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Clerk of the Superior Court
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DREW MARTINEZ and TYON HOOD,
on behalf of the State of California, as
private attorney generals,

Plaintiffs,

vs.

NATIONAL STEEL AND
SHIPBUILDING COMPANY, a
Corporation; and Does 1 through 50,
Inclusive,

Defendants.

Case No. 37-2021-00007644-CU-OE-CTL

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B)

1 Plaintiffs Drew Martinez and Tyon Hood (“PLAINTIFFS”), on behalf of the people of
2 the State of California and as “aggrieved employees” acting as private attorney generals under
3 the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, allege
4 on information and belief, except for their own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFFS bring this action against Defendant NATIONAL STEEL AND
8 SHIPBUILDING COMPANY (“DEFENDANT”) seeking only to recover PAGA civil penalties
9 for themselves, and on behalf of all current and former aggrieved employees that worked for
10 DEFENDANT. PLAINTIFFS do **not seek to recover anything other than penalties as**
11 **permitted by California Labor Code § 2699.** To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFFS do not seek underlying general and/or special
13 damages for those violations, but simply the civil penalties permitted by California Labor Code
14 § 2699.

15 2. California has enacted the PAGA to permit individuals to bring an action on
16 behalf of themselves and on behalf of others for PAGA penalties *only*, which is the precise and
17 sole nature of this action.

18 3. Accordingly, PLAINTIFFS seek to obtain all applicable relief for
19 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
20 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
21 complaint should be construed as attempting to obtain any relief that would not be available in
22 a PAGA-only action.

23 **THE PARTIES**

24 4. Defendant National Steel and Shipbuilding Company (“DEFENDANT”) is a
25 Corporation and at all relevant times mentioned herein conducted and continues to conduct
26 substantial and regular business throughout California.
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1 5. DEFENDANT designs and constructs auxiliary and support ships, as well as oil
2 tankers and dry cargo carriers for commercial markets. DEFENDANT was founded in 1960.

3 6. Plaintiff Martinez was employed by DEFENDANT in California from March of
4 2014 to September of 2020 and was at all times classified by DEFENDANT as a non-exempt
5 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
6 payment of minimum and overtime wages due for all time worked.

7 7. Plaintiff Hood has been employed by DEFENDANT in California since
8 May of 2015 and has been at all times classified by DEFENDANT as a non-exempt employee,
9 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
10 of minimum and overtime wages due for all time worked.

11 8. PLAINTIFFS, and such persons that may be added from time to time who satisfy
12 the requirements and exhaust the administrative procedures under the Private Attorney General
13 Act, bring this Representative Action on behalf of the State of California with respect to
14 themselves and all individuals who are or previously were employed by DEFENDANT in
15 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
16 the time period of December 11, 2019 until a date as determined by the Court (the "PAGA
17 PERIOD").

18 9. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES
19 presently or formerly employed by DEFENDANT during the PAGA PERIOD, bring this
20 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
21 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a),
22 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
23 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s)
24 and thereby gives rise to civil penalties as a result of such conduct.¹ Based upon the foregoing,
25 PLAINTIFFS and all AGGRIEVED EMPLOYEES are aggrieved employees within the

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27 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor
28 Code §558(a)(3).

1 meaning of Labor Code § 2699, *et seq.*

2 10. The true names and capacities, whether individual, corporate, subsidiary,
3 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
4 unknown to PLAINTIFFS who therefore sues these Defendants by such fictitious names
5 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint
6 to allege the true names and capacities of Does 1 through 50, inclusive, when they are
7 ascertained. PLAINTIFFS are informed and believe, and based upon that information and
8 belief allege, that the Defendants named in this Complaint, including DOES 1 through 50,
9 inclusive, are responsible in some manner for one or more of the events and happenings that
10 proximately caused the injuries and damages hereinafter alleged.

11 11. The agents, servants and/or employees of the Defendants and each of them acting
12 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
13 agent, servant and/or employee of the Defendants, and personally participated in the conduct
14 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
15 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
16 all Defendants are jointly and severally liable to PLAINTIFFS and the other AGGRIEVED
17 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
18 agents, servants and/or employees.

19 20 **THE CONDUCT**

21 12. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
22 PLAINTIFFS and other AGGRIEVED EMPLOYEES for the actual amount of time these
23 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
24 is required to pay PLAINTIFFS and other AGGRIEVED EMPLOYEES for all time worked,
25 meaning the time during which an employee was subject to the control of an employer,
26 including all the time the employee was permitted or suffered to permit this work.
27 DEFENDANT required PLAINTIFFS and AGGRIEVED EMPLOYEES to work off the clock
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1 without paying them for all the time they were under DEFENDANT's control. Specifically,
2 PLAINTIFFS and AGGRIEVED EMPLOYEES would clock out of DEFENDANT's
3 timekeeping system, in order to perform additional work for DEFENDANT as required to meet
4 DEFENDANT's job requirements. During the PAGA PERIOD, DEFENDANT engaged in the
5 practice of requiring PLAINTIFFS and AGGRIEVED EMPLOYEES to perform work off the
6 clock after clocking out in that DEFENDANT, as a condition of employment, required these
7 employees to wait for and submit to loss prevention inspections at the end of each scheduled
8 shift for which DEFENDANT did not provide compensation for time spent waiting for and
9 submitting to DEFENDANT's loss prevention inspections off the clock. Further, as a result of
10 their rigorous work schedules and DEFENDANT's loss prevention inspection policy,
11 PLAINTIFFS and other AGGRIEVED EMPLOYEES were from time to time not fully relieved
12 of duty by DEFENDANT for their meal periods. As a result, PLAINTIFFS and other
13 AGGRIEVED EMPLOYEES forfeited minimum wages and overtime wage compensation by
14 working without their time being correctly recorded and without compensation at the applicable
15 rates. Further, during the PAGA PERIOD, PLAINTIFFS and other AGGRIEVED
16 EMPLOYEES from time to time were not paid wages for all time worked, including overtime
17 wages, such that in the aggregate employees were underpaid wages as a result of
18 DEFENDANT's pattern and practice of unevenly rounding time worked by its employees.
19 DEFENDANT's policy and practice not to pay PLAINTIFFS and other AGGRIEVED
20 EMPLOYEES for all time worked, is evidenced by DEFENDANT's business records.

21 13. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
23 intentionally and knowingly failed to compensate PLAINTIFFS and the other AGGRIEVED
24 EMPLOYEES at the correct rate of pay for all overtime worked. This policy and practice of
25 DEFENDANT was intended to purposefully avoid the payment of the correct overtime
26 compensation as required by California law which allowed DEFENDANT to illegally profit and
27 gain an unfair advantage over competitors who complied with the law. To the extent equitable
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1 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the
2 PAGA PERIOD should be adjusted accordingly.

3 14. State law provides that employees must be paid overtime at one-and-one-half
4 times their “regular rate of pay.” PLAINTIFFS and other AGGRIEVED EMPLOYEES were
5 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
6 employee’s performance.

7 15. The second component of PLAINTIFFS’s and other AGGRIEVED
8 EMPLOYEES’ compensation was DEFENDANT’s non-discretionary incentive program that
9 paid PLAINTIFFS and other AGGRIEVED EMPLOYEES incentive wages based on their
10 performance for DEFENDANT. The non-discretionary incentive program provided all
11 employees paid on an hourly basis with incentive compensation when the employees met the
12 various performance goals set by DEFENDANT. However, when calculating the regular rate
13 of pay in order to pay overtime to PLAINTIFFS and other AGGRIEVED EMPLOYEES,
14 DEFENDANT failed to include the incentive compensation as part of the employees’ “regular
15 rate of pay” for purposes of calculating overtime pay. Management and supervisors described
16 the incentive program to potential and new employees as part of the compensation package. As
17 a matter of law, the incentive compensation received by PLAINTIFFS and other AGGRIEVED
18 EMPLOYEES must be included in the “regular rate of pay.” The failure to do so has resulted
19 in an underpayment of overtime compensation to PLAINTIFFS and other AGGRIEVED
20 EMPLOYEES by DEFENDANT. Further, DEFENDANT underpaid sick pay wages to
21 PLAINTIFFS and other AGGRIEVED EMPLOYEES by failing to pay such wages at the
22 regular rate of pay. Specifically, PLAINTIFFS and other non-exempt employees regularly earn
23 non-discretionary remuneration, including but not limited to, incentives, shift differential pay,
24 and bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick
25 pay to PLAINTIFFS and other AGGRIEVED EMPLOYEES at their base rates of pay.

26 16. As a result of their rigorous work schedules, PLAINTIFFS and other
27 AGGRIEVED EMPLOYEES were also from time to time unable to take off duty meal breaks
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1 and were not fully relieved of duty for meal periods. PLAINTIFFS and other AGGRIEVED
2 EMPLOYEES were from time to time required to perform work as ordered by DEFENDANT
3 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
4 DEFENDANT from time to time failed to provide PLAINTIFFS and AGGRIEVED
5 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
6 were required by DEFENDANT to work ten (10) hours of work. PLAINTIFFS and the other
7 AGGRIEVED EMPLOYEES therefore forfeited meal breaks from time to time without
8 additional compensation and in accordance with DEFENDANT's corporate policy and practice.

9 17. During the PAGA PERIOD, PLAINTIFFS and other AGGRIEVED
10 EMPLOYEES were also from time to time required to work in excess of four (4) hours without
11 being provided ten (10) minute rest periods. Further, these employees were denied their first
12 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
13 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
14 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
15 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
16 PLAINTIFFS and other AGGRIEVED EMPLOYEES were also not provided with one hour
17 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers
18 to provide employees with off-duty rest periods, which the California Supreme Court defined
19 as time during which an employee is relieved from all work related duties and free from
20 employer control. In so doing, the Court held that the requirement under California law that
21 employers authorize and permit all employees to take rest period means that employers must
22 relieve employees of all duties and relinquish control over how employees spend their time
23 which includes control over the locations where employees may take their rest period.
24 Employers cannot impose controls that prohibit an employee from leaving the employer's
25 premises during rest periods. Here, DEFENDANT's policy restricted PLAINTIFFS's and other
26 AGGRIEVED EMPLOYEES' ability to leave the premises and was unlawful based on
27 DEFENDANT's rule which stated PLAINTIFFS and other AGGRIEVED EMPLOYEES could
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1 not leave the work premises during their rest period. In fact, PLAINTIFFS, during what should
2 have been their off-duty rest period time, were required to remain on DEFENDANT's premises
3 and from time to time were required to perform work on DEFENDANT's premises during their
4 rest break time.

5 18. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
6 employees with an accurate itemized wage statement in writing showing, among other things,
7 gross wages earned and all applicable hourly rates in effect during the pay period and the
8 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT
9 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct
10 gross and net wages earned. Aside from the violations listed above, DEFENDANT failed to
11 issue to PLAINTIFFS an itemized wage statement that lists all the requirements under
12 California Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided
13 PLAINTIFFS and the other AGGRIEVED EMPLOYEES with wage statements which violated
14 Cal. Lab. Code § 226.

15 19. All of the conduct and violations alleged herein occurred during the PAGA
16 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
17 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that
18 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
19 AJDAR 12157 (Certified for Publication 12/19/18).

20 **JURISDICTION AND VENUE**

21 20. This Court has jurisdiction over this Action pursuant to California Code of Civil
22 Procedure, Section 410.10.

23 21. Venue is proper in this Court pursuant to California Code of Civil Procedure,
24 Sections 395 and 395.5, because PLAINTIFFS worked and reside in this County, and
25 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
26 in this County and/or conducts substantial business in this County, and (ii) committed the
27 wrongful conduct herein alleged in this County against PLAINTIFFS and the AGGRIEVED
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1 EMPLOYEES.

2 **FIRST CAUSE OF ACTION**

3 **For Violation of the Private Attorneys General Act**

4 **[Cal. Lab. Code §§ 2698, *et seq.*]**

5 **(By PLAINTIFFS and Against All Defendants)**

6 22. PLAINTIFFS incorporates by reference, as though fully set forth herein, the
7 prior paragraphs of this Complaint.

8 23. PAGA is a mechanism by which the State of California itself can enforce state
9 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
10 the state's labor law enforcement agencies. An action to recover civil penalties under
11 PAGA is fundamentally a law enforcement action designed to protect the public and not to
12 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
13 but to create a means of "deputizing" citizens as private attorneys general to enforce the
14 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
15 public interest to allow aggrieved employees, acting as private attorneys general to recover
16 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
17 claims cannot be subject to arbitration.

18 24. PLAINTIFFS, and such persons that may be added from time to time who
19 satisfy the requirements and exhaust the administrative procedures under the Private
20 Attorney General Act, bring this Representative Action on behalf of the State of California
21 with respect to themselves and all individuals who are or previously were employed by
22 DEFENDANT in California and classified as non-exempt employees ("AGGRIEVED
23 EMPLOYEES") during the time period of December 11, 2019 until a date as determined by
24 the Court (the "PAGA PERIOD").

25 25. On December 11, 2020, Plaintiff Hood gave written notice by electronic mail
26 to the Labor and Workforce Development Agency (the "Agency") and by certified mail to
27 the employer of the specific provisions of this code alleged to have been violated as required
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1 by Labor Code § 2699.3. The statutory waiting period for Plaintiff Hood to add these
2 allegations to the Complaint has expired. On December 18, 2020, Plaintiff Martinez gave
3 written notice by electronic mail to the Labor and Workforce Development Agency (the
4 "Agency") and by certified mail to the employer of the specific provisions of this code
5 alleged to have been violated as required by Labor Code § 2699.3. The statutory waiting
6 period for Plaintiff Martinez to add these allegations to the Complaint has expired. As a
7 result, pursuant to Section 2699.3, PLAINTIFFS may now commence a representative civil
8 action under PAGA pursuant to Section 2699 as the proxies of the State of California with
9 respect to all AGGRIEVED EMPLOYEES as herein defined.

10 26. The policies, acts and practices heretofore described were and are an unlawful
11 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
12 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
13 properly record and provide legally required meal and rest periods, (c) failed to pay overtime
14 wages, (d) failed to pay minimum wages, and (e) failed to provide wages when due, all in
15 violation of the applicable Labor Code sections listed in Labor Code §§201, 202, 203, 204 *et*
16 *seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
17 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
18 applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of
19 such conduct.² PLAINTIFFS hereby seek recovery of only civil penalties as prescribed by
20 the Labor Code Private Attorney General Act of 2004 as the representatives of the State of
21 California for the illegal conduct perpetrated on PLAINTIFFS and the other AGGRIEVED
22 EMPLOYEES.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, PLAINTIFFS prays for judgment against each Defendant, jointly and
25 severally, as follows:

26 _____
27 ²Plaintiffs specifically exclude and/or do not allege any claims under California Labor
28 Code §558(a)(3).

1. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and,

B) An award of attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §2699.

Dated: February 23, 2021 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

By: /s/ Norman Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiffs