employment, and the number of workweeks worked by each Settlement Class member while employed during the Class Period (the "Class Data"). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.

- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
 - i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Settlement Class member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon. Notwithstanding the foregoing, the PGA settlement and release provisions will apply to all Settlement Class members whether or not they exclude themselves from the class action settlement. Settlement Class members who were employed by Defendant at any time from November 25, 2018 through the date of preliminary approval of this Settlement and submit a valid and timely Request for Exclusion shall still be entitled to their portion of the PGA Amount described above, and will release all PGA Released Claims, whether they submit a valid and timely Request for Exclusion or not.

- D. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, as well as file all such objections with the Court). Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless the objections are filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant's counsel and Class Counsel shall have ten (10) days to file a response to the objections. To be valid, any written objection should: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline. Members of the Settlement Class who do not request exclusion may also object to the Settlement by appearing at the Final Approval Hearing. Members of the Settlement class who request exclusion *may not* object to the Settlement.
- E. Notice of Estimated Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Individual Settlement Award as well as all of the information that was used from Defendant's records in order to calculate the Settlement Award. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Estimated Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Awards under the terms of this Settlement Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Individual Settlement Award shall be binding upon the Settlement Class member and the Parties.
- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. It will be conclusively presumed that, if an envelope so

mailed has not been returned within thirty (30) days of the mailing, the Settlement Class member received the Notice Packet. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant's Counsel to provide notice of the proposed settlement.

12. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiffs shall apply to the Court for entry of an Order:

- A. Granting final approval of the Settlement, adjudging the terms thereof to be fair, adequate, and reasonable, and directing consummation of its terms and provisions;
- B. Approving Plaintiffs' and Class Counsel's request for attorneys' fees and reimbursement of costs, Class Representative Service Awards, and settlement administration costs; and
- C. Entering Final Judgment pursuant to California Rule of Court 3.769. Said Judgment shall be posted on the Settlement Administrator's website.

13. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to Federal Evidence Code Section 408 and California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by Federal Evidence Code Section 408 and the California Evidence Code Section 1152.

14. **No Prior Assignments.** Plaintiffs and Class Counsel represent, covenant, and warrant that they have not directly or indirectly encumbered, assigned, transferred, or otherwise given away any of the claims, demands, causes of actions, or rights that they are releasing by signing this Settlement Agreement, nor has any of them purported to do so.

15. **Non-disclosure and Non-publication.** Plaintiffs and Class Counsel agree not to disclose or publicize the Settlement Agreement contemplated herein, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. However, for the limited purpose of allowing Class Counsel to prove adequacy as class

counsel in other Lawsuits, Class Counsel may disclose the names of the Parties in this Lawsuit, the venue/case number of this Lawsuit, and a general description of the Lawsuit, to a court in a declaration by Class Counsel.

16. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

17. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendant: John Haubrich of Lewis Brisbois Bisgaard & Smith LLP, 633 West 5th Street, Suite 4000, Los Angeles, California 90071; John.Haubrich@lewisbrisbois.com.

if to Plaintiffs: Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, California 90245; phaines@haineslawgroup.com.

Alexander Gamez, Boucher LLP; 21600 Oxnard Street, Suite 600, Woodland Hills, California 91367; gamez@boucher.la

18. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

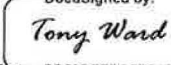
19. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the Lawsuit contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof. Further, all terms of this Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of California.

20. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

21. **Enforcement Action.** The Parties agree that the Los Angeles County Superior Court shall have jurisdiction to enforce this Settlement pursuant to California Code of Civil Procedure section 664.6, and California Rule of Court 3.769. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

DATED: 5/6/2022, 2022

DEFENDANT DMC POWER, INC.

By: 
DocuSigned by:
BB59DEFBCFB54DD...
Title: CEO

DATED: EM, 2022

PLAINTIFF EDGAR MACABULIT

By: 
Edgar Macabulit (May 5, 2022 16:59 PDT)
Plaintiff and Settlement Class Representative

DATED: _____, 2022

PLAINTIFF SAN ANTONIO BROCK

By: _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: May 18, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: 
John Haubrich, Jr.
Attorneys for Defendant
DMC POWER, INC.

DATED: May 5, 2022

HAINES LAW GROUP, APC

By: 
Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff Edgar Macabulit

DATED: _____, 2022

BOUCHER LLP
LAW OFFICES OF SAHAG MAJARIAN II

By: _____
Raymond P. Boucher
Sahag Majarian II
Attorneys for Plaintiff San Antonio Brock

DATED: _____, 2022

DEFENDANT DMC POWER, INC.

By: _____
Title:

DATED: **EM** _____, 2022

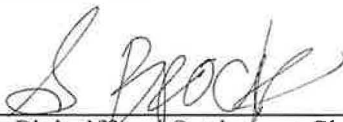
PLAINTIFF EDGAR MACABULIT

05/17/2022

By: 
Edgar Macabulit (May 5, 2022 16:59 PDT)
Plaintiff and Settlement Class Representative

DATED: _____, 2022

PLAINTIFF SAN ANTONIO BROCK

By: 
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

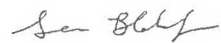
DATED: _____, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____
John Haubrich, Jr.
Attorneys for Defendant
DMC POWER, INC.

DATED: May 5, 2022

HAINES LAW GROUP, APC

By: 
Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff Edgar Macabulit

DATED: May 17, 2022

BOUCHER LLP
LAW OFFICES OF SAHAG MAJARIAN II

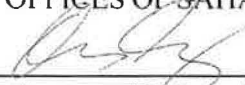
By: 
Raymond P. Boucher
Sahag Majarian II
Attorneys for Plaintiff San Antonio Brock

EXHIBIT *A*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

EDGAR MACABULIT and SAN ANTONIO
BROCK, as individuals and on behalf of all others
similarly situated,

Plaintiffs,

vs.

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

Defendants.

Case No. 20STCV32034

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED
SETTLEMENT**

To: All current and former non-exempt employees employed by Defendant DMC Power, Inc. in California from February 10, 2016 until <<PRELIM APPROVAL DATE>>. These employees will be referred to as the “Settlement Class” or “Settlement Class members.”

**PLEASE READ THIS NOTICE CAREFULLY.
THIS NOTICE IS BEING PROVIDED TO YOU IN BOTH ENGLISH AND SPANISH.
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT.**

Why should you read this notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Edgar Macabulit, et al. v. DMC Power, Inc.*, Los Angeles County Superior Court Case No. 20STCV32034 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this Notice carefully.

You may be entitled to money from this Settlement. Defendant DMC Power, Inc.’s (“DMC Power”) records indicate that you were employed by DMC Power as a non-exempt employee in California between February 10, 2016 and <<PRELIM APPROVAL DATE>> (the “Class Period”). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves this Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

On February 10, 2020, Plaintiff San Antonio Brock filed an action asserting a claim for civil penalties under the Private Attorneys General Act (“PAGA”) against DMC Power in the matter entitled *San Antonio Brock v. DMC Power, Inc.*, Los Angeles Superior Court Case No. 20STCV05459. On August 20, 2020, Plaintiff Edgar Macabulit filed a class action complaint in this action entitled *Edgar Macabulit v. DMC Power, Inc.*, on behalf of all current and former non-exempt employees of DMC Power who worked in California during the Class Period. Plaintiffs’ operative Second Amended Class and Representative Action Complaint (“SAC”) alleges the following causes of action against DMC Power: (1) minimum wage violations; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6) unfair competition; (7) waiting time

penalties; and (8) civil penalties under the Private Attorneys General Act of 2004 (“PAGA”). Plaintiffs San Antonio Brock and Edgar Macabulit are known as the “Class Representatives,” and their attorneys, who also represent the interests of all Settlement Class members, are known as “Class Counsel.”

DMC Power denies that it has done anything wrong or that it owes Settlement Class members any wages, restitution, penalties, or other damages. Accordingly, this class-wide Settlement constitutes a compromise of highly disputed claims and should not be construed as an admission of liability on the part of DMC Power, by whom all liability is expressly denied.

The Court has not ruled on the merits of Plaintiffs’ claims. However, to avoid additional expense, inconvenience, and interference with DMC Power’s business operations, the parties have agreed to settle the Lawsuit on the terms summarized in this Notice. After DMC Power provided relevant information and documents to Class Counsel, the Settlement was reached after mediation and intensive arm’s length negotiations between the parties.

The Class Representatives and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to DMC Power, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

Who are the attorneys?

Attorneys for Plaintiffs/Settlement Class Members: HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Sean M. Blakely sblakely@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 Raymond P. Boucher ray@boucher.la Shehnaz M. Bhujwala bhujwala@boucher.la Maria L. Weitz weitz@boucher.la Alexander Gamez gamez@boucher.la BOUCHER LLP 21600 Oxnard Street, Suite 600 Woodland Hills, California 91367-4903 Tel: (818) 340-5400 Fax: (818) 340-5401 Sahag Majarian II sahagii@aol.com LAW OFFICES OF SAHAG MAJARIAN II 18250 Ventura Boulevard	Attorneys for Defendant DMC Power, Inc.: LEWIS BRISBOIS BISGAARD & SMITH LLP John L. Barber john.barber@lewisbrisbois.com John Haubrich, Jr. john.haubrich@lewisbrisbois.com Armine Antonyan armine.antonyan@lewisbrisbois.com 633 West 5th Street, Suite 4000 Los Angeles, California 90071 Tel: (213) 250-1800 Fax: (213) 250-7900
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Tarzana, California 91356 Tel: (818) 609-0807 Fax: (818) 609-0892	
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What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt employees employed by DMC Power in California from February 10, 2016 until <<PRELIM APPROVAL DATE>>. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release claims against DMC Power as specifically described below.

DMC Power has agreed to pay \$1,100,000.00 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, including claims by Settlement Class members, attorneys’ fees, costs, settlement administration costs, Plaintiffs’ Service Awards, and the amount designated as PAGA civil penalties.

The following deductions from the Gross Settlement Amount will be requested by the Parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$10,000.00 from the Gross Settlement Amount to pay the settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount, which is estimated to be \$366,666.66, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$45,000.00 for reimbursement of verified costs Class Counsel incurred in connection with the Lawsuit.

Plaintiffs’ Service Awards. Class Counsel will ask the Court to approve a Service Award of \$7,500.00 to Plaintiff Edgar Macabulit, and \$7,500.00 to Plaintiff San Antonio Brock, for a total of \$15,000.00. These payments are to compensate Plaintiffs for their services and extra work performed on behalf of the Settlement Class members.

PAGA Payment to State of California. \$50,000.00 has been set aside as PAGA civil penalties for the settlement of Plaintiffs’ claim on behalf of the Settlement Class under PAGA. Of that amount, 75%, or \$37,500.00, will be paid to the LWDA, as required under PAGA. The remaining 25%, or \$12,500.00, will be designated the “PAGA Amount” and will be paid to Settlement Class members as explained below.

Calculation of Settlement Class members’ Individual Settlement Awards. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (defined below). The Net Settlement Amount is estimated to be approximately \$616,333.34 and will be divided as follows:

All Settlement Class members: Eighty Percent (80%) of the Net Settlement Amount shall be allocated to all participating Settlement Class members based on each participating Settlement Class member’s proportionate number of workweeks worked for DMC Power during the Class Period, and will be calculated by multiplying 80% of the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member’s

total workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all participating Settlement Class members during the Class Period.

Waiting Time Amount: Ten Percent (10%) of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” Each participating Settlement Class member who separated their employment from DMC Power at any time from February 10, 2017 through <<PRELIM APPROVAL DATE>> shall receive an equal share of the Waiting Time Amount. Thus, the “Waiting Time Amount” shall be divided equally among each participating Settlement Class member who separated their employment from DMC Power at any time from February 10, 2017 through <<PRELIM APPROVAL DATE>>.

Wage Statement Amount: Ten Percent (10%) of the Net Settlement Amount shall be designated as the “Wage Statement Amount.” Each participating Settlement Class member who was employed by DMC Power at any time from February 10, 2019 through <<PRELIM APPROVAL DATE>> shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the period from February 10, 2019 through <<PRELIM APPROVAL DATE>>, and which will be calculated by multiplying 10% of the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member’s number of workweeks worked from February 10, 2019 through <<PRELIM APPROVAL DATE>>, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the time period from February 10, 2019 through <<PRELIM APPROVAL DATE>>.

PAGA Amount: In addition to the Net Settlement Amount, each Settlement Class member who was employed by DMC Power at any time from November 25, 2018 through <<PRELIM APPROVAL DATE>> (including those who submit a valid and timely Request for Exclusion from the class action settlement), shall receive a portion of the \$12,500.00 PAGA Amount proportionate to the number of workweeks worked during the period of November 25, 2018<<PRELIM APPROVAL DATE>> (“PAGA Period”) , and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Settlement Class member’s gross number of workweeks worked during the PAGA Period, and the denominator of which is the total number of workweeks worked by all Settlement Class members (including those who submit a valid and timely Request for Exclusion from the class action settlement) during the PAGA Period.

Payments to Settlement Class members. The Gross Settlement Amount shall be deposited with the Settlement Administrator within (30) calendar days of the Effective Date (which, for this purpose, shall be defined as the later of (1) date on which the Court enters an Order granting Final Approval or, (2) solely in the event that there are any objections to the Settlement Agreement (the filing of an objection being a prerequisite to the filing of an appeal), the later of: (i) the last date on which any appeal might be filed or (ii) the successful resolution of any appeal(s) – including expiration of any time to seek reconsideration or further review.

Allocation and Taxes. For tax purposes, an Individual Settlement Award shall be treated as follows: twenty percent (20%) of each Individual Settlement Award shall be designated as wages subject to W-2 reporting and normal payroll withholdings; and eighty percent (80%) of each Individual Settlement Award shall be designated as penalties and interest. The Settlement Administrator will be responsible for issuing to Settlement Class members IRS Forms W-2 for amounts deemed “wages” and IRS Forms 1099 for the amounts allocated as penalties and interest. Settlement Class members are responsible for the proper income tax treatment of the Settlement Awards. The Settlement Administrator, DMC Power and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, the Class Representatives, and every member of the Settlement Class (except those who opt out and except as to the PAGA claims specified below) will fully release and discharge DMC Power, Inc., and all of its past and present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, (collectively the “Released Parties”) from all claims, demands, rights,

liabilities, and causes of action that were pled in the operative Second Amended Class and Representative Action Complaint, or which could have been pled in the Second Amended and Representative Action Complaint that arose during the Class Period, including: the failure to pay minimum wages; the failure to pay all overtime wages; failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; failure to provide proper meal periods, or premium pay for non-compliant meal periods; failure to furnish complete and accurate wage statements; waiting time penalties; and civil penalties under the Private Attorneys General Act (Lab. Code section 2698, et seq.), all related statutory claims including, but not limited to, alleged violations of California Labor Code sections 201-204, 210, 226, 226.3, 226.7, 256, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 1199, and California Business and Professions Code section 17200, et seq., the applicable Wage Order of the Industrial Welfare Commission, and all claims for unfair business practices that could have been premised on the facts, claims, caused of action or legal theories described above (the “Released Claims”). This period of the Released Claims shall extend to the limits of the Class Period. In addition, all Settlement Class members (whether or not they opt out) who worked for DMC Power at any time during the PAGA Period are “Aggrieved Employees” and shall release the Released Parties from all claims for civil penalties that could have been premised on the facts alleged within the exhaustion letters filed with the Labor and Workforce Development Agency (“LWDA”) by Plaintiff Brock and Plaintiff Macabulit (the “PAGA Released Claims”).

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your Individual Settlement Award based on your proportionate number of workweeks worked during the Class Period, the number of workweeks worked during the time period of February 10, 2019 through <<PRELIM APPROVAL DATE>>, the number of workweeks you worked during the PAGA Period, as well as whether your employment with DMC Power ended during the relevant time period, as stated in the enclosed Notice of Estimated Individual Settlement Award. You will also be bound by the Settlement, including the release of claims stated herein.

If you are issued a Settlement, Check, you must cash the check(s) within 180 days from the date the Settlement Administrator mails it to you. If you do not cash your check within the 180 days, the check shall become void, and the funds associated with such voided check, plus any accrued interest that has not otherwise been distributed, shall be distributed to the Children’s Law Center of California pursuant to California Code of Civil Procedure section 384 as the *cy pres* beneficiary designated by the Parties.

What other options do I have?

Disputing Information in Notice of Estimated Individual Settlement Award. Your estimated Individual Settlement Award is based on your number of proportionate workweeks worked during the Class Period, the number of workweeks worked from February 10, 2019 through <<PRELIM APPROVAL DATE>>, the number of workweeks you worked during the PAGA Period, as well as whether your employment with DMC Power ended during the time period from February 10, 2017 through <<PRELIM APPROVAL DATE>>. The information contained in DMC Power’s records regarding each of these factors is listed on the accompanying Notice of Estimated Individual Settlement Award. If you disagree with what is contained in your Notice of Estimated Individual Settlement Award, you may submit a dispute, along with any supporting information and documentation, in accordance with the procedures stated in the Notice of Estimated Individual Settlement Award. Any disputes, along with supporting information and documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Awards, and the Settlement Administrator’s determination shall be binding upon the Settlement Class member and the Parties.

Excluding Yourself from the Settlement. If you **do not** wish to take part in the class action Settlement, you may exclude yourself by sending to the Settlement Administrator a written “Request for Exclusion” letter or card postmarked no later than <<RESPONSE DEADLINE>>, with your full name, current address and telephone number, last four digits of your social security number, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *EDGAR MACABULIT V. DMC POWER, INC.*, LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who submits a valid and timely Request for Exclusion shall, upon receipt, no longer be a Settlement Class member, shall be barred from participating in any portion of the class action Settlement, and shall receive no monetary benefits from the class action Settlement. However, if you were employed by DMC Power at any time during the PAGA Period, you may not opt out of the PAGA settlement and you will still be entitled to a portion of the PAGA Amount as described above. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator. Your written objection should include your full name, current address, the name and address of any attorney representing you, the case name and number, each specific objection, and any legal or factual support for each objection, including any supporting papers, briefs, written evidence, declarations, and/or other evidence. Objections should be submitted by mail to the Settlement Administrator and must be postmarked on or before <<RESPONSE DEADLINE>>.

Members of the Settlement Class who do not request exclusion may also object to the Settlement by appearing at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department 10 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, California 90012. You have the right to appear either in person or through your own attorney at this hearing. You need not file a written objection in order to appear at the Final Approval Hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE DEADLINE>>. All objections or other correspondence must state the name and number of the case, which is *Edgar Macabulit, et al. v. DMC Power, Inc.*, Los Angeles County Superior Court Case No. 20STCV32034.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department 10 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, California 90012. The Court will also be asked to rule on Class Counsel’s request for attorneys’ fees and costs, settlement administration costs, Plaintiffs’ service awards, and the payment to the LWDA for its share of PAGA civil penalties. The Final Approval Hearing may be postponed without further notice to the Class. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

If you plan on attending the hearing or otherwise visiting the Court, please consult the Court's website, <https://www.lacourt.ca.gov>, for information regarding court operations during COVID-19 as well as face covering and social distancing requirements.

If the Court grants Final Approval, the Court will issue a final judgment which shall be posted on the Settlement Administrator's website (<http://www.phoenixclassaction.com>).

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, California 90012, during regular court hours, please visit <https://www.lacourt.org> for the Court's current hours as the hours may be impacted by the COVID-19 pandemic and an appointment may be required to inspect the Court's files. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, DMC POWER, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT.

Reminder as to time limits

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is **<<RESPONSE DEADLINE>>**. These deadlines will be strictly enforced.

EXHIBIT B

NOTICE OF ESTIMATED INDIVIDUAL SETTLEMENT AWARD

EDGAR MACABULIT, ET AL. V. DMC POWER, INC.,
Los Angeles County Superior Court Case No. 20STCV32034

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

Phone number (if you wish to be contacted by phone)

(III) Information Used to Calculate Your Estimated Individual Settlement Award:

According to DMC Power, Inc.'s ("DMC Power") records¹:

- (a) you worked [] workweeks between February 10, 2016 and <<PRELIM APPROVAL DATE>> for DMC Power;
- (b) you worked [] workweeks between February 10, 2019 and <<PRELIM APPROVAL DATE>> for DMC Power;
- (c) you worked [] workweeks between November 25, 2018 and <<PRELIM APPROVAL DATE>> for DMC Power; and
- (d) your employment with DMC Power <<DID/DID NOT>> end between February 10, 2017, and <<PRELIM APPROVAL DATE>>.

Based on the above, your Individual Settlement Award is estimated at \$_____.

(IV) If you disagree with items (a), (b), (c), and/or (d) in Section (III) above, please explain why in the space provided below and include copies of any supporting documentation with this Form:

¹ Please note that the number of full workweeks spent on leave of absence, sick time, or vacation are not included.

If you dispute the above information garnered from DMC Power’s records, DMC Power’s records will control unless you are able to provide documentation that establishes otherwise. If there is a dispute about whether DMC Power’s information or yours is accurate, and the dispute cannot be resolved informally by the Parties, the dispute will be resolved by the Settlement Administrator as described in the accompanying “Notice of Pendency of Class Action and Proposed Settlement.”

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE
POSTMARKED NO LATER THAN <<RESPONSE DEADLINE>>.**

EXHIBIT 2

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

August 20, 2020

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Edgar Macabulit v. DMC Power, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Edgar Macabulit (“Mr. Macabulit”) in claims arising from his employment with DMC Power, Inc.; and Does 1 through 100 (collectively “DMC Power”). Mr. Macabulit is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to DMC Power’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Section 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” include all of DMC Power’s non-exempt employees who worked for DMC Power in California during the period of April 6, 2019 through the present.

Mr. Macabulit has been employed by DMC Power as a non-exempt employee in the packaging department from approximately February 2007 to the present.

During Mr. Macabulit’s employment with DMC Power, DMC Power utilized a timekeeping system which resulted in Mr. Macabulit and other aggrieved employees not being compensated for all hours actually worked, whether by rounding, time-shaving, or otherwise. Specifically, DMC Power rounded Mr. Macabulit’s and other aggrieved employees’ timekeeping entries in an uneven manner to a quarter-of-an-hour increment, so that, over a period of time, Mr. Macabulit and other aggrieved employees were deprived of all earned minimum and overtime wages. Upon information and belief, DMC Power’s timekeeping system regularly, systematically, and impermissibly rounded the hours worked by Mr. Macabulit and other aggrieved employees in DMC Power’s favor, resulting, over a period of time, in the failure to compensate Mr. Macabulit and other aggrieved employees for all hours worked. As a result, Mr. Macabulit and other aggrieved employees were not compensated for all required minimum and overtime wages.

During Mr. Macabulit’s and other aggrieved employees’ employment with DMC Power, Mr. Macabulit and other aggrieved employees worked over 8.0 hours per workday and/or more than 40.0 hours per workweek, but did not receive overtime compensation

equal to one and one-half times their regular rates of pay for working overtime hours. Specifically, DMC Power paid Mr. Macabulit and other aggrieved employees non-discretionary incentive pay, including but not limited to, bonus payments denoted on their payroll records as “BONUS,” and/or other forms of pay that are not excludable from an employee’s “regular rate” of pay (hereinafter the aforementioned forms of pay are collectively referred to as “Incentive Pay”). However, DMC Power failed to properly calculate Mr. Macabulit’s and other aggrieved employees’ regular rates of pay as a result of their receipt of Incentive Pay, thereby miscalculating and underpaying the overtime wages owed to them.

Mr. Macabulit and other aggrieved employees were not provided with all legally compliant meal periods because DMC Power’s meal period policies/practices failed to provide Mr. Macabulit and other aggrieved employees with a second 30-minute meal period for shifts in excess of 10.0 hours; nor were Mr. Macabulit and other aggrieved employees provided with a second meal period for shifts over 10.0 hours. On the occasions when Mr. Macabulit and other aggrieved employees were not provided with all legally-compliant meal periods to which they were entitled, DMC Power failed to compensate Mr. Macabulit and other aggrieved employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, DMC Power maintained no payroll code or other mechanism for the payment of meal period premiums under Labor Code § 226.7 in the event a legally compliant meal period was not provided to its non-exempt employees.

Mr. Macabulit and other aggrieved employees were not authorized and permitted to take all legally compliant rest periods due to DMC Power’s rest period policies/practices, which fail to authorize and permit an off-duty rest period for every four hours worked, or major fraction thereof. Specifically, Mr. Macabulit and other aggrieved employees were not authorized and permitted to take a third rest period on shifts in excess of 10.0 hours due to DMC Power’s rest period policies/practices, which fail to authorize and permit non-exempt employees to take a third rest period on occasions when they worked over 10.0 hours in a workday. On the occasions when Mr. Macabulit and other aggrieved employees were not provided with all legally-compliant rest periods to which they were entitled, DMC Power failed to compensate Mr. Macabulit and other aggrieved employees with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, DMC Power maintained no payroll code or other mechanism for the payment of rest period premiums as required by Labor Code Section 226.7 in the event a legally compliant rest period was not provided to their non-exempt employees.

As a result of DMC Power’s failure to compensate Mr. Macabulit and other aggrieved employees for all minimum wages, overtime wages, and meal and rest period premium wages earned, DMC Power maintained inaccurate payroll records and failed to issue accurate, compliant, itemized wage statements.

As a further result of its failure to pay all minimum wages, overtime wages, and meal and rest period premiums, DMC Power failed to pay all final wages to aggrieved former employees at the separation of their employment.¹

As described above, DMC Power committed, and continues to commit, the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 1 (“Wage Order 1”):

Minimum Wage Violations

DMC Power was required to pay Mr. Macabulit and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1182.12, 1194; 1194.2, 1197; Wage Order 1, § 4. As alleged above, DMC Power failed to conform its pay practices to the requirements of the law by failing to pay Mr. Macabulit and other aggrieved employees for all hours worked including, but not limited to, all hours they were subject to the control of DMC Power and/or suffered or permitted to work under the California Labor Code and Wage Order 1. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Macabulit and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

DMC Power was required to pay Mr. Macabulit and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; Wage Order 1, § 3. According to Labor Code § 510(a), “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” This Section further provides, “Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” As alleged above, DMC Power caused Mr. Macabulit and other aggrieved employees to work overtime hours, but did not compensate Mr. Macabulit and other aggrieved employees with one and one-half times their regular rate of pay for such hours. As a result of these policies/practices, Mr. Macabulit and other aggrieved employees were not compensated for all overtime and double-time wages.

¹ As Mr. Macabulit is still employed by DMC Power, Mr. Macabulit does not seek to recover waiting time penalties on behalf of himself, but rather only on behalf of DMC Power’s other aggrieved employees under the precedent of *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 754 (“any Labor Code penalties recoverable by state authorities may be recovered in a PAGA action by a person who was employed by the alleged violator and affected by at least *one* of the violations alleged in the complaint.”)(emphasis added).

Meal Period Violations

As alleged above, DMC Power failed to provide Mr. Macabulit and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. As a result, Mr. Macabulit and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”).

Rest Period Violations

As alleged above, DMC Power also failed to authorize and permit Mr. Macabulit and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As a result, Mr. Macabulit and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”)

Wage Statement Violations

DMC Power was required to furnish Mr. Macabulit and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, and total net wages earned. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 1, § 7. As a result of DMC Power’s failure to pay for all minimum wages, overtime wages, and meal and rest period premium wages earned, DMC Power maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Macabulit and other aggrieved employees in violation of Labor Code § 226. DMC Power’s failure to comply with its wage statement obligations was knowing and intentional, and Mr. Macabulit and other aggrieved employees have suffered injury as a result.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. As alleged above, DMC Power failed to timely pay aggrieved former employees all of their final wages at the time of separation, including all minimum and overtime wages, and all meal and rest period premium wages. Pursuant to Labor Code § 203, DMC Power’s failure to pay all final wages due to aggrieved

employees was willful and, consequently, entitles aggrieved former employees to waiting time penalties equal to one day of wages at their standard rate for each day DMC Power failed to pay their final wages after their separation, up to a maximum of thirty days.

As an “aggrieved employee,” Mr. Macabulit will initiate a civil action on behalf of himself and other aggrieved employees to recover civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Macabulit’s own investigation, and on information and belief, DMC Power committed and continues to commit the following Labor Code violations:

- a. DMC Power violated Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Macabulit and other aggrieved employees the statutory minimum wage for all hours worked;
- b. DMC Power violated Labor Code §§ 204, 510, 1194 and 1198 by failing to pay Mr. Macabulit and other aggrieved employees all overtime compensation earned;
- c. DMC Power violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Macabulit and other aggrieved employees at these employees’ respective regular rates of compensation for meal period violations;
- d. DMC Power violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to authorize and permit Mr. Macabulit and other aggrieved employees all required rest periods and failing to pay rest period premiums to Mr. Macabulit and other aggrieved employees at these employees’ respective regular rates of compensation for rest period violations;
- e. DMC Power violated Labor Code § 226 by failing to furnish Mr. Macabulit and other aggrieved employees with accurate and compliant itemized wage statements;
- f. DMC Power has violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to aggrieved former employees;
- g. DMC Power violated Labor Code § 204 by failing to pay Mr. Macabulit and other aggrieved employees all wages earned at least twice during each calendar month; and
- h. DMC Power violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Macabulit and other aggrieved employees.

LWDA
October 21, 2020
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Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and DMC Power if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Paul K. Haines

cc: DMC Power, Inc. (via certified mail)

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10/21/2020

LWDA Case No. LWDA-CM-810282-20
Law Firm : Haines Law Group, APC
Plaintiff Name : Edgar Macabulit
Employer: DMC Power, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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