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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

FRANCISCO GONGORA, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act,

Plaintiff,

vs.

DC LOGISTICS, LLC, a Delaware limited liability company; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 23CV049652

CLASS ACTION

[Assigned for all purposes to the Hon. Patrick McKinney, Dept. 18]

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

Date: January 14, 2026
Time: 1:30 p.m.
Dept.: 18
Reservation: **CRS# A-49652-001**

Action Filed: November 2, 2023
Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on January 14, 2026 at 1:30 p.m., or as soon thereafter as the matter may be heard in Department 18 of the above-entitled Court, located at 1225 Fallon Street, Oakland, California 94612, Plaintiffs Francisco Gongora, and Luis Angel Diaz, and Juan Carlos Arteaga ("Plaintiffs") will, and hereby do, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement ("Settlement") between Plaintiffs and Defendant DC Logistics, LLC ("Defendant" or "DCL");
2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional certification, for settlement purposes only, of the following Settlement Class:

   > All current and former non-exempt employees who worked for DC Logistics, LLC and/or Pier Enterprises, Inc. in California at any time from November 2, 2019 through January 11, 2025 (the "Class Period")

3. Preliminary appointment of Plaintiffs as Class Representatives;
4. Preliminary appointment of Tuvia Korobkin and Nancy Goodes of Marquee Law Group, APC; and John G. Yslas, Jeffrey C. Bils, Aram Boyadjian, Andrew Sandoval, Emily K. Borman, and Courtney M. Miller of Wilshire Law Firm, PLC as Class Counsel;
5. Appointment of Phoenix Settlement Administrators ("Phoenix") as Settlement Administrator;
6. Approval of the proposed Notice of Proposed Class Action Settlement and Notice of Estimated Settlement Award (the "Notice Packet"), and an order that the Notice Packet be disseminated to the Settlement Class as provided in the Settlement; and
7. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award Class Representative Service Payments to Plaintiffs, and attorneys' fees and costs to Class Counsel.

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This motion is based on this notice of motion; the attached memorandum of points and authorities; the declarations of counsel and exhibits attached thereto; the declarations of Plaintiffs; the declaration of Jodey Lawrence and exhibits attached thereto; the pleadings and other papers filed in this action; and any further oral or documentary evidence or argument presented at the time of hearing.

Dated: December 18, 2025

MARQUEE LAW GROUP, APC

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Tuvia Korobkin
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Francisco Gongora, Luis Angel Diaz, and Juan Carlos Arteaga ("Plaintiffs") seek preliminary approval of a class action settlement ("Settlement") with Defendant DC Logistics, LLC ("DCL" or "Defendant") (together with Plaintiffs, the "Parties"). The Settlement resolves a consolidated class and representative action pending before this Court (the "Action"), in which Plaintiffs allege that DCL failed to properly pay employee wages; failed to provide meal periods; failed to authorize and permit rest periods; and failed to reimburse work-related expenses. Plaintiffs further allege that as a result of these violations, DCL failed to issue accurate itemized wage statements, failed to pay all wages on termination, engaged in unfair competition, and is liable for civil penalties under the Private Attorneys General act ("PAGA").

Plaintiffs now respectfully request that this Court preliminarily approve this non-reversionary class action Settlement,[1] in which DCL has agreed to pay **$2,475,000.00** to the following Settlement Class, which is estimated to consist of 457 individuals:

> All current and former non-exempt employees who worked for DCL and/or Pier Enterprises, Inc.[2] in California at any time from November 2, 2019 through January 11, 2025 (the "Class Period")

The Settlement was reached after the Parties engaged in a full-day mediation with Monique Ngo-Bonnici, Esq., an experienced and respected class action mediator. In connection with mediation, DCL produced extensive informal discovery, including timekeeping and payroll records for a sampling of the putative class members, DCL's employee handbooks, and other documents and information.

After extensive research and investigation, including a detailed analysis of DCL's potential exposure made with the assistance of an expert data analyst, the full-day mediation session was held with Ms. Ngo-Bonnici on October 11, 202. The matter did not resolve at mediation However, at the conclusion of mediation, Ms. Ngo-Bonnici made a mediator's proposal

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[1] The Settlement is attached as Exhibit 1 to the Korobkin Declaration. The Class Notice and Notice of Estimated Settlement Payment are attached as Exhibits A and B, respectively, to the Settlement.

[2] Pier Enterprises, Inc. was a predecessor entity to DCL and a named defendant in the *Diaz* actions. However, all employees who were employed by Pier Enterprises, Inc. during the Class Period became employees of DCL, and DCL assumed any liability for the claims alleged in the Actions.

to resolve the Actions, which was eventually accepted by the Parties in November 2024. Over the following several months, the Parties negotiated the finer terms of their settlement, ultimately resulting in the Settlement.

Notably, Settlement Class members do not need to submit a claim form to receive a payment ("Settlement Award"). After deductions for proposed administration costs, attorney fees and costs, Plaintiffs' service payments, and the Labor & Workforce Development Agency's ("LWDA") share of PAGA civil penalties, the average Settlement Award is estimated at **$3,120.90**. For the reasons discussed herein, Plaintiffs respectfully submit the Settlement is fair, reasonable, and adequate, and request that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. FACTUAL AND PROCEDURAL BACKGROUND

DCL is a freight services company with multiple locations in California, including one in San Leandro. *See* Declaration of Tuvia Korobkin ("Korobkin Decl."), ¶ 10. Plaintiff Gongora worked for DCL as a non-exempt forklift operator from June 2022 to July 2023. (Gongora Decl., ¶ 2.) Plaintiff Diaz worked for DCL as a non-exempt forklift driver from approximately January 2023 to September 2023. (Diaz Decl., ¶ 3.) Plaintiff Arteaga worked for DCL as a non-exempt shuttle driver from approximately February 2024 to May 2024. (Arteaga Decl., ¶ 3.)

On November 2, 2023, Plaintiff Gongora filed this Action, alleging claims for failure to pay minimum wages and overtime wages, meal and rest period violations, wage statement violations, failure to timely pay wages during employment and at termination, failure to reimburse expenses, PAGA civil penalties, and unfair competition. (Korobkin Decl., ¶ 11.)

On January 31, 2024, Plaintiff Diaz filed a class action against DCL and Pier Enterprises, Inc., alleging failure to pay minimum wages and overtime wages, meal and rest period violations, wage statement violations, failure to timely pay final wages, failure to reimburse expenses, and unfair competition. Declaration of John Yslas ("Yslas Decl."), ¶ 2. On September 13, 2024, after providing notice to the LWDA, Plaintiffs Diaz and Arteaga filed a representative action complaint against DCL seeking PAGA civil penalties. (*Id.*, ¶ 3.)

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On December 18, 2025, pursuant to the Parties' stipulation, Plaintiffs filed a First Amended Complaint ("Complaint") in this Action, which consolidates the claims of all Plaintiffs. (Korobkin Decl., ¶ 13.)

B. PLAINTIFFS' CLAIMS AND DCL'S DEFENSES

1. Unpaid Overtime Claim

Plaintiffs allege that DCL failed to pay overtime wages to many of its non-exempt employees, and instead paid overtime hours as straight time. (Korobkin Decl., ¶ 14.) DCL contends it has always paid employees properly for all hours worked. DCL further asserts that many of its employees, including drivers and related positions, were exempt from overtime pursuant to Wage Order 9, section 3(L), as their hours of service are regulated by federal and/or state "hours of service" regulations. (*Id.*) DCL further alleges that its drivers and related positions were exempt from overtime under the federal motor carrier exemption. (*Id.*) DCL further argues that this claim would not be certified, as Plaintiffs and other putative class members signed arbitration agreements that would require individual arbitration of their claims. (*Id.*) Moreover, DCL argues that differences among employees regarding positions held, their managers, whether they worked overtime, and whether they were exempt under any of DCL's theories would require individualized inquiries that would likewise preclude certification. (*Id.*)

2. Off-the-Clock Claim

Plaintiffs allege that their meal periods would sometimes be interrupted by work demands, such that they would need to cut short their meal periods and work off-the-clock. (Korobkin Decl., ¶ 15.) DCL asserts that it does not require employees to work off-the-clock, that its policies prohibit off-the-clock work, that it always provides full, 30-minute meal periods, and therefore, employees very rarely, if ever, performed off-the-clock work. (*Id.*) DCL also argues that if an employee's meal period were truly cut short, the employee could simply advise their supervisor and the employee would be provided another 30-minute, off-duty meal period. (*Id.*) In addition, DCL asserts that differences among employees' job duties and working conditions, as well as issues with proving whether each employee worked unpaid wages on each individual shift, would present a plethora of individualized issues that would preclude class certification. (*Id.*) Moreover, as noted above, DCL argues that certification would further be precluded by the arbitration agreements signed by Plaintiffs and other employees. (*Id.*)

3. <u>Meal Period Claim</u>

Plaintiffs allege that they and other employees were not provided all meal periods to which they were entitled under California law. Specifically, Plaintiffs allege that meal periods were sometimes provided late, were cut short, or were not provided altogether, due to the workload imposed on Plaintiffs and other employees. (Korobkin Decl., ¶ 16.) DCL asserts, first, that its drivers and employees in related positions are not entitled to meal periods because they are subject to the Federal Motor Carrier Safety Administration's (FMCSA) 2018 decision that found California's meal and rest period laws preempted by federal law since they are subject to FMCSA's own break regulations. *Id.*; *see also Int'l Brotherhood of Teamsters, Local 2785 v. Federal Motor Carrier Safety Administration* (9th Cir. 2021) 986 F.3d 841 (upholding FMCSA's determination that California's meal and rest period rules are preempted). DCL further argues that, assuming all class members are entitled to meal periods, DCL has maintained legally-compliant meal period policies and practices throughout the Class Period and has consistently afforded employees the opportunity to take full, timely meal periods. (*Id.*) Under *Brinker*, DCL argues it is only required to "provide" the opportunity to take meal periods, not "ensure" they are taken. *Brinker Rest. Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (rejecting "ensure" standard). DCL further argues that because employees were consistently permitted to take timely and full meal periods, any failure to take a timely, 30-minute meal period was the result of employee choice rather than any policy or practice of Defendants. (Korobkin Decl., ¶ 16.) DCL further argues that individualized inquiries would be required to determine whether individual employees – working on many different shifts in various job positions and under varying circumstances, in different locations, and under different managers over a 5-year period – received a non-compliant meal period on each individual shift, and why any meal period was late, short or missed, thereby precluding certification of this claim. (*Id.*) Moreover, and as mentioned above, Defendants contend that this claim would not proceed on a class basis because Plaintiffs and other putative class members would be required to individually arbitrate their claims. (*Id.*)

4. **Rest Period Claim**

Plaintiffs allege that, as with meal periods, they and other employees were not able to take all rest periods to which they were entitled, due to the workload and work-related interruptions imposed by DCL. (Korobkin Decl., ¶ 17.) For its part, DCL asserts that FMCSA preemption defense as discussed above. (*Id.*). DCL further argues that, assuming all class members are entitled to rest periods, DCL has maintained legally-compliant rest period policies and practices throughout the Class Period and has consistently afforded employees the opportunity to take legally compliant rest periods, which is all it is required to do under *Brinker*. (*Id.*) DCL further argues that, as with meal periods, any failure to take rest periods was the result of employee choice rather than any policy or practice of Defendants. (*Id.*) DCL further argues that the same individualized inquiries described above with respect to meal periods would also be required with respect to rest periods, thereby precluding certification of this claim. (*Id.*) Indeed, DCL argues, these individualized inquiries are even more acute for rest periods, since rest periods are not – and need not be – recorded, making liability and damages determinations even more dependent on individual "mini trials" for each employee. Moreover, and as mentioned above, Defendants contend this claim would not proceed on a class basis because Plaintiffs and other putative class members would be required to arbitrate their claims on an individual basis pursuant to arbitration agreements. (*Id.*)

5. **Expense Reimbursement Claim**

Plaintiffs allege that DCL failed to indemnify or reimburse them and other employees for the use of their personal cell phones and personal vehicles for work purposes, including to communicate with supervisors and taking pictures of arriving trucks, and to travel in their personal vehicles to pick up drivers when a company truck broke down. (Korobkin Decl., ¶ 18.) DCL counters that employees did not need to use their personal cell phones or personal vehicles in connection with their job duties, and that if they did, there are procedures in place for employees to request reimbursement of work-related expenses. (*Id.*) DCL also contends that employees are provided with any equipment necessary to perform their job duties. (*Id.*) DCL further argues this claim would not be certified, as it would require hundreds of individualized inquiries as to whether employees incurred business-related expenses, whether they were reimbursed, whether DCL knew (or reasonably should have known) about the expense, and whether the expense was "necessary" under the circumstances. *See Gattuso v. Hart-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007) ("In calculating the reimbursement amount due under section 2802, the employer may consider not only the actual expenses that the employee incurred, but also whether each of those expenses was 'necessary,' which in turn depends on the reasonableness of the employee's choices."); *Grissom v. Vons Companies, Inc.*, 1 Cal.App.4th 52, 58 (1991) (under § 2802, "ascertaining what was a necessary expenditure will require an inquiry into what was reasonable under the circumstances"). DCL further argues that, again, the arbitration agreements signed by Plaintiffs and other employees would preclude class adjudication of this claim. (Korobkin Decl., ¶ 18.)

6. <u>Claims Under Lab. Code §§ 203, 226, and the PAGA</u>

As a result of DCL's alleged failure to pay all wages and to provide all meal and rest periods, Plaintiffs assert that DCL failed to comply with its final payment and wage statement obligations, in violation of Cal. Labor Code §§ 203 and 226, respectively. (Korobkin Decl., ¶ 19.) Plaintiffs also seek civil penalties under the PAGA based on the above claims. *Id*.

DCL argues that Plaintiffs' derivative claims fail for the same reasons their underlying claims fail. (Korobkin Decl., ¶ 20.) DCL further asserts it has strong, good-faith defenses to Plaintiffs' underlying claims, precluding imposition of penalties. *See* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding "good faith dispute" precluded imposition of waiting time penalties); *Naranjo v. Spectrum Security Services, Inc.*, 15 Cal.5th 1056 (2024) (holding good faith defense precluded imposition of wage statement penalties). DCL further contends its wage statements always accurately reflect amounts *paid* to employees and therefore no wage statement violations occurred. *See, e.g., Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) ("The purpose of section 226 is to '*document* the *paid wages* to ensure the employee is fully informed regarding the calculation of those wages.") (citing *Soto v. Motel 6 Operating, L.P.*, 4 Cal.App.5th 385, 392 (2016)). (Korobkin Decl., ¶ 20.)

DCL contends Plaintiffs' PAGA claim fails because the underlying claims fail. *See, e.g., Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). DCL further maintains that given its good-faith defenses and attempts to comply with the law, the Court would greatly reduce PAGA penalties even if it found in Plaintiffs' favor on underlying claims. *See* Lab. Code § 2699(e)(2) (authorizing discretionary reduction in PAGA penalties); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties, in part because "the evidence showed…defendants took their obligations…seriously and attempted to comply with the law"); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer was "not aware" of violations and "took prompt steps to correct all violations once notified"); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just $5 per pay period where employer made "good faith attempts" to comply with the law).

C. <u>DISCOVERY AND MEDIATION</u>

The Parties engaged in significant informal discovery. DCL produced timekeeping and payroll records for approximately one-third of the class; its employee handbooks; a class list with each employee's hire date, termination date, location, and other data; and other relevant information. (Korobkin Decl., ¶ 21.) Plaintiffs' counsel hired an expert data analyst to analyze and extrapolate the data. (*Id*.) This discovery allowed the Parties to assess the merits and value of Plaintiffs' claims and DCL's defenses, as well as the chances for class certification. (*Id*.)

The Parties attended a full-day mediation with Ms. Ngo-Bonnici on October 11, 2024, during which they vigorously debated Plaintiffs' claims and DCL's defenses, potential damages, and the chances of certification. (Korobkin Decl., ¶ 22.) At the conclusion of mediation, with the Parties at an impasse, Ms. Ngo-Bonnici made a Mediator's Proposal, which was eventually accepted by the Parties in November 2024. Over several months, the Parties negotiated the finer terms of the settlement, ultimately resulting in the Settlement in September 2025. (*Id*.)

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III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

Under the Settlement, DCL will pay a non-reversionary Gross Settlement Amount ("GSA") of $2,475,000.00. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount ("GSA"):	$2,475,000.00
• Minus Court-approved attorneys' fees (up to 35%):	$866,250.00
• Minus Court-approved costs (up to):	$30,000.00
• Minus Court-approved Service Awards:	$30,000.00
• Minus Amount Set Aside as PAGA penalties:	$150,000.00
• Minus settlement administration costs (up to):	$10,000.00
Net Settlement Amount ("NSA"):	**$1,388,750.00**
PLUS 25% of PAGA penalties ("PAGA Amount"):	$37,500.00
Total Amount Paid to Settlement Class:	**$1,426,250.00**

1. The Settlement Provides for Significant Monetary Payments

As noted above, after deducting amounts for court-approved service payments, administration costs, attorneys' fees and costs, and PAGA payment to the LWDA, Settlement Class members will receive $1,426,250.00. (*See* Settlement, § 5.) DCL represents there are approximately 457 Settlement Class members. (*Id.*, § 1.) Thus, the average payment to Settlement Class members is estimated to be **$3,120.90**. (Korobkin Decl., ¶ 24.)

The NSA will be distributed to Participating Class Members (Settlement Class members who do not opt out) proportionally based on the number of workweeks worked as non-exempt employees in California during the Class Period. (*See* Settlement, § 7(B).) Additionally, all Settlement Class members (even those who opt out) who were employed by DCL as non-exempt employees in California at any time from August 25, 2022 to January 11, 2025 (the "PAGA Period") are known as the "PAGA Group," and PAGA Group members will receive a portion of the $37,500 PAGA Amount, based on their proportionate number of pay periods worked for DCL as a non-exempt employee in California during the PAGA Period. (*Id.*, § 7(C).)

Payments from the NSA will be treated as 30% wages reported on a Form W-2, with the remaining 70% treated as interest, penalties and reimbursement and reported on a Form 1099. (Settlement, § 7(E).) Payments from the PAGA Amount will be treated as 100% penalties. (*Id.*) DCL will separately pay the employer's share of payroll taxes on the amount designated as "wages," in addition to the GSA. (*Id.*, §§ 5(D), 7(E).)

2. <u>Notice Period and Release of Claims</u>

Settlement Class members will have 60 days from the Notice mailing to opt out of or object to the Settlement or submit disputes, thereby providing ample time to review the Notice without unduly delaying the Settlement. (Settlement, § 12(C)-(E).)

Participating Class Members will be bound by the Settlement and shall release all wage and hour claims that were pled in the Action, or that could have been pled based on the facts alleged in the Action, during the Class Period ("California Released Claims"). (Settlement, § 2.) In addition, Plaintiffs, as authorized agents of the LWDA, shall release all claims against DCL for PAGA penalties based on the facts alleged in the PAGA letters submitted by the Plaintiffs, that arose during the PAGA Period ("Released PAGA Claims"). (*Id.*, §§ 3-4.)

3. <u>Funding of the Settlement</u>

The Settlement will be funded within 30 days of the Effective Date. (Settlement, § 5(B).) If there are no objections to the Settlement, the Effective Date will be the expiration date of the time for filing or noticing any appeal, i.e., 60 days after Judgment is entered. (*Id.*, § 6.)

4. <u>Attorneys' Fees and Costs, Enhancement Award, and PAGA Payment</u>

At final approval, Plaintiffs will apply for Service Payments of $10,000 each. (Settlement, §§ 5(C)(iii), 9.) "[I]ncentive awards are fairly typical in class action cases…and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be briefed at final approval, Plaintiffs' requested payments are in recognition of the time and effort they expended on behalf of the Settlement Class, including providing factual information and documents to counsel, discussing with counsel the claims and theories at issue in the litigation, reviewing the settlement agreement and other documents, referring potential witnesses to counsel, and otherwise actively participating in the prosecution of this case. Plaintiffs respectfully submit that the requested payments are well within the range of permissible approval. *See, e.g., Alvarado v. Nederend*, No. 1:08-cv-01099-OWW-DLB, 2011 WL 1883188 at *10 (E.D. Cal. May 17, 2011) (approving $7,500 award to each of <u>five</u> named plaintiffs ($37,500 total) from $505,058.60 settlement); *Martinez v. Knight*

Transportation, *Inc.*, No. 1:16-cv-01730-SKO, 2023 WL 5917989 (E.D. Cal. Sept. 11, 2023) (awarding $10,000 incentive award from $400,000 claims-made settlement where average settlement payment was just $127.61).

The parties have also designated $150,000.00 of the GSA as PAGA penalties, of which $112,500 (75%) will be paid to the LWDA, with the remaining $37,500 (25%) distributed to PAGA Group members as described above, consistent with the "old" PAGA's requirements under former Labor Code § 2699(e). (Settlement, § 5(C)(v).) Plaintiff Gongora's PAGA notice letter was submitted in 2023, and therefore, the "new" PAGA amendments that took effect in June 2024, do not apply. Plaintiffs submit this allocation to the LWDA is reasonable. *See, e.g., Chu v. Wells Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011) (approving $10,000 PAGA payment from $6.9 million settlement); *Lagunas v. Young Adult Institute, Inc.,* No. 23-cv-00654-RS, 2024 WL 1025121 (N.D. Cal. Mar. 8, 2024) (preliminarily approving PAGA allocation of $20,000 from $850,000 settlement).

At final approval, Plaintiffs' counsel will request attorneys' fees of 35% of the GSA (currently estimated at $866,250), and up to $30,000 in litigation costs. (Settlement, § 5(C)(iv).) The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis. Plaintiffs' counsel have incurred substantial attorneys' fees, in, among other things, conducting pre-filing investigation and legal research; analyzing timekeeping, payroll, and other data with Plaintiffs' data expert to create a comprehensive damages model; preparing for and attending mediation; negotiating and preparing the Settlement; preparing this Motion; and otherwise prosecuting this case. (Korobkin Decl., ¶ 35; Yslas Decl., ¶¶ 4-6.) Counsel will also incur future attorney fees in overseeing the Notice process, fielding phone calls from Settlement Class members, preparing the Final Approval Motion and supporting documents, and appearing at the Final Approval Hearing. (*Id*.)

It is appropriate to award attorney fees as a percentage of the "common fund" created by the settlement. *Laffitte v. Robert Half Int'l, Inc.,* 1 Cal.5th 480 (2016) (holding "the percentage of fund method survives in California class action cases"). Counsel's fee request is well within the range of reasonableness and is typical for common fund settlements. *See*, *e.g.*, *Chavez v. Netflix,* *Inc.*, 162 Cal.App.4th 43, n.11 (2008) ("regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery"). As will be briefed at final approval, the fee request is reasonable in light of the substantial risks and significant work undertaken, the results obtained, and the efficiency with which counsel litigated.

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions class action settlements on court approval, which is generally evaluated under the same standards as Fed. R. Civ. Proc. 23. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court's role is to ensure the settlement agreement taken as a whole is fair and within the range of reasonableness. *Hanlon*, 150 F.3d at 1027. There is a presumption of fairness when a settlement is negotiated at arm's length by counsel. *See, e.g.*, *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1. Standard for Preliminary Approval is Met Here

To make a fairness determination, the Court should consider several factors, including: "the strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). "The list of factors is not exclusive and the Court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001).

The Court can grant preliminary approval of a proposed settlement and direct that notice be given if the settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed negotiations; and (3) has no obvious deficiencies. *See Manual for Complex Litig.*, § 30.41 (3rd Ed. 1995); *Newberg on Class Actions*, §§ 11:24-25 (4th Ed. 2013). As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

a. The Strength of Plaintiffs' Case

While Plaintiffs are confident in the merits of their claims, Plaintiffs acknowledge there were substantial risks and uncertainty in proceeding with class certification and eventual trial on the merits. As described in section II.B., *supra*, DCL presented multiple defenses to Plaintiffs' claims, both on the merits and to class certification, rendering success uncertain.

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

Although the Parties engaged in significant informal discovery, they had not completed formal written and deposition discovery, which would have required expenditure of substantial time and resources. (Korobkin Decl., ¶ 37.) Plaintiffs also still had to file for class certification. (*Id.*) Even if Plaintiffs obtained certification, the Parties would incur considerable attorneys' fees and costs through a possible decertification motion, motions for summary judgment, trial, and potential appeals. (*Id.*) The Settlement avoids those risks and the accompanying delay and expense. (*Id.*) Thus, this factor supports preliminary approval.

c. Risk of Maintaining Class Action Status

Class certification in a non-settlement context was far from certain. Plaintiffs and other class members had executed arbitration agreements with class action waivers, which, if enforced, would have required individual arbitration of Plaintiffs' claims and precluded class certification. While Plaintiffs believe they had good-faith basis to oppose arbitration, there was a real risk that the Court would have disagreed and enforced the agreements. Therefore, absent settlement, there was a risk there would not be a certified class at all, and that the Settlement Class would have received nothing. Thus, this factor supports preliminary approval.

d. Settlement Amount is Reasonable and the Result of Serious, Informed Negotiations

The Settlement provides a fair and reasonable monetary recovery for the Settlement Class for disputed claims. As detailed in the Korobkin Declaration, and with the assistance of a data expert, Plaintiffs conducted an analysis of potential damages due to DCL's allegedly unlawful policies and practices. After applying reasonable discounts for risks of not obtaining class certification and risks of losing on the merits, Plaintiffs estimated their claims had a realistic potential value of $2,787,335. (Korobkin Decl., ¶¶ 26-34.) The proposed settlement of $2,475,000 thus represents over 88% of Plaintiffs' reasonably forecasted classwide recovery. (*Id.*, ¶ 34.) As noted above, the settlement results in average payments of more than $3,000 to Settlement Class members.

In sum, the Settlement resulted from an exchange of substantial information, extensive discovery, arm's-length negotiations, a full-day mediation, and months of additional negotiations. Plaintiffs carefully vetted the claims at issue and conducted a detailed analysis of the relevant data and information with the help of a retained expert. The Settlement is thus entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130.

e. The Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enter. Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, counsel have extensive experience litigating wage and hour class actions, and have been appointed class counsel in numerous cases alleging similar claims. (*See* Korobkin Decl., ¶¶ 2-8; Yslas Decl., ¶¶ 9-20; Declaration of Nancy Goodes, ¶¶ 2-4.) Counsel conducted an in-depth review of DCL's policies, timekeeping and payroll records, and other relevant data, and drew on their extensive experience to assess Plaintiffs' claims. The Settlement was also reached after a mediation session with mediator Monique Ngo-Bonnici, Esq., an experienced wage and hour class action mediator. (Korobkin Decl., ¶ 22.) This strongly supports preliminary approval. *Kullar*, 168 Cal.App.4th at 130.

f. The Settlement Is Devoid of Obvious Deficiencies

The Settlement has no obvious deficiencies. It provides tangible monetary relief to the Settlement Class, and the amounts proposed for attorneys' fees, costs, Plaintiffs' incentive awards, and PAGA penalties are all reasonable and appropriate based on the facts of this case.

B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS

The proposed Settlement Class satisfies the criteria for certification because: 1) the Settlement Class is ascertainable and numerous; 2) common questions of law and fact predominate; 3) Plaintiffs' claims are typical of the Settlement Class; and 4) Plaintiffs and their counsel will fairly and adequately represent the Settlement Class. Cal. Code Civ. Proc. § 382.

1. The Proposed Class Is Ascertainable and Numerous

A class is "ascertainable" where members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *Sevidal v. Target Corp.*, 189 Cal.App.4th 905, 919 (2010). The Settlement Class includes non-exempt employees who worked for DCL in California during the Class Period, and it thus can be readily identified from DCL's records. DCL represents there are approximately 457 Settlement Class members, rendering it impracticable to bring them all before the Court.

2. Common Issues of Law and Fact Predominate

The focus on certification is not on the merits, but rather on what types of questions, "common or individual," are likely to arise in the action. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiffs' claims are predicated primarily on DCL's payroll, meal and rest period, and reimbursement policies/practices. Such claims are commonly held proper for class certification. *See, e.g., Benton v. Telecom Network Specialists, Inc.* 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims); *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161 (9th Cir. 2014) (affirming certification of off-the-clock claim); *Cochran v. Schwan's Home Service,* 228 Cal.App.4th 1137 (2014) (reversing denial of certification of reimbursement claim).

3. The Named Plaintiffs' Claims Are Typical

Typicality is satisfied where class representatives have claims typical of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.,* 191 Cal.App.3d 1341, 1347 (1987). Here, Plaintiffs' claims are typical of those held by Settlement Class members. Plaintiffs were employed by DCL as non-exempt employees in California during the Class Period, and Plaintiffs contend they were injured by the same challenged policies that allegedly injured the Settlement Class as a whole. (*See* Gongora Decl., ¶¶ 2-3; Diaz Decl., ¶¶ 3-5; Arteaga Decl., ¶¶ 3-5.)

4. **<u>Plaintiffs and Class Counsel Will Adequately Represent the Class</u>**

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Svcs.,* 155 Cal.App.4th 676, 697 (2007). Plaintiffs and their counsel will adequately represent the Settlement Class, as there are no known conflicts between Plaintiffs or their counsel and the Settlement Class. *See McGhee v. Bank of Am.,* 60 Cal.App.3d 442, 450 (1976) (finding adequacy satisfied where there was no indication that plaintiff's counsel was not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation, as noted above.

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

The Court should order distribution of the proposed Notice by U.S. Mail, using last known mailing addresses provided by DCL. This is the "best notice practicable" under the circumstances as it provides "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin,* 417 U.S. 156, 173 (1974). Plaintiffs propose the Settlement be administered by Phoenix Settlement Administrators, an experienced administrator. (*See* Jodey Lawrence Declaration and exhibits.) Phoenix will run all addresses through the USPS National Change of Address database and will perform "skip traces" to obtain current addresses for Notices returned as undeliverable. (*See* Settlement, § 12(B) & (F).)

The proposed Notice satisfies Rule of Court 3.766(d) because it advises the Settlement Class of the nature of the claims; the parties' basic contentions; the key Settlement terms; the 60-day deadline to opt out, object, or submit a dispute and how to do so; the payment formula and expected payment amount for each Settlement Class member; and explains the releases of claims. (*See* Settlement, Exh. A.) The Notice also includes the final approval hearing date and time and provides contact information for Class Counsel and the administrator. (*Id.*) The Notice will also be translated into Spanish. (*See* Settlement, § 11(F).) The Notice satisfies Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching the Settlement Class.

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

The Court should set a hearing for final approval on a date appropriately scheduled to follow Settlement Class members' response deadline. (*See* Cal. Rule of Court 3.769.)

V. <u>CONCLUSION</u>

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

Dated: December 18, 2025

Respectfully submitted,
MARQUEE LAW GROUP, APC

By: ______________________
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