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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10  
11 MARLIN MCCLURE, an individual, for  
himself and those similarly situated,

12  
13 Plaintiff,

14 v.

15 WAVELAND SERVICES, INC.,  
16 a Louisiana corporation doing business in  
California; and DOES 1 through 100,  
17 inclusive,

18 Defendants.

Case No. 2:18-cv-01726-KJM-AC  
*Hon. Kimberly J. Mueller*

PUTATIVE CLASS ACTION

**~~[PROPOSED]~~ SECOND AMENDED  
COMPLAINT**

- 1) MEAL PERIOD VIOLATIONS;
- 2) REST PERIOD VIOLATIONS;
- 3) PAY STUB VIOLATIONS;
- 4) UNFAIR COMPETITION;
- 5) FAILURE TO TIMELY PAY FINAL WAGES;
- 6) CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT OF 2004;
- 7) VIOLATIONS OF FLSA FOR UNPAID MINIMUM AND OVERTIME WAGES (29 U.S.C. § 201 et seq.)
- 8) MIMINUM WAGE VIOLATIONS;
- 9) OVERTIME VIOLATIONS;

19  
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25  
26 Complaint filed: June 14, 2018  
FAC filed: September 7, 2018

1           **TO ALL INTERESTED PARTIES HEREIN AND TO THEIR ATTORNEYS OF**  
2 **RECORD:**

3           COMES NOW, Plaintiff MARLIN MCCLURE (“Plaintiff”), individually and on behalf  
4 of all other similarly situated current and former employees of Defendant WVELAND  
5 SERVICES, INC., a Louisiana corporation doing business in California and Does 1 through 100  
6 (collectively “Defendants”), and each of them, for legal relief to redress unlawful violations of  
7 Plaintiff’s rights under federal and California law and the rights of those similarly situated.  
8 Plaintiff bring his claims against Defendants as a California statewide class action pursuant to  
9 Federal Rules of Civil Procedure, Rule 23; as a California representative action under the Private  
10 Attorneys General Act of 2004; and as a nationwide collective action under the Fair Labor  
11 Standards Act (“FLSA”), 29 U.S.C. § 216(b).

12   **INTRODUCTION**

13           1.       This is a class, collective, and representative action brought by Plaintiff, on behalf  
14 of himself and all others similarly situated. Plaintiff and those similarly situated are or were  
15 employed by Defendants and were denied the benefits of state and federal wage-and-hour laws  
16 as alleged herein.

17           2.       The “*Putative Class*” consists of all current and former hourly employees of  
18 Defendants, who, at any time within four years from the date of filing of this lawsuit and through  
19 the present, worked on oil platforms off the California coast for shifts of 12 hours or more  
20 (hereinafter the “Putative Class”).

21           3.       The “*FLSA Collective*” consists of each and every current and former hourly  
22 employee of Defendants, who, at any time within three years from the date of filing of this  
23 lawsuit and through the present, worked over 40 hours in a single workweek on an oil platform  
24 off any coast of the United States and, during such workweek, was furnished any meals and/or  
25 lodging in addition to other wages (hereinafter the “FLSA Collective”).

26           4.       Defendants maintained a policy and practice whereby Plaintiff and the other  
27 members of the Putative Class worked shifts of 12 hours each day, from either 6 a.m. to 6 p.m.  
28 or from 6 p.m. to 6 a.m., with only one 30-minute meal period and two rest periods. The meal

1 period typically occurred after the start of the sixth hour of work.

2 5. Defendants maintained a policy and practice of not paying meal or rest period  
3 premiums to Plaintiff and the other members of the Putative Class. Defendants' policies and  
4 practices also included not paying all meal or rest period premiums earned in the employees'  
5 final wages and not itemizing the meal and/or rest period earnings in the employees' wage  
6 statements.

7 6. Defendants also maintained a policy and practice of providing free meals and  
8 lodging to Plaintiff and all members of the Putative Class and FLSA Collective, but not  
9 including the value of such meals and lodging in these employees' regular rates of pay for the  
10 purpose of calculating overtime wages due. As a consequence of this policy and practice,  
11 Plaintiff and the FLSA Collective were paid overtime wages at the incorrect rate of pay in  
12 violation of 29 U.S.C. § 207. As another consequence of this policy and practice, the paychecks  
13 of Plaintiff and the Putative Class did not show the correct amount of the employees' gross and  
14 net wages earned or the correct applicable overtime rates for all overtime hours worked in  
15 violation of California Labor Code section 226. Defendants also maintained a policy and  
16 practice of failing to pay minimum wages to the Putative Class and FLSA Collective. As a  
17 consequence of this policy and practice, the Putative Class and FLSA Collective were not paid  
18 at a rate not less than the federal statutory minimum wage rate for each regular hour work in  
19 violation of 29 U.S.C. § 206(a)(1), or at a rate at least the state-mandated minimum wage for all  
20 hours worked by non-exempt employees (See Lab. Code, §§ 1194, 1197).

21 7. Plaintiff was an hourly employee impacted by Defendants' illegal wage-and-hour  
22 policies. He seeks relief on a collective and class-wide basis challenging the unlawful business  
23 practices engaged in by Defendants as alleged herein.

24 8. Plaintiff also seeks equitable relief under the California Unfair Competition Law,  
25 Business and Professions Code section 17200 *et seq.* (the "UCL"), which is predicated on  
26 Defendants' violation of California laws regarding the payment of meal and rest period premium  
27 wages. The UCL claim seeks to obtain disgorgement and restitution of all ill-gotten gains from  
28 the unlawful conduct alleged herein.

1 9. In conclusion, the Plaintiff seeks relief for the Putative Class under California  
2 wage-and-hour law and for the FLSA Collective under the Fair Labor Standards Act (“FLSA”),  
3 29 U.S.C. §§ 201 *et seq.*, to remedy Defendants’ continued failure to pay all wages due, provide  
4 meal and rest periods, pay appropriate minimum wage and overtime compensation, pay waiting-  
5 time penalties, and to provide accurate wage statements.

6 **THE PARTIES**

7 10. At all times herein mentioned, Plaintiff Marlin McClure was an hourly employee  
8 of Defendants, working off the coast of and in the State of California, within the last two (2)  
9 years as a Sandblaster Painter, a Supervisor and as a Relief Foreman.

10 11. Plaintiff stopped working for Defendants on or around May 2018.

11 12. At all times herein mentioned, Plaintiff is informed and believes and, based on  
12 such information and belief, thereon alleges that Defendants are Louisiana corporations, with  
13 their principal offices in Eunice Louisiana, but which do business and maintain offices in  
14 California. More specifically, Defendants maintain offices in Solano County, California,  
15 located at 535 Watt Drive, Suite A, Fairfield, California 94534, as well as at 3839 Bithell Lane,  
16 Suisun City, California 94585.

17 13. The true names and capacities, whether individual, corporate, associate,  
18 representative or otherwise, of the defendants identified herein as Does 1 through 100, inclusive,  
19 are unknown to Plaintiff, who therefore sue these defendants by said fictitious names. Plaintiff  
20 will amend this Complaint to allege the true names and capacities of Does 1 through 100 when  
21 they have been ascertained. Does 1 through 100 are in some manner legally responsible for the  
22 wrongs and injuries alleged herein.

23 14. Each of the Defendants acted as the agent or employee of the others and each acted  
24 within the scope of that agency or employment.

25 **VENUE AND JURISDICTION**

26 15. Venue is proper in this Court pursuant to 28 U.S.C. §§ 84(c)(2) and 1391, as  
27 because this is the judicial district and division of this Court in which Defendants reside and in  
28 which they are subject to personal jurisdiction with respect to this action.

1 16. Further, Defendants reside in Solano County for purposes of venue pursuant to 28  
2 U.S.C. § 84, which lies within the Eastern District.

3 17. This Court has federal question jurisdiction under 28 U.S.C. § 1331, and the Outer  
4 Continental Shelf Lands Act (“OCSLA,” 43 U.S.C. § 1331, *et seq.*), which specifies that United  
5 States district courts shall have jurisdiction over all “cases and controversies arising out of, or  
6 in connection with...any operation conducted on the outer Continental Shelf which involves  
7 exploration, development, or production of the minerals, of the subsoil and seabed of the outer  
8 Continental Shelf, or which involves rights to such minerals....Proceedings with respect to any  
9 such case or controversy may be instituted in the judicial district in which any defendant resides  
10 or may be found....” 43 U.S.C. § 1349(b)(1). The “OCSLA explicitly provides that district  
11 courts have federal question jurisdiction over claims occurring on the Outer Continental Shelf.”  
12 *Barker v. Hercules Offshore, Inc.*, 713 F.3d 208, 220 (5th Cir. 2013) (internal citations omitted).

13 **CLASS ACTION ALLEGATIONS**

14 18. Plaintiff brings this action on his own behalf and on behalf of all persons similarly  
15 situated. The **Putative Class** consists of “all current and former hourly employees of  
16 Defendants, who, at any time within four years from the date of filing of this lawsuit and through  
17 the present, worked on oil platforms off the California coast for shifts of 12 hours or more.”

18 19. The Putative Class represents over 25 persons and is so numerous that the joinder  
19 of each member of the putative class is impracticable.

20 20. There is a well-defined community of interest in the questions of law and fact  
21 affecting the class Plaintiff represents. The Putative Class members’ claims against Defendants  
22 involve questions of common or general interest, in that each was employed by Defendants, was  
23 not paid for all regular or overtime hours during which they were subject to the control of  
24 Defendants, worked 12-hour shifts but only received one meal period and two rest periods, was  
25 provided a meal period after the start of the sixth hour of work, did not receive all premium  
26 wages earned in their final paycheck, and was provided wage statements that included incorrect  
27 information concerning gross and net wages earned and the applicable rates of pay for overtime  
28 hours worked. These questions are such that proof of a state of facts common to the members

1 of the Putative Class will entitle each member to the relief requested in this complaint.

2 21. The members of the Putative Class that Plaintiff represents have no plain, speedy  
3 or adequate remedy at law against Defendants, other than by maintenance of this class action,  
4 because Plaintiff is informed and believes, and on such information and belief alleges, that the  
5 damage to each member of the Putative Class may be relatively small and that it would be  
6 economically infeasible to seek recovery against Defendants other than by a class action.

7 22. Plaintiff will fairly and adequately represent the interest of the Putative Class,  
8 because Plaintiff is a member of the Putative Class, and Plaintiff's claims are typical of those in  
9 the Putative Class.

10 23. Plaintiff was subjected to the policies and practices of Defendant as set forth in  
11 paragraphs four through six hereinabove and as generally set forth in this Second Amended  
12 Complaint. As consequence of being subjected to these policies, Plaintiff was damaged in that  
13 he was not paid meal and rest period premiums when due each pay period, was provided  
14 incorrect paycheck stubs, and did not receive all premium wages earned in his final wages, all  
15 in violation of California law.

16 **COLLECTIVE ACTION ALLEGATIONS**

17 24. Plaintiff brings this action on behalf of himself and other similarly situated  
18 employees as authorized under the FLSA, 29 U.S.C. § 216(b). The **FLSA Collective** is defined  
19 as: "Each and every current and former hourly employee of Defendants, who, at any time within  
20 three years from the date of filing of this lawsuit, worked over 40 hours in a single workweek  
21 on an oil platform off any coast of the United States and, during such workweek, was furnished  
22 any meals and/or lodging in addition to other wages."

23 25. Defendants failed to compensate Plaintiff and the FLSA Collective at the rate not  
24 less than the federal statutory minimum wage for each regular hour worked because Plaintiff  
25 and the FLSA Collective, who could not leave their worksite on the platforms during their  
26 hitches, regularly worked hours for which they were not paid at least the federal minimum wage.  
27 Defendants' minimum wage violations include, but are not limited to, the failure to pay any  
28 wages whatsoever to Plaintiff and the FLSA Collective for 12 hours each workday.

1           26. Defendants also failed to compensate Plaintiff and the FLSA Collective at the  
2 correct overtime rate of pay for overtime hours worked because Defendant failed to include the  
3 following in their regular hourly rates of pay:

- 4                     a. Compensation for meals provided by the employer;
- 5                     b. Compensation for lodging provided by the employer; and
- 6                     c. Any other remuneration still unknown that was provided by the employer.

7           27. All the above behaviors and actions were knowing, intentional and willful on the  
8 part of Defendants.

9           28. Defendants knew that Plaintiff and the FLSA Collective performed work that  
10 required the payment of minimum wages and the calculation of overtime rates to include the  
11 value of all remuneration received including meals and lodging.

12           29. Defendants operated under a scheme to deprive these employees of minimum  
13 wage and overtime compensation by failing to pay or properly compute and compensate all  
14 regular hours and overtime hours worked by not including the value of these remunerations in  
15 their overtime rate.

16           30. Defendants are liable under the FLSA for failing to properly compensate Plaintiff  
17 and the FLSA Collective, and as such, notice should be sent to the Collective. There are  
18 numerous similarly situated current and former workers who have been denied minimum wage  
19 and overtime pay by Defendants in violation of the FLSA who would benefit from the issuance  
20 of Court-supervised notice of this lawsuit and the opportunity to join. Those similarly situated  
21 workers are known to Defendants and should be readily identifiable through Defendant's  
22 records.

23   **FIRST CAUSE OF ACTION**

24   ***Meal Period Violations***

25   **(On Behalf of Plaintiff and the Putative Class Against All Defendants)**

26           31. Plaintiff incorporates by reference and re-allege each and every one of the  
27 allegations contained in the preceding and foregoing paragraphs of this Second Amended  
28 Complaint as if fully set forth herein.

1 32. California law provides that no employer shall employ any person for a work  
2 period of more than five hours without a meal period of not less than 30 minutes. Lab. Code §§  
3 226.7, 512, 8 Cal. Code Regs. § 11160, subd. 10. California law requires that a first meal period  
4 must begin no later than the start of an employee’s sixth hour of work. *Brinker Rest. Corp. v.*  
5 *Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012); 8 Cal. Code Regs. § 11160(10)(A)-(B);  
6 Cal. Lab. Code § 512(A). A second meal period must be given after no more than 10 hours of  
7 work. *Brinker* at 1043; 8 Cal. Code Regs. § 11160(10)(A)-(B); Cal. Lab. Code § 512(A).

8 33. If an employer fails to provide a meal period in accordance with these rules, the  
9 employer must pay an aggrieved employee one additional hour of pay at the employee’s regular  
10 rate of compensation for each workday that the meal period is not provided. Cal. Lab. Code §  
11 226.7.

12 34. Here, Defendants did not provide meal periods as required by California law and,  
13 therefore, are liable to Plaintiff and the Putative Class for meal period premiums under  
14 California Labor Code section 226.7. Defendants’ meal period violations include, but are not  
15 limited to, the provision of only one meal period per 12-hour shift, the failure to provide such  
16 meal period before the start of the sixth hour of work, and the failure to pay meal period premium  
17 wages when earned.

18 35. Plaintiff seeks meal period premium wages owed to them and the Putative Class  
19 for the three-year period measured backward from the date of the filing of the initial Complaint  
20 in this matter. (In the Unfair Competition cause of action stated herein and brought pursuant to  
21 the UCL, Plaintiff and the Putative Class seek restitution of unpaid meal period premium wages  
22 due for the four-year period measured backward from the date of the filing of the initial  
23 Complaint in this matter.)

24 36. The exact amount of meal period premium wages owed will not be fully  
25 ascertained until discovery is completed. Until Defendants produce the necessary documents  
26 for an accounting, Plaintiff is unable to determine the exact amount of meal period premium  
27 wages owed.

28 37. California Labor Code section 218.6 states, “[I]n any action brought for the



1 nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of  
2 interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from  
3 the date that the wages were due and payable as provided in Part 1 (commencing with Section  
4 200) of Division 2.” Plaintiff and the Putative Class seek such interest on all meal period  
5 premium wages owed to them for the three-year period measured backward from the date of the  
6 filing of the initial Complaint in this matter. (In the Unfair Competition cause of action stated  
7 herein and brought pursuant to the UCL, Plaintiff and the Putative Class seek interest on all  
8 unpaid meal period premium wages due for the four-year period measured backward from the  
9 date of the filing of the initial Complaint in this matter.)

10 38. There are no federal laws that address the issues that are relevant to Plaintiff’s  
11 claims for meal period premiums under California Labor Code section 226.7. Those relevant  
12 issues are: (1) whether meal periods must be given to workers; (2) when meal periods must be  
13 given; (3) how many meal periods must be given; and (4) if meal periods are not given (or, if  
14 given, were untimely or too few in number), whether an employee has a remedy.

15 **SECOND CAUSE OF ACTION**

16 ***Rest Period Violations***

17 **(On Behalf of Plaintiff and the Putative Class Against All Defendants)**

18 39. Plaintiff incorporates by reference and re-allege each and every one of the  
19 allegations contained in the preceding and foregoing paragraphs of this Second Amended  
20 Complaint as if fully set forth herein.

21 40. Employees are entitled to “a paid 10-minute rest period per four hours of work.”  
22 *Brinker*, 53 Cal. 4th at 1028-1029; 8 Cal. Code Regs. § 11160(11)(A).

23 41. If an employer fails to provide a rest period in accordance with these rules, the  
24 employer must pay an aggrieved employee one additional hour of pay at the employee’s regular  
25 rate of compensation for each workday that the rest period is not provided. Cal. Lab. Code §  
26 226.7.

27 42. Here, Defendants did not provide rest periods as required by California law and,  
28 therefore, are liable to Plaintiff and the Putative Class for rest period premiums under California

1 Labor Code section 226.7. Defendants’ rest period violations include, but are not limited to, the  
2 provision of only two rest periods per 12-hour shift.

3 43. Plaintiff seeks rest period premium wages owed to them and the Putative Class for  
4 the three-year period measured backward from the date of the filing of the initial Complaint in  
5 this matter. (In the Unfair Competition cause of action stated herein and brought pursuant to the  
6 UCL, Plaintiff and the Putative Class seek restitution of unpaid rest period premium wages due  
7 for the four-year period measured backward from the date of the filing of the initial Complaint  
8 in this matter.)

9 44. The exact amount of rest period premium wages owed will not be fully ascertained  
10 until discovery is completed. Until Defendants produce the necessary documents for an  
11 accounting, Plaintiff is unable to determine the exact amount of rest period premium wages  
12 owed.

13 45. California Labor Code section 218.6 states, “[I]n any action brought for the  
14 nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of  
15 interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from  
16 the date that the wages were due and payable as provided in Part 1 (commencing with Section  
17 200) of Division 2.” Plaintiff and the Putative Class seek such interest on all rest period premium  
18 wages owed to them for the three-year period measured backward from the date of the filing of  
19 the initial Complaint in this matter. (In the Unfair Competition cause of action stated herein and  
20 brought pursuant to the UCL, Plaintiff and the Putative Class seek interest on all unpaid rest  
21 period premium wages due for the four-year period measured backward from the date of the  
22 filing of the initial Complaint in this matter.)

23 There are no federal laws that address the issues that are relevant to Plaintiff’s claims for rest  
24 period premiums under California Labor Code section 226.7. Those relevant issues are: (1)  
25 whether rest periods must be given to workers; (2) how many rest periods must be given; and  
26 (3) if rest periods are not given (or, if given, too few in number), whether an employee has a  
27 remedy.

28 **THIRD CAUSE OF ACTION**

*Pay Stub Violations*

**(On Behalf of Plaintiff and the Putative Class Against All Defendants)**

1  
2  
3 46. Plaintiff incorporates by reference and re-alleges each and every one of the  
4 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
5 forth herein.

6 47. California Labor Code section 226(a) provides in pertinent part that the employer  
7 shall provide their employees with written paycheck stubs showing: “(1) gross wages earned,  
8 ... (5) net wages earned, ..., and (9) all applicable hourly rates in effect during the pay period  
9 and the corresponding number of hours worked at each hourly rate by the employee....”

10 48. Labor Code section 226(e) provides penalties for violations of § 226(a) that  
11 include: “fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred  
12 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an  
13 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and  
14 reasonable attorney’s fees.”

15 49. In this case, Defendants have failed to provide such wage deduction statements to  
16 Plaintiff and the Putative Class in that their wage deduction statements do not include, without  
17 limitation, the requisite meal period and rest period premium wages earned each pay period, the  
18 actual gross and net wages earned (because, as set forth in the FLSA claim hereinbelow, Plaintiff  
19 and the Putative Class were paid at incorrect overtime rates), and the correct hourly rates in  
20 effect (because, again, the employees were paid overtime at the incorrect rate). Pursuant to Labor  
21 Code section 226(e), damages are appropriate.

22 50. At this time, Plaintiff believes and alleges that he and the Putative Class are owed  
23 the maximum allowable penalty under section 226(e) because Defendants intentionally failed to  
24 provide adequate paycheck stubs. However, the exact amount of damages under Labor Code  
25 section 226(e) will not be fully ascertained until discovery is completed. Until Defendants  
26 produce the necessary documents for an accounting, Plaintiff is unable to determine the exact  
27 amount of damages under Labor Code section 226(e).

28 51. Pursuant to Labor Code section 226(e), Plaintiff requests the Court to award

1 reasonable attorney’s fees and costs incurred in this action.

2 52. No federal laws address the issues of whether paycheck stubs must be given to  
3 employees, the contents of those paycheck stubs, or the penalty for an employer’s failure to  
4 provide compliant paycheck stubs.

5 **FOURTH CAUSE OF ACTION**

6 ***Unfair Competition***

7 **(Action Brought By Plaintiff On Behalf Of Himself**

8 **And the Putative Class Against All Defendants)**

9 53. Plaintiff incorporates by reference and re-alleges each and every one of the  
10 allegations contained in the preceding and foregoing paragraphs of this Complaint as though  
11 fully set forth herein.

12 54. This cause of action is being brought pursuant to California Business and  
13 Professions Code section 17200 et seq. and California case law including *Cortez v. Purolator*  
14 *Air Filtration Products Co.*, 23 Cal. App. 4th 163 (2000).

15 55. It is alleged that Defendants have willfully failed to pay Plaintiff and the Putative  
16 Class state-mandated meal and rest period premium wages. The failure to pay such premium  
17 wages constitutes an unfair business practice under California Business and Professions Code  
18 section 17200 (the “UCL”).

19 56. As a result of the conduct of Defendants, Defendants profited from breaking the  
20 law. Plaintiff and the Putative Class seek disgorgement of this unlawfully obtained benefit (plus  
21 interest thereon) for the four-year period measured backward from the date of filing of the initial  
22 Complaint in this matter.

23 57. California Business and Professions Code section 17203, under the authority of  
24 which a restitutionary order may be made, provides: “The court may make such orders or  
25 judgments, including the appointment of a receiver, as may be necessary to prevent the use of  
26 employment by any person of any practice which constitutes unfair competition, as defined in  
27 this chapter, or as may be necessary to restore to any person in interest any money or property,  
28 real or personal, which may have been acquired by means of such unfair competition.” Under

1 this authority, Plaintiff seeks any and all equitable relief the Court deems appropriate, including  
2 without limitation the appointment of a receiver and/or an accounting.

3 58. As a result of the alleged aforesaid actions, Plaintiff and the Putative Class have  
4 suffered injury in fact and have lost money as a result of such unfair competition. It is requested  
5 that this Court order restitution under the UCL.

6 59. There is no federal law that, like the UCL, allows an aggrieved employee to seek  
7 restitution of unlawfully retained meal and rest period premiums.

8 **FIFTH CAUSE OF ACTION**

9 ***Failure To Timely Pay Final Wages***

10 **(On Behalf of Plaintiff and the Putative Class Against All Defendants)**

11 60. Plaintiff incorporates by reference and re-allege each and every one of the  
12 allegations contained in the preceding and foregoing paragraphs of this Second Amended  
13 Complaint as if fully set forth herein.

14 61. California law requires an employee's final wages to be paid at the time of  
15 termination or, in the case of a resignation, within 72 hours thereof. Cal. Lab. Code §§ 201,  
16 202. If an employer willfully fails to timely pay all final wages owed to an employee, the  
17 employee's remedy is set forth in section 203, which provides for a penalty equal to 30 days of  
18 wages. Cal. Lab. Code § 203(a); *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal.App.4th  
19 365, 377 (2005) (the penalty is an amount "equal to the employee's daily wages for each day ...  
20 that the wages are unpaid").

21 62. Defendants did not pay immediately all meal or rest period premium wages earned  
22 and unpaid to Plaintiff and the Putative Class upon discharge. Defendants have refused and  
23 continue to refuse to pay said wages. Such failure was willful, as Defendants have been aware  
24 that they owed the meal and rest period wages claimed by Plaintiff and the Putative Class, yet  
25 Defendants nevertheless failed to make payment. As a result, Plaintiff seeks wages and waiting-  
26 time penalties pursuant to Labor Code section 203 on behalf of themselves and the Putative  
27 Class. These penalties consist of up to 30 days of pay for Plaintiff and the Putative Class at their  
28 regular rates of pay, including overtime.

1 63. Plaintiff and the Putative Class have been available and ready to receive wages  
2 owed to them.

3 64. Plaintiff has never refused to receive any payment, nor has Plaintiff been absent  
4 from his regular place of residence.

5 65. Federal law does not address the issues relevant to Plaintiff's section 203 claim.  
6 There are no federal laws mandating the timing of an employee's final paycheck, the measure  
7 of meal or rest period premium wages due therein, or setting forth a penalty for the failure to  
8 provide all meal and rest period premium wages earned in an employee's final paycheck.

9 **SIXTH CAUSE OF ACTION**

10 ***Civil Penalties Under The Private Attorneys General Act Of 2004***

11 **(On Behalf of Plaintiff Against All Defendants)**

12 66. Plaintiff incorporates by reference and re-allege each and every one of the  
13 allegations contained in the preceding and foregoing paragraphs of this Second Amended  
14 Complaint as if fully set forth herein.

15 67. Under the California Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab.  
16 Code §§ 2698-2699.6, an "aggrieved employee" may bring a civil action personally and on  
17 behalf of other current or former employees to recover civil penalties for Labor Code violations.  
18 Cal. Lab. Code, § 2699, subd. (a); *Arias v. Superior Court*, 46 Cal. 4th 969, 980-81 (2009).

19 68. Here, Plaintiff seeks civil penalties under PAGA for Defendants' violations of the  
20 following California Labor Code provisions: 201 (failure to timely pay all final wages at  
21 employee's termination), 202 (failure to timely pay all final wages with 72 hours of employee's  
22 resignation), 203 (willful failure to comply with sections 201 and 202), 204 (failure to pay all  
23 wages earned for work performed each pay period), 219 (for the circumvention by private  
24 agreement of other Labor Code provisions), 226 (failure to provide lawful paycheck stubs),  
25 226.7 (failure to pay meal and rest period premiums), and 512 (failure to provide meal periods).  
26 For these violations of the Labor Code, Plaintiff seeks either the corresponding civil penalty  
27 (e.g., a penalty under California Labor Code section 226.3 for the failure to comply with  
28 California Labor Code section 226 and wages and penalties under California Labor Code section

1 558 for Defendants’ failure to comply with California Labor Code section 512) or the default  
2 civil penalty established by PAGA itself in Labor Code section 2699(f).

3 69. Plaintiff is entitled to recover civil penalties on behalf of themselves and other  
4 “aggrieved employees,” i.e., persons who are or were employed by the alleged violator and  
5 against whom one or more of the alleged violations was committed. Plaintiff is therefore  
6 pursuing civil penalties for violations of the California Labor Code sections set forth herein.

7 70. One or more of the alleged violations set forth herein was committed against  
8 Plaintiff, and Plaintiff is therefore an “aggrieved employee” under California Labor Code  
9 section 2699(c).

10 71. California Labor Code section 200 defines “wages” as including all amounts for  
11 labor performed by employers of every description, whether the amount is fixed or ascertained  
12 by the standard of time, task, piece, commission basis, or other method of calculation.

13 72. California Labor Code section 201 requires immediate payment of all wages owed  
14 at the termination of employment. It is alleged that within the last year, Defendants’ employees  
15 in California have been terminated and have not received all meal and/or rest period premium  
16 wages owed at their termination. Plaintiff seeks civil penalties on behalf of themselves and all  
17 others similarly situated under California Labor Code section 256.

18 73. California Labor Code section 202 requires payment of all wages owed within 72  
19 hours of the resignation of an employee, unless the employee gives more than 72-hours notice,  
20 in which case wages are owed at the employee’s resignation. It is alleged that within the last  
21 year, Defendants’ employees in California have resigned and have not received all meal and/or  
22 rest period premium wages owed in a timely fashion after their resignation. Plaintiff seeks civil  
23 penalties on behalf of themselves and all others similarly situated under California Labor Code  
24 section 256.

25 74. California Labor Code section 203(a) provides for a penalty for late payment of  
26 wages: “(a) If an employer willfully fails to pay, without abatement or reduction, in accordance  
27 with Sections 201, 201.3, 201.5, 201.6, 201.9, 202, and 205.5, any wages of an employee who  
28 is discharged or who quits, the wages of the employee shall continue as a penalty from the due

1 date thereof at the same rate until paid or until an action therefor is commenced; but the wages  
2 shall not continue for more than 30 days. An employee who secretes or absents themselves to  
3 avoid payment to the employee, or who refuses to receive the payment when fully tendered to  
4 them, including any penalty then accrued under this section, is not entitled to any benefit under  
5 this section for the time during which the employee so avoids payment.”

6 75. California Labor Code section 204 makes wages due no less frequently than twice  
7 a month for non-exempt employees for work performed each pay period. Defendants have  
8 violated section 204 with respect to Plaintiff and similarly situated coworkers by not paying  
9 them all meal and/or rest period premium wages due for work performed each pay period.  
10 Plaintiff seeks civil penalties on behalf of themselves and all other similarly situated under  
11 California Labor Code section 210.

12 76. California Labor Code section 219 provides that an employer may not circumvent  
13 by way of private agreement the requirements of the wage-and-hour laws of the Labor Code.  
14 To the extent that Defendants will argue that these employees agreed to forfeit their meal and/or  
15 rest period premium wages, Defendants will have violated California Labor Code section 219.  
16 There is no civil penalty associated with violation of section 219, but Plaintiff seeks civil  
17 penalties on behalf of themselves and all others similarly situated under California Labor Code  
18 section 2699, subd. (f).

19 77. California Labor Code section 226, subdivision (a), requires a California employer  
20 to include very specific information on an employee’s paycheck stub. As alleged hereinabove,  
21 Defendants failed to provide accurate paycheck stubs to Plaintiff and the other aggrieved  
22 employees. California Labor Code section 226.3 sets forth civil penalties for violation of section  
23 226, subdivision (a). Plaintiff seeks said penalties against Defendants on behalf of themselves  
24 and all other similarly situated employees for violation of section 226, subdivision (a).

25 78. California Labor Code section 226.7 provides that an employer must compensate  
26 a non-exempt employee with one hour of pay for each required meal or rest period that it does  
27 not provide. As alleged herein, Defendants violated this statute by not paying this meal or rest  
28 period premium pay to Plaintiff and their co-workers when they were not provided with meal or



1 rest periods in violation of California law. There is no civil penalty associated with violation of  
2 section 226.7, but Plaintiff seeks civil penalties on behalf of himself and all others similarly  
3 situated under California Labor Code section 2699, subd. (f).

4 79. California Labor Code section 512 provides that an employer shall provide its non-  
5 exempt employees with one off-duty meal period for each five-hour work period. Defendants  
6 violated section 512 by not providing two meal periods for every 12-hour shift.

7 80. California Labor Code section 558 provides for the recovery of wages and civil  
8 penalties against an employer who violates section 512. Plaintiff seeks said wages and penalties  
9 against Defendants on behalf of themselves and all other similarly situated employees for  
10 violation of section 512.

11 81. Labor Code section 1197 requires that employers may not pay less than the  
12 mandated minimum wage. Defendants violated section 1197 by not paying Plaintiff and his  
13 similarly situated coworkers at least the minimum wage for all hours worked. The civil penalty  
14 for violations of section 1197 is enumerated in Labor Code section 1197.1. Plaintiff seeks said  
15 penalties against Defendants on behalf of himself and all other similarly situated employees for  
16 violations of section 1197.

17 82. Plaintiff also seeks any civil penalties allowable under the Labor Code that arise  
18 out of the same set of operative facts as the claims made in this Second Amended Complaint.

19 83. Plaintiff has fully complied with the statutory requirements of Labor Code section  
20 2699.3. Plaintiff gave notice by a letter dated February 9, 2015 and delivered by certified mail  
21 to the California Labor and Workforce Development Agency and the employer of the specific  
22 provisions of the Labor Code alleged to have been violated, including the facts and theories to  
23 support the alleged violations. Over 33 days have passed since Plaintiff gave notice as required  
24 by section 2699.3 and they have not received correspondence from the Labor and Workforce  
25 Development Agency indicating that it intends to investigate the alleged violations.

26 84. Defendants have not taken any actions to “cure” the Labor Code violations  
27 pursuant to California Labor Code section 2699 et seq.

28 85. By failing to pay Plaintiff and the current and past aggrieved employees,

1 Defendants have violated numerous California Labor Code provisions, all as set forth  
2 hereinabove. Civil penalties are therefore appropriate.

3 **SEVENTH CAUSE OF ACTION**

4 ***Violations of the Fair Labor Standards Act for Unpaid Minimum and Overtime Wages***  
5 ***(29 U.S.C. § 201 et seq.)***

6 **(On Behalf of Plaintiff and the FLSA Collective Against All Defendants)**

7 86. Plaintiff incorporates by reference and re-allege each and every one of the  
8 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
9 forth herein.

10 87. The Fair Labor Standards Act (“FLSA”) requires “employers to compensate  
11 employees for hours in excess of 40 per week at a rate of 1 ½ times the employees’ regular  
12 wages.” 29 U.S.C. § 207(a). To calculate the “regular rate” of pay under federal law, all  
13 remuneration received by an employee in a workweek in which overtime is not worked is  
14 included in the calculation. 29 U.S.C. § 207(e). The reasonable cost of meals and lodging  
15 provided to employees in addition to their wages must be included in the employees’ regular  
16 rate of pay for the purpose of calculating overtime wages under section 207. 29 C.F.R. §  
17 778.116.

18 88. Pursuant to the foregoing authority, it is alleged the Plaintiff has been, and are  
19 still, owed overtime wages from Defendants pursuant to the FLSA. Defendants did not pay  
20 Plaintiff and the FLSA Collective at proper overtime rates for work in excess of forty (40) hours  
21 per workweek in violation of 29 U.S.C. § 207 because Defendants did not include the reasonable  
22 cost of meals and lodging provided to employees in addition to their wages when calculating  
23 and paying their overtime earnings. Plaintiff and the FLSA Collective regularly worked  
24 overtime hours as defined by the FLSA and were under-compensated as described herein.

25 89. The FLSA also requires that Defendants compensate employees at the rate of not  
26 less than the federal statutory minimum wage rate for each hour worked up to forty (40) hours  
27 in a work week.

28 90. At all relevant times, Defendants have failed to compensate Plaintiff and the FLSA

1 Collective at the rate not less than the federal statutory minimum wage rate for each regular hour  
2 worked.

3 91. By failing to compensate Plaintiff and the FLSA Collective and at a rate not less  
4 than the federal statutory minimum wage rate for each regular hour worked, Defendants have  
5 additionally violated the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. § 206(a)(1).

6 92. Defendants' violations of the FLSA as alleged herein have been done in a willful  
7 and bad faith manner such that Plaintiff is entitled to damages equal to the amount of minimum  
8 wage and overtime premium pay within the statutory period, plus periods of equitable tolling.  
9 As a result of the aforesaid willful violations of the FLSA, minimum wage and overtime  
10 compensation has been unlawfully withheld by Defendants from Plaintiff for which Defendants  
11 are liable under 29 U.S.C. § 216(b), together with an additional equal amount as liquidated  
12 damages, as well as interest, reasonable attorneys' fees and costs.

13 93. These FLSA claims relate back to the filing of Plaintiff's original complaint,  
14 which alleged minimum wage and overtime violations under California law. *Parker Drilling*  
15 *Mgmt. Servs., Ltd. v. Newton*, \_\_\_ U.S. \_\_\_, 139 S.Ct. 1881 (2019) ultimately set the standard  
16 for when state wage-and-hour laws apply to work performed on the outer continental shelf. Now  
17 that the *Parker Drilling* decision has been issued, Plaintiff's amend their complaint to add these  
18 FLSA claims. Such FLSA claims are premised on essentially the same set of facts as the original  
19 minimum wage overtime claims under California law. Although the original complaint did not  
20 specifically allege that Defendants failed to include the value of meals and lodging in  
21 employees' regular rates of pay, the measure of damages on Plaintiff's original overtime claim  
22 would necessarily require the inclusion of those values into the affected employees' overtime  
23 owed. *See Huntington Mem'l Hosp. v. Superior Court*, 131 Cal. App. 4th 893, 904 (2005)  
24 (adopting federal standards for determining regular rate of pay for calculation of California  
25 overtime wages owed). Defendants had notice of the existence of potential minimum wage and  
26 overtime claims, and the same facts underlying said claims as articulated in the original  
27 complaint and the FAC and are not prejudiced by having to gather and preserve any new  
28 evidence as a result of the instant claim. Plaintiff acted reasonably and in good faith in pursuing

1 their state overtime claims, because no court had ever held that state overtime claims do not  
2 apply to work performed on the outer continental shelf, and Plaintiff gave notice of the existence  
3 of their California minimum wage and overtime claims within the statutory period, which alerted  
4 Defendants to the need to begin investigating the facts that form the basis for these FLSA claims.

5 **EIGHTH CAUSE OF ACTION**

6 ***Minimum Wage Violations***

7 **(Action Brought By Plaintiff On Behalf Of Himself**

8 **And the Putative Class Against All Defendants)**

9 89. Plaintiff incorporates by reference and re-alleges each and every one of the  
10 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
11 forth herein.

12 90. California law requires payment of at least the state-mandated minimum wage for  
13 all hours worked by non-exempt employees. (See Lab. Code, §§ 1194, 1197.) Hourly wages  
14 cannot be averaged out to cover hours worked during which no compensation was paid. (See  
15 *Armenta v. Osmose* (2005) 135 Cal.App.4th 314, 322-24.) Time during which a worker cannot  
16 leave his or her worksite, even sleeping time, is considered hours worked under California law.  
17 (*Mendiola v. CPS Security Solutions, Inc.* (Cal., Jan. 8, 2015) 15 Cal. Daily Op. Serv. 203.)

18 91. Plaintiff and the Putative Class, who could not leave their worksite on the  
19 platforms during their hitches, regularly worked hours for which they were not paid the  
20 minimum wage. Defendants' minimum wage violations include, but are not limited to, the  
21 failure to pay any wages whatsoever to Plaintiff and the Putative Class for 12 hours each  
22 workday.

23 92. Plaintiff seeks such minimum wages owed to them for the three-year period  
24 measured backward from the date of the filing of the initial Complaint in this matter.

25 93. The exact amount of minimum wages owed will not be fully ascertained until  
26 discovery is completed. Until Defendants produce the necessary documents for an accounting,  
27 Plaintiff is unable to determine the exact amount of minimum wages owed.

28 94. Labor Code section 218.6 states, "[I]n any action brought for the nonpayment of

1 wages, the court shall award interest on all due and unpaid wages at the rate of interest specified  
2 in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the  
3 wages were due and payable as provided in Part 1 (commencing with Section 200) of Division  
4 2.” Plaintiff seeks such interest on all minimum wages owed to them for the three-year period  
5 measured backward from the date of the filing of the initial Complaint in this matter.

6 95. Plaintiff seeks liquidated damages in an amount equal to the minimum wages due  
7 to him and the Putative Class under Labor Code section 1194.2.

8 96. Pursuant to Labor Code section 1194, Plaintiff requests the Court to award  
9 Plaintiff’s reasonable attorney’s fees and costs incurred in this action.

10 **NINTH CAUSE OF ACTION**

11 ***Failure to Pay California Overtime and Double-time Premium Wages***

12 **(Action Brought By Plaintiff On Behalf Of Himself**

13 **And the Putative Class Against All Defendants)**

14 97. Plaintiff incorporates by reference and re-alleges each and every one of the  
15 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
16 forth herein.

17 98. California law requires payment of overtime premium pay for all hours worked  
18 by non-exempt employees in excess of eight in one day or 40 hours in one week and for the first  
19 eight hours on the seventh-straight day of work in one workweek. Lab. Code § 510; 8 Cal. Code  
20 Regs. § 11160, subd. 3(A). It further requires payment of double-time premium pay for all hours  
21 worked by non-exempt employees in excess of twelve hours in one day or in excess of eight  
22 hours on the seventh-straight day of work in a single workweek. Lab. Code § 510; 8 Cal. Code  
23 Regs. § 11160, subd. 3(A).

24 99. Plaintiff and the Putative Class regularly worked hours for which they were not  
25 paid the overtime or double-time premium wages under California law. Defendants violated the  
26 California Labor Code’s overtime and double-time provisions in numerous respects, including  
27 but not limited to the following:

28 a. Failing to compensate Plaintiff and the Putative Class at the proper

1 overtime rate for all hours worked in excess of eight (8) in a workday, forty (40) in a workweek,  
2 or on the seventh (7th) straight day in a workweek or at the proper double-time rate for all hours  
3 worked in excess of twelve (12) in a workday or in excess of eight (8) on the seventh (7th)  
4 straight day of work in a workweek for the following categories of hours worked:

5 i. Time spent on the employer’s premises due to the reasonable  
6 inability to leave;

7 ii. Time spent on-call on the employer’s premises and engaged to wait  
8 as those terms are defined by California regulations and case law;

9 iii. Time spent donning, doffing, and retrieving job-related protective  
10 gear (such as fire-retardant clothing) before and after working their 12-hour shifts;

11 iv. Time spent “handing off” a shift to the relief employee and/or  
12 receiving such a hands off from the employee who was relieved;

13 v. All time spent traveling to and back from shore, including but not  
14 limited to time spent waiting for the ship to take them to the platform or back to shore;

15 vi. All time spent responding to alarms and drills or other calls to  
16 muster after hours; and

17 vii. To the extent such a claim is not subsumed by the aforementioned  
18 situations, time spent sleeping on the employer’s premises; and

19 b. Failing to compensate Plaintiff and the Putative Class at the correct  
20 overtime rate of pay for overtime hours worked because Defendants failed to include the  
21 following in the Putative Class’s regular hourly rates of pay:

22 i. Compensation for performance-related bonuses;

23 ii. Compensation for meals provided by the employer; and

24 iii. Compensation for lodging provided by the employer.

25 100. Plaintiff and the Putative Class seek such overtime and double-time premium  
26 wages owed to them for the three-year period measured backward from the date of the filing of  
27 the initial Complaint in this matter. (In the Unfair Competition cause of action stated herein and  
28 brought pursuant to the UCL, Plaintiff and the Putative Class seek restitution of unpaid overtime

1 and double-time wages due for the four-year period measured backward from the date of the  
2 filing of the initial Complaint in this matter.)

3 101. The exact amount of overtime and double-time premium wages owed will not be  
4 fully ascertained until discovery is completed. Until Defendants produce the necessary  
5 documents for an accounting, Plaintiff is unable to determine the exact amount of overtime and  
6 double-time premium wages owed.

7 102. Plaintiff seeks interest on all overtime and double-time premium wages owed to  
8 them for the three-year period measured backward from the date of the filing of the initial  
9 Complaint in this matter pursuant to Labor Code section 1194. (In the Unfair Competition cause  
10 of action stated herein and brought pursuant to the UCL, Plaintiff and the Putative Class seek  
11 interest on all unpaid overtime and double-time wages due for the four-year period measured  
12 backward from the date of the filing of the initial Complaint in this matter.)

13 103. Pursuant to Labor Code section 1194, Plaintiff requests the Court to award  
14 Plaintiff's reasonable attorney's fees and costs incurred in this action.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, on behalf of themselves, the Putative Class and the  
17 FLSA Collective, demand judgment against Defendants, and each of them, as follows:

- 18 1. For all meal period premium wages owed, according to proof;
- 19 2. For all rest period premium wages owed, according to proof;
- 20 3. For all statutory penalties owed pursuant to California Labor Code section 226(e);
- 21 4. For restitution of all meal and rest period premiums owed, according to proof;
- 22 5. For any and all equitable relief the Court deems appropriate, including without  
23 limitation the appointment of a receiver and/or an accounting;
- 24 6. For all waiting-time penalties owed pursuant to California Labor Code section  
25 203;
- 26 7. For all civil penalties owed under the Private Attorneys General Act of 2004;
- 27 8. For all overtime wages owed pursuant to 29 U.S.C. § 207;
- 28 9. For liquidated damages as provided by the FLSA, 29 U.S.C. § 216(b), interest,

1 and such other legal and equitable relief as the Court deems just and proper;

2 10. For prejudgment interest on all amounts claimed;

3 11. For costs of suit;

4 12. For recovery of attorneys' fees and costs, including an expert fees, to be paid by  
5 Defendants, as provided by the California Labor Code sections 226(e) and 2699(g), 29 U.S.C.  
6 § 216(b), and California Code of Civil Procedure section 1021.5;

7 13. For minimum wages owed according to proof;

8 14. For liquidated damages in an amount equal to the unpaid minimum wages owed  
9 under Labor Code section 1194.2;

10 15. For overtime, double-time, meal period, and rest period premium wages owed  
11 under California law according to proof;

12 16. For prejudgment interest pursuant to Labor Code sections 218.6 and 1194 and  
13 Civil Code sections 3288 and 3291 on all amounts claimed;

14 17. For attorney's fees and costs pursuant to Labor Code sections 218.5, 226, 1194,  
15 and 2802(c);

16 18. For any and other relief the Court deems just and proper.

17 DATED: May 7, 2020

**STRAUSS & STRAUSS, APC**



18  
19 By: \_\_\_\_\_

20 Michael A. Strauss  
21 Aris E. Karakalos  
22 Andrew C. Ellison  
23 Attorneys for Plaintiff  
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**DEMAND FOR JURY TRIAL**

Plaintiff Marlin McClure hereby demands a trial by jury.

DATED: May 7, 2020

**STRAUSS & STRAUSS, APC**



By:

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Michael A. Strauss  
Aris E. Karakalos  
Andrew C. Ellison  
Attorneys for Plaintiff

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