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VENTURA
SUPERIOR COURT
FILED

JUL 13 2015

MICHAEL D. PLANET
Executive Officer and Clerk

BY: _____, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

ERIC HERAUX, an individual,

Plaintiff,

v.

C & C BOATS, INC., a California
Corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 56-2015-00469765-CU-OE-VTA

CLASS ACTION

COMPLAINT FOR:

- 1) **MINIMUM WAGE VIOLATIONS;**
- 2) **PAY STUB VIOLATIONS;**
- 3) **UNFAIR COMPETITION;**
- 4) **FAILURE TO TIMELY PAY FINAL WAGES;**
- 5) **FAILURE TO PROVIDE LAWFUL MEAL PERIODS;**
and
- 6) **FAILURE TO PAY OVERTIME AND DOUBLETIME PREMIUM WAGES**

1 vessels that do not engage in foreign, intercoastal, or coastwise voyages who are or were paid
2 on an hourly basis and have worked hitches of 24 hours or more (hereinafter the "Putative
3 Class"). The Putative Class represents over 25 persons and is so numerous that the joinder of
4 each member of the putative class is impracticable.

5 8. There is a well-defined community of interest in the questions of law and fact
6 affecting the classes Plaintiff represents. The Putative Class members' claims against
7 Defendants involve questions of common or general interest, in that each was employed by
8 Defendants, and each was not paid wages owed based on the same failure to compensate for
9 all hours during which they were subject to the control of Defendants, including hours in
10 excess of their scheduled shifts and during meal periods. These questions are such that proof
11 of a state of facts common to the members of the Putative Class will entitle each member to
12 the relief requested in this complaint.

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

18 10. Plaintiff will fairly and adequately represent the interest of the Putative Class,
19 because Plaintiff is a member of the Putative Class, and Plaintiff's claims are typical of those
20 in the Putative Class.

21 11. Plaintiff is (and at all times relevant herein was) a California resident. He was a
22 maritime employee of Defendants. He worked primarily on the high seas off the California
23 coast on vessels that did not engage in foreign, intercoastal, or coastwise voyages. These
24 vessels were crew boats that serviced offshore oil platforms. Defendants paid Plaintiff on an
25 hourly basis. Plaintiff's "hitch" typically lasted fourteen days, meaning that he is on a crew
26 boat for fourteen straight days, followed by seven days on short, off duty. Defendant paid
27 Plaintiff for only 12 hours each day while on the crew boat. He did not receive any
28 compensation for the remaining 12 hours he spent each day on the crew boat.

1 **FIRST CAUSE OF ACTION**

2 ***Minimum Wage Violations***

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

4 **And The Putative Class Against All Defendants)**

5 12. Plaintiff incorporates by reference and re-alleges each and every one of the
6 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully
7 set forth herein.

8 13. This claim is an alternative to the Sixth Cause of Action stated herein for unpaid
9 overtime and doubletime premium wages.

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

17 15. Plaintiff and the Putative Class regularly worked hours for which they were not
18 paid the minimum wage. Defendants' minimum wage violations include, but are not limited
19 to, the failure to pay any wages whatsoever to Plaintiff and the Putative Class for 12 hours
20 each workday.

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

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

26 18. Labor Code section 218.6 states, "[I]n any action brought for the nonpayment of
27 wages, the court shall award interest on all due and unpaid wages at the rate of interest
28 specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the

1 date that the wages were due and payable as provided in Part 1 (commencing with Section
2 200) of Division 2.” Plaintiff seeks such interest on all minimum wages owed to them for the
3 three-year period measured backward from the date of the filing of the initial Complaint in this
4 matter.

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

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

9 WHEREFORE, Plaintiff and the Putative Class demand judgment against Defendants,
10 and each of them, as follows:

- 11 1. For minimum wages owed according to proof;
- 12 2. For prejudgment interest pursuant to Labor Code section 218.6 and Civil Code
13 sections 3288 and 3291 on all amounts claimed;
- 14 3. For liquidated damages in an amount equal to the unpaid minimum wages owed
15 under Labor Code section 1194.2;
- 16 4. For attorney’s fees and costs pursuant to Labor Code section 1194;
- 17 5. For costs of suit; and
- 18 6. For any other and further relief that the Court considers just and proper.

19 **SECOND CAUSE OF ACTION**

20 ***Pay Stub Violations***

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

22 **And The Putative Class Against All Defendants)**

23 27. Plaintiff incorporates by reference and re-alleges each and every one of the
24 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully
25 set forth herein.

26 28. California Labor Code section 226 provides:

27 Every employer shall, semimonthly or at the time of each payment
28 of wages, furnish each of his or her employees, either as a detachable part

1 of the check, draft, or voucher paying the employee's wages, or separately
2 when wages are paid by personal check or cash, an itemized statement in
3 writing showing (1) gross wages earned, (2) total hours worked by the
4 employee, except for any employee whose compensation is solely based
5 on a salary and who is exempt from payment of overtime under
6 subdivision (a) of Section 515 or any applicable order of the Industrial
7 Welfare Commission, (3) the number of piece-rate units earned and any
8 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
9 deductions, provided, that all deductions made on written orders of the
10 employee may be aggregated and shown as one item, (5) net wages
11 earned, (6) the inclusive dates of the period for which the employee is
12 paid, (7) the name of the employee and his or her social security number,
13 (8) the name and address of the legal entity that is the employer, and (9)
14 all applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the
16 employee.

17 29. In this case, Defendants have failed to provide such wage deduction statements
18 to Plaintiff and the Putative Class in that their wage deduction statements do not include,
19 without limitation, their gross wages earned, all hours worked, net wages earned, or all
20 applicable hourly rates in effect during the pay period, and the corresponding number of hours
21 worked at each hourly rate by the employee. Pursuant to Labor Code section 226(e), damages
22 are appropriate. At this time, Plaintiff believes and alleges that he and the Putative Class are
23 owed the maximum allowable penalty under section 226(e) because Defendants 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 30. Pursuant to Labor Code section 226(e), Plaintiff requests the court to award
Plaintiff's reasonable attorney's fees and costs incurred by Plaintiff in this action.

WHEREFORE, Plaintiff and the Putative Class demand judgment against Defendants,
and each of them, as follows:

1. For statutory penalties, pursuant to law;
2. For reasonable attorneys' fees pursuant Labor Code section 226;

1 3. For costs of suit; and

2 4. For any other and further relief that the Court considers just and proper.

3 **THIRD CAUSE OF ACTION**

4 ***Unfair Competition***

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

6 **And The Putative Class Against All Defendants)**

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

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

13 33. It is alleged that Defendants have willfully failed to pay Plaintiff and the Putative
14 Class, the state-mandated minimum, overtime, doubletime, and meal period premium wages
15 for all hours worked. The failure to pay such wages constitutes an unfair business practice
16 under California Business and Professions Code section 17200.

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

21 35. California Business and Professions Code section 17203, under the authority of
22 which a restitutionary order may be made, provides:

23
24 Any person who engages, has engaged, or proposes to engage in
25 unfair competition may be enjoined in any court of competent
26 jurisdiction. The court may make such orders or judgments,
27 including the appointment of a receiver, as may be necessary to
28 prevent the use of employment by any person of any practice
which constitutes unfair competition, as defined in this chapter, or
as may be necessary to restore to any person in interest any money
or property, real or personal, which may have been acquired by

1 means of such unfair competition. Any person may pursue
2 representative claims or relief on behalf of others only if the
3 claimant meets the standing requirements of Section 17204 and
4 complies with Section 282 of the Code of Civil Procedure, but
5 these limitations do not apply to claims brought under his chapter
6 by the Attorney General, or any district attorney, county counsel,
7 city attorney, or city prosecutor in this state.

8 36. As a result of the alleged aforesaid actions, Plaintiff and the Putative Class have
9 suffered injury in fact and have lost money as a result of such unfair competition.

10 37. In this case, it is requested that this Court order such restitution.

11 WHEREFORE, Plaintiff and the Putative Class demand judgment against Defendants,
12 and each of them, as follows:

13 1. For an equitable order, ordering Defendants to pay all Putative Class members
14 all wages, interest, and penalties they are owed;

15 2. For an appointment of a receiver to perform an accounting of all monies owed to
16 these employees;

17 3. For any and all injunctive relief this Court deems necessary pursuant to Business
18 and Professions Code section 17203;

19 4. For attorneys' fees and costs;

20 5. For prejudgment interest on all amounts owed pursuant to Civil Code sections
21 3288 and 3291; and

22 6. For any other and further relief that the Court considers proper.

23 **FOURTH CAUSE OF ACTION**

24 ***Failure To Timely Pay Wages At Termination***

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

26 **And The Putative Class Against All Defendants)**

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

39. Labor Code section 201 provides, in relevant part, "If an employer discharges an

1 employee, the wages earned and unpaid at the time of discharge are due and payable
2 immediately.” (Lab. Code, § 201, subd. (a).) Labor Code section 202 provides, in relevant
3 part, “If an employee not having a written contract for a definite period quits his or her
4 employment, his or her wages shall become due and payable not later than 72 hours thereafter,
5 unless the employee has given 72 hours previous notice of his or her intention to quit, in which
6 case the employee is entitled to his or her wages at the time of quitting.” (Lab. Code, § 202,
7 subd. (a).) Defendants did not pay immediately all wages earned and unpaid to Plaintiff and
8 the Putative Class upon discharge or resignation. Defendants have refused and continue to
9 refuse to pay said wages.

10 40. Pursuant to Labor Code section 203, Defendants have willfully failed to pay
11 without abatement or reduction, in accordance with Labor Code sections 201 and 202 all of the
12 minimum, overtime, meal period, and doubletime wages of the Plaintiff and the Putative Class,
13 as herein alleged. Defendants are aware that they owe the wages claimed by Plaintiff and the
14 Putative Class, yet Defendants willfully failed to make payment. As a result, Plaintiff seeks
15 wages and waiting-time penalties pursuant to Labor Code section 203 on behalf of himself and
16 the Putative Class. These penalties consist of up to 30 days of pay for Plaintiff and the
17 Putative Class at their regular rates of pay.

18 41. Plaintiff and the Putative Class have been available and ready to receive wages
19 owed to them.

20 42. Plaintiff and the Putative Class have never refused to receive any payment, nor
21 have they been absent from their regular places of residence.

22 43. Defendants’ failure to pay wages due and owing Plaintiff and the Putative Class,
23 as indicated in prior paragraphs, was willful; Defendants have knowingly refused to pay any
24 portion of the amount due and owing Plaintiff and the Putative Class.

25 WHEREFORE, Plaintiff and the Putative Class demand judgment against Defendants,
26 and each of them, as follows:

- 27 1. For waiting-time penalties under Labor Code section 203;
- 28 2. For costs of suit; and

1 not to provide these mandated periods.

2 52. Plaintiff seeks meal period premium wages owed to them for the three-year
3 period measured backward from the date of the filing of the initial Complaint in this matter.

4 53. The exact amount of meal period premium wages owed will not be fully
5 ascertained until discovery is completed. Until Defendants produce the necessary documents
6 for an accounting, Plaintiff is unable to determine the exact amount of meal period premium
7 wages owed.

8 21. Labor Code section 218.6 states, “[I]n any action brought for the nonpayment of
9 wages, the court shall award interest on all due and unpaid wages at the rate of interest
10 specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the
11 date that the wages were due and payable as provided in Part 1 (commencing with Section
12 200) of Division 2.” Plaintiff seeks such interest on all meal period premium wages owed to
13 them for the three-year period measured backward from the date of the filing of the initial
14 Complaint in this matter.

15 WHEREFORE, Plaintiff and the Putative Class demand judgment against Defendants,
16 and each of them, as follows:

- 17 1. For meal period premiums in an amount according to proof;
- 18 2. For costs of suit; and
- 19 3. For any other and further relief that the Court considers just and proper.

20 **SIXTH CAUSE OF ACTION**

21 ***Failure To Pay Overtime And Doubletime Premium Wages***

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

23 **And The Putative Class Against All Defendants)**

24 58. Plaintiff incorporates by reference and re-alleges each and every one of the
25 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully
26 set forth herein.

27 59. California law requires payment of overtime premium pay for all hours worked
28 by non-exempt employees in excess of eight in one day or 40 hours in one week and for the

1 first eight hours on the seventh-straight day of work in one workweek. (Lab. Code, § 510.) It
2 further requires payment of doubletime premium pay for all hours worked by non-exempt
3 employees in excess of twelve hours in one day or in excess of eight hours on the seventh-
4 straight day of work in a single workweek. (*Ibid.*)

5 60. Time during which a worker cannot leave his or her worksite, even sleeping
6 time, is considered hours worked under California law. (*Mendiola v. CPS Security Solutions,*
7 *Inc.* (Cal., Jan. 8, 2015) 15 Cal. Daily Op. Serv. 203; *Bono Enterprises, Inc. v. Bradshaw*
8 (1995) 32 Cal.App.4th 968, 974-975, *disapproved of on other grounds by Tidewater Marine*
9 *W., Inc. v. Bradshaw* (1996) 14 Cal.4th 557.)

10 61. Plaintiff and the Putative Class regularly worked hours for which they were not
11 paid the overtime or doubletime premium wages. Defendants' overtime and doubletime wage
12 violations include, but are not limited to, the failure to pay any wages whatsoever to Plaintiff
13 and the Putative Class for 12 hours each workday, which time lawfully was considered
14 overtime and/or doubletime hours worked.

15 62. Plaintiff and the Putative Class seek such overtime and doubletime premium
16 wages owed to them for the three-year period measured backward from the date of the filing of
17 the initial Complaint in this matter.

18 63. The exact amount of overtime and doubletime premium wages owed will not be
19 fully ascertained until discovery is completed. Until Defendants produce the necessary
20 documents for an accounting, Plaintiff is unable to determine the exact amount of overtime
21 and doubletime premium wages owed.

22 64. Labor Code section 218.6 states, "[I]n any action brought for the nonpayment of
23 wages, the court shall award interest on all due and unpaid wages at the rate of interest
24 specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the
25 date that the wages were due and payable as provided in Part 1 (commencing with Section
26 200) of Division 2." Plaintiff seeks such interest on all overtime and doubletime premium
27 wages owed to them for the three-year period measured backward from the date of the filing of
28 the initial Complaint in this matter.

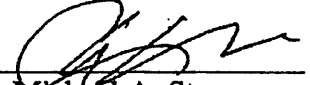
1 65. Pursuant to Labor Code section 1194, Plaintiff requests the Court to award
2 Plaintiff's reasonable attorney's fees and costs incurred in this action.

3 WHEREFORE, Plaintiff and the Putative Class demand judgment against Defendants,
4 and each of them, as follows:

- 5 1. For overtime and doubletime premium wages owed according to proof;
- 6 2. For prejudgment interest pursuant to Labor Code section 218.6 and Civil Code
7 sections 3288 and 3291 on all amounts claimed;
- 8 3. For attorney's fees and costs pursuant to Labor Code section 1194;
- 9 4. For costs of suit; and
- 10 5. For any other and further relief that the Court considers just and proper.

11 DATED: July 8, 2015

STRAUSS & PALAY, APC

12 By: 
13 Michael A. Strauss
14 Andrew C. Ellison
15 Attorneys for Plaintiff
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