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

KAYASONE MUONGKHOT and JULIO
RUBIO, on behalf of themselves 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

**SECOND AMENDED CLASS ACTION
COMPLAINT**

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

**CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698, *et seq.*)**

1 Plaintiffs Kayasone Muongkhhot and Julio Rubio allege, on behalf of themselves and all
2 persons similarly situated, as follows:

3 I. INTRODUCTION

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

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

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

19 4. This is also a representative action, under the California Private Attorneys General
20 Act ("PAGA"), California Labor Code §§ 2698 *et seq.*, seeking civil penalties for violations of the
21 California Labor Code, on behalf of Plaintiff Rubio and all other individuals who have been
22 employed as Welders and Ship Fitters by Defendant HL Welding in California on or after February
23 13, 2019. Plaintiff Rubio brings this action on behalf of himself and on behalf of similarly situated
24 Welders and Ship Fitters who have not been properly paid their overtime wages in violation of the
25 California Labor Code.

26 II. JURISDICTION

27 5. This Court has jurisdiction over the claims for unfair competition under Bus. &
28 Prof. Code § 17200, *et seq.*

6. The Court has jurisdiction over the claims for PAGA penalties under Labor Code §§ 2698, *et seq.*

III. VENUE

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

IV. PARTIES

8. 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.

9. Plaintiff Julio Rubio is currently a resident of San Diego County in the State of California. Plaintiff was employed by Defendant during the relevant period as a Welder. He brings a claim for civil penalties under PAGA on behalf of himself and as a representative for all other aggrieved employees.

10. 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.

11. 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

1 when such identities become known. Defendant and Doe defendants are referred to herein
2 collectively as “Defendant” and/or “HL Welding.”

3 12. All of Plaintiffs’ claims are asserted against Defendant and any of its owners,
4 predecessors, successors, subsidiaries, and/or assigns.

5 **V. FACTUAL BACKGROUND**

6 13. Throughout the relevant time period, HL Welding has employed Welders and Ship
7 Fitters to perform construction work at jobsites in California, primarily in San Diego County.

8 14. Throughout the relevant time period, Welders and Ship Fitters employed by HL
9 Welding have regularly received multiple non-overtime rates of pay in the same pay period,
10 including a regular hourly rate and a “per diem” rate based on hours worked. In those instances,
11 HL Welding has a policy and practice of failing to include the “per diem” rate to calculate
12 Welders’ and Ship Fitters’ regular rate of pay for the calculation of overtime pay; instead using
13 only the regular hourly rate for the purpose of calculating overtime compensation. As a result of
14 HL Welding’s unlawful policy and practice, Welders and Ship Fitters regularly receive less
15 overtime compensation than they are due.

16 **VI. CLASS ACTION ALLEGATIONS**

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

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

23 16. This action has been brought and may properly be maintained as a class action
24 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
25 litigation, the proposed Class is easily ascertainable, and Plaintiff is a proper representative of the
26 Class:
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1 17. Ascertainability and Numerosity: The potential Class Members are so numerous
2 that joinder would be impracticable. Plaintiff Muongkhot is informed and believes, and on that
3 basis alleges, that Defendant employed over 100 Welders and Ship Fitters during the Class Period
4 who are members of the Class. The names and addresses of the Class Members are available to
5 Defendant. Notice can be provided to the Class Members via first class mail using techniques and
6 a form of notice similar to those customarily used in class action lawsuits of this nature.

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

- 10 a. Whether Defendant has failed to sufficiently pay Class Members
11 overtime premium wages for time worked in violation of Labor Code §§
12 510, 1194 and IWC Wage Order No. 16;
- 13 b. Whether Defendant's failure to pay overtime compensation to Class
14 Members constitutes an unlawful, unfair, and/or fraudulent practice
15 under Business & Professions Code § 17200, et seq.;
- 16 c. The proper formula for calculating restitution owed to Class Members.

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

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

27 21. Superiority of Class Action: A class action is superior to other available means for
28 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

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

FIRST CAUSE OF ACTION

UNFAIR COMPETITION LAW VIOLATIONS

(Bus. & Prof. Code § 17200)
(Claim by Plaintiff Muongkhot)

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

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

25. 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.

26. Beginning at an exact date unknown to Plaintiff Muongkhot, 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

1 required overtime premium pay to Plaintiff Muongkhot and similarly situated Welders and Ship
2 Fitters.

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

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

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

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

20 31. By all of the foregoing alleged conduct, Defendant has committed, and is continuing
21 to commit, ongoing unfair business practices within the meaning of Business & Professions Code §
22 17200 et seq.

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

26 33. Pursuant to Business & Professions Code § 17203, Plaintiff Muongkhot is entitled
27 to: (a) restitution of money acquired by means of its unfair and unlawful business practices, in
28 amounts not yet ascertained but to be ascertained at trial; (b) injunctive relief against Defendant's

1 continuation of its unfair and unlawful business practices; and (c) a declaration that Defendant's
2 business practices are unfair and unlawful within the meaning of the statute.

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

7 35. Plaintiff Muongkhot, on behalf of himself and similarly situated Welders and Ship
8 Fitters, requests relief as described below.

9 **SECOND CAUSE OF ACTION**
10 **LIABILITY FOR PENALTIES UNDER PAGA**
11 **(Labor Code §§ 2698 et seq.)**
12 **(Claim by Plaintiff Rubio)**

13 36. Plaintiff Rubio re-alleges and incorporates by reference all previous paragraphs as
14 though fully alleged herein,

15 37. Labor Code § 2699 gives any aggrieved employee the right to file an action for civil
16 penalties on behalf of himself and other current or former employees, for the employer's violations
17 of the Labor Code.

18 38. Plaintiff Rubio and other Welders and Ship Fitters are aggrieved employees within
19 the meaning of PAGA, because Defendant employed them and committed Labor Code violations
20 against them.

21 39. Defendant has violated numerous provisions of the Labor Code as follows:

- 22 a. Labor Code Section 510 requires that "[a]ny work in excess of eight
23 hours in one workday and any work in excess of 40 hours in any one
24 workweek shall be compensated at the rate of no less than one and one-
25 half times the regular rate of pay for an employee." Labor Code Section
26 1194 requires that "any employee receiving less than the legal minimum
27 wage or the legal overtime compensation applicable to the employee is
28 entitled to recover in a civil action the unpaid balance of the full amount

of this minimum wage or overtime compensation.” HL Welding’s conduct as described herein constitutes a violation of Labor Code §§ 510 and 1194 because Defendant failed to sufficiently pay Welders and Ship Fitters overtime premium wages for time worked.

40. On February 13, 2020, Plaintiff Rubio issued written notice, via electronic filing and certified mail to Defendant and the Labor and Workforce Development Agency (“LWDA”), of Plaintiff’s intent to seek PAGA penalties related to the violations of Labor Code §§ 510 and 1194. The facts and legal theories supporting the claims giving rise to PAGA claims are the same as pled above.

41. The LWDA declined to issue notice of its intention to pursue civil penalties. Labor Code § 2699.3(a)(2)(C) authorizes Plaintiff Rubio, as a matter of right, to amend the existing complaint to add a cause of action arising under PAGA within 60 days of the specified time periods. Accordingly, Plaintiff Rubio commences this PAGA claim for civil remedies as provided for under Labor Code § 2699.

VIII. PRAYER FOR RELIEF

42. WHEREFORE, Plaintiff Muongkhot, 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.
- d. An equitable accounting to identify, locate, and restore to all current and former Welders and Ship Fitters the wages, and interest that are due; and
- e. 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

1 amount according to proof, pursuant to Business § Professions Code § 17203;

2 43. WHEREFORE, Plaintiff Rubio, on behalf of himself, the state of California and
3 situated Welders and Ship Fitters employed by Defendant in California on or after February 13,
4 2019, requests relief as follows:

5 a. An award of civil penalties as provided by Labor Code § 2699 *et seq.* for
6 Defendant's failing to pay proper overtime compensation under California law. .

7 44. WHEREFORE, Plaintiff, on behalf of themselves, the state of California and
8 situated Welders and Ship Fitters employed during the relevant time periods herein, request relief
9 as follows:

10 a. An award to Welders and Ship Fitters of reasonable attorneys' fees and costs,
11 pursuant to Code of Civil Procedure § 1021.5, Labor Code § 2699, and/or other
12 applicable law; and

13 b. An award to Welders and Ship Fitters of such other and further relief as this Court
14 deems just and proper.

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16 DATED: June 15, 2020

LEONARD CARDER, LLP

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By: 
AARON KAUFMANN
DAVID POGREL
AFROZ BAIG

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Attorneys for Plaintiffs

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1 **PROOF OF SERVICE**

2 I certify that I am over the age of 18 years and not a party to the within action; that my business address is
3 1999 Harrison Street, Ste. 2700, Oakland, CA 94612; and that on this date I served a true copy of the following
4 document:

- 5 • **SECOND AMENDED COMPLAINT WITH PRIVATE ATTORNEY GENERAL ACT**
6 **CLAIM**

7 On June 18, 2020, service was effectuated by forwarding the above-noted document(s) in the
8 following manner:

9 ☐ By U.S. Mail, by placing the document(s) listed above in a sealed envelope, addressed as noted
10 below, with postage fully prepaid and placing it for collection and mailing following the
11 ordinary business practices of LEONARD CARDER LLP.

12 Marie Burke Kenny
13 Clint Engleson
14 PROCOPIO, CORY, HARGREAVES &
15 SAVITCH, LLP
16 525 B Street, Suite 2200
17 San Diego, CA 92101
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18 ☒ By Electronic service **via One Legal** on the recipients designated on the Transaction Receipt
19 located on the *One Legal* website.

20 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
21 true and correct. Executed on Thursday, June 18, 2020, at Rodeo, California.

22 

23 _____
24 CATE L. COELHO