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10 Attorneys for Plaintiff JOE VIGIL,
11 on behalf of herself and all others similarly situated

12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 JOE VIGIL, individually and on behalf
16 of all others similarly situated,

17 Plaintiff,

18 vs.

19 HYATT CORPORATION, a Delaware
20 corporation, GRAND HYATT S.F.,
21 LLC, a Delaware limited liability
22 company, doing business as GRAND
23 HYATT SAN FRANCISCO, and
24 DOES 1-50, inclusive,

25 Defendants.

Case No. 4:22-cv-00693-HSG
Judge: Haywood S. Gilliam, Jr.

26 **DECLARATION OF JAMES R.**
27 **HAWKINS IN SUPPORT OF**
28 **PLAINTIFF JOE VIGIL'S**
MOTION FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT, CONDITIONAL
CERTIFICATION OF
SETTLEMENT CLASS, AND
APPROVAL OF PROPOSED
NOTICE OF CLASS ACTION
SETTLEMENT

Date: August 24, 2023
Time: 2:00 p.m.
Courtroom 2

Action Filed: November 2, 2021

1 I, James Hawkins, declare as follows:

2 1. I am the principal of James Hawkins, APLC, counsel of record for
3 Plaintiff Joe Vigil ("Plaintiff") and all other similarly situated and aggrieved
4 employees. I have personal knowledge of the facts set forth below, and if called to
5 testify regarding them, I could and would do so competently.

6 2. I submit this declaration in support of Plaintiff's motion for
7 preliminary approval of the parties' Joint Stipulation of Class Action Settlement
8 and Release of Claims (the "Settlement Agreement").

9 **Procedural History**

10 3. Plaintiff Joe Vigil is a former employee of Hyatt Corporation who
11 worked at the Grand Hyatt San Francisco hotel.

12 4. On November 2, 2021, Plaintiff Vigil filed a putative wage and hour
13 class action against Defendants Hyatt Corporation and Grant Hyatt S.F., LLC, dba
14 Grant Hyatt San Francisco in the Superior Court of the State of California, County
15 of San Francisco, Case No. CGC-21-596484 (the "Class Action"). The Class
16 Action sought damages, penalties and attorneys' fees, expenses, and costs for
17 Defendants' alleged violations of the California Labor Code, including: (1) failure
18 to pay minimum wages; (2) failure to pay overtime owed; (3) failure to provide
19 lawful meal periods; (4) failure to authorize and permit rest periods; (5) failure to
20 timely pay wages due and payable during employment; (6) failure to timely pay
21 wages upon separation; (7) failure to reimburse necessary expenses; (8) knowing
22 and intentional failure to comply with itemized wage statement provisions; and (9)
23 violation of the unfair competition law. Plaintiff also provided notice to the LWDA
24 pursuant to Labor Code § 2698 et seq. ("PAGA").

25 5. On January 7, 2022, after more than 65 days had passed with no
26 response to the LWDA letter, Plaintiff Vigil filed a second action seeking civil
27 penalties under Labor Code section 2698 et seq. against Defendants Hyatt
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1 Corporation and Grant Hyatt S.F., LLC, dba Grant Hyatt San Francisco in the
2 Superior Court of the State of California, County of San Francisco, Case No. CGC-
3 21-596484 (the "PAGA Action"). The PAGA action sought civil penalties for
4 Defendants' alleged violations of the California Labor Code, including: (1) failure
5 to pay minimum wages; (2) failure to pay overtime owed; (3) failure to provide
6 lawful meal periods; (4) failure to authorize and permit rest periods; (5) failure to
7 timely pay wages due and payable during employment; (6) failure to timely pay
8 wages upon separation; (7) failure to reimburse necessary expenses; (8) knowing
9 and intentional failure to comply with itemized wage statement provisions; (9)
10 failure to maintain timekeeping and payroll records; and (10) failure to properly pay
11 sick leave.

12 6. Defendants removed each of the actions to the United States District
13 Court for the Northern District of California. The Class Action was removed on
14 February 2, 2022 as Case No. 4:22-cv-00693. The PAGA Action was removed on
15 April 8, 2022 as Case No. 3:22-cv-02216.

16 7. The class action and PAGA action complaints were consolidated into a
17 single proceeding for all purposes. On July 25, 2022, the Parties stipulated to the
18 consolidation of the class and PAGA complaints into a single proceeding, and
19 Plaintiff filed his First Amended Consolidated Complaint asserting (1) Failure to
20 Pay Minimum Wages; (2) Failure to Pay Overtime Owed; (3) Failure to Provide
21 Lawful Meal Periods; (4) Failure To Authorize And Permit Rest Periods; (5)
22 Failure to Timely Pay Wages Upon Separation; (6) Failure to Reimburse Necessary
23 Expenses; (7) Violation of the Unfair Competition Law; and (8) Penalties Under
24 Private Attorneys General Act, Labor Code § 2698 et seq. as Case No. 4:22-cv-
25 00693-HSG. Like the original Complaint, the First Amended Complaint seeks
26 unpaid wages, actual damages, statutory damages, monetary damages, interest,
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1 statutory penalties, civil penalties, liquidated damages, restitution, pre-judgment
2 interest, and attorneys' fees and costs.

3 8. On August 8, 2022, Defendants filed their Answer to Plaintiff's First
4 Amended Complaint.

5 9. On August 19, 2022, the Parties stipulated to mediation.

6 10. On December 2, 2022, the Parties participated in a full day of
7 mediation with Paul Grossman, an experienced complex class action mediator. The
8 parties were unable to reach an agreement at mediation. The mediator provided the
9 parties with his proposal the same day. Both parties accepted, resulting in this
10 settlement.

11 11. The Joint Stipulation of Class Action Settlement and Release of
12 Claims was subsequently negotiated and fully executed by the Parties. A true and
13 correct copy of the executed Settlement Agreement is attached hereto as **Exhibit 1**.

14 12. In connection with the Settlement Agreement and as part of this
15 approval process, the Parties concurrently stipulate to the filing of a Second
16 Amended Complaint to clarify the claims and theories related to Defendants'
17 alleged liability. Attached hereto as **Exhibit C** is a true and correct copy of the
18 Second Amended Consolidated Complaint that Plaintiff seeks leave to file.

19
20 **The Litigation of this Matter, Including Discovery and Investigation**

21 13. Since the filing of each of the actions (the class and PAGA actions
22 which are now consolidated) and through execution of the Settlement, Class
23 Counsel conducted thorough investigation and research into the factual and legal
24 issues implicated by Plaintiff's claims that allowed us to objectively assess the
25 settlement's reasonableness.

26 14. Prior to the filing of each of the class and PAGA actions, Plaintiff
27 provided us with the factual bases for pursuing his claims against Defendants for
28 Labor Code violations as well as certain documents pertinent to his claims. Plaintiff

1 was intimately familiar with Defendants' labor policies and practices (as he had
2 worked for the company since approximately 2001), and over the course of multiple
3 interviews, knowledgably summarized those policies and practices. Plaintiff
4 explained how the policies and practices were instituted and provided valuable
5 insight into how they gave rise to the alleged Labor Code violations. Based on
6 these interviews and the review of available information, we determined that there
7 were legally sufficient grounds for pursuing the actions against Defendants.
8 Additionally, in preparation for drafting the LWDA notice and the civil complaint
9 for the Action, we conducted our own independent preliminary investigations into
10 the factual bases for Plaintiff's claims, which entailed, inter alia, a careful
11 examination of Plaintiff's personnel files and associated records. We also
12 conducted extensive legal research in connection with the preparation of the action.

13 15. The Parties apprised each other through pleadings and in various
14 conversations and correspondence of their respective factual contentions, legal
15 theories and defenses, and provided evidence in support of their contentions. As
16 Class Counsel, we engaged in investigation, interviews and discussions about the
17 strengths and weaknesses of the various claims and defenses asserted as pertinent to
18 the putative class as a whole. This allowed us to objectively assess the settlement's
19 reasonableness.
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21 16. Class Counsel also developed a discovery plan and propounded
22 discovery requests on Defendants, including Requests for Production, Special
23 Interrogatories, and a Rule 30(b)(6) deposition notice. In lieu of formal responses,
24 however, Defendants and Plaintiff agreed to engage in an informal document and
25 information exchange and attend mediation. Class Counsel sent a list of requested
26 documents and items to Defense counsel to prepare for mediation.

27 17. Defendants produced a sampling of nearly one million time
28 records/punches and pay records, as well as attestation records for the members of

1 the putative class for expert evaluation and Counsel's independent evaluation.
2 Defendant also provided data points for the putative Class Members, the number of
3 workweeks and pay periods at issue, and the number of purportedly aggrieved
4 employees. In addition to the time and pay records, and attestation data, Class
5 Counsel reviewed hundreds of pages of personnel records, policy and procedure
6 documents, earnings statements, memoranda, emails, tasks and policies. Class
7 Counsel created a comprehensive damages model regarding the claims with the
8 assistance of an expert. In addition, in preparing for mediation, Class Counsel
9 researched the various claims and defenses and the law as applied to the facts, and
10 theories advanced.

11 18. The Parties have conducted themselves in informed, good faith arms-
12 length negotiations after exchanging extensive evidence and information about the
13 claims and defenses of this lawsuit through informal discovery, and engaging in pre-
14 mediation discussions, telephone conferences, and correspondence all aimed at
15 investigating, litigating, and eventually settling their dispute. The document and data
16 exchanges allowed Class Counsel to fully assess the nature and magnitude of the
17 claims being settled, as well as the impediments to recovery, and ultimately enabled
18 Class Counsel so as to make an independent assessment of the reasonableness of the
19 settlement's terms.

20 19. On December 2, 2022, only after such review and investigation, the
21 Parties, with experienced Counsel on both sides, participated in a full day of
22 mediation and arm's length bargaining with Paul Grossman, a well-respected and
23 experienced complex class action mediator. At all times, the Parties' negotiations
24 were adversarial and non-collusive, and aided by an experienced wage and hour
25 mediator. Indeed, the process was so adversarial, that the parties were unable to
26 reach an agreement on their own and the resolution was only reached through a
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1 mediator's proposal for the resolution of the action. Both parties ultimately
2 accepted the proposal, resulting in the Settlement.

3 20. At all times, Defendants denied any and all liability, the merits of
4 Plaintiff's claims, and denied that the matter could be pursued on a class of PAGA
5 representative basis.

6 21. The Parties went into mediation willing to explore the potential for a
7 settlement of the dispute, but each side was also prepared to litigate its position
8 through trial and appeal if a settlement had not been reached.

9 22. After the mediator's proposal was issued, the parties were able to
10 reach an agreement in principle. In the following months, the Parties engaged in
11 extensive negotiations regarding the long form agreement and entered into the
12 comprehensive Settlement Agreement that they now ask the Court to approve.

13 23. In summary (and in addition to the day-to-day litigation and
14 management of the case), Class Counsel performed a thorough investigation into the
15 claims at issue, which included: (1) determining Plaintiff's suitability as private
16 attorney general and class representative through interviews, background
17 investigations, and analyses of his employment files and related records; (2)
18 evaluating all of Plaintiff's potential class and representative claims; (3) engaging in
19 informal discovery and investigation, which included a review of Defendants'
20 timekeeping, meal period and rest break policies; documents evidencing Defendants'
21 handbooks, policies and procedures for managing payment for all hours worked,
22 meal periods and rest breaks; and other relevant information, including Plaintiff's
23 personnel and payroll file; (4) exchanging documents, data, and information based
24 on electronic time and pay records, for the putative Class Members to determine the
25 number of current and former putative class members who worked during the
26 relevant time period, the total number of workweeks at issue, the average hourly rate
27 for the putative class and aggrieved employees; (5) researching similar wage and
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1 hour class actions as to the claims brought, the nature of the positions, and the type
2 of employer; (6) analyzing employees' time, pay, and wage records, as well as
3 attestation records, and consulting with an expert; (7) reviewing Defendants'
4 employment policies and practices; (8) researching settlements in similar cases; (9)
5 evaluating Plaintiff's claims and estimating Defendants' liability for purposes of
6 settlement; (10) drafting the mediation brief; and (11) participating in the mediation.

7 24. By engaging in such a thorough investigation and evaluation of
8 Plaintiff's claims, Class Counsel can opine that the Settlement, for the consideration
9 and on the terms set forth in the Settlement Agreement, is fair, reasonable, an
10 adequate, and is in the best interests of Class Members in light of all known facts and
11 circumstances, including the risk of significant delay and uncertainty associated with
12 litigation, and various defenses asserted by Defendants.

13 25. Defendants categorically deny all Plaintiff's assertions and allegations
14 raised in and in support of the claims in this consolidated action. To that end,
15 Defendants have denied and continue to deny each, and all of the allegations, claims,
16 and contentions alleged by the Plaintiff. Defendants have expressly denied and
17 continues to deny all charges of wrongdoing or liability against it arising out of any
18 of the conduct, statements, acts or omissions alleged in the action. Defendants
19 contend that they complied in good faith with wage and hour laws and have dealt
20 legally and fairly with Plaintiff and putative class members. Defendants further deny
21 that, for any purpose other than settling this action, these claims are appropriate for
22 class or representative treatment. To date, no class has been certified and no court
23 has made any findings that Defendants engaged in any wrongdoing or in any
24 wrongful conduct, or otherwise acted improperly or in violation of any law, rule or
25 regulation with respect to any of the issues presented in this action. Nonetheless,
26 the Parties have concluded that further proceedings in the action would be
27 protracted and expensive and that it is desirable that the Class and action be fully
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1 and finally settled in the manner and upon the terms and conditions set forth in this
2 Settlement in order to dispose of burdensome and protracted litigation, to permit the
3 operation of Defendants' business without further expensive litigation and the
4 distraction and diversion of its personnel with respect to matters at issue in the
5 action. Defendants have also taken into account the uncertainty and risks inherent in
6 any litigation, especially in complex cases such as this action. Defendants have,
7 therefore, determined that it is desirable and beneficial to it that the action be settled
8 in the manner and upon the terms and conditions set forth in Settlement.

9 **The Proposed Settlement**

10 26. Subject to Court approval, Plaintiff and Defendants have agreed to
11 settle the litigation upon the terms and conditions and for the consideration set
12 forth in the Settlement Agreement. A summary of the terms of the settlement
13 are as follows:

- 14 • Defendants will stipulate, for the purpose of this settlement only, to
15 certification of a class defined as: all current and former non-
16 exempt, hourly employees working for Defendants at the Grand
17 Hyatt San Francisco hotel at any time between November 2, 2017,
18 to March 9, 2023. (Settlement, ¶ 2.8.)
- 19 • Defendants shall pay the maximum amount of \$725,000.00 as the
20 Gross Settlement Amount ("GSA"). (Settlement, ¶ 1.16.)
- 21 • The Settlement Administration costs, not to exceed \$9,750.00, will
22 be paid out of the GSA. (Id. ¶ 3.1.)
- 23 • The Settlement Agreement allows Class Counsel to apply for
24 attorneys' fees of up to \$253,750, which represents 35% of the GSA.
25 However, Class Counsel intends to apply for a fee award of only 1/3
26 of the GSA, or \$241,666.67, all of which will be paid out of the
27 GSA. (Id. ¶ 5.3.)
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- Class Counsel will apply for reimbursement of verified costs of up to \$25,000, which will be paid out of the GSA. (Id.)
- Class Counsel will apply for an incentive award of up to \$10,000.00 for Plaintiff, which will be paid out of the GSA; (Id. at ¶ 5.4.)
- The Parties agreed that \$10,000.00 of the GSA will be paid as PAGA penalties, 75% (\$7,500) of which will be paid to the LWDA out of the Gross Settlement Amount, and 25% (\$2,500) of which will be distributed to the Class in the Net Settlement Amount; (Id. at ¶ 5.6.)
- The “Net Settlement Amount” is the amount remaining after deducting the amounts awarded to Class Counsel for attorneys’ fees and costs, the incentive award to Plaintiff, the payment to the LWDA, and the Settlement Administrator’s costs. (Settlement, ¶ 1.2, 5.7.) Based upon the requested allocations, the Net Settlement Amount is estimated to be approximately \$431,083.33.¹ Based on approximately 527 estimated Class Members, this results in an average distribution of approximately \$817.99 per person, when calculated as a raw average. This amount will increase or decrease depending on how many workweeks each Class Member worked during the Class Period.
- The Individual Settlement Payments to Settlement Class Members will be allocated 20% to taxable wages and 80% to non-taxable penalties and interest. (Settlement, ¶ 5.10)
- Defendant will pay the employer’s share of ay payroll taxes separate and apart from the Gross Settlement Amount. (Settlement, ¶ 1.16.)

¹ If the request for fees were a 35% of the GSA, the NSA would be \$419,000.

- Settlement Class Members will have 180 days from the date of issuance of the check to cash their check. For any check not cashed, the Settlement Administrator will pay over the amount represented by the check to the State Controller's Office, Unclaimed Property Division, with the identity of the Participating Class Member to whom the funds belong, to be held for the Participating Class Member. (Settlement, ¶5.10.2.)

27. The release is fairly tailored to the claims that were asserted or could have been asserted in the underlying lawsuits based on the facts alleged in the respective complaints, including the Second Amended Consolidated Complaint filed herewith. The Parties have agreed to the filing of the Second Amended Consolidated Complaint with this motion to conform the pleadings with the scope of the release, and specifically, to more explicitly plead class and representative theories of liability that were raised at mediation. (Settlement, ¶ 2.6.) A true and correct copy of the proposed complaint, which the Parties request that the Court grant leave to file is attached to the Settlement Agreement attached hereto as **Exhibit C**.

28. In addition, the proposed Notice of Class Action Settlement ("Class Notice") contains a comprehensive description of the claims and the terms of the Settlement, including the amount of the Settlement, the requested allocations and awards, the scope of the release and informs putative class members how to accept the benefits of the Settlement, object to the Settlement, or opt out of the Settlement. The proposed Class Notice is attached to the Settlement Agreement attached hereto as **Exhibit A**.

29. In addition, only Plaintiff is required to provide a Civil Code § 1542 waiver, not the Class Members.

1 30. The Settlement that has been reached, subject to this Court’s approval,
2 is the product of *tremendous* effort and a great deal of expense by the Parties and
3 their counsel. The settlement amount is, of course, a compromise figure. However,
4 counsel for the Parties are satisfied that this figure is reasonable in light of the risks
5 and expense of continued litigation, including without limitation, Defendant’s
6 continued general denial of Plaintiff’s claims, arguments against class certification,
7 and affirmative defenses.

8 **Settlement Agreement and Accompanying Documents**

9 31. Attached hereto as **Exhibit 1** is a true and correct copy of the Settlement
10 Agreement fully executed by the Parties.

11 32. Attached to the Settlement Agreement as **Exhibit A** is the proposed
12 Notice of Pendency of Class Action Settlement (“Class Notice”) to be distributed to
13 Class Members in English and Spanish.

14 33. Attached to the Settlement Agreement as **Exhibit B** is the proposed
15 Request for Exclusion to be distributed to Class Members in English and Spanish.

16 34. Attached to the Settlement Agreement as **Exhibit C** is the Second
17 Amended Complaint.

18 35. The Parties have agreed to use Phoenix Class Action Administration
19 Solutions to administer the Settlement. The Parties agreed that the administration
20 costs will be paid out of the Gross Settlement Amount. Phoenix is a well-recognized
21 class action settlement administrator. We believe that the requested \$9,750
22 administration fee is reasonable and should be approved.

23 36. On the date of filing this Motion, Class Counsel also submitted a copy
24 of the Settlement Agreement to the California Labor and Workforce Development
25 Agency (“LWDA”) in compliance with Labor Code section 2699, subdivision (1)(2)
26 on behalf of Plaintiff Joe Vigil. A true and correct copy of the confirmation from the
27 LWDA in connection with Plaintiff’s submission is attached hereto as **Exhibit 2**.
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The Class Should Be Conditionally Certified

37. Numerosity: Defendant's payroll records show that the proposed Settlement Class contained approximately 527 class members as of the date of mediation.

38. Commonality: Class certification, as requested by the Parties for the purposes of the settlement only, should be granted because Plaintiff alleges that the proposed Settlement Class Members' claims all stem from the same alleged conduct. There are common questions of law and fact applicable to the Class, as Plaintiff alleges that Defendants' uniform policies and practices as to timekeeping, Covid-19 screenings, meal periods, rest periods, wage payments, minimum wages, overtime, reimbursements, wage statements, and pay at termination applicable to all non-exempt employees violated California law. These common questions—capable of class wide resolution—include (1) whether Defendants paid Class Members at least minimum wage for all hours worked; (2) whether Defendants knew or should have known that Class Members were required to perform work off the clock; (3) whether Defendants accurately calculated and paid all Class Members overtime premiums for overtime hours worked; (4) whether Defendants accurately calculated Class Members' regular rate; (5) whether meal and/or rest period premiums were accurately paid at the regular rate; (6) whether they were provided with compliant rest and meal periods; (7) whether Defendants were required to reimburse for expenses incurred; (8) whether Defendants had a policy and practice of providing a 30-minute lawful uninterrupted meal break within the first five hours of work and a second 30-minute uninterrupted meal break before the start of the tenth hour of work; (9) whether Defendants authorized and permitted class members to take a lawful net 10-minute uninterrupted rest periods for every major fraction of four hours worked; (10) whether Defendants furnished class members with complete and accurate itemized wage statements; and (11)

1 whether Defendants paid Class Members all wages at the termination of their
2 employment. The members of the proposed Settlement Class and Plaintiff are all
3 non-exempt employees working in the same hotel, working under the same set of
4 unlawful policies and practices. Plaintiff contends these questions are common to
5 the class as resolving these questions would resolve Class-wide issues. Further, in
6 addition to compensatory damages and penalties, Plaintiff and the Settlement Class
7 seek restitution, attorneys' fees, costs, and interest. Under these specific
8 circumstances, the commonality requirement for class certification is satisfied.

9 39. Typicality: Plaintiff contends his claims are typical of the class
10 because he personally suffered each violation for which he has brought class
11 claims, and alleges that all class members suffered the same violations. Again,
12 Plaintiff and the members of the proposed Settlement Class are all non-exempt
13 employees working in the same hotel, working under the same set of unlawful
14 policies and practices. Plaintiff contends that the Class Members were not paid
15 minimum wages for all hours worked, were not accurately paid overtime wages
16 when they worked more than 8 hours in a day or 40 hours in a work week; were
17 not provided with compliant rest and meal periods, and not paid one hour's pay for
18 non-compliant meal periods or rest breaks at their regular rate of pay; were not
19 reimbursed for necessary expenses; were issued the same wage statements; were
20 not paid all wages at the termination of their employment; were subject to the same
21 pay policies; and their claims are based on identical legal theories. In addition,
22 Plaintiff brings derivative claims for violations of the Unfair Competition law and
23 for PAGA penalties based on these violations.

24 40. Adequacy: I am not aware of any conflicts between Plaintiff and the
25 proposed Settlement Class that he seeks to represent. He is aware of his
26 obligations as a Class Representative and is committed to fairly and adequately
27 protecting the interests of the Class. As detailed more extensively below, Plaintiff
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1 is represented by competent counsel, James Hawkins APLC, with deep experience
2 in litigating class actions including wage and hour and PAGA actions. I do not
3 believe that we have any conflict of interest with the class. Further, the record
4 demonstrates that the Class Representative and Class Counsel have prosecuted this
5 action vigorously on behalf of the Settlement Class. The Class Representative will
6 receive a reasonable award for the time and effort spent assisting Class counsel
7 with factual issues surrounding the case. Other than this specific payment to the
8 Class Representative, all of the Settlement Class Members will receive a
9 proportionate share of the Net Settlement Amount, as detailed above provided they
10 do not exclude themselves. As a result, there is no conflict of interest between the
11 Class Representative and the Settlement Class Members. Further, the Net
12 Settlement Amount will be fairly distributed among participating Settlement Class
13 Members, and no “settlement allocation” questions will be raised.

14 41. Predominance and Superiority: Common questions of law and fact
15 predominate over individual questions and class-wide treatment of this dispute is
16 superior to individual litigation. Plaintiff alleges that the proposed Settlement Class
17 in this case is sufficiently cohesive, since all Settlement Class Members share a
18 common nucleus of facts and potential legal remedies, and since all of the Settlement
19 Class Members and the Class Representative seek compensation for unpaid wages
20 and other civil and statutory penalties from Defendants for the allegations described
21 in the Second Amended Complaint. Common questions about compensation or lack
22 thereof for work performed by Settlement Class Members and the Settlement Class
23 Members’ potential legal remedies are identical. The alternative method of resolution
24 is individual claims for relatively small amounts of damages, but individual cases
25 would be uneconomical for potential plaintiffs because the cost of litigation dwarfs
26 potential recovery. Therefore, a class action is the preferred method of resolution.
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**The Settlement Was Negotiated at Arms-Length, Is Not Collusive, and Should
Be Preliminarily Approved**

42. The Settlement that has been reached, subject to this Court's approval, is the product of substantial effort by the Parties and their counsel as set forth more extensively above. As detailed above, the settlement was reached only after extensive factual and legal investigation and research, interviews, exchanges of documents and information, review of Defendants' employment policies, correspondence and negotiation between counsel, an analysis of Defendants' time and payroll records for the putative class members, and a full day mediation session with Paul Grossman, a skilled wage and hour mediator and is the product of a mediator's proposal. The settlement amount is a compromise based upon a reasoned consideration of the risks related to certification, liability, damages, and all the defenses asserted by Defendants.

43. While Plaintiff believes in his chances of success of certifying the claims if permitted, Plaintiff recognizes the potential risk, expense, and complexity posed by litigation on a class basis. Continuing to litigate the class claims would require substantial additional preparation, and discovery, and ultimately would involve the deposition and presentation of numerous additional Class Member and expert witnesses, as well as the consideration, preparation, and analysis of expert reports to get through certification. Therefore, further class litigation, if permitted, would have carried with it significant additional expense incurred by each side (above and beyond the tens of thousands of dollars of expenses already incurred).

44. Again, Plaintiff and Defendants have very strong opposing positions on liability in this case. Defendant denies wrongdoing of any kind associated with the claims alleged in the action, and further deny that, for any purpose other than that of settling this lawsuit, the matters are appropriate for class treatment. In light of the sharply contested legal and factual issues, the risks of continued litigation, and

1 substantial benefits to Class Members under the Settlement, the terms and conditions
2 of this class settlement are fair and reasonable to all sides.

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6 **The Settlement Amount is Well Within the Range of Reasonableness**

7 45. I am informed and believe that the settlement amount reached in this
8 case provides significant recovery to participating class members, based on the
9 circumstances, falls within the range of reasonableness.

10 46. In settling this action, Plaintiff recognizes the inherent risks and
11 uncertainty of litigation. Although Plaintiff believes that a class should be certified
12 and that he will ultimately prevail on the merits of his claims, Plaintiff also believes
13 in the fairness of the settlement, factoring in the uncertainty and risks to Plaintiff
14 involved in not prevailing on one or more of the causes of action or theories alleged
15 in the Complaint, the possibility of non-certification, continued challenges to
16 certification and merits, and the potential for appeals.

17 47. In recognizing the inherent risks and uncertainty of litigation, Plaintiff
18 and his Counsel recognize the risk that the Settlement Class could receive nothing
19 and understand the benefit of providing a significant settlement sum now. The
20 specific risks include: (i) the potential for individualized issues and issues of proof;
21 (ii) the possibility that a Class would not be certified, or, if certified, be decertified;
22 (iii) the possibility for an adverse ruling on the motion to dismiss and/or on a motion
23 for summary judgment; (iv) the need for a unanimous jury at trial; (v) the
24 possibility that the Court will find no Article III injury arising from the alleged
25 violations; (vi) the possibility of an unfavorable, or less favorable, verdict at trial;
26 (vii) the possibility that post-trial motions may result in an unfavorable, or less
27 favorable, result than trial; and/or (viii) the possibility of an unfavorable, or less
28 favorable, result than trial; and/or (viii) the possibility of an unfavorable, or less

1 favorable result on appeal, and (ix) the certainty that the litigation, trial, and
2 appellate process would be lengthy.

3 48. While Plaintiff firmly believes in the strength of his claims,
4 Defendants have strong defenses to Plaintiff's claims, and those defenses created
5 a real possibility that Defendants will be able to defeat the action and all recovery
6 to Plaintiff and the Class. The settlement achieved is a reasonable compromise.
7 Class Counsel believes the proposed Settlement is in the Class's best interest based
8 on detailed knowledge of the factual and legal issues presented.

9 49. In this action, Plaintiff contends that Defendants failed to pay
10 minimum wage by, among other things, requiring employees to work off the clock;
11 did not properly pay overtime wages; did not lawfully provide and/or authorize and
12 permit its employees meal and rest periods; did not reimburse necessary business
13 expenses (including cellular phone expenses); did not provide lawful wage
14 statements; did not properly pay premiums, overtime, and sick pay by virtue of
15 failing to properly calculate and pay these sums at the accurate regular rate; failed
16 to pay all sums owed at termination; and failed to provide lawful accurate itemized
17 wage statements. Plaintiff further asserted claims under PAGA for these
18 violations.

19 50. As set forth above, Defendants opposed all contentions made by
20 Plaintiff as to certification, liability, and damages and asserted a litany of defenses.

21 51. Proceeding through certification and trial, rather than achieving
22 Settlement, would impose a significant risk of no recovery on the class and PAGA
23 claims in this action. By contrast, the Settlement will yield a prompt, certain, and
24 substantial recovery for the Settlement Class, without the need for additional time
25 or judicial resources including the strong possibility of an appeal.
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52. In the face of these uncertainties, the Parties agreed to a non-reversionary settlement of \$725,000 as a result of a mediator's proposal. This recovery is certain and substantial for the Settlement Class.

53. Based on data provided, 527 Class Members (of which 215 are former employees) were identified with 56,217 weeks worked to mediation, and an average hourly rate of \$26.45 per hour and average regular rate of \$28.74. Plaintiff estimated that if Plaintiff were to maintain certification through trial, prevail on all theories/damages claims and obtain all Labor Code section 226 and 203 penalties sought at trial, Defendants' maximum exposure on the class claims was approximately \$17.9 million as set forth below.

Failure to Pay Minimum Wages

54. Plaintiff contends that Defendants failed to pay Class Members for all hours worked. Plaintiff contends that he and the Class Members were required to clock in at the beginning of their shifts, out for lunch, in at the ends of their lunch periods, and out at the end of their shifts. However, they were not paid for all hours worked because employees were required to work off the clock. By way of example, Plaintiff was required to participate in off the clock Covid screenings both during the pandemic closure and after the reopening of the hotel. Plaintiff and the other Class Members was not allowed to clock in until after screening. He alleged there was often a line or a backup at the screening because employees often came in at same time and had to process through temperature checks with security.

55. Defendants factually denied all allegations and argued that their policies always complied with the laws, and that to the extent there was any off the clock time such time was de minimus.

56. Plaintiff's narrative testimony and interviews support a reasonable estimate of 5 minutes of unpaid work per shift in the period post Covid-19 pandemic reopening. Plaintiff's investigation led to the conclusion that most of

1 the violations occurred during this time period, principally because the rounding
2 claims were resolved in the context of the prior filed and resolved in the matter
3 entitled, *Crump v. Hyatt Corporation*, Northern District of California Case No.
4 4:20-cv-00295-HSG. The time and pay records analyzed by Plaintiff's expert lead
5 to the reasonable belief that there were approximately 5,960.8 alleged hours
6 worked off the clock, at the average hourly rate of \$25.45/hour during the Class
7 Period. Thus, Defendants' maximum exposure for failing to pay minimum wages
8 is approximately: \$157,663.16 plus interest; approximately 5 minutes off the clock
9 each shift; \$26.45 per hour and 5,960.8 alleged hours off the clock= \$157,663.16
10 plus interest.

11 57. In determining Defendants' realistic exposure on this claim after
12 discounting the amount for obstacles to certification, Defendants' defenses, issues
13 of proof, and potential merits issues, Plaintiff's counsel estimated the realistic
14 exposure for this claim to be \$78,831.58 ($\$157,663.16 \times .5$).

15 **Failure to Pay Overtime**

16 58. In addition, Plaintiff and the Class Members worked in excess of
17 eight (8) hours in day and/or over forty (40) hours in a workweek. Plaintiff
18 contended that not only were some of the off the clock hours worked overtime (and
19 thus subject to payment at 1.5 times the regular rate), but also Defendants failed to
20 incorporate the value of certain non-discretionary sums into the regular rate of pay,
21 such that employees were not properly paid for such time at a rate of time and one-
22 half the employee's regular rate of pay per hour for overtime. In addition, Plaintiff
23 contends that the failure to properly calculate the regular rate also led to a failure
24 to pay meal and rest period premiums and sick leave at the proper rate.

25 59. Defendants factually denied all allegations and argued that very little
26 overtime was worked during the relevant period, and that when overtime was
27 worked it was always paid at the proper rate. In addition, the Parties disagreed
28

1 about whether certain sums for items such as meals and other non-discretionary
2 line items on wage statements had to be included in the regular rate.

3 60. Plaintiff estimated an underpayment of approximately \$.43 per hour
4 on average due to alleged miscalculation of regular rate x estimated 39,088
5 overtime hours worked during period when there was also a non-discretionary sum
6 paid. Thus, Plaintiff estimated that Defendant's maximum liability for this alleged
7 violation was \$16,807.84.

8 61. In determining Defendants' realistic exposure on this claim after
9 discounting the amount for obstacles to certification, Defendants' defenses, issues
10 of proof, and potential merits issues, Plaintiff's counsel estimated the realistic
11 exposure for this claim to be approximately \$5,042.36 (\$16,807.84 x .3).

12 **Failure to Pay Sick Leave and Properly Pay Meal and Rest Period**
13 **Premiums**

14 62. Plaintiff's expert reviewed the payroll records provided and
15 determined that if the sums indicated by counsel were, in fact, non-discretionary
16 and required to be incorporated in the regular rate, then there was a systemic
17 underpayment of sick leave, and meal and rest period premiums. Plaintiff's expert
18 estimates \$16,911.00 of unpaid wages for failure to fully pay sick leave, and meal
19 and rest period premiums. Defendants factually denied all allegations and argued
20 that all sums owed were properly paid. In addition, the Parties disagreed about
21 whether certain sums for items such as meals and other non-discretionary line items
22 on wage statements had to be included in the regular rate.

24 63. In determining Defendants' realistic exposure on this claim after
25 discounting the amount for obstacles to certification and potential merits issues,
26 Plaintiff's counsel estimated the realistic exposure for this claim to be
27 approximately \$15,219.00 (\$16,911.00 x .9).

28 **Failure to Provide Lawful Meal Periods**

1 64. While Defendants contend that they maintained facially compliant
2 meal period policies, Plaintiff argues that he and the other Class Members did not
3 receive compliant meal periods as a result of Defendant's staffing and scheduling
4 practices, lack of coverage, and work demands. In addition, Plaintiff argues that
5 during the period of the pandemic closure and in the subsequent reopening,
6 Defendants discouraged people from leaving the premises during meal and rest
7 periods to avoid potential exposure and because employees returning from off
8 premises had to go through off the clock Covid screenings before could come back
9 on property. Plaintiff maintained that this time cut into meal and rest periods if
10 employees left the premises. Plaintiff also alleged that he and the Class Members
11 were required to carry work-related cellular phones, walkie talkies, handheld
12 devices, or other communications devices during meal and rest periods, and were
13 required to remain available.

14 65. Plaintiff's expert identified approximately 73,872 shifts from April 1,
15 2020 and in the post pandemic period worked by the putative class. Plaintiff
16 alleged that each of these shifts had a meal period violation because Defendants did
17 not relinquish all control over employees for a full 30-minute duty free meal period
18 by virtue of the Covid-19 policies. During the class period, 98.5% of the shifts
19 were over five hours and meal period eligible (72,763 meal period eligible from
20 April 1, 2020 to mediation). Plaintiff's expert identified approximately 11,340
21 unique meal period violations in the data from 2017 to April 2020. Accordingly,
22 Plaintiff alleged that there were approximately 84,103 meal period violations during
23 the relevant period. Plaintiff's expert identified 9,707 meal period premium
24 payments during the relevant period. Thus, Plaintiff contended that Defendants'
25 maximum exposure for failing to provide meal periods was approximately
26 \$2,138,141.04 ((84,103 alleged meal violations – 9,707 meal period premiums) x 1
27 hr. x \$28.74/hr.).
28

1 66. In response, Defendants argued that they maintained a compliant meal
2 period policy and that employees were directed to turn off their work provided
3 communications devices during meal and rest periods. Defendants contended that
4 such employees on meal and rest periods were not expected to respond to any
5 inquiries while on break. Moreover, Defendants defends that in the rare occasion
6 that a meal period was not compliant, Defendants provided meal period premium
7 pay, in accordance with their policy. Defendants argued that they did not require
8 employees to remain on premises at any point during the relevant period for meal
9 or rest periods. Defendants argued that they were not liable if an employee chose
10 to remain on premises for a break. Defendants further argued that to the extent a
11 meal or rest period was missed, late or short, it was a matter of individual
12 preference, and the existence of a violation could not be determined without an
13 evaluation of the circumstances of each instance. Defendants argued that these
14 issues were accordingly not ripe for certification. Defendants further argued that
15 the employees were not performing any work during the meal periods and that the
16 employees were required to take a meal period and let Defendants know if they did
17 not take a meal period.

18
19 67. In determining Defendants' realistic exposure on this claim after
20 discounting the amount for obstacles to certification, Defendants' defenses, issues
21 of proof, and potential merits issues, Plaintiff's counsel estimated the realistic
22 exposure for this claim to be approximately \$641,442.31 (\$2,138,141.04 x .3).

23 **Failure to Authorize and Permit Rest Periods**

24 68. Plaintiff incorporates the discussion above regarding meal periods, as
25 the same theories generally applied to rest periods as well. Plaintiff asserted that
26 he and the other Class Members did not receive compliant rest breaks. Plaintiff
27 asserted that as to all non-exempt employees, Defendant enforced scheduling and
28 staffing practices that effectively failed to authorize and permit all rest periods. In

1 addition, Plaintiff and the Class Members were required to stay on the premises
2 during meal and rest periods, or be subject to off-the-clock Covid screenings. He
3 also alleged that he and the Class Members were required to carry work-related
4 cellular phones, walkie talkies, handheld devices, or other communications devices
5 during meal and rest periods, and were required to remain available.

6 69. The sampling provided by Defendants revealed that there were
7 247,876 shifts above 3.5 hours in length in the Class Period. Based upon the
8 theories set forth above, Plaintiff estimated that Defendants' maximum exposure
9 for failing to authorize and permit at least one rest period owed per day is
10 \$7,123,956.24 (247,876 alleged rest violations x 1 hr. x \$28.74/hr.).

11 70. Defendants contend that all time they have had compliant rest period
12 policies, did not require employees to remain on premises or keep communications
13 devices on during such rest periods. Defendants further contends that even if they
14 did, they would not be liable under applicable law because the fact is that putative
15 class members took their rest breaks, were trained and reminded to take them, and
16 that individual issues predominate as to why rest periods were not taken by a given
17 employee during a given shift (if not taken). Moreover, Defendants maintain that
18 at all relevant times Defendants had posted the applicable Wage Order and putative
19 class members were trained on Defendant' rest break policies, including, among
20 other things, the requirement for employees to notify Defendants of any policy
21 violations. Defendants hold that the inquiry regarding whether or not a rest period
22 was authorized and permitted on a given shift is not properly amenable to class
23 certification, cannot give rise to a manageable trial, and, in any event, an estimate
24 of a 100% violation rate is excessive.

25 71. In determining Defendants' realistic exposure on this claim after
26 discounting the amount for obstacles to certification, Defendants' defenses, issues
27 of proof, potential merits issues, and in narrowing the realistic liability to the period
28

1 post-April 2020 when the pandemic procedures were instituted, Plaintiff's counsel
2 estimated the realistic liability for this claim to be \$455,931.36 ((79,320 alleged
3 violations x \$28.74) x .2).

4 **Wage Statement Violations**

5 72. Plaintiff contends that Class Members are entitled to recover penalties
6 for Defendants' alleged failure to issue compliant wage statements under Labor
7 Code section 226, subdivision (e). Plaintiff asserts that Defendants' wage
8 statements did not comply with Lab. Code § 226 based on the derivative impact of
9 the failure to pay all wages owed in connection with alleged unpaid wages, failure
10 to pay meal period premiums, and failure to pay rest period premiums.

11 73. A non-exempt employee suffering injury as a result of a knowing and
12 intentional failure by an employer to comply with Labor Code section 226,
13 subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars
14 (\$50) for the initial pay period in which a violation occurs and one hundred dollars
15 (\$100) per employee for each violation in a subsequent pay period, with a
16 maximum aggregate penalty of four thousand dollars (\$4,000). This claim
17 commands a one-year statute of limitations period, which would significantly limit
18 this claim. Plaintiff estimated Defendants' maximum liability on this claim to be
19 approximately \$896,600.00 (338 initial violations at \$50/violation and 8797
20 subsequent violations for \$100/violation.)

21 74. Defendants contended they complied with all wage statement
22 requirements under Labor Code section 226, and all information on the wage
23 statements was accurate and reflected the amount of money paid to employees.
24 Defendants contended that Plaintiff could not demonstrate that any violation (to
25 the extent any existed which they denied) was intentional or willful. Defendants
26 also contended penalties were not available for certain derivative violations.
27 Defendants also contended that no employee suffered injury because of any alleged
28

1 violations.

2 75. Plaintiff understands the risks inherent in this claim should the
3 underlying claims not be certified or not succeed on the merits and the potential
4 that a Court finds no injury occurred. In determining Defendants' realistic exposure
5 on this claim after discounting the amount for obstacles to certification,
6 Defendants' defenses, issues of proof, and potential merits issues, Plaintiff's
7 counsel estimated the realistic exposure for this claim to be \$179,320.00
8 (\$896,600.00 x .2).

9 **Failure to Reimburse Necessary Expenses**

10 76. Plaintiff also alleged that the Class Members were required to incur
11 necessary expenses in the discharge of their duties, including without limitation for
12 cellular phone expenses, but were not reimbursed for such necessary expenses.
13 Plaintiff alleged that Class Members were required to use their cellular phones
14 throughout the working day for various purposes. Plaintiff estimated maximum
15 liability on the Labor Code section 2802 claim to be approximately \$500,797.50:
16 estimated \$35 per month for cellular phone expenses, 14,308.5 months of
17 unreimbursed expenses; $\$35 \times 14,308.5 = \$500,797.50$.

18 77. Defendants argued that employees were not required to use their
19 personal cellular phones to perform job duties and that Defendants provided all
20 tools, including communications devices, necessary for Class Members to do their
21 jobs. Defendants further argued that to the extent employees incurred any expenses
22 in the course of performing their job duties, employees were made aware of
23 procedures for seeking reimbursements and that Defendants maintained a legally
24 compliant reimbursement mechanism.

25 78. In determining Defendants' realistic exposure on this claim after
26 discounting the amount for obstacles to certification, Defendants' defenses, issues
27
28

1 of proof, and potential merits issues, Plaintiff's counsel estimated the realistic
2 exposure for this claim to be \$100,159.50 ($\$500,797.50 \times .2$).

3 **Waiting Time Penalties**

4 79. Pursuant to Labor Code sections 201, 202 and 203, each former
5 employee in the relevant statutory period is entitled to 30 days' worth of wages as
6 a waiting time penalty for not being paid all wages upon the separation of
7 employment. Plaintiff alleges that penalties are owed under Labor Code section
8 203 due to, at a minimum, Defendants' failure to pay wages for all hours worked,
9 failure to pay premium wages, and sick pay wages (*Flores v. Dart Container Corp.*
10 2020 WL 2770073 (E.D. Cal. May 28, 2020)).

11 80. Plaintiff estimated maximum liability on the Labor Code section 203
12 claim as follows: $\$26.45$ per hour $\times 7.4$ hours per day $\times 215$ former employees $\times$
13 30 days = $\$1,262,458.50$.

14 81. Defendants contended that employees could not recover waiting time
15 penalties because all wages were lawfully paid and any failure to pay all wages at
16 the time of termination was not willful.

17 82. In determining Defendants' realistic exposure on this claim after
18 discounting the amount for obstacles to certification, Defendants' defenses
19 (including an asserted lack of willfulness), issues of proof, and potential merits
20 issues, Plaintiff's counsel estimated the realistic liability for this claim to be
21 $\$378,737.55$ ($\$1,262,458.50 \times .3$).

22 **PAGA Penalties**

23 83. Plaintiff's expert calculated from the time and payroll data that there
24 were approximately 9,135 pay periods in the PAGA Period. Plaintiffs' allegations
25 under PAGA are substantially similar to those brought in the Class Action (i.e.,
26 failure to pay wages, failure to provide meal and rest periods, wage statement
27 violations, waiting time penalties, and sick pay violations).
28

1 84. In addition to seeking PAGA penalties for the violations set forth
2 above, Plaintiff also asserted Labor Code claims under PAGA for failure to
3 maintain requisite records, and failure to pay sick leave. Defendants asserted a
4 number of defenses in responses. First, Defendants claimed the Plaintiffs' initial
5 and subsequent notice to the LWDA were insufficient to exhaust their
6 administrative remedies and that Defendants would prevail on summary judgment
7 as to the PAGA claim. Second, Defendants defend that PAGA penalties cannot
8 and should not be stacked and that, even if they could, very few Courts have ever
9 exercised discretion to stack them. Further, it is Defendants' contention that PAGA
10 penalties cannot be stacked, and that at most just one PAGA penalty can be
11 awarded to an aggrieved employee in any one pay period. See Labor Code section
12 2699 (f)(2) (authorizing awardable PAGA penalties to be measure by "each "each
13 aggrieved employee per pay period"); *Smith v. Lux Retail North America, Inc.*,
14 2013 WL 2932243, at *1, *4 (N.D. Cal. 2013) (rejecting a pleading that sought the
15 "stacking of penalties"; "[f]or the single mistake of failing to include commissions
16 in the overtime base, plaintiff has asserted five (count them, five) separate labor
17 code violations that could lead to statutory penalties;" "is it plausible that we would
18 really pile one penalty on another for a single substantive wrong?"; noting that "no
19 actual holding in any judicial decision has ever blessed such stacking"). As such,
20 and for this initial reason, Defendants contend that the maximum potential recovery
21 in this action is significantly lower than as stated by Plaintiff. Third, Defendants
22 argue that even were liability established, one does not reach the second-tier
23 penalty for that violation unless and until the employer is first cited for the
24 violation, and that Defendants had never been cited. See *Amalgamated Transit*
25 *Union Local 1309, AFL-CIO v. Laidlaw Transit Servs., Inc.*, 2009 WL 2448430
26 *1, *9 (S.D. Cal. 2009) ("For the purposes of subsequent violation penalties, the
27 issue is not whether [defendant] willfully violated the Labor Code, but rather
28

1 whether a court or commissioner had notified it of any violation.”); *Amaral v.*
2 *Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008) (“[u]ntil the employer
3 has been notified that it is violating a Labor Code provision (whether or not the
4 Commissioner or court chooses to impose penalties), the employer cannot be
5 presumed to be aware that its continuing underpayment of employees is a
6 ‘violation’ subject to penalties” at a second tier); *Robinson v. Open Top Sightseeing*
7 *San Francisco, LLC*, No. 14-CV-00852-PJH, 2018 WL 895572, at *20 (N.D. Cal.
8 Feb. 14, 2018) (applying “initial” penalty to each violation of § 226 and § 2699(f)(2
9) because there was no evidence showing defendant was previously notified its
10 practice violated § 226); *Willis v. Xerox Bus. Servs., LLC*, 2013 WL 605383, at *1,
11 *6 (E.D. Cal. 2013) (“for a plaintiff to recover for a ‘subsequent violation,’ an
12 employer must have notice that it has violated the Labor Code”). As such,
13 Defendants contend that Plaintiffs’ calculations are inflated not only because they
14 “stack” penalties for a single person during a single pay period, but because the
15 penalties Plaintiffs would be awarded in each instances are at an inapplicable
16 (doubled) rate. Fourth, Defendants deny that a violation for each pay period can
17 be established. Defendants state that because the PAGA portion of the action
18 heavily relies on the same allegations made in the Class action, they are subject to
19 the same defenses, and, thus, for the same reason Defendants believe there will be
20 no damages collectible in the class action, no PAGA penalties would be awarded,
21 either. Fifth, Defendants assert that individualized issues predominate the PAGA
22 claims, making the claims unmanageable for trial (despite Plaintiffs’ contentions
23 that there is no manageability requirement for trial). Sixth, Defendants asserted
24 that Plaintiffs could not obtain penalties under Labor Code section 226.3, because
25 Defendants maintained they did not violate Labor Code section 226, and, to the
26 extent there was any violation, it was inadvertent. Finally, Defendants point out
27 that there is no conduct shown by Plaintiffs that would demonstrate any Labor
28

1 Code violations by Defendants are knowing and intentional such that sPAGA
2 penalties would be justified. Defendants also argue that the Court could reduce
3 any penalty potentially due where, as Defendants contend, any technical violation
4 of law would have been inadvertent and in good faith, particularly where the law
5 is undefined and capable of differing interpretations. Section 226, for example, is
6 not violated where the employer acted in “good faith.” See *Pedroza v. PetSmart,*
7 *Inc.*, 2012 WL 9506073 (C.D. Cal. June 14, 2012) (“The good faith defense to the
8 willfulness element of these sections [226, 203] is clearly established under
9 California law); *Woods v. Vector Mktg. Corp.*, 2015 WL 2453202, at *3 (N.D. Cal.
10 May 22, 2015) (“The ‘good faith dispute’ rule has been extended by courts to apply
11 to California Labor Code Section 226 wage statement penalties”). “Mere
12 recklessness” is not a basis for liability. *Pedroza*, 2012 WL 9506073, *5.
13 Defendants further contend that an award of PAGA penalties in addition to class
14 action damages is discretionary, and thus insists a Court is unlikely to exercise its
15 discretion to award any PAGA penalties in this Action where class action damages
16 are available to Class Members. See Labor Code section 2699 (e)(2). Defendants
17 further contend that such an award of PAGA penalties in addition to class action
18 damages would constitute an unjust, arbitrary, oppressive or confiscatory double
19 recovery.
20

21 85. While Plaintiff believes that it is possible to recover the subsequent
22 violation rate for penalties and that stacking is permissible, Plaintiff also
23 understands the risks inherent should the Court not exercise its discretion to grant
24 any PAGA penalties, in addition to potential issues on the merits, trial
25 manageability, and the possibility that the Court does not use permit stacking of
26 penalties or permit the use of the subsequent violation rate when providing
27 penalties. Plaintiff also understands that the bar for establishing knowing and
28 intentional violations of the Labor Code may not be easily met under the

1 circumstances.

2 86. Plaintiff estimated that for each PAGA violation which occurred
3 during the pay period, there was a maximum liability of approximately \$913,500
4 at \$100 per pay period or approximately \$1,793,200 at \$100 for each initial pay
5 period and \$200 for each subsequent pay period. Plaintiff sought PAGA penalties
6 for failure to pay minimum wages and overtime, failure to provide lawful meal and
7 rest periods, failure to reimburse necessary expenses, record-keeping violations,
8 failure to pay sick leave, and failure to timely pay wages during employment and
9 at termination. Plaintiff's expert calculated the maximum PAGA penalties to be
10 approximately \$5,845,900.

11 87. In determining Defendants' realistic exposure on this claim after
12 discounting the amount for Defendants' defenses (including an asserted lack of
13 willfulness), issues of proof, the Court's discretion to reduce penalties, the aims of
14 PAGA, the anticipated class recovery, and potential merits issues, Plaintiff's
15 counsel estimated the realistic exposure for this claim to be \$182,700 (\$20 x 9,135
16 pay periods).

17 **Estimated Total Exposure**

18 88. If Plaintiff were to maintain certification through trial, prevail on all
19 theories/damages claims and obtain all Labor Code section 226 and 203 penalties
20 sought at trial, including derivative penalties and discretionary PAGA penalties,
21 Plaintiff's view Defendants' maximum exposure to be approximately \$17.9 million.
22 However, after taking into account the risks of litigation, Defendants' defenses,
23 issues of proof, the Court's discretion, and potential merits issues, Plaintiff
24 reasonably estimated Defendants' exposure in this matter as approximately
25 \$2,037,384.56 inclusive of PAGA or \$1,854,684.56 exclusive of PAGA. Here,
26 Plaintiff and Class Counsel obtained a Gross Settlement Amount of \$725,000.00.
27 Thus, the Gross Settlement Amount of \$725,000 is approximately 35.5% of the
28

1 realistic liability faced by Defendants including PAGA or 39.1 % of the realistic
2 liability faced by Defendants not including PAGA penalties. We believe this
3 Settlement to be a fair, reasonable and adequate settlement for Class Members and
4 well within the ballpark of reasonableness when considering all known issues and
5 risks, including those related to liability, the hurdles to class certification, the
6 purported LMRA preemption issue, potential issues with manageability at trial, the
7 manner in which the availability of wage statement violations and waiting time
8 penalties have been put at risk by various decisions in the federal courts regarding
9 willfulness and injury, the discretionary nature of PAGA penalties, and considering
10 the case law regarding fair, reasonable, and adequate settlements. (*See, e.g., Officers*
11 *for Justice v. Civil Service Comm'n*, (9th Cir. 1992) 688 F.2d 615, 628 [“(i)t is well-
12 settled law that a cash settlement amounting to only a fraction of the potential
13 recovery does not ... render the settlement inadequate or unfair”].)

14 **The Proposed Attorneys’ Fees And Costs Should**
15 **Be Preliminarily Approved.**

16
17 89. While the Agreement allows Class Counsel to seek attorneys’ fees of
18 \$253,750.00 which is thirty-five percent (35%) of the GSA, we intend only to seek
19 an award of up to 1/3 of the GSA and costs of up to \$25,000 as documented. The
20 requested fee falls well within the historical range of attorneys’ fee awards under the
21 common fund theory, which is generally from 25% to 50%, and is supported by case
22 law.

23 90. The requested fee is fair compensation for undertaking complex, risky,
24 expensive, and time-consuming litigation on a contingent fee basis. Counsel has
25 invested in excess of 275 hours in this litigation and incurred thousands of dollars in
26 costs incurred over the last two years, including for filing fees, service fees,
27 mediation fees, experts and other costs related to the litigation. Thus, the Court
28 should preliminarily approve the requested attorneys’ fees and costs, which are

1 justified by the results achieved, the complexity of the issues, the difficulty of the
2 case, and the great risk undertaken by Class Counsel. The requested attorneys' fees
3 are well within established guidelines.

4 **The Requested Incentive Award To The Named Plaintiff And Class**
5 **Representative Should Be Preliminarily Approved.**

6 91. Plaintiff Joe Vigil, who served as the named Plaintiff in two separate
7 actions which were consolidated before this Court, is entitled to an incentive award
8 for his service as a class representative, his willingness to bring the Actions, his work
9 during this litigation, and the risk associated with being the named plaintiff. In
10 addition, Plaintiff will be providing Defendants a general release of all claims in
11 connection with the Settlement. Mr. Vigil engaged in numerous meetings with
12 Class Counsel and their staff to discuss the facts of the case. He provided documents
13 and information to Class Counsel, assisted in the litigation of this matter, participated
14 in mediation and preparation, and reviewed the Settlement Agreement. As part of
15 his duties as the Class Representative, Plaintiff provided invaluable information and
16 documents that resulted in this settlement. Given Mr. Vigil's contributions,
17 including his efforts in bringing both the class action and the PAGA action,
18 continuing prosecution of this Action, serving as Class Representative, risks
19 undertaken for the payment of costs in the event the cases had not successfully
20 concluded, the substantial benefits conferred on the Settlement Class, and the value
21 associated with his general release, we respectfully submit that the requested award
22 is reasonable and should be preliminarily approved.
23

24 **Experience of Class Counsel**

25 92. In 1993, I graduated from the University of California, Los Angeles
26 with a Bachelor of Arts Degree. Following graduation, I attended Whittier Law
27 School. In 1996, while a full-time law student, I was also a full-time Judicial Extern
28 for the Honorable Consuelo B. Marshall, United States District Court, Central

1 District. After approximately five months of service for Judge Marshall, I became
2 a full-time extern for the United States Attorney's Office, Central District of
3 California. My externship lasted for approximately five months. Thereafter, in
4 1997, I graduated from Whittier Law School. The same year, I was admitted to
5 practice law in the State of California.

6 93. From 1997 to 2007, I was a named partner at Hawkins & Sofonio, a
7 law firm based out of Irvine, California. At Hawkins & Sofonio, I pioneered the
8 employment department litigating plaintiff related employment issues such as:
9 Wrongful Termination, Age Discrimination, Disability, Wage and Hour and Sexual
10 Harassment claims. Through the success and experience I obtained litigating
11 employment related matters, I commenced litigating Wage and Hour Class Actions
12 in 2002. Since then, I have spent the vast majority of my practice litigating Wage
13 and Hour Class Actions.

14 94. In 2007, I incorporated my wage and hour class action practice as
15 James Hawkins, APLC. Since its inception, this law firm has been exclusively
16 involved in class action and complex litigation. In 2009, I opened an additional
17 office in Miami, Florida, prosecuting wage and hour class actions. Since 2002, I
18 have been lead or co-lead counsel in all of the cases listed below.

19 95. I and my firm have a great deal of experience in wage and hour class
20 action litigation. I have been certified and approved as class counsel in many other
21 wage/hour class actions, and I am currently litigating numerous others before this
22 Court and others. Although not an all-inclusive list, over the years I have
23 prosecuted the following class action matters as lead and/or co-lead counsel, all of
24 which implicated similar law and facts to those associated with this Action:

- 25 a. *Mojica v. Compass Group, Inc., et. al.*, USDC Central District, Case
26 No. 8:13-cv-01754. Wage and Hour Class Action case seeking past
27 wages for meal and rest break violations for production workers in the
28

1 State of California. Plaintiff's Counsel preliminarily appointed as
2 Class Counsel. Case settled. Final approval granted, and funds fully
3 disbursed.

- 4 b. *Dao v. 3M Company, et al.* USDC, CENTRAL DISTRICT, Case No.
5 CV-08-04554. Wage and Hour Class Action case seeking past wages
6 for "off the clock", overtime and meal and rest break violations for
7 production workers in the State of California. Plaintiff's Counsel
8 appointed as Lead Counsel. Case settled, Final Approval granted, no
9 objections and funds fully distributed.
- 10 c. *Ortiz v. Kmart*, USDC, CENTRAL DISTRICT, Case No. SACV 06-
11 638 ODW. Wage and Hour Class Action case seeking past wages for
12 meal and rest period violations for retail employees in the State of
13 California. Plaintiff's counsel appointed co-lead counsel. Case
14 settled, Final Approval granted, no objections and funds fully
15 distributed.
- 16 d. *Morgan v. Aramark Campus, LLC*, USDC, CENTRAL DISTRICT,
17 Case No. SACV08-00412. Wage and Hour Class Action case seeking
18 past wages for meal and rest period violations for retail employees in
19 the State of California. Plaintiff's Counsel appointed as Lead Counsel.
20 Case settled, Final Approval granted, no objections and funds fully
21 distributed.
- 22 e. *West v Iron Mountain Information Management, Inc, et. al.*; Los
23 Angeles County Superior Court, Case No. BC393709. Wage and Hour
24 Class Action seeking past wages for overtime, meal and rest break
25 violations for driver employees in the State of California. Stipulation
26 for "binding arbitration." Arbitration Award for Plaintiff Class.
27
28

1 Arbitration Award confirmed. Plaintiff's counsel lead trial counsel
2 and class counsel.

- 3 f. *Gonzalez v. Superior Industries International, Inc., et al.*, Los Angeles
4 County Superior Court, Case No. BC 357912. Wage and Hour Class
5 Action seeking past wages for overtime, meal and rest breaks
6 violations for production employees in the State of California.
7 Plaintiff's counsel appointed as lead counsel. Case settled, Final
8 Approval granted, no objections and funds fully distributed.
- 9 g. *Acosta v. Fleetwood Travel Trailers of California, Inc., et al.*,
10 Riverside County Superior Court, Case No. RIC 440630. Wage and
11 Hour Class Action seeking past wages for overtime, meal and rest
12 break violations for production employees in the State of California.
13 Plaintiff's counsel appointed as co-lead counsel. Case settled, Final
14 Approval granted, no objections and funds fully distributed.
- 15 h. *Walker v. Sharkeez, et al.*, Orange County Superior Court, Case No.
16 05CC00293. Wage and Hour Class Action seeking past wages for
17 unlawful deductions, meal and rest break violations for restaurant
18 employees in the State of California. Plaintiff's counsel appointed as
19 lead counsel. Case settled. Final Approval granted and funds fully
20 distributed.
- 21 i. *Padron v. Universal Protection Service, et al*, Orange County Superior
22 Court, Case No. 05CC00013. Wage and Hour Class Action seeking
23 past wages for overtime, meal and rest break violations for security
24 officers in the State of California. Plaintiff's counsel appointed as co-
25 lead counsel. Case settled, Final Approval granted, no objections and
26 funds fully distributed.
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- 1 j. *Martinez v. Securitas Security Services USA, et al.*, Santa Clara
2 Superior Court, Case No. 15-CV047499, et al. J.C.C.P. No. 4460.
3 Wage and Hour Class Action seeking past wages for meal and rest
4 break violations for security officers employed by defendant in the
5 State of California. Plaintiff's counsel and co-counsel. Case settled,
6 Final Approval granted and funds fully distributed.
- 7 k. *Velasquez-Lopez v. Hotel Cleaning Services, Inc. et al.*, Riverside
8 Superior Court, Case No. RIC 420909. Wage and Hour Class Action
9 seeking past wages for overtime, meal and rest break violations for
10 housekeepers employed by defendant in the State of California.
11 Plaintiff's counsel appointed as lead counsel. Case settled, Final
12 Approval granted, no objections and funds fully distributed.
- 13 l. *Ruiz, et al. v. Unisource Worldwide, Inc., et al.*, USDC, CENTRAL
14 DISTRICT, Case No. CV09-05848. Wage and Hour Class Action
15 seeking past wages for meal and rest period violations for non-exempt
16 employees employed by defendant in the state of California. Case
17 settled. Awaiting Preliminary Approval hearing. Plaintiff has
18 petitioned the Court for Lead Counsel.
- 19 m. *Herrador v. Culligan International Company, et al.*, USDC,
20 CENTRAL DISTRICT, Case No. SACV 08-680. Wage and Hour
21 Class Action seeking past wages for field and branch employees of
22 defendant in the State of California. Plaintiff's counsel appointed as
23 lead counsel. Case settled. Final Approval granted.
- 24 n. *Defries v. Domain Restaurants, et al.*, Orange County Superior Court,
25 Case No. 05CC00128. Wage and Hour Class Action seeking past
26 wages for restaurant employees of defendant in the State of California.
27
28

1 Plaintiff's counsel appointed as lead counsel. Case settled, Final
2 Approval granted, no objections and funds fully distributed.

3 o. *Denton v. BLB Enterprises, Inc., et al.*, Orange County Superior Court,
4 Case No. 07CC01292. Wage and Hour Class Action seeking unpaid
5 overtime, meal and rest break violations for security guards employed
6 by defendant in the State of California. Plaintiff's counsel appointed
7 as lead counsel. Case settled, Final Approval granted, no objections
8 and funds fully distributed.

9 p. *Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.*, Los
10 Angeles Superior Court, Case No. BC411477. Wage and Hour Class
11 Action seeking unpaid meal and rest break violations for production
12 employees employed by defendant in the State of California. Plaintiff
13 counsel appointed as lead counsel. Case settled, Final Approval
14 granted, no objections and funds fully distributed.

15 q. *McMurray v. Dave and Busters, Inc., et al.*, Orange County Superior
16 Court, Case No. 06CC00099. Wage and Hour Class Action seeking
17 past wages for meal and rest break violations for restaurant employees
18 employed by defendant in the State of California. Plaintiff's counsel
19 appointed as co-lead counsel. Case settled, Final Approval granted, no
20 objections and funds fully distributed.

21 r. *Osuna v. DFG Restaurants, Inc., et al.*, Los Angeles Superior Court,
22 Case No. BC 330145. Wage and Hour Class Action seeking past
23 wages of overtime for mis-classification of managers employed by
24 Defendant, DBA Carl's Jrs. in the State of California. Plaintiff's
25 counsel appointed as co-lead counsel. Case settled, Final Approval
26 granted, no objections and funds fully distributed.
27
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- 1 s. *Burns v. Gymboree Operations, Inc., et al.*, San Francisco Superior
2 Court, Case No. CGC-07-461612. Wage and Hour Class Action
3 seeking past wages for meal and rest break violations for retail
4 employees employed by defendant in the State of California.
5 Plaintiff's counsel appointed lead counsel. Case settled, Final
6 Approval granted, no objections and funds fully distributed.
- 7 t. *Willems v. Diedrich Coffee, Inc., et al.*, Orange County Superior Court,
8 Case No. 07CC00015. Wage and Hour Class Action seeking past
9 wages of overtime for mis-classification of managers employed by
10 Defendant in the State of California. Plaintiff's counsel appointed lead
11 counsel. Case settled, Final Approval granted, no objections and funds
12 fully distributed.
- 13 u. *Davila, et al. v. Beckman Coulter, Inc., et al.*, Orange County Superior
14 Court, Case No. 07CC01347. Wage and Hour Class Action seeking
15 past wages for overtime, meal and rest break violations for production
16 workers employed by defendant in the State of California. Plaintiff's
17 counsel appointed lead counsel. Case settled, Final Approval
18 granted, no objections and funds fully distributed.
- 19 v. *Perez v. Naked Juice Company of Glendora, Inc.*, Los Angeles
20 Superior Court, Case No. BC387088. Wage and Hour Class Action
21 seeking past wages for overtime, meal and rest period violations for
22 production employees employed by defendant in the State of
23 California. Plaintiff counsel appointed as lead counsel. Case settled.
24 Final Approval granted, no objections and funds fully distributed.
- 25 w. *Placencia v. Amcor Packaging Distribution, Inc.*, Orange County
26 Superior Court, Case No. 30-2013-00694012-CU-OE-CXC. Wage
27 and Hour Class Action seeking past wages for overtime, meal and rest
28

1 period violations, and penalties on behalf of non-exempt production,
2 maintenance, shipping, and receiving employees employed by
3 Defendant in California. Plaintiff counsel appointed as lead counsel.
4 Case settled. Final Approval granted, no objections and funds fully
5 distributed.

6 x. *Trani v. Lisi Aerospace, et al.*, Los Angeles Superior Court, Case No.
7 BC495527. Wage and Hour Class Action seeking past wages for
8 overtime, meal and rest period violations, and penalties on behalf of
9 non-exempt manufacturing employees employed by Defendant in
10 California. Plaintiff counsel appointed as lead counsel. Case settled.
11 Final Approval granted, no objections and funds fully distributed.

12 y. *Galvan v. Goodwin Co.*, Orange County Superior Court, Case No. 30-
13 2013-00637062-CU-OE-CXC, Wage and Hour Class Action seeking
14 past wages for meal period violations, and non-compliant wage
15 statements on behalf of non-exempt production employees employed
16 by Defendant in California. Plaintiff counsel appointed as lead
17 counsel. Case settled. Final Approval granted, no objections and funds
18 fully distributed.

19 z. *Reyes v. Bristol Fiberlite*, Orange County Superior Court, Case No.
20 30-2013-00653425-CU-OE-CXC. Wage and Hour Class Action
21 seeking past wages for overtime, meal and rest period violations,
22 inaccurate wage statements, and penalties on behalf of non-exempt
23 employees employed by Defendant in California. Plaintiff counsel
24 appointed as lead counsel. Case settled. Final Approval granted, no
25 objections and distribution of funds completed.

26 aa. *Gutierrez v. HMT Tank*, USDC Central Dist., Case No. CV14-1967-
27 CAS(MANx). Wage and Hour Class Action seeking past wages for
28

1 meal and rest period violations, failure to indemnify necessary
2 expenses, inaccurate wage statements, and penalties on behalf of non-
3 exempt employees working in positions related to servicing,
4 refabricating and repairing storage tanks employed by Defendant in
5 California. Plaintiff counsel appointed as lead counsel. Case settled.
6 Final Approval granted, no objections and funds fully distributed.

7 bb. *Williams v. Il Fornaio America Corp.*, Sacramento County, Case No.
8 34-2011-0009616. Wage and Hour Class Action seeking past wages
9 for overtime, meal and rest period violations, reimbursements, and
10 penalties on behalf of non-exempt restaurant employees employed by
11 Defendant in California. Plaintiff counsel appointed as lead counsel.
12 Case settled. Final Approval granted, and funds fully distributed.

13 cc. *Aguilar v. 7-Eleven, Inc.*, Orange County, Case No. 30-2009-
14 002687141-CU-OE-CXC. Wage and Hour Class Action seeking past
15 wages for overtime, meal and rest period violations, and penalties on
16 behalf of non-exempt retail clerks employed by Defendant in
17 California. Plaintiff counsel appointed as lead counsel. Case settled.
18 Final Approval granted, no objections and funds fully distributed.

19 dd. *Madrigal v. Huntington Beach Market Broiler, Inc.*, Orange County,
20 Case No. 30-2012-00611260. Wage and Hour Class Action seeking
21 past wages for overtime, meal and rest period violations,
22 reimbursements, and penalties on behalf of non-exempt employees
23 employed by Defendant in California. Plaintiff counsel appointed as
24 lead counsel. Case settled. Final Approval granted, no objections and
25 funds fully distributed.

26 ee. *Vang v. Jazz Semiconductor, Inc.*, Orange County, Case no. 30-2011-
27 00460278. Wage and Hour Class Action seeking past wages for
28

1 overtime, meal and rest period violations, reimbursements, and
2 penalties on behalf of non-exempt production workers employed by
3 Defendant in California. Plaintiff counsel appointed as lead counsel.
4 Case settled. Final Approval granted, no objections and funds fully
5 distributed.

6 ff. *Cano v. Financial Statement Services, Inc.*, Orange County, Case No.
7 30-2013-00653349-CU-OE-CXC.

8 gg. *Gonzalez v. Quality Aluminum Force, LLC*, Orange County, Case No.
9 30-2015-00817941-CU-OE-CXC.

10 hh. *Smith v. Space Exploration Technologies Corp.*, Los Angeles County
11 Case No. BC554258.

12 ii. *Madrigal v. Balda C Brewer, Inc.*, Orange County Case No. 30-2015-
13 00820218-CU-OE-CXC.

14 jj. *Mendez v. Liberty Glass Fabricators, Inc.*, Riverside County Case No.
15 RIC 1800119.

16 kk. *Attia v. Neiman Marcus Group, Inc.*, United States District Court for
17 the Central District of California Case No. 8:16-cv-001504-DOC-FFM

18 ll. *Vigueras v. Red Robin*, United States District Court for the Central
19 District of California Case No. 8:17-cv-1422-JVS-DFM.

20 mm. *Payne v. Marriott Ownership Resorts, Inc.*, San Diego County Case
21 No. 37-2018-00015175-CU-OE-CTL.

22
23 96. In sum, my firm has been lead or co-lead counsel in hundreds of cases
24 since its inception. We have recovered hundreds of millions of dollars for
25 employees in the State of California and millions for the State as well through
26 PAGA.

27 97. Our firm has served as class counsel in a number of significant wage
28 and hour settlements. Of particular note, in 2019, our firm was co-lead counsel in

1 securing the largest wage and hour class action settlement in California history at
2 \$130,000,000. During this case, plaintiffs appealed a decertification order. This
3 case involved several appeals. The appellate record amassed an extensive appellate
4 record comprising a 23-volume joint appendix, a three-volume reporters transcript,
5 five briefs, four letter briefs, two motions for judicial notice, a motion to augment
6 the record, and several additional letters informing the appellate court of new legal
7 authority issued after *Dukes*. The matter was argued to and submitted by the Court
8 of Appeal on September 15, 2016, and on November 21, 2016, the decertification
9 order was reversed and the case was remanded for further proceedings. (*Lubin v.*
10 *The Wackenhut Corporation* (“*Lubin*”), 5 Cal. App. 5th 960 (2016)). Wackenhut
11 filed a petition for review of the Court of Appeal decision to the California
12 Supreme Court. The Supreme Court denied Wackenhut’s petition for review of
13 *Lubin*. The Court of Appeal issued remittitur on April 10, 2017. Eventually
14 through more litigation, the parties were able to secure the \$130 million settlement
15 that was approved on October 21, 2019 by Judge Highberger in the Los Angeles
16 Superior Court.

17
18 98. Additionally, in early 2020, our firm served as lead counsel in a class
19 action jury trial in the Central District of California involving the class and PAGA
20 representative claims of over 23,000 employees which successfully resolved in the
21 midst of trial for \$8,500,000.

22 99. Our firm has settled many high-stakes class and representative actions.
23 Hawkins’ settlements have directly compensated hundreds of thousands of
24 California workers and consumers. Hawkins’ actions have also forced employers to
25 modify their policies for the benefit of employees including changing the
26 compensation structure for certain employees and changing practices to ensure that
27 workers will be able to take timely rest and meal breaks. A leader in prosecuting
28

1 class and PAGA enforcement actions, Hawkins has secured millions of dollars for
2 workers and in civil penalties for the State of California.

3 100. Based on our experience, demonstrated competence, resources to
4 prosecute the claims at issue and reputation among our colleagues in the both the
5 defense and plaintiffs' bar, I respectfully submit our firm's experience in the field
6 of wage and hour cases provides us the ability to prosecute claims swiftly and often
7 times without the need for protracted litigation as here. Although, as demonstrated
8 in the *Wackenhut* cases, we do not give up fighting for class members when
9 challenged and necessary. As such, we respectfully submit that we are adequate
10 Class Counsel.

11 I declare under penalty of perjury under the laws of the State of California that
12 the foregoing is true and correct this 19th day of May, at Irvine, California.
13

14 /s/ James R. Hawkins
15 James R. Hawkins
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EXHIBIT 1

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Attorneys for Defendants
HYATT CORPORATION and
GRAND HYATT S.F., LLC

[additional counsel on the following page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOE VIGIL, individually and on behalf of himself
and all others similarly situated,

Plaintiff,

v.

HYATT CORPORATION, a Delaware
corporation, GRAND HYATT S.F., LLC, a
Delaware limited liability company, doing
business as GRAND HYATT SAN FRANCISCO,
and DOES 1-50, inclusive,

Defendants.

Case No. 4:22-cv-00693-HSG

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND RELEASE
OF CLAIMS**

Complaint Filed: November 2, 2021

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EXHIBITS

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1 This Joint Stipulation of Class Action Settlement Agreement and Release of Claims
2 (“Agreement”) is made and entered into between: (1) Plaintiff Joe Vigil (“Vigil” or “Plaintiff”),
3 individually and on behalf of all current and former non-exempt, hourly employees working for
4 Defendants Hyatt Corporation and Grand Hyatt S.F., LLC at the Grand Hyatt San Francisco hotel
5 (collectively, “Defendants”) at any time between November 2, 2017 to March 9, 2023 (the “Class”); and
6 (2) Defendants, subject to approval from the Court, as provided below.

7 This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and
8 settle the Action (as defined below) and the Released Claims (as defined below), upon and subject to the
9 terms and conditions hereof, as follows:

10 1. DEFINITIONS

11 As used herein, for the purposes of this Agreement only, the following terms shall be defined as
12 set forth below:

13 1.1. “**Action**” refers to the civil actions entitled: (i) *Vigil v. Hyatt Corporation, et al.*,
14 filed as Case No. CGC-21-596464 in San Francisco Superior Court on November 2, 2021, and (ii) *Vigil*
15 *v. Hyatt Corporation, et al.*, filed as Case No. CGC-22-597517 in San Francisco Superior Court on
16 January 7, 2022, which were both removed to the United States District Court for the Northern District
17 of California and consolidated as Case No. 4:22-cv-00693-HSG. The Action was filed as separate class
18 action and representative action matters, and then consolidated into a single proceeding for all purposes.

19 1.2. “**Agreement**” refers to this Joint Stipulation of Class Action Settlement
20 Agreement and Release of Claims, which includes all of the Recitals and the Exhibits attached hereto.

21 1.3. “**Class**” refers to all current and former non-exempt, hourly employees working
22 for Defendants at the Grand Hyatt San Francisco hotel at any time between November 2, 2017 to March
23 9, 2023.

24 1.4. “**Class Counsel**” refers to James R. Hawkins, Christina M. Lucio, and Mitchell
25 Murray of James Hawkins APLC. For purposes of providing any notices required under this
26 Agreement, Class Counsel shall refer to James Hawkins (james@jameshawkinsaplc.com), Christina M.
27 Lucio (christina@jameshawkinsaplc.com), and Mitchell Murray (mitchell@jameshawkinsaplc.com)
28 9880 Research Drive, Suite 200, Irvine, California 92618.

1.5. **“Class Member(s)”** refers to any individual that is a member of the Class.

1.6. **“Class Period”** refers to the period of November 2, 2017 to March 9, 2023, as defined in this Agreement. The Class Period is based on a four-year statute of limitations period for state law claims, beginning on the date the Action was filed on November 2, 2021.

1.7. **“Class Representative”** refers to the named Plaintiff in the Action, Joe Vigil.

1.8. **“Class Representative Incentive Payment”** refers to any payment, subject to Court approval, to the Class Representative from the Gross Settlement Amount in recognition of the efforts and work in prosecuting the Action on behalf of the Class Members and in exchange for a general release.

1.9. **“Complaint”** refers to the original class action complaint filed on November 2, 2021; the original PAGA action complaint filed on January 7, 2022; and the operative First Amended Consolidated Complaint filed on July 25, 2022, in this Action.

1.10. **“Weeks Worked”** refers to any weeks when a Class Member worked for Defendants during the Class Period, as reflected on Defendants’ records.

1.11. **“Defendants”** refers to Defendant Hyatt Corporation and Defendant Grand Hyatt S.F., LLC.

1.12. **“Defendants’ Counsel”** refers to Seyfarth Shaw LLP. For purposes of providing any notices required under this Agreement, Defendants’ Counsel shall refer to Brian P. Long (bplong@seyfarth.com), Michael Afar (mafar@seyfarth.com), and Phillip J. Ebsworth (pebsworth@seyfarth.com); Seyfarth Shaw LLP, 2029 Century Park East, Suite 3500, Los Angeles, California 90067.

1.13. **“Effective Date”** refers to the 15th calendar day after the date by which the last of the following has occurred: (a) all conditions of Settlement have been satisfied; (b) the Court has entered and filed the Final Approval Order and Judgment; and (c) the time period for appeal of the Judgment has been exhausted without any appeals having been filed, and/or all such appeals have been voluntarily or involuntarily dismissed, and/or the appropriate appellate court or courts have entered a final judgment affirming the Final Approval Order and Judgment of the Court and the final judgment of such appellate court or courts is no longer subject to any further appellate challenge or procedure.

1.14. **“Final Approval Order”** refers to the final order by the Court approving the Settlement following the Final Fairness Hearing.

1.15. **“Final Fairness Hearing”** refers to the hearing at which the Court will make a final determination whether the terms of the Agreement are fair, reasonable, and adequate for the Class and meet all applicable requirements for Final Approval.

1.16. **“Gross Settlement Amount”** refers to the maximum settlement payment Defendants may be obligated to make in connection with the Settlement or Agreement, which in this case is no more than \$725,000. This sum shall include all Individual Settlement Payments made to Class Members, all administration costs, the employees’ share of payroll taxes, the Class Representative Incentive Payment, the LWDA Payment (as defined below), interest, and attorneys’ fees and costs as set forth below. The Gross Settlement Amount shall not include the employer’s share of payroll taxes in connection with the wage-related portions of the Individual Settlement Payments to Class Members. Defendants will separately pay the employer’s share of the payroll taxes in connection with the wage-related portions of the Individual Settlement Payments to Class Members.

The Gross Settlement Amount is a material term of this Agreement. Except as set forth in Paragraph 5.2, to the extent Plaintiff or the Court seeks to require Defendants to pay more than the Gross Settlement Amount as part of this Settlement or Agreement, Defendants shall retain the right, in the exercise of their sole discretion, to nullify the Settlement or Agreement.

1.17. **“Individual Settlement Payment”** refers to the amount calculated by the Settlement Administrator to be distributed to each individual Class Member, based on Weeks Worked. The Individual Settlement Payment shall be paid from the Net Settlement Amount and shall include the employee’s share of payroll taxes and withholdings.

1.18. **“Judgment”** refers to the final judgment by the Court approving the Settlement.

1.19. **“LWDA Payment”** refers to a payment out of the Gross Settlement Amount of \$10,000, which shall be allocated as \$7,500 to the California Labor & Workforce Development Agency (“LWDA”) as the LWDA’s share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA, and as \$2,500 to the Net Settlement Amount for distribution to the Class Members.

1 1.20. **“Net Settlement Amount”** refers to the Gross Settlement Amount minus all
2 administration costs, the Class Representative Incentive Payment, the LWDA Payment, and attorneys’
3 fees and costs. The Net Settlement Amount shall include all Individual Settlement Payments due to
4 Class Members, including the employees’ share of payroll taxes. The Net Settlement Amount is the
5 maximum amount that shall be available for distribution to Class Members.

6 The Net Settlement Amount is a material term of this Agreement. Except as set forth in
7 Paragraph 5.2, to the extent Plaintiff or the Court seeks to require Defendants to pay more than the Net
8 Settlement as part of this Settlement or Agreement, Defendants shall retain the right, in the exercise of
9 their sole discretion, to nullify the Settlement or Agreement.

10 1.21. **“Notice of Class Action Settlement”** refers to the Notice of Class Action
11 Settlement, substantially in the form attached as **Exhibit A**.

12 1.22. **“Objection”** refers to a timely, written, signed objection by a Class Member who
13 elects to object to the Settlement, substantially in the form detailed in the Notice of Class Action
14 Settlement.

15 1.23. **“Parties”** refer to (1) Plaintiff Joe Vigil, individually and on behalf of all current
16 and former non-exempt, hourly employees working for Defendants at the Grand Hyatt San Francisco
17 hotel in California at any time between November 2, 2017 and March 9, 2023; and, (2) Defendants
18 Hyatt Corporation and Grand Hyatt S.F., LLC.

19 1.24. **“Plaintiff”** refers to Joe Vigil.

20 1.25. **“Preliminary Approval Order”** refers to the order issued and entered by the
21 Court following a Motion for Preliminary Approval of the Settlement and this Agreement.

22 1.26. **“Released Claims”** refers to those claims defined in Section 6 of this Agreement.
23 The Released Claims shall apply to all Class Members who do not file a Request for Exclusion (as
24 defined in this Agreement). The scope of the Released Claims is a material term of this Agreement. To
25 the extent Plaintiff or the Court seeks to modify the scope of the Released Claims in order to make it
26 more narrow, Defendants shall retain the right, in the exercise of their sole discretion, to nullify the
27 Settlement or Agreement.
28

1.27. **“Released Parties”** refers to (i) Defendants Hyatt Corporation and Grand Hyatt S.F., LLC; (ii) each of Defendants’ respective past, present and future parents, subsidiaries, and affiliates including, without limitation, any corporation, limited liability company, partnership, affiliated entity, trust, foundation, and non-profit entity which controls, is controlled by, or is under common control with Defendants; (iii) the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing.

1.28. **“Request for Exclusion”** refers to a timely, written, signed opt-out request by someone who otherwise would be a Class Member who elects to be excluded from the Class, substantially in the form attached as **Exhibit B** to this Agreement.

1.29. **“Settlement”** refers to terms of this Agreement, which includes the Recitals and the Exhibits attached hereto.

1.30. **“Settlement Administrator”** refers to the third party administrator, who has been mutually selected by the Parties, subject to Court approval, to perform the notice, claims administration, and distribution of payment functions further described in this Agreement. The Settlement Administrator shall establish its own employer identification number and file an Internal Revenue Service Form W-9. The Settlement Administrator shall meet all of the requirements to establish a Qualified Settlement Fund (“QSF”) pursuant to U.S. Treasury Regulation Section 468B-1.

1.31. **“Settlement Class”** refers to all Class Members who do not file a timely and valid opt-out Request for Exclusion.

2. PROCEDURAL HISTORY AND RECITALS

2.1. **Causes Of Action.** On November 2, 2021, Plaintiff filed his original class action complaint against Defendants on behalf of the Class. The class action complaint was removed to federal court based on jurisdiction under the Class Action Fairness Act and federal question jurisdiction for preemption under the Labor Management Relations Act. On January 7, 2022, Plaintiff filed his original PAGA representative action complaint against Defendants, which was also removed to federal court based on federal question jurisdiction for preemption under the Labor Management Relations Act. On

1 April 28, 2022, the class action and PAGA action complaints were consolidated into a single proceeding
2 for all purposes. On July 25, 2022, Plaintiff filed the operative First Amended Complaint against
3 Defendants on behalf of the Class. Plaintiff assert eight causes of action in the First Amended
4 Complaint against Defendants: “(1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Owed;
5 (3) Failure to Provide Lawful Meal Periods; (4) Failure To Authorize And Permit Rest Periods;
6 (5) Failure to Timely Pay Wages Upon Separation; (6) Failure to Reimburse Necessary Expenses;
7 (7) Violation of the Unfair Competition Law; and (8) Penalties Under Private Attorneys General Act,
8 Labor Code § 2698 et seq.” Like the original Complaint, the First Amended Complaint seeks unpaid
9 wages, actual damages, statutory damages, monetary damages, interest, statutory penalties, civil
10 penalties, liquidated damages, restitution, pre-judgment interest, and attorneys’ fees and costs.

11 **2.2. The Parties Have Exchanged Discovery To Fully Assess The Claims.** During
12 the litigation of this Action, the Parties have engaged in extensive discovery. Plaintiff propounded
13 written discovery on Defendants, including Requests for Production of Documents and Special
14 Interrogatories, and also made certain informal requests in connection with mediation. Pursuant to meet
15 and confer efforts for mediation, Defendants agreed to produce, and did produce, among other things,
16 electronic time punch records and payroll records all putative class members. Defendants also produced
17 meal and rest period attestation records for all putative class members. Defendants also produced
18 company policies, including the employee handbook, new hire paperwork, and all collective bargaining
19 agreements that applied to putative class members. The Parties were then able to engage their own
20 experts to independently review and analyze the data.

21 **2.3. Class Counsel’s Investigation.** Class Counsel investigated the claims against
22 Defendants in the Action and also analyzed all applicable defenses raised by Defendants. The
23 investigation included review of documents produced during discovery, including all time punch records
24 and payroll records, as well as expert analysis on the data. The investigation also included several
25 conferences between Class Counsel and Defendants’ Counsel, conferences between the Parties and the
26 Court, and Class Counsel’s further interviews of the Class Representative and other Class Members, as
27 well as a review of documents provided by the Class Representative and other Class Members.
28

1 2.4. **Defendants' Denials.** Defendants denied and continue to deny: (a) all of the
2 allegations made by the Class Representative or the Class in the Action; (b) that they violated any
3 applicable laws; (c) that they are liable or owe damages, penalties, or other compensation or remedies to
4 anyone with respect to the alleged facts or claims asserted in the Action; and, (d) that class certification
5 or representative treatment of the Action or any alleged claim is proper. Defendants emphasize that the
6 Court has not made any findings of liability as to Defendants and the Court has not determined that class
7 certification is warranted in this Action.

8 Nonetheless, without admitting or conceding any liability or wrongdoing whatsoever and
9 without admitting or conceding that class certification or representative treatment is appropriate for any
10 purpose other than settlement purposes alone, Defendants have agreed to settle the Action on the terms
11 and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of continuing
12 the Action. Any stipulations or statements by Defendants contained in this Agreement are made for
13 settlement purposes only.

14 2.5. **Class Counsel's Evaluation.** Based on Class Counsel's investigation and
15 evaluation, Class Counsel is of the opinion that the terms set forth in this Agreement are fair, reasonable,
16 adequate, and in the best interest of the Class Members. Class Counsel diligently and effectively
17 investigated Plaintiff's claims, drafted the Complaint and subsequent Amended Complaints, interviewed
18 witnesses, prepared discovery, and reviewed and analyzed documents and data produced for the entire
19 putative class. Class Counsel concluded that the Settlement reflected in this Agreement is in the best
20 interests of the Class, after reviewing the data and expert analysis, completing interviews with potential
21 Class Members, reviewing Defendants' policies and collective bargaining agreements, conferring with
22 Defendants' Counsel regarding Defendants' arguments in opposition to a potential Motion for Class
23 Certification, and evaluating the risk that further litigation might result in Plaintiff and the Class not
24 recovering anything at all was a very significant factor in determining that this Agreement is fair,
25 reasonable, and adequate.

26 2.6. **Second Amended Consolidated Complaint.** As a condition of the Settlement,
27 Plaintiff will file a Second Amended Consolidated Complaint to conform the pleadings with the scope
28 of the release, and specifically, to more explicitly plead class and representative theories of liability that

were raised at mediation, the draft of which is attached hereto as **Exhibit C**. Defendants will not be required to file an answer or other responsive pleading to the Second Amended Consolidated Complaint. If, for any reason, the Court does not grant Final Approval, or if the Settlement or Judgment does not become binding for any reason, then the Second Amended Consolidated Complaint will be deemed withdrawn and the First Amended Consolidated Complaint, filed July 25, 2022, will again become the operative complaint without prejudice to Plaintiff's right to seek leave to file another amended complaint. Defendants do not impliedly or expressly waive any arguments or defenses to the Second Amended Consolidated Complaint.

2.7. **The Parties' Intent.** It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge any and all claims, rights, demands, charges, complaints, causes of action, obligations or liability of any and every kind that were or could have been asserted in the Action, to the extent that such claims arise out of the alleged facts, circumstances, and occurrences underlying the allegations as set forth in the claims in the operative First Amended Consolidated Complaint in the Action.

2.8. **Certification of Settlement Classes.** This Agreement is contingent upon approval of class certification under Fed. R. Civ. P. Rule 23 by the Court of the Settlement Class for settlement purposes only. Defendants do not waive, and instead expressly reserves, its right to challenge the propriety of class certification, collective action certification, or representative treatment for any other purpose should the Court not approve the Settlement or this Agreement.

2.9. **The Parties' Agreement to Cooperate.** The Parties agree to cooperate and to take all steps necessary and appropriate to effectuate all aspects of this Agreement, to obtain a Preliminary Approval Order and Final Approval Order of this Settlement, and to dismiss the Action and claims of Class Members with prejudice upon final approval.

NOW THEREFORE, in consideration of the covenants and agreements set forth herein, and of the release and dismissal of all Released Claims, the Parties stipulate and agree to the terms and provisions of this Settlement and Agreement, subject to the approval of the Court.

1 **3. NOTICE TO CLASS MEMBERS**

2 3.1. **Settlement Administrator.** The Parties request that the Court appoint Phoenix
3 Class Action Administration Solutions as Settlement Administrator. The Parties agree that settlement
4 administration costs shall not exceed \$9,750, based on a written bid received from the Settlement
5 Administrator. All disputes relating to the Settlement Administrator's performance of its duties, after
6 good-faith efforts by the Parties to first resolve such disputes, will be referred to the Court, if necessary,
7 which will have continuing jurisdiction over this Agreement until all payments and obligations
8 contemplated by this Agreement have been fully completed.

9 3.2. **Class Data For Settlement Administrator.** Within 21 calendar days of the entry
10 of a Preliminary Approval Order of this Agreement, Defendants shall provide to the Settlement
11 Administrator with the following information: (1) name of each Class Member; (2) most current known
12 address of each Class Member; (3) social security number of each Class Member; and (4) the dates of
13 employment for each Class Member and/or days worked by each Class Member, in order to determine
14 the total number of Weeks Worked by each Class Member during the Class Period.

15 3.3. **Confidentiality Of Class Member Contact Information And Data.** The
16 contact information is being provided confidentially, and the Settlement Administrator shall treat the
17 information as private and confidential and take all necessary precautions to maintain the confidentiality
18 of contact information of the Class Member. This information is to be used only to carry out the
19 Settlement Administrator's duties as specified in this Settlement Agreement. The Settlement
20 Administrator shall return the class data to Defendants or confirm its destruction upon completion of the
21 Settlement Administrator's duties in administering the Settlement.

22 3.4. **Mailing Of Notice Of Class Action Settlement And Request For Exclusion.**
23 The Settlement Administrator shall mail the Notice of Class Action Settlement, and Request for
24 Exclusion, to Class Members within 14 calendar days of receiving the Class Member data from
25 Defendants. The Settlement Administrator shall send the Notice of Class Action Settlement, and
26 Request for Exclusion to Class Members via First Class U.S. Mail, using the most current, known
27 mailing address for each Class Member based on information provided by Defendants. Upon receipt of
28 this information from Defendants, the Settlement Administrator shall perform a search based on the

1 National Change of Address Database maintained by the United States Postal Service to update and
2 correct any known or identifiable address changes.

3 **3.4.1 Re-mailing Of Returned Notices.** Any mailing returned to the
4 Settlement Administrator as undeliverable shall be sent within 3 business days via First Class U.S. Mail
5 to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement
6 Administrator shall attempt to determine the correct address by again using the National Change of
7 Address Database maintained by the United States Postal Service to update and correct any known or
8 identifiable address changes. Following this procedure, the Settlement Administrator shall perform a
9 single re-mailing via First Class U.S. Mail within 3 business days.

10 **3.4.2 Content Of The Notice Of Class Action Settlement.** The Notice of
11 Class Action Settlement shall be substantially in the form attached as **Exhibit A** to this Agreement.

12 **3.4.3 Content Of The Request For Exclusion.** The Request for Exclusion
13 shall be substantially in the form attached as **Exhibit B** to this Agreement.

14 **3.5. Proof Of Mailing.** At least 5 calendar days prior to the Final Fairness Hearing,
15 the Settlement Administrator shall provide a declaration of due diligence and proof of mailing with
16 regard to mailing of the Notice of Class Action Settlement to Class Counsel and Defendants' Counsel,
17 which they shall in turn provide to the Court.

18 **4. CLASS MEMBERS' OPTIONS TO RESPOND**

19 **4.1. Class Members' Consideration Period.** Class Members shall be provided 45
20 calendar days to exercise any rights with regard to the Settlement, following the postmark date of the
21 initial mailing of the Notice of Class Action Settlement and the Request for Exclusion. Except as
22 specifically provided herein, no Class Member responses of any kind that are postmarked more than 45
23 calendar days after the initial mailing of Class Notice shall be considered. Responses from Class
24 Members must be postmarked for mail with the U.S. Postal Service. Responses sent by facsimile, email,
25 or other forms of electronic transmission will not be considered.

26 **4.2. Request for Exclusion and Opt Out Rights.** Class Members shall be given the
27 opportunity to opt out of the Settlement.
28

1 **4.2.1 Opt Out Procedures.** Class Members may opt out of the Settlement by
2 mailing to the Settlement Administrator a Request for Exclusion, substantially in the form attached as
3 Exhibit B. Any such Request for Exclusion must be postmarked not more than 45 calendar days after
4 the postmark date of the initial mailing of the Notice of Class Action Settlement and the Request for
5 Exclusion. To be a valid Request for Exclusion, a Class Member must provide his or her name (and
6 former names, if any), current address, and current telephone number. Any Request for Exclusion that
7 does not include all of the required information or that is not submitted in a timely manner will be
8 deemed null, void, and ineffective. If there is a dispute regarding the timeliness or validity of a Request
9 for Exclusion, the Settlement Administrator shall make the determination, after consultation with Class
10 Counsel and Defense Counsel. Requests for Exclusion from Class Members must be postmarked for
11 mail with the U.S. Postal Service. Requests for Exclusion sent by facsimile, email, or other forms of
12 electronic transmission will not be considered.

13 **4.2.2 Effect of Opt Out.** Any Class Member who opts out of the Settlement
14 may not object to the Settlement, shall not receive any Individual Settlement Payment, and shall not be
15 bound by the Released Claims provisions in this Agreement. If a Class Member submits both a Request
16 for Exclusion and an Objection, the Class Member's Objection will be valid and be deemed to invalidate
17 the Request for Exclusion.

18 Each Class Member who does not opt out of the Settlement shall be bound by the
19 applicable Released Claims provisions in this Agreement, including the Released Claims.

20 The LWDA Payment portion of the Gross Settlement Amount shall be distributed
21 to aggrieved employees based on number of workweeks worked during the PAGA period, defined as
22 one year and sixty-five days preceding the filing of the original Complaint. Class Members who opt out
23 of the class portion of the Settlement and worked during the PAGA period will receive their respective
24 share of the LWDA Payment, even if they opt out of the class portion, because there are no opt-out
25 rights under PAGA.

26 **4.2.3 Defendants' Rights to Withdraw.** Defendants have the right, at their
27 sole option, to withdraw from this Settlement or Agreement if the number of Class Members opting out
28 exceeds five percent (5%) of the total number of Class Members. These rights to withdraw are material

1 terms of the Agreement and Defendants have the right, at their sole option, to withdraw from this
2 Agreement if either of these material terms are not approved by the Court. If Defendants exercise this
3 right to withdraw, they will be responsible for all Settlement Administration Costs incurred by the
4 Administrator.

5 4.3. **Objection Rights.** Because the Settlement Class will be certified by the Court,
6 only Class Members who do not opt out of the Settlement shall be entitled to object to the terms of the
7 Settlement.

8 4.3.1 **Objection Procedures.** Class Members' objections to the Settlement or
9 this Agreement must be made using the procedures set forth in the Notice of Class Action Settlement.
10 Any Objection must be sent to the Settlement Administrator and postmarked no later than 45 days after
11 the first postmark date of mailing the Notice of Class Action Settlement. An Objection shall be deemed
12 to be submitted as of the postmarked date. The written Objection must contain: (1) the name and case
13 number of this lawsuit, *Vigil v. Hyatt Corporation, et. al*, United States District Court for the Northern
14 District of California, Case No. 4:22-cv-00693-HSG; (2) the full name, last four digits of their Social
15 Security Number, and current address of the Class Member making the Objection; (3) the specific
16 reason(s) for the Objection; and (4) any and all evidence and supporting papers (including, without
17 limitation, all briefs, written evidence, and declarations) for the Court to consider. Class Members who
18 submit an Objection remain bound by this Agreement.

19 Objections from Class Members must be postmarked for mail with the U.S. Postal
20 Service. Objections sent by facsimile, email, or other forms of electronic transmission will not be
21 considered.

22 4.3.2 **Rights of Individuals Who Submit an Objection.** Class Members who
23 timely submit an Objection shall have the right to appear at the Final Fairness Hearing either in person
24 or through counsel, but must state their intent to do so at the time they submit their written Objection.
25 Class Members may withdraw their Objections at any time.

26 4.3.3 **Waiver of Objection Rights.** Class Members who fail to make
27 Objections in the manner specified in the Notice of Class Action Settlement shall be deemed to have
28

1 waived any Objections and shall be foreclosed from making any Objection, whether by appeal or
2 otherwise, to this Agreement.

3 **4.4. Proof of Class Members' Responses.** By not later than 75 calendar days after
4 the initial mailing of the Notice of Class Action Settlement and Request for Exclusion, the Settlement
5 Administrator will prepare and submit a declaration attesting to (by number of relevant individuals) its
6 mailing of the Notice of Class Action Settlement, its inability to deliver any mailing due to invalid
7 addresses, and its receipt of valid Requests for Exclusion. Five calendar days prior to the Final Fairness
8 Hearing, the Settlement Administrator will prepare a supplemental declaration to submit to the Court, to
9 indicate the number of valid timely claims, objections, and opt out Requests for Exclusion.

10 **4.5. Binding Effect of Settlement.** Although some Class Members might not receive
11 or timely submit the Notice of Class Action Settlement or the Request for Exclusion, as provided under
12 this Settlement and Agreement, due to inability to locate their current address following the procedures
13 set forth in this Agreement, such individuals shall nonetheless be bound by all of the terms of this
14 Settlement and Agreement and the Final Order and Dismissal with Prejudice.

15 **5. DISTRIBUTION OF SETTLEMENT PROCEEDS**

16 **5.1. Gross Settlement Amount.** Defendants agree to pay up to a maximum Gross
17 Settlement Amount of \$725,000. The \$725,000 Gross Settlement Amount refers to the maximum
18 settlement payment Defendants may be obligated to make in connection with the Settlement or
19 Agreement, and shall include all Individual Settlement Payments made to Class Members, all
20 administration costs, the employees' share of payroll taxes, the Class Representative Incentive Payment,
21 the LWDA Payment, and attorneys' fees and costs. The Gross Settlement Amount shall be funded
22 fourteen (14) calendar days after the Effective Date.

23 **5.2. Representation of Workweeks.** Defendants have represented that the
24 workweeks between November 2, 2017 and October 29, 2022 are approximately 56,217. If the actual
25 number of workweeks during this timeframe (between November 2, 2017 and October 29, 2022)
26 exceeds 56,217 by more than 10%, the amount of the settlement will be increased by the actual
27 percentage. There is no other escalator clause that applies to the Settlement or the Gross Settlement
28 Amount.

1 **5.3. Attorneys' Fees and Costs.** Class Counsel intends to request—and Defendants
2 agree not to oppose—that the Court approve an attorneys' fees and costs award for (a) attorneys' fees in
3 an amount up to 35% of the Gross Settlement Amount (or \$253,750) and (b) costs in the amount of up to
4 \$25,000.00, supported by adequate documentation by Class Counsel. Except as provided in this
5 Agreement, Defendants shall have no liability for any other attorneys' fees or costs.

6 **5.3.1 Approval of Attorneys' Fees and Costs Award Not Material.** The
7 Court's approval of an attorneys' fees or costs award is not a material term of the Settlement or this
8 Agreement. If the Court does not approve or approves only a lesser amount than that requested by Class
9 Counsel for attorneys' fees or costs, the other terms of the Settlement and this Agreement shall still
10 apply. The Court's refusal to approve the attorneys' fees or costs award requested by Class Counsel
11 does not give the Class Representative, the Class Members, or Class Counsel any basis to abrogate the
12 Settlement or this Agreement. Any amount of an attorneys' fees and costs award requested by Class
13 Counsel but unapproved by the Court shall be allocated to the Net Settlement Amount.

14 **5.3.2 Timing of Payment of Attorneys' Fees and Costs.** The Settlement
15 Administrator shall pay to Class Counsel any approved attorneys' fees and costs award fourteen (14)
16 calendar days after the full funding of the Gross Settlement Amount as set forth in Section 5.1. Class
17 Counsel agrees that Class Counsel is responsible for allocating this payment among themselves and any
18 other counsel for Plaintiff settling claims through this Agreement. The Settlement Administrator shall
19 issue an Internal Revenue Service Form 1099 to Class Counsel for any attorneys' fees and costs award
20 payment. Class Counsel shall be solely and legally responsible for paying all applicable taxes on any
21 attorneys' fees and costs award payments and shall indemnify and hold harmless Defendants from any
22 claim or liability for taxes, penalties, or interest arising as a result of the payment.

23 **5.4. Class Representative Incentive Payment.** Class Counsel intends to request—
24 and Defendants agree not to oppose—that the Court approve a Class Representative Incentive Payment
25 of up to \$10,000 for the Class Representative, for his additional participation in the Action and a full
26 individual settlement and release (as outlined in Section 6.2), and such payments shall not be subject to
27 payroll taxes or withholdings. Any Class Representative Incentive Payment is in addition to each Class
28 Representative's Individual Settlement Payment.

1 **5.4.1 Class Representative Incentive Payment Not Material.** The Court's
2 approval of the Class Representative Incentive Payment is not a material term of the Settlement or this
3 Agreement. If the Court does not approve or approves only a lesser amount than that requested by Class
4 Counsel for the Class Representative Incentive Payment, the other terms of the Settlement and this
5 Agreement shall apply. The Court's refusal to approve the Class Representative Incentive Payment
6 requested by Class Counsel does not give either the Class Representative or Class Counsel any basis to
7 abrogate the Settlement or this Agreement. Any amount of a Class Representative Incentive Payment
8 requested by Class Counsel but unapproved by the Court shall be allocated to the Net Settlement
9 Amount.

10 **5.4.2 Timing of Class Representative Incentive Payment.** The Settlement
11 Administrator shall pay to the Class Representative any approved Class Representative Incentive
12 Payment fourteen (14) calendar days after the initial funding of the Gross Settlement Amount set forth in
13 Section 5.1. The Settlement Administrator shall issue an IRS Form 1099 to the Class Representative for
14 any Class Representative Incentive Payment. The Class Representative shall be solely and legally
15 responsible for paying all applicable taxes on any Class Representative Incentive Payment and shall
16 indemnify and hold harmless Defendants from any claim or liability for taxes, penalties, or interest
17 arising as a result of the payment.

18 **5.5. Settlement Administration Costs.** Class Counsel intends to request—and
19 Defendants agree not to oppose—that the Court approve Settlement Administration Costs of up to
20 \$9,750. Upon completion of administration of the Settlement, the Settlement Administrator shall
21 provide written certification of such completion to Class Counsel and Defendants' Counsel. The Parties
22 agree to cooperate in the settlement administration process and to make all reasonable efforts to control
23 and to minimize settlement administration costs.

24 **5.6. LWDA Payment.** The Parties will seek approval for a Private Attorneys General
25 Act ("PAGA") payment out of the Gross Settlement Amount of \$10,000, which shall be allocated as
26 \$7,500 to the LWDA as the LWDA's share of the settlement of civil penalties paid under this
27 Agreement pursuant to the PAGA, and as \$2,500 to the Net Settlement Amount for distribution to the
28 Class Members.

1 **5.6.1 Modification Of LWDA Payment Not Material.** The Court's reduction
2 or increase of a LWDA Payment is not a material term of the Settlement or this Agreement. If the Court
3 approves only a lesser amount or a higher amount than that requested by Class Counsel for the LWDA
4 Payment, the other terms of the Settlement and this Agreement shall apply. The Court's reduction or
5 increase of the LWDA Payment requested by Class Counsel does not give the Class Representative or
6 Class Counsel any basis to abrogate the Settlement or this Agreement.

7 However, the Court's approval of a LWDA Payment is a material term of the
8 Settlement or this Agreement. If the Court does not approve a LWDA Payment set forth in this
9 Agreement, then the LWDA Payment shall be made in the amount required by the Court. If the Court
10 requires the LWDA Payment to be higher than as stated in this Agreement, the additional funds for the
11 LWDA Payment shall be taken from the Gross Settlement Amount. Thus, the Gross Settlement Amount
12 shall not be increased in the Court requires a larger LWDA Payment.

13 **5.7. Individual Settlement Payments From the Net Settlement Amount.** This
14 Settlement shall be a non-reversionary Settlement. Each Class Member who does not opt out of the
15 Settlement shall be entitled to an Individual Settlement Payment consisting of their share of the Net
16 Settlement Amount, in accordance with the formula set forth below.

17 **5.7.1 Individual Settlement Calculations and Payments.** Each Class Member
18 will be eligible to receive a portion of the Net Settlement Amount in accordance with the following
19 formula:

20 Each Class Member's potential share of the Net Settlement Amount will
21 be calculated by dividing the number of Weeks Worked by the Class
22 Member by all Weeks Worked during the Class Period by all Class
23 Members, multiplied by the Net Settlement Amount [*i.e.*, (individual
24 Weeks Worked ÷ total Weeks Worked by Class Members) x Net
25 Settlement Amount].

26 **5.7.2 Disputes Regarding Weeks Worked.** The Notice of Class Action
27 Settlement will list each Class Member's number of Weeks Worked, for purposes of determining the
28 Individual Settlement Payment. If a Class Member disputes the number of Weeks Worked on the
Notice of Class Action Settlement, the Class Member must produce, by no later than fourteen (14)

1 calendar days from the date the Notice of Class Action Settlement is postmarked, evidence to the
2 Settlement Administrator showing that such information is inaccurate. All disputes will be decided
3 within seven (7) calendar days from the date the dispute is received by the Settlement Administrator.
4 The Settlement Administrator shall have the authority to determine the outcome of any disputes, but
5 may contact Class Counsel and/or Defendants' Counsel to seek their input.

6 **5.8. Distribution of Individual Settlement Payments.** Each Class Member's portion
7 of the Net Settlement Amount shall be distributed as one check.

8 **5.8.1 Settlement Checks.** The settlement check shall be for the amount of each
9 Class Member's Individual Settlement Payment. The check will include language indicating that
10 endorsing and cashing the check will constitute a release of claims under the California Labor Code,
11 California Unfair Competition Law, and PAGA, for any and all claims asserted or that could have been
12 asserted based on the facts alleged in the Action. The language to be included will be substantially
13 similar to the following:

14 My signature or cashing of this check constitutes a full and complete
15 release of Hyatt Corporation, and all of their current or former subsidiary
16 or affiliated entities, and their current or former officers, directors, and
17 employees, for any and all claims asserted or that could have been asserted
18 based on the facts alleged in the operative Second Amended Consolidated
19 Complaint in the lawsuit entitled *Vigil v. Hyatt Corporation, et. al*,
20 pending in the United States District Court, Northern District of
California, Case No. 4:22-cv-00693-HSG, including the claims brought
under the California Labor Code, California Unfair Competition Law, or
PAGA, arising during my employment at any time between November 2,
2017 through March 9, 2023.

21 **5.9. Timing of Individual Settlement Payments.** The Settlement Administrator shall
22 issue the distribution of the Individual Settlement Payments no later than fourteen (14) calendar days
23 after the funding of the Gross Settlement Amount.

24 **5.10. Allocation of Individual Settlement Payments.** Each Class Member's
25 Individual Settlement Payment will be characterized as 80% Form 1099 income and 20% Form W-2
26 income, to reflect that 80% of the payment will account for penalties and interest, while 20% will
27 account for unpaid wages. In accordance with applicable tax laws, required tax withholdings and
28 payroll deductions will be taken from each Individual Settlement Payment for the portion allocated to

1 Form W-2 income and remitted to the appropriate taxing authorities. The Settlement Administrator
2 shall issue any necessary IRS Form 1099 and Form W-2 statements to Class Members for their
3 respective Individual Settlement Payments. Class Members shall be solely and legally responsible for
4 paying all other applicable taxes on their respective Individual Settlement Payments and shall indemnify
5 and hold harmless Defendants from any claim or liability for taxes, penalties, or interest arising as a
6 result of the payments. In allocating the Individual Settlement Payments, the Parties agree that, pursuant
7 to applicable law, all payments for wages shall be subject to payroll tax withholdings and a Form W-2,
8 while all payments for penalties shall not be subject to payroll tax withholdings and will be recorded on
9 a Form 1099.

10 **5.10.1 Allocation of Individual Settlement Payment Not Material.** The
11 Court's approval of the allocation of the Individual Settlement Payment for Form 1099 income and
12 Form W-2 income is not a material term of the Settlement or this Agreement. If the Court does not
13 approve or approves a different allocation of the Individual Settlement Payments, the other terms of the
14 Settlement and this Agreement shall apply. The Court's refusal to approve the allocation for the
15 Individual Settlement Payments requested by the Parties does not give the Parties any basis to abrogate
16 the Settlement or this Agreement.

17 **5.10.2 Undeliverable or Uncashed Checks.** Any settlement checks distributing
18 Individual Settlement Payments returned to the Settlement Administrator as undeliverable shall be sent
19 within 5 calendar days via First Class U.S. Mail to the forwarding address affixed thereto. If no
20 forwarding address is provided, the Settlement Administrator shall attempt to determine the correct
21 address using the National Change of Address Database maintained by the United States Postal Service,
22 and it shall then perform a re-mailing within 5 calendar days. The amount of any Individual Settlement
23 Payments that remain undeliverable or uncashed 180 calendar days after the postmarked date of the
24 initial mailing of the Individual Settlement Payments will be sent to the California State Controller's
25 Office to be held as "Unclaimed Property" in the name of the Class Member. The Settlement
26 Administrator shall notify Class Counsel and Defendants' Counsel of any undeliverable checks.

1 **5.11. Tax Payment Considerations.** Class Counsel, Defendants' Counsel,
2 Defendants, and the Settlement Administrator are not giving any tax advice in connection with the
3 Settlement or any payments to be made pursuant to this Agreement.

4 **5.12. No Tax Advice or Liability.** Each Class Member agrees to indemnify, and to
5 hold harmless, Defendants from any liability for taxes, fees, costs, or assessments resulting from his or
6 her failure to timely pay taxes, interest, fees, or penalties owed.

7 **5.13. No Impact On Contributions To Employee Benefit Plans.** None of the
8 payments made pursuant to the Settlement and this Agreement shall be considered to alter the terms or
9 to grant any rights to additional payments under any employee benefit plans. None of the payments
10 made pursuant to the Settlement and this Agreement shall be considered for purposes of determining
11 eligibility for, vesting or participation in, or contributions to any benefit plan, including, without
12 limitation, all plans subject to the Employee Retirement and Income Security Act of 1974 ("ERISA").
13 Any distribution of payments to Plaintiff or Class Members shall not be considered as a payment of
14 wages or compensation under the terms of any applicable benefit plan and shall not affect participation
15 in, eligibility for, vesting in, the amount of any past or future contribution to, or level of benefits under
16 any applicable benefit plan.

17 Any amounts paid will not impact or modify any previously credited hours of
18 service or compensation taken into account under any bonus or incentive plan, benefit plan sponsored or
19 contributed to by Defendants or any jointly-trusted benefit plan, or for purposes of calculating the
20 regular rate of pay. For purposes of this Agreement, "benefit plan" means each and every "employee
21 benefit plan," as defined in 29 U.S.C. Section 1002(3), and, even if not thereby included, any 401(k)
22 plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare, profit sharing,
23 retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred compensation,
24 or any other similar benefit plan, practice, program, or policy.

25 **6. RELEASES**

26 **6.1. Release by Class Members.** By operation of the entry of the Final Approval
27 Order and judgment and contingent upon full funding of all sums owed under this Agreement, each
28 Class Member, and each of their respective executors, administrators, representatives, agents, heirs,

1 successors, assigns, trustees, spouses, or guardians, will release Defendants and each of the Released
2 Parties of and from any and all claims, rights, demands, charges, complaints, causes of action,
3 obligations, or liability of any and every kind between November 2, 2017 through March 9, 2023, for
4 any and all claims that were raised or could have been raised based on the factual allegations made in
5 the operative Second Amended Consolidated Complaint. This includes claims for (1) failure to pay
6 minimum wages; (2) failure to pay overtime wages at the regular rate of pay; (3) failure to provide
7 required meal periods and pay premium pay at the regular rate of pay; (4) failure to provide required rest
8 periods and pay premium pay at the regular rate of pay; (5) failure to timely pay wages due and payable
9 during employment; (6) failure to time pay wages upon separation; (7) failure to reimburse necessary
10 expenses; (8) knowing and intentional failure to comply with itemized wage statement provisions;
11 (9) failure to maintain timekeeping and payroll records; (10) failure to properly pay sick leave;
12 (11) PAGA claims for civil penalties pursuant to Labor Code sections 200, 201, 202, 203, 204, 210, 216,
13 225.5, 226, 226.3, 226.7, 246, 248, 248.5, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
14 1197.1, 1198, 1199, 2698-2699.5, and 2802; (12) claims brought under Business & Professions Code
15 section 17200 *et seq.*; (13) claims arising out of alleged violations of the California Labor Code sections
16 200, 201, 202, 203, 204, 210, 216, 225.5, 226, 226.3, 226.7, 246, 248, 248.5, 510, 512, 558, 1174,
17 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698-2699.5, and 2802, and California
18 Industrial Welfare Commission Wage Order No. 5-2001; (14) penalties of any nature; (15) interest;
19 (16) attorneys' fees and costs; and (17) any other claims arising out of or related to the Second Amended
20 Consolidated Complaint filed in the Action through March 9, 2023.

21 **6.2. Additional Release by Class Representative.** In addition to the above release
22 applicable to the Class Members, the Class Representative also generally releases any and all claims
23 against Defendants and each of the Released Parties. This general release includes any and all claims
24 arising from the employment relationship with Defendants or any Released Party, including, without
25 limitation, claims for wrongful termination, discrimination, harassment, or retaliation pursuant to Title
26 VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 *et seq.*, the California Fair Employment and
27 Housing Act, Cal. Gov't Code Section 12900 *et seq.*, or the California Labor Code. This general release
28 by the Class Representative also includes a waiver of California Civil Code Section 1542. The Class

Representative expressly waives all rights provided by California Civil Code Section 1542, or other similar statutes, that the Class Representative may have against Defendants and each of the Released Parties. California Civil Code Section 1542 states:

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

6.3. Class Representative Acknowledgements. The Class Representative acknowledges that he has read this Agreement in its entirety, including the above language from the California Civil Code, and that he fully understands both this Agreement and the California Civil Code section. By executing this Agreement, the Class Representative expressly waives any benefits and rights granted pursuant to California Civil Code Section 1542 or any statute, rule, or principle of common law or equity, in any jurisdiction, that is similar, comparable, or equivalent, in whole or in part, to California Civil Code Section 1542. The Class Representative acknowledges and agrees that this knowing and voluntary waiver is an essential and material term of this Agreement, and the Agreement would not have been entered into without such a waiver.

6.4. Injunction from Pursuing Released Claims. As part of the preliminary approval of the Settlement, Class Members shall be enjoined from filing, initiating, or continuing to prosecute any actions, claims, complaints, or proceedings in any court, or with the DLSE, or with the California Labor and Workforce Development Agency ("LWDA"), or the United States Department of Labor ("DOL"), or with any other entity regarding the Released Claims.

This Settlement is conditioned upon the release by the Settlement Class as described herein, and upon covenants by the Settlement Class that they will not participate in any actions, lawsuits, proceedings, complaints, or charges brought individually by the DLSE, LWDA, DOL, or by any other agency, persons, or entity in any court or before any administrative body related to the Released Claims, nor will the Settlement Class contest or interfere with efforts by Defendants to oppose any attempt to bring such released claims against Defendants.

6.5. Acknowledgement of Binding Terms of the Settlement, Despite Other Potential Claims. Class Counsel, the Class Representative, and the Settlement Class acknowledge that

1 they may hereafter discover facts or law different from, or in addition to, the facts or law they know or
2 believe to exist with respect to the Released Claims. The Settlement Class nonetheless agrees that this
3 Agreement and the Released Claims contained in it shall be and remain effective in all respects
4 notwithstanding such different or additional facts or law regarding such Released Claims. These
5 releases do not include any claims that cannot be waived as a matter of law, but the Settlement Class
6 agrees that they will not accept any monetary recovery or benefit from any proceedings relating to any
7 such claims.

8 **6.6. No Admission of Liability.** By entering into this Agreement, Defendants in no
9 way admit any violation of law or any liability whatsoever to Class Members, individually or
10 collectively, and expressly deny all such liability. Neither this Agreement, nor any other Settlement
11 documents, shall be offered in any case or proceeding as evidence of any admission by Defendants of
12 any liability on any claim for damages, penalties, restitution, or any other relief. Likewise, by entering
13 into this Agreement, Defendants in no way admit to the suitability of this case for class action, collective
14 action, or representative action litigation, other than for purposes of Settlement. Rather, Defendants
15 enter into this Agreement to avoid further protracted litigation and to resolve and to settle all disputes
16 with the Settlement Class.

17 The Parties understand and agree that this Agreement and all exhibits thereto are
18 settlement documents and shall be inadmissible for any purpose in any proceeding, except an action or
19 proceeding to approve, interpret, or enforce the terms of this Agreement. The Parties agree that, to the
20 extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be
21 used as the basis for an injunction against any action, suit, or other proceeding that may be instituted,
22 prosecuted, or attempted in breach of this Agreement.

23 **7. SETTLEMENT APPROVAL PROCEDURE**

24 **7.1. Preliminary Approval.** The Parties shall submit to the Court a Joint Motion for
25 Preliminary Approval of class action settlement by May 22, 2023. This motion shall seek an order to
26 preliminarily approve the proposed Settlement according to the terms in this Agreement and provide for
27 the Notice of Class Action Settlement and the Request for Exclusion, to be sent to Class Members as
28 specified in this Agreement. This motion shall include the bases for the Gross Settlement Amount and

1 why the amount is reasonable in light of the facts and controlling authorities pertaining to the claims
2 alleged in the Complaint. The motion shall also be accompanied by signed declarations by Class
3 Counsel, discussing the risks of continued litigation and the decision that the best interests of Plaintiff
4 and the Class Members are served by the terms of this Agreement.

5 **7.2. Effect of Failure to Obtain Preliminary Approval.** If this Settlement or
6 Agreement or a substantially similar settlement mutually agreed to by the Parties is not preliminarily
7 approved, the Action shall proceed as if no settlement had been attempted and revert back to its prior
8 procedural posture, *i.e.*, the First Amended Consolidated Complaint shall be the operative Complaint.
9 The Parties may, however, jointly agree to seek reconsideration of the ruling on the Settlement or Court
10 approval of a renegotiated settlement. Defendants retain the right to contest whether any aspect of the
11 Action should be maintained as a class action or representative action, or to contest the merits of the
12 claims being asserted by the Class Representative or Class Members in the Action.

13 **7.3. Final Approval.** The Parties shall submit to the Court a Joint Motion for Final
14 Approval Order. The motion shall request the entry of a Final Approval Order, which shall include
15 findings and orders: (a) approving the Settlement and the Agreement; (b) adjudging the terms to be fair,
16 reasonable, and adequate; (c) reciting the release terms in full; (d) directing that the Settlement terms
17 and provisions be carried out; and (e) retaining jurisdiction to oversee administration and enforcement of
18 the terms of this Agreement and the Court's orders.

19 **7.4. Motion for Attorneys' Fees and Costs Award.** Class Counsel shall file a
20 motion for Court approval of an attorneys' fees and costs award in the amount of (a) up to 35% of the
21 Gross Settlement Amount (or \$253,750) and (b) verified costs in the amount of up to \$25,000.
22 Defendants will not oppose the motion provided it is consistent with this paragraph. Defendants will not
23 be required to support such a motion.

24 **7.5. Entry of Judgment.** At the final approval hearing, the Parties shall request that
25 the Court, among other things: (a) enter final judgment in accordance with this Agreement and without
26 further fees or costs to any party except as expressly set forth in this Agreement; (b) approve this
27 Agreement as fair, reasonable, adequate, and binding on all members of the Settlement Class; (c) enter
28 an order as to Class Counsel's request for an attorneys' fees and costs award; (d) enter an order as to the

request for the Class Representative Incentive Payment; and, (e) enter an order permanently enjoining all members of the Settlement Class from pursuing or seeking to reopen claims that have been released by this Agreement.

7.6. Effect of Failure to Obtain Final Judgment. In the event the Court fails to enter final judgment in accordance with this Agreement, or such final judgment is vacated or reversed, the Action shall proceed as if no settlement had been attempted and revert back to its prior procedural posture, *i.e.*, the First Amended Consolidated Complaint shall be the operative Complaint. The Parties may, however, jointly agree to seek reconsideration or appellate review of the ruling or Court approval of a renegotiated settlement. Defendants retain the right to contest whether any aspect of the Action should be maintained as a class action or representative action, or to contest the merits of the claims being asserted by the Class Representative or Class Members in the Action.

7.7. Waiver of Appeal Rights. By accepting this Settlement, authorizing the dismissal of the Action with prejudice, and upon final approval of the settlement being granted, the Class Representative and Class Counsel hereby waive any and all rights they may have to appeal any judgment, ruling, or order made by the Court in this Action, including, without limitation, any order granting final approval of this Settlement or dismissing the Action with prejudice. This includes all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, a motion for relief under Fed. R. Civ. P. 60, and any extraordinary writ, and the Judgment therefore will become nonappealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as their appeal is finally resolved and the Judgment becomes final.

8. MISCELLANEOUS

8.1. Interim Stay of Proceedings. The Parties agree to refrain from further litigation, except such proceedings necessary to implement and to obtain a Preliminary Approval Order and Final Approval Order of the terms of the Agreement. If the Settlement is not finally approved, the Parties agree that they will revert to their positions in the lawsuit prior to the time the Settlement was reached,

1 and no agreements set forth in this Agreement or any documents generated or orders issued related to
2 the Settlement will be admissible in any future proceeding in this or any other action.

3 **8.2. Parties' Authority.** The signatories hereto represent that they are fully
4 authorized to enter into this Agreement and are fully authorized to bind the Parties to all terms stated
5 herein. It is agreed that Class Members are so numerous that it is impossible or impractical to have each
6 Class Member execute this Agreement. It is agreed that this Agreement may be executed on behalf of
7 Class Members by the Class Representative and Class Counsel.

8 **8.3. Entire Agreement.** This Agreement, which includes the Definitions, Recitals,
9 and all Exhibits attached hereto, constitutes the entire agreement between the Parties with regard to the
10 subject matter contained herein, and all prior and contemporaneous negotiations and understandings
11 between the Parties shall be deemed merged into this Agreement.

12 **8.4. Materiality of Terms.** The Parties have arrived at this Agreement as a result of
13 arm's-length negotiations. Where stated in this Agreement, certain terms are material and revision of
14 these material terms will allow Defendants the option to void this Agreement.

15 **8.5. Counterparts.** This Agreement may be executed in counterparts, and when each
16 party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
17 original, and when taken together with other signed counterparts, shall constitute one signed Agreement,
18 which shall be binding upon and effective as to all Parties.

19 **8.6. Facsimile or Scanned Signatures For This Agreement.** Any party may sign
20 and deliver this Agreement by signing on the designated signature block and transmitting that signature
21 page via facsimile or as an attachment to an e-mail to counsel for the other party. Any signature made
22 and transmitted by facsimile or as an attachment to an e-mail for the purpose of executing this
23 Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding
24 upon the party who transmits the signature page.

25 **8.7. Binding Effect.** This Agreement shall be binding upon the Parties and, with
26 respect to the Class Representative, Class Members, their spouses, children, representatives, heirs,
27 administrators, executors, beneficiaries, conservators, attorneys, and assigns.
28

1 8.8. **Waivers and Modifications to Be in Writing.** No waiver, modification, or
2 amendment of the terms of this Agreement, whether purportedly made before or after the Court's
3 approval of this Agreement, shall be valid or binding, unless in writing, signed by or on behalf of all
4 Parties and then only to the extent set forth in such written waiver, modification, or amendment, subject
5 to any required Court approval. Any failure by any Party to insist upon the strict performance by the
6 other Party of any of the provisions of this Agreement shall not be deemed a waiver of future
7 performance of the same provisions or of any of the other provisions of this Agreement, and such Party,
8 notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of
9 any and all of the provisions of this Agreement. The time periods and dates provided in this Agreement
10 with respect to giving of notices and hearings are subject to Court approval and modification by the
11 Court or by written stipulation of Class Counsel and Defendants' Counsel.

12 Any notice to be given pursuant to this Agreement shall be made by email and
13 overnight delivery to Class Counsel or Defendants' Counsel. If Class Members have questions about
14 this Agreement or their Individual Settlement Payments, they must contact Class Counsel, rather than
15 Defendants. Defendants shall have no obligation to respond to communications by Class Members.

16 8.9. **Construction.** The determination of the terms and conditions of this Agreement
17 has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this
18 Agreement, and the terms and conditions of this Agreement are not intended to be, and shall not be,
19 construed against any party by virtue of draftsmanship.

20 8.9.1 **Exhibits Incorporated by Reference.** The terms of this
21 Agreement include the terms set forth in any attached exhibit, which are incorporated by this reference
22 as though fully set forth herein. Any exhibit to this Agreement is an integral part of the Settlement.

23 8.9.2 **Captions.** The captions or headings of the sections and paragraphs
24 of this Agreement have been inserted for convenience of reference only and shall have no effect upon
25 the construction or interpretation of any part of this Agreement.

26 8.9.3 **Invalidity of Any Provision.** Before declaring any provision of
27 this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent
28

possible consistent with applicable precedents so as to render all provisions of this Agreement valid and enforceable.

8.10. **Further Acts and Cooperation Between the Parties.** The Parties shall cooperate fully with each other and shall use their best efforts to obtain the Court's approval of this Agreement and all of its terms. Each of the Parties, upon the request of another, agrees to perform such further acts and to execute and to deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

8.11. **No Prior Assignments or Undisclosed Liens.** The Class Representative and Class Counsel represent and warrant that they have not assigned, transferred, conveyed, or otherwise disposed of, or purported to assign, transfer, convey, or otherwise dispose of, any Released Claims or the attorneys' fees and costs award to be paid pursuant to this Agreement. The Class Representative and Class Counsel further represent and warrant that there are not any liens or claims against any of the amounts to be paid by Defendants pursuant to this Agreement. The Class Representative and Class Counsel agree to defend, to indemnify, and to hold Defendants harmless from any liability, losses, claims, damages, costs, or expenses, including reasonable attorneys' fees, resulting from a breach of these representations or from any lien or assignment.

8.12. **Waiver of Right to Object by the Class Representative.** The Class Representative agrees to sign this Agreement, and by signing this Agreement, the Class Representative is thereby bound by the terms of this Agreement. The Class Representative further agrees that he shall not object to any of the terms of this Agreement.

8.13. **No Solicitation of Objections.** The Parties further represent and warrant that they have not and will not solicit, encourage, or assist in any fashion any effort by any entity or person to object to or to seek exclusion from the Settlement set forth in this Agreement.

8.14. **Discovery of Confidential Documents and Information.** Class Counsel agree that they will destroy all confidential documents and information provided to them by Defendants within 60 calendar days after the completion of the administration of the Settlement. Class Counsel further agrees that none of the documents and information provided to them by Defendants shall be used for any purpose other than prosecution of this Action or the defense or prosecution of a malpractice action.

1 8.15. **No Tax Advice.** Neither Class Counsel, Defendants' Counsel, or Defendants
2 intend anything contained in this Settlement or Agreement to constitute advice regarding taxes or
3 taxability, nor shall anything in this Settlement or Agreement be relied upon as such within the meaning
4 of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.

5 8.16. **No Media Announcements.** Neither side shall make any public statements to the
6 news, print, electronic, or Internet media concerning the Settlement, and both sides shall decline to
7 respond to media inquiries concerning the Settlement. Class Counsel shall not publicize the settlement
8 in their marketing materials, website, or other advertising media.

9 8.17. **Continuing Jurisdiction.** The Court shall retain jurisdiction over the
10 implementation of this Agreement as well as any and all matters arising out of, or related to, the
11 implementation of this Agreement and Settlement. The Court shall not have jurisdiction to modify the
12 terms of the Agreement without the consent of all of the Parties.

13 8.18. **Disputes.** If the Parties have a dispute with regard to the language of this
14 Agreement, they agree to first attempt to resolve the dispute informally through good-faith negotiations
15 with mediator Paul Grossman, but if those efforts are unsuccessful, they agree to mediate any such
16 dispute. The Parties will split the costs of the mediator, and all parties will bear their own fees and costs.

17 8.19. **Governing Law.** This Settlement and Agreement was made and entered into in
18 the State of California. All terms of this Agreement shall be governed by and interpreted according to
19 the substantive laws of the State of California and the procedural laws of the United States of America.

20 **SO AGREED AND STIPULATED:**

21 DATED: May 17, 2023

PLAINTIFF JOE VIGIL

22 By:

23 Joe Vigil

DocuSigned by:

Joe Vigil

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1 DATED: May__, 2023

DEFENDANTS HYATT CORPORATION and
GRAND HYATT S.F., LLC

2
3 By: _____

4 Print Name: _____

5 Title: _____

6
7 DATED: May 17, 2023

JAMES HAWKINS APLC

8
9 By:  _____
James R. Hawkins
Christina M. Lucio

10 Attorneys for Plaintiff and the Class

11
12 DATED: May__, 2023

SEYFARTH SHAW LLP

13
14 By: _____
Brian P. Long
Michael Afar
Phillip J. Ebsworth

15
16 Attorneys for Defendants
17 HYATT CORPORATION and
GRAND HYATT S.F., LLC

1 DATED: May __, 2023
2 5/17/2023

DEFENDANTS HYATT CORPORATION and
GRAND HYATT S.F., LLC

3 By: _____

DocuSigned by:

David Lewin

7C3AAFFBF9C9486...

4 Print Name: David Lewin

5 Title: GM

6
7 DATED: May __, 2023

JAMES HAWKINS APLC

8 By: _____

James R. Hawkins

Christina M. Lucio

10 Attorneys for Plaintiff and the Class

11
12 DATED: May __, 2023
13 5/16/2023

SEYFARTH SHAW LLP

14 By: _____

DocuSigned by:

Michael Afar

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Brian P. Long

Michael Afar

Phillip J. Ebsworth

16 Attorneys for Defendants
17 HYATT CORPORATION and
18 GRAND HYATT S.F., LLC

EXHIBIT A

NOTICE OF SETTLEMENT OF CLASS ACTION

Joe Vigil v. Hyatt Corporation, et al.

United States District Court, Northern District of California

Case No. 4:22-cv-00693-HSG

To: All current and former non-exempt, hourly employees working for Defendants Hyatt Corporation and Grand Hyatt S.F., LLC (collectively “Hyatt”) at the Grand Hyatt San Francisco hotel at any time between November 2, 2017 to March 9, 2023 (the “Class”):

THIS NOTICE is of a proposed settlement of a class action and representative lawsuit, and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on [INSERT DATE] to address whether the proposed settlement should be approved (“Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

[IDENTIFYING INFORMATION]

You have been identified as a Class Member in the above lawsuit. Under the terms of the proposed settlement, you are estimated to receive approximately \$[INSERT AMOUNT] as your share of the Net Settlement Amount should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share of the Net Settlement Amount may be more or less than this estimate. Your estimate is based on the number of weeks you worked at the Grand Hyatt San Francisco hotel in California between November 2, 2017 to March 9, 2023 (the “Class Period”). Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT (SEE SECTION VIII FOR MORE DETAILS)	
DO NOTHING	Receive a settlement payment and give up your right to sue on the Released Claims described in Section III. This settlement does <u>not</u> require a claims process to receive a payment. Therefore, there is <u>no</u> claim form for you to complete should you wish to receive payment. You are automatically included and eligible to receive a payment once the Court approves the settlement.
EXCLUDE YOURSELF	You may “opt-out” of any connection with this case including any right to a settlement payment. If you choose to opt-out, you must submit a Request for Exclusion by [INSERT DATE] (see Section VI). All persons who validly and timely opt-out of the Settlement will <u>not</u> receive any settlement payment and will preserve Released Claims described in Section IV subject to applicable statutes of limitations, except that Settlement Class Members who worked during the PAGA limitations period are nevertheless bound by the release of the PAGA claims.
OBJECT	Write to the Court and Settlement Administrator about why you do not like the Settlement by completing and submitting an Objection by [INSERT DATE] (see Section VI).
GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement.

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Joe Vigil v. Hyatt Corporation, et al.*, United States District Court, Northern District of California Case No. 4:22-cv-00693-HSG (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

Hyatt’s records show that you were employed in California at the Grand Hyatt San Francisco as a non-exempt, hourly employee at some point between November 2, 2017 to March 9, 2023. The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by Hyatt at the Grand Hyatt San Francisco as a non-exempt, hourly employee in California during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

On or about November 2, 2021, Plaintiff Joe Vigil, filed a class action complaint against Hyatt in San Francisco County Superior Court, Case No. CGC-21-596464. On or about January 7, 2022, Plaintiff filed a PAGA representative action complaint against Hyatt in San Francisco County Superior Court, Case No. CGC-22-597517. Both actions were removed to the United States District Court for the Northern District of California and consolidated as Case No. 4:22-cv-00693-HSG.

The consolidated class and representative action on behalf of himself and other similarly situated and “aggrieved” employees, assert claims against Hyatt for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Owed; (3) Failure to Provide Lawful Meal Periods; (4) Failure To Authorize And Permit Rest Periods; (5) Failure to Timely Pay Wages Upon Separation; (6) Failure to Reimburse Necessary Expenses; (7) Violation of the Unfair Competition Law; and (8) Penalties Under Private Attorneys General Act, Labor Code § 2698 *et seq.* Hyatt denies these allegations and contends that it has done nothing wrong. It denies that it owes any wages, expenses, restitution, penalties, or other damages. Accordingly, this class Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Hyatt, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff’s claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, Hyatt and Plaintiff have concluded that it is in their respective best interests and the interests of the Settlement Class to settle the Lawsuit on the terms summarized in this Notice. After an extensive exchange of information to Class Counsel by Hyatt, the Settlement was reached following an arm’s length mediation. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Proposed Settlement was a good option to resolve the disputed claims.

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

If you are still employed by Hyatt, this Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Further, Hyatt will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement. If a Class Member does not participate, their share will be paid to those who do participate.

III. Who are the attorneys?

Attorneys for the Class Members:

JAMES HAWKINS APLC
James R. Hawkins (SBN 192925)
Christina M. Lucio (SBN 253677)
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676
James@Jameshawkinsaplc.com
Christina@Jameshawkinsaplc.com

IV. What are the terms of the Settlement?

On [PA DATE], the Court certified a class, for settlement purposes only, of all non-exempt employees employed by the Company in California between November 2, 2017 to March 9, 2023 (the "Settlement Class"). Individuals who do not opt out of the Settlement Class, pursuant to the procedures set forth in this Notice, will be mailed Settlement checks and in exchange be bound by the Settlement and release of certain wage and penalty claims against Hyatt.

Without admitting any wrongdoing, the Company has agreed to pay Seven Hundred and Twenty-Five Thousand Dollars (\$725,000) (the "Settlement Amount") to fully resolve all claims in the Lawsuit, which includes payments for Individual Settlement Payments to eligible Class Members, the California Labor & Workforce Development Agency ("LWDA"), attorneys' fees and costs, Settlement Administration Costs, and a Class Representative Service Payment.

The Parties agreed to the following payments from the Settlement Amount:

Settlement Administration Costs. The Court has approved Phoenix Class Action Administration Services, to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of Nine Thousand Seven Hundred Fifty Dollars (\$9,750) will be paid from the Settlement Amount to pay the Settlement Administration Costs.

Penalties to the LWDA. Ten Thousand Dollars (\$10,000) of the Settlement Amount will be allocated to Plaintiff's claim under PAGA. Of this amount, Seven Thousand Five Hundred Dollars (\$7,500) will be paid to the LWDA in satisfaction of the claims for penalties under PAGA, and the remaining Two Thousand Five Hundred Dollars (\$2,500) will be included in the Net Settlement Amount to be divided between all Class Members.

Service Payment to Settlement Class Representative. Class Counsel will ask the Court to award Plaintiff a Service Payment in the amount of Ten Thousand Dollars (\$10,000) to compensate him for service and extra work provided on behalf of the Class Members. The Plaintiff also may receive a share of the Settlement as a Class Member.

Attorneys' Fees and Expenses. Class Counsel (James Hawkins APLC) have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of one-third of the common fund Settlement Amount (\$241,666.67) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to Twenty-Five Thousand Dollars (\$25,000.00) for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above, the balance will form the Net Settlement Amount for distribution to the participating Class Members (who are Class Members who do not opt-out). The Net Settlement Amount will total approximately \$431,083.33(\$XXX). Compensable work weeks will be all Workweeks Worked by the Settlement Class Members during the Class Period. The dollars per compensable Workweek will be calculated by dividing the total Workweeks Worked (excluding any excluded workweeks) by all Settlement Class Members into the Net Settlement Amount to determine a per work week value ("Workweek Value"). The Workweek Value will be multiplied by the number of Workweeks Worked by each Settlement Class Member during the Class Period to determine the distribution, prior to legal deductions, for each Settlement Class Member. If any individual in the Settlement Class opts-out of the Settlement, his/her Individual Settlement Amount will be distributed to all Participating Class Members (i.e., those who do not opt-out).

For each Settlement Class Member, the Weeks Worked for Hyatt at the Grand Hyatt San Francisco hotel during the Class Period will be calculated from Hyatt's records. Hyatt's records indicate that you worked for [TOTAL WORKWEEKS] Workweeks in California at the Grand Hyatt San Francisco during the Class Period of November 2, 2017 to March 9, 2023. If you disagree with this number, you may submit evidence to the Settlement Administrator on or before [INSERT DATE], with documentation to establish the number of weeks you claim to have actually worked for Company in California between November 2, 2017 to March 9, 2023 (excluding any excluded workweeks). **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Parties and Administrator will evaluate the evidence submitted by the Settlement Class Member and discuss in good faith how many Workweeks should be credited to each Settlement Class Member. If the Parties are unable to agree, the Settlement Administrator will render a final decision.

Payments to Participating Class Members. After the Court grants Final Approval of the Settlement and Judgment is entered, settlement checks will be mailed to all participating Class Members who did not timely request to be excluded. Participating Class Members will have 180 days from the issuance of the last check to cash their checks. In the event that any Class Member fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be sent to the California Unclaimed Property Fund in the name of the Class Member, so that the Class Member can attempt to collect the funds at a later date.

Allocation and Taxes. Twenty percent (20%) of the Settlement Amount distributed to each participating Class Member will be considered and reported as “wages” (W-2 reporting). The remaining eighty percent (80%) of the Settlement Amount distributed to each participating Class Member will be distributed to each participating Class Member as “interest” and non-wage “penalties” (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Settlement payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest or non-wage penalty distribution; however, it will be reported on IRS Form 1099 as income. Class Members are responsible for the proper income tax treatment of the Settlement Amounts. The Settlement Administrator, Hyatt and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments. Participating Class Members will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments. Accordingly, Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. Once the Court approves the proposed Settlement, enters Judgment and Hyatt funds the Settlement Amount, then the Settlement Agreement will bind all Participating Class Members who have not opted out of the Settlement, and will bar them from bringing certain claims against Hyatt as described below. Specifically, after Final Approval by the Court, the Participating Class Members and each of their respective executors, administrators, representatives, agents, heirs, successors, assigns, trustees, spouses, or guardians, will release Defendants and each of the Released Parties of and from any and all claims, rights, demands, charges, complaints, causes of action, obligations, or liability of any and every kind between November 2, 2017 through March 9, 2023, for any and all claims that were raised or could have been raised based on the factual allegations made in the operative Second Amended Consolidated Complaint. This includes claims for (1) failure to pay minimum wages; (2) failure to pay overtime wages at the regular rate of pay; (3) failure to provide required meal periods and pay premium pay at the regular rate of pay; (4) failure to provide required rest periods and pay premium pay at the regular rate of pay; (5) failure to timely pay wages due and payable during employment; (6) failure to time pay wages upon separation; (7) failure to reimburse necessary expenses; (8) knowing and intentional failure to comply with itemized wage statement provisions; (9) failure to maintain timekeeping and payroll records; (10) failure to properly pay sick leave; (11) PAGA claims for civil penalties pursuant to Labor Code sections 200, 201, 202, 203, 204, 210, 216, 225.5, 226, 226.3, 226.7, 246, 248, 248.5, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698-2699.5, and 2802; (12) claims brought under Business & Professions Code section 17200 et seq.; (13) claims arising out of alleged violations of the California Labor Code sections 200, 201, 202, 203, 204, 210, 216, 225.5, 226, 226.3, 226.7, 246, 248, 248.5, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698-2699.5, and 2802, and California Industrial Welfare Commission Wage Order No. 5-2001; (14) penalties of any nature; (15) interest; (16) attorneys’ fees and costs; and (17) any other claims arising out of or related to the Second Amended Consolidated Complaint filed in the Action through March 9, 2023. These released claims and damages are hereinafter referred to as “Released Claims.” The time period governing these Released Claims shall be at any time from November 2, 2017 to March 9, 2023 (“Release Period”). Any Settlement Class Member who timely requests exclusion in compliance with these requirements will not be bound by this Release, except that Settlement Class Members who worked during the PAGA limitations period are nevertheless bound by the release of the PAGA claims.

Waiver of Labor Code Section 206.5(e). Class Members who do not opt out will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Payments. That section provides in pertinent part as follows:

“No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made.”

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

V. How can I claim money from the settlement?

You are automatically included as a Settlement Class Member to receive an Individual Settlement Payment, provided that you do not exercise your right to opt-out as explained below, and do not have to take any further action. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or an Individual Settlement Amount.

VI. What other options do I have?

- A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive an Individual Settlement Payment unless you exclude yourself from the settlement by following the exclusion procedure set forth below. If you disagree with the number of Weeks Worked, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described below.

If you are a current employee, your decision as to whether or not to participate in this Settlement will not be considered by Hyatt, and Hyatt will not take any adverse employment action against you based on your participation in the Settlement.

- B. **Exclude Yourself from the Settlement.** You may submit a Request for Exclusion to “opt out” of this Settlement. If you do not want to remain a Class Member, you must submit the enclosed Request for Exclusion to “opt out” of the Settlement. If you submit a timely and valid Request for Exclusion, you will not receive any Individual Settlement Payment. If you opt out, you may not object to the Settlement and will not be bound by the release provisions in the Settlement Agreement. You will be free to pursue any claims you may have against Hyatt on your own behalf, but Class Counsel will not represent you.

In order to exclude yourself from the Class, you must submit the completed Request for Exclusion to the Settlement Administrator, [ADDRESS], so that it is postmarked no later than [INSERT DATE]. If you do not comply with these procedures and the deadline for exclusions, you will lose any opportunity to exclude yourself from the Settlement, and your rights will be determined in this lawsuit by the Settlement Agreement if it is approved by the Court and you may not recover under any other individual settlement agreement with respect to the Release of Claims, including California Labor Code, California Industrial Welfare Commission Wage Orders, California Private Attorneys General Act of 2004 under California Labor Code §§ 2968, *et seq.*, and California Unfair Competition Law under California Business and Professions Code §§ 17200 *et seq.*

- C. **Object to Settlement.** You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the proposed Settlement, or any portion of it, you must submit a written objection stating your full name, address, telephone number, dates of employment at Company, the case name and number, the name and address of your attorney(s) if you are represented, each specific reason in support of your objection, and any legal support for each objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and must be mailed to the Settlement Administrator, [ADDRESS], by no later than [INSERT DATE] for your objection to be considered. Objections that do not include all required information, or that are not submitted timely, will not be considered. **You need not object to the Settlement if you only dispute the number of Weeks Worked.**

VII. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you were employed by Hyatt at the Grand Hyatt San Francisco hotel at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the above-described Released Claims. If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue, and the releases will not take effect.

VIII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, and Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Service Payment to the Class Representative on [INSERT DATE] at [INSERT TIME] in Courtroom 2 of the United States District Court Northern District of California Oakland Courthouse, located at 1301 Clay Street, Oakland, California 94612. You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

IX. How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Stipulation for Class Action Settlement and Release of Claims (the Settlement Agreement) at Office of the Clerk, United States District Court Northern District of California Oakland Courthouse, located at 1301 Clay Street, Oakland, California 94612, during regular court hours. You may also contact Class Counsel or the Settlement Administrator using the contact information listed above for more information.

**PLEASE DO NOT CALL OR WRITE THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT**

EXHIBIT B

**REQUEST FOR EXCLUSION FROM SETTLEMENT
AND EXCLUSION FROM INDIVIDUAL SETTLEMENT PAYMENT**

Joe Vigil v. Hyatt Corporation, et al.

United States District Court, Northern District of California

Case No. 4:22-cv-00693-HSG

**YOU MAY TIMELY SUBMIT THIS REQUEST FOR EXCLUSION *ONLY* IF YOU
DO NOT WISH TO BE INCLUDED IN THE SETTLEMENT AND IF YOU DO NOT
WISH TO RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT.**

INSTRUCTIONS:

You must timely complete, sign, and mail this Request for Exclusion if you want to “opt out” of the Settlement and do not want to receive an Individual Settlement Payment. If you choose to continue to pursue the lawsuit, you will have to find new counsel at your own expense.

IDENTIFYING INFORMATION

Please verify and/or complete any missing identifying information:

NAME AND FORMER NAMES (IF ANY): _____

ADDRESS LINE 1 _____

ADDRESS LINE 2 _____

LAST FOUR DIGITS OF _____

SOCIAL SECURITY NUMBER _____

TELEPHONE NUMBER _____

If you want to be excluded from the Settlement and not receive an Individual Settlement Payment, you must timely file this Request for Exclusion with [INSERT SETTLEMENT ADMINISTRATOR INFORMATION] no later than [INSERT DATE].

I declare the foregoing to be true and correct under penalty of perjury under the laws of the United States and the State of California.

Date: _____, 2023

Signed: _____

EXHIBIT C

James R. Hawkins (SBN 192925)
Christina M. Lucio (SBN 253677)
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676
James@Jameshawkinsaplc.com
Christina@Jameshawkinsaplc.com

Attorneys for Plaintiff JOE VIGIL
on behalf of himself and all others similarly situated

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOE VIGIL, individually and on
behalf of himself and all others
similarly situated,

Plaintiff,

v.

HYATT CORPORATION, a
Delaware Corporation; GRAND
HYATT S.F., LLC, a Delaware
Limited Liability Company, doing
business as GRAND HYATT SAN
FRANCISCO, and DOES 1-50,
inclusive,

Defendants.

Case No. 3:22-CV-00693-HSG

Assigned for All Purposes To:
Hon. Haywood S. Gilliam, Jr.

SECOND AMENDED
CONSOLIDATED COMPLAINT
FOR:

- 1) Failure to Pay Minimum Wages;
- 2) Failure to Pay Overtime Owed;
- 3) Failure to Provide Lawful Meal Periods;
- 4) Failure To Authorize And Permit Rest Periods;
- 5) Failure to Timely Pay Wages Upon Separation;
- 6) Failure to Reimburse Necessary Expenses;
- 7) Violation of the Unfair Competition Law;
- 8) Penalties Under Private Attorneys General Act, Labor Code § 2698 et seq.

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff JOE VIGIL (“Plaintiff”), individually and on behalf of others similarly situated, and asserts claims against defendants HYATT CORPORATION, a Delaware Corporation; GRAND HYATT S.F., LLC, a Delaware Limited Liability Company, doing business as GRAND HYATT SAN FRANCISCO; and DOES 1-50, inclusive (collectively “Defendants” or “Grand Hyatt”) as follows:

INTRODUCTION

1. This is a Class Action, pursuant to California Code of Civil Procedure section 382 and Federal Rule of Civil Procedure Rule 23(b)(3) and (b)(1), on behalf of Plaintiff and any and all persons who are or were employed by Hyatt Corporation or Grand Hyatt S.F., LLC, either directly or indirectly, as non-exempt employees at the Grand Hyatt San Francisco hotel in the State of California at any time from four years prior to the filing of this Complaint through resolution or trial of the matter. (“Class Members” or “Non-Exempt Employees”).

2. Defendants implemented uniform policies and practices that deprived Plaintiff and Class Members of earned wages, including minimum wages; straight time wages; overtime wages; premium wages; lawful meal and/or rest breaks; reimbursement for necessary expenses; and timely payment of wages.

3. Such actions and policies, as described above and further herein, were and continue to be in violation of the California Labor Code. Plaintiff, on behalf of himself and all Class members, bring this action pursuant to the California Labor Code, the applicable Wage Order, and the Business and Professions Code seeking unpaid wages, unpaid meal and rest period compensation, restitution, unreimbursed expenses, penalties, liquidated damages, and reasonable attorneys’ fees and costs.

4. Plaintiff, on behalf of himself and others similarly situated, pursuant to Business and Professions Code sections 17200-17208, also seek restitution from Defendants for their failure to pay to Plaintiffs and Class Members all of their wages, including overtime and premium wages.

1 5. Notwithstanding anything to the contrary herein, none of the claims
2 asserted in this action encompass those claims released in the Settlement in the action
3 entitled Crump v. Hyatt Corporation, Northern District of California Case No. 4:20-
4 cv-00295-HSG. The Crump settlement releases all claims asserted or that could have
5 been asserted based on the facts and theory that Defendant or any of the Released
6 Parties maintained a timekeeping system that unlawfully rounded time as alleged in
7 the Second Amended Complaint in the Action between December 6, 2015 and the
8 date of preliminary approval of the Crump settlement.

9 6. This is also a representative action arising under the Private Attorneys
10 General Act, Labor Code section 2698 et seq. ("PAGA"). Plaintiff brings this action
11 pursuant to the PAGA on a representative basis on behalf of all non-exempt
12 employees, who are or were employed by Hyatt Corporation or Grand Hyatt S.F.,
13 LLC, either directly or indirectly, as non-exempt employees at the Grand Hyatt San
14 Francisco hotel in the State of California from one year prior to the filing of the
15 PAGA notice (as tolled by Emergency Rule 9) to the conclusion of this action.

16 7. Plaintiff seeks civil penalties for Defendants' violation of various
17 provisions of the California Labor Code and IWC Wage Order. Defendants'
18 violations include: (1) failure to pay minimum wages; (2) failure to pay overtime
19 owed; (3) failure to provide lawful meal periods; (4) failure to authorize and permit
20 rest periods; (5) failure to timely pay wages due and payable during employment; (6)
21 failure to time pay wages upon separation; (7) failure to reimburse necessary
22 expenses; (8) knowing and intentional failure to comply with itemized wage
23 statement provisions; (9) failure to maintain timekeeping and payroll records; and
24 (10) failure to properly pay sick leave. For the avoidance of doubt, Plaintiff seeks
25 penalties under PAGA for violation of the following Labor Code sections 200, 201,
26 202, 203, 204, 210, 216, 225.5, 226, 226.3, 226.7, 246, 248, 248.5, 510, 512, 558,
27 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698-2699.5, and
28 2802.

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9. Venue is proper in the Northern District of California because the case was removed from the Superior Court of San Francisco. In addition, pursuant to 28 U.S.C. § 1391, venue is proper because Defendants are corporations that (i) are subject to personal jurisdiction in this District, and, therefore, reside in this District and/or (ii) committed the wrongful conduct against certain members of the Class in this District.

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11. Defendant Grand Hyatt S.F., LLC is a Delaware Limited Liability Company. doing business in the state of California. It is based at 150 N. Riverside Place, 14th Floor, Legal Chicago, Illinois 60606.

13. Upon information and belief, Grand Hyatt employs Non-Exempt Employees, like Plaintiff, throughout the State of California and specifically in San Francisco at the Grand Hyatt San Francisco.

15. Plaintiff was employed in an hourly, non-exempt position by Defendants during the relevant time period.

16. Plaintiff and the members of the putative class were employed as hourly

1 paid employees employed by Defendants, either directly or indirectly, at the Grand
2 Hyatt San Francisco hotel in the State of California at any time from four years prior
3 to the filing of the initial Complaint giving rise to this matter.

4 17. Whenever in this complaint reference is made to any act, deed, or
5 conduct of Defendants, the allegation means that Defendants engaged in the act,
6 deed, or conduct by or through one or more of Defendants' officers, directors, agents,
7 employees, or representatives, who was actively engaged in the management,
8 direction, control, or transaction of the ordinary business and affairs of Defendants.

9 18. The true names and capacities of Defendants, whether individual,
10 corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are
11 currently unknown to Plaintiff, who therefore sue Defendants by such fictitious
12 names under Code of Civil Procedure § 474. Plaintiff will seek leave of court to
13 amend this Complaint to reflect the true names and capacities of the Defendants
14 designated hereinafter as DOES when such identities become known.

15 19. Plaintiff is informed and believes, and thereon allege, that the Doe
16 Defendants are the partners, agents, or principals and co-conspirators of Defendants
17 and of each other; that Defendants and the Doe Defendants performed the acts and
18 conduct herein alleged directly, aided and abetted the performance thereof, or
19 knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct,
20 and therefore each of the Doe Defendants is liable to the extent of the liability of the
21 Defendants as alleged herein.

22 20. Plaintiff is further informed and believes, and thereon allege, that at all
23 times material herein, each Defendant was completely dominated and controlled by
24 its co-Defendants and each was the alter ego of the other. Whenever and wherever
25 reference is made in this complaint to any conduct by Defendant or Defendants, such
26 allegations and references shall also be deemed to mean the conduct of each of the
27 Defendants, acting individually, jointly, and severally. Whenever and wherever
28 reference is made to individuals who are not named as Defendants in this complaint,

1 but were employees and/or agents of Defendants, such individuals, at all relevant
2 times acted on behalf of Defendants named in this complaint within the scope of their
3 respective employments.

4 FACTUAL ALLEGATIONS

5 21. During the relevant time frame, Defendants compensated Plaintiff and
6 the Non-Exempt Employees based upon an hourly wage.

7 22. Plaintiff and the Class Members were, and at all times pertinent hereto,
8 have been non-exempt employees within the meaning of the California Labor Code,
9 and the implementing rules and regulations of the IWC California Wage Orders.
10 They are subject to the protections of the IWC Wage Orders and the Labor Code.

11 23. During the relevant time, Plaintiff was employed by Defendants in an
12 hourly, non-exempt position. He worked as a security officer in Defendants'
13 facilities approximately 5 days per week, 40+ hours per week.

14 24. Plaintiff is informed and believes, and thereon alleges, that Defendants
15 are and were advised by skilled lawyers and other professionals, employees, and
16 advisors with knowledge of the requirements of California's wage and employment
17 laws.

18 25. All Class Members are similarly situated in that they are all subject to
19 Defendants' uniform policies and systemic practices as specified herein.

20 26. Plaintiff and the Class Members were required to clock in at the
21 beginning of their shifts, clock out for lunch, in at the end of their lunch periods and
22 out at the end of their shifts. However, Plaintiff and the Class Members were not
23 paid for all hours worked because employees were required to work off the clock
24 such that they were not paid for all hours worked. .

25 27. By way of example only, during the height of the Covid-19 pandemic
26 (from approximately March 2020 through at least the end of Plaintiff's
27 employment), Plaintiff and the Class Members were generally required by
28 Defendants to remain on premises during purported meal and rest periods in

1 violation of the law. See, Estrada v. Royalty Carpet Mills, Inc., 76 Cal. App. 5th
2 685, 705 (2022) [on-premises meal policy was noncompliant, so it was obligated to
3 provide premium pay to these employees].

4 28. To the extent Defendant contends that its written policies were
5 compliant, employees were discouraged from leaving the premises during meal and
6 rest periods to avoid having to re-screen for Covid. Every time an employee entered
7 the premises they had to have an off-the-clock Covid-19 screening—often there was
8 a line so employees had to wait. This cut into meal and rest breaks.

9 29. By way of further example, as a matter of Defendants' policy and
10 practice, Plaintiff and other Class Members were required to carry certain work-
11 related devices (such as walkie talkies, company cellular phones, and handheld
12 devices/sensors) with them during working hours, including during meal and rest
13 periods. Meal and rest periods were frequently interrupted as a result.

14 30. Such time during purported meal periods counts as hours worked and
15 must be compensated.

16 31. In addition, Plaintiff and the Class Members were required to engage
17 in Covid-19 screenings while off the clock.

18 32. Further, security personnel (a subset of the Class Members) were
19 required to remain at their posts during their shifts without breaks because they had
20 to perform the screenings and watch the security cameras.

21 33. In addition, Plaintiff and the Class Members worked in excess of eight
22 (8) hours in day and/or over forty (40) hours in a workweek but were not properly
23 paid for such time at a rate of time and one-half the employee's regular rate of pay
24 per hour.

25 34. Plaintiff and, upon information and belief, the other Class Members
26 were paid certain non-discretionary sums which Defendants into the regular rate.

27 35. By way of example, during the pay period beginning 8/23/2020 and
28

1 ending 09/05/2020, Plaintiff was paid a sum of \$883.52 for “Other Non Ot” wages.
2 Plaintiff is informed and believes that this amount constitutes non-discretionary
3 compensation which should be included in calculating the regular rate but was not.
4 Indeed, Plaintiff was paid overtime (\$41.4150) and double-time (\$55.2200) during
5 this pay period which was solely calculated based upon his regular base hourly
6 wage of \$27.61.

7 36. Plaintiff is informed and believes that other Class Members were paid
8 other similar non-discretionary sums which were not factored into the regular rate.
9 Accordingly, Plaintiff and the Class Members were undercompensated.

10 37. Plaintiff alleges that this failure to properly calculate the regular rate
11 led to the systematic underpayment of overtime, sick leave, and meal and rest
12 period premiums. By way of example during the pay period beginning 8/23/2020
13 and ending 09/05/2020, Plaintiff was paid both a meal and rest period premium, but
14 these sums were also paid at his regular base hourly rate of \$27.61. These sums did
15 not include the additional non-discretionary compensation paid.

16 38. Plaintiff and the Class Members were regularly required to work shifts
17 in excess of five hours without being provided a lawful meal period and, on
18 occasion, over ten hours in a day without being provided a second lawful meal
19 period as required by law.

20 39. Indeed, during the relevant time, as a consequence of Defendants’
21 scheduling practices, work demands, and Defendants’ policies and practices,
22 Defendants frequently failed to provide Plaintiff and the Class Members timely,
23 legally complaint uninterrupted 30-minute meal periods as required by law.

24 40. Moreover, as described more extensively above, during the height of
25 the Covid-19 pandemic (from approximately March 2020 through at least the end
26 of Plaintiff’s employment), Plaintiff and the Class Members were required by
27 Defendants to remain on premises during purported meal periods in violation of the
28 law. The exercise of control is inconsistent with Defendant’s obligations to provide

1 a meal period and relinquish control.

2 41. By way of further example, as a matter of Defendants' policy and
3 practice, Plaintiff and other Class Members were required to carry certain work-
4 related devices (such as walkie talkies, company cellular phones, and handheld
5 devices/sensors) with them during working hours, including during meal and rest
6 periods. Meal and rest periods were frequently interrupted as a result.

7 42. Despite the above-mentioned meal period violations, Defendants failed
8 to compensate Plaintiff, and on information and belief, failed to compensate Class
9 Members, one additional hour of pay at their regular rate as required by California
10 law when meal periods were not timely or lawfully provided in a compliant manner.

11 43. Plaintiff is informed and believes, and thereon alleges, that Defendants
12 know, should know, knew, and/or should have known that Plaintiff and the other
13 Class Members were entitled to receive accurate premium wages under Labor Code
14 §226.7 but were not receiving accurately calculated compensation.

15 44. In addition, during the relevant time frame, Plaintiff and the Non-
16 Exempt Employees were systematically not authorized and permitted to take one
17 net ten-minute paid, rest period for every four hours worked or major fraction
18 thereof, which is a violation of the Labor Code and IWC wage order.

19 45. Defendants maintained and enforced scheduling practices, policies,
20 and imposed work demands that frequently required Plaintiff and Class Members to
21 forego their lawful, paid rest periods of a net ten minutes for every four hours
22 worked or major fraction thereof. Such requisite rest periods were not timely
23 authorized and permitted.

24 46. Further, as described above, Plaintiff and the Class Members were
25 required to remain on premises during meal and rest periods, and were required to
26 carry certain work-related devices during meal and rest periods.

27 47. Despite the above-mentioned rest period violations, Defendants did not
28 compensate Plaintiff, and on information and belief, did not pay Class Members

1 one additional hour of pay at their regular rate as required by California law,
2 including Labor Code section 226.7 and the applicable IWC wage order, for each
3 day on which lawful rest periods were not authorized and permitted.

4 48. As to the failure to pay meal and rest period premiums at the proper
5 rate, by way of example during the pay period beginning 8/23/2020 and ending
6 09/05/2020, Plaintiff was paid both a meal and rest period premium, but these sums
7 were also paid at his regular base hourly rate of \$27.61. These sums did not include
8 the additional non-discretionary compensation paid.

9 49. Further, Plaintiff and the Class Members were required to incur
10 necessary expenses in the discharge of their duties, including for cellular phone
11 expenses, but were not reimbursed for such costs. By way of example, and not
12 limitation, Plaintiff and the Class Members were required to use personal cellular
13 phones for work-related purposes, such as making emergency calls, communicating
14 with Defendant, and taking pictures of building issues.

15 50. Defendants also failed to provide accurate, lawful itemized wage
16 statements to Plaintiff and the Class Members in part because of the above specified
17 violations.

18 51. Defendants have also made it difficult to determine applicable rates of
19 pay and account with precision for the unlawfully withheld wages and deductions
20 due to be paid to Class Members, including Plaintiff, during the liability period
21 because they did not implement and preserve a lawful record-keeping method to
22 record all hours worked, and non-provided rest and meal periods owed to
23 employees as required for non-exempt employees by 29 U.S.C. section 211(c),
24 California Labor Code section 226, and applicable California Wage Orders.

25 52. Plaintiff and the Class Members are covered by applicable California
26 IWC Wage Orders and corresponding applicable provisions of the California Code
27 of Regulations, Title 8, section 11000 et seq.

28

53. Plaintiff alleges Defendants have knowingly and intentionally failed to comply with Labor Code section 1174 and the Wage Order, including by implementing the policies and procedures and committing the violations alleged in the complaint, including without limitation failing to keep records of meal periods, failing to records of hours worked and wages paid/owed, and all wages earned at the proper rates.

54. Further, Plaintiff alleges that Defendant failed to pay sick leave at the proper rate because it failed to take all forms of compensation, including incentives, bonuses, shifts differentials, and other wages into account in calculating the regular rate. This constitutes a violation of the Labor Code.

CLASS ACTION ALLEGATIONS

55. Plaintiff brings this action on his own behalf, as well as on behalf of each and every other person similarly situated, and thus, seeks class certification under California Code of Civil Procedure §382.

56. All claims alleged herein arise under California law for which Plaintiff seeks relief as authorized by California law.

57. The proposed class is comprised of and defined as: all persons who are or were employed by Hyatt Corporation or Grand Hyatt S.F., LLC, either directly or indirectly, as non-exempt employees at the Grand Hyatt San Francisco hotel in the State of California at any time from four years prior to the initial filing of this action¹ through resolution or trial of the matter. (hereinafter collectively referred to as the “Class” or “Class Members”). on behalf of Plaintiff and any and all persons who are or were employed

58. Plaintiff also seeks to represent Subclasses included in the Plaintiff's Class, which are composed of Class Members satisfying the following definitions:

a. All Class Members who were not paid at least minimum wage for all hours worked (collectively “Minimum Wage Subclass”);

¹ As properly tolled by California Rule of Court App I. R.R. Emergency Rule 9

1 b. All Class Members who were not accurately paid overtime for
2 hours worked over eight in a day or over forty in a workweek (collectively “Overtime
3 Subclass”);

4 c. All Class Members who worked more than five (5) hours in a
5 workday and were not provided with a timely, uninterrupted lawful meal period of
6 net thirty (30) minutes, and were not paid compensation of one hour premium wages
7 at the employee’s regular rate in lieu thereof (hereinafter collectively referred to as
8 the “First Meal Period Subclass”);

9 d. All Class Members who worked more than ten hours in a workday
10 and were not provided with a timely, uninterrupted lawful second meal period of
11 thirty (30) minutes, and were not paid compensation of one hour premium wages at
12 the employee’s regular rate in lieu thereof (hereinafter collectively referred to as the
13 “Second Meal Period Subclass”);

14 e. All Class Members who worked more than three and a half hours
15 in a workday and were not authorized and permitted to take a net 10-minute rest
16 period for every four (4) hours or major fraction thereof worked per day and were
17 not paid compensation of one hour premium wages at the employee’s regular rate in
18 lieu thereof (hereinafter collectively referred to as the “Rest Period Subclass”);

19 f. All Class Members who were required to remain on premises
20 during meal periods (collectively “On-Premises Meal Period Subclass”);

21 g. All Class Members who performed security or engineering
22 functions (collectively “Security or Engineering Subclass”);

23 h. All Class Members who were not reimbursed for all necessary
24 expenditures (collectively “Indemnification Subclass”);

25 i. All Class Members who were employed by Defendants and
26 subject to Defendant’s Unfair Business Practices (hereinafter collectively referred to
27 as the “Unfair Business Practices Subclass”).

28 59. Plaintiff reserves the right to amend or modify the descriptions of the

1 Class and Subclasses to provide greater specificity as appropriate, or if it should be
2 deemed necessary by the Court or to further divide the Class Members into additional
3 Subclasses or to limit the Subclasses to particular issues. Any reference herein to the
4 Class Members or the Plaintiffs' Class includes the members of each of the
5 Subclasses.

6 60. As set forth in further detail below, this action has been brought and may
7 properly be maintained as a class action under the provisions of section 382 of the
8 Code of Civil Procedure and Federal Rule of Civil Procedure Rule 23(b)(3) and
9 23(b)(1) because there is a well-defined community of interest in the litigation, and
10 the proposed Class and Subclasses are easily ascertainable through Defendants'
11 records.

12 a. Numerosity: The members of the Class and Subclasses are so
13 numerous that joinder of all members of the Class and Subclasses would be
14 unfeasible and impractical. The membership of the entire Class and Subclasses is
15 unknown to Plaintiff at this time, however, the Class is estimated to be hundreds of
16 individuals. Accounting for employee turnover during the relevant periods
17 necessarily increases this number substantially. Plaintiff alleges Defendants'
18 employment records would provide information as to the number and location of all
19 Class Members. Joinder of all members of the proposed Class is not practicable.

20 b. The proposed class is easily ascertainable. The number and
21 identity of the class members are determinable from Defendants' payroll records and
22 time records for each class member.

23 c. Commonality: There are common questions of law and fact as to
24 the Class and Subclasses that predominate over questions affecting only individual
25 Class Members. These common questions of law and fact include, without
26 limitation:

- 27 1. Whether Defendants accurately paid Class Members for all hours
28 worked;

2. Whether Defendants knew or should have known that Class Members were required to perform work off the clock;
3. Whether Defendants were required to pay Class Members for meal periods during which Class Members were required to remain on premises;
4. Whether Defendants accurately calculated and paid all Class Members overtime premiums for the hours which Plaintiff and Class Members worked in excess of eight (8) hours per day and/or forty (40) hours per week;
5. Whether Defendants accurately paid employees double time for hours worked in excess of 12 hours in one day or for work over 8 hours in a day on the seventh day of work in a workweek;
6. Whether Defendants had a policy and practice of providing lawful, timely meal periods in accordance with Labor Code § 512, as well as the applicable Industrial Welfare Commission (“IWC”) wage order;
7. Whether Defendants had a policy and practice of complying with Labor Code section 226.7 and IWC Wage Order on each instance that a lawful, timely 30-minute uninterrupted meal period was not provided;
8. Whether Defendants failed to authorize and permit a lawful, net 10-minute rest period to the Class Members for every four (4) hours or major fraction thereof worked;
9. Whether Defendants required employees to remain on the premises during meal and rest periods;
10. Whether employees were required to carry communications devices during meal and rest periods and remain available;

- 1 11. Whether Defendants had a policy and practice of complying with
2 Labor Code section 226.7 and the IWC Wage Order on each
3 instance that a lawful rest period was not provided;
4 12. Whether Defendants failed to reimburse employees for necessary
5 expenses in accordance with Labor Code section 2802;
6 13. The appropriate amount of damages, restitution, and/or monetary
7 penalties resulting from Defendants' violations of California law.
8 14. Whether Defendants omitted required information from itemized
9 wage statements;
10 15. Whether Defendants failed to maintain accurate records of Class
11 Members' earned wages, work periods, meal periods and
12 deductions;
13 16. Whether Defendants engaged in unfair competition in violation
14 of section 17200 et seq. of the Business and Professions Code;
15 17. Whether Defendants' conduct was willful and/or reckless;
16 18. The appropriate amount of damages, restitution, and/or monetary
17 penalties resulting from Defendants' violations of California law.
18 d. Typicality: Plaintiff is qualified to, and will fairly and adequately
19 protect the interests of each member of the Class and Subclasses with whom he has
20 a well-defined community of interest. Plaintiff's claims herein alleged are typical of
21 those claims which could be alleged by any member of the Class and/or Subclasses,
22 and the relief sought is typical of the relief which would be sought by each member
23 of the Class and/or Subclasses in separate actions. All members of the Class and/or
24 Subclasses have been similarly harmed by Defendants' failure to provide lawful meal
25 and rest periods, failure to reimburse expenses, failure to provide accurate wage
26 statements, failure to pay minimum wages, and failure to accurately pay all wages
27 earned including all owed premium and overtime wages, all due to Defendants'
28 policies and practices that affected each member of the Class and/or Subclasses

1 similarly. Further, Defendants benefited from the same type of unfair and/or
2 wrongful acts as to each member of the Class and/or Subclasses.

3 e. Adequacy: Plaintiff is qualified to, and will fairly and adequately
4 protect the interests of each member of the Class and/or Subclasses with whom he
5 has a well-defined community of interest and typicality of claims, as demonstrated
6 herein. Plaintiff acknowledges that he has an obligation to make known to the Court
7 any relationships, conflicts, or differences with any member of the Class and/or
8 Subclasses, and no such relationships or conflicts are currently known to exist.
9 Plaintiff's attorneys and the proposed counsel for the Class and Subclasses are versed
10 in the rules governing class action discovery, certification, litigation, and settlement
11 and experienced in handling such matters. Other former and current employees of
12 Defendants may also serve as representatives of the Class and Subclasses if needed.

13 f. Superiority: The nature of this action makes the use of class
14 action adjudication superior to other methods. A class action will achieve economies
15 of time, effort, judicial resources, and expense, which would not be achieved with
16 separate lawsuits. The prosecution of separate actions by individual members of the
17 Class and/or Subclasses would create a risk of inconsistent and/or varying
18 adjudications with respect to the individual members of the Class and/or Subclasses,
19 establishing incompatible standards of conduct for the Defendants, and resulting in
20 the impairment of the rights of the members of the Class and/or Subclasses and the
21 disposition of their interests through actions to which they were not parties. Thus, a
22 class action is superior to other available means for the fair and efficient adjudication
23 of this controversy because individual joinder of all Class Members is not practicable,
24 and questions of law and fact common to the Class predominate over any questions
25 affecting only individual Class Members. Each member of the Class has been
26 damaged and is entitled to recovery by reason of Defendants' unlawful policies and
27 practices that affected each member of the Class and/or Subclasses similarly. Class
28 action treatment will allow those similarly situated persons to litigate their claims in

1 the manner that is most efficient and economical for both parties and the judicial
2 system. Plaintiff is unaware of any difficulties that are likely to be encountered in
3 the management of this action that would preclude its maintenance as a class action.

4 g. Public Policy Considerations: Employers in the state of
5 California violate employment and labor laws every day. However, current
6 employees are often afraid to assert their rights out of fear of direct or indirect
7 retaliation. Former employees are fearful of bringing actions because they believe
8 their former employers may damage their future endeavors through negative
9 references and/or other means. The nature of this action allows for the protection of
10 current and former employees' rights without fear of retaliation or damage.
11 Additionally, the citizens of California have a significant interest in ensuring
12 employers comply with California's labor laws and in ensuring those employers who
13 do not are prevented from taking further advantage of their employees.

14
15 CLASS ACTION CLAIMS

16 FIRST CAUSE OF ACTION

17 FAILURE TO PAY MINIMUM WAGES

18 (By Plaintiff and the Class Against Defendants)

19 61. Plaintiff incorporates each and every allegation set forth in all of the
20 foregoing paragraphs as if fully set forth herein.

21 62. Labor Code section 204 establishes the fundamental right of all
22 employees in the State of California to be paid wages, including minimum wage,
23 straight time and overtime, in a timely fashion for their work.

24 63. Labor Code section 1194(a) provides that notwithstanding any
25 agreement to work for a lesser wage, any employee receiving less than the legal
26 minimum wage or the legal overtime compensation applicable to the employee is
27 entitled to recover in a civil action the unpaid balance of the full amount of this
28 minimum wage or overtime compensation, including interest thereon, reasonable

1 attorney's fees, and costs of suit.

2 64. Labor Code section 1197 provides: The minimum wage for employees
3 fixed by the commission or by any applicable state or local law, is the minimum wage
4 to be paid to employees, and the payment of a lower wage than the minimum so fixed
5 is unlawful.

6 65. Pursuant to Labor Code section 1198, it is unlawful to employ persons
7 for longer than the hours set by the Industrial Welfare Commission or under
8 conditions prohibited by the IWC Wage Order(s).

9 66. The applicable wage orders and California Labor Code sections 1197
10 and 1182.12 establish the right of employees to be paid minimum wages for all hours
11 worked, in amounts set by state law.

12 67. Labor Code sections 1194(a) and 1194.2(a) provide that an employee
13 who has not been paid the legal minimum wage as required by Labor Code section
14 1197 may recover the unpaid balance together with attorneys' fees and costs of suit,
15 as well as liquidated damages in an amount equal to the unpaid wages and interest
16 accrued thereon.

17 68. During all relevant periods, the California Labor Code and wage orders
18 required that Defendants fully and timely pay its non-exempt, hourly employees all
19 wages earned and due for all hours worked.

20 69. The IWC Wage Orders define "hours worked" as "the time during
21 which an employee is subject to the control of an employer, and includes all the time
22 the employee is suffered or permitted to work, whether or not required to do so."

23 70. At all times relevant, Plaintiff and Class Members consistently worked
24 hours for which they were not paid because Defendants frequently required Plaintiff
25 and the Class Members to work off the clock.

26 71. Plaintiff is informed and believes that Defendants were aware that
27 Plaintiff and the Class Members were working off the clock and that they should
28 have been paid for this time. Such time includes hours worked before and after

1 scheduled shifts and during purported meal periods.

2 72. Defendant's policy and practice of not paying all minimum wages
3 violates California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197,
4 1197.1, 1198, and the applicable wage order 5-2001.

5 73. Due to Defendants' violations of the California Labor Code and wage
6 orders, Plaintiff and the Class Members are entitled to recover from Defendant their
7 unpaid wages, statutory penalties, reasonable attorneys' fees and costs in this action,
8 and pre-judgment and post-judgment interest, as well as liquidated damages.

9 SECOND CAUSE OF ACTION

10 FAILURE TO PAY OVERTIME OWED

11 (By Plaintiff and the Class Against All Defendants)

12 74. Plaintiff incorporates each and every allegation set forth in all of the
13 foregoing paragraphs as if fully set forth herein.

14 75. During all relevant periods, Defendant required Plaintiff and the Class
15 members to work shifts in excess of eight (8) hours per workday and/or to work in
16 excess of forty (40) hours per workweek.

17 76. During all relevant periods, both the California Labor Code sections
18 1194, 1197, 510, 1198, and the pertinent wage order 5-2001 required that all work
19 performed by an employee in excess of eight (8) hours in any workday, on the seventh
20 day of work in any workweek, or in excess of forty (40) hours in any workweek be
21 compensated at one and one-half (1.5) times the employee's regular rate of pay. Any
22 work in excess of twelve (12) hours in one (1) day is required to be compensated at
23 the rate of no less than twice the regular rate of pay for an employee. In addition, any
24 work in excess of eight (8) hours on any seventh (7th) day of a workweek is required
25 to be compensated at the rate of no less than twice the regular rate of pay of an
26 employee.

27 77. During all relevant periods, Defendants had a uniform policy of
28 requiring Plaintiff and the Class members to work in excess of eight (8) hours in a

1 workday and/or in excess of forty (40) hours in a workweek without compensating
2 them at a rate of one and one-half (1.5) times their regular rate of pay. Upon
3 information and belief, Defendants also failed to properly compensate Plaintiff and
4 the Class Members for hours worked in excess of twelve (12) hours in one (1) day,
5 or eight (8) hours on the seventh (7th) day of a workweek.

6 78. The IWC Wage Orders define “hours worked” as “the time during
7 which an employee is subject to the control of an employer, and includes all the time
8 the employee is suffered or permitted to work, whether or not required to do so.”

9 79. At all times relevant, Plaintiff and Class Members consistently worked
10 hours for which they were not paid because Plaintiff and the Class Members were
11 required to work off the clock—some of these hours were over eight (8) hours in one
12 (1) workday or in excess of forty (40) hours in a workweek and should have been
13 paid at the overtime rate.

14 80. Plaintiff is informed and believes that Defendants were aware that
15 Plaintiff and the Class Members were working off the clock and that they should
16 have been paid for this time.

17 81. In addition, upon information and belief, Defendants failed to
18 incorporate all forms of non-discretionary compensation, including without
19 limitation bonuses, differentials, incentives, and other non-discretionary sums, into
20 the regular rate for overtime purposes.

21 82. As a result, Defendants failed to pay Plaintiff and the Class members
22 earned overtime wages and such employees suffered damages as a result.

23 83. Defendants knew or should have known Plaintiffs and the Class
24 Members were undercompensated as a result of these practices.

25 84. Due to Defendant’s violations of the California Labor Code, Plaintiff
26 and the Class members are entitled to recover from Defendants their unpaid overtime
27 wages, reasonable attorneys’ fees and costs in this action, and pre-judgment and post-
28 judgment interest, statutory penalties, and liquidated damages.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE LAWFUL MEAL PERIODS

(By Plaintiff and the Class Against All Defendants)

85. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

86. Pursuant to Labor Code § 512, no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee.

87. For the four (4) years preceding the filing of this lawsuit as properly tolled by Emergency Rule 9, Defendants failed to provide Plaintiff and Class Members timely and uninterrupted first meal periods of not less than thirty (30) minutes within the first five hours of a shift.

88. As a consequence of Defendants' policies and practices, requirements, demands, coverage and staffing practices, Plaintiff and the Class Members were often required to forego such meal periods, take shortened meal periods, and/or commence their meal periods into and beyond the sixth hour of their shifts.

89. In addition, as detailed above, Plaintiff and the Class Members were required to carry work-related cellular phones, handheld devices (like sensors), walkie talkies, or other devices during meal and rest periods, and were required to remain available. Meal and rest periods were frequently interrupted as a consequence.

90. In addition, during certain periods of time, Plaintiff and the Class Members were required to remain on premises during meal periods.

91. Upon information and belief, Plaintiff and the Class Members were not paid one hour of pay at their regular rate of pay for each day that a meal period was

1 not lawfully provided.

2 92. Defendants' failure to incorporate all forms of compensation, including
3 without limitation bonuses, differentials, and incentives, into the regular rate for
4 purposes of paying meal and rest period premiums constitutes a further violation of
5 the Labor Code and Wage Order.

6 93. As a proximate result of the aforementioned violations, Plaintiff and the
7 Class Members have been damaged in an amount according to proof at time of trial.

8 94. Pursuant to Labor Code § 226.7, Plaintiff and Class Members are
9 entitled to recover one (1) hour of premium pay for each day in which a meal period
10 violation occurred. They are also entitled to recover reasonable attorneys' fees, cost,
11 interest, and penalties as applicable.

12 95. As a result of the unlawful acts of Defendants, Plaintiffs and the Class
13 they seek to represent have been deprived of premium wages in amounts to be
14 determined at trial, and are entitled to recovery of such amounts, plus interest and
15 penalties thereon, attorneys' fees, and costs, under Labor Code sections 218.6, 226.7,
16 512 and the applicable IWC Wage Orders, and Civil Code section 3287.

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS**

19 (By Plaintiff and the Class Against All Defendants)

20 96. Plaintiff incorporates by reference and realleges each and every
21 allegation contained above, as though fully set forth herein.

22 97. Pursuant to the IWC wage orders applicable to Plaintiff's and Class
23 Members' employment by Defendants, "Every employer shall authorize and permit
24 all employees to take rest periods, which insofar as practicable shall be in the middle
25 of each work period.... [The] authorized rest period time shall be based on the total
26 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours
27 worked or major fraction thereof.... Authorized rest period time shall be counted as
28 hours worked, for which there shall be no deduction from wages."

1 98. Labor Code §226.7(a) prohibits an employer from requiring any
2 employee to work during any rest period mandated by an applicable order of the
3 IWC.

4 99. Defendants were required to authorize and permit employees such as
5 Plaintiff and Class Members to take rest periods during shifts in excess of 3.5 hours,
6 based upon the total hours worked at a rate of ten (10) minutes net rest per four (4)
7 hours worked, or major fraction thereof, with no deduction from wages.

8 100. Despite said requirements of the IWC wage orders applicable to
9 Plaintiff's and Class Member's employment with Defendants, Defendants failed and
10 refused to authorize and permit Plaintiff and Class Members to take lawful, net ten
11 (10) minute rest periods for every four (4) hours worked, or major fraction thereof.
12 Such rest breaks, when provided, were frequently untimely or less than net ten
13 minutes because of the work requirements imposed by Defendants, and frequent calls
14 during rest periods.

15 101. In addition, as detailed above, Plaintiff and the Class Members were
16 required to carry work-related cellular phones, handheld devices (like sensors),
17 walkie talkies, or other devices during meal and rest periods, and were required to
18 remain available. Meal and rest periods were frequently interrupted as a
19 consequence.

20 102. In addition, during certain periods of time, Plaintiff and the Class
21 Members were required to remain on premises during meal periods.

22 103. Defendants did not pay Plaintiff one additional hour of pay at his regular
23 rate of pay for each day that a rest period violation occurred. On information and
24 belief, the other members of the Class endured similar violations as a result of
25 Defendants' rest period policies and practices and Defendant did not pay said Class
26 Members premium pay as required by law.

27 104. By their failure to authorize and permit Plaintiff and the Class Members
28 to take a lawful, net ten (10) minute rest period free from work duties every four (4)

1 hours or major fraction thereof worked, including failure to provide two (2) total rest
2 periods on six to ten hour shifts and three (3) total ten (10) minute rest periods on
3 days on which Plaintiff and the other Class Members work(ed) work a third rest
4 period for shifts in excess of ten (10) hours, and by their failure to provide
5 compensation for such unprovided rest periods as alleged herein, Defendants
6 willfully violated the provisions of Labor Code sections 226.7 and the applicable
7 IWC Wage Order(s).

8 105. Defendants' failure to incorporate all forms of compensation, including
9 without limitation bonuses, differentials, and incentives, into the regular rate for
10 purposes of paying meal and rest period premiums constitutes a further violation of
11 the Labor Code and Wage Order.

12 106. As a result of the unlawful acts of Defendants, Plaintiffs and the Class
13 they seek to represent have been deprived of premium wages in amounts to be
14 determined at trial, and are entitled to recovery of such amounts, plus interest and
15 penalties thereon, attorneys' fees, and costs, under Labor Code sections 218.6, 226.7,
16 the applicable IWC Wage Orders, and Civil Code 3287.

17 FIFTH CAUSE OF ACTION

18 FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION

19 (By Plaintiff and the Waiting Time Subclass Against All Defendants)

20 107. Plaintiff incorporates by reference and realleges each and every
21 allegation contained above, as though fully set forth herein.

22 108. Labor Code §§ 201 and 202 require Defendants to pay their employees
23 all wages due within seventy-two (72) hours of separation of employment.

24 109. Section 203 of the Labor Code provides that if an employer willfully
25 fails to timely pay such wages the employer must, as a penalty, continue to pay the
26 subject employee's wages until the back wages are paid in full or an action is
27 commenced. The penalty cannot exceed 30 days of wages.

28 110. Plaintiff and Class Members are entitled to compensation for all forms

1 of wages earned, including but not limited to minimum wages, overtime, sick, and
2 premium meal and rest period compensation, but to date have not received such
3 compensation, therefore entitling them to Labor Code § 203 penalties.

4 111. In addition, irrespective of any derivative violation, Defendants failed
5 to timely pay Plaintiff and, upon information and belief, other Class Members earned
6 compensation at the time of termination despite their obligations under Labor Code
7 201 and 202.

8 112. More than thirty (30) days have passed since affected Waiting Time
9 Subclass Members have left Defendants' employ, and on information and belief, they
10 have not received payment pursuant to Labor Code § 203.

11 113. Plaintiff and Waiting Time Subclass Members are thus entitled to 30
12 days' wages as a penalty under Labor Code § 203, together with interest thereon and
13 attorneys' fees and costs.

14
15 SIXTH CAUSE OF ACTION

16 FAILURE TO REIMBURSE NECESSARY EXPENSES

17 (By Plaintiff and the Indemnification Subclass Against All Defendants)

18 114. Plaintiff incorporates by reference and realleges each and every
19 allegation contained above, as though fully set forth herein.

20 115. Plaintiff repeats and incorporates herein by reference each and every
21 allegation set forth above, as though fully set forth herein.

22 116. Labor Code § 2802 requires Defendants to indemnify Plaintiff and
23 Class Members for necessary expenditures incurred in direct consequence of the
24 discharge of his or her duties.

25 117. Plaintiff and the members of the Indemnification Class were required
26 to incur expenses in the performance of their assigned job duties, including
27 expenses related to cellular phones.

28 118. Upon information and belief, the Defendants did not reimburse

1 Plaintiff or the Plaintiff's subclass for such expenses.

2 119. As a result of the unlawful acts of Defendants, Plaintiffs and the
3 Plaintiffs' Subclass Members have been deprived of un-reimbursed sums in
4 amounts to be determined at trial, and are entitled to the recovery of such amounts,
5 plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor
6 Code §2802.

7 SEVENTH CAUSE OF ACTION
8 VIOLATION OF THE UNFAIR COMPETITION LAW

9 By Plaintiff and Class Against All Defendants

10 120. Plaintiff incorporates by reference and realleges each and every
11 allegation contained above, as though fully set forth herein.

12 121. Defendants' conduct, as alleged in this complaint, has been, and
13 continues to be, unfair, unlawful, and harmful to Plaintiff and Class Members,
14 Defendants' competitors, and the general public. Plaintiff also seeks to enforce
15 important rights affecting the public interest within the meaning of the California
16 Code of Civil Procedure § 1021.5.

17 122. Defendants' policies, activities, and actions as alleged herein are
18 violations of California law and constitute unlawful business acts and practices in
19 violation of California Business and Professions Code §§ 17200, et seq.

20 123. A violation of California Business and Professions Code §§ 17200, et
21 seq., may be predicated on the violation of any state or federal law.

22 124. The state law violations, including violations of the relevant IWC Wage
23 Order, detailed herein above are the predicate violations for this cause of action. By
24 way of example only, in the instant case Defendants' policy of failing to lawfully
25 provide Plaintiff and the Class with timely meal and rest periods or pay one (1) hour
26 of premium pay when a meal or rest period was not lawfully provided violates Labor
27 Code § 512, and § 226.7, and the IWC Wage Orders. Defendants further violated the
28 law through their policies of failing to fully and accurately compensate Plaintiff and

1 the Class Members for all hours worked, including minimum wages and overtime,
2 and failing to reimburse for necessary expenses, as well as failing to provide accurate
3 itemized wage statement as specified above.

4 125. Plaintiff and the Class Members have been personally aggrieved by
5 Defendants' unlawful and unfair business acts and practices alleged herein by the
6 loss of money and/or property.

7 126. Pursuant to California Business and Professions Code §§ 17200, et seq.,
8 Plaintiff and the Class Members are entitled to restitution of the wages withheld and
9 retained by Defendants during a period that commences four (4) years prior to the
10 filing of this complaint; an award of attorneys' fees pursuant to California Code of
11 Civil Procedure §1021.5; interest; and an award of costs.

12 EIGHTH CAUSE OF ACTION
13 CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT OF
14 2004, LABOR CODE SECTION 2698 ET SEQ.

15 127. Plaintiff incorporates by reference each and every paragraph above,
16 and realleges each and every allegation contained above as though fully set forth
17 herein.

18 128. On or about November 2, 2021, Plaintiff gave written notice by online
19 submission to the LWDA and by certified mail to Defendants of Defendants'
20 violations of numerous provisions of the California Labor Code and the IWC Wage
21 Orders as alleged in this complaint. All fees were paid as required by statute. A
22 copy of the letter sent to the LWDA with enclosure is attached hereto as Exhibit A.

23 129. Plaintiff is an "aggrieved employee" as defined in Labor Code Section
24 2699(A), as he was employed by Defendants during the statutory period and
25 suffered one or more of the Labor Code violations set forth herein. He seeks to
26 recover of himself and all other current and former aggrieved employees of
27 Defendants the civil penalties provided by PAGA, plus reasonable attorneys' fees
28 and costs. The "Aggrieved Employees" are a subset of the Class Members.

1 130. 65 days have passed, and no response has been received from the
2 LWDA. Accordingly, the LWDA has permitted Plaintiff to proceed in a
3 representative capacity.

4 131. Plaintiff has exhausted all administrative procedures required of them
5 under the Labor Code §§2698, 2699, 2699.3, and as a result, is justified as a matter
6 of right in bringing forward this cause of action.

7 132. Pursuant to Labor Code section 2699(a), Plaintiff seeks to recover civil
8 penalties for which Defendants are liable due to numerous Labor Code violations as
9 set forth in this Complaint.

10 133. Plaintiff seeks to recover the PAGA civil penalties through a
11 representative action permitted by PAGA and the California Supreme Court in
12 *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Class certification of the PAGA
13 claims is no required.

14 134. Pursuant to Labor Code section 2698 et seq. and 2699(a), Plaintiff
15 seeks to recover civil penalties for which Defendants are liable due to numerous
16 Labor Code and Wage Order violations as set forth in this Complaint.

17 135. Specifically, Plaintiff, on behalf of herself and the Aggrieved
18 Employees, seek penalties under Labor Code §2699, for, without limitation, the
19 claims set forth herein, including:

- 20 a. Defendants' failure to comply with the requirement of Labor Code
21 §1182.12, 1194, 1197, 1198, and Wage Orders to pay at least
22 minimum wage for every hour worked;
- 23 b. Defendants' failure to comply with the requirement of Labor Code
24 §510, 1194, 1197, 1198, and Wage Orders to accurately pay all
25 wages earned including overtime wages;
- 26 c. Defendants' failure to comply with the requirement of Labor code
27 §216 to pay wages after demand was made;
- 28 d. Defendants' failure to comply with the requirement of Labor Code

§§204 and 210 to pay, without condition and within the time set by the applicable article, all wages, or parts thereof;

- e. Defendants' failure to comply with the requirement of Labor Code §225.5 to pay wages due;
- f. Defendants' failure to comply with the requirement of Labor Code §§201 and 202 to pay wages due to former employees;
- g. Defendants' failure to comply with the requirement of Labor Code §203 to pay waiting time penalties to former employees;
- h. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Orders to authorize and permit ten (10) minute rest breaks;
- i. Defendants' failure to comply with the requirement of Labor Code §§226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each statutorily required rest break that was not lawfully authorized and permitted;
- j. Defendants' failure to comply with the requirement of Labor Code §226.7, 512, 1198, and IWC Wage Orders to provide timely, uninterrupted 30 minutes off duty meal periods;
- k. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each lawful meal break that was not provided;
- l. Defendants' failure to provide accurate compliant wage statements under Labor Code section 226;
- m. Defendants' failure to reimburse necessary expenses under Labor Code §2802;
- n. Defendants' failure to pay sick leave at the proper rate in under Labor Code §246(l);

- 1 o. Defendants' failure to maintain required records in violation of
2 Labor Code §226, 1174, and Wage Orders for the above-specified
3 violations, and failure to maintain accurate clock in and out times;

4 136. Plaintiff seeks civil penalties for Defendants' violation of Labor Code
5 provisions for which a civil penalty is specifically provided, including but not
6 limited to the following:

- 7 a. Pursuant to Labor Code §210, for violations of Labor
8 Code §204, Defendants are subject to a civil penalty in
9 the amount of one hundred dollars (\$100) for the initial
10 violation for each failure to pay each employee and two
11 hundred (\$200) per employee for violations in subsequent
12 pay periods plus 25% of the amount unlawfully withheld.
13 b. Pursuant to Labor Code §226.3, for violations of Labor
14 Code §226(a) Defendants are subject to a civil penalty in
15 the amount of two hundred and fifty dollars (\$250) per
16 aggrieved employee for the initial pay period where a
17 violation occurs and one thousand dollars (\$1,000) per
18 aggrieved employee for violations in subsequent pay
19 periods.
20 c. Pursuant to Labor Code §558(a), "[a]ny employer or other
21 person acting on behalf of an employer who violated, or
22 causes to be violated, a section of this chapter or any
23 provisions regulating hours and days of work in any order
24 of the Industrial Welfare Commission," including Labor
25 Code §§ 510 and 512, shall be subject to a civil penalty,
26 in addition to any other penalty provided by law, of fifty
27 dollars (\$50) for initial violations for each underpaid
28 employee for each pay period for which the employee

1 was underpaid and one hundred dollars (\$100) for each
2 subsequent violations for each underpaid employee for
3 each pay period for which the employee was underpaid.

4 d. Pursuant to Labor Code §1197.1, an employer who pays
5 or causes to be paid to any employee a wage less than the
6 minimum fixed by an order of the commission, shall be
7 subject to a civil penalty as follows: for any initial
8 violation that is intentionally committed, one hundred
9 dollars (\$100) for each underpaid employee for each pay
10 period for which the employee is underpaid; and for each
11 subsequent violation of the same offense, two hundred
12 fifty dollars (\$250) for each underpaid employee for each
13 pay period for which the employee is underpaid
14 regardless of whether the initial violation was
15 intentionally committed.

16 e. Pursuant to Labor Code § 1174.5, for violations of Labor
17 Code §1174(d), Defendants are subject to a civil penalty
18 of five hundred dollars (\$500).

19 137. Further, as a result of the acts alleged hereinabove, Plaintiff seeks
20 penalties under Labor Code §2698 et seq. and 2699 because of Defendants'
21 violation of numerous provisions of the California Labor Code and IWC Wage
22 Orders.

23 138. Under Labor Code §2699, Plaintiff and Aggrieved Employees are
24 entitled to \$100 for any initial violation and \$200 for all subsequent violations of
25 the above-mentioned provisions of the California Labor Code.

26 139. Under Labor Code §2699, Plaintiff and Aggrieved Employees should
27 be awarded twenty-five (25%) of all penalties due under California law, interest,
28 attorneys' fees and costs.

1 140. Under Labor Code §2699, the State of California should be awarded
2 seventy-five percent (75%) of the penalties due under California law.

3
4
5 PRAYER FOR RELIEF

6 WHEREFORE, Plaintiff pray judgment against Defendants, jointly and
7 severally, as follows:

8 Class Certification

- 9 1. That this action be certified as a class action;
10 2. That Plaintiff be appointed as the representative of the Class;
11 3. That Plaintiff be appointed as the representatives of the Subclasses; and
12 4. That counsel for Plaintiff be appointed as counsel for the Class and
13 Subclasses.

14 On the First Cause of Action

15 (Failure to pay minimum wages)

- 16 1. For the unpaid balance of the full amount of any minimum wages, and
17 regular wages owed, as well as interest thereon,
18 2. Penalties according to statute,
19 3. Liquidated damages,
20 4. Reasonable attorneys' fees, and costs of suit;
21 5. For interest and
22 6. For such other and further relief as the Court deems proper.

23 On the Second Cause of Action

24 (Failure to pay overtime)

- 25 1. For the unpaid balance of the full amount of any overtime wages owed,
26 as well as interest thereon,
27 2. Penalties according to statute,
28 3. Liquidated damages,

4. Reasonable attorneys' fees, and costs of suit;
5. For interest and
6. For such other and further relief as the Court deems proper.

On the Third Cause of Action

(Failure to Provide Lawful Meal Periods)

1. For one (1) hour of premium pay for each day in which a required meal period was not lawfully provided;
2. For reasonable attorneys' fees and costs pursuant to statute; and
3. For such other and further relief as the Court deems proper.

On the Fourth Cause of Action

(Failure to Authorize and Permit Lawful Rest Periods)

1. For one (1) hour of premium pay for each day in which a required rest period was not lawfully authorized and permitted; and
2. For reasonable attorneys' fees and costs pursuant to statute; and
3. For such other and further relief as the Court deems proper.

On the Fifth Cause of Action

(Failure to Timely Pay Wages At Separation)

1. For unpaid wages;
2. For penalties pursuant to Labor Code § 203;
3. For interest;
4. For reasonable attorneys' fees and costs pursuant to statute; and
5. For such other and further relief as the Court deems proper.

On the Sixth Cause of Action

(Failure to Reimburse Necessary Expenses)

1. For unreimbursed sums;
2. For reasonable attorneys' fees and costs pursuant to statute;
3. For interest; and

1 4. For such other and further relief as the Court deems proper.

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3
4
5 On the Seventh Cause of Action

6 (Violation of the Unfair Competition Law)

7 1. That Defendants, jointly and/or severally, pay restitution and/or
8 disgorgement of sums to Plaintiff and Class Members for the Defendants' past failure
9 to pay minimum, overtime and regular wages, for Defendants' past failure to
10 reimburse necessary expenses, and for premium wages for meal and rest periods that
11 were not provided to Plaintiff and Class Members over the last four (4) years in an
12 amount according to proof;

13 2. For reasonable attorneys' fees that Plaintiff and Class Members are
14 entitled to recover under California Code of Civil Procedure § 1021.5 and Labor
15 Code section 1194, 1197, 1198 ;

16 3. For pre-judgment interest on any unpaid minimum, regular and overtime
17 wages due from the day that such amounts were due;

18 4. For costs of suit incurred herein that Plaintiff and Class Members are
19 entitled to recover under the Labor Code; and

20 5. For such other and further relief as the Court deems proper.

21 On the Eighth Cause of Action

22 (Penalties Pursuant to PAGA, Labor Code § 2698 et seq.)

23 1. For penalties according to proof, pursuant to Labor Code §§2698, et seq.
24 for the violations specified above;

25 2. For penalties under Labor Code section 210, 266.3, 1174.5, 1197.1, 2802
26 and 2699(a) and (f); &

27 3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194,
28 California Civil Code §§ 3287, 3288, and/or any other applicable

- 1 provisions providing for pre-judgment interest;
- 2 4. For reasonable attorneys' fees, expenses, and costs under Labor Code
- 3 §§1194, 226, 2699, and/or Code of Civil Procedure §1021.5, and/or any
- 4 other applicable provisions providing for attorneys' fees and costs; and
- 5 5. For such other and further relief as the Court deems proper.

6

7 DEMAND FOR JURY TRIAL

8 Plaintiff, on behalf of the Class and Subclasses, respectfully demand a jury

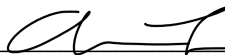
9 trial in this matter to the fullest extent available under the law.

10 Respectfully submitted,

11

12

13 Dated: May 19, 2023



JAMES HAWKINS, APLC
James R. Hawkins, Esq.
Christina M. Lucio, Esq.

14

15

16 Attorneys for JOE VIGIL, on behalf of himself

17 and all others similarly situated

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EXHIBIT 2

Irma Ceja

From: Christina Lucio
Sent: Friday, May 19, 2023 2:44 PM
To: SD Staff; Staff
Subject: FW: Thank you for your Other Response or Document Submission

Christina Lucio
James Hawkins APLC
9880 Research Dr., Suite 200
Irvine, California 92618

Office Tel: [\(949\) 387-7200](tel:(949)387-7200)
Direct Fax: [\(949\) 387-6676](tel:(949)387-6676)

Christina@Jameshawkinsaplc.com

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From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Date: Friday, May 19, 2023 at 2:43 PM
To: Christina Lucio <christina@jameshawkinsaplc.com>
Subject: Thank you for your Other Response or Document Submission

05/19/2023 02:43:06 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Other Response or Document Submission

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private Attorneys General Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)