

PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND RELEASE

This Private Attorneys General Act Settlement Agreement and Release (“Agreement”) is made by and between Plaintiff Maikel Gonzalez (“Plaintiff”), individually, and on behalf of all other aggrieved employees (the “Aggrieved Employees,” as described below), and as a private attorney general on behalf of the State of California pursuant to Labor Code section 2699, *et seq.*, the Private Attorneys General Act (“PAGA”) on the one hand, and Defendant Aluminum Precision Products, Inc. (“APP”), on the other hand. Plaintiff and APP are collectively referred to herein as “the Parties.”

This Agreement, and the settlement embodied herein, shall be binding on Plaintiff, the Aggrieved Employees he represents, and APP, subject to the approval of the Court.

WHEREAS, Plaintiff has filed a Complaint in the Superior Court of California, County of Ventura, entitled *Gonzalez v. Aluminum Precision Products, Inc.*, Case No. 56-2020-00546795-CU-OE-VTA (the “Lawsuit”), asserting class claims and a representative claim for civil penalties payable to himself, other aggrieved employees, and the State of California pursuant to PAGA, based on allegations that APP: (1) failed to pay minimum and straight time wages; (2) failed 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; and (7) failed to furnish accurate itemized wage statements. In addition, Plaintiff submitted Amended notices of Labor Code violations to the California Labor & Workforce Development Agency (“LWDA”) and/or Division of Occupational Health and Safety (“OSHA”), based on allegations that APP failed to: (1) comply with Labor Code section 1401 in connection with a mass layoff, (2) take all feasible means to reduce excessive heat in the workplace in accordance with Section 15 of the applicable Industrial Wage Order, (3) provide a safe and healthful work environment in violation of Labor Code section 6400, *et al.*, (4) implement and maintain an effective written injury prevention program, (5) provide suitable seats pursuant to section 14 of the applicable Industrial Wage Order, and (6) provide access to shade. Specifically, the Representative PAGA Claims are claims for civil penalties under PAGA for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 1400, 1401, 2441, 2698, 2699, 2802, 6310, 6400, 6401, 6401.7, 6402, 6403, 6409.6, 6427, 6428, and 6429 (as well as the corresponding provisions of the applicable Industrial Wage Order), IWC Wage Order §§ 14 and 15, and Cal. Code Regs., tit. 8, § 3395, and for any other PAGA violations that could have been asserted in the action based on the factual assertions and legal assertions in the First Amended Complaint and/or Plaintiff’s Second Amended PAGA Notice, attached as **Exhibit B** (all of the foregoing are collectively referred to as Plaintiff’s “Representative PAGA Claims”). Plaintiff’s Second Amended PAGA Notice is attached hereto as **Exhibit B**.

WHEREAS, Plaintiff timely sent notice to the LWDA and OSHA of his intent to pursue a representative action pursuant to PAGA, on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees (the “PAGA Notice”).

WHEREAS, Plaintiff signed an arbitration agreement during his employment with APP. The arbitration agreement Plaintiff signed precludes him from bringing class claims in this action.

See Lamps Plus, Inc. v. Varela, 139 S. Ct. 1407 (2019). Accordingly, Plaintiff will file a request to dismiss his class claims without prejudice pursuant to California Rule of Court, Rule 3.770.

WHEREAS, on May 6, 2021, the Parties attended an all-day mediation with experienced wage-and-hour mediator Lisa Klerman, Esq. As a result, the Parties agreed to settle Plaintiff's Representative PAGA claims, taking into account all known facts and circumstances – including the difficulty of proving some of Plaintiff's claims, potential defenses asserted by APP, the uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate issues.

WHEREAS, for purposes of this Settlement, the Aggrieved Employees are defined as: “All individuals who are or were employed by APP within the State of California between July 28, 2019 and the date the Court enters an order and judgment approving this settlement.” APP represents that there are approximately 700 Aggrieved Employees.

WHEREAS, the Parties understand, acknowledge, and agree that this PAGA settlement constitutes a compromise of Plaintiff's Representative PAGA Claims, and that it is the desire and intention of the Parties to effect a final and complete resolution of the Representative PAGA Claims that Plaintiff and the Aggrieved Employees have against APP and APP's past or present parents, subsidiaries, and affiliates, and/or its or their respective past or present officers, directors, employees, partners, agents, or insurers (collectively, the “Released Parties”), and/or any other individual or entity that could be liable for the acts of omissions of APP or the Released Parties. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by APP or the Released Parties of any wrongdoing or liability. Specifically, APP and the Released Parties deny any liability or wrongdoing of any kind associated with the claims alleged in the First Amended Complaint and the Second Amended PAGA Notice. APP and the Released Parties, among other things, contend that they have complied at all times with the California Labor Code and all applicable California laws.

WHEREAS, the Parties believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the Representative PAGA Claims, and have arrived at the settlement in extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

WHEREAS, California Labor Code § 2699(k)(2) requires Court review and approval of any settlement of a civil action filed pursuant to PAGA.

WHEREAS, based on their own independent investigations and evaluations, APP and Plaintiff and their respective counsel are of the opinion that the amount and terms of the Settlement are fair, reasonable, and adequate and are in the best interests of the Plaintiff, the Aggrieved Employees, and APP in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, counsel for Plaintiff, Scott Leviant of Moon & Yang, APC, believes that the settlement amount entered into is in the best interests of the Aggrieved Employees and that the settlement for each Aggrieved Employee is fair, reasonable, and adequate, given the inherent risk of litigation.

WHEREAS, the Parties: (1) believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the Representative PAGA Claims, (2) have investigated the facts relevant to this settlement and this Agreement, and all matters pertaining thereto, and (3) have arrived at the settlement through extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

WHEREAS, the Parties recognize that in accordance with Labor Code section 2699(l), Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. *See also Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074 (2017) (“PAGA authorizes a representative action without the need for class certification”); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (“a PAGA suit is fundamentally different than a class action” in that PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action); *Williams v. Sup. Ct.*, 3 Cal. 5th 531, 546-47 (2017) (“PAGA does not make other potentially aggrieved employees parties or clients of plaintiff’s counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect to the ability to represent a large class”).

Therefore, in consideration of the promises and agreements contained herein, and to avoid the uncertainty, risks, costs, and delays associated with further litigation, the Parties agree and covenant as follows:

1. Effective Date. The effective date (“Effective Date”) of this Agreement shall mean the following: (a) the date of service of notice of entry of the order approving this Agreement and the PAGA Settlement if no objections are filed to this settlement or if all objections are withdrawn prior to the Court ruling on them; or (b) sixty-one (61) days after the date of service of notice of entry of the settlement approval order if objections are filed and overruled and no appeal is taken from the order approving the settlement; or (c) if a timely appeal is made, ten (10) business days after the final resolution of that appeal if the appeal is rejected, the settlement is upheld, and the settlement approval order is no longer subject to further judicial review.

2. Released Claims/Effect of Judgment on Aggrieved Employees and LWDA
The Parties agree and acknowledge that, to the maximum extent permitted by law, the final judgment entered pursuant to this settlement will bind all those who would be bound by a judgment if the action had been brought by the LWDA, including Plaintiff, the LWDA, and the Aggrieved Employees, with respect to the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, *et. seq.* only, against APP and APP’s past or present parents, subsidiaries, and affiliates, and/or its or their respective past or present officers, directors, employees, partners, agents or insurers (collectively, the “Released Parties”), and/or any other individual or entity that could be liable for the acts or omissions of APP or the Released Parties. It is expressly understood and agreed that this settlement only includes a full release of the PAGA claim for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 1400, 1401, 2441, 2698, 2699, 2802, 6310, 6400, 6401, 6401.7, 6402, 6403, 6409.6, 6427, 6428, and 6429

(as well as the corresponding provisions of the applicable Industrial Wage Order), IWC Wage Order §§ 14 and 15, and Cal. Cod Regs., tit. 8, § 3395, and for any other PAGA violations that could have been asserted in the action based on the factual assertions and legal assertions in the First Amended Complaint and/or Plaintiff's Second Amended PAGA Notice, attached as **Exhibit B** (all of the foregoing are collectively referred to as Plaintiff's "Representative PAGA Claims"). This settlement shall not impact Aggrieved Employees' ability to assert Labor Code claims other than PAGA claims.

3. Notice to LWDA. Pursuant to California Labor Code § 2699(k)(2), the Parties shall submit to the LWDA a copy of this Agreement at the same time that the Parties submit it to the Court for approval.

4. Total Settlement Amount. APP agrees to pay, in accordance with the terms set forth herein, the total sum of \$350,000.00 (the "Gross Settlement Amount") in full settlement of the Lawsuit. The Gross Settlement Amount will be allocated as follows:

- a. PAGA Counsel's attorneys' fees and costs request of up to 33 and 1/3% of the Gross Settlement Amount (\$116,666.66) ("PAGA Counsel's Fees") and PAGA Counsel's separate request for reasonable litigation costs incurred in this matter ("PAGA Counsel's Costs") not to exceed \$12,000.00. APP will not oppose these requests. To the extent that the Court approves less than the amount of attorney's fees and costs that PAGA Counsel requests, any reduced amount shall be allocated to the settlement fund for the Aggrieved Employees;
- b. Administration costs of no more than \$6,000.00 to be paid to the Settlement Administrator ("Administration Costs"), based upon a bid submitted by Phoenix Settlement Administrators;
- c. A PAGA service award in the amount of \$5,000.00 to Plaintiff for his services on behalf of the State of California and PAGA Members ("Plaintiff's Service Award"); and
- d. The remainder of the Gross Settlement Amount (the "PAGA Fund") after deducting items (a) and (b) is approximately \$210,383.76, and shall be designated as PAGA Penalties to be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i), with 75% paid to the LWDA (the "LWDA PAGA Portion") and 25% paid to the Aggrieved Employees (the "Aggrieved Employees' PAGA Portion") on a pro-rata basis.

5. Allocation and Calculation of the PAGA Penalties. Each Aggrieved Employee shall receive a portion of the PAGA Penalties on a pro-rata basis. APP will calculate: (i) the total number of pay periods worked by each Aggrieved Employee during the PAGA Period, and (ii) the total number of pay periods worked by all Aggrieved Employees during the PAGA Period. To determine each Aggrieved Employee's payment from the Aggrieved Employees' PAGA Portion, APP will use the following formula: Settlement Payment = Aggrieved

Employees' PAGA Portion ($\approx \$52,595.94$) $\times$ [Pay Periods Worked by Individual Aggrieved Employee during the PAGA Period $\div$ Total Pay Periods Worked by All Aggrieved Employees during the PAGA Period].

6. Tax Treatment of Settlement Amounts. With regard to settlement payments to Aggrieved Employees, IRS Form 1099s will be issued, if applicable. IRS Form 1099s are used for payments of miscellaneous income of at least \$600 that is not considered wages, such as the penalty payments at issue in this Settlement. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff acknowledges that he has obtained no tax advice from APP and that neither APP nor its attorneys have made any representation concerning the tax consequences, if any, of the Settlement Amount in this Agreement or any payment to be made pursuant to this Agreement. To the extent that this Settlement or any of its attachments are interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. APP is not responsible for any employee tax obligations regarding the allocation of the settlement payments. Payment of the portion allocated to PAGA Counsel's fees and costs will be reflected in a Form 1099 to PAGA Counsel, who shall assume full responsibility and liability for the payment of taxes due on such payments.

7. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND TAX ADVISERS FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

8. PAGA Settlement Payment Procedures.

- a. Within 10 business days of the Effective Date, APP shall deposit the Gross Settlement Amount or \$350,000.00 with the Settlement Administrator. Within 10 business days of the Effective Date, APP shall also provide the Settlement Administrator with a list of all Aggrieved Employees with each listed employee's full name, last known mailing address, social security number, and number of pay periods in the PAGA period. The Settlement Administrator shall run all the addresses of Aggrieved Employees through the United States Postal Service NCOA database to obtain current address information.

Within 30 calendar days from the date the Gross Settlement Amount has been deposited with the Settlement Administrator, the Settlement Administrator shall:

- i. Remit a total of Twenty-Five percent (25%) of the PAGA Fund to the Aggrieved Employees, along with the employee letter (attached hereto as **Exhibit A**). Aggrieved Employees shall not be required to make claims, but shall simply be delivered a check for their share of the PAGA settlement. The payment checks shall be sent to each Aggrieved Employee by U.S. First Class mail to the Aggrieved Employee's address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. It will be conclusively presumed that an Aggrieved Employee's Individual Settlement Payment check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check. All uncashed settlement checks shall be sent to the California State Controller's Unclaimed Property division.
- ii. Remit a total of Seventy-Five percent (75%) of the PAGA Fund to the LWDA.
- iii. Remit PAGA Counsel's fees and costs, as approved by the Court.
- b. Settlement Checks issued to Aggrieved Employees pursuant to this Agreement will expire one hundred and eighty (180) days from the date they are mailed by the Settlement Administrator.
- c. Neither APP nor Plaintiff shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

9. Settlement Administrator. As set forth in Paragraph 8, the Settlement Administrator shall be responsible for sending notices, calculating settlement payments, preparing all checks and mailings, and complying with all requirements set forth in Paragraph 8.

As noted above, the costs of the Settlement Administrator shall be paid out of the Gross Settlement Amount, and the Parties agree to use Phoenix Class Action Administrator Solutions as Settlement Administrator. APP is not responsible or liable for any errors in the calculation of settlement amounts to be awarded to each Aggrieved Employee. APP is also not liable or responsible for any errors made by the Settlement Administrator in the administration of the settlement.

10. Duties of the Parties Prior to Approval. Promptly upon execution of this Settlement, Plaintiff shall apply to the Court for approval of the proposed Settlement and for the entry of an order approving this Settlement as required by Labor Code section 2699(1). The Approval Stipulation will request Court approval of the following: (1) the terms of this Agreement, (2) the amount of fees and costs to PAGA Counsel, and (3) Final Judgment. In conjunction with the Motion for Approval, Plaintiff shall submit a proposed Final Judgment requesting the entry of judgment.

11. Non-Admission of Wrongdoing. The Parties agree that this Agreement does not constitute an admission by APP or any Released Party, of any of the matters alleged in the Lawsuit or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Plaintiff, APP or the Released Parties, or APP or the Released Parties' parents, subsidiaries, divisions, affiliated corporations, trustees, directors, officers, shareholders, agents, attorneys, insurers, or employees.

12. Nondisclosure and Nonpublication. Plaintiff agrees not to publicize the Agreement, the fact of the Agreement, its terms or contents, or the negotiations underlying the Agreement, in any manner or form, directly or indirectly, to any person or entity, beyond filing the Agreement with the Court and submitting a copy to the LWDA.

13. Waiver and Amendment. The Parties may not waive, amend, or modify any provision of this Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

14. Communications. All communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

To Defendant Aluminum Precision Products, Inc.: Paul Berkowitz, Sheppard Mullin Richter & Hampton LLP, 1901 Avenue of the Stars, Suite 1600, Los Angeles, CA 90067.

To Plaintiff: H. Scott Leviant, Moon & Yang, APC, 1055 W. Seventh Street, Suite 1880, Los Angeles, CA 90017.

15. Entire Agreement. This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all

negotiations, presentations, warranties, commitments, offers, contracts and writings prior to the date hereof relating to the subject matters hereof. Any representation, promise or agreement not specifically included in this Agreement shall not be binding upon or enforceable against either Party. This is a fully integrated agreement. No other promises or agreements shall be binding or shall modify this Agreement unless in writing and signed by the Parties.

16. Severability. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Settlement Agreement that can be given effect without the invalid provisions or application, and to this end, the provisions of this Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable Released Party.

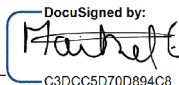
17. No Construction Against the Drafter. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter.

18. Choice of Law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles of conflict of laws.

19. Counterparts. This Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

20. Cooperation. Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

Dated: May __, 2021

DocuSigned by:


Maikel Gonzalez, PAGA Representative

Dated: May __, 2021

Aluminum Precision Products, Inc.

By: _____

Its: _____

negotiations, presentations, warranties, commitments, offers, contracts and writings prior to the date hereof relating to the subject matters hereof. Any representation, promise or agreement not specifically included in this Agreement shall not be binding upon or enforceable against either Party. This is a fully integrated agreement. No other promises or agreements shall be binding or shall modify this Agreement unless in writing and signed by the Parties.

16. **Severability**. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Settlement Agreement that can be given effect without the invalid provisions or application, and to this end, the provisions of this Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable Released Party.

17. **No Construction Against the Drafter**. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter.

18. **Choice of Law**. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles of conflict of laws.

19. **Counterparts**. This Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

20. **Cooperation**. Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

Dated: May ___, 2021

Maikel Gonzalez, PAGA Representative

Dated: May 14, 2021

Aluminum Precision Products, Inc.
By: GREGORY S. KEELER
Its: PRESIDENT / CEO

APPROVED AS TO FORM AND CONTENT:

Dated: May 14, 2021

MOON & YANG, APC



Kane Moon, Esq.

H. Scott Leviant, Esq.

Attorneys for Plaintiff Maikel Gonzalez
and Aggrieved Employees

Dated: May ___, 2021

**SHEPPARD MULLIN RICHTER &
HAMPTON LLP**

Ronda D. Jamgotchian, Esq.

Paul Berkowitz, Esq.

Attorneys for Defendant

Aluminum Precision Products, Inc.

APPROVED AS TO FORM AND CONTENT:

Dated: May ___, 2021

MOON & YANG, APC

Kane Moon, Esq.
H. Scott Leviant, Esq.
Attorneys for Plaintiff Maikel Gonzalez
and Aggrieved Employees

Dated: May 14, 2021

**SHEPPARD MULLIN RICHTER &
HAMPTON LLP**



Ronda D. Jamgotchian, Esq.
Paul Berkowitz, Esq.
Attorneys for Defendant
Aluminum Precision Products, Inc.

Exhibit “A”

NOTICE OF PAGA ACTION SETTLEMENT

Gonzalez v. Aluminum Precision Products, Inc.
Ventura Superior Court Case No. 56-2020-00546795-CU-OE-VTA

This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE EMPLOYED BY DEFENDANT ALUMINUM PRECISION PRODUCTS, INC. (“DEFENDANT” OR “APP”) DURING THE PAGA PERIOD (July 28, 2019 THROUGH <<**APPROVAL DATE**>>), THIS PAGA SETTLEMENT AFFECT YOUR RIGHTS.

A settlement (the “Settlement”) has been reached in a lawsuit entitled *Gonzalez v. Aluminum Precision Products, Inc.*, Case No. 56-2020-00546795-CU-OE-VTA, (the “Action”), asserting a claim under the Labor Code Private Attorney Generals Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”). The purpose of this Notice is to advise you as to why you have received a portion of the Settlement proceeds. The Settlement resolves the entire Action.

Who is affected by this proposed Settlement?

The Court has designated, for settlement purposes only, the following persons as (“Aggrieved Employees”):

All persons currently or formerly employed by Defendant in California during the designated PAGA Period (July 28, 2019 through the date the Court approves this Settlement Agreement).

According to Defendant’s records, you are one of the Aggrieved Employees.

What is this case about?

In the Action, Plaintiff asserted a claim that APP violated provisions of the Labor Code giving rise to civil penalty liability under the Labor Code Private Attorneys General Act of 2004 (“PAGA”) [Lab. Code § 2699, *et seq.*].

APP denied all liability and was confident that it had strong legal and factual defenses to these claims, but APP recognized the risks, distractions, and costs associated with continued litigation.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiff and APP (the “Parties”), through their attorneys, with the assistance of a neutral third-party mediator and is not an admission of liability on the part of APP.

The Court has not ruled on the merits of Plaintiff’s claims or APP’s defenses, but did approve the Settlement.

What are the Settlement terms?

Defendant will pay \$350,000.00 (the “Total Settlement Amount”) for: (a) payment of **\$157,787.82** to the Labor and Workforce Development Agency (“LWDA”) as its 75% share of PAGA penalties; (b) payment of **\$52,595.94** to PAGA Settlement Members as their 25% share of PAGA penalties, (c) payment of attorney’s fees of **\$116,666.66** and litigation costs of **\$11,949.58**; (d) payment of administration costs of **\$6,000** to the Settlement Administrator, and (e) payment of **\$5,000** as a service payment to the Plaintiff.

By operation of the Settlement’s terms, all Aggrieved Employees will release APP and its past or present parents, subsidiaries, related companies, and affiliates, and each of their respective officers, directors, employees, partners, agents, attorneys, insurers, and/or any other individual or entity that could be liable for the acts or omissions of APP from the PAGA claim for penalties for the period of July 28, 2019 through <<**APPROVAL DATE**>> for civil penalties under PAGA for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 1400, 1401, 2441, 2698, 2699, 2802, 6310, 6400, 6401, 6401.7, 6402, 6403, 6409.6, 6427, 6428, and 6429 (as well as the corresponding provisions of the applicable Industrial Wage Order), IWC Wage Order §§ 14 and 15, and Cal. Code Regs., tit. 8, § 3395, and for any other PAGA violations that could have been asserted in the action based on the factual assertions and legal assertions in the First Amended Complaint and/or Plaintiff’s Second Amended PAGA Notice.

The Settlement Payments to Aggrieved Employees are classified as other miscellaneous income and will be reported on IRS Form 1099-MISC, if required. Your share was calculated based on the number of pay periods you worked during the PAGA Period (July 28, 2019 through <<**APPROVAL DATE**>>).

All checks will remain valid and negotiable for one hundred eighty (180) days from the date of the checks’ issuance and shall thereafter automatically be void if not cashed within that time. Uncashed checks will be sent to the California State Controller’s Unclaimed Property division. in the name of the PAGA Settlement Member.

The Settlement includes a release of PAGA claims asserted in this lawsuit.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

Exhibit “B”

MOON & YANG, APC

ATTORNEYS AT LAW
WWW.MOONYANGLAW.COM

1055 W. SEVENTH ST., SUITE 1880
LOS ANGELES, CALIFORNIA 90017
TELEPHONE: (213) 232-3128
FACSIMILE: (213) 232-3125

Kane Moon, Esq.
Kane.moon@moonyanglaw.com

May 5, 2021

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA EMAIL: DIRDOSHRegionIII@dir.ca.gov

Division of Occupational Health and Safety
Kathy Derham, Regional Manager
2 MacArthur Place, Suite 720
Santa Ana, CA 92707

VIA EMAIL: DOSHSA@dir.ca.gov

Division of Occupational Health and Safety
Ujitha Perera, District Manager
2 MacArthur Place, Suite 720
Santa Ana, CA 92707

VIA CERTIFIED MAIL

Aluminum Precision Products, Inc.
3333 W. Warner Avenue
Santa Ana, CA 92704

Amended Notice of Labor Code Violations and PAGA Penalties

Re: ***Maikel Gonzalez v. Aluminum Precision Products, Inc.***

To Whom It May Concern:

Please be advised that my office has been retained by Maikel Gonzalez (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, Aluminum Precision Products, Inc. (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of herself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Ventura County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendant as a general worker from approximately November 2005 to May 2020, primarily in Ventura County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and in excess of 8 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

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

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

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

Throughout the statutory period, Defendants regularly used a system of time rounding in a manner that results, over a period of time, in a failure to compensate Plaintiff and the Aggrieved Employees properly for all the time they actually worked, even though the realities of Defendants' operations are such that it is possible, practical, and feasible to count and pay for every minute of work performed. Also, Plaintiff and the Aggrieved Employees were typically required to work "off the clock". For example, Plaintiff and the Aggrieved Employees were required to wait in line in order to clock into work each workday, uncompensated. Further, after clocking out at the end of each workday, Plaintiff and the Aggrieved Employees were required to go to the changing/cleaning area to wash the oil and dirt from their hands/face/arms. Plaintiff and the Aggrieved Employees were then required to change out of their dirty (oil-stained) uniforms, and pick up their clean uniforms for the following day (so that Plaintiff and the Aggrieved Employees could arrive at work in a clean uniform the following workday). This time changing

out of the dirty uniform and picking up clean uniforms was uncompensated. As a result, Defendants frequently paid Plaintiff and the Aggrieved Employees less than all their work time, some of which should have been paid at the overtime rate. As a further result, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

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

Failure to Provide Meal Periods

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

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Further, Plaintiff and the Aggrieved Employees were required to wait in line to wash their hands during their 30-minute meal period, which reduced the actual meal period itself. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

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

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

Failure to Authorize and Permit Rest Periods

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

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

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

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

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

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

Failure to Reimburse and Indemnify Expenses

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

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

Failure to Timely Pay All Wages at Termination

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

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required

to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

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

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

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

Failure to Furnish Accurate Itemized Wage Statements

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

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

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

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

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

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

Failure to Provide Proper Termination Notice During Layoffs

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

The statute further provides that an employer who fails to give notice as required by paragraph (1) of subdivision (a) of Section 1401 before ordering a mass layoff, relocation, or termination is liable to each employee entitled to notice who lost his or her employment for back pay and the value of the cost of any benefits the employee may have been entitled to up to a maximum of 60 days or one-half the number of days that the employee was employed by the employer, whichever is smaller. An employer's liability may be reduced by specific payments made. (Lab. Code § 1402(a)-(c)).

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

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

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

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

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

Failure to Take All Feasible Means to Reduce Excessive Heat in Workplace

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

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

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.

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.

Failure to Provide Safe and Healthful Work Environment

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

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.

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.

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.

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

Failure to Implement and Maintain an Effective Written Injury Prevention Program

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

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

Failure to Provide Clean Drinking Water

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

California Code of Regulations, title 8, Section 3395(c) provides that employees shall have access to portable drinking water meeting the requirements of Sections 1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge. The water shall be located as close as practicable to the areas where employees are working. Where drinking water is not plumbed or otherwise continuously supplied, it shall be provided in sufficient quantity at the beginning of the work shift to provide one quart per employee per hour for drinking for the entire shift.

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

Failure to Provide Notice of a Potential COVID-19 Workplace Exposure

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

- (1) Provide a written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the qualifying individual 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.
- (2) Provide a written notice to the exclusive representative, if any, of employees under paragraph (1).
- (3) Provide all employees who may have been exposed and the exclusive representative, if any, with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws.
- (4) Notify all employees, and the employers of subcontracted employees and the exclusive representative, if any, on the disinfection and safety plan that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control.

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

Failure to Provide Access to Shade and Failure to Implement Heat Illness Prevention Plan

California Code of Regulations title 8, Section 3395(d) provides that shade shall be present when the temperature exceeds 80 degrees Fahrenheit. When the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling.

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

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

However, Defendant used forge presses that shape aluminum with high temperatures and has not taken feasible means to sufficiently reduce such excessive heat. As a result, Plaintiff and

Aggrieved Employees suffered injuries at their workplace due to the excessive heat, and Defendant failed to provide shade and to establish and maintain a heat illness prevention plan.

Failure to Provide Suitable Seats

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

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

Retaliation for Complaining About Occupational Safety Hazards

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

- (1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, their employer, or their representative.
- (2) Instituted or caused to be instituted any proceeding under or relating to their rights 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) Participated in an occupational health and safety committee established pursuant to Section 6401.7.
- (4) Reported a work-related fatality, injury, or illness, requested access to occupational injury or illness reports and records that are made or maintained pursuant to Subchapter 1 (commencing with Section 14000) of Chapter 1 of Division 1 of Title 8 of the 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.

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

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

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

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

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements;
8. Labor Code § 1401 and the Federal Worker Adjustment and Retraining Notification Act for failure to provide proper notice during layoffs;
9. IWC applicable order for failure to take all feasible means to reduce excessive heat in the workplace and provide suitable seats;
10. Labor Code § 640, 6401, 6402, 6403 for failure to provide safe and healthful work environment;
11. Labor Code § 6401.7 for failure to implement and maintain an effective written injury prevention program;

12. Labor Code § 2441 and California. Code of Regulations title 8, Section 3395(c) for failure to provide clean drinking water;
13. Labor Code § 6409.6 for failure to provide notice of a potential COVID-19 workplace exposure;
14. California Code of Regulations title 8, Section 3395(d) and (i) for failure to provide access to shade and failure to implement heat illness prevention plan;
15. Labor Code § 6310 for retaliation for complaining about occupational safety hazards.

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

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

MOON & YANG, APC



Kane Moon
Attorney at Law