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Attorneys for Plaintiffs Archie Shakespeare
and Tyon Hood

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

Archie Shakespeare and Tyon Hood, as
individuals, on behalf of themselves and all others
similarly situated and as private attorneys general
pursuant to the Private Attorneys General Act,

Plaintiffs,

vs.

National Steel and Shipbuilding Company,
Defendant.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

9/6/2024 10:22:32 AM

Clerk of the Superior Court

By E. Engel, Deputy Clerk

Case No. 37-2021-00013962-CU-OE-CTL
CLASS ACTION

*(Assigned to the Hon. Katherine Bacal –
Dept. C-63)*

Fourth Amended Complaint

Demand for Jury Trial

1 Plaintiffs Archie Shakespeare and Tyon Hood (“Plaintiffs”), individually and on behalf of all
2 other persons similarly situated and as private attorneys general pursuant to the Private Attorneys General
3 Act, allege:

- 4 1. Plaintiff Archie Shakespeare was employed by Ameri-Force Craft Services, Inc. and Defendant
5 National Steel and Shipbuilding Company (“NASSCO”) and Plaintiff Tyron Hood was employed
6 by NASSCO as non-exempt employees.

7 **First Cause of Action**
8 **Failure to Pay Wages for Hours Worked**

- 9 2. Plaintiffs reallege all the preceding paragraphs.

10 **CLASS ACTION ALLEGATIONS**

- 11 3. Each of the Plaintiffs is a member of and brings the first through sixth causes of action for himself
12 and on behalf of the following class:

13 Archie Shakespeare, Tyon Hood and all individuals who are or previously were directly
14 employed by Defendant National Steel and Shipbuilding Co. (“NASSCO”) in the State of
15 California from September 18, 2017, to May 19, 2024 (the “Class Period”) who were
16 classified as non-exempt and who are not members of any union.

- 17 4. During the class period, NASSCO employed Plaintiffs and class members in California.
- 18 5. **Numerosity.** The number of class members is so numerous that joining all members is impractical.
19 The names and addresses of the class members are identifiable through documents maintained by
20 NASSCO, and the class members may be notified of the pendency of this action by published
21 and/or mailed notice. Plaintiffs believe there are more than 3,000 class members.
- 22 6. **Existence and Predominance of Common Questions of Law and Fact.** Common questions of
23 law and fact exist as to all class members. These questions predominate over the questions
24 affecting only individual members. These common legal and factual questions include, *inter alia*:
- 25 • Whether NASSCO paid class members for all hours worked as required by California
26 law including, but not limited to, time spent: 1) waiting for and going through security
27 processes, 2) donning and doffing personal protective equipment, 3) having their
28 temperatures checked during peak-COVID; 4) traveling between the security check
points and the location where they worked; and 5) performing additional work for
NASSCO after clocking out;
 - Whether NASSCO provided compliant meal periods to class members;

- Whether NASSCO provided compliant rest periods to class members;
- Whether the per diems paid to class members, or any other non-discretionary incentives, were required to be included in the calculation of the overtime or sick pay rates payable to the class members;
- Whether NASSCO paid class members for overtime at the proper rate;
- Whether NASSCO paid class members for sick pay at the proper rate;
- Whether NASSCO unevenly rounded time worked by class members;
- Whether NASSCO violated Labor Code Sections 201 or 202 by willfully failing to pay the wages earned and unpaid that were due them in the time required by Sections 201 or 202;
- Whether NASSCO knowingly and intentionally violated Labor Code Section 226(a) by failing to timely furnish Plaintiffs and class members accurate wage statements with all of the information required to be shown by Section 226(a); and
- Whether NASSCO engaged in unfair competition as that term is defined in Business & Professions Code Section 17200 in violation of California Business & Professions Code Section 17200, *et seq.*

7. **Typicality.** Plaintiffs' class claims are typical of the class members' claims. Plaintiffs and all class members sustained injuries and damages arising out of NASSCO's common course of conduct in violation of the law. Plaintiffs are entitled to the same relief under the class action causes of action as the class members.
8. **Adequacy.** Plaintiffs and Plaintiffs' counsel will fairly and adequately protect the class members' interests. NASSCO employed Plaintiffs during the class period. Each of the Plaintiffs is an adequate representative for the class members because neither Plaintiff has any interest adverse to the interests of the class members and Plaintiffs have retained legal counsel with substantial experience in employment class action litigation.
9. **Superiority.** A class action is superior to other available means of fair and efficient adjudication of the class members' claims. The joining of all class members is impractical. Class action treatment will allow numerous similarly situated persons to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would cause to such plaintiffs or to the court system.

Further, the damages of many class members may be relatively small and the burden and expenses of individual litigation would make it difficult or impossible for individual class members to seek and obtain relief, while a class action will serve an important public interest. Furthermore, questions of law and fact common to the class members predominate over questions affecting only individual members and a class action is superior to other available methods for fair and efficient adjudication of the controversy. Individual litigation would present the potential for inconsistent or contradictory judgments. By contrast, the class action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in one case.

10. Before being allowed to work, Plaintiffs and other class members were required to stop at a security check point where a guard would scan their employee badges before allowing them to enter the secured site where they worked. There were lines of employees in which they were required to wait to go through this security process. After going through the mandatory security entrance process, they were required to have their temperatures checked (during peak-COVID in 2020), put on personal protective equipment, and then travel to the location where they worked. Plaintiffs and class members were not paid for all this time. After Plaintiffs and class members stopped working for the day, they had to take off all the protective gear and had to travel from the location where they had worked to the security exit check point. There, they had to wait to go through the mandatory exit process, which included waiting in line. Plaintiffs and class members were not paid for all this time.

11. NASSCO did not compensate Plaintiffs and other class members for such hours worked and, to the extent such hours worked exceeded eight hours in a day or 40 hours in a week, NASSCO did not compensate Plaintiffs and other class members at the correct overtime rate.

12. Plaintiffs and class members occasionally received a daily per diem and/or other non-discretionary incentives. They did not receive this per diem on days they did not work. When they worked less than six hours in a day, their daily per diem was reduced. In addition, NASSCO had a non-discretionary incentive program that paid Plaintiffs and class members incentive wages based on their performance for NASSCO. The non-discretionary incentive program provided all employees

1 paid on an hourly basis with incentive compensation when the employees met the various
2 performance goals set by NASSCO. Management and supervisors described the incentive program
3 to potential and new employees as part of the compensation package. On occasion, Plaintiffs and
4 class members worked and were paid overtime. The overtime rate, however, was not calculated
5 by accounting for the per diem payments and non-discretionary incentives as required by
6 California law. Therefore, they were not paid the correct overtime rate.

7 13. Further, NASSCO underpaid sick pay wages to Plaintiffs and class members by failing to pay such
8 wages at the regular rate of pay. Specifically, Plaintiffs and class members regularly earn non-
9 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
10 bonuses. Rather than pay sick pay at the regular rate of pay, NASSCO underpaid sick pay to
11 Plaintiffs and the class members at their base rates of pay.

12 14. Plaintiffs and class members are entitled to compensation for unpaid wages and to liquidated
13 damages pursuant to Labor Code Section 1194.2.

14 15. Plaintiffs have incurred and is entitled to attorney's fees, costs, and interest.

15 **Second Cause of Action**
16 **Meal Period Violations**

17 16. Plaintiffs reallege all the preceding paragraphs.

18 17. NASSCO did not provide class members with all meal periods to which they were entitled under
19 California law and did not pay meal period premiums owing them.

20 **Third Cause of Action**
21 **Rest Period Violations**

22 18. NASSCO did not provide class members with all rest periods to which they were entitled under
23 California law and did not pay rest period premiums owing them.

24 **Fourth Cause of Action**
Failure to Pay Wages Due on Termination

25 19. Plaintiffs reallege all the preceding paragraphs.

26 20. The employment of Plaintiffs and certain class members with NASSCO terminated.

27 21. When the employment of Plaintiffs and certain class members terminated, NASSCO violated
28 Labor Code Sections 201 or 202 by willfully failing to pay the wages earned and unpaid that were

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1 due them, including wages due for regular hours worked, wages for overtime hours worked in the
2 time required by Sections 201 or 202.

3 22. Plaintiffs have incurred and are entitled to attorney's fees, costs, and interest.

4 **Fifth Cause of Action**
5 **Wage Statement Violations**

6 23. Plaintiffs reallege all the preceding paragraphs.

7 24. As a matter of uniform policy and practice, NASSCO knowingly and intentionally failed to
8 maintain and furnish Plaintiffs and class members with accurate and complete wage statements
9 reflecting all the information required under Section 226(a) and/or Section 1174.

10 25. NASSCO violated Section 226(a)(1) as to Plaintiffs and other class members by knowingly and
11 intentionally failing to provide them wage statements that accurately showed the gross wages
12 earned by Plaintiffs and other class members.

13 26. NASSCO violated Section 226(a)(2) by knowingly and intentionally failing to provide Plaintiffs
14 and other class members wage statements that accurately showed the total hours worked by
15 Plaintiffs and other class members.

16 27. NASSCO violated Section 226(a)(5) by knowingly and intentionally failing to provide Plaintiffs
17 and other class members with wage statements that accurately showed the net wages earned by
18 Plaintiffs and other class members.

19 28. NASSCO violated Section 226(a)(9) by knowingly and intentionally failing to provide Plaintiffs
20 and other class members with wage statements that accurately showed the applicable hourly rates
21 in effect during the pay period and the corresponding number of hours worked at each hourly rate
22 by failing accurately to show the actual number of hours worked at the applicable hourly rate at
23 which they were to be paid.

24 29. Plaintiffs and the other class members are entitled to damages and/or penalties pursuant to Labor
25 Code Section 226(e).

26 30. Plaintiffs have incurred and are entitled to attorney's fees, costs, and interest.

27 **Sixth Cause of Action**
28 **Violation of California Business and Professions Code Section 17200, *et seq.***

31. Plaintiffs reallege all the preceding paragraphs.

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32. NASSCO's violations of the Labor Code and Wage Order provisions set forth above constitute unlawful and/or unfair business acts or practices.

33. NASSCO has been unjustly enriched because of NASSCO's unlawful and/or unfair business acts and/or practices.

34. Plaintiffs and the class members are entitled to restitution of the money and/or property by which NASSCO was unjustly enriched.

35. Plaintiffs have incurred and are entitled to an award of attorney's fees pursuant to California Code of Civil Procedure Section 1021.5.

**Seventh Cause of Action
For Recovery of Civil Penalties under the California Private Attorney General Act,
Labor Code Section 2698, *et seq.***

36. Plaintiffs reallege all the preceding paragraphs.

37. One or more of the alleged violations set forth below was committed against Plaintiffs and Plaintiffs are therefore "aggrieved employees" under Labor Code Section 2699(c).

38. As alleged above, NASSCO has committed Labor Code violations against Plaintiffs and other employees of NASSCO.

39. Plaintiffs seek to recover all civil penalties recoverable under PAGA against NASSCO, including without limitation penalties pursuant to Labor Code Sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699(f).

40. Plaintiffs' attorneys gave written notice to the Labor and Workforce Development Agency ("LWDA") and to NASSCO by certified mail identifying violations set forth in this complaint. Plaintiff Hood first gave notice to the LWDA as to former Defendant Ameri-Force Craft Services, Inc. on December 11, 2020, while former Plaintiff Troy Brown first gave notice to the LWDA as to NASSCO on June 16, 2021. More than 65 days have therefore passed from the date of the mailing of these notices.

41. Plaintiffs have incurred and are entitled to attorney's fees and costs in pursuing this claim.

WHEREFORE, Plaintiffs demand a jury trial and requests that judgment be entered against NASSCO as follows:

1. Certification of this action as a class action and the appointment of Plaintiffs as the representatives of the classes and Plaintiffs' counsel as lead counsel for the classes;
2. Damages for unpaid wages;
3. Liquidated damages;
4. Compensatory damages according to proof;
5. Statutory penalties pursuant to Labor Code Section 226(e);
6. Restitution pursuant to Business & Professions Code Sections 17200, et seq.;
7. Penalties pursuant to the PAGA;
8. Prejudgment interest;
9. Attorney's fees;
10. Costs as allowed by law;
11. Such other relief as this Court shall deem just and proper.

Dated: August 13, 2024

THE DION-KINDEM LAW FIRM

BY: _____



PETER R. DION-KINDEM, P.C.
PETER R. DION-KINDEM
Attorney for Plaintiffs Archie Shakespeare
and Tyon Hood

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on interested parties in this action addressed as follows:

See attached service list

xxx **(By Email)** Based on a court order, Rules of Court, or an agreement of the parties to accept electronic service, I caused the documents to be sent to the person(s) at the email addresses set forth above.

(By Personal Service)

I delivered such envelope by hand to the offices of the addressee pursuant to Code of Civil Procedure Section 1011.

Kale Mout

Kale M. Morita

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