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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RODERICK HENDERSON and CALVIN CROUCH on behalf of themselves, the State of California, and other aggrieved employees,

Plaintiffs,

v.

SAMUEL, SON & CO. USA, INC., a Delaware corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 2:24-cv-10542-MWC-SHK

THIRD AMENDED REPRESENTATIVE COMPLAINT

1. Civil Penalties (Lab. Code §§ 2698 *et seq.*)

Plaintiffs RODERICK HENDERSON, CALVIN CROUCH, and JEFFREY RICHARDS ("Plaintiffs"), on behalf of themselves, all other aggrieved employees, the State of California, and the general public, complain and allege as follows:

INTRODUCTION

1. Plaintiffs bring this representative action against Defendants SAMUEL, SON & CO. USA, INC., a Delaware corporation; SIERRA ALUMINUM COMPANY, a California corporation; and DOES 1 through 50, inclusive (collectively referred to as "Defendants") for alleged violations of the California Labor Code. As set forth below, Plaintiffs allege that Defendants have:

a. Failed to pay all wages owed, including minimum and overtime wages, for all time worked;

b. Failed to pay overtime and/or double time wages by failing to include all applicable remuneration in calculating the regular rate of pay;

c. Failed to provide lawful meal periods;

d. Failed to provide lawful meal periods;

e. Failed to properly pay premium wages for missed meal and rest periods;

f. Failed to pay proper sick time pay;

g. Failed to reimburse for necessary business expenditures;

h. Failed to provide accurate wage statements; and

i. Failed to timely pay all final wages owed following separation of employment.

2. Based on these alleged Labor Code violations, Plaintiffs now bring this representative action for civil penalties, on behalf of themselves, all other aggrieved employees, the State of California, and the general public.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction to hear this case because the civil penalties sought by Plaintiffs for Defendants' conduct exceeds the minimal

jurisdiction of the Superior Court of the State of California.

4. Venue is proper in the County of Los Angeles pursuant to Code of Civil Procedure §§ 393(a), 395(a), and 395.5 in that liability arose in this county because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices, transacts business, and/or has an agent therein.

5. Venue is proper in Los Angeles County because Defendants' have at all times alleged herein, conducted business in Los Angeles County and throughout California. As such, venue is proper in any county in California.

PARTIES

6. Plaintiffs RODERICK HENDERSON, CALVIN CROUCH, and JEFFREY RICHARDS are, and at all relevant times mentioned herein, individuals residing in the State of California.

7. Plaintiffs are informed and believe, and thereupon allege that Defendant SAMUEL, SON & CO. USA, INC., is a Delaware corporation, doing business in the state of California.

8. Plaintiffs are informed and believe, and thereupon allege that Defendant SIERRA ALUMINUM COMPANY, is a California corporation, doing business in the state of California.

9. Plaintiffs are ignorant of the true names and capacities of the defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiffs will amend this Complaint to allege the true names and capacities of the DOE defendants when ascertained. Plaintiffs are informed and believe, and thereupon allege that each of the fictitiously named defendants are responsible in some manner for the occurrences, acts and omissions alleged herein and that Plaintiffs' alleged damages were proximately caused by these defendants, and each of them. Plaintiffs will amend this complaint to allege both the true names and capacities of the DOE defendants when ascertained.

10. Plaintiffs are informed and believe, and thereupon allege that, at all relevant times mentioned herein, some or all of the defendants were the representatives, agents, employees, partners, directors, associates, joint venturers, joint employers, owners, principals or co-participants of some or all of the other defendants, and in doing the things alleged herein, were acting within the course and scope of such relationship and with the full knowledge, consent and ratification by such other defendants.

11. Plaintiffs are informed and believe, and thereupon allege that, at all relevant times mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and conspired with one another, and aided and abetted one another to accomplish the occurrences, acts and omissions alleged herein.

12. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all respects as the employers or joint employers of Employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of Employees, or suffered or permitted Employees to work, or engaged, thereby creating a common law employment relationship, with Employees. Plaintiffs base this belief on all three of their jobsite addresses being owned and operated by Sierra Aluminum Company and by Defendant Sierra Aluminum Company merging into Defendant Samuel, Son & Co. USA, INC. on December 31, 2019. Therefore, Defendants, and each of them, employed or jointly employed Employees.

GENERAL ALLEGATIONS

13. Plaintiff are former employees against whom Defendants committed one or more of the alleged Labor Code violations during the applicable limitations period, are aggrieved employees within the meaning of Labor Code § 2699(c). Plaintiffs were employed by Defendants as non-exempt hourly employees in California. Aggrieved

Employees include all non-exempt hourly employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present (Plaintiffs and Aggrieved Employees are collectively referred to herein as "Aggrieved Employees")

14. Plaintiffs worked for Defendants as a non-exempt employees during the relevant and statutory periods.

15. Defendants had a common policy and practice of systemically failing to pay Plaintiffs and Aggrieved Employees proper wages and overtime for all hours worked at the proper rates of pay. First, Defendants implemented an unlawful time-rounding policy and practice which rounded down and reduced the actual working hours recorded by Plaintiffs and Aggrieved Employees, and upon which their pay was based, and generally did so to the detriment of the Plaintiffs and Aggrieved Employees, and these unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created. Defendants did so with the ostensible intent of paying Plaintiffs and Aggrieved Employees only for the hours they were scheduled to work, rather than the hours they were actually under Defendants' control. Plaintiffs contends this policy is not neutral and results, over time, to the detriment of the Plaintiffs and Aggrieved Employees by systematically undercompensating them.

16. Next, Plaintiffs and Aggrieved Employees were consistently required to perform work, off-the-clock, for which they were not paid wages. By way of example, Plaintiffs and Aggrieved Employees were systemically required to arrive to work 5-10 minutes early due to the amount of time it took to stand in line and clock in. The forgoing time it took for Plaintiffs and Aggrieved Employees to clock in was uncompensated working time under the direction and control of Defendants, for which no wages were paid.

17. This uncompensated time caused Plaintiffs and Aggrieved Employees to work in excess of eight (8), ten (10) and/or twelve (12) hours a day and/or forty (40)

hours a week, entitling Plaintiffs and Aggrieved Employees to minimum and overtime wages, which they were systemically denied.

18. Moreover, Defendants failed to pay Plaintiffs and Aggrieved Employees overtime wages at the proper and applicable regular rates of pay. Specifically, Plaintiffs and Aggrieved Employees earned incentive pay, as well as performance-based non-discretionary bonuses, in addition to their hourly pay. However, these supplemental earnings were not accounted for when determining Plaintiffs and Aggrieved Employees' regular rates of pay, and respective and proper overtime rates of pay. As a result, Plaintiffs and Aggrieved Employees were not fully compensated for all hours worked.

19. Defendants had a common policy and practice of systemically denying Plaintiffs and Aggrieved Employees the opportunity to take meal periods in compliance with the California Law. Specifically, due to understaffing and heavy workloads, Plaintiffs and Aggrieved Employees were denied the opportunity to take timely meal periods altogether, and/or prior to the completion of their fifth hour of work. Additionally, the uncompensated pre-shift duties, discussed herein, further delayed Plaintiffs and Aggrieved Employees' meal periods to commence after to the completion of the fifth and tenth hours of work.

20. Plaintiffs and Aggrieved Employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy and practice of not scheduling each meal period as part of each work shift; and (2) Defendants' policy and practice of requiring putative Aggrieved Employees to continue working through their meal and rest periods due to the excessive workload.

21. Similarly, Defendants had a common policy and practice of systemically denying Plaintiffs and Aggrieved Employees the opportunity to take rest periods in compliance with California Law. Plaintiffs and Aggrieved Employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy and practice of not

scheduling each rest period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; and (2) Defendants' policy and practice of requiring putative Aggrieved Employees to continue working through their rest breaks due to the excessive workload.

22. Defendants had a common policy and practice of systemically failing to pay Plaintiffs and Aggrieved Employees the requisite sick time pay at the proper rate of pay in accordance with California Law. Additionally, the sick pay paid to Plaintiffs and Aggrieved Employees did not account for the incentive and non-discretional bonus pay, which was never factored into the rate upon which sick pay was accrued and paid.

23. Plaintiffs and Aggrieved Employees were not reimbursed for business expenses incurred in executing their duties under Defendant's employ. Specifically, Plaintiffs and Aggrieved Employees were required to purchase and maintain protective gear, including steel toe boots, fire resistant garments, gloves, face shields, hard hats, and various other safety gear all necessary to perform their duties under Defendants' employ. Plaintiffs and Aggrieved Employees also had to purchase and use some of their own tools and equipment necessary to perform their job duties, such as a flashlight. Plaintiffs and Aggrieved Employees were not reimbursed for these necessary work-related expenses. Plaintiffs allege that these expenses and materials were necessary for executing their duties because the nature of Plaintiffs' duties required tools, but there were not a sufficient number of tools available for employees to use to execute their job duties. Plaintiffs would inform Defendants that more tools were required, but Defendant failed to do use. Additionally, Plaintiffs were required to use the protective gear due to department safety standards, as well as personal safety standards, in order to work in their potentially dangerous work environment. Plaintiffs would be reprimanded for not having the requisite safety gear, but Defendants would not provide enough gear, or safe enough gear, for the dangerous nature of Plaintiffs' work. Plaintiffs would receive work orders for customers, take machines apart and examined, and put them back together, or would be stacking tools for machinery.

Plaintiffs would need the tools to operate on the machinery, and needed the safety gear because of the weight and danger of the heavy metal pieces, which could cause cuts and broken bones easily.

24. Plaintiffs and Aggrieved Employees were not provided with accurate wage statements as mandated by law pursuant to Labor Code section 226.

25. Specifically, Defendants failed to comply with Labor Code section 226(a)(1), (a)(2), (a)(5) and (a)(9) as Defendants failed to provide Plaintiffs and Aggrieved Employees wage statements that accurately reported all hours worked, including overtime, and the applicable hourly rates. Further, Defendants failed to properly itemize "total hours worked" pursuant to Labor Code section 226(a)(2) as Defendants included non-working hours as "total hours worked" on Plaintiffs' and Aggrieved Employees' wage statements.

26. Defendants also have had a consistent policy of failing to pay all wages owed to Employees at the time of their termination of within seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.

27. Finally, the facilities where Defendants required Aggrieved Employees to work were intolerably hot, and Plaintiff and upon information and belief the Aggrieved Employees were concerned that they would suffer from heat-related injuries during their work shifts. Defendants' management would not permit doors to be opened for security reasons, and provided only a few fans which only circulated hot air. By failing to maintain temperatures providing reasonable comfort levels consistent with industry-wide standards for the nature and process of the work performed, Defendants violated paragraph 15 of the applicable IWC Wage Orders, and are entitled to civil penalties as appropriate.

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<u>FIRST CAUSE OF ACTION</u>

CIVIL PENALTIES

(Lab. Code §§ 2698 *et seq.*)

(Plaintiffs Against All Defendants)

28. Plaintiffs incorporate by reference the preceding paragraphs of the Complaint as if fully alleged herein.

29. At all relevant times, Plaintiffs and the other Aggrieved Employees have been non-exempt employees of Defendant entitled to the full meal period protections of both the Labor Code and the applicable Industrial Welfare Commission Wage Order.

30. Labor Code § 512 and § 11 of the applicable Industrial Welfare Commission Wage Order impose an affirmative obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

31. Labor Code § 226.7 and § 11 of the applicable Industrial Welfare Commission Wage Order ("Wage Order") both prohibit employers from requiring employees to work during required meal periods and require employers to pay non-exempt employees an hour of premium wages on each workday that the employee is not provided with the required meal period.

32. Compensation for missed meal periods constitutes wages within the meaning of Labor Code § 200.

33. Labor Code § 1198 makes it unlawful to employ a person under conditions that violate the applicable Wage Order.

34. Section 11 of the applicable Wage Order states:

> No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and

> counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

35. At all relevant times, Plaintiffs was not subject to a valid on-duty meal period agreement. Plaintiffs is informed and believes that, at all relevant times, the other Aggrieved Employees were not subject to valid on-duty meal period agreements with Defendants.

36. Plaintiffs alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing Plaintiffs and the other Aggrieved Employees with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5) hour work period, as required by Labor Code § 512 and the applicable Wage Order. Plaintiffs and the other Aggrieved Employees were required to perform work during their unpaid meal periods which they were systemically denied.

37. Additionally, Defendants had a common policy and practice of systemically denying Plaintiffs and Aggrieved Employees the opportunity to take meal periods in compliance with the California Law. Specifically, due to understaffing and heavy workloads, Plaintiffs and Aggrieved Employees were denied the opportunity to take timely meal periods altogether, and/or prior to the completion of their fifth hour of work. Additionally, the uncompensated pre-shift duties, discussed herein, further delayed Plaintiffs and Aggrieved Employees' meal periods to commence after to the completion of the fifth and tenth hours of work.

38. Plaintiffs and Aggrieved Employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy and practice of not scheduling each meal period as part of each work shift; and (2) Defendants' policy and practice of requiring putative Aggrieved Employees to continue working through their meal and rest periods due to the excessive workload.

39. Plaintiffs alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of failing to pay premium wages to the other Aggrieved Employees when they worked five (5) hours without clocking out for any meal period.

40. Plaintiffs alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing Plaintiffs and the other Aggrieved Employees with a second meal period when they worked shifts of ten or more hours and failed to pay them premium wages as required by Labor Code 512 and the applicable Wage Order.

41. At all relevant times, Defendants failed to pay Plaintiffs and the other Aggrieved Employees additional premium wages, and/or were not paid premium wages at the employees' regular rates of pay when required meal periods were not provided.

42. Section 12 of the applicable Wage Order imposes an affirmative obligation on employers to permit and authorize employees to take required rest periods at a rate of no less than ten
minutes of net rest time for each four-hour work period, or major fraction thereof, that must be in the middle of each work period insofar as practicable.

43. Labor Code § 226.7 and § 12 of the applicable Wage Order both prohibit employers from requiring employees to work during required rest periods and require employers to pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on each workday that the employee is not provided with the required rest period(s).

44. Compensation for missed rest periods constitutes wages within the meaning of Labor Code § 200.

45. Labor Code § 1198 makes it unlawful to employ a person under conditions that violate the Wage Order.

46. Plaintiffs alleges that, at all relevant times during the applicable

limitations period, Defendants maintained a policy or practice of not providing Plaintiffs and the other Aggrieved Employees with net rest period of at least ten uninterrupted minutes for each four hour work period, or major fraction thereof, as required by the applicable Wage Order.

47. Similarly, Defendants had a common policy and practice of systemically denying Plaintiffs and Aggrieved Employees the opportunity to take rest periods in compliance with California Law. Plaintiffs and Aggrieved Employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy and practice of not scheduling each rest period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; and (2) Defendants' policy and practice of requiring putative Aggrieved Employees to continue working through their rest breaks due to the excessive workload.

48. At all relevant times, Defendants failed to pay Plaintiffs and the other Aggrieved Employees additional premium wages when required rest periods were not provided.

49. Section 2 of the applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of the employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

50. Section 4 of the applicable Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

51. Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Order.

52. Labor Code § 1194.2 entitles non-exempt employees to recover liquidated

damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the underlying unpaid minimum wages and interest thereon.

53. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

54. Labor Code § 1197.1 provides that it is unlawful for any employer or any other person acting either individually or as an officer, agent, or employee of another person, to pay an employee, or cause an employee to be paid, less than the applicable minimum wage.

55. Labor Code § 1198 makes it unlawful for employers to employ employees under conditions that violate the applicable Wage Order.

56. Labor Code § 204 requires employers to pay non-exempt employees their earned wages for the normal work period at least twice during each calendar month on days the employer designates in advance and to pay non-exempt employees their earned wages for labor performed in excess of the normal work period by no later than the next regular payday.

57. Labor Code § 223 makes it unlawful for employers to pay their employees lower wages than required by contract or statute while purporting to pay them legal wages.

58. Labor Code § 510 and § 3 of the applicable Wage Order require employees to pay non-exempt employees overtime wages of no less than one and one-half times their respective regular rates of pay for all hours worked in excess of eight hours in one workday, all hours worked in excess of forty hours in one workweek, and/or for the first eight hours worked on the seventh consecutive day of one workweek.

59. Labor Code § 510 and § 3 of the applicable Wage Order also require employers to pay non-exempt employees overtime wages of no less than two times their respective regular rates of pay for all hours worked in excess of twelve hours in

one workday and for all hours worked in excess of eight hours on a seventh consecutive workday during the workweek.

60. Plaintiffs are informed and believe that, at all relevant times, Defendants have applied centrally devised policies and practices to her and the other Aggrieved Employees with respect to working conditions and compensation arrangements.

61. At all relevant times, Defendants failed to pay hourly wages to Plaintiffs and the other Aggrieved Employees for all time worked, including but not limited to, overtime hours at statutory and/or agreed rates. Plaintiffs and the other Aggrieved Employees were not paid proper wages and overtime for all hours worked, at the proper rates of pay.

62. Defendants had a common policy and practice of systemically failing to pay Plaintiffs and Aggrieved Employees wages and overtime for all hours worked, at the proper rates of pay. First, Defendants implemented an unlawful time-rounding policy and practice which rounded down and reduced the actual working hours recorded by Plaintiffs and Aggrieved Employees, and upon which their pay was based, and generally did so to the detriment of the Plaintiffs and Aggrieved Employees, and these unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created. Defendants did so with the ostensible intent of paying Plaintiffs and Aggrieved Employees only for the hours they were scheduled to work, rather than the hours they were actually under Defendants' control. Plaintiffs contends this policy is not neutral and results, over time, to the detriment of the Plaintiffs and Aggrieved Employees by systematically undercompensating them.

63. Next, Plaintiffs and Aggrieved Employees were consistently required to perform work, off-the-clock, for which they were not paid wages. By way of example, Plaintiffs and Aggrieved Employees were systemically required to arrive to work 5-10 minutes early due to the amount of time it took to stand in line and clock in. The forgoing time it took for Plaintiffs and Aggrieved Employees to clock in was

uncompensated working time under the direction and control of Defendants, for which no wages were paid.

64. This uncompensated time caused Plaintiffs and Aggrieved Employees to work in excess of eight (8), ten (10) and/or twelve (12) hours a day and/or forty (40) hours a week, entitling Plaintiffs and Aggrieved Employees to minimum and overtime wages, which they were systemically denied.

65. Moreover, Defendants failed to pay Plaintiffs and Aggrieved Employees overtime wages at the proper and applicable regular rates of pay. Specifically, Plaintiffs and Aggrieved Employees earned incentive pay, as well as performance-based non-discretionary bonuses, in addition to their hourly pay. However, these supplemental earnings were not accounted for when determining Plaintiffs and Aggrieved Employees' regular rates of pay, and respective and proper overtime rates of pay. As a result, Plaintiffs and Aggrieved Employees were not fully compensated for all hours worked.

66. Plaintiffs and the Aggrieved Employees were not paid all wages earned as Defendants directed, permitted, or otherwise encouraged Plaintiffs and Aggrieved Employees to perform off-the-clock work.

67. Plaintiffs and the Aggrieved Employees were regularly required to perform for pre-shift and post-shift duties, off the clock, for which no wages were paid. Due to the volume of work, Plaintiffs and the Aggrieved Employees were instructed by their managers to perform various duties both before clocking in and after clocking out. Oftentimes, it was not possible to complete all their required duties within the regular workday. As a result, Plaintiffs and the Aggrieved Employees reported to work before their scheduled shifts and left after their scheduled time, working off the clock to complete their tasks.

68. As a result of performing off-the-clock work that was directed, permitted, or otherwise encouraged by Defendants, Plaintiffs and the Aggrieved Employees should have been paid for this time. Instead, Defendants only paid Plaintiffs and the

Aggrieved Employees based on the time they were clocked in for their shifts and did not pay Plaintiffs and the Aggrieved Employees for any of the time spent working off-the-clock.

69. Defendants knew or should have known that Plaintiffs and the Aggrieved Employees were performing work before and after their scheduled work shifts and failed to pay Plaintiffs and the Aggrieved Employees for these hours.

70. Defendants implemented a common policy and practice requiring Plaintiffs and the other Aggrieved Employees to perform work-related duties during unpaid meal periods, which they were systemically denied. Plaintiffs and the other Aggrieved Employees were never paid wages for these meal-period hours worked. As such, Plaintiffs and the other Aggrieved Employees were not paid proper wages and overtime for all hours worked, at the proper rates of pay. Plaintiffs and the other Aggrieved Employees were consistently required to work in excess of eight (8) hours a day and/or forty (40) hours a week, entitling Plaintiffs and the other Aggrieved Employees to overtime wages, which they were systemically denied.

71. Labor Code § 226(a) states:

> An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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 only 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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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 and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made

> from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, 'copy' includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

72. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize the "detachable part of the check" provision and the "accurate itemized statement in writing" provision of Labor Code § 226(a) by allowing for electronic wage statements so long as each employee retains the right to elect to receive a written paper stub or record and that those who are provided with electronic wage statements retain the ability to easily access the information and convert the electronic statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006.)

73. Plaintiffs are informed and believe that, at all relevant times during the applicable limitations period, Defendants have failed to provide her and the other Aggrieved Employees with written wage statements as described above. Additionally, the wage statements issued to Plaintiffs and the other Aggrieved Employees failed to account for the unpaid minimum wages, overtime, and premium pay wages described above.

74. Defendants also had a common policy and practice of systemically failing to pay Plaintiffs and Aggrieved Employees the requisite sick time pay at the proper rate of pay in accordance with California Law. Additionally, the sick pay paid to Plaintiffs and Aggrieved Employees did not account for the incentive and non-discretional bonus pay, which was never factored into the rate upon which sick pay was accrued and paid.

75. Plaintiffs are informed and believe that Defendants' failure to provide her and the other Aggrieved Employees with accurate written wage statements were intentional in that Defendants have the ability to provide them with accurate wage statements but have intentionally provided them with written wage statements that

Defendants have known do not comply with Labor Code § 226(a).

76. Plaintiffs and Aggrieved Employees were not provided with accurate wage statements as mandated by law pursuant to Labor Code section 226. Specifically, Defendants failed to comply with Labor Code section 226(a)(1), (a)(2), (a)(5) and (a)(9) as Defendants failed to provide Plaintiffs and Aggrieved Employees wage statements that accurately reported all hours worked, including overtime, and the applicable hourly rates. Further, Defendants failed to properly itemize "total hours worked" pursuant to Labor Code section 226(a)(2) as Defendants included non-working hours as "total hours worked" on Plaintiffs' and Aggrieved Employees' wage statements.

77. Labor Code section 2802(a) states:

> An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

78. At all relevant times during the applicable limitations period, Plaintiffs and the Aggrieved Employees incurred necessary business-related expenses and costs, including but not limited to, the use of personal cell phones for work-related activities.

79. Plaintiffs are informed and believe and thereupon allege that the reimbursement paid by Defendants was insufficient to indemnify Plaintiffs and Aggrieved Employees for all necessary expenses incurred in the discharge of their duties.

80. At all relevant times during the applicable limitations period, Defendants required Plaintiffs and the Aggrieved Employees to pay for expenses and/or losses caused by Defendants' want of ordinary care. Defendants failed to indemnify Plaintiffs and Aggrieved Employees for all such expenditures.

81. Plaintiffs and Aggrieved Employees were not reimbursed for business expenses incurred in executing their duties under Defendant's employ. Specifically,

Plaintiffs and Aggrieved Employees were required to purchase and maintain protective gear, including steel toe boots, fire resistant garments, gloves, face shields, hard hats, and various other safety gear all necessary to perform their duties under Defendants' employ. Plaintiffs and Aggrieved Employees also had to purchase and use some of their own tools and equipment necessary to perform their job duties, such as a flashlight. Plaintiffs and Aggrieved Employees were not reimbursed for these necessary work-related expenses.

82. At all relevant times, Plaintiffs and the other Aggrieved Employees have been entitled, upon the end of their employment with Defendants, to timely payment of all wages earned and unpaid before termination or resignation.

83. At all relevant times, pursuant to Labor Code § 201, employees who have been discharged have been entitled to payment of all final wages immediately upon termination.

84. At all relevant times, pursuant to Labor Code § 202, employees who have resigned after giving at least seventy-two (72) hours' notice of resignation have been entitled to payment of all final wages at the time of resignation.

85. Plaintiffs are informed and believe that, at all relevant times during the applicable limitations period, Defendants have failed to timely pay the other Aggrieved Employees all of their final wages in accordance with the Labor Code. Defendants have had a consistent policy of failing to pay all wages owed to Aggrieved Employees at the time of their termination of within seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.

86. Plaintiffs are informed and believe that, at all relevant times during the applicable limitations period, Defendants have maintained a policy or practice of paying Plaintiffs and the other Aggrieved Employees their final wages without regard to the requirements of Labor Code §§ 201 or 202 by failing to timely pay them all final wages.

87. Plaintiffs are informed and believe and thereupon allege that Defendants'

failure to timely pay all final wages to her and the other Aggrieved Employees have been willful in that Defendants have the ability to pay final wages in accordance with Labor Code §§ 201 and/or 202 but have intentionally adopted policies or practices that are incompatible with those requirements.

88. The IWC Wage Order requires employers to maintain the temperature in each work area providing reasonable comfort consistent with industry wide standards for the nature of the process and the work performed. The IWC Wage Order states: "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. 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." Here, the temperature in Defendants' workspace was well above what is legally allowed under California Law.

89. As addressed in detail above, Defendants failed to reduce excessive heat to a degree providing employees with reasonable comfort. The temperature in Defendants' workspace was well above what is legally allowed constituting violations of Labor Code § 1198 and § 2699(f)(2). Specifically, the facilities where Defendants required Aggrieved Employees to work were intolerably hot, and Plaintiff and upon information and belief the Aggrieved Employees were concerned that they would suffer from heat-related injuries during their work shifts. Defendants' management would not permit doors to be opened for security reasons, and provided only a few fans which only circulated hot air. By failing to maintain temperatures providing reasonable comfort levels consistent with industry-wide standards for the nature and process of the work performed, Defendants violated paragraph 15 of the applicable IWC Wage Orders, and are entitled to civil penalties as appropriate.

90. In failing to pay Plaintiffs and Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis

as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

91. During the applicable limitations period, Defendants have violated Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, and 2802.

92. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of herself and other current and former employees, to bring a representative civil action to recover civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not, be brought or maintained as a class action pursuant to Code of Civil Procedure § 382.

93. Plaintiffs, former employees against whom Defendants committed one or more of the alleged Labor Code violations during the applicable limitations period, are aggrieved employees within the meaning of Labor Code § 2699(c).

94. Plaintiffs have complied with the procedures for bringing suit specified in Labor Code § 2699.3.

95. Plaintiffs have exhausted their administrative remedy by uploading a certified letter to the LWDA and Defendants postmarked on February 9, 2024. Plaintiffs amended their LWDA letter on August 6, 2024, adding Plaintiff Jeffrey Richards and Defendant Sierra Aluminum Company. The LWDA has not provided notice of its intent to investigate the alleged violations within 65 calendar days of the upload and the postmark date of the letter.

96. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiffs seek the following civil penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2802:

i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 227.3, 1174, 1194, 1198, and 2802 one hundred dollars ($100) for each employee per pay period for each initial violation and two hundred dollars ($200) for each employee per pay period for each subsequent violation (penalties set by Labor Code § 2699(f)(2));

ii. For violations of Labor Code § 203, a penalty in an amount not exceeding thirty (30) days' pay as waiting time (penalties set by Labor Code § 256);

iii. For violations of Labor Code § 204, one hundred dollars ($100) for each employee for each initial violation that was neither willful nor intentional, two hundred dollars ($200) for each employee, plus 25% of the amount unlawfully withheld from each employee, for each initial violation that was either willful or intentional, and two hundred dollars ($200) for each employee, plus twenty-five percent (25%) of the amount unlawfully withheld from each employee, for each subsequent violation, regardless of whether the subsequent violation was either willful or intentional (penalties set by Labor Code § 210);

iv. For violations of Labor Code § 223, one hundred dollars ($100) for each employee for each initial violation that was neither willful nor intentional, two hundred dollars ($200) for each employee, plus twenty-five percent (25%) of the amount unlawfully withheld from each employee, for each initial violation that was either willful or intentional, and two hundred dollars ($200) for each employee, plus twenty-five percent (25%) of the amount unlawfully withheld from each employee, for each subsequent violation, regardless of whether the subsequent violation was either willful or intentional (penalties set by Labor Code § 225.5);

v. For violations of Labor Code § 226(a), if this action is deemed to be an initial citation, two hundred and fifty dollars ($250) for each employee for each violation. Alternatively, if an initial citation or its equivalent occurred before the filing of this action, one thousand dollars ($1,000) for each employee for each violation (penalties set by Labor Code § 226.3);

vi. For violation of Labor Code §§ 510 and 512, fifty dollars ($50) for each employee for each initial pay period for which the employee was underpaid, and one hundred dollars ($100) for each employee for each subsequent pay period for which the employee was underpaid (penalties set by Labor Code § 558);

vii. For violations of Labor Code § 1197, one hundred dollars ($100) for each aggrieved employee for each initial violation of Labor Code § 1197 that was intentional and two hundred and fifty dollars ($250) for each aggrieved employee per pay period for each subsequent violation of Labor Code § 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code § 1197.1);

viii. Pursuant to Labor Code § 2699(g), Plaintiffs seek an award of reasonable attorneys' fees and costs in connection with Plaintiffs' claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves, all other aggrieved employees, the State of California, and the general public, pray for relief and judgment against Defendants as follows:

(1) Pre-judgment interest;

(2) Civil penalties;

(3) Costs of suit;

(4) Reasonable attorneys' fees; and

(5) Such other relief as the Court deems just and proper.

Dated: March 13, 2025

D.LAW, INC.

/s/ David Keledjian

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