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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

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BY   
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BY FAX

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10 **SUPERIOR COURT OF CALIFORNIA**  
11 **COUNTY OF SAN BERNARDINO**  
12

13 **DAVID WALKER**, an individual, on behalf of  
himself and all others similarly situated,  
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15 Plaintiffs,  
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17 vs.  
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**HOWMET AEROSPACE, INC.**, a Delaware  
corporation; **SCHLOSSER FORGE**  
17 **COMPANY**, a Delaware corporation; and  
18 **DOES 1-50**,

19 Defendants.  
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Case No. **CIV DS 2022311**

**COMPLAINT FOR CIVIL PENALTIES  
PURSUANT TO PRIVATE ATTORNEY  
GENERAL ACT OF 2004 (LABOR CODE  
§§ 2698 ET SEQ.)**

**COMPLAINT**

1 Plaintiff David Walker (“PLAINTIFF”), on behalf of himself, other similarly aggrieved  
2 employees of Defendants Howmet Aerospace, Inc. and Schlosser Forge Company, and on behalf of  
3 the State of California, hereby complains and alleges as follows:

#### 4 **INTRODUCTION**

5 1. This is a representative action by PLAINTIFF on behalf of himself, other similarly  
6 aggrieved employees, and the State of California against defendants Howmet Aerospace, Inc. and  
7 Schlosser Forge Company and Doe Defendants 1-50 (collectively, “DEFENDANTS”), pursuant to  
8 the California Private Attorney General Act, Labor Code sections 2698 *et seq.* (“PAGA”) to recover  
9 civil penalties (75% payable to the Labor Workforce Development Agency and 25% payable to  
10 aggrieved employees) for failure to pay all minimum and overtime wages, failure to provide  
11 adequate meal breaks, failure to correctly pay meal and rest break premiums, failure to provide  
12 accurate wage statements and failure to timely pay all wages upon cessation of employment to  
13 PLAINTIFF and other similarly aggrieved employees of DEFENDANTS in California.

#### 14 **JURISDICTION AND VENUE**

15 2. This Court has jurisdiction over PLAINTIFF’s claims for penalties pursuant to  
16 PAGA.

17 3. Venue is proper in this Judicial district and the County of San Bernardino pursuant  
18 to California Code of Civil Procedure § 395.5 because DEFENDANTS employed PLAINTIFF at  
19 its facility in Rancho Cucamonga, California, in the County of San Bernardino, and the acts,  
20 omissions, and conduct alleged by PLAINTIFF herein occurred in this county.

#### 21 **PARTIES**

22 4. Plaintiff David Walker is a resident of San Bernardino County, California.  
23 PLAINTIFF was hired by Defendant Schlosser Forge Company dba Arconic, Inc., a Delaware  
24 corporation, as a grinder at its facility in Rancho Cucamonga, California, in or around 2017. In  
25 2020, Arconic, Inc. became Howmet Aerospace, Inc., a Delaware corporation. PLAINTIFF worked  
26 for DEFENDANTS until he was laid off in the summer of 2020 by Howmet Aerospace, Inc.

1           5.       PLAINTIFF is informed and believes that DOES 1 through 50 are corporations,  
2 individuals, limited liability partnerships, limited liability companies, general partnerships, sole  
3 proprietorships or are other business entities or organizations of a nature not currently known to  
4 PLAINTIFF.

5           6.       PLAINTIFF is unaware of the true names of Defendant DOES 1 through 50.  
6 PLAINTIFF sues said Defendants by said fictitious name, and will amend this complaint when the  
7 true names and capacities are ascertained or when such facts pertaining to liability are ascertained,  
8 or as permitted by law or by the Court. PLAINTIFF is informed and believes that each of the  
9 fictitiously named Defendants is in some manner responsible for the events and allegations set forth  
10 in this complaint.

11           7.       PLAINTIFF is informed and believes, and thereon alleges, that at all times herein  
12 mentioned each Defendant, including all Defendants sued under fictitious names, was the  
13 employee, or representative of each of the remaining Defendants, and in doing the things  
14 hereinafter alleged, was at times acting within the course and scope of this employment, and at  
15 other times, acting in his or her own individual capacity. In the alternative, each of the individually  
16 named Defendants, acted in concert and in furtherance of a fraudulent plan and scheme and each  
17 actively participated in the wrongful acts alleged in this complaint.

18                               **FACTUAL BACKGROUND**

19           8.       At all times during the liability period, DEFENDANTS employed PLAINTIFF and  
20 other similarly situated hourly paid employees to perform services at DEFENDANTS' facilities  
21 throughout California.

22           9.       When working in DEFENDANTS' facility, including during the one year period  
23 before PLAINTIFF notified DEFENDANTS and the LWDA of his claims, in violation of Labor  
24 Code Sections 510, 1194, 1197 and subsections 3 and 4 of applicable Industrial Welfare  
25 Commission ("IWC") Wage Orders, including Wage Order 1, PLAINTIFF and other similarly  
26 situated aggrieved employees were suffered and permitted to work before the start of their shifts to  
27 don protective clothing and gear that was necessary for them to perform their work, including a  
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1 work shirt and pants, apron, safety boots, safety glasses, ear plugs, helmet, and N95 mask.  
2 DEFENDANTS maintained lockers where PLAINTIFF and other similarly situated employed  
3 individuals changed out of their personal shirt, pants and shoes and donned the protective clothing  
4 and gear before the start of their scheduled shift. DEFENDANTS required PLAINTIFF and other  
5 similarly situated employed individuals to be dressed in their protective clothing and gear before  
6 they clocked in for work. PLAINTIFF performed this work with the knowledge of and at the  
7 direction of his supervisors.

8 10. PLAINTIFF spent approximately ten minutes before each shift donning his  
9 protective clothing and gear. However, PLAINTIFF and other similarly employed individuals were  
10 only paid from the start of their scheduled shift time. Therefore, DEFENDANTS did not pay  
11 PLAINTIFF and other similarly situated employed individuals for the approximately 10 minutes of  
12 work time required before the start of their scheduled shift time. On shifts less than 8 hours or in  
13 weeks in which PLAINTIFF worked less than 40 hours, DEFENDANTS owe PLAINTIFF for his  
14 unpaid work time at minimum wage. On shifts of 8 or more hours or in weeks in which  
15 PLAINTIFF worked 40 or more hours, Defendant owes PLAINTIFF for his unpaid work at  
16 PLAINTIFF's overtime rate.

17 11. During his employment by DEFENDANTS, PLAINTIFF and other similarly  
18 situated employed individuals often earned overtime pay for working more than 8 hours in a day or  
19 more than 40 hours in a week. During the same pay periods in which he earned overtime, he also  
20 was, at times, paid additional non-discretionary incentive pay (reflected on their wage statements as  
21 "Perf Pay"). This incentive payment is not excludable under California law when calculating an  
22 employee's regular rate. Accordingly, DEFENDANTS were required to include the amount of this  
23 "Perf Pay" payment when calculating PLAINTIFF's regular rate of pay for the payment of  
24 overtime. DEFENDANTS failed to do so. Instead, they only paid overtime on PLAINTIFF's base  
25 hourly rate. DEFENDANTS continued this practice of failing to include incentive pay when  
26 calculating the regular rate of pay for the aggrieved employees who worked during the one-year  
27 period preceding the date PLAINTIFF gave notice to DEFENDANTS and the LWDA of these  
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claims. Accordingly, DEFENDANTS violated Labor Code Section 510 and IWC Wage Order 1, subsection 3.

12. Labor Code § 512 generally requires that employees working shifts of more than five hours be provided with a meal period within the first five hours of work, and that employees working shifts of more than ten hours be provided with a second meal period. Lab. Code § 512; *see also* Section 11 of the applicable Wage Orders, including Wage Orders 1. Employees are, therefore, entitled to one additional hour of pay at the employee's regular rate of pay for every day that a meal period was not provided or is provided late. *See id.*; Lab. Code § 226.7(c).

13. During PLAINTIFF's employment, PLAINTIFF regularly worked shifts lasting longer than 10 hours. PLAINTIFF and all other similarly employed individuals were released for their meal periods at the same time by their supervisor. PLAINTIFF did not have discretion when to take his meal periods. DEFENDANTS did not release PLAINTIFF and other similarly employed individuals for their second 30-minute meal period when they worked shifts lasting longer than 10 hours. Accordingly, DEFENDANTS regularly failed to provide, authorize, and/or permit to PLAINTIFF and other similarly employed aggrieved employees to take a second meal period on shifts over ten hours, as required by California law. DEFENDANTS did not pay PLAINTIFF and the other similarly situated aggrieved employees an additional hour as premium pay, as required by California law.

14. Labor Code Section 226.7 and Section 11(D) of the applicable IWC Wage Order, including Wage Order 1, requires DEFENDANTS to pay employees, when their rights to meal breaks and rest breaks are violated, "one additional hour of pay at the employee's regular rate of compensation" for each workday that the meal or rest period is not provided. When DEFENDANTS pay break premiums, DEFENDANTS' policy and practice has been to pay the break premium at the employee's base hourly rate without factoring in other wages paid for the labor performed.

15. California looks to federal law in defining "regular rate" and the FLSA defines "regular rate" at 29 USC § 207(e) without reference to "of pay", or "of compensation":

1 (e) **“Regular rate” defined**

2 As used in this section the “regular rate” at which an employee is employed shall be deemed  
3 to include **all remuneration for employment paid to, or on behalf of, the employee....**  
(emphasis added.)

4 16. The “all remuneration” requirement compels employers, in determining “regular  
5 rate” for an hour of work, to incorporate all remuneration an employee is paid for the hour (e.g.  
6 bonuses, shift differentials, commissions, hourly pay, piece work wages, etc.).

7 17. During the one-year period prior to the date of submitting this letter,  
8 DEFENDANTS paid PLAINTIFF and other similarly employed individuals break premiums at  
9 their base hourly rate without factoring in other wages paid for the labor performed, including  
10 incentive bonuses and shift differentials, among other things.

11 18. At all times during the liability period, PLAINTIFF and other similarly situated  
12 seasonal employees did not receive all money owed them at the time their employment with  
13 DEFENDANTS ceased and still have not received such pay.

14 19. During the one-year period prior to the date of submitting this letter,  
15 DEFENDANTS issued wage statements to PLAINTIFF and similarly situated employed  
16 individuals that did not list all wages earned, including the minimum, overtime and premium wages  
17 discussed above. As the above infractions explain, PLAINTIFF and similarly employed persons  
18 were entitled to minimum, overtime and premium wages that were not paid and, therefore,  
19 DEFENDANTS violated and continue to violate the provisions of Labor Code Section 226.

20 20. PLAINTIFF (and others) have ceased their employment with DEFENDANTS. Upon  
21 the cessation of that employment relationship (and as prescribed by statute), they did not receive all  
22 wages owed. Namely, said former employees (including PLAINTIFF) did not receive all of their  
23 minimum and overtime wages due to DEFENDANTS’ failure to include Incentive Pay in the  
24 calculation of their regular rate of pay and due to DEFENDANTS’ failure to pay for pre-shift  
25 donning of protective clothing and gear. PLAINTIFF and those similarly situated, upon  
26 termination, did not receive all owed wages on the date of termination. Therefore, DEFENDANTS  
27 have violated and continue to violate Labor Code Sections 201 and 202.

21. As alleged above, DEFENDANTS required PLAINTIFF and other similarly situated employed individuals to wear certain articles of protective gear including masks and safety boots while they work. DEFENDANTS were required to provide N95 masks to PLAINTIFF and other similarly employed individuals; however, once the Coronavirus pandemic started, not only did DEFENDANTS no longer provide N95 masks to PLAINTIFF and others, DEFENDANTS provided no masks and required PLAINTIFF and other similarly employed individuals to procure their own masks at their own expense. In order to protect himself and comply with the mask requirement, PLAINTIFF purchased disposable single use masks at a cost of approximately \$4 per mask per workday without reimbursement. PLAINTIFF worked three days per week. Similarly, DEFENDANTS were supposed to provide safety boots to PLAINTIFF and other similarly employed individuals. However, when individuals needed new boots, DEFENDANTS did not provide employees with a new boot voucher to buy a replacement pair of boots. Employees were required to purchase replacement boots at their own expense without reimbursement.

22. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” Wage Order 1, Section 9(B), also states that an employer shall provide necessary tools or equipment, except in cases where the employee is paid two times the minimum wage.

23. At the time PLAINTIFF was laid off, PLAINTIFF was paid \$16.4285 per hour. Similarly situated employees are also paid less than two times the minimum wage. As such, DEFENDANTS were required to provide all necessary tools and equipment. Moreover, pursuant to Labor Code Section 2802, DEFENDANTS were required to reimburse all necessary expenditures. Here, DEFENDANTS were required to indemnify PLAINTIFF and all similarly situated employees for masks and replacement boots purchased in direct consequence of the discharge of their duties. Therefore, DEFENDANTS have violated Labor Code Section 2802 by requiring its employees to purchase their own masks and replacement boots and failing to reimburse the expense.

1                                    **COMPLIANCE WITH NOTIFICATION REQUIREMENTS**

2            24.      On July 29, 2020, PLAINTIFF, through his counsel, sent a certified letter to the  
3 California Labor and Workforce Development Agency (“LWDA”) informing it that  
4 DEFENDANTS failed to meet their obligations under California law with regard to the violations  
5 alleged in this complaint (“PAGA Letter”). Attached hereto as **Exhibit A** is a true and correct  
6 copy of the July 29, 2020 letter also sent to DEFENDANTS at the offices of their Agents for  
7 Service of Process.

8            25.      To date, more than 65 days after July 29, 2020 PAGA Letter was mailed, the  
9 LWDA has not responded.

10           26.      The PAGA Letter outlined PLAINTIFF’s claims for violations of the California  
11 Labor Code and the applicable wage orders on behalf of himself, the State of California and other  
12 aggrieved employees.

13           27.      Accordingly, PLAINTIFF exhausted administrative remedies as required by Labor  
14 Code § 2699.3.

15                                    **FIRST CAUSE OF ACTION**

16                                    **CIVIL PENALTIES UNDER PAGA**

17                                    **(By PLAINTIFF and Aggrieved Employees against DEFENDANTS)**

18           28.      PLAINTIFF incorporates all of the foregoing paragraphs of this complaint as if fully  
19 alleged herein.

20           29.      Under the Private Attorney General Act, Labor Code §§ 2698-99 (“PAGA”), private  
21 parties may recover civil penalties for violations of the California Labor Code, including sections  
22 510, 512, 1194, 1197, 201, 202, 203, 226, 226.7 and the Industrial Welfare Commission’s (“IWC”)   
23 Wage Orders, including IWC Wage Order 1. PAGA penalties are in addition to any other relief  
24 available under the Labor Code.

25           30.      As set forth above, DEFENDANTS violated the California Labor Code by  
26 consistently failing to employ PLAINTIFF and other similarly situated employees in compliance  
27 with California law.

1           31.     At all times relevant to this action, PLAINTIFF and other aggrieved employees were  
2 employees of DEFENDANTS entitled to the benefits of the IWC Wage Orders, including Wage  
3 Orders 1.

4           32.     At all times relevant hereto, California Labor Code §§ 510, 1194(a) and 1197 and  
5 the applicable wage orders, have required DEFENDANTS to pay their employees the applicable  
6 minimum wage for all hours worked and overtime wages for all hours worked over 8 hours in a day  
7 and over 40 hours in a week.

8           33.     PLAINTIFF and the other aggrieved employees were not paid by DEFENDANTS,  
9 during the relevant period, the applicable minimum and overtime wages for all hours worked  
10 because DEFENDANTS required PLAINTIFF and others to perform work off the clock before the  
11 start of their shift for which DEFENDANTS did not pay them, as alleged above.

12           34.     At all relevant times, PLAINTIFF and the other aggrieved employees were  
13 employees of DEFENDANTS covered by Labor Code Sections 510 and 1194 and the applicable  
14 wage orders.

15           35.     By failing to correctly pay PLAINTIFF and the other aggrieved employees for all  
16 overtime hours worked, including by failing to include all non-discretionary incentive payments in  
17 DEFENDANTS' calculation of the regular rate of pay for the payment of overtime,  
18 DEFENDANTS willfully breached their obligation to pay overtime wages, violating the provisions  
19 of Labor Code sections 510 and 1194 and the applicable wage orders.

20           36.     By failing to pay PLAINTIFF and other aggrieved employees who performed pre-  
21 shift work, DEFENDANTS willfully breached their obligations under Section 5 of the applicable  
22 wage orders, including Wage Orders 1.

23           37.     At all relevant times, PLAINTIFF and other aggrieved employees were employees  
24 of DEFENDANTS covered by the meal period provisions of Labor Code Sections 226.7 and 512,  
25 and the applicable wage orders, including Wage Orders 1.

26           38.     Pursuant to Labor Code Sections 226.7 and 512, and the applicable wage orders,  
27 PLAINTIFF and other aggrieved employees were entitled to a meal period of at least 30 minutes for  
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each workday they worked more than 5 hours in any workday, and one additional hour of pay for every day that a timely meal period was not provided.

39. DEFENDANTS failed to provide PLAINTIFF and other aggrieved employees with timely, uninterrupted, duty free meal periods in accordance with Labor Code Section 226.7 and 512, and the applicable wage orders. During the relevant period, DEFENDANTS maintained and continue to maintain a policy or practice of failing to provide aggrieved employees, including PLAINTIFF, with second meal periods on shifts over 10 hours, as alleged above.

40. DEFENDANTS failed to provide PLAINTIFF and other aggrieved employees the additional hour of pay required by Labor Code Section 226.7 and the applicable wage orders for the meal period violations alleged herein. PLAINTIFF is informed and believes and thereon alleges that at all relevant times within the relevant period, DEFENDANTS maintained and continue to maintain a policy or practice of not paying additional pay to employees for meal period violations, and when DEFENDANTS do pay premiums for meal and rest break violations, DEFENDANTS have maintained and continue to maintain a policy or practice of failing to include all forms of compensation in its calculation of those premiums payments, as alleged above.

41. Pursuant to Labor Code Section 201, PLAINTIFF and other similarly aggrieved employees were entitled upon cessation of employment with DEFENDANTS to timely payment of all wages earned and unpaid prior to termination and/or discharge, including layoff. Employees who were discharged were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Pursuant to Section 202, employees who voluntarily terminated their employment with DEFENDANTS were entitled to timely payment of all wages earned and unpaid within 72 hours of giving notice of their resignation.

42. DEFENDANTS failed to pay PLAINTIFF and other aggrieved terminated employees all wages earned and unpaid prior to termination timely in accordance with Labor Code Sections 201 and 202. PLAINTIFF is informed and believes and thereon alleges that at all relevant times within the applicable limitations period, DEFENDANTS maintained and continue to maintain

1 a policy or practice of not paying terminated employees all their final wages earned before  
2 termination or layoff due under Labor Code Sections 201 and 202.

3 43. DEFENDANTS' failure to pay PLAINTIFF and other terminated employees all  
4 wages earned prior to termination in accordance with Labor Code Sections 201 and 202 was willful.  
5 DEFENDANTS had the ability to pay all wages earned by employees prior to termination in  
6 accordance with Labor Code Sections 201 and 202, but intentionally adopted policies or practices  
7 incompatible with the requirements of Section 201 and 202.

8 44. Pursuant to Labor Code Section 203, PLAINTIFF and other terminated employees  
9 were entitled to continuation of their wages, from the day their earned and unpaid wages were due  
10 upon termination until paid, up to a maximum of 30 days. DEFENDANTS did not comply with  
11 their obligations under Section 203.

12 45. DEFENDANTS failed to reimburse PLAINTIFF and other aggrieved employees for  
13 necessary expenditures or losses incurred by the employees in direct consequence of the discharge  
14 of their duties in violation of Labor Code Section 2802.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, on behalf of himself and all other aggrieved employees and the  
17 State of California, prays for relief and judgment against Defendants as follows:

- 18 1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and  
19 25% payable to aggrieved employees);  
20 2. Costs;  
21 3. Reasonable attorney's fees; and  
22 4. Such other and further relief as this Court may deem just and proper.  
23

24 Dated: October 13, 2020

MOSS BOLLINGER LLP

25  
26 By:   
27 Jeremy F. Bollinger  
28 Attorneys for Plaintiff DAVID WALKER