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on behalf of himself and the putative class

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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Regina Chanez, Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

KAYASONE MUONGKHOT, on behalf of
himself and all other persons similarly situated,

Plaintiff,

v.

HL WELDING, INC. and DOES 1 through 10,
inclusive,

Defendants.

Case No. 37-2019-00054150-CU-OE-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT**

**UNFAIR COMPETITION LAW
VIOLATIONS (Bus. & Prof. Code §§ 17200
et seq.).**

1 Plaintiff Kayasone Muongkhot alleges, on behalf of himself and all persons similarly
2 situated, as follows:

3 I. INTRODUCTION

4 1. This is a class action seeking relief from Defendant HL Welding, Inc.'s ("HL
5 Welding" or "Defendant") violations of California's unfair competition law through its failure to
6 pay overtime premium pay as required by the California Labor Code and applicable wage order.
7 Defendant HL Welding provides maritime and other construction services and has employed
8 Plaintiff and similarly situated Class Members as Welders and Ship Fitters on maritime
9 construction projects in San Diego county.

10 2. Plaintiff challenges HL Welding's policies and practices of failing to pay Welders
11 and Ship Fitters proper overtime compensation, in violation of California law. These unlawful
12 policies and practices have been in effect for at least four years prior to the filing of this action.

13 3. Plaintiff brings claims under California law for restitution of unpaid overtime
14 compensation, interest, and attorneys' fees and costs. These claims are brought under Code of Civil
15 Procedure § 382 on behalf of a class of Welders and Ship Fitters employed by HL Welding during
16 the period commencing four years prior to the filing of this Complaint through the date of final
17 judgment.

18 II. JURISDICTION

19 4. This Court has jurisdiction over the claims for unfair competition under Bus. &
20 Prof. Code § 17200, et seq.

21 III. VENUE

22 5. Venue as to Defendant is proper in San Diego County, pursuant to Code of Civil
23 Procedure § 395.5. Defendant's principal place of business is located in San Diego County.
24 Defendant transacts business, and/or has agents in San Diego County, and is otherwise within this
25 Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a
26 direct effect on Plaintiff and those similarly situated within the State of California and within San
27 Diego County. Defendant has employed numerous Class Members in San Diego County, including
28 Plaintiff, who have not received adequate overtime compensation during the Class Period.

IV. PARTIES

6. Plaintiff Kayasone Muongkhhot is currently a resident of Mobile County in the State of Alabama. Plaintiff was employed by Defendant in California during the relevant period as a Ship Fitter. He sues on behalf of himself and as a representative of all similarly situated workers in the class defined below.

7. Defendant HL Welding is a California corporation with its principal place of business in San Diego County. HL Welding is and at all relevant times has been an employer covered by the California Labor Code and IWC Wage Order No. 16.

8. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants, sued herein as Does 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names. Plaintiff is informed and believes, and on that basis alleges, that each of the defendants designated herein as a Doe is legally responsible for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as Does when such identities become known. Defendant and Doe defendants are referred to herein collectively as “Defendant” and/or “HL Welding.”

9. All of Plaintiff’s claims are asserted against Defendant and any of its owners, predecessors, successors, subsidiaries, and/or assigns.

V. FACTUAL BACKGROUND

10. Throughout the Class Period, HL Welding has employed Welders and Ship Fitters to perform construction work at jobsites in California, primarily in San Diego County.

11. Throughout the Class Period, Welders and Ship Fitters employed by HL Welding have regularly received multiple non-overtime rates of pay in the same pay period, including a regular hourly rate and a “per diem” rate based on hours worked. In those instances, HL Welding has a policy and practice of failing to include the “per diem” rate to calculate Welders’ and Ship Fitters’ regular rate of pay for the calculation of overtime pay; instead using only the regular hourly rate for the purpose of calculating overtime compensation. As a result of HL Welding’s unlawful

policy and practice, Welders and Ship Fitters regularly receive less overtime compensation than they are due.

VI. CLASS ACTION ALLEGATIONS

12. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a class action pursuant to Code of Civil Procedure § 382. The Class that Plaintiff seeks to represent is composed of and defined as:

All persons who worked for Defendant in the State of California as Welders and Ship Fitters or other similar positions ("Class Members") during the period commencing four (4) years prior to the filing of the Complaint through certification of a class in this action ("Class Period").

13. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation, the proposed Class is easily ascertainable, and Plaintiff is a proper representative of the Class:

14. Ascertainability and Numerosity: The potential Class Members are so numerous that joinder would be impracticable. Plaintiff is informed and believes, and on that basis alleges, that Defendant employed over 100 Welders and Ship Fitters during the Class Period who are members of the Class. The names and addresses of the Class Members are available to Defendant. Notice can be provided to the Class Members via first class mail using techniques and a form of notice similar to those customarily used in class action lawsuits of this nature.

15. Commonality: There are questions of law and fact common to Plaintiff and the Class Members that predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, without limitation:

- a. Whether Defendant has failed to sufficiently pay Class Members overtime premium wages for time worked in violation of Labor Code §§ 510, 1194 and IWC Wage Order No. 16;
- b. Whether Defendant's failure to pay overtime compensation to Class Members constitutes an unlawful, unfair, and/or fraudulent practice

under Business & Professions Code § 17200, et seq.;

c. The proper formula for calculating restitution owed to Class Members.

16. Typicality: Plaintiff's claims are typical of the claims for the Class. Defendant's common course of unlawful conduct has caused Plaintiff and similarly situated Class Members to sustain the same or similar injuries and damages caused by the same practices of Defendant. Plaintiff's claims are thereby representative of and co-extensive with the claims of the Class.

17. Adequacy of Representation: Plaintiff is a member of the Class, does not have any conflicts with other Class Members, and will prosecute the case vigorously on behalf of the Class. Plaintiff will fairly and adequately represent and protect the interests of the Class Members. Plaintiff's counsel is competent and experienced in litigating employment class actions.

18. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Class Member has been damaged or may be damaged in the future by reason of Defendant's unlawful policies and practices detailed herein. Certification of this case as a class action will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Certification of this case as a class action is superior because it will allow for efficient and full disgorgement of the ill-gotten gains Defendant has enjoyed by failing to pay overtime compensation. Class action treatment will also avoid inconsistent outcomes because the same issues can be adjudicated in the same manner for all members of the Class.

VII. RESTITUTION

19. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff and similarly situated employees are owed overtime compensation, interest, and attorneys' fees and costs. The precise amount of restitution will be proved at trial.

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FIRST CAUSE OF ACTION

UNFAIR COMPETITION LAW VIOLATIONS

(Bus. & Prof. Code § 17200)

20. The allegations of each of the preceding paragraphs are re-alleged and incorporated herein by reference, and Plaintiff alleges as follows a claim for relief on behalf of himself and the above-described Class of similarly situated Welders and Ship Fitters.

21. Business & Professions Code § 17200 prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice.

22. Business & Professions Code § 17204 allows “any person acting for the interests of itself, its members or the general public” to prosecute a civil action for violation of the Unfair Competition Law.

23. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the filing of this action, Defendant committed unlawful, unfair, and/or fraudulent business acts and practices as defined by Business & Professions Code § 17200, by failing to pay the legally required overtime premium pay to Plaintiff and similarly situated Welders and Ship Fitters.

24. The violations of these laws serve as unlawful, unfair, and/or fraudulent predicate acts and practices for purposes of Business & Professions Code § 17200.

25. As a direct and proximate result of Defendant’s unlawful, unfair, and/or fraudulent acts and practices described herein, Defendant has received and continues to hold ill-gotten gains belonging to Plaintiff and similarly situated Welders and Ship Fitters. As a direct and proximate result of Defendant’s unlawful business practices, Plaintiff and similarly situated Welders and Ship Fitters have suffered economic injuries including, but not limited to loss of overtime wages. Defendant has profited from its unlawful, unfair, and/or fraudulent acts and practices in the amount of those unpaid overtime wages, and interest accrued thereon.

26. Plaintiff and similarly situated Welders and Ship Fitters are entitled to restitution pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid overtime wages and interest accrued since four years prior to the filing of this action, and attorneys’ fees and costs Plaintiff has incurred to enforce these rights, including his rights under Labor Code § 2802.

27. Plaintiff and similarly situated Welders and Ship Fitters are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

28. By all of the foregoing alleged conduct, Defendant has committed, and is continuing to commit, ongoing unfair business practices within the meaning of Business & Professions Code § 17200 et seq.

29. As a direct and proximate result of the unlawful, unfair, and/or fraudulent business practices described above, Plaintiff and similarly situated Welders and Ship Fitters have suffered significant losses and Defendant has been unjustly enriched.

30. Pursuant to Business & Professions Code § 17203, Plaintiff is entitled to: (a) restitution of money acquired by means of its unfair and unlawful business practices, in amounts not yet ascertained but to be ascertained at trial; (b) injunctive relief against Defendant's continuation of its unfair and unlawful business practices; and (c) a declaration that Defendant's business practices are unfair and unlawful within the meaning of the statute.

31. Plaintiff assumed the responsibility of enforcement of the laws and lawful claims specified herein. There is a financial burden incurred in pursuing this action which is in the public interest. Therefore, reasonable attorneys' fees are appropriate pursuant to Code of Civil Procedure § 1021.5.

32. Plaintiff, on behalf of himself and similarly situated Welders and Ship Fitters, requests relief as described below.

VIII. PRAYER FOR RELIEF

33. WHEREFORE, Plaintiff, on behalf of himself and the above described Class of similarly situated Welders and Ship Fitters, requests relief as follows:

- a. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure § 382, and define the Class as requested herein;
- b. Provision of class notice to all members of the Class;
- c. A declaratory judgment that Defendant has knowingly and intentionally violated the following provisions of law:
 - i. Business & Professions Code §§ 17200 et seq. by failing to pay proper overtime

compensation under California law.

- e. An equitable accounting to identify, locate, and restore to all current and former Welders and Ship Fitters the wages, and interest that are due;
- f. An order requiring Defendant to pay restitution of all amounts owed to Welders and Ship Fitters for Defendant's failure to pay legally required overtime pay, in an amount according to proof, pursuant to Business & Professions Code § 17203;
- g. An award to Welders and Ship Fitters of reasonable attorneys' fees and costs, pursuant to Code of Civil Procedure § 1021.5 and/or other applicable law; and
- h. An award to Welders and Ship Fitters of such other and further relief as this Court deems just and proper.

DATED: October 17, 2019

LEONARD CARDER, LLP

By: 

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Attorneys for Plaintiff