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Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

MICHAEL MAKANEOLE, individually and
on behalf of all similarly situated,

Plaintiff,

v.

**SOLARWORLD INDUSTRIES
AMERICA, INC.; SOLARWORLD
INDUSTRIES AMERICA, LP;
SOLARWORLD INDUSTRIES
SERVICES, LLC; SOLARWORLD
POWER PROJECTS, INC., RANDSTAD
PROFESSIONALS US, LP, and KELLY
SERVICES, INC.,**

Defendants.

Case No. 3:14-cv-01528-PK

AMENDED COMPLAINT

JURY TRIAL DEMANDED

Comes now the Plaintiff, Michael Makaneole, by and through the attorneys at Schuck Law, LLC, and states and alleges as follows:

1. This is an action under State wage and hour laws to recover unpaid wages, overtime wages, and penalty wages for all current and former employees of Defendants,

**SOLARWORLD INDUSTRIES AMERICA, INC.; SOLARWORLD INDUSTRIES
AMERICA, LP; SOLARWORLD INDUSTRIES SERVICES, LLC; SOLARWORLD**

POWER PROJECTS, INC., RANDSTAD PROFESSIONALS US, LP, and KELLY SERVICES, INC., (collectively all Defendants referred to as “Employers” or “Defendants”) who worked for Employers within Oregon.

2. At all times material herein, Plaintiff was employed by one or more of the Defendants in the State of Oregon.

3. At all times material herein, the Defendant **SOLARWORLD INDUSTRIES AMERICA, INC.** was a domestic corporation.

4. At all times material herein, the Defendant **SOLARWORLD INDUSTRIES AMERICA, LP** was a foreign limited partnership.

5. At all times material herein, the Defendant **SOLARWORLD INDUSTRIES SERVICES, LLC** was a foreign limited liability company.

6. At all times material herein, the Defendant; **SOLARWORLD POWER PROJECTS, INC.** was a foreign corporation.

7. At all times material herein, the Defendant **SOLARWORLD INDUSTRIES AMERICA, INC.** was a domestic corporation.

8. At all times material herein, the Defendant **RANDSTAD PROFESSIONALS US, LP**, was a foreign limited partnership.

9. At all times material herein, the Defendant **RANDSTAD PROFESSIONALS US, LP**, provided temporary employees to work at the manufacturing facility operated by Solarworld Industries America, Inc.; Solarworld Industries America, LP; Solarworld Industries Services, LLC; Solarworld Power Projects, Inc.

10. At all times material herein, the Defendant **RANDSTAD PROFESSIONALS US, LP**, utilized the time records (Etime) provided by Solarworld Industries America, Inc.; Solarworld Industries America, LP; Solarworld Industries Services, LLC; Solarworld Power Projects, Inc. to calculate wages owed the employees.

11. At all times material herein, the Defendant **KELLY SERVICES, INC.**, was a foreign business corporation.

12. At all times material herein, the Defendant **KELLY SERVICES, INC.**, provided temporary employees to work at the manufacturing facility operated by Solarworld Industries America, Inc.; Solarworld Industries America, LP; Solarworld Industries Services, LLC; Solarworld Power Projects, Inc.

13. At all times material herein, the Defendant **KELLY SERVICES, INC.**, utilized the time records provided by Solarworld Industries America, Inc.; Solarworld Industries America, LP; Solarworld Industries Services, LLC; Solarworld Power Projects, Inc. to calculate wages owed the employees.

14. All claims, including those against Randstad Professionals US, LP and Kelly Services, Inc. are limited to the employees who worked for any Defendant at the manufacturing facilities operated by Solarworld Industries America, Inc.; Solarworld Industries America, LP; Solarworld Industries Services, LLC; Solarworld Power Projects, Inc.

15. At all times material herein, Defendants were doing business in Oregon.

16. The Circuit Court of Oregon has personal jurisdiction over all Defendants because they are/were engaged in substantial and not isolated activities within this state, because the events set forth in this complaint occurred in Oregon and because the claims arise out of services actually performed for the Defendant by the Plaintiff and putative class members within Oregon.

17. The Circuit Court of Oregon has personal jurisdiction over Defendant **SOLARWORLD INDUSTRIES AMERICA, INC.** because it was formed under the laws of the state of Oregon.

18. Employers did not pay all wages for time worked on the clock by Plaintiff and similarly situated individual.

19. Employers were required to pay all wages due at the next regularly scheduled payday.

20. Employers failed and refused to pay Plaintiff and class members all wages due at the regular rate of pay for all time worked from the time the employee began working until the time the employee stopped working.

21. Employers programmed their time keeping system such that an employee would not be paid for all time the employee worked.

22. Because Employers failed to compensate Plaintiff and class members at their regular rate of pay, Employers failed to pay Plaintiff and class members all their wages due at the next regularly scheduled payday, in violation of Oregon law.

24. Employers had a practice and policy of failing to pay its employees whose employment ended when required by Oregon law.

25. Employers suffered and permitted Plaintiff and class members to perform work for Employers in excess of 40 hours per week, for which Employers did not compensate them at the overtime rate of 1-1/2 times their regular earning rate as required. In so doing, Employers are liable for the unpaid overtime wages and civil penalty wages pursuant to ORS 653.261(1); ORS 653.055; ORS 652.150; and OAR 839-020-0030. Each Defendant is liable for the wages and penalties earned during the time period Plaintiff and any class members were employed by that specific Defendant.

26. Employers failed to make immediate payment of all wages due and owing Plaintiff and class members upon the ending of employment pursuant to Oregon law.

27. Defendants were all free agents.

28. Employers knew when Plaintiff's and class member's employment ended with the specific relevant Defendant.

29. Employers intended to pay wages to their respective employees when they did and further intended to pay the amount of wages they paid.

30. Wages are due and owing Plaintiff and class members and Plaintiff and class members are owed civil penalties and penalty wages for each Defendant, in whose employ they worked and were not paid wages, overtime wages, or were not timely paid final wages.

I. PARTIES

31. At all material times, Plaintiff and all similarly situated individuals are current and former employees of Employers, who worked for Employers in Oregon, who are subject to Oregon wage and hour provisions.

32. Each Defendant has or had employees working at the manufacturing facility located 25300 NE Evergreen Road, Hillsboro, Oregon 97124.

33. All claims alleged herein occurred from the use of the electronic time clocks at the Hillsboro, Oregon manufacturing plant.

II. CLASS ACTION ALLEGATIONS

34. Plaintiff brings the Oregon State wage claims for failure to pay all wages, failure to pay overtime wages, and failure to pay all wages when due at termination as a class action pursuant to ORCP 32 on behalf of himself and as the Class Representative for the following persons:

(Unpaid Wages Class)

35. For Plaintiff and similarly situated individuals who worked for Employers within the statutory time period, and were not paid wages for all hours worked, when those wages were due.

(Overtime Class)

37. For Plaintiff and all similarly situated class members, who worked for Employers in Oregon, within the statutory period before the commencement of this action, and were not paid at 1 ½ times their regular hourly rate for all overtime hours worked.

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(Late Payment Class)

38. For Plaintiff and similarly situated individuals whose employment with any Defendant ended within the statutory time period, and who did not receive all wages when due, and who were not already awarded a civil penalty for failure to pay overtime wages under ORS 653.055.

39. The Oregon State law claims, if certified for class wide treatment, may be pursued by all similarly-situated persons who do not request exclusion or opt-out of the class. Class members may be notified of the pendency of this action by first-class mail. Class members may be identified through Defendants' human resources and payroll computer systems. Notice of the class action may be made by mailing to the class members' address in Employers' records.

40. Plaintiff's Oregon State law claims satisfy the numerosity, commonality, typicality, adequacy and superiority requirements of a class action pursuant to ORCP 32.

41. Numerosity of the Class (ORCP 32 A(1)): The class satisfies the numerosity requirement. The class is believed to exceed 500 persons and may increase based on the turnover rate of employees during applicable statute of limitations. Deposition testimony confirms that more than 100 class members exist. Upon information and belief, approximately 500 individuals are currently employed at the Employers excluding temporary employers. With temporary employers, addition individuals work for Employers currently. As a result, joinder of all class members in a single action is impracticable. The precise number of class members and their addresses is unknown to the Plaintiff, but can be determined from Employers' employment and payroll records.

42. Commonality (ORCP 32 A(2)): There are questions of fact and law common to the class that predominate over any questions affecting only individual members. The questions of law and fact common to the class arising from Employers' actions include, without limitations, the following:

- A. Whether Employers programed their electronic time keeping system to alter punch times for their employees working at the Hillsboro plant;
- B. Whether the above programing caused Employers to fail to pay Plaintiff and class members all wages based on the practices alleged herein;
- C. Whether the programming of the electronic time keeping system caused Employers not to pay all overtime wages under Oregon law;
- D. Whether Employers had a practice of failing to timely pay all wages when due and required by ORS § 652.140;
- E. Whether Randstad Professionals US, LP or Kelly Services, Inc., terminated¹ class members' employment when the class member was hired directly by either Solarworld Industries America, Inc.; Solarworld Industries America, LP; Solarworld Industries Services, LLC; Solarworld Power Projects, Inc.
- F. Whether Randstad Professionals US, LP or Kelly Services, Inc., terminated class members' employment when they were hired directly by either Randstad Professionals US, LP or Kelly Services, Inc.
- G. Whether Employers' conduct in failing to timely pay all wages at the end of employment was willful;
- H. Which remedies are available for the violations of ORS 652.120; 652.140; and 653.261; and
- I. Whether class members are entitled to recovery their attorney fees under either ORS 652.200 or ORS 653.055.
- J. Whether Randstad Professionals US, LP or Kelly Services, Inc. used the time clocks provided by the Solarworld entities' time clocks to determine hours worked.

¹Terminated herein refers to the ending of an employment relationship by any means.

43. Typicality (ORCP 32 A(3)): Plaintiff's claims are typical of class members' claims because Plaintiff and other employees were subject to the same policies and practices alleged herein and used the same electronic time keeping system. Plaintiff's claims are typical of class members' claims in that:

- A. Plaintiff was affected by the violations described above;
- B. Plaintiff's claims stem from the same practices and/or courses of conduct that form the basis of the claims;
- C. Plaintiff's claims are based upon the same legal and remedial theories as those of the class and involve similar factual circumstances; and
- D. Plaintiff's injuries are similar to the injuries which class members have suffered.

44. Adequacy of Plaintiff's Representation (ORCP 32 A(4)): The named Plaintiff will fairly and adequately represent and protect the interests of the class because:

- A. There is no conflict between his claims and those of other class members;
- B. Plaintiff retained counsel who are skilled and experienced in wage and hour cases and in class actions and who will vigorously prosecute the litigation;
- C. Plaintiff's claims are typical of the claims of class members; and
- D. The interests of the class members will be fairly and adequately protected by Plaintiff and his counsel.

45. Plaintiff provided notice before this lawsuit was filed (ORCP 32 A(5)): The named Plaintiff provided multiple notices regarding the claims in this case. Plaintiff's initial mailer was sent via certified mail, return receipt requested.

46. Plaintiff sent the first notices to Employers on or about June 24, 2014.

48. ORCP 32 B: A class action would avoid inconsistent or varying adjudications with respect to individual class members. Given the number of class members, individual cases would likely lead to inconsistent adjudications. This is an inefficient use of limited judicial

resources to separately rule on the same legal issues that are present in this case for the Plaintiff.

49. Superiority ORCP 32 B(3): A class action is superior to other available means for the fair and efficient adjudication of Plaintiff's and class members' claims. The questions in paragraph 41-42 predominate over questions affecting only individual persons. Each class member's damage amount may be relatively small, especially given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Employers' conduct. Moreover, even if class members could afford individual litigation, the court system would be unnecessarily burdened by the individual actions. Individualized litigation presents a potential for inconsistent or contradictory judgments and increases the potential for delay and expense for all parties. A class action will present far fewer management difficulties and will provide the benefits of a single adjudication, economy of scale, and comprehensive supervision by a single court. Plaintiff's claims are appropriate for certification under ORCP 32 B(3).

50. Maintenance of this action as a class action is a fair and efficient method for adjudication of this controversy. It would be impracticable and undesirable for each class member who suffered harm to bring a separate action. Additionally, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members. Further, because this case is based upon electronic records, determining the violations for a large group of current and former employees is easier.

III. COMMON ALLEGATIONS

51. Common questions of fact and law exist as to all similarly situated individuals and predominate over any questions that affect only individual similarly situated individuals. The conduct at issue in this case affected Plaintiff and all purported class members.

52. The members of each class exceed 50 members and that number will increase depending upon employee turnover.

53. Evidence supporting class allegations are based upon information and belief. Evidence supporting the allegations will be available through discovery because employers are required to keep wage and hour records for current and former employees. Plaintiff has a good faith belief that wages are due absent class members based in part upon data provided from Employers in other cases.

54. Plaintiff has a good faith belief that wages are due absent class members based on the fact that Defendants have admitted how they programmed their electronic time keeping system and further how that system operates with payroll.

55. Employers suffered and permitted Plaintiff and similarly situated individuals to work hours for which Employers did not compensate them. Employers did so by not including all hours worked and recorded on the electronic time keeping system when computing employee pay. Employers also did this by altering lunch punches such that the lunch was deducted in its entirety or by failing to pay for the interrupted lunch.

56. Employers suffered and permitted Plaintiff and other similarly situated class members to perform work for Employers in excess of 40 per week, for which they did not compensate them at the overtime rate of 1-1/2 times their regular hourly rate as required by Oregon law.

57. Employers failed and refused to pay all wages to Plaintiff and similarly situated individuals whose employment ended when those wages were due.

58. At all times material herein, Employers was doing business in Oregon.

59. Plaintiff was an at will employee and was not contracted to work for any specific period of time for any Defendant.

60. Plaintiff began working for Employers through Defendant Kelly Services, Inc.

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61. Plaintiff's employment for Defendant Kelly Services, Inc. terminated when he was hired by Defendant Randstad Professionals US, LP.

62. Plaintiff's employment for Defendant Randstad Professionals US, LP terminated when he began working for Solarworld Industries America, Inc.; Solarworld Industries America, LP; Solarworld Industries Services, LLC; Solarworld Power Projects, Inc.

63. Plaintiff's employment for Defendants Solarworld Industries America, Inc.; Solarworld Industries America, LP; Solarworld Industries Services, LLC; Solarworld Power Projects, Inc. terminated.

64. On or about June 24, 2014, Plaintiff's attorney sent ORCP 32 H notice, written demand and notice of the wage claims to each Randstad Professionals US LP, and Kelly Services, Inc. via certified mail.

65. On or about July 31, 2014, Plaintiff's attorney sent written demand and notice of the wage claims to each Randstad Professionals US LP, Kelly Services, Inc. via email.

66. On or about June 24, 2014, Plaintiff's attorney sent ORCP 32 H notice, written demand and notice of the wage claims to Solarworld Industries America, Inc.; Solarworld Industries America, LP; Solarworld Industries Services, LLC; Solarworld Power Projects, Inc. via certified mail.

67. On or about July 31, 2014, Plaintiff's attorney sent written demand and notice of the wage claims to Solarworld Industries America, Inc.; Solarworld Industries America, LP; Solarworld Industries Services, LLC; Solarworld Power Projects, Inc. via email.

68. In the year preceding any of Plaintiff's three terminations (Kelly Services, Ranstad, & Solarworld entities), the employer subject to that termination failed to pay other class members' their wages timely as required by ORS 652.140.

69. Defendants agreed to pay Plaintiff at multiple hourly rates depending upon the date the wages were not paid and the Defendant who was not paying them.

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FIRST CLAIM FOR RELIEF

(Unpaid Wages Claim)

70. Plaintiff re-alleges all paragraphs as though fully alleged herein.
71. For defendants Randstad and Kelley, this claim runs for the six year period before filing of this suit.
72. For defendants Solarworld Industries America, Inc.; Solarworld Industries America, LP; Solarworld Industries Services, LLC; Solarworld Power Projects, Inc., this claim runs from the date of filing back to the date Frederick Bey's case was filed in Multnomah County court.
73. During the course of Plaintiff's employment, Employers allowed, suffered and permitted Plaintiff and class members to perform work for the benefit of Employers.
74. Employers tracked time worked by Plaintiff and similarly situated class members through an electronic time keeping system.
75. Employers tracked time worked by Plaintiff and similarly situated class members through Kronos electronic time keeping system.
76. Employers' Kronos time keeping system downloaded data to Etime computer program.
77. Employers programmed the electronic time keeping system such that it failed to provide payroll with all the hours worked and recorded by Plaintiff and class members.
78. Employers programmed the electronic time keeping system such that changed start and stop "punch times" at the beginning of a shift, end of a shift, and for lunch breaks.
79. Defendant provided the altered time to payroll resulting in Defendants not paying for all hours worked.
80. The alterations with the start of the day punch causes between 0 to 5 minutes of unpaid wages per day.

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81. The alterations to the end of day punch causes between 0 to 5 minutes of unpaid wages per day.

82. The alterations to the lunch period punch causes between 0 and 29 minutes of unpaid wages for manual labor provided.

83. Plaintiff estimates that the average loss of paid work time based upon the computer programming described above is 12-20 minutes per class member per week.

84. As the adjustments were not made known to Plaintiff at the time they were being taken, Plaintiff has no records showing the actual losses he or the class members suffered.

85. In addition, because Oregon law requires the lunches to be paid in full if interrupted, where a lunch is not 30 minutes in length, the employee is due a full 30 minutes of wages, not just the labor hours he/she actually worked during the lunch period. OAR 839-020-0050(2)(b).

86. Plaintiff estimates that the unpaid wages due under OAR 839-020-0050(2)(b) will be an average of 5-15 additional minutes per week above the 12-20 minutes lost described above and due each class member per week.

87. As employers, each Defendant had the duty to separately and accurately track the time worked by its employees and retain those records.

88. Plaintiff intends to rely upon Defendants' records to be obtained from each Defendant as allowed by *Chard v. Beauty-N-Beast Salon*, 148 Or App 623, n. 9 (1997), overruled on independent contractor test *Cejas Comm. Interiors, Inc. v. Torres-Lizama*, 260 Or App 87 (2013)(citing with approval the burden shifting standard of *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 686-87 (1946)).

89. The payroll departments for each employer paid Plaintiff and class members their wages based upon the altered time communicated to payroll by the electronic time keeping system.

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90. Employers were required to pay all wages earned on payday under ORS 652.120 and 653.010, including the wages it failed to pay because of the way Employers programmed its electronic time keeping system.

91. Each Defendant failed to timely pay all wages to Plaintiff and class members because of the programming used by the electronic time keeping system.

92. Plaintiff made multiple demands for payment of all unpaid wages on behalf of himself and other class members to each Defendant.

93. Each Defendant failed and refused to pay all wages earned during Plaintiff and class members employment for that particular Defendant and there remains an amount of wages owed by each Defendant to Plaintiff and class members.

94. Plaintiff's attorney sent written notices of the wage claim to Employers.

95. Because of each Defendant's failure to make payment of all regular wages when due, Plaintiff and class members are due unpaid regular wages in an amount to be determined at trial against each Defendant.

96. Because of Employers' failure to pay Plaintiff's and all class members' wages within 48 hours after they were due, Plaintiff and class members are entitled to recover costs, disbursements, and reasonable attorney fees, pursuant to ORS 652.200(2).

97. Plaintiff and class members seek unpaid wages, costs, disbursements and attorney fees, pursuant to ORS 652.200(2) plus pre- and post-judgment interest in the amount of 9% per annum incurred herein under ORS 82.010.

SECOND CLAIM FOR RELIEF

(Oregon Overtime Wages, Civil Penalty)

98. Plaintiff re-alleges all paragraphs as though fully alleged herein.

99. For defendants Randstad and Kelley, this claim runs for the two year period before filing of this suit.

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100. For defendants Solarworld Industries America, Inc.; Solarworld Industries America, LP; Solarworld Industries Services, LLC; Solarworld Power Projects, Inc., this claim runs from the date of filing back to the date Frederick Bey's case was filed in Multnomah County court.

101. During the course of Plaintiff's and class members' employment, Employers authorized, allowed, permitted, and suffered Plaintiff to work hours, in excess of 40 hours per week.

102. Pursuant to ORS 653.261 and OAR 839-020-0030, Employers was required to pay Plaintiff and all class members at the rate of 1 ½ times their regular rate of pay those hours worked in excess of 40 hours per week, when those wages were due.

103. For those workers covered, Employers was required to pay hours worked in excess of 10 hours per day at 1 ½ times their regular rate of pay.

104. Because Employers programmed its electronic time keeping system to reduce the recorded hours worked, Employers failed to pay all overtime wages for all overtime hours worked by Plaintiff and class members, and failed to pay those hours at the rate of 1 ½ times their regular hourly rate.

105. Where Employers programmed the electronic time keeping system to alter punches for lunches, the employee is due 30 minutes of wages. Where those wages are in excess of 10 hours per day or 40 hours per week, that time should have been paid at the overtime rate.

106. It is estimated that between 60 to 80 percent of work time described above was performed during weeks in which the wages were required to have been paid at the overtime rate.

107. Employers failed and refused to pay Plaintiff and class members for the hours of overtime worked, when those wages were due, and there remains due and unpaid overtime wages in an amount to be determined against each Defendant.

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108. Employers were required to pay Plaintiff and all class members for all overtime hours worked on the next regularly scheduled pay day under ORS 652.120 and ORS 653.010.

109. In failing to pay Plaintiff and class members for all overtime hours worked at the rate of 1 ½ times their regular rate of pay, Employers' actions were willful.

110. Because of each Defendant's failure to pay Plaintiff and all class members for all overtime hours worked during their employment with that specific Defendant, Plaintiff and class members, pursuant to ORS 653.055(1)(b), are entitled to a civil penalty as computed by ORS 652.150 against each Defendant for which they separately were employed.

111. Plaintiff and class members are due a separate civil penalty under ORS 653.055 from each Defendant for which they worked, but were not paid. Where Plaintiff or class members terminated employment with a temporary employer and were hired by another temporary employer or any of the Solarworld entities, Plaintiff and class members are due multiple overtime civil penalties, one from each employer.

112. Plaintiff is due three separate overtime civil penalties. One each from Kelly Services, Randstad Professionals US, and one from the Solarworld entities. Each overtime penalty due Plaintiff is in the approximate amount of \$3,500.

113. Plaintiff and class members have been required to bring this action to recover overtime earnings and penalties, and are entitled to recover costs, disbursements, and a reasonable sum for attorney fees, pursuant to ORS 653.055(4) and ORS 652.200(2).

114. Plaintiff and class members seek overtime wages in an amount to be determined, plus a civil penalty as determined per ORS 653.055(1)(b) against each Defendant for whom the individual class member worked and was not paid overtime wages, plus costs and disbursements. Plaintiff also seeks attorney fees per ORS 655.055(4) and ORS 652.200(2) plus pre- and post-judgment interest in the amount of 9% per annum incurred herein under ORS 82.010.

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THIRD CLAIM FOR RELIEF

(Late Payment at Termination Claim)

115. Plaintiff re-alleges all paragraphs as though fully alleged herein.
116. For defendants Randstad and Kelley, this claim runs for the three year period before filing of this suit.
117. For defendants Solarworld Industries America, Inc.; Solarworld Industries America, LP; Solarworld Industries Services, LLC; Solarworld Power Projects, Inc., this claim runs from the date of filing back to the date Frederick Bey's case was filed in Multnomah County court.
118. For each Employer, this claim is plead in the alternative for class members who are not entitled to an overtime penalty under ORS 653.055.
119. During the course of Plaintiff's and class members' employment, Employers allowed, suffered and permitted Plaintiff and class members to perform work for the benefit of Employers.
120. At the time of Plaintiff's termination, Employers agreed to pay Plaintiff at an hourly rate.
121. Plaintiff was terminated by Defendant Kelly Services, Inc.
122. Plaintiff was terminated by Defendant Randstad Professionals US, LP.
123. Plaintiff was terminated by Defendants Solarworld Industries America, Inc.; Solarworld Industries America, LP; Solarworld Industries Services, LLC; Solarworld Power Projects, Inc.
124. The last hourly rate paid to Plaintiff and class members and the final date of employment for Plaintiff and class members should be in Employers' employment records.
125. Employers failed to pay Plaintiff and all class members the wages as set out above, and wages remain due and owing.

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126. Employers were required to pay Plaintiff and all class members for all time they worked, including the unpaid time described in this complaint, within the time set by ORS 652.140 for each termination.

127. Employers failed and refused to pay all time worked, and therefore, failed to pay all wages within the time required by ORS 652.140.

128. In failing to pay all of Plaintiff's and class members' final wages at termination, Employers were a free agents.

129. In failing to pay all of Plaintiff's and class members' final wages at termination, Employers determined their own actions.

130. Employers programed, or caused their electronic time keeping system to be programmed, in the manner set forth in this complaint.

131. Employers each had a duty to ensure that the electronic time keeping system was programmed to accurately reflect the actual time worked by each class member.

132. In failing to pay all of Plaintiff's and class members' final wages at termination, Employers were not responsible to, nor coerced by any other person, or entity, or authority.

133. Employers knew Plaintiff's employment had ended when it ended for each Defendant.

134. Employers knew class members' employment had ended when the employment relationship ended with each Defendant.

135. Employers possessed all information regarding the hours worked by Plaintiff and class members.

136. Employers were required to possess all information regarding the hours worked by Plaintiff and class members.

137. Employers could calculate the amount of wages due Plaintiff and class members at termination.

138. Employers were capable of paying all Plaintiff's and class members' wages earned and due at termination.

139. Employers' failure to make payment of Plaintiff's final wages when due was wilful and continued for not less than 30 days.

140. Plaintiff and his attorneys made multiple demands for payment of his unpaid wages and the unpaid wages of class members.

141. Employers continue their failure to pay all wages due after Plaintiff's written demand.

142. Plaintiff's attorney sent written notice of the wage claim to Employers.

143. Because of Employers' failure to make payment of final wages when due, Plaintiff and class members are due statutory penalty wages in an amount to be determined pursuant to ORS 652.150, for the continuation of Plaintiff's and class members' unpaid final wages for not less than 30 days for each termination for any Defendant.

144. Plaintiff and class members are due a separate 30 days of penalty wages for each Defendant for whom he/she was hired and terminated, but not paid all wages due as set out in this complaint. (Specifically Randstad, Kelly, & the Solarworld entities).

145. Plaintiff is due penalty wages for three separate employment situations. One amount of penalty wages each from Kelly Services, Randstad, and the Solarworld entities respectively. Each set of penalty wages due Plaintiff is in the approximate amount of \$3,500.

146. Because of Employers' failure to pay Plaintiff's wages within 48 hours after they were due, Plaintiff and class members are entitled to recover costs, disbursements, and reasonable attorney fees, pursuant to ORS 652.200(2).

147. Plaintiff and class members seek statutory wages pursuant to ORS 652.150, and costs, disbursements. Plaintiff also seeks attorney fees, pursuant to ORS 652.200(2) plus pre- and post-judgment interest in the amount of 9% per annum incurred herein under ORS 82.010.

WHEREFORE, Plaintiff demands judgment from Defendant:

Upon Plaintiff's claim for relief:

1. Unpaid wages in an amount to be determined after discovery.
2. Attorney fees pursuant to ORS 652.200(2).

3. Costs and disbursements, pre and post judgment interest in the amount of 9% per annum on all claims herein under ORS 82.010.

Upon Plaintiff's claim for relief for failing to pay Oregon overtime wages:

1. Unpaid overtime wages for an amount to be determined.
2. Civil Penalty per ORS 653.055(1)(b) and ORS 652.150 for each separate employer who failed to pay overtime wages.
3. Attorney fees pursuant to ORS 653.055(4) and ORS 652.200(2).
4. Costs, disbursements, and pre- and post- judgment interest in the amount of 9% per annum incurred herein under ORS 82.010.

Upon Plaintiff's claim for relief for failing to timely pay all wages on termination:

1. Unpaid wages in an amount to be determined.
2. Statutory penalty wages pursuant to ORS 652.150 for each class member who worked for a specific Employer and who does not receive an overtime civil penalty from that employer.
3. Attorney fees pursuant to ORS 652.200(2).
4. Pre-judgment and post- judgment interest on all damage amounts, plus costs and disbursements under ORS 82.010.

DATED: April 6, 2015.

Schuck Law, LLC

/s/ David A. Schuck
DAVID A. SCHUCK, Esquire
OSB # 993564, WSB # 37285
(360) 566-9243
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served the foregoing **AMENDED COMPLAINT** upon:

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Attorney for Defendants

by the following indicated method(s):

- [X] by electronic mailing through the CM/ECF system, in accordance with Fed. R. Civ. P. 5(d), on April 6, 2015.

DATED: April 6, 2015.

Schuck Law, LLC

/s/ David A. Schuck
DAVID A. SCHUCK, Esquire
OSB # 993564, WSB # 37285
(360) 566-9243
Attorney for Plaintiff