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10 Attorneys for Defendants
C&C Boats, Inc.
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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF VENTURA**

14 ERIC HERAUX, an individual,

15 Plaintiffs,

16 vs.

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

18 Defendants.
19

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

**C&C BOATS INC.'S AMENDED ANSWER
TO THE COMPLAINT**

Dept.: 43

Judge: Hon. Kevin G. DeNoce

Complaint filed: July 13, 2015

Trial: none set yet

20 In lieu of opposing the demurrer currently on calendar Defendant C&C Boats, Inc.
21 ("Defendant") hereby files this amended answer to the complaint of Eric Heraux ("Plaintiff") as
22 follows:

23 **GENERAL DENIAL**

24 Pursuant to Code of Civil Procedure section 431.30(d), Defendant denies, generally and
25 specifically, each and every allegation contained in the complaint and denies that Plaintiff has
26 been or was injured or damaged as alleged, or at all.

27 In further answer to Plaintiff's complaint for damages, and the whole thereof, this
28 answering Defendant denies that Plaintiff has sustained, or will sustain, any injuries, damage or

1 loss by reason of any act, omission, or negligence, or any other conduct or absence thereof, on the
2 part of this answering Defendant or any agent, servants or employee of this answering Defendant,
3 and denies that Defendant was negligent, careless, reckless, acted unlawfully and/or was guilty of
4 any other wrongful act or omission whatsoever.

5 **AFFIRMATIVE DEFENSES**

6 In addition, Defendant alleges the following affirmative defenses in response to Plaintiff's
7 complaint. In asserting these defenses, Defendant does not expressly or impliedly assume the
8 burden of disproving any element of any claim for which Plaintiff bears the burden of proof as a
9 matter of law. Defendant is informed and believes and thereon alleges the following:

10 **FIRST AFFIRMATIVE DEFENSE**

11 1. Plaintiff's complaint as a whole and each cause of action therein fail to state facts
12 sufficient to constitute a cause of action against Defendant upon which relief may be granted.

13 **SECOND AFFIRMATIVE DEFENSE**

14 2. Plaintiff's complaint as a whole and each cause of action therein are barred in
15 whole or in part by the applicable statutes of limitation, including but not limited to Code of Civil
16 Procedure sections 338 and 340(a).

17 **THIRD AFFIRMATIVE DEFENSE**

18 3. Plaintiff's complaint is barred to the extent Plaintiff or the alleged putative class
19 members voluntarily waived their right to take the meal periods as provided. Plaintiff and the
20 putative class worked on board boats and they were required to remain on board during the meal
21 period. In such circumstances, the meal period must be and was paid even where the employee is
22 relieved of all work duties during the meal period as required by *Bono Enterprises, Inc. v.*
23 *Bradshaw* (1995) 32 Cal.App.4th 968.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 4. To the extent Plaintiff's complaint seeks statutory penalties for alleged willful
26 failure to comply with the requirements of the Labor Code, such penalties are barred or must be
27 reduced because Defendant did not willfully violate the requirements of Labor Code sections 201,
28 202 and 203, or any other applicable Labor Code section, had reasonable grounds for believing

1 that it was in compliance with all applicable laws, and a good faith dispute exists concerning such
2 alleged violations. As permitted by *Seymore v. Metson Marine, Inc.* (2011) 194 Cal.App.4th 361,
3 plaintiff and the putative class waived their right to compensated sleep time. Sleeping facilities
4 were provided for employees on the ships, and it was exceptionally rare for their sleep to be
5 interrupted by an emergency. An implied agreement between the parties that plaintiffs would not
6 be compensated for eight hours of sleep time so long as their sleep was not interrupted. Prior to
7 their employment, plaintiffs received a handbook that set forth C&C Boats' compensation
8 policies, including that employees would not be compensated for eight hours of "off-duty" sleep
9 time each day. Plaintiffs were aware of and worked for C&C Boats pursuant to the pay structure
10 set forth in its employee handbook.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 5. Plaintiff's complaint as a whole and each cause of action therein is barred because
13 Plaintiff and the alleged putative class members are estopped by their own conduct to claim any
14 right to damages or any relief against Defendant. As permitted by *Seymore v. Metson Marine, Inc.*
15 (2011) 194 Cal.App.4th 361, plaintiff and the putative class waived their right to compensated
16 sleep time. Sleeping facilities were provided for employees on the ships, and it was exceptionally
17 rare for their sleep to be interrupted by an emergency. An implied agreement between the parties
18 that plaintiffs would not be compensated for eight hours of sleep time so long as their sleep was
19 not interrupted. Prior to their employment, plaintiffs received a handbook that set forth C&C
20 Boats' compensation policies, including that employees would not be compensated for eight hours
21 of "off-duty" sleep time each day. Plaintiffs were aware of and worked for C&C Boats pursuant
22 to the pay structure set forth in its employee handbook.

23 **SIXTH AFFIRMATIVE DEFENSE**

24 6. Plaintiff's complaint as a whole and each cause of action therein is barred by the
25 doctrine of waiver. Plaintiff and the putative class worked on board boats and they were required
26 to remain on board during the meal period. In such circumstances, the meal period must be and
27 was paid even where the employee is relieved of all work duties during the meal period as
28 required by *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968. In addition, plaintiff

1 and the putative class waived their right to compensated sleep time. Sleeping facilities were
2 provided for employees on the ships, and it was exceptionally rare for their sleep to be interrupted
3 by an emergency. An implied agreement between the parties that plaintiffs would not be
4 compensated for eight hours of sleep time so long as their sleep was not interrupted. Prior to their
5 employment, plaintiffs received a handbook that set forth C&C Boats' compensation policies,
6 including that employees would not be compensated for eight hours of "off-duty" sleep time each
7 day. Plaintiffs were aware of and worked for C&C Boats pursuant to the pay structure set forth in
8 its employee handbook.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 7. Defendant alleges that, even assuming *arguendo* Plaintiff and/or the alleged
11 putative class members were not provided with a proper itemized statement of wages and
12 deductions, Plaintiff and the putative class members are not entitled to recover damages because
13 Defendant's alleged failure to comply with California Labor Code section 226(a) was not a
14 "knowing and intentional failure" under California Labor Code section 226(e). As permitted by
15 *Seymore v. Metson Marine, Inc.* (2011) 194 Cal.App.4th 361, plaintiff and the putative class
16 waived their right to compensated sleep time. Sleeping facilities were provided for employees on
17 the ships, and it was exceptionally rare for their sleep to be interrupted by an emergency. An
18 implied agreement between the parties that plaintiffs would not be compensated for eight hours of
19 sleep time so long as their sleep was not interrupted. Prior to their employment, plaintiffs received
20 a handbook that set forth C&C Boats' compensation policies, including that employees would not
21 be compensated for eight hours of "off-duty" sleep time each day. Plaintiffs were aware of and
22 worked for C&C Boats pursuant to the pay structure set forth in its employee handbook.

23 **EIGHTH AFFIRMATIVE DEFENSE**

24 8. Defendant alleges that, even assuming *arguendo* Plaintiff and/or the alleged
25 putative class members were not provided with a proper itemized statement of wages and
26 deductions, Plaintiff and the putative class members are not entitled to recover damages because
27 they did not suffer any injury.

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PRAYER

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff takes nothing by his complaint;
2. That the complaint and each cause of action be dismissed in its entirety with prejudice;
3. That Plaintiff be denied each and every demand and prayer for relief contained in the complaint;
4. For costs of suit incurred herein, including reasonable attorneys' fees; and
5. For such other and further relief as the Court deems just and equitable.

Dated: November 30, 2015

**SCHWARTZ SEMERDJIAN
CAULEY & MOOT LLP *and***

LIGHTGABLER LLP

By: 

Sarah B. Evans

Attorneys for C&C Boats, Inc.

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14 **PROOF OF SERVICE**

15 **Eric Heraux v. C& C Boats, Inc..**
16 **Ventura Superior Court Case Number 56-2015-00469765-CU-OE-VTA**

17 I, Marci Bratton, declare that I am employed in the County of Ventura, State of
18 California. I am over the age of 18 and not a party to the within action. My business
19 address is 760 Paseo Camarillo, Suite 300, Camarillo, California 93010.

20 On November 30, 2015, I served the foregoing document(s):

21 **C&C BOATS INC.'S AMENDED ANSWER TO THE COMPLAINT**

22 [X] (BY OVERNIGHT) I enclosed the documents in an envelope or
23 package provided by an overnight delivery carrier and addressed to the
24 persons at the addresses below. I placed the envelope or package for
25 collection and overnight delivery at an office or a regularly utilized drop box
26 of the overnight delivery carrier.

27 Michael A. Strauss, Esq.
28 STRAUSS & PALAY, APC
121 N. Fir Street, Suite F
Ventura, CA 93001

Attorneys for Eric Heraux and the Putative Class

Telephone: 805.641.6600
Facsimile: 805.641.6607
Email: mike@palaylaw.com

29 I declare under penalty of perjury under the laws of the State of California
30 that the above is true and correct.

31 Executed on November 30, 2015, at Camarillo, California.

32 

33 Marci Bratton