

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

ALVIN P. MAGEE, JR.,

Plaintiff,

V.

THYSSENKRUPP MATERIALS NA,
INC.; and DOES 1-100, inclusive,

Defendant.

Case No. RG19027231

JOINT STIPULATION FOR CLASS ACTION
SETTLEMENT AND RELEASE

JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE

This Joint Stipulation of Class Action Settlement and Release (“Settlement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Alvin Magee, and proposed additional plaintiff Fidel Jones (collectively “Plaintiffs” or “Class Representatives”), as individuals and on behalf of all others similarly situated, and Defendant Thyssenkrupp Materials NA, Inc., and proposed additional Defendant Thyssenkrupp Supply Chain Services NA, Inc. (collectively Defendants).

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. "Action" means *Magee v. Thyssenkrupp Materials NA, Inc.*, Alameda County Superior Court case number RG19027231.
2. "Attorneys' Fees and Costs" means attorneys' fees approved by the Court for Class Counsel's litigation and resolution of the Action, and all Court approved costs incurred and to be incurred by Class Counsel in the Action, including but not limited to, costs associated with documenting the Settlement, providing any notices to governmental agencies required as part of the Settlement or Court Order, securing the Court's approval of the Settlement, administering the Settlement, obtaining entry of a Judgment terminating the Action, and expenses for any experts. Class Counsel will request attorneys' fees not in excess of one-third (1/3) of the Gross Fund, or Four Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$483,333.33). Class Counsel will request costs not in excess of Twenty Thousand Dollars (\$20,000), to be deducted from the Gross Fund.
3. "Class Counsel" means Mayall Hurley P.C.
4. "Class List" means a complete list of all Class Members that Defendants will diligently and in good faith compile from their records and provide to the Settlement Administrator within fifteen (15) calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in Microsoft Office Excel and will include each Class Member's full name; most recent mailing address; Social Security number; dates of employment in class positions; the respective number of Workweeks that each Class Member worked during the Class Period in

1 class positions; and any other relevant information needed to calculate settlement payments.

2 5. “Class Member(s)” or “Settlement Class” means all non-exempt hourly California
3 employees who were employed by Defendants during the Class Period.

4 6. “Class Period” means the period from July 16, 2015 through the earlier of the date of
5 Preliminary Approval of the Settlement Agreement or an increase of more than 7.5% in the
6 number of workweeks or class size for each respective Defendant (the “Class Cut-Off”).

7 7. “Class/PAGA Representative Enhancement Payment” means the amount to be paid to
8 Plaintiffs in the Action in recognition of their effort and work in prosecuting the Action on behalf
9 of Class Members, and for their general releases of claims. Subject to the Court granting final
10 approval of this Settlement Agreement and subject to the exhaustion of any and all appeals,
11 Plaintiffs will request Court approval of Class/PAGA Representative Enhancement Payments of
12 Five Thousand Dollars (\$5,000) each, or Ten Thousand Dollars (\$10,000) total.

13 8. “Court” means the California Superior Court for the County of Alameda.

14 9. “Defendants” mean Thyssenkrupp Materials NA, Inc., and Thyssenkrupp Supply Chain
15 Services NA, Inc.

16 10. “Effective Date” is the latter of: (1) the last date after the final judgment by which a
17 notice of appeal of the order granting final approval or the final judgment may be timely filed,
18 and none is filed (i.e., 60 days after the date of entry of the order granting final approval); or (2) if
19 a notice of appeal from the order granting final approval or the final judgment is filed, the date
20 on which the Superior Court’s order granting final approval or final judgment is finally affirmed
21 or upheld without any further right of appeal by any party or third party and following the
22 expiration of any such period for such further appeal that may be available. The Effective Date is
23 a condition of performance of the obligations under this Settlement.

24 11. “First Amended Complaint” means the proposed First Amended Complaint attached
25 hereto as **Exhibit B**, which adds i) Fidel Jones as a named plaintiff, ii) Thyssenkrupp Supply
26 Chain Services NA, Inc. as a named defendant, iii) a cause of action for waiting time penalties
27 pursuant to Labor Code Section 203, iv) a cause of action under PAGA pursuant to Labor Code
28 Section 2698, *et seq.*, and v) incorporates the allegations of the the amended LWDA letter sent to

1 the LWDA on September 9, 2019.

2 12. “Gross Fund” means the agreed amount of One Million Four Hundred and Fifty
3 Thousand Dollars (\$1,450,000), to be paid by Defendants in full satisfaction of all Released
4 Claims arising from the Action, which includes all Individual Settlement Payments to
5 Participating Class Members, Attorneys’ Fees and Costs to Class Counsel, the Class/PAGA
6 Representative Enhancement Payment to Plaintiffs, the Labor and Workforce Development
7 Agency Payment, and Settlement Administration Costs to the Settlement Administrator. This
8 Gross Fund has been agreed to by Plaintiffs and Defendants based on the aggregation of the
9 agreed-upon settlement value of individual claims in the Action. In no event will Defendants be
10 liable for more than the Gross Fund. There will be no reversion of the Gross Fund to
11 Defendants. Defendants will be separately responsible for any employer payroll taxes required
12 by law, which shall not be paid from the Gross Fund.

13 13. “Individual Settlement Payment” means each Participating Class Member’s respective
14 share of the Net Settlement Amount.

15 14. “Labor and Workforce Development Agency Payment” means the amount that the
16 Parties have agreed to pay to the Labor and Workforce Development Agency (“LWDA”) in
17 connection with the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§
18 2698, *et seq.*, “PAGA”) out of the PAGA Settlement Amount. The Parties have agreed that
19 Seventy-Five Thousand Dollars (\$75,000) of the Gross Fund will constitute the PAGA
20 Allocation and be remitted in consideration for the resolution of Class Members’ claims arising
21 under PAGA during the PAGA Period. Pursuant to PAGA, Seventy-Five Percent (75%) of the
22 PAGA Settlement Amount, or \$56,250.00, will constitute the Labor and Workforce
23 Development Agency Payment and Twenty-Five Percent (25%) of the PAGA Settlement
24 Amount, or \$18,750.00, will constitute the Net PAGA Settlement Amount to be paid to Class
25 Members.

26 15. “Net Settlement Amount” means the portion of the Gross Fund remaining after
27 deducting the Attorneys’ Fees and Costs, the Class Representative Enhancement Payments, the
28 Labor and Workforce Development Agency Payment, and Settlement Administration Costs.

1 The Net Settlement Amount will be distributed to Participating Class Members. There will be
2 no reversion of the Net Settlement Amount to Defendants if any funds cannot be distributed.

3 16. “Net Class Settlement Amount” means the portion of the Gross Fund remaining after
4 deducting the Attorneys’ Fees and Costs, the Class Representative Enhancement Payments, the
5 PAGA Settlement Amount, and Settlement Administration Costs. The Net Class Settlement
6 Amount will be distributed to Participating Class Members. There will be no reversion of the
7 Net Class Settlement Amount to Defendants if any funds cannot be distributed.

8 17. “Net PAGA Settlement Amount” refers to the 25% portion of the PAGA Settlement
9 Amount available for distribution to Class Members. There will be no reversion of the Net
10 PAGA Settlement Amount to Defendants if any funds cannot be distributed.

11 18. “Notice of Objection” means a Class Member’s valid and timely written objection to the
12 Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the
13 objector’s full name, signature, address, and telephone number, (ii) a written statement of all
14 grounds for the objection accompanied by any legal support for such objection; and (iii) copies
15 of any papers, briefs, or other documents upon which the objection is based, if any documents
16 are a basis of the objection.

17 19. “Notice Packet” or “Class Notice” means the Notice of Class Action Settlement,
18 substantially in the form attached as **Exhibit A**.

19 20. “PAGA Claims” shall refer to claims for the imposition of civil penalties pursuant to the
20 PAGA arising out of alleged violations of the California Labor Code and/or wage orders as
21 outlined in the Released Claims committed against Class Members during the PAGA Period.

22 21. “PAGA Settlement Amount” shall refer to the amount the Parties have agreed to
23 allocate to the resolution of PAGA Claims during the PAGA Period. The Parties have agreed
24 that Seventy-Five Thousand Dollars (\$75,000) of the Gross Fund will constitute the PAGA
25 Settlement Amount.

26 22. “PAGA Settlement Period” is the period of time from July 16, 2018, through
27 Preliminary Approval or the Class Cut-Off Date, whichever comes first.

28 23. “Parties” means Plaintiffs and Defendants collectively.

1 24. "Participating Class Members" means all Class Members who do not submit timely and
2 valid Requests for Exclusion and are thus entitled to a share of the Net Class Settlement Amount.

3 25. "Plaintiffs" mean Alvin Magee, Jr. and Fidel Jones.

4 26. "Preliminary Approval" means the Court order granting preliminary approval of the
5 Settlement Agreement.

6 27. "Released Claims" means all claims, rights, demands, liabilities, and causes of action,
7 arising from or related to minimum wage, overtime, meal breaks, inaccurate wage statements,
8 sick pay, waiting time penalties, and unfair business practices / PAGA based upon the same, as
9 well as any claims that were alleged in the operative complaint or that could have been alleged
10 based on the facts asserted in the operative complaint (including the proposed First Amended
11 Complaint and amended LWDA letters), including claims under Labor Code sections 201-203,
12 226, 226.7, 233, 246, 510, 512, 1182.12 et seq., 1194, 1197, and 1198, and 2698 et seq., and the
13 applicable CA wage orders, Bus. & Prof. Code sections 17200 et seq.

14 28. "Released Parties" means Defendants and each of their respective former and present
15 parents, subsidiaries, divisions, and affiliated corporations and entities and each of their
16 respective former and present officers, directors, employees, partners, shareholders, principals,
17 agents, attorneys, insurers, and any other assigns or legal representatives.

18 29. "Release Period" means July 16, 2015 through the date of Preliminary Approval of the
19 Settlement Agreement.

20 30. "Request for Exclusion" means a timely letter submitted by a Class Member indicating a
21 request to be excluded from the non-PAGA portion of the Settlement. The Request for
22 Exclusion must: (i) set forth the name, address, telephone number and last four digits of the
23 Social Security Number of the Class Member requesting exclusion; (ii) be signed by the Class
24 Member; (iii) be returned to the Settlement Administrator; (iv) clearly state that the Class
25 Member does not wish to be included in the Settlement; and (v) be faxed or postmarked on or
26 before the Response Deadline.

27 31. "Response Deadline" means the deadline by which Class Members must postmark or
28 fax to the Settlement Administrator Requests for Exclusion, Notices of Objection or workweek

1 disputes. The Response Deadline will be forty-five (45) calendar days from the initial mailing of
2 the Notice Packet by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls
3 on a Sunday or State holiday, in which case the Response Deadline will be extended to the next
4 day on which the U.S. Postal Service is open.

5 32. “Settlement Administration Costs” means the costs payable from the Gross Fund to the
6 Settlement Administrator for administering this Settlement, including, but not limited to,
7 printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the
8 Gross Fund, and providing necessary reports and declarations, as requested by the Parties. The
9 Settlement Administration Costs will be paid from the Gross Fund.

10 33. “Settlement Administrator” or “Administrator” means the third-party class action
11 settlement administrator agreed to by the Parties and approved by the Court for the purposes of
12 administering this Settlement. The Parties each represent that they do not have any financial
13 interest in the Settlement Administrator or otherwise have a relationship with the Settlement
14 Administrator that could create a conflict of interest.

15 34. “Workweeks” means each full or partial week that each Class Member during the Class
16 Period worked for Defendants in a covered position. All Class Members will be credited with at
17 least one Workweek.

18 **TERMS OF AGREEMENT**

19 Plaintiffs, on behalf of themselves and the Settlement Class, and Defendants agree as follows:

20 35. Funding of the Gross Fund. Defendants will send a one-time check or wire transfer in
21 the amount of the Gross Fund of One Million Four Hundred and Fifty Thousand Dollars
22 (\$1,450,000) to the Settlement Administrator, which will be deposited into a Qualified
23 Settlement Account to be established by the Settlement Administrator. Defendants will pay the
24 employer’s share of payroll taxes separately. After the Effective Date, the Gross Fund will be
25 used for: (i) Individual Settlement Payments; (ii) the Labor and Workforce Development
26 Agency Payment; (iii) the Class Representative Enhancement Payment; (iv) Attorneys’ Fees and
27 Costs; and (v) Settlement Administration Costs. Defendants will send a check in the amount of
28 the Gross Fund within ten (10) business days of the Effective Date. Defendants shall submit any

1 additional payroll taxes within thirty (30) business days following calculations from the
2 Settlement Administrator.

3 36. Attorneys' Fees and Costs. Class Counsel will file a motion for Attorneys' Fees and
4 Costs of not more than one-third of the Gross Fund, or Four Hundred Eighty-Three Thousand
5 Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$483,333.33), plus the
6 reimbursement of costs and expenses associated with Class Counsel's litigation and settlement
7 of the Action, not to exceed Twenty Thousand Dollars (\$20,000), both of which will be paid
8 from the Gross Fund. These amounts satisfy all of the claims for attorney's fees and costs in the
9 Action. A reduction in these amounts by the Court is not grounds to void the Agreement.

10 37. Class Representative Enhancement Payments. In exchange for a general and complete
11 release, and in recognition of their efforts and work in prosecuting the Action on behalf of Class
12 Members, Defendants agrees not to oppose or impede any application or motion for a Class
13 Representative Enhancement Payment of Five Thousand Dollars (\$5,000) for each named
14 Plaintiff, for a total of \$10,000. A reduction in this amount by the Court is not grounds to void
15 the Agreement. The Class Representative Enhancement Payments will be paid from the Gross
16 Fund and will be in addition to any Individual Settlement Payment Plaintiffs may be entitled to
17 pursuant to the Settlement. Plaintiffs will be solely and legally responsible to pay any and all
18 applicable taxes on the Class Representative Enhancement Payments.

19 38. Settlement Administration Costs. The Settlement Administrator will be paid for the
20 reasonable costs of administration of the Settlement and distribution of payments from the Gross
21 Fund, which shall not exceed Eleven Thousand Six Hundred (\$11,600). These costs, which will
22 be paid from the Gross Fund, will include, *inter alia*, the required tax reporting on the Individual
23 Settlement Payments, the issuing of 1099 and W-2 IRS Forms, distributing Notice Packets,
24 calculating and distributing the Gross Fund, establishing and maintaining a settlement website in
25 the manner described below, and providing necessary reports and declarations.

26 39. PAGA Settlement Amount and Distribution. Subject to Court approval, the Parties
27 agree that the amount of Seventy-Five Thousand Dollars (\$75,000) from the Gross Fund will be
28 designated for satisfaction of civil penalties arising out of the PAGA Claims during the PAGA

Period. Pursuant to PAGA, Seventy-Five Percent (75%), or Fifty-Six Thousand Two Hundred and Fifty Dollars (\$56,250), of this sum will be paid to the LWDA and Twenty-Five Percent (25%), or Eighteen Thousand Seven Hundred and Fifty Dollars (\$18,750), will constitute the Net PAGA Settlement Amount and will be paid to Class Members subject to the PAGA Settlement Period (regardless of whether they object to or are excluded from the non-PAGA portion of the Settlement) on a pro-rata basis.

40. Net Class Settlement Amount. The entire Net Class Settlement Amount will be distributed to Participating Class Members. No portion of the Net Class Settlement Amount will revert or be retained by Defendants.

41. Individual Settlement Payment Calculations. Individual Settlement Payments will be calculated and apportioned from the Net Class Settlement Amount based on the number of Workweeks a Participating Class Member worked during the Class Period. Specific calculations of Individual Settlement Payments will be made as follows:

41(a) The Settlement Administrator will calculate the total number of Workweeks worked by each Participating Class Member during the Class Period and the aggregate total number of Workweeks worked by all Participating Class Members during the Class Period.

41(b) To determine each Participating Class Member's share of the Net Class Settlement Amount, the Settlement Administrator will use the following formula: The Net Class Settlement Amount, less \$300,000 set aside to compensate Participating Class Members whose employment ended on or before preliminary approval, will be divided by the aggregate total number of Workweeks worked by all Participating Class Members, resulting in the "Workweek Value."

41(c) Each Participating Class Member's share of the Net Class Settlement Amount will be calculated by multiplying each individual Participating Class Member's total number of Workweeks by the Workweek Value. Participating Class Members whose employment with Defendants ended on or before preliminary approval will each also receive a pro rata share of the \$300,000 set aside to compensate for them for their

1 claim for Waiting Time Penalties. All Class Members who were employed during the
2 PAGA Period will also receive a pro rata share of the \$18,750 Net PAGA Settlement
3 Amount. The Individual Settlement Payment will be reduced by any required
4 deductions for each Participating Class Member as specifically set forth herein,
5 including employee-side tax withholdings or deductions.

6 41(d) The entire Net Settlement Amount will be disbursed to Participating Class
7 Members as set forth above.

8 42. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
9 Participating Class Members under this Settlement, as well as any other payments made
10 pursuant to this Settlement, will not be utilized to calculate any additional benefits under any
11 benefit plans to which any Class Members may be eligible, including, but not limited to profit-
12 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans,
13 PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement
14 Agreement will not affect any rights, contributions, or amounts to which any Class Members
15 may be entitled under any benefit plans.

16 43. Administration Process. The Parties agree to cooperate in the administration of the
17 settlement and to make all reasonable efforts to control and minimize the costs and expenses
18 incurred in administration of the Settlement.

19 44. Delivery of the Class List. Within fifteen (15) calendar days of Preliminary Approval,
20 Defendants will provide the Class List to the Settlement Administrator.

21 45. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class
22 List from Defendants, the Settlement Administrator will mail a Notice Packet to all Class
23 Members via regular First-Class U.S. Mail, using the most current, known mailing addresses
24 identified in the Class List as updated by the process in Paragraph 46, below.

25 46. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement
26 Administrator will perform a search based on the National Change of Address Database for
27 information to update and correct for any known or identifiable address changes. Any Notice
28 Packets returned to the Settlement Administrator as non-deliverable on or before the Response

1 Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address
2 affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the
3 Notice Packet. If no forwarding address is provided, the Settlement Administrator will promptly
4 attempt to determine the correct address using a skip-trace, or other search using the name,
5 address and/or Social Security number of the Class Member involved, and will then perform a
6 single re-mailing. Those Class Members who receive a re-mailed Notice Packet, whether by
7 skip-trace or by request, will have between the later of (i) an additional fifteen (15) calendar days
8 or (ii) the Response Deadline to submit a Request for Exclusion or an objection to the
9 Settlement.

10 47. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet
11 will provide: (i) information regarding the nature of the Action; (ii) a summary of the
12 Settlement's principal terms; (iii) the Settlement Class definition; (iv) the total number of
13 Workweeks the Class Member worked for Defendants during the Class Period; (v) each Class
14 Member's estimated Individual Settlement Payment and the formula for calculating Individual
15 Settlement Payments; (vi) the dates which comprise the Class Period; (vii) instructions on how
16 to submit Requests for Exclusion, Notices of Objection or Workweek disputes; (viii) the
17 deadlines by which the Class Member must postmark or fax Request for Exclusions, Notices of
18 Objection or Workweek disputes; and (ix) the claims to be released.

19 48. Disputed Information on Notice Packets. Class Members will have an opportunity to
20 dispute the Workweek information provided in their Notice Packets. To the extent Class
21 Members dispute their employment dates or the number of Workweeks on record, Class
22 Members may produce evidence to the Settlement Administrator showing that such information
23 is inaccurate. The Settlement Administrator will decide the dispute. Defendants' records will be
24 presumed correct, but the Settlement Administrator will evaluate the evidence submitted by the
25 Class Member and will make the final decision as to the merits of the dispute. All disputes will
26 be decided within five (5) business days of the Response Deadline.

27 49. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the
28 requirements listed herein, that Class Member will be given an opportunity to cure the defect(s).

1 The Settlement Administrator will mail the Class Member a cure letter within three (3) business
2 days of receiving the defective submission to advise the Class Member that his or her
3 submission is defective and that the defect must be cured to render the Request for Exclusion
4 valid. The Class Member will have until the later of (i) Response Deadline or (ii) fifteen (15)
5 calendar days from the date of the cure letter, whichever date is later, to postmark or fax a
6 revised Request for Exclusion. If the revised Request for Exclusion is not postmarked or
7 received by fax within that period, it will be deemed untimely.

8 50. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
9 Class portion of the Settlement Agreement (i.e. to not waive individual claims for relief
10 encompassed by the Released Claims and not receive a portion of the Net Class Settlement
11 Amount) must sign and fax or postmark a written Request for Exclusion to the Settlement
12 Administrator within the Response Deadline. In the case of Requests for Exclusion that are
13 mailed to the Settlement Administrator, the postmark date will be the exclusive means to
14 determine whether a Request for Exclusion has been timely submitted. Any Class member who
15 requests to be excluded from the class settlement will not be entitled to any portion of the Net
16 Class Settlement Amount and will not be bound by the terms of the class settlement or have any
17 right to object, appeal or comment thereon, although the PAGA settlement and release
18 provisions applicable to the PAGA Period will still apply to each such individual, and each such
19 individual shall be entitled to his or her pro rata share of the Net PAGA Settlement Amount.

20 51. Class Size. The Gross Fund was calculated based on the understanding that as of March
21 2020, there were approximately 900 Thyssenkrupp Supply Chain Services NA, Inc. employees
22 with 60,000 estimated workweeks, and 300 Thyssenkrupp Materials NA, Inc. employees with
23 25,000 workweeks, for a total of 85,000 Workweeks. In the event the final class list or total
24 workweeks for each respective employer is more than 7.5% larger, at the option of the
25 Defendants, the Gross Settlement Amount shall increase pro rata with a 7.5% grace margin (i.e.
26 if the numbers increase by 8.5%, the Gross Settlement Amount shall increase by 1%), or the date
27 for determining class membership (“Class Cut-Off”) shall be adjusted so as to limit the class size
28 to a maximum of no more than 7.5% of the estimated class members identified above.

1 52. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member
2 who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and
3 valid Request for Exclusion will be bound by all of its terms, including those pertaining to the
4 Released Claims during the Release Period, as well as any Judgment that may be entered by the
5 Court if it grants final approval to the Settlement.

6 53. Objection Procedures. To object to the Settlement Agreement, a Class Member must
7 fax or postmark a valid Notice of Objection to the Settlement Administrator on or before the
8 Response Deadline. The Notice of Objection must be signed by the Class Member and contain
9 all information required by this Settlement Agreement. At no time will any of the Parties or their
10 counsel seek to solicit or otherwise encourage Class Members to submit written objections to the
11 Settlement Agreement or appeal from the Order and Judgment. Class Counsel will not represent
12 any Class Members with respect to any such objections to this Settlement. If a Class Member
13 submits both a valid Request for Exclusion and a Notice of Objection, the Notice of Objection
14 shall be void and the Class Member will be deemed to have opted out of membership as a
15 Participating Class Member.

16 54. Certification Reports Regarding Individual Settlement Payment Calculations. The
17 Settlement Administrator will provide Defendants' counsel and Class Counsel a weekly report
18 that certifies the number of Class Members who have submitted valid Requests for Exclusion,
19 objections to the Settlement, and whether any Class Member has submitted a challenge to any
20 information contained in their Notice Packet. Additionally, the Settlement Administrator will
21 provide to counsel for both Parties any updated reports regarding the administration of the
22 Settlement Agreement as needed or requested.

23 55. Distribution Timing of Settlement Payments. Within fifteen (15) calendar days of the
24 Effective Date, the Settlement Administrator will issue payments to: (i) Participating Class
25 Members; (ii) the Labor and Workforce Development Agency; (iii) PAGA payments to Class
26 Members who opted out of the non-PAGA portions of the settlement; (iv) Plaintiffs; and (v)
27 Class Counsel. The Settlement Administrator will also issue a payment to itself for Court-
28 approved services performed in connection with the Settlement.

1 56. Un-cashed Settlement Checks. Funds represented by Individual Settlement Payment
2 checks returned as undeliverable and Individual Settlement Payment checks remaining un-
3 cashed for more than one hundred and eighty (180) calendar days after issuance will be tendered
4 to CASA of Alameda County, a child advocacy program that places Court Appointed Special
5 Advocates For Children (website is www.casaofalamedacounty.org/).

6 57. Certification of Completion. Upon completion of administration of the Settlement, the
7 Settlement Administrator will provide a written declaration under oath to certify such
8 completion to the Court and counsel for all Parties. The Settlement Administrator will be solely
9 responsible for preparation of the declaration, and the Settlement Administrator's failure to
10 comply with this requirement will not affect the settlement's validity.

11 58. Treatment of Individual Settlement Payments. All Individual Settlement Payments will
12 be allocated as follows: (i) Thirty-three Percent (33%) of each Individual Settlement Payment
13 will be allocated as wages for which IRS Forms W-2 will be issued; and (ii) Sixty-Seven (67%)
14 will be allocated as non-wages (for alleged interest and penalties) for which IRS Forms 1099-
15 MISC will be issued. Each Class Member's Labor and Workforce Development Agency
16 Payment will be allocated as non-wages (for alleged interest and penalties) for which IRS Forms
17 1099-MISC will be issued.

18 59. Administration of Taxes by the Settlement Administrator. The Settlement
19 Administrator will be responsible for issuing to Plaintiffs, Participating Class Members, Class
20 Members receiving payments from the Labor and Workforce Development Agency Payment,
21 and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts
22 paid pursuant to this Settlement. The Settlement Administrator will also be responsible for
23 forwarding all payroll taxes and penalties to the appropriate government authorities.

24 60. Tax Liability. Defendants make no representation as to the tax treatment or legal effect
25 of the payments called for hereunder, and Plaintiffs and Participating Class Members are not
26 relying on any statement, representation, or calculation by Defendants or by the Settlement
27 Administrator in this regard.

28 61. Circular 230 Disclaimer. Each party to this agreement (for purposes of this section, the

1 “acknowledging party” and each party to this agreement other than the acknowledging party, an
2 “other party”) acknowledges and agrees that (1) no provision of this agreement, and no written
3 communication or disclosure between or among the parties or their attorneys and other advisers,
4 is or was intended to be, nor will any such communication or disclosure constitute or be
5 construed or be relied upon as, tax advice within the meaning of United States Treasury
6 Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has
7 relied exclusively upon his, her, or its own, independent legal and tax counsel for advice
8 (including tax advice) in connection with this agreement, (b) has not entered into this agreement
9 based upon the recommendation of any other party or any attorney or advisor to any other party,
10 and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to
11 any other party to avoid any tax penalty that may be imposed on the acknowledging party; and
12 (3) no attorney or adviser to any other party has imposed any limitation that protects the
13 confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such
14 limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or
15 tax structure of any transaction, including any transaction contemplated by this agreement.

16 62. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
17 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
18 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
19 cause of action or right herein released and discharged.

20 63. Nullification of Settlement Agreement. In the event that: (i) the Court does not finally
21 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any
22 other reason, then this Settlement Agreement, and any documents generated to bring it into
23 effect, will be null and void. Any order or judgment entered by the Court in furtherance of this
24 Settlement Agreement will likewise be treated as void from the beginning. Furthermore, in the
25 event that 4% or more of the Class Members opt-out of the Settlement, or Class Members who
26 represent more than 4% of the aggregate Workweeks opt-out of the Settlement, then Defendants
27 shall have in their sole discretion the option to nullify the Settlement Agreement which shall
28 thereafter be null and void. The amount of the Gross Fund is deemed a material term and

1 Defendants may revoke the agreement if the Court insists on a change that increases the
2 obligation of Defendants to pay an amount in excess of the Gross Fund. In the event that
3 Defendants exercise their right to nullify the Settlement they shall be responsible for any and all
4 costs incurred by the Settlement Administrator to date. Changes requested by the Court to the
5 allocation of funds between PAGA and the remaining class claims, or changes in the amount of
6 attorney's fees and costs or enhancement awards to Plaintiffs, or changes to the procedures
7 accompanying the administration of the Settlement will not form the basis for any party in the
8 Action to revoke this Agreement.

9 64. Preliminary Approval Hearing. Plaintiffs will obtain a hearing before the Court to
10 request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary
11 Approval Order for: (i) conditional certification of the Settlement Class for settlement purposes
12 only, (ii) preliminary approval of the proposed Settlement Agreement, (iii) setting a date for a
13 Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for
14 the Notice Packet to be sent to all Class Members as specified herein. In conjunction with the
15 Preliminary Approval hearing, Plaintiffs will submit this Settlement Agreement, which sets forth
16 the terms of this Settlement, and will include the proposed Notice Packet, which will include
17 both the proposed Notice of Class Action Settlement document, attached as Exhibit A. Class
18 Counsel will be responsible for drafting all documents necessary to obtain preliminary approval,
19 but Defendant's counsel will have the right to review the drafts prior to filing.

20 65. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
21 deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and
22 with the Court's permission, a Final Approval/Settlement Fairness Hearing will be conducted to
23 determine the Final Approval of the Settlement Agreement along with the amounts properly
24 payable for: (i) Attorneys' Fees and Costs; (ii) the Class Representative Enhancement
25 Payments; (iii) Individual Settlement Payments; (iv) the Labor and Workforce Development
26 Agency Payment; and (v) all Settlement Administration Costs. The Final Approval/Settlement
27 Fairness Hearing will not be held earlier than fifteen (15) calendar days after the Response
28 Deadline. Class Counsel will be responsible for drafting all documents necessary to obtain final

1 approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs
2 application to be heard at the final approval hearing, but Defendants' counsel will have the right
3 to review the drafts.

4 66. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the
5 Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the
6 Judgment to the Court for its approval. After entry of the Judgment, the Court will have
7 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
8 of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-
9 Judgment matters as may be appropriate under court rules or as set forth in this Settlement
10 Agreement.

11 67. Release by Plaintiffs. Upon the Effective Date, in addition to the claims being released
12 by all Participating Class Members, Plaintiffs will release and forever discharge the Released
13 Parties, to the fullest extent permitted by law, of and from any and all claims, known and
14 unknown, asserted and not asserted, which Plaintiffs have or may have against the Released
15 Parties as of the date of execution of this Settlement Agreement. To the extent the foregoing
16 release is a release to which Section 1542 of the California Civil Code or similar provisions of
17 other applicable law may apply, Plaintiffs expressly waive any and all rights and benefits
18 conferred by the provisions of Section 1542 of the California Civil Code or similar provisions of
19 applicable law which are as follows: A general release does not extend to claims that the creditor
20 or releasing party does not know or suspect to exist in his or her favor at the time of executing
21 the release, and that, if known by him or her would have materially affected his or her settlement
22 with the debtor or released party.

23 68. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include
24 the terms set forth in any attached Exhibits, which are incorporated by this reference as though
25 fully set forth herein. Any Exhibits to this Settlement Agreement are an integral part of the
26 Settlement.

27 69. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the
28 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral

1 agreements may be deemed binding on the Parties, and no Party is relying on any representation
2 not contained in this agreement.

3 70. Amendment or Modification. No amendment, change, or modification to this
4 Settlement Agreement will be valid unless in writing and signed, either by the Parties or their
5 counsel.

6 71. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
7 represent they are expressly authorized by the Parties whom they represent to negotiate this
8 Settlement Agreement and to take all appropriate action required or permitted to be taken by
9 such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any
10 other documents required to effectuate the terms of this Settlement Agreement. The Parties and
11 their counsel will cooperate with each other and use their best efforts to effect the
12 implementation of the Settlement. If the Parties are unable to reach agreement on the form or
13 content of any document needed to implement the Settlement, or on any supplemental
14 provisions that may become necessary to effectuate the terms of this Settlement, the Parties may
15 seek the assistance of the Court to resolve such disagreement.

16 72. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
17 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

18 73. California Law Governs. All substantive terms of this Settlement Agreement and
19 Exhibits hereto will be governed by and interpreted according to the laws of the State of
20 California, except to the extent Federal Law applies.

21 74. Execution and Counterparts. This Settlement Agreement is subject only to the execution
22 of all Parties. However, the Settlement Agreement may be executed in one or more
23 counterparts. All executed counterparts and each of them, including electronic (e.g., DocuSign),
24 facsimile, and scanned copies of the signature page, will be deemed to be one and the same
25 instrument.

26 75. Acknowledgement that the Settlement Is Fair and Reasonable. The Parties believe this
27 Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have
28 arrived at this Settlement after arm's-length negotiations with the assistance of an experienced

wage/hour mediator and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

76. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement as valid and enforceable.

77. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this Settlement only; except, however, that Plaintiffs or Class Counsel may appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court, and either party may appeal any court order that materially alters the Settlement Agreement's terms.

78. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to class action certification for purposes of the Settlement only. If, for any reason, the Settlement is not approved, the stipulation to certification will be void. The Parties further agree that certification for purposes of the Settlement is not an admission that class action certification is proper under the standards applied to contested certification motions and that this Settlement Agreement will not be admissible in this or any other proceeding as evidence that either (i) a class action should be certified, or (ii) Defendants are liable to Plaintiffs or any Class Member or any other person or entity, other than according to the Settlement's terms.

79. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Settlement, Defendants do not admit, and specifically deny, that they violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees or anyone else. Neither this

1 Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected
2 with it, will be construed as an admission or concession by Defendants of any such violations or
3 failures to comply with any applicable law. Except as necessary in a proceeding to enforce the
4 terms of this Settlement, this Settlement Agreement and its terms and provisions will not be
5 offered or received as evidence in any action or proceeding to establish any liability or admission
6 on the part of Defendants or to establish the existence of any condition constituting a violation
7 of, or a non-compliance with, federal, state, local or other applicable law.

80. Injunction Against Duplicative Claims: Upon Preliminary Approval of the Settlement
9 Agreement, all Participating Class Members shall be enjoined from filing, joining, or becoming
10 a party, member or representative in any actions, claims, complaints, or proceedings in any state
11 or federal court on an individual, representative, collective or class action basis, or with the
12 California Department of Industrial Relations' Division of Labor Standards Enforcement
13 ("DLSE") or the United States Department of Labor ("DOL"), or from initiating any other
14 proceedings, regarding any of the Released Claims defined herein above Any related pending
15 actions, claims, complaints, or proceedings in any state or federal court or with the DLSE or
16 DOL, shall be stayed until the Class Members have had an opportunity to decide to participate,
17 object or file a request for exclusion from this Settlement..

81. No Public Comment: Following the filing of the Motion for Preliminary Approval, the
9 Parties understand and agree that there may be media coverage of the Settlement not initiated by
10 Plaintiffs or Defendants, directly or indirectly, as a result of the public filings. Notwithstanding
11 the foregoing, Plaintiffs, Defendants, and their respective counsel agree that no Party shall issue
12 any press release to the news media, nor shall any Party disclose any information regarding this
13 settlement in their marketing materials or firm websites, nor shall any Party communicate in any
14 way with news media concerning the settlement or the Class Action. This provision shall not
15 apply to or limit the public filing of motions or other case materials in the Class Action related to
16 seeking and obtaining Court approval of the proposed Settlement Agreement, the fees and costs
17 of Class Counsel, the Service Payments to the Class Representatives, and the other relief set
18 forth in this Settlement Agreement. This provision shall not prohibit Class Counsel from listing

this Action by name in support of motions for appointment as class counsel, certification, attorneys' fees and costs, or the like.

82. Encouragement of Class Members: The Parties to this Agreement and the counsel representing such Parties shall not, directly or indirectly, through any person, encourage or solicit any Class Member to exclude himself or herself from this Settlement (opt out) or to object to it. However, Class Counsel and Defendants may respond to inquiries from Class Members. Class Counsel and Defendants' counsel represent, through their signatures below, that they have not taken any action prior to signing this Agreement that would encourage any Class Member to exclude himself or herself from this Settlement, or to object to it. Class Counsel represents and warrants that at the time of signing this Agreement, it has no clients or prospective clients who are potential plaintiffs with potential or actual causes of action against Defendants.

83. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

84. Enforcement Actions. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

85. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

86. Representation by Counsel. The Parties acknowledge that they have been represented

1 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement,
2 and that this Settlement Agreement has been executed with the consent and advice of counsel.
3 Further, Plaintiffs and Class Counsel warrant and represent that there are no liens on the
4 Settlement Agreement.

5 **All Terms Subject to Final Court Approval.** All amounts and procedures described in
6 this Settlement Agreement will be subject to final Court approval.

7 **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good
8 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
9 Settlement Agreement.

10 **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this
11 Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and
12 binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to
enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply
under federal or state law.

13 5/13/2020

14 Dated: _____

DocuSigned by:

CB77D0BB630548F...

15 Alvin Magee, Jr.
16 Plaintiff/Class Representative

17 5/14/2020

18 Dated: _____

DocuSigned by:

FBE1B44BC3CD4EE...

19 Fidel Jones
20 Proposed Plaintiff/Class Representative

21 Dated: _____

22 _____
23 By:

24 Thyssenkrupp Supply Chain Services NA, Inc.

25 Dated: _____

26 _____
27 By:

28 Thyssenkrupp Materials NA, Inc.

APPROVED AS TO FORM

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12 binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to
enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply
under federal or state law.

14 Dated: _____

15 Alvin Magee, Jr.
16 Plaintiff/Class Representative

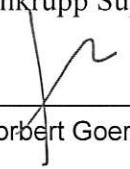
17 Dated: _____

18 Fidel Jones
19 Proposed Plaintiff/Class Representative

20 Dated: 05/22/2020

21 By: 
22 Brian Diephuis
23 Thyssenkrupp Supply Chain Services NA, Inc.

24 Dated: 05/22/2020

25 By: 
26 Norbert Goertz
27 Thyssenkrupp Materials NA, Inc.

28 APPROVED AS TO FORM

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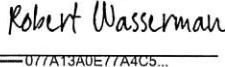
5/13/2020

Dated: _____

MAYALL HURLEY P.C.

By: _____

Robert J. Wasserman
Jenny D. Baysinger
Attorneys for Plaintiffs

DocuSigned by:

07/13/2020 7:45...

LITTLER MENDELSON, P.C.

Dated: _____

By: _____

Gregory Iskander
Attorneys for Defendants

MAYALL HURLEY P.C.

Dated: _____

By: _____

Robert J. Wasserman
Jenny D. Baysinger
Attorneys for Plaintiffs

LITTLER MENDELSON, P.C.

Dated: 12/10/20

By: _____

Gregory Iskander
Attorneys for Defendants

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ALVIN P. MAGEE, JR., and FIDEL JONES,

Case No.: RJ19027231

Plaintiff,

VS.

**THYSSENKRUPP MATERIALS NA, INC.;
THYSSENKRUPP SUPPLY CHAIN
SERVICES, NA, INC.;
and DOES 1-100, inclusive,**

Defendants.

**NOTICE OF PENDENCY OF CLASS
ACTION SETTLEMENT AND FINAL
HEARING**

IMPORTANT: THIS LEGAL NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY. YOU ARE NOT BEING SUED.

TO: All individuals who worked at Thyssenkrupp Materials NA, Inc. and Thyssenkrupp Supply Chain Services NA, Inc. within California in an hourly, non-exempt position between July 16, 2015 through [preliminary approval date].

A proposed class action settlement (“the Settlement”) of this lawsuit pending in Alameda County Superior Court for alleged wage and hour violations has been reached between Plaintiffs Alvin P. Magee, Jr. and Fidel Jones (“Plaintiffs”) and Defendants Thyssenkrupp Materials NA, Inc. and Thyssenkrupp Supply Chain Services NA, Inc. (“Defendants”). The Court has granted preliminary approval of the Settlement. You may be entitled to receive money from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THIS SETTLEMENT:

DO NOTHING	If you do nothing, you will be included as a member of the class, you will be bound by this Settlement, and you will receive a payment.
EXCLUDE YOURSELF	If you wish to be excluded from the Settlement, you must submit a written election not to participate known as an “opt-out” by no later than _____, ____ 2020. If you opt out, you will not be bound by the Settlement and will not receive a payment.
OBJECT	You may submit a written objection about why you do not like the Settlement. Any objection must be received by _____, ____ 2020. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement.
GO TO A HEARING	Write to the Administer and ask to speak to the Court about why you do not like the Settlement.

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2. **WHY DID I RECEIVE THIS NOTICE?**

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The parties have proposed to settle this class action lawsuit. Your employment records indicate that you are a Class Member. If the Court grants final approval to the Settlement, your legal rights may be affected. This Notice, which has been approved by the Court, is only a summary. A more detailed document, called the “Joint Stipulation of Class Action Settlement and Release”, containing the complete terms of the Settlement, is on file with the Court and available on the Settlement Administrator’s website.

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2. **WHAT IS THIS LAWSUIT ABOUT?**

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Plaintiff Magee filed this lawsuit on July 16, 2019, in the Alameda County Superior Court. Plaintiffs are represented by Mayall Hurley P.C. As set forth below, Mayall Hurley P.C. has been appointed by the Court to act as attorneys for the Class (referred to as “Class Counsel”).

Plaintiffs allege that Defendants failed to properly calculate and pay minimum wage, overtime, and sick pay to their non-exempt employees within California, failed to provide meal breaks, that the wage statements they furnished were inaccurate, and that they failed to pay all wages due and owing to employees at the end of their employment.

Defendants expressly deny all of the claims in the lawsuit and deny any liability or wrongdoing of any kind. The Court has made no determination about the strengths and weaknesses of the claims or contentions of either Plaintiffs or Defendants.

3. **WHO IS COVERED BY THE CLASS ACTION AND PROPOSED SETTLEMENT?**

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A. **Who are the Class Members?**

The proposed settlement covers the claims of certain current and former employees of Defendants (referred to as the “Class Members” and collectively as the “Class”). The Class consists of all non-exempt hourly employees who were employed by Defendants within California from July 26, 2015 through [preliminary approval date].

B. **What is the Effect of Membership in the Class?**

If you are a Class Member, you are automatically a Participating Class Member unless you optout (i.e., exclude yourself from the Settlement) by following the procedures set forth in this Notice. If the Settlement is approved by the Court, you are entitled to a payment under the Settlement and you will be bound by its terms. Individuals who optout will not be bound by the Settlement and will not be eligible to receive a payment.

4. **WHAT ARE THE TERMS OF THE SETTLEMENT?**

The proposed Settlement was agreed upon between Defendants and Class Counsel after a mediation with renowned employment class action mediator Michael Dickstein, Esq. Class Counsel believes that this Settlement, the terms of which are summarized below, is fair, reasonable, adequate, and in the best interests of the Class.

1

2 **A. Overall Summary of the Settlement Terms.**

3 Defendant will pay a total of \$1,450,000 to settle the claims of the Class (referred to as the
4 “Gross Fund”). The Gross Fund includes payments to Participating Class Members, the fees and costs
5 of the Settlement Administrator, the Service Payments to Plaintiffs for their service to the Class,
6 satisfaction of claims for civil penalties under the Private Attorneys General Act (“PAGA”) that could
7 be awarded as a result of the violations alleged, and Class Counsel’s attorneys’ fees and costs. The
8 remainder, after deduction of these payments, is known as the “Net Class Settlement Amount.”

9

10 **B. Costs of Claims Administrator.**

11 The Parties have agreed to employ [REDACTED] to serve as Administrator.
12 The Administrator’s fees and costs for administering the Settlement, estimated to be no more than
13 \$[REDACTED], if approved by the Court, will be paid out of the Gross Settlement Amount.

14

15 **C. Service Payment to Class Representative.**

16 Plaintiffs have been approved by the Court to serve as Class Representatives. As Class
17 Representatives, Plaintiffs are entitled to payment for their services to the Class. The Parties have
18 agreed, and the Court has preliminarily approved a payment of \$5,000 each (\$10,000 total), or 0.69%
19 of the Gross Fund, for Plaintiffs’ services to the Class.

20

21 **D. Class Counsel’s Fees and Costs.**

22 Class Counsel is entitled to attorney’s fees and costs for representing the Class. Class Counsel
23 will request attorneys’ fees of one-third of the Gross Settlement Amount, or \$483,333.33, and
24 reimbursement of litigation costs of up to \$20,000. The Court has preliminarily approved payment to
25 Class Counsel in the amounts set forth above.

26

27 **E. Payment for PAGA Claims.**

28 The Parties have allocated \$75,000 of the Gross Fund to any civil penalties under the Private
29 Attorneys General Act (“PAGA”) that could be awarded as a result of the violations alleged. Of that
30 amount, \$56,250 will be paid to the State of California’s Labor and Workforce Development Agency,
31 and the remaining \$18,750 (“Net PAGA Settlement Amount”) will be paid to Class Members
32 (regardless of whether or not they opt-out).

33

34 **F. What Can I Expect to Receive?**

35 Individual Settlement Payments to Participating Class Members will be calculated and apportioned
36 from the Net Class Settlement Amount based on the number of Workweeks a Class Member worked during
37 the Class Period in a covered position. Specifically, the Net Class Settlement Amount, less \$[REDACTED] set aside
38 to compensate Participating Class Members whose employment ended on or before preliminary approval,
39 divided by the aggregate total number of Workweeks worked by all Participating Class Members, resulting in
40 the “Workweek Value.” Each Participating Class Member’s share of the Net Class Settlement Amount will
41 be calculated by multiplying his or her total number of Workweeks worked by the Workweek Value.
42 Participating Class Members whose employment with Defendants ended on or before preliminary approval
43 will each also receive a pro rata share of the \$[REDACTED] set aside to compensate for them for their claim for

1 Waiting Time Penalties.

2 All Class Members also receive a pro rata share of the \$18,750 Net PAGA Settlement Amount. The
3 Individual Settlement Payment will be reduced by any required deductions for each Participating Class
4 Members as specifically set forth herein, including employee-side tax withholdings or deductions.

5 Defendants' records indicate that you are a Class Member and worked _____ Workweeks in a
6 covered position during the Class Period. [Defendants' records also indicated that your employment
7 ended on or before (preliminary approval date)]. It is estimated that your payment will be \$_____. It
8 will not be possible to know the exact amount of your payment until the response deadline has passed
9 and the Settlement Administrator knows the number of Participating Class Members.

10 If you believe you worked more workweeks in a covered position than the number set forth
11 above or that your employment ended on or before [preliminary approval date], you may challenge
12 the same. To do so, you must write the Settlement Administrator explaining the nature of your
13 dispute and provide any records or documentation that supports your position by no later than [45
14 days following the mailing of the Notice]. The Administrator will decide the dispute. Defendants'
15 records will be presumed correct, but the Administrator will evaluate the evidence you submit and
16 will make the final decision as to the merits of the dispute.

17 For tax purposes, one-third of your payment will be treated as unpaid wages, two-thirds will
18 be treated as interest and penalties. Civil penalties paid to Class Members in accordance with the
19 PAGA shall be reported on an IRS Form 1099. Any and all Employer-side Taxes that Defendants
20 would normally be responsible for paying will be paid by Defendants in addition to the Gross Fund.
21 Class Members will be issued appropriate tax forms for these amounts. Class Members are
22 responsible for any taxes owing on the non-wage portion of their settlement payment.

23 **5. WHAT AM I GIVING UP IF I DO NOT OPT OUT OF THE SETTLEMENT?**

24 If the Settlement is approved, each Participating Class Member releases and discharges the
25 Defendants and all of their officers, shareholders, agents, employees, predecessor, successor, and
26 related or affiliated entities ("Released Parties") from certain claims and liabilities. The released
27 claims are set forth below:

28 Any and all claims, rights, demands, liabilities, and causes of action, for, minimum wage,
29 overtime, meal breaks, inaccurate wage statements, sick pay, and waiting time penalties,
30 arising under Labor Code sections 201-203, 226, 226.7, 233, 246, 510, 512, 1182.12 et seq.,
31 1194, 1197, and 1198, and 2698 et seq., and the applicable CA wage orders, as well as unfair
32 business practices and imposition of PAGA civil penalties during the PAGA Period based upon
33 the same, and any claims that were alleged in the operative complaint and the LWDA letters or
34 that could have been alleged based on the facts asserted in the operative complaint or LWDA
35 letters, (including the proposed First Amended Complaint and amended LWDA letter), during
36 the Class Period

37 **If you do NOT exclude yourself by following the procedures set forth in this Notice and
38 the Court approves the proposed Settlement, you will be deemed to have released the
39 aforementioned claims, as appropriate, and will receive a payment. Whether or not you
40 opt-out of the Class Settlement, you will have been deemed to release all PAGA claims.**

6. HOW DO I RECEIVE A PAYMENT?

All Class Members will receive a payment under this Settlement unless they opt out. You do not need to submit a claim in order to receive a payment. If you are a Class Member and you move or change your address, and you want to receive your payment at your new address, you must send a notice of your change of address to the Administrator, _____, 3_____, Telephone: 209-867-5309, www.name@administrator.com.

7. WHAT ARE THE REASONS FOR THE SETTLEMENT?

Class Counsel and Plaintiffs agreed to enter into the proposed Settlement after weighing the risks and benefits of the Settlement when compared with those of continuing the litigation. The factors that Class Counsel and Plaintiffs considered included the strength of the Class Members' claims, the uncertainty and delay associated with continued litigation, a trial, and appeals, and the uncertainty of particular legal issues that have yet to be determined, including whether the Class would be certified. Class Counsel and Plaintiff balanced these and other substantial risks in determining that the proposed Settlement is fair, reasonable, and adequate in light of all circumstances and in the best interest of Class Members.

Although Defendants deny any liability or wrongdoing of any kind, they have agreed to the Settlement in order to avoid the risks, costs, and disruption of business associated with protracted litigation. The Defendants do not admit any claim alleged in the lawsuit and deny that they owe money for any of the claims in this matter. The Defendants are settling the lawsuit as a compromise. The Defendants reserve the right to object to and defend themselves against any claim if, for any reason, the Settlement fails.

8. WHO ARE THE ATTORNEYS REPRESENTING THE PARTIES?

Class Counsel

Mayall Hurley, P.C.
Robert J. Wasserman, Esq.
Jenny D. Baysinger Esq.
2453 Grand Canal Blvd.
Stockton, CA 95242
Telephone: 209.477.3833

Defense Counsel

Gregory G. Iskander, Esq.
Chad Greeson, Esq.
LITTLER MENDELSON, P.C.
1255 Treat Boulevard, Suite 600
Walnut Creek, CA 94597
Tel.:(925) 932-2468

9. WHAT ARE MY RIGHTS AND OPTIONS?

If you are a Class Member as defined above, you have the following rights and options under the proposed Settlement:

A. Participate in the Settlement, be represented by Class Counsel, and take no action.

If you take no further action, you will be a Participating Class Member, will be represented by Class Counsel, and will have the right to a share of the Net Class Settlement Amount. If the Settlement is approved by the Court, you will be bound by the terms of the Settlement and, as set forth

1 above, will be deemed to have released the above-described claims against Defendants. As a
2 Participating Class Member, you will not be charged for the services of Class Counsel.

3 **B. Participate in the Settlement, but elect to hire your own attorney.**

4 If you do not wish to be represented by Class Counsel, you may hire your own attorney. Your
5 attorney must send a Notice of Appearance to the Settlement Administrator at the address listed below,
6 so that it is received no later than [REDACTED], 2020. You will be responsible for any attorneys' fees
and costs charged by your attorney.

7 **C. Exclude yourself from the Settlement by opting out.**

8 If you are a Class Member but do not want to participate in the settlement, you may exclude
9 yourself by opting out. If you choose to opt out, you will lose any right to participate in the settlement
10 and you will not be eligible to receive a share of the Class Net Settlement Amount. You will still
11 receive any portion of the Net PAGA Settlement Amount to which you are entitled. You will be free
12 to pursue any individual claims you may have against Defendants on your own behalf (except PAGA
13 claims), but Class Counsel will not represent you.

14 In order to optout, you must notify the Administrator in writing, at the address listed below.
15 To be effective, your opt-out must be postmarked or delivered to the Administrator no later than [45
16 days from the mailing of the Class Notice], and must be signed, contain your full name, current home
17 (or mailing address), the last four digits of your Social Security number, and written affirmation of
18 your desire to opt out containing the following or substantially similar language:

19 "I elect to opt out of the *Magee and Jones v. Thyssenkrupp Materials NA, Inc. et al.* class
20 action settlement. I understand that by doing so, I will not be able to participate in the
21 settlement, and will not receive a share of the settlement."

22 If you do not comply with these procedures, you will lose any opportunity to exclude yourself
23 from the settlement, will be a Participating Class Member, will be represented by Class Counsel, and
24 will receive a share of the Net Class Settlement Amount. If the settlement is approved by the Court,
25 you will be bound by the terms of the settlement and, as set forth above, will be deemed to have
26 released your claims against Defendants as identified above.

27 **D. Object to the terms of the Settlement.**

28 If you are dissatisfied with the terms of the Settlement, you may object to the Settlement.
29 Written objections and supporting papers must (a) be mailed to the Settlement Administrator,
30 postmarked before [45 days following the mailing of the Notice], (b) clearly identify the case name
31 and number (*Magee and Jones v. Thyssenkrupp*, Alameda County Superior Court, Case No. 34-2017-
32 00217486), (c) contain the your full name, current home (or mailing address), and the last four digits
33 of your social security number, (d) clearly and concisely state all grounds for the objection, (e)
34 indicate whether the you are represented by counsel and, if so, identify such counsel, (f) indicate
35 whether the you or your counsel intend to appear at the Final Approval Hearing, and (g) be signed by
36 you or your attorney.

1 You also may also appear at the Final Approval Hearing to orally object. If you decide to
2 appear and orally object to the Settlement, you should notify Class Counsel and the Court of your
3 intent to do so at least one court day in advance of the Final Approval Hearing

4 **10. WHEN IS THE COURT HEARING AND WHAT IS IT FOR?**

5 The Court will hold the Final Approval Hearing in the Administration Building, 1221 Oak
6 Street, Oakland, CA 94612, on [REDACTED], 2019, at [REDACTED]:[REDACTED] a.m. in Department 23, to determine
7 whether the settlement should be finally approved as fair, reasonable and adequate. The Court will
8 also be asked to approve the fees and costs of the Settlement Administrator, the payment to the State
9 of California, the Service Payments to the Class Representatives, and the fees and costs of Class
10 Counsel. **It is not necessary for you to appear at this hearing to participate in the settlement.** If
11 you want to be heard orally in support of or in opposition to the Settlement, either personally or
through counsel, you must comply with the procedures set forth above. The Court will issue a
tentative ruling the day before the Final Approval Hearing. You may view the Court's tentative ruling
by visiting the Court's public access system, DomainWeb at
<https://publicrecords.alameda.courts.ca.gov/prs>, and entering the case number (RG19027231) or by
calling 866-223-2244.

12 **11. HOW CAN I GET MORE INFORMATION?**

13 The above is a summary of the basic terms of the Settlement. For the precise terms and
14 conditions of the Settlement, you are referred to the Joint Stipulation for Class Action Settlement and
15 Release. The Joint Stipulation for Class Action Settlement and Release, as well as the pleadings and
16 other records in this litigation, including Motion for Preliminary Approval, Motion for Final Approval,
17 and Motion for Attorneys' Fees, Costs and Service Payments, are available by accessing the Court
18 docket in this case through the Court's public access system, DomainWeb at
<https://publicrecords.alameda.courts.ca.gov/prs>, or by using one of the computer terminal kiosks
19 available at the Rene C. Davidson Courthouse, located at 1225 Fallon St., Oakland, CA 94612, or at
the Hayward Hall of Justice, located at 24405 Amador St., Hayward, CA 94544, between 8:30 a.m.
20 and 2:30 p.m., Monday through Friday, excluding Court Holidays. You may also view the Court's
Order of Preliminary Approval and, once they are filed, the Motion for Attorneys' Fees, Costs and
Service Payment, Motion for Final Approval, and Order Granting Final Approval, online at
www.thyssenkruppclassactionsettlement.com.

21 If you have questions about the Settlement, you may contact Class Counsel (identified above)
22 or the Settlement Administrator as follows:

23	Settlement Administrator
24	Magee and Jones v. Thyssenkrupp
25	c/o [REDACTED]
26	ADDRESS [REDACTED] CITY, STATE ZIP Telephone: [REDACTED] 209.867.5309
27	

28 **PLEASE DO NOT WRITE OR TELEPHONE THE COURT FOR INFORMATION ABOUT
THE PROPOSED SETTLEMENT OR THIS LAWSUIT.**

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2 **THE COURT HAS APPROVED THIS NOTICE.**
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EXHIBIT B

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14 **Attorneys for Plaintiff Alvin P. Magee, Jr. and the Putative Class**

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **COUNTY OF ALAMEDA**

17 **ALVIN P. MAGEE, JR., and FIDEL JONES,**

18 **Plaintiffs,**

19 **vs.**

20 **THYSSENKRUPP MATERIALS NA, INC.;**
21 **THYSSENKRUPP SUPPLY CHAIN**
22 **SERVICES, NA, INC.;**
23 **and DOES 1-100, inclusive,**

24 **Defendants.**

25 **Case No.: RG19027231**

26 **FIRST AMENDED CLASS ACTION
27 COMPLAINT**

- 1. FAILURE TO PAY MINIMUM WAGE**
- 2. FAILURE TO PAY OVERTIME**
- 3. FAILURE TO PROVIDE LUNCH
BREAKS**
- 4. FAILURE TO FURNISH ACCURATE
ITEMIZED WAGE STATEMENTS**
- 5. FAILURE TO PROPERLY PAY SICK
LEAVE**
- 6. FAILURE TO PAY ALL WAGES DUE
AND OWING AT END OF
EMPLOYMENT**
- 7. UNLAWFUL BUSINESS PRACTICES**
- 8. CALIFORNIA PRIVATE ATTORNEYS
GENERAL ACT**

28 Plaintiffs Alvin P. Magee, Jr. and Fidel Jones bring this class action against Thyssenkrupp Materials NA, Inc., Thyssenkrupp Supply Chain Services NA, Inc., and Does 1 through 100, for violations of the California Labor Code and the Business and Professions Code.

29 **///**

30 **///**

PARTIES

1. Alvin P. Magee, Jr. (“Magee”) is and at all times relevant herein was employed in San Joaquin County, California, and was an “employee” as defined by the California Labor Code (“Labor Code”) and the applicable California Industrial Wage Commission (“IWC”) Order(s).

2. Fidel Jones (“Jones”) is and at all times relevant herein was employed in San Joaquin County, California, and was an “employee” as defined by the Labor Code and the applicable IWC Order(s).

3. Magee and Jones are collectively referred to as Plaintiffs.

4. Thyssenkrupp Materials NA, Inc. ("Thyssenkrupp Materials") is a Michigan corporation which does business in California and throughout the United States.

5. At all times relevant herein, Thyssenkrupp Materials has been an “employer” as defined by the Labor Code and the applicable IWC Order(s).

6. Thyssenkrupp Supply Chain Services NA, Inc. (“Thyssenkrupp Supply Chain Services”) is a Michigan corporation which does business in California and throughout the United States.

7. At all times relevant herein, Thyssenkrupp Supply Chain Services has been an “employer” as defined by the Labor Code and the applicable IWC Order(s).

8. Plaintiffs are informed and believe that Thyssenkrupp Materials and Thyssenkrupp Supply Chain Services are related entities operated from the same entity address and share officers and directors and that both employed Plaintiffs at all relevant times. Thyssenkrupp Materials and Thyssenkrupp Supply Chain Services are collectively referred to as Thyssenkrupp.

9. Thyssenkrupp Materials, Thyssenkrupp Supply Chain Services, and Does 1-100 are collectively referred to as Defendants.

10. Plaintiffs are not aware of the true names and capacities of the Defendants sued herein as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sue such Defendants by these fictitious names. Plaintiffs will amend this Complaint to allege their true names and capacities when ascertained. Plaintiffs are informed and believe, and on that basis allege, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiffs' injuries and damages herein alleged were legally caused by such Defendants.

Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

11. Plaintiffs are informed and believe and thereupon allege that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

JURISDICTION AND VENUE

12. This Court is the proper Court, and this action is properly filed in the Superior Court of California for the County of Alameda because Thyssenkrupp conducts business in this County and Plaintiffs have performed work for Thyssenkrupp in this County. Plaintiffs hereby demand a jury trial.

GENERAL ALLEGATIONS

13. Magee was hired by Thyssenkrupp in or around June 2016 as a Forklift Driver at its Livermore, CA warehouse.

14. The application Magee completed bore the heading “Thyssenkrupp Materials, N.A.” When Magee was hired, the offer letter he received identified “Thyssenkrupp Materials, N.A., thyssenkrupp Industrial Services Division.”

15. In May, 2018, Magee was presented a new offer letter that identified both Thyssenkrupp Materials and Thyssenkrupp Supply Chain Services at the top and was from “Michael Wright, Plant Supervisor II, Thyssenkrupp Supply Chain Services.”

16. At all times from his initial hire by Thyssenkrupp in 2016 through April, 2020, Magee was assigned to the same worksite in Livermore, CA and was subject to the same employment policies and practices.

17. Jones was hired by Thyssenkrupp in or around March 2018 as a Forklift Driver at its Livermore, CA warehouse.

1 18. Plaintiffs are informed and believe Thyssenkrupp Materials and Thyssenkrupp Supply
2 Chain Services have common employment policies and practices and that both entities were their joint
3 employers at all relevant times and/or that Magee was initially employed by Thyssenkrupp Materials
4 and was later an employee of Thyssenkrupp Supply Chain Services (as of May, 2018).

5 19. Throughout their employment, Plaintiffs were non-exempt employees. As such, they
6 were entitled to be paid for every hour worked and overtime as appropriate.

7 20. Plaintiffs and Thyssenkrupp's other non-exempt California employees were also eligible
8 for and at times received non-discretionary bonuses, commissions, and other items of compensation
9 (such as shift differentials). **Exhibit 1.**¹

10 21. Throughout their respective employment terms, however, Plaintiffs and Thyssenkrupp's
11 other non-exempt California employees were not properly paid for all hours worked, including
12 overtime.

13 22. Specifically, because of issues with Thyssenkrupp's timekeeping practices, Plaintiffs
14 and Thyssenkrupp's other non-exempt California employees were routinely credited for less hours than
15 they actually worked.

16 23. Plaintiffs and Thyssenkrupp's other hourly, non-exempt California employees were not
17 consistently authorized or permitted to take meal breaks as required by California law.

18 24. Thyssenkrupp also required Plaintiffs and their other non-exempt California employees
19 to work through meal breaks due to understaffing and work demands.

20 25. On the occasions that Plaintiffs and Thyssenkrupp's other non-exempt California
21 employees were able to take their meal breaks, they routinely occurred after 5 hours of work.

22 26. Further, Thyssenkrupp frequently failed to relieve Plaintiffs and its other non-exempt
23 California employees of employer control during their meal breaks.

24 27. When Plaintiffs and Thyssenkrupp's other non-exempt California employees were not
25 provided compliant meal breaks, Thyssenkrupp did not pay premiums as required by California law.
26 Specifically, Thyssenkrupp either (a) failed to pay the premiums in their entirety or (b) paid the

28 ¹ Exhibit 1 is incorporated by this reference as though fully set forth herein. Some Exhibits have
been reduced and/or redacted due to their size and content.

1 premium(s) only at its employees' base rate of pay rather than their regular rate of pay, without
2 accounting for non-discretionary bonuses, commissions, and/or other items of compensation (including
3 shift premiums and differentials).

4 28. For example, during the pay period of June 17, 2019 through June 23, 2019, Magee
5 received (i) a shift differential, designated as "2nd Shift Premium", of \$10.00, and (ii) two missed meal
6 break premiums, designated as "No Lunch Premium", of \$18.36, i.e., his base hourly rate. See **Exhibit**
7 **1.**

8 29. Because of the violations set forth above, and as evidenced in the sample of Magee's
9 wage statement attached hereto as **Exhibit 1**, the wage statements furnished by Thyssenkrupp to its
10 non-exempt California employees violate California Labor Code section 226(a) insofar as they fail to
11 accurately show:

12 a. The gross wages earned, in violation of section 226(a)(1);
13 b. The total hours worked, in violation of section 226(a)(2)
14 c. The net wages earned, in violation of section 226(a)(5); and
d. All applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate in violation of section 226(a)(9).

16 30. Separately, the wage statements Thyssenkrupp furnishes to its non-exempt California
17 employees violate California Labor Code section 226(a) insofar as they fail to accurately show the total
18 hours worked in violation of section 226(a)(2). Specifically, the wage statements list multiple different
19 categories of earnings: (i) "Regular," (ii) "Overtime Hour 1.5," (3) " 2nd Shift Premium," and (4) "2nd
20 Shift 1.5 Premium". See **Exhibit 1**. With respect to the hours included in the pay period, the wage
21 statements do not provide a separate category calculating the total hours worked by Plaintiff or
22 Thyssenkrupp's other non-exempt California employees. *Id.* Rather, the statements appear to list the
23 number of hours worked at the "Regular" rate of pay, state the number of overtime hours under both
24 the "Overtime Hour 1.5" and "2nd Shift 1.5 OT Premium" categories, and separately identify the
25 number of "2nd Shift Premium" hours. *Id.* Inclusion of multiple categories of "hours worked" render
26 the wage statements inaccurate and confusing and impeded the ability of Plaintiffs and Thyssenkrupp's
27 other non-exempt California employees to promptly and easily determine the total hours worked during
28 the pay period in order to ensure Thyssenkrupp was properly compensating its employees.

1 31. For example, during the pay period of June 17, 2019 through June 23, 2019, Magee's
2 wage statement identifies that he worked a total of 40.00 hours at the "Regular" earnings category, lists
3 8.00 hours for the "Overtime Hour 1.5" earnings category, 8.00 hours for the "2nd Shift 1.5 OT
4 Premium" earnings category , and 40.00 hours for the "2nd Shift Premium" category. *Id.* Additionally,
5 the wage statement identifies 2.0 hours for the "No Lunch Premium" earnings category. There is no
6 separate category identifying "total hours worked."

7 32. Similarly, during the pay period of May 20, 2019 through May 26, 2019, Magee's wage
8 statement identifies that he worked a total of 40.00 hours for the "Regular" earnings category, lists 7.50
9 hours for the "Overtime Hour 1.5" earnings category, 7.50 hours for the "2nd Shift 1.5 OT Premium"
10 earnings category, and 40.00 hours for the "2nd Shift Premium" earnings category. See **Exhibit 2**.

11 33. If an employee sought to calculate the total number of hours worked during a pay period
12 and added the hours listed under the "Regular", "Overtime Hour 1.5", "2nd Shift 1.5 OT Premium"
13 and/or "2nd Shift Premium" categories, the total hours worked would be incorrect. *Id.*; see *McKenzie v.*
14 *Federal Exp. Corp.*, 275 F.R.D. 290, 292 (C.D. Cal. 2011).

15 34. There is no way to determine from the face of the wage statements the total number of
16 hours actually worked. Simply adding all of the numbers under the "Hours" column, for the June 17,
17 2019 through June 23, 2019 pay period for example (8.00 + 40.00 + 40.00 + 8.00 + 2.00), results in
18 98.00 hours. Magee did not work 98.00 hours during the single week pay period of June 17-23, 2019.
19 Similarly, simply adding all of the numbers under the "Hours" column for the May 20-26, 2019 pay
20 period results in 95.00 hours. Magee did not work 95.00 hours during the single week pay period of
21 May 20-26, 2019.

22 35. Also, separate and independent of the foregoing allegations, the wage statements that
23 Thyssenkrupp furnishes to their California employees violate California Labor Code section 226(a)(8)
24 insofar as they fail to accurately show the name and address of the entity that is the employer. See
25 **Exhibits 1 and 2**.

26 36. Plaintiffs are informed and believe wage statements they had electronic access to
27 identified "Thyssenkrupp Supply Chain Services," whereas physical statements identified
28 "Thyssenkrupp Materials NA" for period of time.

1 37. To the extent Thyssenkrupp Materials is actually Magee's employer and/or
2 Thyssenkrupp Materials and Thyssenkrupp Supply Chain Services were jointly Magee's employers,
3 simply identifying Thyssenkrupp Materials NA, without more is confusing in that there are numerous
4 Thyssenkrupp entities. Similarly, furnishing two versions of wage statements, one electronically and
5 one physically, that identify different entities as the employer is confusing and violates Labor Code
6 section 226(a)(8).

7 38. Defendants were, at all times relevant herein, aware of the requirements of California
8 Labor Code section 226.

9 39. Defendants have, at all times relevant herein, furnished wage statements to each of its
10 California employees pursuant to an established set of policies, procedures and practices.

11 40. Plaintiffs and Defendants' other California employees, both current and former, have
12 suffered injury as a result of Defendants' knowing and intentional failure to comply with California
13 Labor Code section 226(a).

14 41. Plaintiffs and Thyssenkrupp's other non-exempt California employees, both current and
15 former, have suffered injury as a result of Thyssenkrupp's knowing and intentional failure to furnish
16 wage statements accurately showing the gross wages earned by them in violation of California Labor
17 Code section 226(a)(1).

18 42. Plaintiffs and Thyssenkrupp's other non-exempt California employees, both current and
19 former, were unable to promptly and easily determine their net wages earned from the wage statements
20 furnished by Thyssenkrupp.

21 43. Plaintiffs and Thyssenkrupp's other non-exempt California employees, both current and
22 former, have suffered injury as a result of Thyssenkrupp's knowing and intentional failure to furnish
23 wage statements accurately showing the total hours worked by them in violation of California Labor
24 Code section 226(a)(2).

25 44. Plaintiffs and Thyssenkrupp's other non-exempt California employees, both current and
26 former, were unable to promptly and easily determine their total hours worked from the wage
27 statements furnished by Thyssenkrupp.

1 45. Plaintiffs and Thyssenkrupp's other non-exempt California employees, both current and
2 former, have suffered injury as a result of Thyssenkrupp's knowing and intentional failure to furnish
3 wage statements accurately showing the net wages earned by them in violation of California Labor
4 Code section 226(a)(5).

5 46. Plaintiffs and Thyssenkrupp's other non-exempt California employees, both current and
6 former, were unable to promptly and easily determine all applicable hourly rates in effect during the
7 pay period and the corresponding number of hours worked at each hourly rate from the wage
8 statements furnished by Thyssenkrupp.

9 47. Plaintiffs and Thyssenkrupp's other non-exempt California employees, both current and
10 former, have suffered injury as a result of Thyssenkrupp's knowing and intentional failure to furnish
11 wage statements accurately showing all applicable hourly rates in effect during the pay period and the
12 corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).

13 48. Plaintiffs and Thyssenkrupp's other California employees, both current and former and
14 both exempt and non-exempt, were unable to promptly and easily determine the name and address of
15 the legal entity that was their employer by reference to the wage statements furnished by Thyssenkrupp
16 alone

17 49. Plaintiffs and Thyssenkrupp's other California employees, both current and former and
18 both exempt and non-exempt, have suffered injury as a result of Thyssenkrupp's knowing and
19 intentional failure to furnish wage statements accurately showing the name and address of the legal
20 entity that was their employer in violation of California Labor Code section 226(a)(8).

21 50. Plaintiffs and Thyssenkrupp's non-exempt employees were also entitled to sick pay.
22 Any sick pay used appeared on their wage statements as "Sick Leave". Thyssenkrupp failed to include
23 commissions, non-discretionary bonuses and other items of compensation (including shift premiums
24 and differentials) when determining Plaintiffs and their other non-exempt California employees' regular
25 rate of pay for purposes of sick pay. As such, Thyssenkrupp improperly retained, and was unjustly
26 enriched by, monies that should have been paid to California non-exempt employees for sick pay.

27 51. Because Thyssenkrupp fails to pay its non-exempt California employees for all the hours
28 they worked, overtime at the correct rate of pay, sick pay at the correct rate of pay, and because they are

1 not provided compliant meal breaks, or the premiums associated with missing the same, they are not
2 timely paid all wages due and owing to them at the end of their employment.

3 52. Jones was not paid all such wages due and owing to him when his employment with
4 Thyssenkrupp ended in July 2019.

5 53. From at least four years prior to the filing of this action, Thyssenkrupp has adopted and
6 employed unfair business practices. These unfair business practices include, but are not limited to,
7 failing to properly pay all minimum and overtime wages due, failing to provide compliant meal breaks,
8 and failing to properly compensate employees for statutorily required sick leave.

9 54. On July 12, 2019, Magee provided written notice to the Labor and Workforce
10 Development Agency (“LWDA”) and Thyssenkrupp Materials regarding the specific provisions of the
11 Labor Code alleged to have been violated, including the facts and theories to support those alleged
12 violations, a copy of which is attached as **Exhibit 3** and incorporated herein.

13 55. On September 4, 2019, Magee provided written notice to the Labor and Workforce
14 Development Agency (“LWDA”), Thyssenkrupp Materials, and Thyssenkrupp Supply Chain regarding
15 the specific provisions of the Labor Code alleged to have been violated, including the facts and theories
16 to support those alleged violations, a copy of which is included as **Exhibit 4** and incorporated herein.

17 56. As of the filing of this Complaint, more than 65 calendar days since Magee’s written
18 notice, the LWDA has not provided written notice that it intends to investigate his allegations.
19 Accordingly, Plaintiff has satisfied the administrative prerequisites under Labor Code section 2699.3 to
20 bring a civil action to recover civil penalties against Thyssenkrupp, in addition to other remedies, for
21 violations of the California Labor Code.

22 **CLASS ACTION ALLEGATIONS**

23 57. Plaintiffs seek to maintain this action as a class action as to the First through Seventh
24 Causes of Action. Plaintiffs bring this action, on behalf of themselves and all others similarly situated,
25 as a class action pursuant to Code of Civil Procedure 382. The putative Class which Plaintiffs seek to
26 represent consist of the following:

27 28 All current and former non-exempt California employees of Thyssenkrupp who worked
from July 16, 2015 through the date of trial (the “Class”).

1 58. The class of persons is so numerous that joinder of all members is impracticable, and the
2 disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiff is
3 informed and believes, and based thereon alleges, that Defendants employ more than 600 employees
4 who satisfy the class definition. Although the exact number and identity of class members is not
5 presently known, they can be identified in Defendants' records through coordinated discovery pursuant
6 to this class action.

7 59. This action may be maintained as a class because the questions of law and fact which are
8 common to class members clearly predominate over any questions affecting only individual members
9 and because a class action is superior to other available methods for adjudicating the controversy.

10 60. There are numerous common questions of law and fact arising out of Defendants'
11 conduct. This class action focuses on Defendants': (a) systematic failure to properly pay employees for
12 all hours worked, including overtime; (b) systemic failure to authorize and permit meal breaks or to pay
13 the requisite premiums in lieu of providing said breaks; (c) systematic failure to properly pay sick pay;
14 (d) systematic failure to pay all wages due and owing at the end of employment; and (e) systematic
15 failure to comply with Labor Code section 226(a).

16 61. Furthermore, common questions of fact and law predominate over any questions
17 affecting only individual members of the class. The predominating common or class-wide questions of
18 law and fact include the following:

- 20 a. Whether Defendants failed to pay all their non-exempt California employees for
21 all hours worked;
- 22 b. Whether Defendants failed to pay their non-exempt California employees for all
23 overtime worked;
- 24 c. Whether Defendants failed to properly calculate and pay their non-exempt
25 California employees' sick pay;
- 26 d. Whether Defendants failed to provide compliant meal breaks to their non-exempt
27 California employees;
- 28 e. Whether Defendants failed to pay premiums to their non-exempt California
 employees as a result of non-compliant meal breaks;

- f. Whether Defendants failed to pay all wages due and owing at end of their non-exempt California employees' employment;
- g. Whether the wage statements Defendants furnished to their California employees comply with Labor Code section 226;
- h. Whether the alleged violations constitute unfair business practices;
- i. Whether the Class is entitled to injunctive relief; and
- j. Whether the Class is entitled to unpaid wages, statutory penalties and/or restitutionary relief, and the amount of the same.

62. Plaintiffs' claims are typical of the claims of the members of the Class as a whole, all of whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the alleged violations of Defendants. Plaintiffs' claims are typical of those of the Class because Defendants subjected Plaintiff and each member of the Class to the same violations alleged herein.

63. The defenses of Defendants, to the extent that such defenses apply, are applicable generally to the whole Class and are not distinguishable as to the proposed class members.

64. Plaintiffs will fairly and adequately protect the interests of all members of the Class, and has retained attorneys with extensive experience in litigation, including class and representative actions. Plaintiff has no interests that conflict with those of the Class. Plaintiffs are able to fairly and adequately protect the interests of all members of the class because it is in their best interest to prosecute the claims alleged herein in order to obtain the full compensation due themselves and the other class members.

65. A class action is superior to any other method available for fairly and efficiently adjudicating the controversy because 1) joinder of individual class members is not practicable, 2) litigating the claims of individual class members would be unnecessarily costly and burdensome and would deter individual claims, 3) litigating the claims of individual class members would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to bring individual claims, 5) class members would be discouraged from pursuing individual claims because the damages available to them are relatively small, and 6) public policy encourages the use of

the class actions to enforce employment laws and protect individuals who, by virtue of their subordinate position, are particularly vulnerable.

66. Judicial economy will be served by maintenance of this lawsuit as a class action. To process numerous virtually identical individual cases will significantly increase the expense on the Court, the class members, and Defendants, all while unnecessarily delaying the resolution of this matter. There are no obstacles to effective and efficient management of this lawsuit as a class action by this Court and doing so will provide multiple benefits to the litigating parties including, but not limited to, efficiency, economy, and uniform adjudication with consistent results.

67. Notice of a certified class action and any result or resolution of the litigation can be provided to class members by mail, email, publication, or such other methods of notice as deemed appropriate by the Court.

FIRST CAUSE OF ACTION
VIOLATION OF CALIFORNIA LABOR CODE § 1128.12 et seq.
(Failure to Pay Minimum Wage)
Against Defendants

68. Plaintiffs hereby reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

69. California Labor Code section 1182.12 establishes the minimum wage for California employees from July 1, 2014, to present.

70. Labor Code Section 1194 provides, in relevant part:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ... applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage ... including interest thereon, reasonable attorney's fees, and costs of suit.

71. Labor Code section 1194.2 provides, in relevant part:

In any action under ... Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

72. Labor Code section 1197 provides that the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lesser wage is unlawful

73. Pursuant to California Labor Code section 1198, the maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees and the employment of any employee for longer hours than those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

74. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiffs and their other non-exempt California employees for every hour worked.

75. Wherefore, Plaintiffs and the other members of the Class have been injured as set forth above and request relief as hereafter provided.

SECOND CAUSE OF ACTION
VIOLATION OF CALIFORNIA LABOR CODE §§ 510 & 1198
(Failure to Pay Overtime)
Against Defendants

76. Plaintiffs hereby reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

77. Pursuant to California Labor Code section 510, any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

78. Pursuant to California Labor Code section 1198, the maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees and the employment of any employee for longer hours than those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

79. During the relevant time period, Plaintiffs and Defendants' other non-exempt California employees regularly worked overtime.

80. During the relevant time period, Defendants intentionally and willfully failed to pay the proper overtime wages due to Plaintiffs and their other non-exempt California employees.

81. Wherefore, Plaintiffs and the other members of the Class have been injured as set forth above and request relief as hereafter provided.

THIRD CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 226.7, 512 and IWC WAGE ORDERS
(Failure to Provide Meal Breaks)
Against Defendants

82. Plaintiffs hereby reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

83. Labor Code § 226.7 requires employers to provide employees meal breaks as mandated by Order of the Industrial Welfare Commission. It states:

- a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee 1 additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided

84. Labor Code § 512(a) and the applicable Wage Order(s) provide that an employer may not employ a person for a work period of more than 5 hours per day without providing that employee a meal period of not less than 30 minutes, except that if the total work period per day is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ a person for a work period of more than 10 hours per day without providing an employee with a second meal period of not less than 30 minutes, except

that if the total work period per day of the employee is no more than twelve 12 hours, the meal period may be waived by mutual consent of both the employer and the employee, and if the first meal period was not waived.

85. During the relevant time period, Plaintiffs and the other members of the Meal Break Class were not provided with compliant meal breaks, nor did they receive an additional hour of premium pay for each missed meal break.

86. Wherefore, Plaintiffs and the other members of the Class have been injured as set forth above and request relief as hereafter provided.

FOURTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Failure to Furnish Accurate Itemized Wage Statements)
Against Defendants

87. Plaintiffs hereby reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

88. Pursuant to California Labor Code section 226(a) "every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when the 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 [. . .], (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, (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, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each temporary services assignment."

89. An employee suffering injury as a result of the knowing and intentional failure by an employer to comply with Labor Code section 226(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 the aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees. Labor Code § 226(e)(1).

90. An employee is deemed to suffer injury if the employer fails to provide a wage statement or if the employer fails to provide accurate and complete information as required by any one or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee during the pay period or any of the other information required to be provided pursuant to Labor Code section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name and address of the employer and iv) the name of the employee and the last four digits of his or her social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-(iv). “Promptly and easily determine” means a reasonable person would be able to readily ascertain the information without reference to other documents or information. Labor Code § 226(e)(2)(C).

91. As set forth above, Defendants intentionally and willfully failed to furnish accurate itemized wage statements which complied with Labor Code section 226.

92. Wherefore, Plaintiffs and the other members of the Class have been injured as set forth above and request relief as hereafter provided.

FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 218, 233, 246 et seq.
(Failure to Pay Wages)
Against Defendants

93. Plaintiffs hereby reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

94. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt employees at that employee's "regular rate of pay."

95. The "regular rate of pay" includes all remuneration for employment paid to the employee and includes, but is not limited to, hourly earnings, salary, piece work earnings, shift

1 differentials, commissions, non-discretionary bonuses, and the value of meals and lodging. See 29
2 U.S.C. § 207(e); DLSE Enforcement Policies and Interpretations Manual Section 49.

3 96. During the relevant time period, Defendants failed to include commissions,
4 incentive payments, non-discretionary bonuses, and/or other items of compensation when
5 determining the “regular rate of pay” for Plaintiff and their other non-exempt California employees
6 for purposes of sick time pay.

7 97. According to the California Supreme Court, sick pay is a form of wages. *Murphy*
8 *v. Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.

9 98. Labor Code section 233 provides that “any employer who provides sick leave for
10 employees shall permit an employee to use in any calendar year the employee's accrued and
11 available sick leave entitlement, in an amount not less than the sick leave that would be accrued
12 during six months at the employee's then current rate of entitlement, for the reasons specified in
13 subdivision (a) of Section 246.5.”

14 99. During the relevant time period, Defendants intentionally and willfully failed to
15 pay Plaintiff and the other members of the Sick Pay Class their sick pay at the rate of pay required
16 by law. Accordingly, Plaintiff and the other members of the Sick Pay Class did not receive the full
17 amount of paid sick time that they were entitled to receive by law, and were therefore denied the
18 right to use sick leave within the meaning of Labor Code sections 233(a) and (c).

19 100. Any employer who violates Labor Code section 233 is liable to employees for the
20 greater of one days' pay or actual damages, reasonable equitable relief, and reasonable attorneys'
21 fees and costs. Labor Code §233(d), (e).

22 101. Further, Labor Code section 218 authorizes a private right of action to recover unpaid
23 wages.

24 102. Wherefore, Plaintiffs and the other members of the Class have been injured as set forth
25 above and request relief as hereafter provided.

26 ///

27 ///

28 ///

1

SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 201, ET SEQ.
(Failure to Pay All Wages Due and Owing at End of Employment)
Against Defendants

2

3

4 103. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
5 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
6 allegations of this cause of action.

7 104. California Labor Code section 201 provides that if an employer discharges an employee,
8 the wages earned and unpaid at the time of discharge are due and payable immediately.

9 105. California Labor Code section 202 requires an employer to pay an employee all earned
10 wages within 72 hours of the employee quitting his or her employment, or immediately at the time of
11 quitting if the employee has given 72 hours previous notice of his or her intention to quit.

12 106. As set forth above, Plaintiffs and the other members of the Former Non-Exempt
13 Employee Class were not timely paid all of their earned but unpaid wages, including minimum wage,
14 overtime, meal break premiums and improperly compensated sick pay, when their employment with
15 Defendants ended

16 107. Wherefore, Plaintiffs and the other members of the Class have been injured as set forth
17 above and request relief as hereafter provided.

18

SEVENTH CAUSE OF ACTION
VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200 ET SEQ.
(Unfair Business Practices)
Against Defendants

19

20

21 108. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
22 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
23 allegations of this cause of action.

24 109. The statutory violations, as alleged above, are unfair business practices within the
25 meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq*), and
26 include, but are not limited to failing to properly pay minimum and overtime wages, failing to pay meal
27 break premiums, and failing to properly compensate employees for statutorily required sick leave.

110. Wherefore, Plaintiffs and the other members of the Class have been damaged as set forth above and request relief as hereafter provided.

EIGHTH CAUSE OF ACTION
VIOLATION OF LABOR CODE SECTION 2698 ET SEQ.
(Private Attorneys General Act)
Against Defendants

111. Magee hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

112. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which provides for a civil penalty to be assessed and collected by the LWDA for violations of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures outlined in Labor Code section 2699.3.

113. Magee was employed by Defendants and the alleged violations were committed against him during his time of employment. Magee is therefore aggrieved employees as defined by Labor Code section 2699(c). Other current and former employees are also aggrieved employees in that one or more of the alleged violations were also committed against them during their time of employment with Defendants.

114. Pursuant to Labor Code section 2699(f), the civil penalty recoverable in a PAGA action is that which is provided for by the Labor Code or, where no civil penalty is specifically provided, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

115. Pursuant to California Labor Code section 2699(g), an aggrieved employee may recover the civil penalty on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Furthermore, any employee who prevails in any such action shall be entitled to an award of reasonable attorney's fees and costs.

1 116. As set forth above, Defendants violated the California Labor Code by, inter alia, failing
2 to properly pay minimum wage and overtime, failing to provide compliant meal breaks, failing to
3 timely pay wages, and failing to furnish accurate itemized wage statements.

4 117. Wherefore, Magee and the other aggrieved employees have been damaged as set forth
5 above and request relief as hereafter provided.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

8 **As to the First through Seventh Causes of Action:**

- 9 1. That this Court certify the Class;
- 10 2. That this Court appoint Plaintiffs as the representative of the Class;
- 11 3. That this Court appoint Mayall Hurley, P.C. as Class Counsel;
- 12 4. That this Court award actual, compensatory, special, and general damages as well as
restitutive relief to Plaintiff and the members of the Class;
- 13 5. That this Court award injunctive relief, including that available under Labor Code
section 226(h) and Business and Professions Code Section 17203;
- 14 6. That this Court award penalties and liquidated damages including, but not limited to,
those available under Labor Code sections 203, 226, 226.7 and 1194.2;
- 15 7. That this Court award statutory attorneys' fees and costs, including those available under
Labor Code sections 218.5, 226(e)(1), 226(h) and 1194, as well as Code of Civil
Procedure section 1021.5;
- 16 8. That this Court award prejudgment and post-judgment interest according to any
applicable provision of law or as otherwise permitted by law; and
- 17 9. That this Court award such other and further relief as the court deems just and proper.

24 As to the Eighth Cause of Action:

- 25 1. For civil penalties, including but not limited to those available under Labor Code §§
226.3, 558 and 2699(f);
- 26 2. For statutory attorneys' fees and costs, including but not limited to those available
under Labor Code § 2699(g);

1 3. For prejudgment and post-judgment interest according to any applicable provision of
2 law or as otherwise permitted by law, including those available under Civil Code §§
3 3287(a) and 3289(b), and Labor Code § 218.6; and
4 4. For such other and further relief as the court deems just and proper.

5
6 **DATED:** May 14, 2020

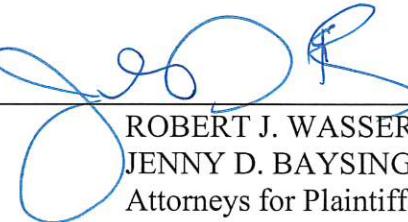
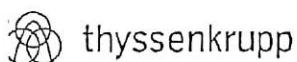
7 **MAYALL HURLEY P.C.**
8 By 
9 ROBERT J. WASSERMAN
10 JENNY D. BAYSINGER
11 Attorneys for Plaintiffs and the Putative Class

EXHIBIT 1



thyssenkrupp Materials NA
22355 W 11 Mile Rd, Southfield MI 48033

Name: Magee Jr, Alvin P
8-ID: 10525158
Pay Date: 06/28/2019
Pay Period: 06/17/2019 - 06/23/2019
Pay Frequency: Weekly

Earnings	Rate	Hours	Current	YTD	Pre Tax Deductions	Current	YTD
Overtime Hour 1.5	27.93	8.00	223.44	2,326.16	Dental Insurance	6.92	179.92
Regular	18.36	40.00	734.40	12,553.65	Vision Insurance	6.04	157.04
2nd Shift Premium	0.25	40.00	10.00	170.94	Voluntary Life Ins	2.02	52.52
2nd Shift 1.5 OT Premium	0.38	8.00	3.04	31.66	Total Pre Tax Deductions	14.98	389.48
Floating Holiday			146.88				
Sick Leave			440.64				
Vacation			1,294.38				
Holiday Pay			587.52				
No Lunch Premium	18.36	2.00	36.72	257.04			
Total Earnings			1,007.60	17,808.87			
Retro Pay	Rate	Hours	Current	Per. End Dt	Post Tax Deductions	Current	YTD
Total Retro Pay			0.00		Federal Levy		1,862.70
					Child Life	0.36	9.36
					Spouse Life	2.07	53.82
					Roth	50.38	884.81
					Total Post Tax Deductions	52.81	2,810.69
Taxes			Current	YTD	Memo	Current	YTD
California					GTLI Imputed Income	2.14	44.94
EE Disability Tax			9.92	174.19	Net Pay		
Federal					Acc. / Check No.		Amount
Withholding Tax	S - 00		123.13	1,912.38	EDI Bank transfer		100.00
EE Social Security Tax			61.68	1,082.79	EDI Bank transfer		630.66
EE Medicare Tax			14.42	253.23			
Total Taxes			209.15	3,422.59			

Personal Notification

	Gross Pay	Deductions & Taxes	=	Net Pay	Federal Taxable Gross
Current	1,007.60	276.94	=	730.66	994.76
YTD	17,808.87	6,622.76	=	11,186.11	17,464.33

*** NOT NEGOTIABLE ***

EXHIBIT 2



thyssenkrupp Materials NA
22355 W 11 Mile Rd, Southfield MI 48033

Name: Magee Jr, Alvin P
8-ID: 10525158
Pay Date: 05/31/2019
Pay Period: 05/20/2019 - 05/26/2019
Pay Frequency: Weekly

Earnings	Rate	Hours	Current	YTD	Pre Tax Deductions	Current	YTD
Overtime Hour 1.5	27.95	7.50	209.63	1,865.37	Dental Insurance	6.92	152.24
Regular	18.36	40.00	734.40	9,616.05	Vision Insurance	6.04	132.88
2nd Shift Premium	0.25	40.00	10.00	130.94	Voluntary Life Ins	2.02	44.44
2nd Shift 1.5 OT Premium	0.38	7.50	2.85	25.39	Total Pre Tax Deductions	14.98	329.56
Floating Holiday			146.88				
Sick Leave			440.64				
Vacation			1,147.50				
Holiday Pay			440.64				
No Lunch Premium			91.80				
Total Earnings			956.88	13,905.21			
Retro Pay	Rate	Hours	Current	Per. End Dt	Post Tax Deductions	Current	YTD
Total Retro Pay			0.00		Federal Levy		1,862.70
					Child Life	0.36	7.92
					Spouse Life	2.07	45.54
					Roth	47.84	689.63
					Total Post Tax Deductions	50.27	2,605.79
Taxes			Current	YTD	Memo	Current	YTD
California					GTLI Imputed Income	2.14	36.38
EE Disability Tax			9.42	135.76	Net Pay	Acc. / Check No.	Amount
Federal					EDI Bank transfer	xxxxxx1627	698.03
Withholding Tax	S - 00		111.97	1,443.19			
EE Social Security Tax			58.53	843.95			
EE Medicare Tax			13.68	197.37			
Total Taxes			193.60	2,620.27			

Personal Notification

	Gross Pay	-	Deductions & Taxes	=	Net Pay	Federal Taxable Gross
Current	956.88	-	258.85	=	698.03	944.04
YTD	13,905.21	-	5,555.62	=	8,349.59	13,612.03

*** NOT NEGOTIABLE ***

EXHIBIT 3

LAW OFFICES
MAYALL HURLEY

A PROFESSIONAL CORPORATION

SOUTHERN CALIFORNIA OFFICE

450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91203
(818) 646-6440

MAILING ADDRESS:
2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207-8253
FAX (209) 473-4818
TELEPHONE (209) 477-3833
WWW.MAYALLAW.COM

VLADIMIR F. KOZINA
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WILLIAM J. GORHAM III
NICHOLAS J. SCARDIGLI
ROBERT J. WASSERMAN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA
ANGELA C. RUSSELL
RACHAEL ALLGAIER

OF COUNSEL
J. ANTHONY ABBOTT

July 12, 2019

SENT VIA ONLINE FILING (<https://dir.tfaforms.net/207>)

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

SENT VIA CERTIFIED MAIL

Thyssenkrupp Materials NA
22355 W 11 Mile Rd
Southfield, MI 48033

Re: Alvin Magee, Jr. (SSN: XXX-XX-5129; DOB: 08/30/1980)

To Whom It May Concern:

This firm represents Alvin Magee, Jr. in relation to his employment with Thyssenkrupp Materials, NA (“Thyssenkrupp”). In accordance with California Labor Code section 2699.3, this letter shall serve as Mr. Magee’s written notice to the Labor and Workforce Development Agency (“LWDA”) and Thyssenkrupp regarding the following violations, and facts and theories supporting the violations, on Mr. Magee’s behalf and, as a proxy for the LWDA, on behalf of other current and former non-exempt employees of Thyssenkrupp.

Mr. Magee was hired by Thyssenkrupp in or around June 2016 as a Forklift Driver. Throughout his employment, Plaintiff has been a non-exempt employee. As such, he was entitled to pay for every hour worked and overtime as appropriate. Mr. Magee and Thyssenkrupp’s other non-exempt California employees were also eligible for and at times received non-discretionary bonuses, commissions, and other items of compensation (such as shift differentials). **Exhibit A**. Throughout his employment, however, Mr. Magee and Thyssenkrupp’s other non-exempt employees were not properly paid for all hours worked, including overtime. Specifically, because of issues with Thyssenkrupp’s timekeeping practices, Mr. Magee and Thyssenkrupp’s other non-exempt California employees were routinely credited for less hours than they actually worked.

Additionally, Mr. Magee and Thyssenkrupp’s other hourly, non-exempt California employees were not consistently authorized or permitted to take meal breaks as required by California law. Thyssenkrupp also required Plaintiff and their other non-exempt California employees to work through meal breaks due to understaffing and work demands. On the occasions that Mr. Magee and

Thyssenkrupp's other non-exempt California employees were able to take their meal breaks, they routinely occurred after 5 hours of work. Further, Thyssenkrupp frequently failed to relieve Mr. Magee and its other non-exempt California employees of employer control during their meal breaks.

When Mr. Magee and Thyssenkrupp's other non-exempt California employees were not provided compliant meal breaks, Thyssenkrupp did not pay premiums as required by California law. Specifically, Thyssenkrupp either (a) failed to pay the premiums in their entirety or (b) paid the premium(s) only at its employees' base rate of pay rather than their regular rate of pay, without accounting for non-discretionary bonuses, commissions, and/or other items of compensation (including shift premiums and differentials).

For example, during the pay period of June 17, 2019 through June 23, 2019, Plaintiff received (i) a shift differential, designated as "2nd Shift Premium", of \$10.00, and (ii) two missed meal break premiums, designated as "No Lunch Premium", of \$18.36, i.e., his base hourly rate. See **Exhibit A**.

Mr. Magee and Thyssenkrupp's non-exempt employees were also entitled to sick pay. Any sick pay used appeared on their wage statements as "Sick Leave". Thyssenkrupp failed to include commissions, non-discretionary bonuses and other items of compensation (including shift premiums and differentials) when determining Mr. Magee's and its other non-exempt California employees' regular rate of pay for purposes of sick pay.

Because of the violations set forth above, and as evidenced in the samples of Mr. Magee's wage statements attached hereto as **Exhibit A**, the wage statements furnished by Thyssenkrupp to its non-exempt California employees violated California Labor Code section 226(a) insofar as they failed to accurately show:

- a. The gross wages earned, in violation of section 226(a)(1);
- b. The total hours worked, in violation of section 226(a)(2)
- c. The net wages earned, in violation of section 226(a)(5); and
- d. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).

Separately, and independent of Thyssenkrupp's failure to pay overtime and to provide compliant meal breaks, or the premiums associated with the same, the wage statements it furnishes to its non-exempt California employees violate California Labor Code section 226(a) insofar as they fail to accurately show the total hours worked in violation of section 226(a)(2). Specifically, they list multiple different categories of earnings: (i) "Regular," (ii) "Overtime Hour 1.5," (3) " 2nd Shift Premium," and (4) "2nd Shift 1.5 Premium". See **Exhibit A**. With respect to the hours included in the pay period, the wage statements do not provide a separate category calculating the total hours worked by Plaintiff or Thyssenkrupp's other non-exempt California employees. *Id.* Rather, these statements list the number of hours worked at the "Regular" rate of pay, stated the number of overtime hours under both the "Overtime Hour 1.5" and "2nd Shift 1.5 OT Premium" categories, and the number of "2nd Shift Premium" hours. *Id.*

For example, during the pay period of June 17, 2019 through June 23, 2019, Plaintiff's wage statements provided that he worked a total of 40.00 hours at "Regular" rate, listed 8.00 hours twice

July 12, 2019
Pg. 3

under the "Overtime Hour 1.5" and "2nd Shift 1.5 OT Premium" rates of pay, and 40.00 hours under the "2nd Shift Premium" category. *Id.* If an employee sought to calculate the total number of hours worked during a pay period and added the hours listed under the "Regular", "Overtime Hour 1.5", "2nd Shift 1.5 OT Premium" and/or "2nd Shift Premium" categories, the total hours worked would be incorrect. *Id.*; see *McKenzie v. Federal Exp. Corp.*, 275 F.R.D. 290, 292 (C.D. Cal. 2011).

Because Thyssenkrupp fails to pay its non-exempt California employees for all the hours they worked, sick pay at the correct rate of pay, and because they are not provided compliant meal breaks, or the premiums associated with missing the same, they are not timely paid all wages due and owing to them at the end of their employment.

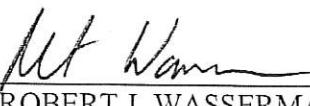
Accordingly, and as set forth above, Mr. Magee contends Thyssenkrupp has violated Labor Code sections 201, 202, 203, 226, 226.7, 233, 246, 510, 512, and the IWC Wage Orders.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Mr. Magee intends to file a civil complaint, or amend a pre-existing civil complaint, against Progressive pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former California non-exempt, hourly employees. Thank you for your attention in this matter.

Regards,

MAYALL HURLEY P.C.

By 
ROBERT J. WASSERMAN

Enclosure

cc: Gregor Iskander
Littler Mendelson
Treat Towers
1255 Treat Boulevard, Suite 600
Walnut Creek, CA 94597

EXHIBIT A



thyssenkrupp Materials NA
2355 W 11 Mile Rd, Southfield MI 48033

Name: Magee Jr, Alvin P
8-ID: 10525158
Pay Date: 06/28/2019
Pay Period: 06/17/2019 - 06/23/2019
Pay Frequency: Weekly

Earnings	Rate	Hours	Current	YTD	Pre Tax Deductions	Current	YTD
Overtime Hour 1.5	27.93	8.00	223.44	2,326.16	Dental Insurance	6.92	179.92
Regular	18.36	40.00	734.40	12,553.65	Vision Insurance	6.04	157.04
2nd Shift Premium	0.25	40.00	10.00	170.94	Voluntary Life Ins	2.02	52.52
2nd Shift 1.5 OT Premium	0.38	8.00	3.04	31.66	Total Pre Tax Deductions	14.98	389.48
Floating Holiday			146.88				
Sick Leave			440.64				
Vacation			1,294.38				
Holiday Pay			587.52				
No Lunch Premium	18.36	2.00	36.72	257.04			
Total Earnings			1,007.60	17,808.87			
Retro Pay	Rate	Hours	Current	Per. End Dt	Post Tax Deductions	Current	YTD
Total Retro Pay			0.00		Federal Levy		1,862.70
					Child Life	0.36	9.36
					Spouse Life	2.07	53.82
					Roth	50.38	884.81
					Total Post Tax Deductions	52.81	2,810.69
Taxes			Current	YTD	Memo	Current	YTD
California					GTLI Imputed Income	2.14	44.94
EE Disability Tax			9.92	174.19	Net Pay	Acc. / Check No.	Amount
Federal					EDI Bank transfer	xxxxxx4323	100.00
Withholding Tax	S - 00		123.13	1,912.38	EDI Bank transfer	xxxxxx4310	630.66
EE Social Security Tax			61.68	1,082.79			
EE Medicare Tax			14.42	253.23			
Total Taxes			209.15	3,422.59			

Personal Notification

	Gross Pay	-	Deductions & Taxes	=	Net Pay	Federal Taxable Gross
Current	1,007.60	-	276.94	=	730.66	994.76
YTD	17,808.87	-	6,622.76	=	11,186.11	17,464.33

*** NOT NEGOTIABLE ***

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

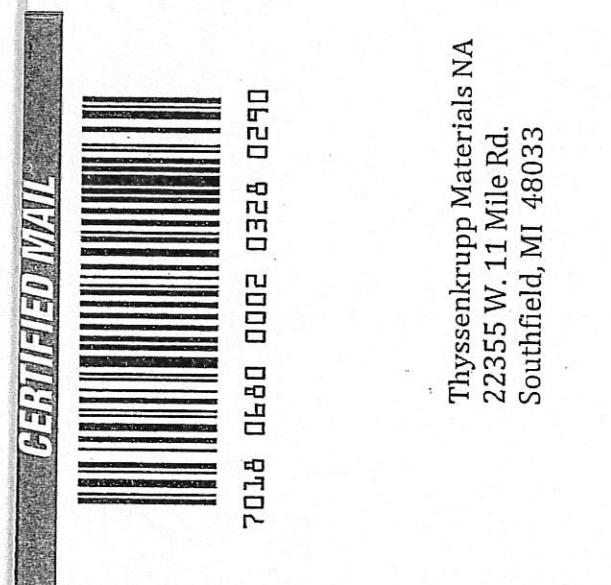
For delivery information, visit our website at www.usps.com.

OFFICIAL USE

U.S. POSTAGE PITNEY BOWES	
ZIP 95207 \$ 006.95 02 4W 0000338509 JUL 12 2019	
7018 0680 0002 0328 0290	
Certified Mail Fee \$	
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy) \$ _____ <input type="checkbox"/> Return Receipt (electronic) \$ _____ <input type="checkbox"/> Certified Mail Restricted Delivery \$ _____ <input type="checkbox"/> Adult Signature Required \$ _____ <input type="checkbox"/> Adult Signature Restricted Delivery \$ _____	
Postage \$	
Total Postage and Fees \$	
Sent To Street and Apt. No., or PO Box No.	
City, State, Zip+4	

PS Form 3600, April 2015 PSN 7530-02-000-8047 See Reverse for Instructions

Postmark
Here



Thyssenkrupp Materials NA
 22355 W. 11 Mile Rd.
 Southfield, MI 48033

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Thyssenkrupp Materials NA
 22355 W. 11 Mile Rd.
 Southfield, MI 48033



9590 9402 4993 9063 3480 64

2. Article Number (Transfer from service label)

7018 0680 0002 0328 0290

COMPLETE THIS SECTION ON DELIVERY

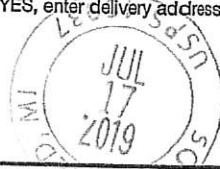
A. Signature

Agent
 Addressee

B. Received by (Printed Name)

Date of Delivery
 7/17/19

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No



3. Service Type

- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Mail Restricted Delivery
- Priority Mail
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

EXHIBIT 4

LAW OFFICES
MAYALL HURLEY

A PROFESSIONAL CORPORATION

SOUTHERN CALIFORNIA OFFICE
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91203
(818) 646-6440
MAILING ADDRESS:
2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207-8253
FAX (209) 473-4818
TELEPHONE (209) 477-3833
WWW.MAYALLAW.COM

VLADIMIR F. KOZINA
STEVEN A. MALCOLM
MARK E. BERRY
WILLIAM J. GORHAM III
NICHOLAS F. SCARDIGLI
ROBERT J. WASSERMAN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA
ANGELA C. RUSSELL
RACHAEL ALLGAIER
OF COUNSEL
J. ANTHONY ABBOTT

September 4, 2019

SENT VIA ONLINE FILING (<https://dir.tfaforms.net/207>)

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

SENT VIA CERTIFIED MAIL

Thyssenkrupp Materials NA
22355 W 11 Mile Rd
Southfield, MI 48033

Thyssenkrupp Supply Chain Services, NA
22355 W. 11 Mile Rd.
Southfield, MI 48033

Re: Alvin Magee, Jr. (SSN: XXX-XX-5129; DOB: 08/30/1980)

To Whom It May Concern:

This firm represents Alvin Magee, Jr. On July 12, 2019, Mr. Magee sent written notice to the LWDA and Thyssenkrupp Materials, NA regarding alleged Labor Code violations, and the facts and theories supporting said violations. See **Exhibit C**; LWDA Case No. LWDA-CM-717770-19.

Mr. Magee has recently learned that Thyssenkrupp Materials, NA will be contending that he was actually employed by Thyssenkrupp Supply Chain Services, NA. Accordingly, Mr. Magee reasserts the allegations of his July 12, 2019 LWDA letter as against both Thyssenkrupp Materials, NA and Thyssenkrupp Supply Chain Services, NA (collectively “Thyssenkrupp”). Mr. Magee further alleges that Thyssenkrupp violated Labor Code section 226(a)(8) by furnishing wage statements which do not accurately show the name and address of the entity that is the employer.

Mr. Magee was hired in or around June 2016 as a Forklift Driver. Throughout his employment, Plaintiff has been a non-exempt employee. As such, he was entitled to pay for every hour worked and overtime as appropriate. Mr. Magee and Thyssenkrupp’s other non-exempt California employees were also eligible for and at times received non-discretionary bonuses, commissions, and other items of compensation (such as shift differentials). **Exhibit D**. Throughout his employment, however, Mr. Magee and Thyssenkrupp’s other non-exempt employees were not properly paid for all hours worked, including overtime. Specifically, because of issues with Thyssenkrupp’s timekeeping practices, Mr. Magee and Thyssenkrupp’s other non-exempt California employees were routinely credited for less hours than they actually worked. Further, Thyssenkrupp routinely failed to pay or miscalculated their non-exempt California employees’ regular rate of pay for purposes of overtime.

September 4, 2019

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Additionally, Mr. Magee and Thyssenkrupp's other hourly, non-exempt California employees were not consistently authorized or permitted to take meal breaks as required by California law. Thyssenkrupp also required Plaintiff and their other non-exempt California employees to work through meal breaks due to understaffing and work demands. On the occasions that Mr. Magee and Thyssenkrupp's other non-exempt California employees were able to take their meal breaks, they routinely occurred after 5 hours of work. Further, Thyssenkrupp frequently failed to relieve Mr. Magee and its other non-exempt California employees of employer control during their meal breaks.

When Mr. Magee and Thyssenkrupp's other non-exempt California employees were not provided compliant meal breaks, Thyssenkrupp did not pay premiums as required by California law. Specifically, Thyssenkrupp either (a) failed to pay the premiums in their entirety or (b) paid the premium(s) only at its employees' base rate of pay rather than their regular rate of pay, without accounting for non-discretionary bonuses, commissions, and/or other items of compensation (including shift premiums and differentials).

For example, during the pay period of June 17, 2019 through June 23, 2019, Plaintiff received (i) a shift differential, designated as "2nd Shift Premium", of \$10.00, and (ii) two missed meal break premiums, designated as "No Lunch Premium", of \$18.36, i.e., his base hourly rate. See **Exhibit D**.

Mr. Magee and Thyssenkrupp's non-exempt employees were also entitled to sick pay. Any sick pay used appeared on their wage statements as "Sick Leave". Thyssenkrupp failed to include commissions, non-discretionary bonuses and other items of compensation (including shift premiums and differentials) when determining Mr. Magee's and its other non-exempt California employees' regular rate of pay for purposes of sick pay.

Because of the violations set forth above, and as evidenced in the samples of Mr. Magee's wage statements attached hereto as **Exhibits D** and **E**, the wage statements furnished by Thyssenkrupp to its non-exempt California employees violated California Labor Code section 226(a) insofar as they failed to accurately show:

- a. The gross wages earned, in violation of section 226(a)(1);
- b. The total hours worked, in violation of section 226(a)(2)
- c. The net wages earned, in violation of section 226(a)(5); and
- d. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).

Separately, and independent of Thyssenkrupp's failure to pay minimum wage and overtime, and to provide compliant meal breaks, or the premiums associated with the same, the wage statements it furnishes to its non-exempt California employees violate California Labor Code section 226(a) insofar as they fail to accurately show the total hours worked in violation of section 226(a)(2). Specifically, they list multiple different categories of earnings: (i) "Regular," (ii) "Overtime Hour 1.5," (3) "2nd Shift Premium," and (4) "2nd Shift 1.5 Premium". See **Exhibit D**. With respect to the hours included in the pay period, the wage statements do not provide a separate category calculating the total hours worked by Plaintiff or Thyssenkrupp's other non-exempt California employees. *Id.* Rather, these statements list the number of hours worked at the "Regular" rate of pay, stated the

September 4, 2019

Pg. 3

number of overtime hours under both the "Overtime Hour 1.5" and "2nd Shift 1.5 OT Premium" categories, and the number of "2nd Shift Premium" hours. *Id.*

For example, during the pay period of June 17, 2019 through June 23, 2019, Plaintiff's wage statements provided that he worked a total of 40.00 hours at "Regular" rate, listed 8.00 hours twice under the "Overtime Hour 1.5" and "2nd Shift 1.5 OT Premium" rates of pay, and 40.00 hours under the "2nd Shift Premium" rate. See **Exhibit D**. If an employee sought to calculate the total number of hours worked during a pay period and added the hours listed under the "Regular", "Overtime Hour 1.5", "2nd Shift 1.5 OT Premium" and/or "2nd Shift Premium" categories, the total hours worked would be incorrect. *Id.*; see *McKenzie v. Federal Exp. Corp.*, 275 F.R.D. 290, 292 (C.D. Cal. 2011).

Similarly, during the pay period of May 20, 2019 through May 26, 2019, Plaintiff's wage statements provided that he worked a total of 40.00 hours at "Regular" rate, listed 7.50 hours twice under the "Overtime Hour 1.5" and "2nd Shift 1.5 OT Premium" rates of pay, and 40.00 hours under the "2nd Shift Premium" rate. See **Exhibit E**. If an employee sought to calculate the total number of hours worked during a pay period and added the hours listed under the "Regular", "Overtime Hour 1.5", "2nd Shift 1.5 OT Premium" and/or "2nd Shift Premium" categories, the total hours worked would be incorrect. *Id.*; see *McKenzie v. Federal Exp. Corp.*, 275 F.R.D. 290, 292 (C.D. Cal. 2011).

Also separate and independent of the foregoing alleged violations, the wage statements that Thyssenkrupp furnishes to their California employees violate Labor Code section 226(a)(8) insofar as they fail to accurately show the name and address of the entity that is the employer. See **Exhibits D** and **E**.

Because Thyssenkrupp fails to pay its non-exempt California employees for all the hours they worked, overtime at the correct rate of pay, sick pay at the correct rate of pay, and because they are not provided compliant meal breaks, or the premiums associated with missing the same, they are not timely paid all wages due and owing to them at the end of their employment.

Accordingly, and as set forth above, Mr. Magee contends Thyssenkrupp has violated Labor Code sections 201, 202, 203, 226, 226.7, 233, 246, 510, 512, 1182.12 et seq., 1194, 1197, 1198 and the IWC Wage Orders.

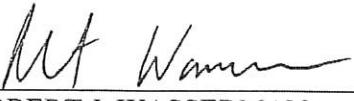
If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Mr. Magee intends to file a civil complaint, or amend a pre-existing civil complaint, against Progressive pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former California non-exempt, hourly employees. Thank you for your attention in this matter.

September 4, 2019
Pg. 4

Regards,

MAYALL HURLEY P.C.

By 
ROBERT J. WASSERMAN

Enclosures

cc: Gregor Iskander
Littler Mendelson
Treat Towers
1255 Treat Boulevard, Suite 600
Walnut Creek, CA 94597

EXHIBIT C

LAW OFFICES
MAYALL HURLEY

A PROFESSIONAL CORPORATION

SOUTHERN CALIFORNIA OFFICE
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91203
(818) 646-6440
MAILING ADDRESS:
2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207

2453 GRAND CANAL BOULEVARD
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VLADIMIR J. KOZINA
ANGELA C. RUSSELL
RACHAEL ALLGAIER

OF COUNSEL
J. ANTHONY ABBOTT

July 12, 2019

SENT VIA ONLINE FILING (<https://dir.tfaforms.net/207>)

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

SENT VIA CERTIFIED MAIL

Thyssenkrupp Materials NA
22355 W 11 Mile Rd
Southfield, MI 48033

Re: Alvin Magee, Jr. (SSN: XXX-XX-5129; DOB: 08/30/1980)

To Whom It May Concern:

This firm represents Alvin Magee, Jr. in relation to his employment with Thyssenkrupp Materials, NA (“Thyssenkrupp”). In accordance with California Labor Code section 2699.3, this letter shall serve as Mr. Magee’s written notice to the Labor and Workforce Development Agency (“LWDA”) and Thyssenkrupp regarding the following violations, and facts and theories supporting the violations, on Mr. Magee’s behalf and, as a proxy for the LWDA, on behalf of other current and former non-exempt employees of Thyssenkrupp.

Mr. Magee was hired by Thyssenkrupp in or around June 2016 as a Forklift Driver. Throughout his employment, Plaintiff has been a non-exempt employee. As such, he was entitled to pay for every hour worked and overtime as appropriate. Mr. Magee and Thyssenkrupp’s other non-exempt California employees were also eligible for and at times received non-discretionary bonuses, commissions, and other items of compensation (such as shift differentials). Exhibit A. Throughout his employment, however, Mr. Magee and Thyssenkrupp’s other non-exempt employees were not properly paid for all hours worked, including overtime. Specifically, because of issues with Thyssenkrupp’s timekeeping practices, Mr. Magee and Thyssenkrupp’s other non-exempt California employees were routinely credited for less hours than they actually worked.

Additionally, Mr. Magee and Thyssenkrupp’s other hourly, non-exempt California employees were not consistently authorized or permitted to take meal breaks as required by California law. Thyssenkrupp also required Plaintiff and their other non-exempt California employees to work through meal breaks due to understaffing and work demands. On the occasions that Mr. Magee and

Thyssenkrupp's other non-exempt California employees were able to take their meal breaks, they routinely occurred after 5 hours of work. Further, Thyssenkrupp frequently failed to relieve Mr. Magee and its other non-exempt California employees of employer control during their meal breaks.

When Mr. Magee and Thyssenkrupp's other non-exempt California employees were not provided compliant meal breaks, Thyssenkrupp did not pay premiums as required by California law. Specifically, Thyssenkrupp either (a) failed to pay the premiums in their entirety or (b) paid the premium(s) only at its employees' base rate of pay rather than their regular rate of pay, without accounting for non-discretionary bonuses, commissions, and/or other items of compensation (including shift premiums and differentials).

For example, during the pay period of June 17, 2019 through June 23, 2019, Plaintiff received (i) a shift differential, designated as "2nd Shift Premium", of \$10.00, and (ii) two missed meal break premiums, designated as "No Lunch Premium", of \$18.36, i.e., his base hourly rate. See **Exhibit A**.

Mr. Magee and Thyssenkrupp's non-exempt employees were also entitled to sick pay. Any sick pay used appeared on their wage statements as "Sick Leave". Thyssenkrupp failed to include commissions, non-discretionary bonuses and other items of compensation (including shift premiums and differentials) when determining Mr. Magee's and its other non-exempt California employees' regular rate of pay for purposes of sick pay.

Because of the violations set forth above, and as evidenced in the samples of Mr. Magee's wage statements attached hereto as **Exhibit A**, the wage statements furnished by Thyssenkrupp to its non-exempt California employees violated California Labor Code section 226(a) insofar as they failed to accurately show:

- a. The gross wages earned, in violation of section 226(a)(1);
- b. The total hours worked, in violation of section 226(a)(2)
- c. The net wages earned, in violation of section 226(a)(5); and
- d. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).

Separately, and independent of Thyssenkrupp's failure to pay overtime and to provide compliant meal breaks, or the premiums associated with the same, the wage statements it furnishes to its non-exempt California employees violate California Labor Code section 226(a) insofar as they fail to accurately show the total hours worked in violation of section 226(a)(2). Specifically, they list multiple different categories of earnings: (i) "Regular," (ii) "Overtime Hour 1.5," (3) "2nd Shift Premium," and (4) "2nd Shift 1.5 Premium". See **Exhibit A**. With respect to the hours included in the pay period, the wage statements do not provide a separate category calculating the total hours worked by Plaintiff or Thyssenkrupp's other non-exempt California employees. *Id.* Rather, these statements list the number of hours worked at the "Regular" rate of pay, stated the number of overtime hours under both the "Overtime Hour 1.5" and "2nd Shift 1.5 OT Premium" categories, and the number of "2nd Shift Premium" hours. *Id.*

For example, during the pay period of June 17, 2019 through June 23, 2019, Plaintiff's wage statements provided that he worked a total of 40.00 hours at "Regular" rate, listed 8.00 hours twice

July 12, 2019

Pg. 3

under the "Overtime Hour 1.5" and "2nd Shift 1.5 OT Premium" rates of pay, and 40.00 hours under the "2nd Shift Premium" category. *Id.* If an employee sought to calculate the total number of hours worked during a pay period and added the hours listed under the "Regular", "Overtime Hour 1.5", "2nd Shift 1.5 OT Premium" and/or "2nd Shift Premium" categories, the total hours worked would be incorrect. *Id.*; see *McKenzie v. Federal Exp. Corp.*, 275 F.R.D. 290, 292 (C.D. Cal. 2011).

Because Thyssenkrupp fails to pay its non-exempt California employees for all the hours they worked, sick pay at the correct rate of pay, and because they are not provided compliant meal breaks, or the premiums associated with missing the same, they are not timely paid all wages due and owing to them at the end of their employment.

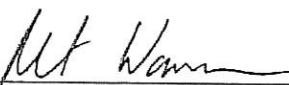
Accordingly, and as set forth above, Mr. Magee contends Thyssenkrupp has violated Labor Code sections 201, 202, 203, 226, 226.7, 233, 246, 510, 512, and the IWC Wage Orders.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Mr. Magee intends to file a civil complaint, or amend a pre-existing civil complaint, against Progressive pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former California non-exempt, hourly employees. Thank you for your attention in this matter.

Regards,

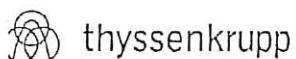
MAYALL HURLEY P.C.

By 
ROBERT J. WASSERMAN

Enclosure

cc: Gregor Iskander
Littler Mendelson
Treat Towers
1255 Treat Boulevard, Suite 600
Walnut Creek, CA 94597

EXHIBIT A



thyssenkrupp Materials NA
22355 W 11 Mile Rd, Southfield MI 48033

Name: Magee Jr, Alvin P
8-ID: 10525158
Pay Date: 06/28/2019
Pay Period: 06/17/2019 - 06/23/2019
Pay Frequency: Weekly

Earnings	Rate	Hours	Current	YTD	Pre Tax Deductions	Current	YTD
Overtime Hour 1.5	27.93	8.00	223.44	2,326.16	Dental Insurance	6.92	179.92
Regular	18.36	40.00	734.40	12,553.65	Vision Insurance	6.04	157.04
2nd Shift Premium	0.25	40.00	10.00	170.94	Voluntary Life Ins	2.02	52.52
2nd Shift 1.5 OT Premium	0.38	8.00	3.04	31.66	Total Pre Tax Deductions	14.98	389.48
Floating Holiday				146.88			
Sick Leave				440.64			
Vacation				1,294.38			
Holiday Pay				587.52			
No Lunch Premium	18.36	2.00	36.72	257.04			
Total Earnings			1,007.60	17,808.87			
Retro Pay	Rate	Hours	Current	Per. End Dt	Post Tax Deductions	Current	YTD
Total Retro Pay			0.00		Federal Levy		1,862.70
					Child Life	0.36	9.36
					Spouse Life	2.07	53.82
					Roth	50.38	884.81
					Total Post Tax Deductions	52.81	2,810.69
Taxes			Current	YTD	Memo	Current	YTD
California					GTLI Imputed Income	2.14	44.94
EE Disability Tax			9.92	174.19	Net Pay	Acc. / Check No.	Amount
Federal					EDI Bank transfer	xxxxxx4323	100.00
Withholding Tax	S - 00		123.13	1,912.38	EDI Bank transfer	xxxxxx4310	630.66
EE Social Security Tax			61.68	1,082.79			
EE Medicare Tax			14.42	253.23			
Total Taxes			209.15	3,422.59			
Personal Notification							

	Gross Pay	-	Deductions & Taxes	=	Net Pay	Federal Taxable Gross
Current	1,007.60	-	276.94	=	730.66	994.76
YTD	17,808.87	-	6,622.76	=	11,186.11	17,464.33

*** NOT NEGOTIABLE ***

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
To: [Robert Wasserman](mailto:Robert.Wasserman@labor.ca.gov)
Subject: Thank you for submission of your PAGA Case.
Date: Friday, July 12, 2019 2:33:53 PM

7/12/2019

LWDA Case No. LWDA-CM-717770-19

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT D



thyssenkrupp Materials NA
2355 W 11 Mile Rd, Southfield MI 48033

Name: Magee Jr, Alvin P
S-ID: 10525158
Pay Date: 06/28/2019
Pay Period: 06/17/2019 - 06/23/2019
Pay Frequency: Weekly

Earnings	Rate	Hours	Current	YTD	Pre Tax Deductions	Current	YTD
Overtime Hour 1.5	27.93	8.00	223.44	2,326.16	Dental Insurance	6.92	179.92
Regular	18.36	40.00	734.40	12,553.65	Vision Insurance	6.04	157.04
2nd Shift Premium	0.25	40.00	10.00	170.94	Voluntary Life Ins	2.02	52.52
2nd Shift 1.5 OT Premium	0.38	8.00	3.04	31.66	Total Pre Tax Deductions	14.98	389.48
Floating Holiday				146.88			
Sick Leave				440.64			
Vacation				1,294.38			
Holiday Pay				587.52			
No Lunch Premium	18.36	2.00	36.72	257.04			
Total Earnings			1,007.60	17,808.87			
Retro Pay	Rate	Hours	Current	Per. End Dt	Post Tax Deductions	Current	YTD
Total Retro Pay			0.00		Federal Levy		1,862.70
					Child Life	0.36	9.36
					Spouse Life	2.07	53.82
					Roth	50.38	884.81
					Total Post Tax Deductions	52.81	2,810.69
Taxes			Current	YTD	Memo	Current	YTD
California					GTLI Imputed Income	2.14	44.94
EE Disability Tax			9.92	174.19	Net Pay		
Federal					Acc. / Check No.		
Withholding Tax		S - 00	123.13	1,912.38	EDI Bank transfer		100.00
EE Social Security Tax			61.68	1,082.79	EDI Bank transfer		630.66
EE Medicare Tax			14.42	253.23			
Total Taxes			209.15	3,422.59			

Personal Notification

	Gross Pay	-	Deductions & Taxes	=	Net Pay	Federal Taxable Gross
Current	1,007.60	-	276.94	=	730.66	994.76
YTD	17,808.87	-	6,622.76	=	11,186.11	17,464.33

*** NOT NEGOTIABLE ***

EXHIBIT E



thyssenkrupp Materials NA
22355 W 11 Mile Rd, Southfield MI 48033

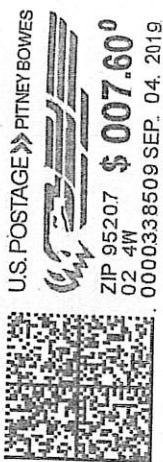
Name: Magee Jr, Alvin P
8-ID: 10525158
Pay Date: 05/31/2019
Pay Period: 05/20/2019 - 05/26/2019
Pay Frequency: Weekly

Earnings	Rate	Hours	Current	YTD	Pre Tax Deductions	Current	YTD
Overtime Hour 1.5	27.95	7.50	209.63	1,865.37	Dental Insurance	6.92	152.24
Regular	18.36	40.00	734.40	9,616.05	Vision Insurance	6.04	132.88
2nd Shift Premium	0.25	40.00	10.00	130.94	Voluntary Life Ins	2.02	44.44
2nd Shift 1.5 OT Premium	0.38	7.50	2.85	25.39	Total Pre Tax Deductions	14.98	329.56
Floating Holiday			146.88				
Sick Leave			440.64				
Vacation			1,147.50				
Holiday Pay			440.64				
No Lunch Premium			91.80				
Total Earnings			956.88	13,905.21			
Retro Pay	Rate	Hours	Current	Per. End Dt	Post Tax Deductions	Current	YTD
Total Retro Pay			0.00		Federal Levy		1,862.70
					Child Life	0.36	7.92
					Spouse Life	2.07	45.54
					Roth	47.84	689.63
					Total Post Tax Deductions	50.27	2,605.79
Taxes			Current	YTD	Memo	Current	YTD
California					GTLI Imputed Income	2.14	36.38
EE Disability Tax			9.42	135.76	Net Pay	Acc. / Check No.	Amount
Federal					EDI Bank transfer		
Withholding Tax		S - 00	111.97	1,443.19			698.03
EE Social Security Tax			58.53	843.95			
EE Medicare Tax			13.68	197.37			
Total Taxes			193.60	2,620.27			

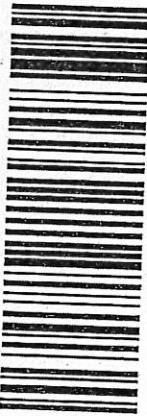
Personal Notification

	Gross Pay	-	Deductions & Taxes	=	Net Pay	Federal Taxable Gross
Current	956.88	-	258.85	=	698.03	944.04
YTD	13,905.21	-	5,555.62	=	8,349.59	13,612.03

*** NOT NEGOTIABLE ***



CERTIFIED MAIL®



7019 1120 0002 3134 1566

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only**

For delivery information, visit our website at www.usps.com.

OFFICIAL USE

Certified Mail Fee
\$
Extra Services & Fees (check box, add fee as appropriate)
 Return Receipt (hardcopy) \$
 Return Receipt (electronic) \$
 Certified Mail Restricted Delivery \$
 Adult Signature Required \$
 Adult Signature Restricted Delivery \$

Postage
\$

Total Postage and Fees
\$

Sent To
Street and Apt. No., or PO Box No.
City, State, Zip+4

PS Form 3800, April 2015 PSN 7530-02-000-9047

Postmark
Here

See Reverse for Instructions

Thyssenkrupp Materials NA
22355 W 11 Mile Rd
Southfield, MI 48033

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Thyssenkrupp Materials NA
22355 W 11 Mile Rd
Southfield, MI 48033



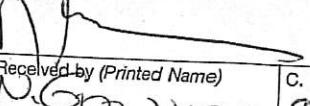
9590 9402 5036 9092 7308 62

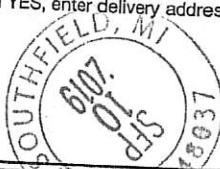
2. Article Number (Transfer from service label)

7019 1120 0002 3134 1566

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature		<input type="checkbox"/> Agent
B. Received by (Printed Name)		<input type="checkbox"/> Addressee
N. Cowen		9/10/19
C. Date of Delivery		
D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No		



3. Service Type

<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™
<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery
Mail	00
Mail Restricted Delivery	10

Domestic Return Receipt