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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 KYLE JENSEN, an individual, for himself  
and those similarly situated,

12  
13 Plaintiff,

14 v.

15 SECORP INDUSTRIES, a Louisiana  
16 partnership; and DOES 1 through 100,  
17 inclusive,

18 Defendants.  
19  
20

Case No. 2:18-CV-02890-rgk-gjs

**PUTATIVE CLASS ACTION**

**SECOND AMENDED COMPLAINT**

21 **TO ALL INTERESTED PARTIES HEREIN AND THEIR ATTORNEYS:**

22 COMES NOW, Plaintiff KYLE JENSEN (“Plaintiff”), individually and on behalf of all  
23 other similarly situated current and former employees of Defendant SECORP INDUSTRIES, a  
24 Louisiana Partnership (herein “Secorp”) and Does 1 through 100, inclusive (herein, Secorp and  
25 Does 1 through 100, inclusive, are collectively referred to as “Defendants”), and each of them,  
26 for legal relief to redress unlawful violations of Plaintiff’s rights under California law and the  
27 rights of those similarly situated. Plaintiff bring his claims against Defendants as a California  
28 statewide class action pursuant to Federal Rules of Civil Procedure, Rule 23.

1 **INTRODUCTION**

2 1. California wage-and-hour laws apply within its territorial boundaries. *Sullivan v.*  
3 *Oracle Corp.*, 51 Cal.4th 1191, 1197. California’s wage-and-hour laws apply to “wage earners  
4 of California” when they perform work in its coastal waters, including waters outside the state’s  
5 territorial boundaries. *California Tidewater Marine W., Inc. v. Bradshaw*, 14 Cal. 4th 557, 579  
6 (1996). Those same laws apply on oil platforms on the Outer Continental Shelf off the coast of  
7 California. *Newton v. Parker Drilling Mgmt. Servs., Ltd.*, --- F.3d ---, 2018 WL 706490, \*15  
8 (9th Cir. Feb. 5, 2018).

9 2. Defendants provide services to drilling operations off the California coast,  
10 including on fixed oil platforms on the Outer Continental Shelf. Defendants employ hourly  
11 employees who work on these oil platforms and travel between them when necessary.  
12 Defendants mandate that these hourly workers perform their work in “hitches,” which are  
13 multiple-day shifts (typically seven days in length) that begin and end in California and are also  
14 spent either on vessels traveling to, back from, or between oil platforms or on the oil platforms  
15 themselves.

16 3. California Labor Code section 500, subdivision (b) defines a “workweek” as “any  
17 seven consecutive days, starting with the same calendar day each week.” It goes on to explain  
18 that a “‘Workweek’ is a fixed and regularly recurring period of 168 hours, seven consecutive  
19 24-hour periods.”

20 4. Defendants have intentionally arranged for the seven-day hitches to span from  
21 Wednesday morning to the following Wednesday morning, but have defined the work-week for  
22 their employees working those hitches from Monday through Sunday, thereby reducing the  
23 number of weekly overtime hours worked by the hitch employees. There is no bona fide  
24 business reason for setting the “work week” in this way, other than to evade California’s  
25 overtime laws. Defendants have been intentionally skirting California overtime laws by  
26 designating an artificial workweek that does not correspond with the period actually worked.

27 5. The employees’ hitches begin on California soil, where the employees wait for a  
28 vessel to transport them to an oil platform. While they wait, Defendants mandate that the

1 employees attend safety briefings. The employees board their vessel and travel to an oil platform  
2 on the Outer Continental Shelf, a trip that can last between 30 minutes to two hours, depending  
3 on which platform they will perform their duties.

4 6. Some employees travel to and back from their designated platform by helicopter.  
5 The process is similar to trips aboard a vessel. The primary difference is the length of the trip.

6 7. Regardless of which method of travel the employees take to their platform, it is  
7 impossible for employees to take their own vessel and/or helicopter to reach the platform. They  
8 must use the transportation provided by Defendants.

9 8. Some employees travel between platforms during their shifts. All of their voyages  
10 between platforms take place in California coastal waters.

11 9. During these hourly employees' hitches, they cannot realistically leave their  
12 vessel, helicopter, or oil platform. Their confinement ends only upon their return to California  
13 soil, when they disembark from the vessel or helicopter.

14 10. California law mandates the payment of wages for every hour worked. *Armenta*  
15 *v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005). California employers must also pay  
16 overtime premium wages for all hours worked in excess of eight in one day or over 40 in one  
17 workweek and doubletime premium wages for all hours worked in excess of 12 in one day. Lab.  
18 Code § 510(a).

19 11. California law defines as "hours worked" as "the time during which an employee  
20 is subject to the control of an employer, and includes all the time the employee is suffered or  
21 permitted to work, whether or not required to do so." 8 Cal. Code Regs. § 11160(2)(J). "An  
22 employee who is subject to an employer's control does not have to be working during that time  
23 to be compensated." *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 592 (2000). "When an  
24 employer directs, commands or restrains an employee from leaving the work place ... and thus  
25 prevents the employee from using the time effectively for his or her own purposes, that employee  
26 remains subject to the employer's control. According to [the definition of hours worked], that  
27 employee must be paid." *Id.* at 583. An employer cannot exclude sleep time for employees  
28 working shifts of 24 hours. *Mendiola v. CPS Sec. Sols., Inc.*, 60 Cal. 4th 833, 848-49 (2015).

1 12. Defendants violated these key principles of California wage-and-hour law.  
2 Defendants' hourly employees were restrained to their workplace for the entirety of their hitches.  
3 They could not use the time effectively for their own purposes and always remained subject to  
4 Defendants' control. Defendants, in contravention of California law, maintained a policy and  
5 practice of paying their hourly employees for twelve hours each day. "Defendants maintained  
6 a policy whereby it did not pay their hourly employees for controlled stand-by time, typically  
7 time spent on the platform between 6 p.m. and 6 a.m. (and relieving employees worked the 6  
8 a.m. to 6 p.m. shift), even though this entire time was on-call time and even though their hourly  
9 employees were deprived several freedoms during this time. In short, Defendants violated  
10 California law by not treating as compensable hours worked every hour their hourly employees  
11 were restrained to the workplace, i.e., on Defendants' vessels and platforms, including sleeping  
12 time, and spent on California soil.

13 13. Plaintiff is one of the hourly employees impacted by Defendants' illegal wage-  
14 and-hour policies. Plaintiff is a "wage earner of California" in that he resides in California,  
15 receives pay in California, and works exclusively in California and in its coastal waters. He  
16 seeks relief on a collective and class-wide basis challenging the unlawful business practices  
17 engaged in by Defendants of failing to properly compensate Plaintiff and all others similarly  
18 situated for all wages owed, denied meal and rest periods, and various other related penalties  
19 under California Labor Code. Plaintiff also seeks equitable relief under the California Unfair  
20 Competition Law, Business and Professions Code section 17200 *et seq.* (the "UCL"), which is  
21 predicated on Defendants' violation of California laws regarding the payment of wages. The  
22 UCL claim seeks to obtain disgorgement and restitution of all ill-gotten gains from the unlawful  
23 conduct alleged herein and an injunction preventing Defendants from continuing to violate  
24 California law.

25 **THE PARTIES**

26 14. At all times herein mentioned, Plaintiff Kyle Jensen was an employee of  
27 Defendants, working off the coast of and in the State of California, within the last four (4) years  
28 as an offshore paramedic and H2S Gas Tech.

1 15. At all times herein mentioned and relevant, Plaintiff was and is an individual  
2 residing in the State of California, in the County of Ventura.

3 16. At all times herein mentioned, Plaintiff is informed and believes and, based on  
4 such information and belief, thereon alleges that Secorp, is a Louisiana Partnership that does  
5 business and maintains an office in the County of Ventura, California, located at 2550 Eastman  
6 Ave, No. 3, Ventura, California 93003.

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

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

15 **PLAINTIFF**

16 19. Plaintiff was required to report to Goleta Parking Lot at 6:45 a.m. on the  
17 Wednesday his hitch was scheduled to begin. Thereafter, Plaintiff and his co-workers would  
18 attend a safety meeting for approximately 10-15 minutes. Thereafter, Plaintiff and his co-  
19 workers would be shuttled to the Goleta Pier where they would board a boat to their respective  
20 platforms. Plaintiff's boat typically departed at 7:15 a.m., and arrived at platform Hondo at  
21 approximately 10 a.m. Plaintiff would immediately begin working on said platform until 6 p.m.  
22 Between 6 p.m. and until 6 a.m. the next day (when he typically began his next day's shift)  
23 Plaintiff would be on controlled stand-by. During this time Plaintiff was required to respond to  
24 any alarms and other medical emergencies and to be ready to muster at the command of his  
25 employer.

26 20. Plaintiff would typically end his hitch on a Wednesday, one week after his hitch  
27 began. Plaintiff would begin working on the platform at 6 a.m. the last day of each hitch.  
28 Plaintiff would board a boat at approximately 8:30 a.m. and return to mainland California

1 (Goleta Pier). Thereafter, Plaintiff would be shuttled back to his car at the Goleta Parking Lot,  
2 where his hitch would formally terminate. Defendants paid Plaintiff for 4 hours of pay at his  
3 regular rate on the last day of each hitch – to account for 2 hours of “work” in the morning, and  
4 another 2 hours of travel time back to mainland California.

5 21. Plaintiff is required to submit time sheets for review by his supervisors on the  
6 platform and Defendants on Sunday evening, mid-hitch. Plaintiff is required to submit time  
7 sheets for review by his supervisors on the platform and Defendants once again on Wednesday  
8 before he departs from the platform at the end of each hitch. Plaintiff’s “work week” as defined  
9 by Defendants is Monday through Sunday, even though Plaintiff’s work week is actually  
10 Wednesday through Wednesday. This is a policy implemented by Defendants to intentionally  
11 reduce the overtime they are required to pay under California law.

12 **VENUE AND JURISDICTION**

13 22. Venue is proper in this Court pursuant to 28 U.S.C. §§ 84(c)(2) and 1391, as well  
14 as 28 U.S.C. § 1441(a), because this is the judicial district and division of this Court in which a  
15 substantial part of the events or omissions giving rise to Plaintiff’s claims occurred and where  
16 Plaintiff resides.

17 23. Further, Defendant resides in Ventura County for purposes of venue pursuant to  
18 28 U.S.C. § 1391(c)(2) at 2550 Eastman Ave., No. 3, Ventura, California 93003, which is within  
19 the Western Division of the Central District.

20 24. This Court has federal question jurisdiction under 28 U.S.C. § 1331, and the Outer  
21 Continental Shelf Lands Act (“OCSLA,” 43 U.S.C. § 1331, *et seq.*), which specifies that United  
22 States district courts shall have jurisdiction over all “cases and controversies arising out of, or  
23 in connection with...any operation conducted on the outer Continental Shelf which involves  
24 exploration, development, or production of the minerals, of the subsoil and seabed of the outer  
25 Continental Shelf, or which involves rights to such minerals....Proceedings with respect to any  
26 such case or controversy may be instituted in the judicial district in which any defendant resides  
27 or may be found....” 43 U.S.C. § 1349(b)(1). The “OCSLA explicitly provides that district  
28 courts have federal question jurisdiction over claims occurring on the Outer Continental Shelf.”

1 *Barker v. Hercules Offshore, Inc.*, 713 F.3d 208, 220 (5th Cir. 2013) (internal citations omitted).

2 **CLASS ACTION ALLEGATIONS**

3 25. Plaintiff brings the causes of action stated herein on his own behalf and on behalf  
4 of all persons similarly situated. The class consists of all hourly and otherwise non-exempt,  
5 California-based employees of Defendants, who, at any time within four years from the date of  
6 filing of this lawsuit, worked on oil platforms off of the California coast for periods of 24 hours  
7 or more (hereinafter the “Putative Class”).

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

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

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

23 29. Plaintiff will fairly and adequately represent the interest of the Putative Class,  
24 because Plaintiff is a member of the Putative Class, and Plaintiff’s claims are typical of those in  
25 the Putative Class.

26 30. Plaintiff is currently employed by Defendants, and assigned to work on several  
27 platforms off the coast of California, but is assigned to stay overnight during his hitches on  
28 platform Hondo, also located off of California’s coast in Santa Barbara County.

1           31. Plaintiff was employed by Defendants during the four years preceding the filing  
2 of the Complaint. He worked primarily as an offshore paramedic and H2 Gas Tech.

3           32. Plaintiff was at all relevant times herein alleged paid an hourly rate.

4           33. During the employment with Defendants, Plaintiff sometimes worked on an oil  
5 platform (or platforms) in the California coastal waters, performing non-exempt work.

6           34. During the employment with Defendants, Plaintiff sometimes worked onshore in  
7 California, performing non-exempt work. Each of Plaintiff's hitches (7-day periods of work)  
8 began onshore in California and ended onshore in California.

9           35. During the employment with Defendants, Plaintiff's offshore shifts typically  
10 lasted seven days. He typically received pay for only 12 hours each day while on the oil  
11 platforms, but nothing for the remaining 12 hours of restricted stand-by which were also spent  
12 on the platforms.

13           36. Plaintiff did not receive compensation for all hours worked on the platform.

14           37. Plaintiff could not reasonably leave the platform during his seven-day shift.

15           38. Plaintiff could not leave the platforms for his meal or rest periods.

16           39. As a consequence of not being able to leave the platform for his meal or rest  
17 periods, he would remain subject to Defendant's control, "on duty," and "on call" as those terms  
18 are defined under California law. All time subject to an employer's control is compensable, and  
19 on-duty and on-call meal and rest periods are not permitted under California law.

20           40. For each on duty meal or rest period, a California employer is required to pay its  
21 employees one extra hour of pay at their normal hourly rate (known as a meal or rest period  
22 "premium" wage).

23           41. Defendants did not pay Plaintiff one extra hour of pay for each on duty meal  
24 period. Nor did Defendants pay Plaintiff an extra hour of pay for each on duty rest period, as  
25 required by California law.

26           42. Plaintiff was denied accurate paycheck stubs, which lacked, among other things  
27 required under California law, the requisite amount of overtime/doubletime, meal period, and  
28 rest period premium wages earned each pay period.



1 43. As a condition of his employment, Plaintiff was required to wear safety gear/attire  
2 while on the platforms. Defendants did not furnish Plaintiff with such safety gear/attire and did  
3 not reimburse him for said business expenses which he incurred.

4 **FIRST CAUSE OF ACTION**

5 ***Failure To Pay California Overtime And Doubletime Premium Wages***

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

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

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

11 45. California law requires payment of overtime premium pay for all hours worked  
12 by non-exempt employees in excess of eight in one day or 40 hours in one week and for the first  
13 eight hours on the seventh-straight day of work in one workweek. Lab. Code § 510; 8 Cal. Code  
14 Regs. § 11160, subd. 3(A). It further requires payment of doubletime premium pay for all hours  
15 worked by non-exempt employees in excess of twelve hours in one day or in excess of eight  
16 hours on the seventh-straight day of work in a single workweek. Lab. Code § 510; 8 Cal. Code  
17 Regs. § 11160, subd. 3(A).

18 46. Plaintiff and the Putative Class regularly worked hours for which they were not  
19 paid the overtime or doubletime premium wages under California law. Defendants violated the  
20 California Labor Code's overtime and doubletime provisions in numerous respects, including  
21 but not limited to the following:

22 a. Failing to compensate Plaintiff and the Putative Class at the proper  
23 overtime rate for all hours worked in excess of eight (8) in a workday, forty (40) in a workweek,  
24 or on the seventh (7th) straight day in a workweek or at the proper doubletime rate for all hours  
25 worked in excess of twelve (12) in a workday or in excess of eight (8) on the seventh (7th)  
26 straight day of work in a workweek for the following categories of hours worked:

27 i. Time spent on the employer's premises due to the reasonable  
28 inability to leave;

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

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

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

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

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

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

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

16                   i.       Compensation for performance-related bonuses;

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

18                   iii.       Compensation for lodging provided by the employer.

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

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

1 49. Plaintiff seeks interest on all overtime and doubletime premium wages owed to  
2 them for the three-year period measured backward from the date of the filing of the initial  
3 Complaint in this matter pursuant to Labor Code section 1194. (In the Unfair Competition cause  
4 of action stated herein and brought pursuant to the UCL, Plaintiff and the Putative Class seek  
5 interest on all unpaid overtime and doubletime wages due for the four-year period measured  
6 backward from the date of the filing of the initial Complaint in this matter.)

7 50. 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 **SECOND CAUSE OF ACTION**

10 ***Failure To Provide Lawful Meal and Rest Periods***

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

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

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

16 52. California law provides that no employer shall employ any person for a work  
17 period of more than five hours without a meal period of not less than 30 minutes. Lab. Code §§  
18 226.7, 512, 8 Cal. Code Regs. § 11160, subd. 10.

19 53. Employees are entitled to "a paid 10-minute rest period per four hours of work."  
20 *Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864, 870; 8 Cal. Code Regs. § 11050, subd.  
21 12(A). "State law prohibits on-duty and on-call rest periods. During required rest periods,  
22 employers must relieve their employees of all duties and relinquish any control over how  
23 employees spend their break time." *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 385-386  
24 (2016).

25 54. "If an employer fails to provide an employee a ... meal ... period in accordance  
26 with a state law..., the employer shall pay the employee one additional hour of pay at the  
27 employee's regular rate of compensation for each workday that the ... meal ... period is not  
28 provided." Lab. Code § 226.7; 8 Cal. Code Regs. § 11160, subd. 10.

1           55. “If an employer fails to provide an employee a ... rest ... period in accordance  
2 with a state law..., the employer shall pay the employee one additional hour of pay at the  
3 employee’s regular rate of compensation for each workday that the ... rest ... period is not  
4 provided.” Lab. Code § 226.7(c); 8 Cal. Code Regs. § 11160, subd. 10.

5           56. Defendants have intentionally and improperly denied meal and rest periods to  
6 Plaintiff and the Putative Class in violation of Labor Code sections 226.7 and 512 and 8 Cal.  
7 Code Regs. § 11160, subd. 10.

8           57. At all times relevant hereto, Plaintiff and the other members of the Putative Class  
9 have worked more than five hours in a workday (and often more than ten, fifteen hours, and  
10 twenty hours). At all relevant times hereto, Defendants have failed to provide meal periods for  
11 every five-hour work period and to provide rest periods for every four hours of work as required  
12 by California law, because Plaintiff and the Putative Class could not reasonably leave the work  
13 premises and were not relieved of all duty and subject to their employer’s control for their meal  
14 and rest periods.

15           58. Plaintiff and the other members of the Putative Class are informed and believe,  
16 and based upon that information and belief allege, that Defendants know or should have known  
17 that Plaintiff and the Putative Class were entitled to lawful meal and rest periods but purposely  
18 elected not to provide these mandated periods.

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

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



1 Plaintiffs and the Putative Class to purchase and use their own safety gear/attire for work-related  
2 purposes, without reimbursement, and by failure to fully provide reimbursement for the purchase  
3 of necessary work-related apparel. By this and similar acts, the Defendants have violated section  
4 2802.

5 66. Plaintiff and those similarly situated employees of Defendants incurred substantial  
6 expenses in order to perform their jobs and for the benefit of the defendant employers, which  
7 were not fully reimbursed.

8 67. Plaintiffs have sustained economic damages and losses in the amount of the actual  
9 costs of purchases made for the necessary discharge of their duties, less any “vouchers.”

10 68. California Labor Code section 2802(c) provides that the employee may recover  
11 all reasonable costs, including attorneys’ fees, for enforcing the employee’s right under this  
12 section. Plaintiffs have incurred costs and attorneys’ fees, and will continue to incur costs and  
13 attorneys’ fees to enforce their rights and the rights of similarly situated employees of  
14 Defendants’ under section 2802. Plaintiffs are entitled to recover their reasonable attorneys’  
15 fees and costs in an exact amount to be proven at trial.

16 **FOURTH CAUSE OF ACTION**

17 ***Unfair Competition***

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

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

20 69. Plaintiff incorporates by reference and re-alleges each and every one of the  
21 allegations contained in the preceding and foregoing paragraphs of this Complaint as though  
22 fully set forth herein.

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

26 71. It is alleged that Defendants have willfully failed to pay Plaintiff and the Putative  
27 Class, overtime, doubletime, meal, and rest period premium wages under California law or to  
28 lawfully reimburse Plaintiff and the Putative Class for their work-related expenditures, as

1 alleged throughout this Complaint. The failures to pay such premium wages and expense  
2 reimbursement constitute unfair business practices under California Business and Professions  
3 Code section 17200.

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

8 73. California Business and Professions Code section 17203, under the authority of  
9 which a restitutionary order may be made, provides:

10 Any person who engages, has engaged, or proposes to engage in  
11 unfair competition may be enjoined in any court of competent  
12 jurisdiction. The court may make such orders or judgments,  
13 including the appointment of a receiver, as may be necessary to  
14 prevent the use of employment by any person of any practice which  
15 constitutes unfair competition, as defined in this chapter, or as may  
16 be necessary to restore to any person in interest any money or  
17 property, real or personal, which may have been acquired by means  
18 of such unfair competition. Any person may pursue representative  
19 claims or relief on behalf of others only if the claimant meets the  
20 standing requirements of Section 17204 and complies with Section  
21 382 of the Code of Civil Procedure, but these limitations do not  
22 apply to claims brought under his chapter by the Attorney General,  
23 or any district attorney, county counsel, city attorney, or city  
24 prosecutor in this state.

25 Bus. & Prof. Code § 17203.

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

75. Plaintiff seeks unreimbursed expenses owed to him and the Putative Class for the  
three-year period measured backward from the date of the filing of the initial Complaint in this  
matter. (In the Unfair Competition cause of action stated herein and brought pursuant to the  
UCL, Plaintiff and the Putative Class seek restitution of the unreimbursed business expenses

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

3 76. Plaintiff also seeks an injunction preventing Defendants from continuing to violate  
4 California's wage-and-hour laws.

5 **FIFTH CAUSE OF ACTION**

6 ***Pay Stub Violations***

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

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

9 77. Plaintiffs incorporate 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 78. California Labor Code section 226 provides, in relevant part:

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

26 Lab. Code § 226(a).

27 79. In this case, Defendants have failed to provide such wage deduction statements to  
28



1 Plaintiff and the Putative Class in that their wage deduction statements do not include, without  
2 limitation, their gross wages earned, all hours worked, net wages earned, or all applicable hourly  
3 rates in effect during the pay period, and the corresponding number of hours worked at each  
4 hourly rate by the employee.

5 80. Pursuant to Labor Code section 226(e), damages are appropriate. At this time,  
6 Plaintiff believes and alleges that he and the Putative Class are owed the maximum allowable  
7 penalty under section 226(e) because Defendants failed to provide adequate paycheck stubs.

8 81. However, the exact amount of damages under Labor Code section 226(e) will not  
9 be fully ascertained until discovery is completed. Until Defendants produce the necessary  
10 documents for an accounting, Plaintiff will be unable to determine the exact amount of damages  
11 under Labor Code section 226(e).

12 82. Pursuant to Labor Code section 226(e), Plaintiff requests the Court to award  
13 Plaintiffs' reasonable attorney's fees and costs incurred by Plaintiffs in this action.

14 **SEVENTH CAUSE OF ACTION**

15 ***Civil Penalties Under the Private Attorneys General Act of 2004***

16 **(Action Brought by Plaintiff on Behalf of Himself**

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

18 83. Plaintiffs incorporate by reference and re-alleges each and every one of the  
19 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set  
20 forth herein.

21 84. It is alleged that Defendants intentionally denied Plaintiff and his similarly  
22 situated co-workers wages that should have been paid and have violated Labor Code provisions.

23 85. Pursuant to Labor Code sections 2698 *et seq.* ("PAGA"), Plaintiff is entitled to  
24 recover civil penalties on behalf of himself and other persons who are or were employed by the  
25 alleged violator and against whom one or more of the alleged violations was committed.  
26 Plaintiff is therefore pursuing civil penalties for violations of the Labor Code sections set forth  
27 herein.

28 86. One or more of the alleged violations set forth herein was committed against

1 Plaintiff, and Plaintiff is therefore an “aggrieved employee” under Labor Code Section 2699(c),  
2 which provides in relevant part, “(c) For purposes of this part, “aggrieved employee” means any  
3 person who was employed by the alleged violator and against whom one or more of the alleged  
4 violations was committed.”

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

8 88. Labor Code section 201 requires immediate payment of all wages owed at the  
9 termination of employment. It is alleged that within the last year, Defendants’ employees in  
10 California have been terminated and have not received all wages owed at their termination.  
11 There is no civil penalty associated with violation of section 201, but Plaintiff seeks civil  
12 penalties on behalf of himself and all others similarly situated under Labor Code section 2699,  
13 subd. (f).

14 89. Labor Code section 202 requires payment of all wages owed within 72 hours of  
15 the resignation of an employee, unless the employee gives more than 72-hours’ notice, in which  
16 case wages are owed at the employee’s resignation. It is alleged that within the last year,  
17 Defendants’ employees in California have resigned and have not received all overtime premium  
18 pay owed in a timely fashion after their resignation. There is no civil penalty associated with  
19 violation of section 202, but Plaintiff seeks civil penalties on behalf of himself and all others  
20 similarly situated under Labor Code section 2699, subd. (f).

21 90. Labor Code section 203 provides that “[i]f an employer willfully fails to pay,  
22 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and  
23 205.5, any wages of an employee who is discharged or who quits, the wages of the employee  
24 shall continue as a penalty from the due date thereof at the same rate until paid or until an action  
25 therefor is commenced; but the wages shall not continue for more than 30 days.” For violation  
26 of this provision, Plaintiff seeks civil penalties on behalf of himself and all other similarly  
27 situated under Labor Code section 256.

28 91. Labor Code section 204 makes wages due no less frequently than twice a month

1 for non-exempt employees for work performed each pay period. Defendants have violated  
2 section 204 with respect to Plaintiff and his similarly situated coworkers by not paying them all  
3 wages due for work performed each pay period. Plaintiff seeks civil penalties on behalf of  
4 himself and all other similarly situated under Labor Code section 210.

5 92. Labor Code section 219 provides that an employer may not circumvent by way of  
6 private agreement the requirements of the wage-and-hour laws of the Labor Code. To the extent  
7 that Defendants will argue that these employees agreed to forfeit their travel time and/or other  
8 wages, Defendants will have violated Labor Code section 219. There is no civil penalty  
9 associated with violation of section 219, but Plaintiff seeks civil penalties on behalf of himself  
10 and all others similarly situated under Labor Code section 2699, subd. (f).

11 93. Labor Code section 226, subdivision (a), requires a California employer to include  
12 very specific information on an employee's paycheck stub. The required information includes  
13 the total number of overtime hours worked and the correct rates of pay. Lab. Code § 226(a).  
14 Subdivision (e) sets forth statutory penalties for the violation of section 226(a). Plaintiff seeks  
15 to recover said penalties on behalf of himself and all others similarly situated.

16 94. Labor Code section 226.3 sets forth civil penalties for violation of section 226,  
17 subdivision (a). Plaintiff seeks said penalties against Defendants on behalf of himself and all  
18 other similarly situated employees for violation of section 226, subdivision (a).

19 95. Labor Code section 226.7 provides that an employer must compensate a non-  
20 exempt employee with one hour of pay for each required meal period that it does not provide.  
21 Defendants violated this statute by not paying this meal period premium pay to Plaintiff and his  
22 co-workers when they were not provided with 30-minute, off-duty meal periods.

23 96. Labor Code section 510 provides that an employer shall pay overtime premium  
24 wages to non-exempt employees who work over eight hours in a workday or over 40 hours in a  
25 workweek. Defendants violated Labor Code section 510 by not paying overtime premium  
26 wages to non-exempt employees who worked over eight hours in a day and Labor Code section  
27 510.

28 //

1           97. Labor Code section 512 provides that an employer shall provide its non-exempt  
2 employees with one off-duty meal period for each five-hour work period. Defendants violated  
3 Labor Code section 512 by not providing off-duty meal periods to its non-exempt employees  
4 for every five-hour work period.

5           98. Labor Code section 558 provides for civil penalties against an employer who  
6 violates sections 510 and 512. Plaintiff seeks said penalties against Defendants on behalf of  
7 himself and all other similarly situated employees for violation of sections 510 and 512.

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

14           100. Plaintiff also seeks any civil penalties allowable under the Labor Code that arise  
15 out of the same set of operative facts as the claims made in this complaint.

16           101. Plaintiff has fully complied with the statutory requirements of Labor Code section  
17 2699.3. Plaintiff gave notice by a letter (and email to paga@dir.ca.gov) dated February 9, 2016  
18 and by certified mail to the California Labor and Workforce Development Agency (“LWDA”)  
19 postmarked February 9, 2018, and the employer via certified mail of the specific provisions of  
20 the Labor Code alleged to have been violated, including the facts and theories to support the  
21 alleged violations. More than 65 days have passed since the abovementioned letter was sent via  
22 certified mail to the LWDA, as described in Labor Code section 2699.3(2)(A). Plaintiff has not  
23 yet received notice from the LWDA indicating its intent to either pursue or not pursue an  
24 investigation or action for penalties against Defendants. Plaintiff therefore amends to add this  
25 claim.

26           102. Defendants’ failure to pay wages due and owing to Plaintiff and those similarly  
27 situated, as indicated in prior paragraphs, was willful. Defendants have knowingly refused to  
28 pay any portion of the amount due and owing Plaintiff and his similarly situated employees.

1 Further, Defendants have not taken any actions to “cure” the Labor Code violations pursuant to  
2 California Labor Code section 2699 et seq.

3 103. By failing to pay Plaintiff and the current and past aggrieved employees,  
4 Defendants have violated numerous California Labor Code provisions, all as set forth  
5 hereinabove. Civil penalties are therefore appropriate.

6 **PRAYER FOR RELIEF**

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

9 1. For overtime, doubletime, meal period, and rest period premium wages owed  
10 under California law according to proof;

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

13 3. For attorney’s fees and costs pursuant to Labor Code sections 226, 1194, and  
14 2802(c);

15 4. For statutory penalties under Labor Code section 226;

16 5. For an equitable order/injunction, ordering Defendants to comply with California  
17 law and to pay all Putative Class members all wages and interest they are owed;

18 6. For an appointment of a receiver to perform an accounting of all monies owed to  
19 these employees;

20 7. For any and all injunctive relief this Court deems necessary pursuant to Business  
21 and Professions Code section 17203;

22 8. For unreimbursed expenses, according to proof, plus interest thereon pursuant to  
23 Labor Code section 2802(b);

24 9. For civil penalties for each aggrieved employee, for each violation alleged  
25 aforesaid, to be distributed in accordance with Labor Code section 2699;

26 10. For attorneys’ fees and costs pursuant to Labor Code section 2699(g);

27 11. For costs of suit; and

28 12. For any other and further relief that the Court considers just and proper.

1 DATED: June 12, 2018

**STRAUSS & STRAUSS, APC**

2  
3  By:

4  
5 Michael A. Strauss  
6 Aris E. Karakalos  
7 Andrew C. Ellison  
8 Attorneys for Plaintiff  
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**DEMAND FOR JURY TRIAL**

Plaintiff Kyle Jensen hereby demands a trial by jury.

DATED: June 12, 2018

**STRAUSS & STRAUSS, APC**

By: 

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

# Other Complaint Filings

2:18-cv-02890-RGK-GJS Kyle Jensen v. Safety Equipment Corporation et al

ACCO,NORTHERN,(GJSx),DISCOVERY,MANADR

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## Notice of Electronic Filing

The following transaction was entered by Strauss, Michael on 6/19/2018 at 2:51 PM PDT and filed on 6/19/2018

**Case Name:** Kyle Jensen v. Safety Equipment Corporation et al

**Case Number:** 2:18-cv-02890-RGK-GJS

**Filer:** Kyle Jensen

**Document Number:** 25

### Docket Text:

**SECOND AMENDED COMPLAINT** against Defendant Secorp Industries Safety Equipment Corporation amending Amended Complaint/Petition[21], Complaint - (Discovery), filed by Plaintiff Kyle Jensen(Strauss, Michael)

**2:18-cv-02890-RGK-GJS Notice has been electronically mailed to:**

Andrew Clayton Ellison andrew@strausslawyers.com, dc@palaylaw.com

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**2:18-cv-02890-RGK-GJS Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**C:\fakepath\Second Amended Complaint.pdf

**Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=6/19/2018] [FileNumber=25766619-0]  
] [29d013116eafd87394ec2742cb5476e8e7d4b6115aad9afabf91b6af12bf8fb9074  
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