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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

FAUSTINO RAMOS and ALBERTO MEZA
SOLIS, as individuals and on behalf of all
others similarly situated,

Plaintiffs,

vs.

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

Defendants.

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

*[Assigned for all purposes to the Hon. Peter J.
Wilson, Dept. CX-101]*

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

Date: August 24, 2023
Time: 2:00 p.m.
Dept.: CX-101

Complaint Filed: December 14, 2020
Trial Date: None Set

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
2 on August 24, 2023 at 2:00 p.m., or as soon thereafter as the matter may be heard in Department
3 CX-101 of the above-entitled Court, located at 751 West Santa Ana Boulevard, Santa Ana,
4 California 92701, Plaintiffs Faustino Ramos and Alberto Meza Solis (“Plaintiffs”) will, and
5 hereby do, move this Court for:

6 1. Preliminary approval of the proposed Joint Stipulation of Class Action and Private
7 Attorneys General Act Settlement (“Settlement Agreement”) between Plaintiffs and
8 Defendants Hyatt Die Cast and Engineering Corporation-South (“Hyatt Die”),
9 Partners Personnel – Management Services, LLC (“Partners Personnel”) and Nexem
10 Partners, LLC (“Nexem Partners”) (collectively “Defendants”);

11 2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional
12 certification, for settlement purposes only, of the proposed Settlement Class, defined
13 as follows:

14 All current and former non-exempt, hourly employees of Defendant
15 Hyatt Die, whether employed directly by Defendant Hyatt Die or
16 supplied to Defendant Hyatt Die by Defendants Partners Personnel or
17 Nexem Partners as temp workers, who worked at Defendant Hyatt Die’s
18 California facilities at any time from July 2, 2017, through July 14, 2022
19 (the “Class Period”).

20 3. Preliminary appointment of Plaintiffs as Class Representatives;

21 4. Preliminary appointment of Paul K. Haines and Sean M. Blakely of Haines Law
22 Group, APC and Michael Nourmand and James A. De Sario of The Nourmand Law
23 Firm, APC, as Class Counsel;

24 5. The scheduling of a hearing to consider whether the Settlement should be finally
25 approved and to award an amount for service payments to the Class Representatives,
26 attorneys’ fees and costs to Class Counsel, settlement administration costs, and the
27 payment to the Labor & Workforce Development Agency (“LWDA”) for its share of
28 civil penalties under the Private Attorneys General Act (“PAGA”);

1 6. Appointment of ILYM Group, Inc. as the third-party Settlement Administrator for
2 mailing notices; and

3 7. Approval of the proposed Notice Packet, and an order that it be disseminated to the
4 proposed Settlement Class as provided in the Settlement Agreement.

5 This motion is based on this notice of motion; the attached memorandum of points and
6 authorities; the declaration of Paul K. Haines and exhibits attached thereto; the supporting
7 declarations of Sean M. Blakely and James A. De Sario; the declaration of Lisa Mullins of ILYM
8 Group, Inc. and exhibits attached thereto; the declarations of Plaintiffs; the Settlement
9 Agreement; the pleadings and other papers filed in this action; and any further oral or
10 documentary evidence or argument presented at the time of hearing.

11
12 Dated: June 22, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

13
14 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Faustino Ramos and Alberto Meza Solis (“Plaintiffs”) seek preliminary
4 approval of a class action settlement (“Settlement”) with Defendants Hyatt Die Cast and
5 Engineering Corporation-South (“Hyatt Die”), Partners Personnel – Management Services, LLC
6 (“Partners Personnel”) and Nexem Partners, LLC (“Nexem Partners”) (collectively
7 “Defendants”) (Defendants collectively with Plaintiffs are referred to as the “Parties”). In this
8 action, Plaintiffs’ primary allegations are that Defendants: (1) failed to pay all wages due to its
9 allegedly unlawful timekeeping policies/practices; (2) failed to provide all legally compliant meal
10 periods; and (3) failed to authorize and permit all required rest periods. As a result of these
11 violations, Plaintiffs allege that Defendants failed to issue accurate and compliant itemized wage
12 statements, failed to pay all wages upon separation of employment, and are liable for civil
13 penalties under the Private Attorneys General Act (“PAGA”), Labor Code § 2698 *et seq.*¹

14 Plaintiffs now respectfully request that this Court preliminarily approve this non-
15 reversionary, common-fund class action settlement,² in which Defendants have agreed to pay a
16 Gross Settlement Amount of Eight Hundred Fifty Thousand Dollars and Zero Cents
17 (\$850,000.00) to the following Settlement Class, which is estimated to consist of 465 individuals:

18 All current and former non-exempt, hourly employees of Defendant Hyatt
19 Die whether employed directly by Defendant Hyatt Die or supplied to
20 Defendant Hyatt Die by Defendants Partners Personnel or Nexem Partners
21 as temp workers, who worked at Defendant Hyatt Die’s California facilities
22 at any time from July 2, 2017, through July 14, 2022 (the “Class Period”).

23 The Settlement was only reached after extensive informal discovery, and a full-day

24 ¹ Plaintiffs’ operative First Amended Class and Representative Action Complaint (“FAC”) pleads
25 the following causes of action: (1) minimum wage violations; (2) failure to pay all overtime
26 wages; (3) meal period violations; (4) rest period violations; (5) wage statement violation; (6)
waiting time penalties; (7) unfair competition; and (8) civil penalties under the PAGA.

27 ² The Joint Stipulation of Class Action and Private Attorneys General Act Settlement
28 (“Settlement”) is attached as Exhibit 1 to the Declaration of Paul K. Haines. The proposed Class
Notice, Notice of Change of Address, and Request for Exclusion Form are attached as Exhibits
A, B, and C, respectively, to the Settlement.

1 mediation with Francis J. Ortman, III, Esq., an experienced wage and hour class action mediator.
2 In connection with mediation, Defendants provided Plaintiffs with payroll and timekeeping
3 records for a 15% random sampling of putative class members, as well as applicable documents
4 regarding Defendants' wage and hour written policies, and other relevant information. Defendants
5 also provided Plaintiffs with relevant data points including the number of current and former non-
6 exempt employees who worked during the Class Period, the number of workweeks during the
7 Class Period, as well as the total number of aggregate pay periods worked during the PAGA
8 Period. After extensive research and analysis, including a detailed evaluation of Defendants'
9 potential exposure with the assistance of Plaintiffs' retained expert, the Parties attended a full-day
10 mediation on March 28, 2022, where the Parties were ultimately able to reach a classwide
11 settlement.

12 Significantly, Settlement Class members do not need to file a claim to reap the financial
13 benefits of the Settlement as Settlement Payments will be distributed to all Settlement Class
14 members who do not affirmatively opt out. After deductions for proposed settlement
15 administration costs, requested attorneys' fees and costs, the payment to the LWDA for its share
16 of PAGA civil penalties, and the Class Representative Service Payments, the Settlement requires
17 Defendants to pay a Net Settlement Amount ("NSA") of at least \$438,416.67 to those Settlement
18 Class members who do not opt out. According to Defendants, there are approximately 465
19 Settlement Class members, and therefore, the average Settlement Payment is estimated to be at
20 least \$942.83.³ This is an excellent result for Settlement Class members, who will be agreeing to
21 a release of only those claims that were asserted this litigation. For the reasons stated herein,
22 Plaintiffs respectfully request that the Court grant preliminary approval of the proposed
23 Settlement.

24 ///

25 ///

26 ³ In addition to the \$942.83 average Settlement Payment from the Net Settlement Amount, the
27 approximately 356 Aggrieved Employees who worked during the time period from October 7,
28 2019, through July 14, 2022 ("PAGA Period"), will also receive a portion of the \$18,750 PAGA
Amount. Haines Decl., ¶ 17. The average share of the PAGA Amount is estimated to be
approximately \$52.67. *Id.*

II. SUMMARY OF THE LITIGATION

A. FACTUAL AND PROCEDURAL BACKGROUND

Defendants are in the business of manufacturing various products in the die casting, general engineering, and machining industries, and supply parts for companies in the aerospace, defense, and other industries. *See* Declaration of Paul K. Haines (“Haines Decl.”), ¶ 10. Partners Personnel and Nexem Partners are temporary staffing agencies. *Id.* Plaintiff Ramos worked at Defendant Hyatt Die’s Cypress, California location as a non-exempt “Die Cast Operator” from approximately July 2013 to July 2020. *See* Declaration of Faustino Ramos (“Ramos Decl.”), ¶ 2. Plaintiff Solis worked at Defendant Hyatt Die’s Cypress, California location as a non-exempt “Final Inspector” from approximately May 2013 to July 16, 2020.

On December 14, 2020, Plaintiff Ramos filed a representative action for civil penalties under the Private Attorneys General Act, Labor Code section 2698, *et seq.* (“PAGA”), against Defendants Hyatt Die, Partners Personnel and Nexem Staffing, Inc. in the Superior Court of California, County of Orange, Case No. 30-2020-01174518-CU-OE-CXC, alleging a single cause of action for civil penalties under the PAGA (“*Ramos Action*”). Haines Decl., ¶ 11.

On December 29, 2020, Defendant Nexem Staffing, Inc. filed its Certificate of Surrender (“Certificate”) with the California Secretary of State, and consented to process of service being served upon the California Secretary of State for any liability or obligation incurred within California prior to the filing of the Certificate. *See* Settlement, ¶ 2. On February 24, 2021, pursuant to California Corp. Code section 2114(b), the California Secretary of State accepted service of process for Defendant Nexem Staffing, Inc., which failed to respond to the Complaint. *Id.*

On July 2, 2021, Plaintiff Solis filed a Class Action Complaint against Defendants Partners Personnel, Hyatt Die, Nexem Partners, Nexem Staffing, Inc. and Staff Holdings, Inc. in the Superior Court of California, County of Orange, Case No. 30-2021-01209210-CU-OE-CXC, asserting claims for: failure to pay overtime wages; failure to pay minimum wages; failure to provide meal periods; failure to provide rest periods; failure to pay all wages upon termination; failure to provide accurate wage statements; and unfair competition (“*Solis Action*”). Haines Decl., ¶ 12.

On or about September 9, 2021 the *Ramos* and *Solis* Actions were deemed related by this Court. Haines Decl., ¶ 13. On March 1, 2022, Plaintiff Solis filed and served a First Amended Class Action Complaint adding a cause of action for civil penalties under the PAGA against Defendants Partners Personnel, Hyatt Die and Nexem Partners. *Id.*

On March 28, 2022, the Parties in the *Ramos* and *Solis* Actions attended private mediation with mediator Tripper Ortman and reached a global classwide settlement of both Actions. Haines Decl., ¶ 15. As part of the Settlement, the Parties agreed to file a First Amended Class and Representative Action Complaint (“FAC”) in this Action to add Plaintiff Solis as a named plaintiff and class representative and add all claims alleged in the *Solis* Action. *Id.* On March 27, 2023, Plaintiffs filed the FAC in this Action. *Id.*

B. PLAINTIFFS’ CLAIMS AND DEFENDANTS’ DEFENSES

1. Arbitration Agreements

As an initial matter, Defendant Hyatt Die contends that the overwhelming majority of its direct hires are unionized and covered by a Collective Bargaining Agreement (“CBA”), which contains an express grievance procedure and arbitration provision. Haines Decl., ¶ 18. Defendant Hyatt Die argued that the claims of its direct hires were therefore preempted by the CBA. *Id.* Moreover, Defendants Partners Personnel and Nexem Partners contend that approximately 90% of its employees placed at Hyatt Die signed arbitration agreements with class action waivers. *Id.* Setting aside any arguments as to the merits of Plaintiffs’ claims, Defendants contends that absent settlement, a class-wide recovery was not possible and that only PAGA civil penalties could potentially be recovered on behalf of a subset of the Settlement Class members. *Id.* As such, Defendant contends that absent its agreement to not raise the arbitration agreements as an affirmative defense, any recovery to the Settlement Class members through a representative action would be limited to only the employees’ potential 25% share of PAGA civil penalties. *Id.*

2. Unpaid Wages Due to Unlawful Time-Rounding Practices

Plaintiffs allege that Defendants underpaid Settlement Class members due to its allegedly unlawful rounding policies/practices. Haines Decl., ¶ 19. Plaintiffs allege that despite Defendants’ timekeeping system recording time-punches to the minute, Defendants round employee time-

punches, resulting in an underpayment of wages to Settlement Class members. *Id.*

Defendants counter that they utilize a neutral time-rounding mechanism that results, over time, in employees being paid for all hours worked. Haines Decl., ¶ 19; *see also, See's Candy Shops, Inc. v. Sup. Ct.*, 210 Cal.App.4th 889, 901 (2012) (rounding policy lawful if employer “applies a consistent rounding policy that, on average, favors neither overpayment nor underpayment.”). Defendants also contend that multiple Courts of Appeal have found rounding mechanisms to be lawful under similar circumstances. Haines Decl., ¶ 19; *see e.g., Ferra v. Loews Hollywood Hotel, LLC*, 40 Cal.App.5th 1239, 1254 (2019) (review granted on other grounds); *AHMC Healthcare, Inc. v. Sup. Ct.*, 24 Cal.App.5th 1014, 1027-28 (2018) (affirming summary judgment for employer where “bare majority” of employees were underpaid due to rounding). Defendants also argue that any unpaid time could have only amounted to a few minutes per day, at most, and was thus *de minimis*. Haines Decl., ¶ 19. While Plaintiffs point to *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018), where the California Supreme Court held California’s labor laws generally do not recognize a *de minimis* defense, Defendants argue that *Troester* should be limited to its facts. (“[W]e decide only whether the de minimis rule is applicable to the facts of this case as described by the Ninth Circuit.” *Troester*, 5 Cal.5th at 829.). Finally, Defendants assert that Plaintiffs would be unable to certify this claim since their rounding policy is facially neutral and some employees were *overpaid* due to rounding, and individualized inquiries would be necessary as to whether employees were, in fact, underpaid or overpaid for each workday in question (including whether they were actually working when they were clocked in), resulting in an unmanageable series of mini-trials. Haines Decl., ¶ 19.

3. Meal Period Claims

Plaintiffs allege that Defendants had a policy/practice of providing short (i.e., less than 30 minutes) first meal periods. Haines Decl., ¶ 20. Specifically, Plaintiffs allege that Defendants implemented a bell system which would sound a bell to signal the start of the meal period, and a second bell exactly 30 minutes later to signal the end of the meal period. *Id.* However, Plaintiffs allege that Defendants required Settlement Class members to be back at their work stations, ready to resume working, before the second bell rang. *Id.* As a result, Plaintiffs contend that Settlement

1 Class members were required to cut their meal periods short in order to ensure that they were
2 back at the workstations before the second bell. *Id.* Plaintiffs further allege that Defendants failed
3 to record the beginning and end of each meal period because Defendants generally did not require
4 Plaintiffs or other non-exempt employees to clock-out for meal periods, in violation of Wage
5 Order 1, § 7(A)(3) and Labor Code § 1174. *Id.* Instead, Plaintiffs allege that Defendants
6 automatically deducted 30 minutes from employee timekeeping records for a purported meal
7 period, even if the meal period did not actually last for 30 minutes. *Id.* In addition, Plaintiffs allege
8 that Defendants failed to provide a second meal period when Settlement Class members worked
9 in excess of 10.0 hours in a workday. *Id.*, at ¶ 21.

10 Defendants contend that they maintained compliant written meal period policies
11 throughout the Class Period and provided all legally compliant meal periods in line with those
12 policies. Haines Decl., ¶ 20. Defendants further argue that under *Brinker*, they were only required
13 to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken. *Id.*;
14 *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting “ensure”
15 standard). Defendants also argue that any short, missed, or late first meal periods were the result
16 of lawful employee waiver or choice, thereby precluding liability. Haines Decl., ¶ 20. With
17 respect to second meal periods, Defendants argue that second meal periods may lawfully be
18 waived on shifts of more than 10.0 hours but less than 12.0 hours per Labor Code § 512, and that
19 employees regularly did so. *Id.*, at ¶ 21. Lastly, Defendants maintain Plaintiffs’ meal period claim
20 is not suited for class certification since individual inquiries would be needed to assess which
21 employees took non-compliant meal periods, how many meal periods were non-compliant, the
22 reasons why a particular employee did not take a meal period on a particular shift, and whether
23 they waived the meal period. *Id.*, at ¶¶ 20-21.

24 **4. Rest Period Claims**

25 Plaintiffs allege that Defendants failed to authorize and permit all legally compliant off-
26 duty rest periods due to Defendants’ rest period policies/practices. Haines Decl., ¶ 22.
27 Specifically, Plaintiffs allege that Defendants’ rest period policies/practices only authorized and
28 permitted two (2) rest periods per shift, irrespective of shift length, and therefore, failed to

1 authorize and permit third rest periods on those occasions when Plaintiffs or other non-exempt
2 employees worked over 10.0 hours in a workday. *Id.*

3 Defendants counter that they have maintained compliant written rest period policies
4 throughout the Class Period and have always authorized and permitted employees a 10-minute
5 rest period for each four (4) hours worked, or major fraction thereof, as required under the Wage
6 Order, and that any failure to take rest periods was a result of employee choice, rather than any
7 policy and/or practice on the part of Defendants. Haines Decl., ¶ 22. Defendants also argue that
8 Plaintiffs' rest period claim is not amenable to class treatment, since individual inquiries would
9 be required to determine which employees failed to take rest periods, how many rest periods they
10 failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift.
11 *Id.* These manageability concerns are especially present with respect to rest period claims,
12 Defendants argue, given that rest periods are not recorded. *Id.*

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

14 As a result of these alleged wage and hour violations, Plaintiffs assert that Defendants
15 failed to comply with their final wage payment and wage statement obligations, in violation of
16 Labor Code §§ 203 and 226, respectively. Haines Decl., ¶¶ 23-24. Additionally, Plaintiffs allege
17 the wage statements issued to Plaintiffs and other non-exempt employees who were supplied by
18 Partners Personnel and Nexem Partners failed to list the name and address of the legal entity that
19 is the employer, in violation of Labor Code § 226(a)(8). *Id.*, at ¶ 24. Finally, Plaintiffs seek civil
20 penalties under the PAGA, based on the aforementioned claims. *Id.*, at ¶ 25.

21 Defendants assert they have strong, good-faith defenses to Plaintiffs' underlying claims,
22 precluding imposition of waiting time penalties, which are only available for the "willful" failure
23 to pay wages. Haines Decl., ¶ 23; *see* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any
24 wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12
25 Cal.App.5th 947, 963 (2017) (holding "good faith dispute" precluded imposition of waiting time
26 penalties). Defendants further contend that any alleged wage statement violations could not be
27 shown to be "knowing and intentional," particularly given their good-faith defenses; that
28 Plaintiffs cannot show they or other employees "suffer[ed] injury" due to alleged wage statement

1 violations, as required by Lab. Code § 226(e); and that wage statements always accurately
2 reflected amounts *paid* to employees. Haines Decl., ¶ 24; *see Maldonado v. Epsilon Plastics, Inc.*,
3 22 Cal.App.5th 1308, 1337 (2018) (“The purpose of section 226 is to ‘document the paid wages
4 to ensure the employee is fully informed regarding the calculation of those wages’”).

5 Finally, Defendants contend that since Plaintiffs’ PAGA claim is derivative of their
6 underlying wage claims, Plaintiffs’ PAGA claim would fail with those claims. Haines Decl., ¶
7 25; *see Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying
8 causes of action fail, the derivative UCL and PAGA claims also fail”). Defendants further
9 maintain that given their good-faith defenses, the Court would substantially reduce any PAGA
10 penalties awarded. Haines Decl., ¶ 25; Lab. Code § 2699(e)(2) (authorizing reduction in PAGA
11 penalties in court’s discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112,
12 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien, Inc.*, No. ED-CV-10-
13 1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over
14 82%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty
15 of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

16 C. DISCOVERY AND MEDIATION

17 In connection with mediation, the Parties engaged in significant informal discovery,
18 including Defendants’ production of timekeeping and payroll data for 15% of employees during
19 the Class Period, their written policies in effect during the Class Period, as well as relevant data
20 points including the number of non-exempt employees employed during the Class Period, the
21 number of workweeks worked during the Class Period, and the number of pay periods and
22 employees during the PAGA Period. Haines Decl., ¶ 14. Plaintiffs hired a labor economist with a
23 Ph.D in economics to assist Plaintiffs in conducting a comprehensive analysis and extrapolation
24 of the timekeeping and payroll data to calculate Defendants’ potential exposure for each of
25 Plaintiffs’ claims. *Id.* This discovery allowed the Parties to assess the merits and value of
26 Plaintiffs’ claims, the chances of certification of Plaintiffs’ claims, and Defendants’ potential
27 defenses. *Id.*

28 On March 28, 2022, the Parties attended a full-day mediation with Francis J. Ortman, III,

Esq., an experienced wage and hour class action mediator. Haines Decl., ¶ 15. During mediation, the Parties vigorously debated their legal positions, the likelihood of certification of Plaintiffs’ claims, and the legal bases for the claims and defenses. *Id.* At the conclusion of mediation, the Parties reached a class-wide settlement in principle. *Id.* During the months that followed, the Parties negotiated and finalized the long-form Settlement now before the Court. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

Under the Settlement, Defendants will pay a non-reversionary Gross Settlement Amount (“GSA”) of \$850,000.00. *See* Settlement, ¶ 22. Settlement Class members will not need to file a claim form as each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out. *Id.*, at ¶¶ 23(e), (q). The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount (“GSA”):	\$850,000.00
• Minus Court-approved attorneys’ fees (one-third):	\$283,333.33
• Minus Court-approved, verified costs (up to):	\$50,000.00
• Minus Court-approved Service Payments:	\$10,000.00
• Minus payment to LWDA:	\$56,250.00
• <u>Minus estimated settlement administration costs (up to):</u>	<u>\$12,000.00</u>
Net Settlement Amount (“NSA”):	\$438,416.67

1. The Settlement Provides for Reasonable Monetary Payments

After deducting administration costs, requested Service payments to Plaintiffs, the payment to the LWDA for its share of PAGA civil penalties, and requested attorneys’ fees and costs, Defendants will pay a Net Settlement Amount of at least \$438,416.67 to the Settlement Class. Haines Decl., ¶ 16; *see also* Settlement, ¶ 23(c). According to Defendants, there are approximately 465 Settlement Class members. Haines Decl., ¶ 17. Thus, the average Settlement Payment from the NSA is estimated to be \$942.83. *Id.* Further, Defendants represent that there are approximately 356 employees who fall within the PAGA Period. *Id.* Therefore, the average PAGA Payment from the “PAGA Amount” is estimated to be approximately \$52.67. *Id.*

The Net Settlement Amount (“NSA”) shall be distributed as follows: first, the Settlement Administrator will distribute the \$18,750.00 “PAGA Amount,” which is 25% of the \$75,000.00 total allocated to PAGA penalties, to all Settlement Class Members (regardless whether they opt

1 out) who worked at Defendants' California facilities at any time during the PAGA Period.
2 Settlement, ¶ 23(e). The PAGA Amount will be distributed to all such Settlement Class Members,
3 proportionally based on the number of pay periods worked at Hyatt Die's California facilities
4 during the PAGA Period. *Id.* The remainder of the NSA ("NSA Remainder") will be paid to all
5 participating Settlement Class Members proportionally based on the number of Covered
6 Workweeks worked by each Settlement Class Member during the Class Period. *Id.*

7 All payments from the PAGA Amount will be allocated as 100% penalties; all payments
8 from the NSA Remainder will be allocated as one-third (1/3) wages, one-third (1/3) interest, and
9 one-third (1/3) penalties. Settlement, at ¶ 23(f). Defendants will pay employer-side payroll taxes
10 separately from, and in addition to, the GSA. *Id.*, at ¶ 22.

11 Settlement Class members will have 60 days from the mailing to opt-out or object, thereby
12 providing ample time to review the Settlement. *See* Settlement, at ¶¶ 23(o), 23(q), 23(r).
13 Settlement Class members who do not opt out will be bound by the Settlement and will release
14 and discharge Defendants from all claims and/or causes of action arising from or related to the
15 Actions and/or based on the facts alleged in the FAC. *Id.*, at ¶¶ 18, 32. In addition, all Settlement
16 Class members (regardless of whether they opt out) who worked for Defendants during the PAGA
17 Period will release all claims for civil penalties under the PAGA based on the above-mentioned
18 claims, arising during their work at Hyatt Die's California facilities during the PAGA Period
19 ("PAGA Released Claims"). *Id.*, at ¶ 18.

20 **2. Service Payments, Attorneys' Fees and Costs, and LWDA Payment**

21 Plaintiffs will apply for a Class Representative Service Payment at final approval in the
22 amount of \$5,000.00 each, for a total of \$10,000.00, for their services to the Settlement Class. *See*
23 Settlement, ¶ 23(i). "[I]ncentive awards are fairly typical in class action cases...and are intended
24 to compensate class representatives for work done on behalf of the class [and] to make up for
25 financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination*
26 *Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at final approval, the
27 requested Service Payments are intended to recognize the substantial time and effort Plaintiffs
28 expended on behalf of the Settlement Class, including providing factual information and

documents to counsel, identifying potential witnesses, attending meetings with counsel to discuss the claims and theories at issue in the litigation, and otherwise actively participating in the prosecution of his claims. *See generally*, Declarations of Plaintiff Ramos and Solis. Plaintiffs respectfully submit that the requested payments are well within the range of permissible approval.

At final approval, Plaintiffs' counsel will request an attorneys' fees award of one-third of the GSA, and up to \$50,000.00 in verified costs. Haines Decl., ¶ 28; *see also* Settlement, ¶ 23(h). Plaintiffs submit the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent basis. Plaintiffs' counsel has expended significant time conducting pre-filing investigation; conducting legal research; analyzing Plaintiffs' claims; analyzing employee timekeeping and payroll records and other data and documents; engaging in informal discovery; working with its expert to develop a comprehensive damages analysis and mediation brief; preparing for and attending mediation; negotiating the Settlement; preparing this Motion; and otherwise prosecuting this case. Haines Decl., ¶ 28. Counsel anticipates incurring additional fees in appearing at the hearing on this Motion, supervising the Notice process, preparing the Final Approval Motion and appearing at the Final Approval Hearing. *Id.*

It is appropriate to award attorneys' fees in class actions as a percentage of the "common fund" created by a settlement. *See 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 of one-third of the GSA is well within the range of reasonableness, and is typical for common fund settlements, and in fact was the percentage approved in *Laffitte*.

Additionally, the parties have agreed to designate \$75,000.00 of the GSA as PAGA civil penalties, of which \$56,250.00 (75%) will be paid to the LWDA, with the remaining \$18,750.00 (25%) for distribution to the Settlement Class, as the PAGA requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, ¶¶ 23(c), 23(k). Plaintiffs submit this allocation to the LWDA for PAGA civil penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC* (N.D. Cal. 2011) Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.*

(N.D. Cal. 2013) Case No. C11-03609 HRL, 2013 WL 3541217 (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund settlement).

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards under Fed. R. Civ. Proc. Rule 23. *Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule of Court 3.769 requires court to determine “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. *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The court’s role in evaluating a settlement is limited to ensuring the agreement, as a whole, is fair and within the range of reasonableness. *Hanlon*, 150 F.3d at 1027. There is an initial presumption of fairness when, as here, a settlement was negotiated at arm’s length by experienced class counsel, with the assistance of an experienced mediator. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1. Standard for Preliminary Approval

To make a fairness determination, a 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). As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of these factors.

a. The Strength of Plaintiffs’ Case

Although they steadfastly maintain their claims are meritorious, Plaintiffs acknowledge

1 there were substantial risks and uncertainty in proceeding with class certification and eventual
2 trial on the merits. As described in section II.B., *supra*, Defendants presented multiple defenses
3 to Plaintiffs' claims, both on the merits and with respect to class certification. While Plaintiffs
4 were prepared to litigate their claims through class certification and ultimately trial, success was
5 far from certain.

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

7 Although the Parties engaged in significant informal discovery in advance of mediation,
8 the Parties still had substantial discovery to complete in formal litigation had the matter not
9 settled, which would have required the expenditure of substantial time and resources by all parties.
10 Haines Decl., ¶ 27. Even if Plaintiffs obtained class certification, the Parties would incur
11 considerable attorneys' fees and costs through a possible decertification motion, trial, and
12 possible appeal. *Id.* The Settlement avoids those risks and the accompanying delay and expense,
13 and thus, this factor supports preliminary approval. *Id.*

14 **c. Risk of Maintaining Class Action Status**

15 Due to the fact that Settlement Class members hired directly by Hyatt Die were governed
16 by a Collective Bargaining Agreement which included a grievance procedure and arbitration
17 provision, and Partners Personnel and Nexem Partners' contention that the overwhelmingly
18 majority of its employees signed arbitration agreements, it is likely that absent settlement, there
19 would not be a certified class at the time of trial. Thus, this factor, too, supports preliminary
20 approval of the Settlement.

21 **d. Amount Offered in Settlement Given Realistic Value of Claims**

22 The Settlement provides a fair and reasonable monetary recovery for Settlement Class
23 members concerning heavily disputed claims where the law is in a state of frequent change. Based
24 on a review of the data and information produced by Defendants in connection with mediation,
25 Plaintiffs conducted the following exposure analyses for each of Plaintiffs' claims:

26 **Unpaid Wages Due to Defendants' Unlawful Time-Rounding Practices: \$53,130**

27 As stated above, Plaintiffs allege that Defendants utilized a timekeeping system that
28 systematically underpaid wages through a process of unlawful time-rounding. Haines Decl., ¶ 19.

1 Based on Plaintiffs' expert's review and extrapolation of employee timekeeping data, Plaintiffs
2 estimate that Settlement Class members were underpaid for a total of approximately 10,120 hours
3 during the Class Period. *Id.* Treating these potential damages as unpaid minimum wages,
4 Plaintiffs estimated a maximum exposure for this claim at approximately \$253,000 (10,120
5 unpaid hours * \$12.50/hr. avg. min. wage⁴ * 2 [liquidated damages under Labor Code § 1194.2]).
6 *Id.*

7 However, as noted above, Defendants contend that their timekeeping system is even-
8 handed and facially neutral and compensated employees for all hours worked. Haines Decl., ¶ 19.
9 Defendants further argue that just because an employee is clocked in does not mean they are
10 working. *Id.* Defendants also assert that Plaintiffs would be unable to certify this claim given the
11 individualized inquiry as to whether employees were, in fact, underpaid or potentially overpaid
12 for each workday in question. *Id.* Based on these defenses, Plaintiffs discounted the estimated
13 maximum amount by 70% for the risk of non-certification and potential inability to proceed on a
14 classwide basis due to the arbitration agreements, and by an additional 30% to account for the
15 risk of losing on the merits or failure to recover the maximal amount sought, to arrive at an
16 estimated exposure of approximately \$53,130. *Id.*

17 **First Meal Period Violations: \$300,646**

18 Plaintiffs allege that due to Defendants' bell system, Defendants regularly provided first
19 meal periods that were less than 30 full minutes. Haines Decl., ¶ 20. Plaintiffs' analysis and
20 extrapolation of the timekeeping data showed there were approximately 88,716 shifts in excess
21 of 6.0 hours worked during the Class Period, including 70,596 such shifts worked by Hyatt Die
22 direct hires and 18,120 shifts worked by Partners Personnel workers. *Id.* Further, the data
23 produced by Defendants reflected an average hourly rate of approximately \$18.40 for Settlement
24 Class members directly hired by Hyatt Die and an average hourly rate of approximately \$13.40
25 for Settlement Class members hired by Partners Personnel. *Id.* Assuming that Defendants' bell
26 system resulted in a meal period violation for each of these shifts, Plaintiffs estimated a maximum
27 total exposure for this claim at approximately \$1,541,774 ([70,596 non-compliant first meal

28 ⁴ From June 2016 through the present, California's minimum wage ranged from was \$10.00 to \$15.00/hour, with a weighted average of approximately \$12.50.

1 periods by Hyatt Die direct hires * \$18.40 average premium] + [18,120 non-compliant first meal
2 periods by Partners Personnel workers * \$13.40 average premium]). *Id.*

3 However, as noted above, Defendants contend that they maintained compliant written
4 meal period policies throughout the Class Period and provided legally compliant meal periods in
5 line with those policies. Haines Decl., ¶ 20. Defendants also argue that under *Brinker*, it was only
6 required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken.
7 *Id.* Defendants also argue that any short, missed, or late first meal periods were the result of lawful
8 employee waiver or choice, thereby precluding liability. *Id.* Defendants also argue individualized
9 inquiries would be needed to determine why each meal period was taken late or short or missed
10 by each employee, making certification of the meal period claim unlikely. *Id.* In light of these
11 defenses, Plaintiffs discounted the maximum amount by 70% for risk of non-certification and
12 potential inability to proceed on a classwide basis due to the arbitration agreements, and an
13 additional 35% for risk of being unsuccessful on the merits or failure to recover the full amount
14 sought, to arrive at an estimated realistic exposure of approximately \$300,646. *Id.*

15 **Second Meal Period Violations: \$112,373**

16 Plaintiffs further allege that Defendants failed to provide second meal periods on shifts
17 over 10.0 hours. Haines Decl., ¶ 21. Based on Plaintiffs’ expert’s review and extrapolation of
18 employee timekeeping data, Plaintiffs estimated there were approximately 53,884 shifts in excess
19 of 10.0 hours with a non-compliant second meal period, including 42,879 shifts worked by Hyatt
20 Die direct hires and 11,005 shifts worked by Partners Personnel workers. *Id.* As noted above, the
21 data produced by Defendants reflected an average hourly rate of approximately \$18.40 for
22 Settlement Class members directly hired by Hyatt Die and an average hourly rate of
23 approximately \$13.40 for Settlement Class members hired by Partners Personnel. *Id.* Plaintiffs
24 therefore estimated a maximum total exposure for this claim at approximately \$936,441 ([42,879
25 non-compliant second meal periods for Hyatt Die direct hires * \$18.40 average premium] +
26 [11,005 non-compliant meal periods for Partners Personnel employees * \$13.40 average
27 premium])). *Id.*

28 However, as noted above, Defendants argue that second meal periods may lawfully be

1 waived on shifts of more than 10.0 hours but less than 12.0 hours per Labor Code § 512, and that
2 employees regularly did so. Haines Decl., ¶ 21. Defendants further argues that Plaintiffs’ second
3 meal period exposure is grossly inflated as Plaintiffs already seek a meal period premium for first
4 meal period violations on all shifts, and Plaintiffs cannot recover more than one meal period
5 premium for each workday. *Id.*; *See United Parcel Service, Inc. v. Superior Court*, 196
6 Cal.App.4th 57, 70 (2011) (“[E]mployees in this case may recover up to two additional hours of
7 pay on a single work day for meal period and rest period violations – one for failure to provide a
8 meal period and another for failure to provide a rest period.”). In addition, as with first meal
9 periods, Defendants argue individualized inquiries would be needed to determine why each
10 second meal period was taken late or short or missed by each employee, and whether there was a
11 valid waiver, making certification of the meal period claim unlikely. Haines Decl., ¶ 21. In light
12 of these defenses, Plaintiffs discounted the maximum amount by 70% for risk of non-certification
13 and potential inability to proceed on a classwide basis due to the arbitration agreements, and an
14 additional 60% for risk of being unsuccessful on the merits or having exposure reduced due to
15 Defendants’ waiver arguments, to arrive at an estimated realistic exposure of approximately
16 \$112,373. *Id.*

17 **Rest Period Premium Wages: \$117,055**

18 Plaintiffs allege that Defendants failed to authorize and permit third rest periods when
19 Plaintiffs and other non-exempt employees worked more than 10.0 hours. Haines Decl., ¶ 22.
20 Based on Plaintiffs’ expert’s analysis and extrapolation of employee timekeeping records, there
21 were approximately 53,884 shifts of 10.0 hours or more worked by Settlement Class members
22 during the Class Period, including 42,879 shifts worked by Hyatt Die direct hires and 11,005
23 shifts worked by Partners Personnel workers. *Id.* Thus, assuming a 100% violation rate for those
24 shifts, Plaintiffs estimated the maximum potential exposure for this claim at approximately
25 \$936,441 ([42,879 rest period violations for Hyatt Die direct hires * \$18.40 average premium] +
26 [11,005 Partners Personnel rest period violations * \$13.40 average premium]). *Id.*

27 However, as discussed above, Defendants argue that they always maintained and enforced
28 lawful rest period policies and practices during the Class Period. Haines Decl., ¶ 22. Defendants

1 further contend that any failure to take rest periods was a result of employee choice, rather than
2 any policy and/or practice on the part of Defendants. *Id.* Finally, Defendants argue that Plaintiffs’
3 rest period claim is not amenable to class treatment, since individual inquiries would be required
4 to determine which employees failed to take rest periods, how many rest periods they failed to
5 take, and the reasons why each employee failed to take rest period(s) on a particular shift. *Id.*
6 These manageability concerns are especially present with respect to rest period claims,
7 Defendants argue, given that rest periods are not recorded. *Id.* In light of these defenses, Plaintiffs
8 discounted the maximum amount by 75% to account for the risk of non-certification and potential
9 inability to proceed on a classwide basis due to the arbitration agreements, and an additional 50%
10 for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive
11 at an estimated realistic exposure of approximately \$117,055. *Id.*

12 Wage Statement Penalties: \$87,579

13 Plaintiffs’ analysis reflected that there were approximately 9,731 pay periods worked by
14 all Settlement Class members within the one-year liability window under Labor Code § 226.
15 Haines Decl., ¶ 24. In calculating Defendants’ exposure, Plaintiffs assumed they could recover
16 the “initial” \$50 penalty under Section 226(e) for each violation, for a total of approximately
17 \$486,550 (9,731 pay periods * \$50 “initial” penalty) in potential penalties. *Id.*; see *Amaral v.*
18 *Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding “initial” violation rate applies
19 until employer is notified it violated Labor Code); *Patel v. Nike Retail Svcs., Inc.*, 58 F.Supp.3d
20 1032, 1042-43 (N.D. Cal. 2014) (citing *Amaral* and applying “initial” \$50 penalty to all pay
21 periods in calculating amount-in-controversy for wage statement claim). However, given
22 Defendants’ arguments that no violations occurred, that Settlement Class members suffered no
23 “injury,” that any violations were not “knowing and intentional,” that the wage statements always
24 accurately reflected hours worked and amounts paid to employees, as well as risks associated
25 with Plaintiffs’ underlying claims discussed above, Plaintiffs discounted the maximum exposure
26 by 70% for risk of non-certification and potential inability to proceed on a classwide basis due to
27 the arbitration agreements, and by an additional 40% for risks on the merits, for an estimated
28 realistic exposure of approximately \$87,579. Haines Decl., ¶ 24.

1 Waiting Time Penalties: \$161,503

2 Based on data produced by Defendants, there are approximately 318 Settlement Class
3 members who separated their employment from Defendants and are eligible for waiting time
4 penalties, including 45 Hyatt Die direct hires and 273 Partners Personnel workers. Haines Decl.,
5 ¶ 23. Plaintiffs estimated an average waiting time penalty of approximately \$4,416 (\$18.40/hr *
6 8 hrs * 30 days) for Hyatt Die direct employees and an average waiting time penalty of
7 approximately \$3,216 for Partners Personnel workers (\$13.40/hr. * 8 hours * 30 days), and
8 calculated Defendants' maximum waiting time penalty exposure at approximately \$1,076,688
9 ([45 former Hyatt Die direct employees * \$4,416 average waiting time penalty]
10 [273 former Partners Personnel workers * \$3,216]). *Id.* However, Defendants assert they have
11 strong, good-faith defenses to Plaintiffs' underlying claims and thus, even if Plaintiffs were able
12 to recover on their underlying claims, they would not be able to recover waiting time penalties.
13 *Id.* Moreover, Plaintiffs would need to overcome Defendants' defenses, both as to class
14 certification and as to the merits, to their underlying claims. *Id.* Based on these defenses, Plaintiffs
15 discounted Defendants' maximum exposure by 75% for risk of non-certification and potential
16 inability to proceed on a classwide basis due to the arbitration agreements, and by an additional
17 40% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to
18 arrive at an estimated total of approximately \$161,503. *Id.*

19 PAGA Civil Penalties: \$136,150

20 Plaintiffs estimated a maximum PAGA exposure of approximately \$1,556,000 (11,030
21 pay periods worked by Hyatt Die direct hires * \$100 "initial" violation rate] + [4,530 pay period
22 worked by Partners Personnel workers * \$100 "initial" violation rate]). Haines Decl., ¶ 25;
23 *Amaral*, 163 Cal.App.4th at 1209 (finding "initial" violation rate applies until employer is notified
24 that it is violating a Labor Code provision). However, these penalties derive from Plaintiffs'
25 underlying claims, each of which Defendants vigorously dispute. Haines Decl., ¶ 25. The PAGA
26 also grants trial courts discretion to reduce PAGA civil penalties (Lab. Code § 2699(e)(2)), and
27 Defendants argued the Court would reduce penalties significantly given its good-faith defenses.
28 *Id.* Thus, Plaintiffs discounted the maximum figure by 65% for risk of losing on the merits and/or

not recovering a PAGA penalty for each and every pay period, and by an additional 75% for risk of the Court reducing penalties, for an estimated exposure of approximately \$136,150. *Id.*; *see also Fleming*, 2011 WL 7563047 at *4 (reducing PAGA civil penalties by over 82%); *Carrington*, 30 Cal.App.5th at 529 (affirming PAGA civil penalty of just \$5 per pay period).

Using these figures, Plaintiffs estimated the realistic total recovery for the Settlement Class would be approximately \$968,436. Haines Decl., ¶ 26. Thus, the proposed \$850,000 GSA represents approximately 87.8% of Plaintiffs’ reasonably forecasted recovery. *Id.* Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Settlement Class, which is consistent with what Plaintiffs’ counsel believes could have been recovered had the case proceeded through trial.

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. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are represented by competent counsel with extensive experience litigating wage and hour class actions from both the plaintiff and defense side and have been appointed class counsel in numerous cases with similar claims. Haines Decl., ¶¶ 3-8; Declaration of Sean M. Blakely (“Blakely Decl.”), ¶¶ 2-6; Declaration of James A. De Sario, ¶¶ 7-10.

2. The Preliminary Approval Standard Is Met

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

a. The Settlement Is Within the Range of Possible Approval

The Settlement reflects approximately 87.8% of the estimated recovery the Settlement Class could realistically expect in light of the significant litigation risks, and will provide tangible, monetary compensation for hotly disputed wage claims. Indeed, the percentage of the liability exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g.,*

Glass v. UBS Finan. Servs., Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial”). Plaintiffs submit the Settlement is well within the range of possible approval, such that notice should be provided to the Settlement Class. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class members have had the opportunity to opt-out or object.

b. The Settlement Resulted from Serious, Informed Negotiations

The Settlement is a result of extensive informal discovery, a full-day mediation, and months of negotiations. Thus, it is entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130. Plaintiffs carefully vetted the claims at issue and conducted detailed data analysis with the help of a retained expert to arrive at estimated potential damages. Haines Decl., ¶¶ 18-26. The Parties then worked collaboratively in the following months to finalize the Settlement. *Id.*, at ¶ 15. This factor thus supports preliminary approval.

c. The Settlement Is Devoid of Obvious Deficiencies

The Settlement contains no obvious deficiencies. The Settlement will provide tangible monetary relief to Settlement Class members. The amounts proposed for attorneys’ fees, costs, settlement administration costs, LWDA payment, and Service payments are all reasonable. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS

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

///

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

2 A class is “ascertainable” where members “may be readily identified without unreason-
3 able expense or time by reference to...[business] records.” *Sevidal v. Target*, 189 Cal.App.4th
4 905, 919 (2010). Here, the Settlement Class includes all current and former non-exempt, hourly
5 employees of Defendant Hyatt Die whether employed directly by Defendant Hyatt Die or
6 supplied to Defendant Hyatt Die by Defendants Partners Personnel or Nexem Partners as temp
7 workers, who worked at Defendant Hyatt Die’s California facilities at any time during the Class
8 Period. The Settlement Class can therefore be identified from Defendants’ personnel and
9 employment records. Defendants represent that there are approximately 465 Settlement Class
10 members (*see* Haines Decl., ¶ 17), making it impracticable to bring them all before the Court.
11 Thus, numerosity is satisfied.

12 **2. Common Issues of Law and Fact Predominate for Settlement Purposes**

13 The focus on certification is what types of questions, “common or individual,” are likely
14 to arise. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiffs’ claims are
15 predicated primarily on Defendants’ uniform timekeeping policies/practices and uniform meal
16 and rest period policies/practices. These claims are commonly held proper for class certification.
17 *See, e.g., Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701 (2013) (certifying
18 meal & rest period claims).

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

20 Typicality is satisfied where a class representative’s claims are typical of those of the class.
21 *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). Plaintiffs’
22 claims are typical of the Settlement Class. Plaintiffs worked in California for Defendants as non-
23 exempt employees during the Class Period, were subject to Defendants’ wage and hour
24 policies/practices and were injured in the same manner as Settlement Class members. Typicality
25 is thus satisfied.

26 **4. Plaintiffs and Their Counsel Will Adequately Represent the Class**

27 The adequacy inquiry examines conflicts of interest between a named plaintiff and the
28 class he seeks to represent. *Capital People First v. State Dept. of Develop. Svcs.*, 155 Cal.App.4th

676, 697 (2007). Plaintiffs and their counsel will adequately represent the Settlement Class as there are no known conflicts between Plaintiffs and Settlement Class members, and Plaintiffs' counsel have extensive relevant experience. *See* Haines Decl., ¶¶ 3-8.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE CLASS NOTICE

This Court should order distribution of the Notice in English and Spanish by U.S. Mail, using last known mailing addresses provided by Defendants. *See* Settlement, ¶¶ 24, 28. This is the “best notice practicable” under the circumstances because 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 ILYM Group, Inc. (“ILYM”), an experienced settlement administrator. *See* Declaration of Lisa Mullins and exhibits. Settlement Class members’ addresses will be ascertainable through Defendants’ records, which Defendants will provide to ILYM within thirty (30) calendar days after entry of an order preliminarily approving this Settlement. *See* Settlement, ¶ 28(a). ILYM will run the addresses through the National Change of Address (“NCOA”) database (which provides updated addresses for any individual who has moved in the previous four years and has notified the U.S. Postal Service of a forwarding address) to update the class list of addresses as accurately as possible. *See Id.* Within fifteen (15) calendar days of receipt of the Settlement Class members’ addresses, ILYM will mail the Notice Packets to all Settlement Class members. *Id.* at ¶ 28(b). To the extent that any notices are returned as undeliverable, ILYM will perform a “skip trace” to track any Settlement Class member’s current mailing address. *Id.*, at ¶ 28.

The proposed Notice satisfies Cal. Rule of Court 3.766(d) because it advises Settlement Class members of the basic contentions and denials of the parties, the key terms of the Settlement, the 60-day deadline to opt-out or object, the recovery formula, and advises they will be bound by the Settlement if they do not opt-out. *See* Haines Decl., Exhs. A-C to Exh. 1. The Notice also notifies Settlement Class members of the final fairness hearing and provides Class Counsel’s contact information. *Id.* The Notice satisfies Rule 3.766 as the most reliable and cost-effective method of reaching Settlement Class members.

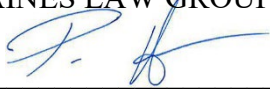
1 **V. CONCLUSION**

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

5
6 Dated: June 22, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

7 By:



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