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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

FAUSTINO RAMOS, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

HYATT DIE CAST AND ENGINEERING
CORPORATION—SOUTH, a California
corporation; NEXEM STAFFING, INC, a
Delaware limited liability company;
PARTNERS PERSONNEL –
MANAGEMENT SERVICES, LLC, a
Delaware limited liability company; and
DOES 1 through 100,

Defendants.

Case No.: 30-2020-01174518-CU-OE-CXC

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, et seq.)**

UNLIMITED CIVIL CASE

Assigned for all purposes to: Judge William Claster

Dept: CX104

1 Plaintiff Faustino Ramos (“Plaintiff”), on behalf of himself, all other aggrieved
2 employees, and the State of California, hereby brings this Representative Action Complaint
3 (“Complaint”) against Hyatt Die Cast and Engineering—South, a California corporation (“Hyatt
4 Die”); Nexem Staffing, Inc., a Delaware limited liability company (“Nexem”); Partners Personnel
5 – Management Services, LLC, a Delaware limited liability company (“Partners”); and DOES 1
6 to 100, inclusive (collectively, “Defendants”), and on information and belief allege as follows:

7 **JURISDICTION**

8 1. Plaintiff, on behalf of himself, all other aggrieved employees, and the State of
9 California, hereby brings this Complaint for recovery of civil penalties under the Private
10 Attorneys General Act, Labor Code § 2698, *et seq.* (“PAGA”), and Industrial Welfare
11 Commission Wage Order 1 (“Wage Order 1”). The monetary damages that Plaintiff seeks exceed
12 this Court’s jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to California Code of Civil
15 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
16 occurred in Orange County. Defendants own, maintain offices, transact business, have an agent
17 or agents within Orange County, and/or otherwise are found within Orange County, and
18 Defendants are within the jurisdiction of this Court for purposes of service of process.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was, and currently is, a California resident. Within the statute of limitations periods
22 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
23 exempt employee.

24 4. Plaintiff is informed and believes, and based thereon alleges, that within the statute
25 of limitations period applicable to each cause of action pled herein and continuing to the present,
26 Defendants did (and continue to do) business as a manufacturer in the die casting and engineering
27 industry, and employed Plaintiff and other non-exempt employees within Orange County and
28 California and, therefore, were (and are) doing business in Orange County and in California.

1 5. Plaintiff does not know the true names or capacities, whether individual, partner,
2 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
3 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
4 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
5 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
6 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
7 and proximately caused Plaintiff and other aggrieved employees to be subject to the unlawful
8 employment practices, wrongs, injuries and damages complained of herein.

9 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
10 herein, Defendants were and are the employers of Plaintiff and other aggrieved employees.

11 7. At all times herein mentioned, each of said Defendants participated in the doing
12 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
13 Defendants, and each of them, were the agents, servants, and employees of each and every one of
14 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
15 were acting within the course and scope of said agency and employment. Defendants, and each
16 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
17 omissions complained of herein.

18 8. At all relevant times, Defendants, and each of them, were members of and engaged
19 in a joint venture, partnership, and common enterprise, and acted within the course and scope of
20 and in pursuance of said joint venture, partnership, and common enterprise. Further, all
21 Defendants were joint employers for all purposes of Plaintiff and other aggrieved employees.

22 **REPRESENTATIVE ACTION ALLEGATIONS**

23 9. Defendants are in the business of manufacturing various products in the die
24 casting, general engineering, and machining industry, and supply parts for companies in the
25 aerospace, defense, and other industries. Plaintiff worked for Defendants as a non-exempt die cast
26 operator at Defendants' Cypress, CA location from approximately July 2013 to approximately
27 July 2020. As a die cast operator, Plaintiff's primary job duties consisted of operating heavy
28 machinery used for creating and assembling various metal parts for Boeing airplanes.

1 10. During his employment with Defendants, Plaintiff clocked in and out using
2 Defendants' timekeeping system. Although Defendants recorded Plaintiff's time-punches to the
3 minute, Defendants utilized a timekeeping system which resulted in Plaintiff not being
4 compensated for all hours actually worked, by time-shaving or rounding, such that Plaintiff was
5 only paid in quarter of an hour increments. Defendants regularly, systematically, and
6 impermissibly rounded the time recorded by Plaintiff and other aggrieved employees in
7 Defendants' favor. This time shaving/rounding practice utilized by Defendants was not even-
8 handed over time and would round and shave in Defendants' favor such that Plaintiff was
9 underpaid for his recorded time worked. Due to Defendants' timekeeping policies and practices
10 that fail to compensate for all hours worked, Plaintiff and other non-exempt employees were
11 deprived of all required minimum wages owed. Further, on occasions when Plaintiff worked
12 over eight hours in a day and/or forty hours in a workweek, this process of time-shaving or
13 rounding also deprived him of all overtime wages owed. As such, Plaintiff and other aggrieved
14 employees were not compensated for all required minimum and overtime wages.

15 11. During Plaintiff's employment, Defendants required Plaintiff and other aggrieved
16 employees to wear a uniform and other personal protective equipment ("PPE"). Specifically,
17 Defendants provided Plaintiff and other aggrieved employees with, *inter alia*, a set of boots, pants,
18 glasses, and shirts that were required to be worn while working. These items were kept in the
19 custody of Defendants. Defendants required that the uniform and PPE be donned before starting
20 a shift and must be doffed and returned to Defendants at the end of a shift, but failed to pay
21 Plaintiff and other aggrieved employees for their time spent donning and doffing the required
22 uniform and PPE. Specifically, Defendants required Plaintiff and other aggrieved employees to
23 arrive fifteen minutes before the beginning of their shift in order to change into the required
24 uniform and PPE, but did not pay them for this time. Plaintiff and other aggrieved employees
25 were also required to remove the uniform and PPE after their shift and return them to Defendants,
26 but they were not paid for this time either. As such, Defendants failed to pay Plaintiff and other
27 aggrieved employees at least the minimum wage for all hours worked. Further, on occasions when
28 Plaintiff and other aggrieved employees worked over eight hours in a workday and/or forty hours

1 in a workweek, Defendants' practice of requiring Plaintiff and other aggrieved employees to don
2 and doff uniforms and PPE without paying them for this time, deprived Plaintiff and other
3 aggrieved employees of all overtime wages earned.

4 12. During Plaintiff's employment, Defendants also failed to provide Plaintiff and
5 other aggrieved employees with all statutorily-mandated meal periods due to Defendants' meal
6 period policies/practices. Specifically, Defendants failed to record the beginning and end of each
7 meal period because Defendants generally did not require Plaintiff or other aggrieved employees
8 to clock-out for meal periods, in violation of Wage Order 1, § 7(A)(3) and Labor Code § 1174.
9 Instead, Defendants automatically deducted 30 minutes from employee timekeeping records for
10 a purported meal period, even if the meal period did not actually last for 30 minutes. In addition,
11 Defendants' meal period policy/practice routinely resulted in employees being provided with
12 "short" meal periods (i.e., less than 30 minutes). Specifically, Defendants would sound a bell to
13 signal the start of the meal period, and a second bell exactly 30 minutes later to signal the end of
14 the meal period. However, Defendants required Plaintiff and other aggrieved employees to be at
15 their work stations, ready to resume working, before the second bell rang, and thus Plaintiff and
16 other aggrieved employees were required to cut their meal period short in order to ensure that
17 they were back at their work stations before the second bell. In addition, the nature of Plaintiff's
18 and other aggrieved employees' work made it impracticable to stop working completely when the
19 first meal period bell sounded. Specifically, before going on a meal period Plaintiff would have
20 to power down and secure his machinery. He would also need to wash himself before going on
21 a meal period, as his work produced a large amount of contaminants. Plaintiff was therefore not
22 able to actually begin his meal period until some several minutes after the initial meal period bell
23 rang, further shortening his meal periods. In addition, as a matter of policy/practice, Defendants
24 failed to provide a second meal period when Plaintiff and other aggrieved employees worked in
25 excess of 10.0 hours in a workday. In those instances that Defendants failed to provide Plaintiff
26 and other aggrieved employees with a legally compliant meal period, Defendants failed to pay
27 them the meal period premiums required by Labor Code § 226.7. Upon information and belief,
28 during at least a portion of the putative class period, Defendants maintained no payroll code or

1 other mechanism for paying meal period premiums when Defendants failed to provide a legally
2 compliant meal period. As a result of the foregoing meal period policies/practices, Defendants
3 failed to provide legally compliant meal periods, failed to pay Plaintiff and other aggrieved
4 employees for all hours worked, and failed to maintain all records they are required to maintain
5 under California law.

6 13. Plaintiff and other aggrieved employees also were not authorized and permitted to
7 take all required and legally-compliant off-duty rest periods due to Defendants' rest period
8 policies/practices. Specifically, Plaintiff was not always authorized and permitted to take all
9 legally compliant rest periods of at least a net ten minutes for each four hours worked or major
10 fraction thereof, due to the workload imposed on Plaintiff, and the fact that he often could not
11 leave his work station in the middle of a work task due to the nature of his work, which involved,
12 *inter alia*, working with heavy machinery and hot metals. In addition, Defendants required
13 Plaintiff and other non-exempt employees to keep on their uniforms and PPE during rest periods.
14 This prevented Plaintiff and other non-exempt employees from using their rest periods for their
15 own purposes, since keeping their uniforms and PPE on precluded them from engaging in certain
16 personal activities, such as eating or drinking. This deprived Plaintiff and other non-exempt
17 employees of off duty rest periods. In addition, Defendants also failed to authorize and permit
18 third rest periods on those occasions when Plaintiff or other aggrieved employees worked over
19 10.0 hours in a workday. On those occasions when Plaintiff and other aggrieved employees were
20 not provided with all legally-required and compliant rest periods, Defendants failed to
21 compensate them with the required rest period premium for each workday in which they
22 experienced a rest period violation, as mandated by Labor Code § 226.7. Upon information and
23 belief, during at least a portion of the relevant time period, Defendants maintained no payroll code
24 for paying rest period premiums under Labor Code § 226.7.

25 14. Defendants also prohibited Plaintiff and other aggrieved employees from using the
26 restroom except on their designated meal and rest periods. This violates Wage Order 1, §§ 12
27 and 13, which require that "suitable resting facilities shall be provided in an area separate from
28 the toilet rooms." The DLSE has interpreted these provisions to mean that employers may not

1 require employees to use restroom breaks as their rest periods, and “the rest period is not to be
2 confused with or limited to breaks taken by employees to use toilet facilities.”¹

3 15. As a result of Defendants’ failure to pay all minimum and overtime wages, as well
4 as meal and rest period premium wages, Defendants failed to issue accurate itemized wage
5 statements to Plaintiff and other aggrieved employees with respect to, among other things, total
6 hours worked, total hours worked at each hourly rate, gross and net wages earned. In addition,
7 the wage statements issued to Plaintiff and other aggrieved employees who were supplied by a
8 staffing agency failed to list the name and address of legal entity that is the employer, in violation
9 of Labor Code § 226(a)(8).

10 16. As a result of the aforementioned violations, Defendants also failed to timely pay
11 Plaintiff and other aggrieved former employees all wages owed at the time of their respective
12 separations from employment.

13 17. Based on the foregoing, Plaintiff seeks to represent himself and other aggrieved
14 employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code
15 violations discussed herein. Pursuant to California Judicial Council Emergency Rule 9, statutes
16 of limitations of more than 180 days were suspended for 178 days, from April 6, 2020 through
17 October 1, 2020. Accordingly, for purposes of this Complaint, “aggrieved employees” refers to
18 all of Hyatt Die’s non-exempt employees in California, whether employed directly by Hyatt Die
19 or supplied to Hyatt Die through a staffing agency (such as Nexem or Partners), from the one-
20 year plus 178 days preceding Plaintiff’s providing notice under the PAGA to the LWDA through
21 the present.

22 **FIRST CAUSE OF ACTION**

23 **PRIVATE ATTORNEYS GENERAL ACT**

24 **(AGAINST ALL DEFENDANTS)**

25 18. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
26 fully set forth herein.

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28 _____
¹ See DLSE Rest Period FAQ: https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm

1 19. Defendants have committed Labor Code violations against Plaintiff and other
2 aggrieved employees. Plaintiff is an “aggrieved employee” within the meaning of the PAGA and,
3 acting on behalf of himself, other aggrieved employees, and the State of California, brings this
4 representative action against Defendants to recover the civil penalties due to Plaintiff and other
5 aggrieved employees against whom one or more of the violations has been committed, and the
6 State of California according to proof, pursuant to Labor Code § 2699, including, but not limited
7 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for
8 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for
9 each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for
10 each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
11 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
12 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
13 initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to
14 Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation
15 and \$200.00 for each subsequent violation per employee per pay period for those violations of
16 the Labor Code for which no civil penalty is specifically provided pursuant to Labor Code §
17 2699(f), based on the following Labor Code violations:

- 18 a. Failing to compensate Plaintiff and other aggrieved employees all overtime wages
19 earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 20 b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum
21 wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2,
22 1197, and 1198;
- 23 c. Failing to authorize and permit all legally required rest periods, and failing to pay
24 rest period premiums, to Plaintiff and other aggrieved employees in violation of
25 Labor Code §§ 226.7, 516, 558, and 1198;
- 26 d. Failing to provide all legally required meal periods, and failing to pay meal period
27 premium pay, to Plaintiff and other aggrieved employees in violation of Labor
28 Code §§ 226.7, 512, 558, and 1198;

- 1 e. Prohibiting Plaintiff and other aggrieved employees from using the restroom
2 outside their designated meal and rest periods, in violation of Labor Code § 1198;
3 f. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate,
4 itemized wage statements in violation of Labor Code § 226;
5 g. Failing to timely pay all final wages and compensation earned by Plaintiff and
6 other aggrieved former employees at the time of separation of employment, in
7 violation of Labor Code §§ 201-203;
8 h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least
9 twice during each calendar month, in violation of Labor Code § 204; and
10 i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
11 employees, in violation of Labor Code § 1174.

12 20. On October 7, 2020, Plaintiff notified Defendants Hyatt Die, Nexem, and Partners
13 via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via
14 its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring
15 a claim for civil penalties under PAGA with respect to violations of the California Labor Code
16 identified in Paragraph 19 (a)-(i) above. Now that sixty-five days have passed from Plaintiff’s
17 notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his
18 administrative requirements for bringing a claim under the PAGA with respect to these violations.

19 21. Plaintiff was compelled to retain the services of counsel to file this court action to
20 protect his interests and the interests of other aggrieved employees, and to assess and collect the
21 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which
22 he is entitled to recover under California Labor Code § 2699(g).

23 **PRAYER**

24 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
25 this suit is brought against Defendants, jointly and severally, as follows:

26 22. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
27 employees, and the State of California according to proof pursuant to Labor Code § 2699,
28 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully

1 withheld; ; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant
2 to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and
3 \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay
4 period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each
5 subsequent violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)
6 \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay
7 period for those violations of the Labor Code for which no civil penalty is specifically provided,
8 pursuant to Labor Code § 2699(f);

9 23. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
10 2699(g) and Code of Civil Procedure § 1021.5; and

11 24. For such other and further relief the Court may deem just and proper.

12 Dated: December 14, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

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14
15 By:



Paul K. Haines
Attorneys for Plaintiff