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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

MAIKEL GONZALEZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

ALUMINUM PRECISION PRODUCTS, INC.,
a California corporation; and,
DOES 1 through 10, inclusive,

Defendants.

Case No.: 56-2022-00571822-CU-OE-VTA

**PAGA REPRESENTATIVE ACTION
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab. Code
§ 2699, et seq.]

By FAX

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1 Plaintiff Maikel Gonzalez (“Plaintiff”), based upon facts that either have evidentiary support or
2 are likely to have evidentiary support after a reasonable opportunity for further investigation and
3 discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendant Aluminum Precision Products, Inc. and
6 Does 1 through 10 (Aluminum Precision Products, Inc., and Does 1 through 10 are collectively referred
7 to as “Defendants”), based on allegations that Defendants (1) failed to pay minimum and straight time
8 wages; (2) failure to pay overtime compensation; (3) failed to provide meal periods; (4) failed to provide
9 rest breaks; (5) failed to reimburse for necessary business expenses; (6) failed to timely pay final wages;
10 (7) failed to furnish accurate itemized wage statements; (8) failed to comply with Labor Code § 1401 in
11 connection with a mass layoff; (9) failed to take all feasible means to reduce excessive heat in the
12 workplace in accordance with Section 15 of the applicable Industrial Wage Order; (10) failed to provide
13 a safe and healthful work environment in violation of Labor Code § 6400, et al.; (11) failed to implement
14 and maintain an effective written injury prevention program in violation of Labor Code § 6401.7; (12)
15 failed to provide suitable seats pursuant to section 14 of the applicable Industrial Wage Order; (13) failed
16 to provide clean drinking water in violation of Labor Code § 2441; (14) failed to provide notice of
17 potential Covid-19 exposure in violation of Labor Code § 6409.6; (15) retaliation for complaining about
18 occupational safety in violation of Labor Code § 6310; and (16) failed to provide access to shade an
19 otherwise implement a heat illness prevention plan.

20 2. Plaintiff brings the single Cause of Action as a representative action under the California
21 Private Attorney General Act (“PAGA”) to recover civil penalties that are owed to Plaintiff, the State of
22 California, and past and present employees of Defendants (hereinafter referred to as the “Aggrieved
23 Employees”).

24 3. Defendants own/owned and operate/operated an industry, business, and establishment
25 within the State of California, including Ventura County. As such, and based upon all the facts and
26 circumstances incident to Defendants’ business in California, Defendants are subject to the California
27 Labor Code, Wage Orders issued by the Industrial Welfare Commission (“IWC”), and the California
28 Business & Professions Code.

1 4. Despite these requirements, throughout the statutory period Defendants maintained a
2 systematic, company-wide policies and practices in which Defendants:

- 3 (a) failed to pay minimum and straight time wages;
- 4 (b) failure to pay overtime compensation;
- 5 (c) failed to provide meal periods;
- 6 (d) failed to provide rest breaks;
- 7 (e) failed to reimburse for necessary business expenses;
- 8 (f) failed to timely pay final wages;
- 9 (g) failed to furnish accurate itemized wage statements;
- 10 (h) failed to comply with Labor Code § 1401 in connection with a mass layoff;
- 11 (i) failed to take all feasible means to reduce excessive heat in the workplace in
12 accordance with Section 15 of the applicable Industrial Wage Order;
- 13 (j) failed to provide a safe and healthful work environment in violation of Labor
14 Code § 6400, *et al.*;
- 15 (k) failed to implement and maintain an effective written injury prevention program
16 in violation of Labor Code § 6401.7;
- 17 (l) failed to provide suitable seats pursuant to section 14 of the applicable Industrial
18 Wage Order;
- 19 (m) failed to provide clean drinking water in violation of Labor Code § 2441;
- 20 (n) failed to provide notice of potential Covid-19 exposure in violation of Labor
21 Code § 6409.6;
- 22 (o) retaliation for complaining about occupational safety in violation of Labor Code
23 § 6310; and,
- 24 (p) failed to provide access to shade and otherwise implement a heat illness
25 prevention plan.

26 5. On information and belief, Defendants, and each of them were on actual and
27 constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful
28

1 policies. Defendants' violations, as alleged above, during all relevant times herein were willful and
2 deliberate.

3 6. At all relevant times, Defendants were and are legally responsible for all of the unlawful
4 conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs
5 as the employer of Plaintiff and the aggrieved employees. Further, Defendants are responsible for each
6 of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior".

7 **THE PARTIES**

8 **A. Plaintiff**

9 7. Plaintiff is a California resident who worked for Defendants in Ventura County,
10 California as a general employee from November 2005 to May 2020.

11 8. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if
12 necessary, in order to establish suitable representative(s).

13 **B. Defendants**

14 9. Plaintiff is informed and believes, and based upon that information and belief alleges,
15 that Defendant Aluminum Precision Products, Inc. is:

16 (a) A California corporation with its principal places of business in Los Angeles,
17 California.

18 (b) A business entity conducting business in numerous counties throughout the
19 State of California, including in Los Angeles County; and

20 (c) The former employer of Plaintiffs, and the current and/or former employer of
21 the aggrieved employees. Aluminum Precision Products, Inc. suffered and
22 permitted Plaintiff and the aggrieved employees to work, and/or controlled their
23 wages, hours, or working conditions.

24 10. Plaintiff does not currently know the true names or capacities of the persons or entities
25 sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each
26 of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff
27 and the aggrieved employees as alleged herein. Plaintiff will amend this complaint to set forth the true
28

names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

11. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of the Plaintiff and the aggrieved employees in the State of California.

12. Plaintiff is informed and believes and thereon alleges that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other aggrieved employees, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

13. Plaintiff Maikel Gonzalez is a California resident who worked for Defendants in the County of Ventura, State of California, as a general employee from approximately November 2005 to May 2020. At all times Defendants classified Plaintiff as non-exempt from California's overtime requirements. During the statutory period, Plaintiff typically worked 5 days each workweek, and typically in excess of 8 hours each workday.

14. Throughout the statutory period, Defendants (1) failed to pay minimum and straight time wages; (2) failure to pay overtime compensation; (3) failed to provide meal periods; (4) failed to provide rest breaks; (5) failed to reimburse for necessary business expenses; (6) failed to timely pay final wages; (7) failed to furnish accurate itemized wage statements; (8) failed to comply with Labor Code § 1401 in connection with a mass layoff; (9) failed to take all feasible means to reduce excessive

1 heat in the workplace in accordance with Section 15 of the applicable Industrial Wage Order; (10)
2 failed to provide a safe and healthful work environment in violation of Labor Code § 6400, et al.; (11)
3 failed to implement and maintain an effective written injury prevention program in violation of Labor
4 Code § 6401.7; (12) failed to provide suitable seats pursuant to section 14 of the applicable Industrial
5 Wage Order; (13) failed to provide clean drinking water in violation of Labor Code § 2441; (14) failed
6 to provide notice of potential Covid-19 exposure in violation of Labor Code § 6409.6; (15) retaliation
7 for complaining about occupational safety in violation of Labor Code § 6310; and (16) failed to provide
8 access to shade and otherwise implement a heat illness prevention plan. As discussed below, Plaintiff's
9 experience working for Defendants was typical and illustrative.

10 **A. Failure to Pay for All Hours Worked, Including Overtime**

11 15. Under California law, an employer must pay for all hours worked by an employee.
12 "Hours worked" is the time during which an employee is subject to the control of an employer, and
13 includes all the time the employee is suffered or permitted to work, whether or not required to do so.

14 16. In addition, Labor Code § 510 provides that employees in California shall not be
15 employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they
16 receive additional compensation beyond their regular wages in amounts specified by law.

17 17. Labor Code §§ 1194 and 1198 also provide that employees in California shall not be
18 employed more than eight hours in any workday unless they receive additional compensation beyond
19 their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the
20 employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is
21 unlawful.

22 18. Throughout the statutory period, Defendants regularly used a system of time rounding in
23 a manner that results, over a period of time, in a failure to compensate Plaintiff and the Aggrieved
24 Employees properly for all the time they actually worked, even though the realities of Defendants'
25 operations are such that it is possible, practical, and feasible to count and pay for every minute of work
26 performed. Also, Plaintiff and the Aggrieved Employees were typically required to work "off the clock".
27 For example, Plaintiff and the Aggrieved Employees were required to wait in line in order to clock into
28 work each workday, uncompensated. Further, after clocking out at the end of each workday, Plaintiff

1 and the Aggrieved Employees were required go the changing/cleaning area to wash the oil and dirt from
2 their hands/face/arms. Plaintiff and the Aggrieved Employees were then required to change out of their
3 dirty (oil-stained) uniforms, and pick up their clean uniforms for the following day (so that Plaintiff and
4 the Aggrieved Employees could arrive at work in a clean uniform the following workday). This time
5 changing out of the dirty uniform and picking up clean uniforms was uncompensated. As a result,
6 Defendants frequently paid Plaintiff and the Aggrieved Employees less than all their work time, some of
7 which should have been paid at the overtime rate. As a further result, Defendants failed to maintain
8 accurate records of the hours Plaintiff and the Aggrieved Employees worked.

9 19. As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil
10 penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours
11 worked, including overtime.

12 **B. Failure to Provide Meal Periods**

13 20. Under California law, employers have an affirmative obligation to relieve employees of
14 all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of
15 work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no
16 later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be
17 paid one hour of additional wages for each workday they were not provided with all required meal
18 period(s).

19 21. Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the
20 Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and
21 the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-
22 minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without
23 compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end
24 of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the
25 Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for
26 shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have
27 adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees,
28 nor did Defendant have adequate policies or practices regarding the timing of meal periods. Further,

1 Plaintiff and the Aggrieved Employees were required to wait in line to wash their hands during their 30-
2 minute meal period, which reduced the actual meal period itself. Defendant also did not have adequate
3 policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required
4 meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff
5 and the Aggrieved Employees in compliance with California law.

6 22. Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional
7 wages for each workday he or she was not provided with all required meal period(s). Defendant,
8 however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which
9 they were entitled for meal periods and that were not provided.

10 23. As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil
11 penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and
12 pay meal period premium wages.

13 **C. Failure to Authorize and Permit Rest Periods**

14 24. Employers are required by California law to authorize and permit breaks of 10
15 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two
16 hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is
17 entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of
18 California's rest break laws.

19 25. Defendant, however, wrongfully failed to authorize and permit Plaintiff and the
20 Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff
21 and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant
22 authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every
23 four hours of work (or major fraction of four hours), or without compensating Plaintiff and the
24 Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not
25 adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover,
26 Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff
27 and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the
28 timing of rest periods. Defendant also did not have adequate policies or practices to verify whether

1 Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did
2 not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate
3 that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period.
4 Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work
5 through rest periods and to not authorize or permit them to take any rest periods.

6 26. Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional
7 wages for each workday he or she was not authorized and permitted to take all required rest period(s).
8 Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages
9 to which they were entitled for rest periods and that they were not authorized and permitted to take.

10 27. As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil
11 penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest
12 periods and pay rest period premium wages.

13 **D. Failure to Maintain Accurate Records of Hours Worked and Meal Periods**

14 28. Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5,
15 any person, including any entity, employing labor who willfully fails to maintain accurate and complete
16 records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
17 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and
18 ends each work period. Meal periods and total hours worked daily shall also be recorded.
19 Defendant, however, failed to maintain accurate records of hours worked and all meal periods
20 taken or missed by Plaintiff and the Aggrieved Employees.

21 29. Defendant's failure to provide and maintain records required by the Labor Code IWC
22 Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and
23 question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in
24 Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the
25 resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant.
26 As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer,
27 substantial losses related to the use and enjoyment of such wages, lost interest on such wages and
28 expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state

1 law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's
2 knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the
3 Aggrieved Employees have also suffered an injury in that they were prevented from knowing,
4 understanding, and disputing the wage payments paid to them.

5 30. As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil
6 penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked
7 and meal periods.

8 **E. Failure to Reimburse and Indemnify Expenses**

9 31. California Labor Code § 2802 requires employers to reimburse employees for their
10 necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of
11 their obedience to directions of the employer.

12 32. Throughout the statutory period, Plaintiff and the Aggrieved Employees were required to
13 purchase work-related items without reimbursement, which includes uniforms and purchases for the
14 benefit of the employer, such as ice. Specifically, Plaintiff and the Aggrieved Employees were required
15 to have 14 uniforms (the company only provided 7 uniforms to Plaintiff and the Aggrieved Employees,
16 and the other 7 uniforms were purchased by Plaintiff and the Aggrieved Employees). Plaintiff and the
17 Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties
18 for Defendant, and Defendant has failed to indemnify Plaintiff and the Aggrieved Employees for these
19 employment-related expenses.

20 **F. Failure to Timely Pay All Wages at Termination**

21 33. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the
22 wages earned and unpaid at the time of discharge are due and payable immediately, and that if an
23 employee voluntarily leaves his or her employment, his or her wages shall become due and payable not
24 later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours
25 previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages
26 at the time of quitting.

27 34. Within the applicable statute of limitations, the employment of Plaintiff and many other
28 Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others

1 will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff
2 and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code
3 sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving
4 Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and
5 straight time wages), missed meal periods, and missed rest periods.

6 35. Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides
7 that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the
8 wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid
9 or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

10 36. Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from
11 Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate
12 of pay, up to 30 days maximum pursuant to Labor Code § 203.

13 37. Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil
14 penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

15 **G. Failure to Furnish Accurate Itemized Wage Statements**

16 38. Labor Code § 226(a) provides that every employer shall furnish each of his or her
17 employees an accurate itemized wage statement in writing showing nine pieces of information,
18 including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate
19 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
20 provided that all deductions made on written orders of the employee may be aggregated and shown as
21 one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7)
22 the name of the employee and the last four digits of his or her social security number or an employee
23 identification number other than a social security number, (8) the name and address of the legal entity
24 that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each hourly rate by the employee. An employee is presumed
26 to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

27 39. The statute further provides: "An employee suffering injury as a result of a knowing and
28 intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all

1 actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
2 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an
3 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable
4 attorney's fees." (Lab. Code § 226(e)(1).)

5 40. Defendant intentionally and willfully failed to provide employees with complete and
6 accurate wage statements. The deficiencies include, among other things, the failure to correctly identify
7 hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages
8 earned, including wages for meal periods that were not provided in accordance with California law,
9 wages for rest periods that were not authorized and permitted to take in accordance with California law,
10 and correct wages earned for all hours worked.

11 41. As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved
12 Employees suffered injury and damage to their statutorily protected rights.

13 42. Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from
14 Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code
15 § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

16 43. Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil
17 penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

18 **H. Failure to Provide Proper Termination Notice During Layoffs**

19 44. Labor Code § 1401(a)-(c) provides that an employer may not order a mass layoff,
20 relocation, or termination at a covered establishment unless, 60 days before the order takes effect, the
21 employer gives written notice of the order to employees and the Employment Development Department
22 and shall include the notice elements required by the Federal Worker Adjustment and Retraining
23 Notification Act (29 U.S.C. section. 2101 et seq.) (Lab. Code § 1401(a)-(c)).

24 45. The statute further provides that an employer who fails to give notice as required by
25 paragraph (1) of subdivision (a) of Section 1401 before ordering a mass layoff, relocation, or termination
26 is liable to each employee entitled to notice who lost his or her employment for back pay and the value of
27 the cost of any benefits the employee may have been entitled to up to a maximum of 60 days or one-half
28 the number of days that the employee was employed by the employer, whichever is smaller. An

1 employer's liability may be reduced by specific payments made. (Lab. Code § 1402(a)-(c)).

2 46. Defendant failed to provide proper notice in accordance with the above-mentioned
3 statutory requirements when implemented layoffs of Aggrieved Employees as a result of the COVID-19
4 pandemic in May 2020.

5 47. As a result of Defendant violating Labor Code § 1401 and the Federal Worker
6 Adjustment and Retraining Notification Act, Plaintiff and Aggrieved Employees suffered injury and
7 damage to their statutorily protected rights.

8 48. Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from
9 Defendant their damages caused by Defendant's failure to comply with Labor Code § 1401 in the
10 amount provided in Lab. Code § 1402.

11 49. Labor Code § 1403 provides that an employer who fails to give notice as required by
12 paragraph (2) of subdivision (a) of Section 1401 is subject to a civil penalty of not more than five
13 hundred dollars (\$500) for each day of the employer's violation. The employer is not subject to a civil
14 penalty under this section, however, if the employer pays to all applicable employees the amounts for
15 which the employer is liable under § 1402 within three weeks from the date the employer orders the mass
16 layoff, relocation, or termination.

17 50. Defendant is therefore liable in the amount of \$500 per day of violation as a result of
18 Defendant's noncompliance with its notice obligation.

19 **I. Failure to Take All Feasible Means to Reduce Excessive Heat in Workplace**

20 51. In accordance with the Section 15 (a) of the applicable wage order issued by the
21 Industrial Welfare Commission ("IWC"), The temperature maintained in each work area shall provide
22 reasonable comfort consistent with industry-wide standards for the nature of the process and the work
23 performed. Further Section 15 (b) of IWC states that if excessive heat or humidity is created by the work
24 process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree
25 providing reasonable comfort.

26 52. However, Defendant used forge presses that shape aluminum with high temperatures and
27 has not taken feasible means to reduce such excessive heat. As a result, Plaintiff and Aggrieved
28 Employees suffered injuries at their workplace due to the excessive heat.

53. Labor Code § 1199 (c) provides that employers, persons, officers, agents, or other employees are guilty of a misdemeanor and subject to a fine of at least \$100 for violating, refusing or neglecting to comply with any provision of the particular Labor Code chapter or any order or ruling of the Commission.

54. Section 20 of IWC provides that in addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of initial violation -\$50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages, and subsequent violations — \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

J. Failure to Provide Safe and Healthful Work Environment

55. Labor Code § 6400 provides that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.

56. Labor Code § 6401 provides that every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

57. Labor Code § 6402 provides that no employer shall require or permit any employee to go or be in any employment or place of employment which is not safe and healthful.

58. Labor Code § 6403 provides no employer shall fail or neglect to do any of the following:

(a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

(b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.

(c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

59. Defendant failed to furnish Plaintiff and Aggrieved Employees with safety devices and

1 implement necessary processes and practices necessary to prevent exposure to COVID-2019. Defendant
2 failed to necessitate the use of and provide the appropriate personal protective equipment. Defendant also
3 failed to establish infection prevention measures such as encouraging sick employees to stay home,
4 implementing social distancing protocols, or establishing procedures to routinely disinfect and clean
5 commonly used surfaces. Defendant also failed to provide washing facilities to maintain cleanliness. In
6 addition, Defendant failed to take individual measures and screening such as temperature checks and pre-
7 shift screening and to provide illness prevention training.

8 **K. Failure to Implement and Maintain an Effective Written Injury Prevention**
9 **Program**

10 60. Labor Code § 6401.7 provides that every employer shall establish, implement, and
11 maintain an effective injury prevention program.

12 61. Defendant failed to establish and maintain a program that will prevent Plaintiff and
13 Aggrieved Employees from injuries that might be caused by exposure to COVID-2019 as well as other
14 health and safety hazards in the workplace. Specifically, Defendant failed to establish adequate infection
15 prevention measures such as encouraging sick employees to stay home, implementing social distancing
16 protocols, or establishing procedures to routinely disinfect and clean commonly used surfaces. Defendant
17 also failed to provide washing facilities to maintain cleanliness. In addition, Defendant failed to take
18 individual measures and screening such as temperature checks and pre-shift screening and to provide
19 illness prevention training.

20 **L. Failure to Provide Clean Drinking Water**

21 62. Labor Code § 2441 provides that every employer of labor in this state shall, without
22 making a charge therefor, provide fresh and pure drinking water to his or her employees during working
23 hours. Access to the drinking water shall be permitted at reasonable and convenient times and places.
24 Any violation of this section is punishable for each offense by a fine of not less than fifty dollars (\$50),
25 nor more than two hundred dollars (\$200), or by imprisonment for not more than 30 days, or by both the
26 fine and imprisonment.

27 63. California Code of Regulations, title 8, Section 3395(c) provides that employees shall
28 have access to portable drinking water meeting the requirements of Sections 1524, 3363, and 3457, as

1 applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided
2 to employees free of charge. The water shall be located as close as practicable to the areas where
3 employees are working. Where drinking water is not plumbed or otherwise continuously supplied, it
4 shall be provided in sufficient quantity at the beginning of the work shift to provide one quart per
5 employee per hour for drinking for the entire shift.

6 64. However, Defendant failed to provide sufficient access to fresh and pure drinking water
7 for Plaintiff and Aggrieved Employees in compliance with above mentioned requirement.

8 **M. Failure to Provide Notice of a Potential COVID-19 Workplace Exposure**

9 65. Labor Code § 6409.6 provides that if an employer or representative of the employer
10 receives a notice of potential exposure to COVID-19, the employer shall take all of the following actions
11 within one business day of the notice of potential exposure:

12 (1) Provide a written notice to all employees, and the employers of subcontracted
13 employees, who were on the premises at the same worksite as the qualifying individual
14 within the infectious period that they may have been exposed to COVID-19 in a manner
the employer normally uses to communicate employment-related information.

15 (2) Provide a written notice to the exclusive representative, if any, of employees under
paragraph (1).

16 (3) Provide all employees who may have been exposed and the exclusive
17 representative, if any, with information regarding COVID-19-related benefits to which
the employee may be entitled under applicable federal, state, or local laws.

18 (4) Notify all employees, and the employers of subcontracted employees and the
19 exclusive representative, if any, on the disinfection and safety plan that the employer
20 plans to implement and complete per the guidelines of the federal Centers for Disease
Control.

21 66. Despite the fact that, based on information and belief, Defendant was notified of
22 employees who were infected with COVID-2019 and other employees were exposed to COVID-2019,
23 Defendant failed to provide any notice to Plaintiff and Aggrieved Employees about exposure to COVID-
24 2019 and failed to take necessary measures to prevent exposure of Aggrieved Employees to COVID-
25 2019.

26 **N. Failure to Provide Access to Shade and Failure to Implement Heat Illness**
27 **Prevention Plan**

28 67. California Code of Regulations title 8, Section 3395(d) provides that shade shall be

1 present when the temperature exceeds 80 degrees Fahrenheit. When the outdoor temperature in the work
2 area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade
3 at all times while employees are present that are either open to the air or provided with ventilation or
4 cooling.

5 68. California Code of Regulations, title 8, Section 3395(d) also provides that employees
6 shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the
7 need to do so to protect themselves from overheating. Such access to shade shall be permitted at all
8 times.

9 69. California Code of Regulations title 8, Section 3395(i) provides that the employer shall
10 establish, implement, and maintain, an effective heat illness prevention plan.

11 70. However, Defendant used forge presses that shape aluminum with high temperatures and
12 has not taken feasible means to sufficiently reduce such excessive heat. As a result, Plaintiff and
13 Aggrieved Employees suffered injuries at their workplace due to the excessive heat, and Defendant
14 failed to provide shade and to establish and maintain a heat illness prevention plan.

15 **O. Failure to Provide Suitable Seats**

16 71. Pursuant to applicable IWC Section 14(A) all working employees shall be provided with
17 suitable seats when the nature of the work reasonably permits the use of seats. IWC Section 14(B) states
18 that when employees are not engaged in the active duties of their employment and the nature of the work
19 requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the
20 work areas and employees shall be permitted to use such seats when it does not interfere with the
21 performance of their duties.

22 72. However, Defendant failed to provide Plaintiff and Aggrieved Employees with suitable
23 seats.

24 **P. Retaliation for Complaining About Occupational Safety Hazards**

25 73. Labor Code § 6310 provides that no person shall discharge or in any manner discriminate
26 against any employee because the employee has done any of the following:

27 (1) Made any oral or written complaint to the division, other governmental agencies
28 having statutory responsibility for or assisting the division with reference to employee
safety or health, their employer, or their representative.

1 (2) Instituted or caused to be instituted any proceeding under or relating to their rights
2 or has testified or is about to testify in the proceeding or because of the exercise by the
employee on behalf of themselves, or others of any rights afforded to them.

3 (3) Participated in an occupational health and safety committee established pursuant to
4 Section 6401.7.

5 (4) Reported a work-related fatality, injury, or illness, requested access to occupational
6 injury or illness reports and records that are made or maintained pursuant to Subchapter
7 1 (commencing with Section 14000) of Chapter 1 of Division 1 of Title 8 of the
8 California Code of Regulations, or exercised any other rights protected by the federal
Occupational Safety and Health Act (29 U.S.C. Sec. 651 et seq.), except in cases where
the employee alleges they have been retaliated against because they have filed or made
known their intention to file a workers' compensation claim pursuant to Section 132a,
which is under the exclusive jurisdiction of the Workers' Compensation Appeals Board.

9 74. However, Defendant, on information and belief, retaliated against Aggrieved Employees
10 for complaining and/or reporting about the occupational safety hazards and/or injuries by terminating
11 their employment or taking other adverse actions against them.

12 75. Labor Code § 6427 provides that any employer who violates any occupational safety or
13 health standard, order, or special order, or Section 25910 of the Health and Safety Code, and the
14 violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to
15 twelve thousand four hundred seventy-one dollars (\$12,471) for each violation.

16 76. Labor Code § 6428 that any employer who violates any occupational safety or health
17 standard, order, or special order, or Section 25910 of the Health and Safety Code, if that violation is a
18 serious violation, shall be assessed a civil penalty of up to twenty-five thousand dollars (\$25,000) for
19 each violation. Employers who do not have an operative injury prevention program shall receive no
20 adjustment for good faith of the employer or history of previous violations as provided in paragraphs (3)
21 and (4) of subdivision (c) of Section 6319.

22 77. Labor Code § 6429 that any employer who willfully or repeatedly violates any
23 occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety
24 Code, may be assessed a civil penalty of not more than one hundred twenty-four thousand seven hundred
25 nine dollars (\$124,709) for each violation, but in no case less than eight thousand nine hundred eight
26 dollars (\$8,908) for each willful violation.

1 **FIRST CAUSE OF ACTION**

2 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of 2004, Cal.**
3 **Lab. Code § 2698 et seq.)**

4 78. Plaintiff incorporates by reference and re-allege as if fully stated herein paragraphs 1
5 through 77 in this Complaint.

6 79. At all times herein mentioned, Defendants were subject to the Labor Code of the State
7 of California and the applicable Industrial Welfare Commission Orders.

8 80. California Labor Code § 2699(a) specifically provides for a private right of action to
9 recover penalties for violations of the Labor Code: “Notwithstanding any other provision of law, any
10 provision of this code that provides for a civil penalty to be assessed and collected by the Labor and
11 Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies,
12 or employees, for a violation of this code, may, as an alternative, be recovered through a civil action
13 brought by an aggrieved employee on behalf of himself or herself and other current or former
14 employees pursuant to the procedures specified in Section 2699.3.”

15 81. Plaintiff has exhausted his administrative remedies pursuant to California Labor Code §
16 2699.3. On April 15, 2021, and, again, on May 5, 2021, Plaintiff gave written notice by online filing to
17 the Labor and Workforce Development Agency and by certified mail to Defendants of the specific
18 provisions of the Labor Code that Defendants have violated against Plaintiff and current and former
19 aggrieved employees, including the facts and theories to support the violations. Plaintiff’s PAGA case
20 number is Case No. LWDA-CM-811365-20. At the time of this filing, 65 days has elapsed since
21 Plaintiff provided notice, but the Labor and Workforce Development Agency has not indicated that it
22 intends to investigate Defendants’ Labor Code violations discussed in the notice. Accordingly, Plaintiff
23 may commence a civil action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for
24 the violations of the Labor Code described in this Complaint. These penalties include, but are not
25 limited to, penalties under California Labor Code §§ 210, 226.3, 558, 1197.1, and 2699(f)(2).

26 82. In addition, Plaintiff seeks penalties for Defendants’ violation of California Labor Code §
27 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor
28 who willfully fails to maintain accurate and complete records required by California Labor Code § 1174

1 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer
2 shall keep time records showing when the employee begins and ends each work period. Meal periods,
3 and total hours worked daily shall also be recorded. Additionally, pursuant to the applicable IWC Order
4 § 7(A)(5), every employer shall keep total hours worked in the payroll period and applicable rates of pay.

5 83. During the time period of employment for Plaintiff and the Aggrieved Employees,
6 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to maintain
7 accurate records showing meal periods, and accurate records showing when employees begin and end
8 each work period. Defendants' failure to provide and maintain records required by the Labor Code IWC
9 Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and
10 question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in
11 Defendants' records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the
12 resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendants.
13 As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer,
14 substantial losses related to the use and enjoyment of such wages, lost interest on such wages and
15 expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state
16 law, all to their respective damage in amounts according to proof at trial. Because of Defendants'
17 knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the
18 Aggrieved Employees have also suffered an injury in that they were prevented from knowing,
19 understanding, and disputing the wage payments paid to them.

20 84. Based on the conduct described in this Complaint, Plaintiff alleges that Defendant
21 violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

- 22 (a) Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours
23 worked, including minimum wages, straight time wages and overtime wages;
- 24 (b) Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal
25 periods;
- 26 (c) Labor Code § 226.7 and applicable Wage Orders by failing to authorize and
27 permit rest periods;
- 28 (d) Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate

- 1 records of hours worked and meal periods taken or missed;
- 2 (e) Labor Code § 2802 by failing to reimburse and indemnify employees for
- 3 expenses and losses in the direct consequence and discharge of their duties;
- 4 (f) Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at
- 5 termination;
- 6 (g) Labor Code § 226 by failing to provide accurate itemized wage statements;
- 7 (h) Labor Code § 1401 and the Federal Worker Adjustment and Retraining
- 8 Notification Act for failure to provide proper notice during layoffs;
- 9 (i) IWC applicable order for failure to take all feasible means to reduce excessive
- 10 heat in the workplace and provide suitable seats;
- 11 (j) Labor Code § 640, 6401, 6402, 6403 for failure to provide safe and healthful
- 12 work environment;
- 13 (k) Labor Code § 6401.7 for failure to implement and maintain an effective written
- 14 injury prevention program;
- 15 (l) Labor Code § 2441 and California. Code of Regulations title 8, Section 3395(c)
- 16 for failure to provide clean drinking water;
- 17 (m) Labor Code § 6409.6 for failure to provide notice of a potential COVID-19
- 18 workplace exposure;
- 19 (n) California Code of Regulations title 8, Section 3395(d) and (i) for failure to
- 20 provide access to shade and failure to implement heat illness prevention plan;
- 21 (o) Labor Code § 6310 for retaliation for complaining about occupational safety
- 22 hazards.

23 85. Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties
24 related to the violations alleged above pursuant to the PAGA. These include, but are not limited to,
25 penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 1401, 2802, 2699(f)(2), 6427, 6428,
26 6429.

27 86. Plaintiff is entitled to an award of civil penalties on behalf of himself, the State of
28 California, and similarly Aggrieved Employees of Defendants. The exact amount of the applicable

penalties, in all, is in an amount to be shown according to proof at trial. These penalties are in addition to all other remedies permitted by law.

87. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."

PRAYER FOR RELIEF

Plaintiff, individually, and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

As to the Ninth Cause of Action

88. That the Court declare, adjudge and decree that Defendants violated the California Labor Cod by failing to pay wages for all hours worked (including minimum, straight time, and overtime wages), failing to provide meal periods, failing to maintain accurate records of meal periods, failing to authorize and permit rest periods, failing to maintain accurate records of all hours worked and meal periods, failing to indemnify necessary business expenses, failing to pay final wages at termination, and failing to furnish accurate wage statements;

89. For all actual, consequential and incidental losses and damages, according to proof;

90. For all civil penalties pursuant to California Labor Code § 2699, et seq., and all other applicable Labor Code provisions;

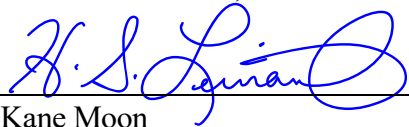
91. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code § 2699;

92. For such other and further relief as the Court may deem equitable and appropriate.

Respectfully submitted,

Dated: November 1, 2022

MOON & YANG, APC

By: 
Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff MAIKEL GONZALEZ