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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

JUN 09 2023

BY: 
Alyssa Leber, Deputy

8 Attorneys for Plaintiff Brian A. Russell, on behalf of himself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN BERNARDINO**

12
13 BRIAN A. RUSSELL, on behalf of himself
and all "aggrieved employees" pursuant to
14 Labor Code § 2698 *et seq.*,

15 Plaintiff,

16 v.

17 MERIT ALUMINUM FOUNDRY, INC., a
18 California corporation, and DOES 1 through
10, inclusive,

19 Defendants.
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CASE NO: **CIV SB 2313309**

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 246, 510, 512,
1174, 1174.5, AND 1194 AND PURSUANT
TO LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE §§ 226.3
AND 558**



1 Plaintiff BRIAN A. RUSSELL (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, complains of MERIT
3 ALUMINUM FOUNDATION INC., a California corporation, and any subsidiaries or affiliated
4 companies (hereinafter referred to as “Defendants”) as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiff and other non-exempt California employees who currently work or formerly worked for
9 Defendants (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Failing to properly compute all commission wages and non-base hourly wages
15 earned by Plaintiff and other Aggrieved employees into their rate of pay for purposes of paying
16 them overtime wages, sick pay wages, paid time off wages, and meal and rest period premiums
17 at the correct rates, in violation of Labor Code §§ 226.7, 246, 510, 512, 558, and 1194.
18 Defendants fail to properly blend commission wages and other non-base hourly wages and
19 instead Plaintiff and Aggrieved Employees overtime wages, sick pay wages, paid time off
20 wages, and meal and rest period premiums based only on the base hourly rate of pay, thus
21 depriving Plaintiff and other Aggrieved Employees of all overtime wages earned;

22 b. Failing to pay correct premium wages to Plaintiff and Aggrieved Employees
23 who are denied rest periods, in violation of Labor Code §§ 226.7 and 558 and IWC Wage
24 Order No. 1-2001. Plaintiff and Aggrieved Employees are routinely unable to take a 10-
25 minute rest period for every four (4) hours of work or major fraction thereof, but are not paid
26 correct premium wages of one hour’s pay for each missed rest period. When Plaintiff and
27 Aggrieved Employees are able to take a rest period, they are oftentimes late, cut-short, or on
28 duty. This violates Labor Code §§ 226.7 and 558 and IWC Wage Order No. 1-2001;

1 c. Failing to pay correct premium wages to Plaintiff and Aggrieved Employees
2 who are denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558, 1194
3 and IWC Wage Order 1-2001. Plaintiff and Aggrieved Employees are routinely denied, and
4 not authorized to take, a timely, uninterrupted, 30-minute meal period for every shift worked
5 that exceeded five hours in duration, or a second timely, uninterrupted, 30-minute meal period
6 for every shift worked that exceeded ten hours in duration, but are not paid correct premium
7 wages of one hour's pay for each missed first or second meal period. Plaintiff and Aggrieved
8 Employees also are required to clock out for their meal breaks and continue to work through
9 them, off-the-clock. This violates Labor Code §§ 226.7, 510, 512, 558, 1174, 1174.5, and
10 1194 and IWC Wage Order 1-2001;

11
12 d. Failing to provide Plaintiff and other Aggrieved Employees with wage
13 statements that fully and accurately itemized the requirements set forth in Labor Code §
14 226(a). Plaintiff and other Aggrieved Employees are not paid all wages due, as stated above.
15 As such, the wage statements provided by Defendants fail to accurately state all gross wages
16 earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of
17 Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5)
18 and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding
19 number of hours worked at each hourly rate by the employee, in violation of Labor Code §§
20 226(a)(9) and 226.3; and

21
22 e. Failing to timely pay all wages due to Aggrieved Employees at the separation
23 of their employment based on the time frames required by Labor Code §§ 201 and 202. As
24 stated above, Aggrieved Employees are not paid all wages due during the course of their
25 employment and, as a result of this failure, they are not timely paid all wages due at the
26 separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf
27 of Aggrieved Employees no longer employed by Defendant.
28

3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code § 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395. The Labor Code violations alleged against Defendants herein arose throughout California, including in San Bernardino County.

III.

PARTIES

A. Plaintiff

5. Plaintiff Brian A. Russell has been employed by Defendants since June 2022 as a non-exempt employee in San Bernardino County, California.

B. Defendant

6. Defendant MERIT ALUMINUM FOUNDATION INC. is a California corporation that employed Plaintiff and Aggrieved Employees in San Bernardino County, California.

7. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

8. Plaintiff is informed and believes, and based thereon alleges, that each Defendants acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants is legally attributable to the other Defendants.

9. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

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1 IV.

2 **CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
5 **CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF**
6 **LABOR CODE §§ 201, 202, 226(a), 226.7, 246, 510, 512, 1174, 1174.5, AND 1194 AND**
7 **PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3**
8 **AND 558**

9 10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set
10 forth herein.

11 11. As a result of the acts alleged above, including the Labor Code violations set forth in
12 paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

13 12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to
14 civil penalties subject to the following formula:

- 15 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
16 each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 246, 510,
17 512, 558, 1174, 1174.5, and 1194; and
18 b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor
19 Code §§ 226.3 and 558.

20 13. Civil penalties recovered will be allocated 75% to the Labor and Workforce
21 Development Agency, and 25% to the affected employees.

22 14. On April 3, 2023, Plaintiff sent a letter, by online submission to the LWDA and by
23 certified mail, return receipt requested, to Defendants setting forth the facts and theories of the
24 violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor
25 Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)
26 calendar days of April 3, 2023. Plaintiff may therefore commence this action to seek civil penalties
27 pursuant to Labor Code § 2698 *et seq.*
28

Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as described below.

V.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;
3. An award of attorneys' fees pursuant to Labor Code §§ 2699(g)(1) and other applicable law; and
4. Such other and further relief as this Court may deem just and proper.

Dated: June 8, 2023

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: 
 DANIEL F. GAINES
 EVAN S. GAINES
 Attorneys for Plaintiff