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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN DIEGO**

DONNELL FUSELIER and MAX MOWERY, individuals, on behalf of themselves, and all persons similarly situated,

Plaintiffs,

v.

Y.Y.K. ENTERPRISES, INC., a California Corporation; STEVE JOHNSTON and PAUL RALPH, individuals; and DOES 1 to 10 inclusive,

Defendants.

CASE NO.: 37-2016-00022133-CU-OE-CTL

**CLASS AND COLLECTIVE ACTION**

**COMPLAINT FOR DAMAGES, RESTITUTION AND INJUNCTIVE RELIEF:**

**(1) FAILURE TO PAY MINIMUM WAGES AND OVERTIME COMPENSATION (Cal Lab. Code §§ 510, 1194, and 1197);**

**(2) FAILURE TO PAY WAGES OWED (Cal. Lab. Code §§ 201, 202 and 203);**

**(3) FAILURE TO PROVIDE MEAL AND REST PERIODS (Cal. Lab. Code §§ 226.7 and 512);**

**(4) FAILURE TO FURNISH ACCURATE WAGE STATEMENTS (Cal. Lab. Code § 226);**

**(5) UNFAIR BUSINESS PRACTICES (Cal. Bus. & Prof. Code § 17200 et seq.);**

**(6) PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (Cal. Lab. Code § 2698 et seq.);**

**(7) VIOLATIONS OF THE FAIR LABOR STANDARDS ACT (29 U.S.C. § 201 et seq.)**

**DEMAND FOR JURY TRIAL**

Plaintiffs Donnell Fuselier and Max Mowery (hereinafter "Plaintiffs"), by and through their attorneys of record, bring this action on behalf of themselves, and all persons similarly situated, against Defendants Y.Y.K. Enterprises, Inc., Steve Johnston, and Paul Ralph (collectively "Defendants"), on the following grounds:

## INTRODUCTION

1. This class and collective action is brought on behalf of all current and former employees of Defendants, who held the position of laborer in the state of California, who were paid on an hourly basis and were not compensated for all hours worked, who were regularly denied meal and rest periods, and who were not provided accurate, itemized wage statements.

2. Plaintiffs seek damages, injunctive relief, and restitutionary disgorgement, as well as reasonable attorneys' fees and litigation costs, as provided under California and Federal law.

3. As described below, Plaintiffs propose four separate and distinct subclasses. Three arise from policies and practices that occur on military bases, or federal enclaves, for which the Fair Labor Standards Act will apply. The other, proposed Subclass A, arises from policies and practices that occur on state and private property, for which the state law causes of action will apply.

4. All allegations in this Complaint are based upon information and belief except for those allegations that pertain to Plaintiffs, which are based upon their own personal knowledge. Each allegation in this Complaint has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

## JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to Cal. Civ. Proc. Code § 410.10. Pursuant to Cal. Civ. Proc. Code § 382 and Cal. Bus. & Prof. Code § 17203, Plaintiffs bring this action on behalf of themselves, and on behalf of all persons within the Class, as defined below.

6. Venue as to Defendants is proper in this judicial district, pursuant to Cal. Civ. Proc. Code § 395(a). Defendants transact business, maintain an office, and/or reside in San Diego County, and are otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiffs and those similarly situated within San Diego County and the state of California.

## CLASS DEFINITION

7. The proposed Class consists of four Subclasses of current and former employees who were employed by Defendants during the period commencing on the date that is within four years prior to the filing of this Complaint and through the present date (hereinafter the "Class Period"). To the extent that equitable tolling operates to toll the claims by the Class against Defendants, the Class Period should be adjusted accordingly.

(a) Subclass A:

All current and former employees of Defendants in the state of California who held the position of laborer, who performed work on-site at General Dynamics NASSCO and/or BAE Systems, who were paid on an hourly basis and were not compensated for all hours worked, who were not provided with accurate and itemized wage statements, and who were regularly denied meal and rest periods in violation of California law.

(b) Subclass B:

All current and former employees of Defendants in the state of California who held the position of laborer, who performed work on-site at Naval Base San Diego (32nd Street), who were paid on an hourly basis, and who were not compensated for all hours worked in violation of federal law.

(c) Subclass C:

All current and former employees of Defendants in the state of California who held the position of laborer, who performed work on-site at Naval Base Point Loma, who were paid on an hourly basis, and who were not compensated for all hours worked in violation of federal law.

(d) Subclass D:

All current and former employees of Defendants in the state of California who held the position of laborer, who performed work on-site at Naval Base Coronado, who were paid on an hourly basis, and who were not compensated for all hours worked in violation of federal law.

8. Members of the Class are all "employees," as the term is used in the California Labor Code and the California Industrial Welfare Commission's (hereinafter "IWC") Wage Orders regulating wages, hours, and working conditions in the state of California.

9. Members of the Class are also "employees," as the term is defined and used in the Fair Labor Standards Act.

## THE PARTIES

10. Plaintiff Donnell Fuselier, at all material times mentioned herein:

(a) Was and is a resident of San Diego County;

(b) Was employed as a laborer by Defendant Y.Y.K. Enterprises, Inc. from approximately August 2012 until January 2016;

(c) Was paid an hourly wage;

(d) Frequently worked more than eight hours a day and/or 40 hours a week;

(e) Was required to travel to each job site in a company owned shuttle;

(f) Was not paid for time spent collecting and loading tools, equipment, and supplies into the company shuttle;

(g) Was not paid for time spent traveling to and from various work sites;

(h) Was provided with inaccurate and/or incomplete wage statements;

(i) Was regularly denied meal and rest periods; and

(j) Is a member of Subclasses A through D as defined in paragraph 7.

11. Plaintiff Max Mowery, at all material times mentioned herein:

(a) Was and is a resident of San Diego County;

(b) Was employed as a laborer by Defendant Y.Y.K. Enterprises, Inc. from approximately May 2014 until April 2016;

(c) Was paid an hourly wage;

(d) Frequently worked more than eight hours a day and/or 40 hours a week;

(e) Was required to travel to each job site in a company owned shuttle;

(f) Was not paid for time spent collecting and loading tools, equipment, and supplies into the company shuttle;

(g) Was not paid for time spent traveling to and from various work sites;

(h) Was provided with inaccurate and/or incomplete wage statements;

(i) Was regularly denied meal and rest periods; and

(j) Is a member of Subclasses A through D as defined in paragraph 7.

12. Defendant Y.Y.K. Enterprises, Inc. is a National City, California based steel

preservation and painting company. According to its website (www.yykenterprises.com), the company was founded in 1980 and since that time, has performed on more than 100 separate contracts and purchase orders, providing preservation, painting, maintenance support, and technical support. Plaintiffs are informed and believe, and on that basis allege, that Defendant Y.Y.K. Enterprises, Inc. is owned, operated, and managed by Defendants Steve Johnston and Paul Ralph.

13. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of Defendant Does 1 through 10, are unknown to Plaintiffs, who therefore sue these defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. Plaintiffs will amend their complaint to allege the true names and capacities of Does 1 through 10 when they are ascertained.

14. At all times mentioned herein, acts alleged to have been done by Defendants are also alleged to have been done by the unascertained defendants mentioned above, and by each of their agents and employees who acted within the scope of their agency and/or employment.

15. At all times mentioned herein, the acts and omissions of each of the defendants concurrently contributed to the various acts and omissions of each and every one of the other defendants in proximately causing the wrongful conduct, harm, and damages alleged herein. Each of the defendants approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

## FACTUAL ALLEGATIONS

16. Plaintiff Fuselier was employed by Defendant Y.Y.K. Enterprises, Inc. (hereinafter "Y.Y.K.") as a laborer from approximately August 2012 until January 2016. Plaintiff Mowery was also employed as a laborer by Y.Y.K. from approximately May 2014 until April 2016. As laborers, Plaintiffs were paid an hourly wage and were tasked with sand blasting, prepping, repainting, and refurbishing naval ships pursuant to contracts and subcontracts with the United States Department of Defense.

17. Work performed pursuant to a direct contract with the Department of Defense is performed on one of the military bases – either Naval Base San Diego, Naval Base Point Loma, or Naval Base Coronado. Work performed pursuant to a subcontract is performed at the contractor's

private shipyard – either General Dynamics NASSCO or BAE Systems.

18. As a matter of company policy, Plaintiffs were required to arrive at Defendants' off-base shipyard in National City at least 30 minutes prior to their scheduled start time. For example, if Plaintiffs were scheduled to work from 7:00 a.m. to 3:00 p.m., they were required to report to the Y.Y.K. shipyard by 6:30 a.m. While at the Y.Y.K. shipyard, Plaintiffs were required to collect tools, paint, equipment, and other supplies necessary for the day's work, and load them into a van or shuttle bus owned by Defendants. This process took approximately 10-15 minutes.

19. Once the required tools, paint, equipment, and supplies were loaded into the van or shuttle bus, Plaintiffs were transported from Defendants' shipyard to one of the various work sites described above in the same vehicle. Travel to the work site generally took 10 to 45 minutes, depending on which work site Plaintiffs were assigned to. Only when Plaintiffs arrived at their assigned work site were they permitted to actually clock in.

20. Similarly, at the end of their shifts, Plaintiffs were required to clock out before gathering and loading the tools, equipment, and unused paint and supplies into a company-owned van or shuttle. This process took approximately 10 minutes. Once the materials were loaded into the vehicle, Plaintiffs were transported back to the Y.Y.K. shipyard where they would unload the materials before finally leaving for the day. Again, depending on the work site Plaintiffs were assigned to, return travel to the Y.Y.K. shipyard generally took 10 to 45 minutes.

21. In order to clock in and out, Defendants provided Plaintiffs with key fobs that were embedded with microchips. To clock in, Plaintiffs would simply touch their green key fobs to a small, portable time clock that Defendants maintained at each work site. To clock out, they would use their red key fobs.

22. In May 2015, Defendants amended their time clock policy to provide that employees who fail to clock in or out five or more times in a 90 day period "will have their pay reduced by 25 cents per hour for the pay period of their last missed punch and the following one." The policy further clarifies that Defendants "will not accept excuses that 'the clock did not work'."

23. On or about August 7, 2015, Defendants adopted a policy where employees are not paid for hours worked beyond the number of hours they were authorized to work under a given

contract. This is true regardless of how long a particular job actually takes to complete.

24. During their tenure at Y.Y.K., Plaintiffs did not clock in and out for meal periods. This is because as a matter of company policy, Defendants would simply deduct 30 minutes for each shift that exceeded six hours. Defendants automatically deducted a 30-minute meal period regardless of whether Plaintiffs were actually permitted to take a meal period or whether the meal period they took was timely. This occurred regardless of whether Plaintiffs were assigned to work at a military base or at one of the private companies with whom Defendants sub-contracted.

25. While Defendants have a policy that requires employees to take a 30-minute meal period for shifts exceeding six hours, Plaintiffs allege that on numerous occasions they were not provided with appropriate meal periods. Plaintiffs were often directed by their supervisors to forgo their meal periods or were provided with shortened or late meal periods. Plaintiffs were not compensated for the hours they actually worked, nor did they receive premium wages for any meal period violations.

26. Plaintiffs also allege that they were frequently not provided with adequate rest periods as required by law. Instead, if Plaintiffs needed to use the restroom or get a drink, they were expected to do it quickly and return to work. Despite knowing that Plaintiffs did not receive compliant rest periods, Defendants did not pay Plaintiffs premium wages for these non-compliant rest periods.

27. Because Defendants did not compensate Plaintiffs for the time they spent collecting and loading or unloading tools, paint, equipment, and other supplies, or the time they spent being transported to and from the day's work site in a company-owned vehicle, the wage statements Defendants provided Plaintiffs did not accurately reflect all of the hours they worked.

28. Similarly, Defendants' policy of automatically deducting a 30-minute meal period from any shift that exceeds six hours, regardless of whether a 30-minute off-duty meal period was taken, resulted in Plaintiffs' wage statements reflecting fewer hours than they actually worked. In addition, because Defendants failed to compensate Plaintiffs one additional hour of pay at their regular rate of pay for each missed meal or rest period as required under Cal. Lab. Code § 226.7(c), the wage statements Defendants provided Plaintiffs were incomplete and inaccurate.

## CLASS ALLEGATIONS

29. Plaintiffs bring this action on behalf of themselves, and on behalf of all persons within the defined Class.

30. This class and collective action meets the statutory prerequisites for the maintenance of a class action, as set forth in Cal. Civ. Proc. Code § 382 and Cal. Civ. Code § 1781, in that:

(a) The persons who comprise the Class are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;

(b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the Class and will apply uniformly to every member of the Class, and as a practical matter, be dispositive of the interests of the other members not party to the adjudication;

(c) The parties opposing the Class have acted or have refused to act on grounds generally applicable to the Class, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the Class as a whole; and

(d) Common questions of law and fact exist as to the members of the Class and predominate over any question affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

i. The interests of Class members in individually controlling the prosecution or defense of separate actions;

ii. The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;

iii. The desirability or undesirability of concentrating the litigation of the claims in this particular forum; and

iv. The difficulties likely to be encountered in the management of a class action.

31. The Court should permit this action to be maintained as a class action pursuant to Cal. Civ. Proc. Code § 382 and Cal. Civ. Code § 1781 because:

(a) Questions of law and fact common to the Class are substantially similar and predominate over any questions affecting only individual members;

(b) A class action is superior to any other available method for the fair and efficient adjudication of Class members' claims;

(c) The members of the Class are so numerous that it is impractical to bring all Class members before the Court;

(d) Plaintiffs' claims are typical of the claims of the Class;

(e) Plaintiffs and the other members of the Class will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;

(f) There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties alleged, and in obtaining adequate compensation for the damages that Defendants' actions have inflicted upon the Class;

(g) Plaintiffs can, and will, fairly and adequately protect the interests of the Class;

(h) There is a community of interest in ensuring that the combined assets and available insurance of Defendants are sufficient to adequately compensate the members of the Class for the injuries sustained; and

(i) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

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## <u>CAUSES OF ACTION</u>

## FIRST CAUSE OF ACTION

**(By Plaintiffs and Subclass A against all Defendants)**

**FAILURE TO PAY MINIMUM WAGES AND OVERTIME COMPENSATION**

**[Cal. Lab. Code §§ 510, 1194, and 1197]**

32. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein, the proceeding paragraphs of this Complaint.

33. Plaintiffs allege that Defendants willfully and intentionally violate California Labor Code by failing to adequately compensate Class Members for all hours worked.

34. Section 1197 of the California Labor Code provides: "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful."

35. Pursuant to California law, an employer must pay each employee "not less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise." (*Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44.)

36. In pertinent part, California Labor Code § 510 provides:

> (a) Eight hours of labor constitutes a day's work. <u>Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek</u> and the first eight hours worked on the seventh day of work in any one workweek <u>shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee</u>. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work. (Emphasis added.)

37. An employee may not waive his or her right to overtime compensation and any agreement by the employee to accept less than the statutorily required rate is unenforceable as a matter of law. (*See Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

38. California Labor Code § 1194(a) states:

> (a) Notwithstanding any agreement to work for a lesser wage, any

> employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

39. As a matter of company policy, Class Members are required to arrive at Defendants' off-base shipyard in National City at least 30 minutes prior to their scheduled start time. While at the shipyard, Class Members are required to collect tools, paint, equipment, and other supplies necessary for their assignment, and load them into a van or shuttle bus owned by Defendants. This process generally takes approximately 10 to 15 minutes to complete. Class Members are also required to perform similar duties at the end of the day. However, because Class Members are only permitted to clock in or out at their assigned work site, Defendants do not compensate Class Members for the work they perform prior to arriving at the work site or after leaving the work site. As such, Class Members are not paid at least minimum wage for this time.

40. Once the necessary tools, paint, equipment, and supplies are loaded into company-owned vehicle, Class Members are transported from Defendants' off-base shipyard to one of the various work sites described above. Travel from Y.Y.K.'s shipyard to the work site takes approximately 10 to 45 minutes, depending on which work site Class Members are assigned to. Again, this process is repeated at the end of Class Members' shifts. Because Class Members cannot clock in until they arrive at the work site and must clock out before leaving the work site, Class Members are not compensated at least minimum wage for travel time that occurs while they are performing work for Defendants.

41. At all relevant times, Plaintiffs and the other members of the Class frequently worked more than eight hours in a single workday and/or more than 40 hours in a workweek. However, in violation of Cal. Lab. Code § 510, Defendants fail to compensate Class Members for such overtime, or compensate them for fewer hours than they actually work.

42. By virtue of Defendants' unlawful failure to compensate Plaintiffs and other Class Members for their overtime, Class Members have suffered, and will continue to suffer, damages in amounts which are presently unknown to them, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

43. Having received less than the legal minimum wage and/or applicable rate of overtime compensation, Plaintiffs and other members of the Class now seek to recover all wages owed, as well as interest, reasonable attorneys' fees and costs pursuant to Cal. Lab. Code § 1194.

**SECOND CAUSE OF ACTION**

**(By Plaintiffs and Subclass A against all Defendants)**

**FAILURE TO PAY WAGES OWED**

**[Cal. Lab. Code §§ 201, 202 and 203]**

44. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein, the proceeding paragraphs of this Complaint.

45. Cal. Lab. Code § 201(a) provides: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

46. The term "wages" is defined in Cal. Lab. Code § 200(a) to include "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time…or other method of calculation." Subsection (b) further defines "labor" to include all "labor, work, or service whether rendered or performed under contract, subcontract, partnership…"

47. According to California Labor Code § 202(a):

> If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment with 72 hours of the notice of quitting.

48. Further, § 203 provides:

> If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action thereof is commenced; but the wages shall not continue for more than 30 days.

49. Plaintiffs and a number of other Class Members are no longer employed by Defendants. To date, however, Defendants have not paid the wages owed to them as required under California law. As a consequence of Defendants' willful and deliberate refusal to tender such wages, affected Class Members are entitled to 30 days' wages as a waiting time penalty pursuant to Cal. Lab. Code § 203.

**THIRD CAUSE OF ACTION**

**(By Plaintiffs and Subclass A against all Defendants)**

**FAILURE TO PROVIDE MEAL AND REST PERIODS**

**[Cal. Lab. Code §§ 226.7 and 512]**

50. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein, the proceeding paragraphs of this Complaint.

51. California Labor Code § 512(a) provides:

> An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

52. In pertinent part, California Labor Code § 226.7 provides:

> (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
>
> (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

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53. IWC Wage Order 9, § 12 further provides:

> (a) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
>
> (b) If an employer fails to provide an employee a rest period in accordance with the applicable provision of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

54. California Labor Code § 1194(a) states:

> (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

55. Under California law, the meal period requirement is generally satisfied if the employee: (1) has at least 30 minutes uninterrupted; (2) is free to leave the premises; and (3) is relieved of all duty for the entire period. (*See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036 [citing DSLE Opn. Letter No. 1996.07.12 (July 12, 1996) p. 1].)

56. Defendants do not require their employees to clock out for meal periods. Instead, Defendants have a policy and practice of automatically deducting a 30-minute meal period whenever an employee works six or more hours in a day, regardless of whether the employee actually took a 30-minute off-duty meal period, or whether the meal period was completed prior to the start of the sixth hour of work.

57. Plaintiffs also allege that Class Members are frequently not provided with rest periods as required under California law. Instead, if Class Members need to use the restroom or get a drink, they are expected to do so quickly and return to their assigned task.

58. At all times relevant, Defendants maintained policies and practices that failed to provide Plaintiffs and the other members of the Class with lawful meal and rest periods. However,

despite knowing that Class Members were denied such meal and rest periods, and in some instances explicitly requesting that Class Members forego their meal and rest periods, Defendants fail to pay Class Members the required premium wage for each missed meal and rest period.

59. As a result of Defendants' unlawful conduct, Plaintiffs and the other Class Members have been deprived of wages owed to them. Pursuant to Cal. Lab. Code § 1194(a), Class Members are entitled to recover unpaid wage premiums, interest thereon, reasonable attorneys' fees, and costs of suit.

**FOURTH CAUSE OF ACTION**

**(By Plaintiffs and Subclass A against all Defendants)**

**FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**

**[Cal. Lab. Code § 226]**

60. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein, the proceeding paragraphs of this Complaint.

61. California Labor Code § 226 states in pertinent part:

> Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee…(4) all deductions…(5) net wages earned, (6) the inclusive dates of the period for which the employee is paid…(8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee…"

62. California Labor Code § 226(e)(1) further provides:

> An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorneys' fees.

63. Injury occurs where the employer fails to provide accurate information and the employee cannot "promptly and easily determine" the total number of hours worked or the "applicable hourly rates in effect during the pay period and the corresponding number of hours

worked at each hourly rate." (Cal. Lab. Code § 226(a)(9)-(e)(2)(B)(i).)

64. Cal. Lab. Code § 226(e)(2)(C) explains that the phrase "promptly and easily determine" means that "a reasonable person would be able to readily ascertain the information without reference to documents or information."

65. Defendants' policy of automatically deducting a 30-minute meal period from any shift that exceeds six hours, regardless of whether a 30-minute off-duty meal period was taken, result in Class Members' wage statements reflecting fewer hours than they actually work. That is, the wage statements that Class Members receive from Defendants do not accurately reflect missed meal periods, meal periods that are less than 30 minutes, or meal periods that are taken after the sixth hour of work. In addition, because Defendants fail to pay Class Members one additional hour of pay at their regular rate of pay for each non-compliant meal or rest period, Class Members' wage statements are not only inaccurate, but also incomplete.

66. Likewise, as Class Members are only permitted to clock in and out at their assigned work site, the wage statements Class Members receive from Defendants do not accurately reflect all of the hours they work because the wage statements do not include the time Class Members spend collecting and loading tools, paint, equipment, and other supplies into Defendants' shuttle, nor the time Class Members spend being driven to and from their assigned work sites.

67. Pursuant to California Law, Plaintiffs and Class Members are deemed to have suffered injury as a result of Defendants' knowing and intentional failure to provide them with accurate wage statements.

68. Under Cal. Lab. Code § 226(e), Class Members are entitled to recover liquidated damages in the amount of $50.00 for the initial violation and $100.00 for each subsequent violation per employee, not to exceed $4,000.00, as well as an award of costs and reasonable attorneys' fees. In addition, pursuant to Cal. Lab. Code § 226(h), Plaintiffs and the other members of the Class are entitled to, and do seek, injunctive relief to ensure that Defendants comply with Cal. Lab. Code § 226.

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**FIFTH CAUSE OF ACTION**

**(By Plaintiffs and Subclass A against all Defendants)**

**UNFAIR BUSINESS PRACTICES**

**[Cal. Bus. & Prof. Code § 17200 et seq.]**

69. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein, the proceeding paragraphs of this Complaint.

70. As codified in Cal. Bus. & Prof. Code § 17200 et seq., California's Unfair Competition Law ("UCL") broadly prohibits "any unlawful, unfair or fraudulent business act or practice."

71. The UCL permits a cause of action to be brought if a practice violates some other law. In effect, the "unlawful" prong of the UCL. Makes a violation of the underlying law a per se violation of Cal. Bus. & Prof. Code § 17200. (*Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180.) Virtually any law or regulation – federal or state, statutory, or common law - can serve as a predicate for a § 17200 "unlawful" violation. (*See Farmers Ins. Exch.v. Superior Court (People)* (1992) 2 Cal.4th 377, 383.)

72. Under the UCL, a practice may be "unfair" even if it is not specifically proscribed by some other law. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1143 [internal citations omitted].) Pursuant to the California Supreme Court, the "unfair" standard is intentionally broad to allow courts maximum discretion is prohibiting new schemes to defraud. (*Cel-Tech Commc'ns, Inc.*, *supra*, 20 Cal.4th at 180-81.)

73. A business act or practice is deemed "fraudulent" under Cal. Bus. & Prof. Code § 17200 where "members of the public are likely to be deceived." (*Blakemore v. Superior Court*, (2005) 129 Cal.App.4th 36, 49.) A showing of actual deception, reasonable reliance, or damages is not required. (*Id.*) The fraudulent prong may be used to attack the deceptive manner in which otherwise lawful contract terms are presented to an individual. (*See Boschma v. Home Loan Ctr., Inc.* (2011) 198 Cal.App.4th 230, 253.) As such, even a true statement may be unlawful under § 17200 if it is "couched in such a manner that is likely to mislead or deceive…, such as by failing to disclose other relevant information." (*Id.*)

74. As discussed in the preceding paragraphs, Defendants' business practices violate all three prongs of California's UCL.

75. Defendants violate Cal. Lab. Code §§ 226.7 and 512, and therefore engage in an unlawful business practice pursuant to Cal. Bus. & Prof. Code § 17200, by failing to provide Class Members with compliant meal and rest periods. Similarly, Defendants' failure to provide Class Members with accurate, itemized wage statements is unlawful under California Labor Code § 226(a). Finally, Defendants' policy of not paying employees for all hours worked is a clear violation of California law, and thus a per se violation of the UCL. (*See Cel-Tech Comm'cns, Inc. v. Los Angeles Cellular Tel. Co.*, *supra*, 20 Cal.4th at 180.)

76. Defendants violate the unfair prong of the UCL by requiring Class Members to arrive at the Y.Y.K. shipyard 30 minutes prior to their start time to collect and load all necessary materials into a company-owned vehicle, while at the same time prohibiting Class Members from clocking in until they arrive at their assigned work site. This same unfair practice also occurs at the end of the day, when Defendants require Class Members to collect and load materials into the van or shuttle after they have already clocked out for the day.

77. Lastly, Defendants' practice of providing Plaintiffs with inaccurate and incomplete wage statements is not only unlawful, but constitutes a fraudulent business practice under the UCL. This is particularly true as Plaintiffs and other Class Members are likely to be, and actually are deceived, as to their earned wages because they are unable to determine from their wage statements whether or not they were paid for all work performed.

78. As a direct and proximate result of Defendants' unlawful, unfair, and fraudulent business practices, Plaintiffs and Class Members have suffered injury-in-fact and have lost wages rightfully owed to them.

79. Through their unlawful, unfair, and fraudulent conduct, Defendants received and continue to receive benefits and profits at the expense of Class Members. Pursuant to Cal. Bus. & Prof. Code § 17200, Defendants should be enjoined from this activity and made to disgorge all ill-gotten gains and restore to Plaintiffs and other Class Members the wages wrongfully withheld from them.

80. Furthermore, the unlawful, unfair, and fraudulent conduct alleged herein is continuing, and there is no indication that Defendants will refrain from such activity in the future. Plaintiffs believe and allege that if Defendants are not enjoined from the conduct described herein, they will continue to violate both California and Federal laws, as well as public policy. Accordingly, Plaintiffs request the Court issue a preliminary and permanent injunction.

**SIXTH CAUSE OF ACTION**

**(By Plaintiffs and Subclass A against all Defendants)**

**PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

**[Cal. Lab. Code § 2698 et seq.]**

81. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein, the proceeding paragraphs of this Complaint.

82. California Labor Code § 2698 et seq., also known as the Private Attorneys General Act of 2004 ("PAGA"), expressly provides that any provision of the California Labor Code allowing for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA"), or any of its departments, divisions, commissions, boards agencies or employees, for a violation of the Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees. These penalties are in addition to any other relief available under the Labor Code, and pursuant to § 2699(i), must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees.

83. As set forth above, Defendants have committed, and continue to commit, numerous violations for which the California Labor Code entitles Plaintiffs, as private attorneys general, to recover, on behalf of themselves, all aggrieved employees, and the general public, interest, attorneys' fees and costs, as well as all statutory penalties against Defendants, for violations of Cal. Lab. Code §§ 203, 226, 226.3, 558, 1197.1, 2699(a), and 2699(f).

84. California Labor Code § 2699(f) provides in pertinent part:

> For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions as follows:

. . .

> (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

85. Plaintiffs have complied with the procedures specified in Cal. Lab. Code § 2699.3. A letter was sent to the LWDA by certified mail on May 4, 2016, giving notice of Plaintiffs' PAGA claims, and a copy was simultaneously sent by certified mail to Defendants' agent for service of process.

86. The LWDA had until June 6, 2016, to provide notice of whether it intended to investigate the alleged violations. As of the date of this Complaint, the LWDA has not provided notice of whether it intends to investigate the alleged violations. Therefore, pursuant to Cal. Lab. Code § 2699.3, Plaintiffs have the right to pursue their claims under PAGA in their representative capacity.

**SEVENTH CAUSE OF ACTION**

**(By Plaintiffs and Subclasses B, C, and D against all Defendants)**

**VIOLATIONS OF THE FAIR LABOR STANDARDS ACT**

**[29 U.S.C. § 201 et seq.]**

87. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein, the proceeding paragraphs of this Complaint.

88. At all relevant times, Plaintiffs and the proposed members of the Collective Class were employees of Defendants as defined in 29 U.S.C. § 203(e)(1).

89. The Fair Labor Standards Act ("FLSA") requires employers to pay employees for all hours worked by its employees. (29 U.S.C. § 201 et seq.) Specifically, § 206 of the FLSA establishes the right to be paid minimum wages. (29 U.S.C. § 206.)

90. The Code of Federal Regulations provides that "work not requested but suffered or permitted is work time." (29 C.F.R. § 785.11.) Under federal law, principal activities or activities that are an integral part of the employee's principal activity, which are indispensable to the employee's performance, are considered work. (29 C.F.R. § 785.24.) This includes an employee's

travel from one work site to another work site. (29 C.F.R. § 785.38.) It is well established that work performed is compensable if the employer knew or had reason to know an employee was performing such work. (29 C.F.R. § 785.12.) Indeed, it is the duty of the employer to exercise control to ensure that work is not performed if the employer does not want the work to be performed. (29 C.F.R. § 785.13.)

91. Under 29 C.F.R. § 785.19, "[B]ona fide meal periods are not work time. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period."

92. Here, Defendants require Plaintiffs and other members of the Collective Class to arrive at Defendants' private, off-base shipyard in National City at least 30 minutes prior to their scheduled start time. For example, if Collective Class Members are scheduled to work from 7:00 a.m. to 3:00 p.m., they are required to report to the Y.Y.K. shipyard by 6:30 a.m. While at the shipyard, Collective Class Members are required to collect tools, paint, equipment, and other supplies that are integral and indispensable to their primary activities of sand blasting, prepping, repainting, and restoring naval ships. They are then required to load the materials into a van or shuttle bus owned by Defendants before being driven to their assigned work site. These same policies and procedures are also followed at the end of the work day.

93. While Defendants know or had reason to know that members of the Collective Class are performing such work, Defendants do not exercise control to prevent the work from being performed. Rather, Defendants not only require the work, but also prohibit Collective Class Members from clocking in until they arrive at their assigned work site. Likewise, at the end of the work day, Defendants require Collective Class Members to clock out prior to loading materials into the van or shuttle and returning to the Y.Y.K. shipyard. As a result, Plaintiffs and the other members of the Collective Class are not compensated for work performed prior to or after their scheduled shifts.

94. In order to clock in and out, Plaintiffs and the other Collective Class Members were provided with key fobs that were embedded with microchips. To clock in, they would simply touch their green key fobs to a small, portable time clock that Defendants maintained at each work site. To

clock out, they would use their red key fobs. Members of the Collective Class do not clock in and out for meal periods because as a matter of company policy, Defendants automatically deduct 30 minutes for each shift that exceeds six hours. This is true regardless of whether Collective Class Members are actually permitted to take a 30-minute meal period, or whether a meal period is less than 30 minutes.

95. Plaintiffs assert that Collective Class Members are often instructed by their supervisors to work through their meal periods, and that even when they do receive meal periods, they are often only 15-20 minutes in length. Because these meal periods are less than 30 minutes, under federal law, they do not qualify as bona fide meal periods. Moreover, because Defendants do not record the start and end times of meal periods, but simply deduct 30 minutes from each shift exceeding six hours, Defendants fail to pay members of the Collective Class for all of the hours they work.

96. In May 2015, Defendants amended their written time clock policy to provide that employees who fail to clock in or out five or more times in a 90 day period "will have their pay reduced by 25 cents per hour for the pay period of their last missed punch and the following one." The policy further clarifies that Defendants "will not accept excuses that 'the clock did not work'." This policy is facially unlawful as it deprives some members of the Collective Class wages they have earned and are entitled to.

97. Pursuant to 29 U.S.C. § 207(a)(1), an employer may not employ an employee for more than 40 hours in a workweek "unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half time the regular rate at which he is employed."

98. At all relevant times, Plaintiffs and the other members of the Collective Class frequently worked more than 40 hours in a workweek. However, as described above, in violation of the FLSA, Defendants fails to compensate them for such overtime, or compensates them for fewer hours than they actually worked.

99. For example, on or about August 7, 2015, Defendants adopted an overtime policy under which employees are not paid for any hours worked beyond the number of hours they are

authorized to work pursuant to a given contract. This is true regardless of how long a particular job actually takes to complete. Although Defendants know that members of the Collective Class often work more overtime than contracted in order to complete necessary tasks, as a result of Defendants' overtime policy, Collective Class Members are not compensated for the hours they work beyond those provided under a given contract.

100. The FLSA requires employers to keep certain records for each non-exempt worker. (29 U.S.C. § 211(c).) The records must be accurate and include the following identifiable information for each employee: (1) The employee's full name and social security number; . . . (5) The time and day of the week that the employee's workweek begins; . . . (7) The total hours worked each workweek; (8) The basis on which the employee's wages are paid; (9) The employee's regular hourly pay rate; (10) The employee's total daily or weekly straight-time earnings; (11) The employee's total overtime earnings for the workweek; . . . (13) The total wages paid to the employee each pay period; and (14) The date of payment and the pay period covered by the payment. (29 C.F.R. § 510 et seq.)

101. Defendants do not record all of the hours worked by Collective Class Members. In particular, Defendants fail to account for the time members of the Collective Class spend collecting and loading tools, paint, equipment, and other supplies at both the beginning and the end of the day. Likewise, Defendants do not record the time Collective Class Members spend traveling from Y.Y.K.'s shipyard to their assigned work site and from the worksite back to Y.Y.K.'s shipyard as hours worked. Finally, as a matter of policy and practice, Defendants do not record Collective Class Members' meal periods, but rather presume that a 30-minute meal period is taken during any scheduled shift exceeding six hours. This is true regardless of whether a meal period is actually taken or whether the meal period is less than 30 minutes in duration. Defendants' failure to record and compensate Collective Class Members for all hours worked results in Collective Class Members receiving wage statements that do not accurately reflect the number of hours they work and the compensation they should receive. As such, Defendants do not maintain accurate employee records in violation of FLSA.

/ / /

102. Section 16(b) of the FLSA entitles an employee to recover all unpaid wages, an equivalent amount as liquidated damages, and reasonable attorneys' fees and costs. (29 U.S.C. § 216(b).)

103. As discussed above, at all times relevant to this action, Defendants willfully fail and refuse to pay Plaintiffs and the other members of the Collective Class the federal minimum wages for all hours worked.

104. Pursuant to 29 U.S.C. § 216(b), Plaintiffs request the Court award them all unpaid wages, an equivalent amount as liquidated damages, and reasonable attorneys' fees and costs incurred in prosecuting this matter.

## PRAYER FOR RELIEF

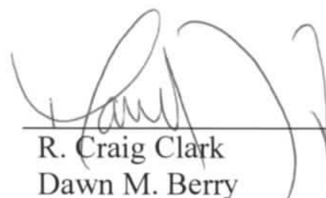
Plaintiffs pray for judgment against Defendants and in favor of the Class and Collective Class as follows:

1. That the Court determine this action may be maintained as a class and collective action with the named Plaintiffs as Class Representatives;
2. For the attorneys appearing on the above caption to be named Class Counsel;
3. For nominal, actual, and compensatory damages;
4. For restitution of all moneys, wages, expenses, and benefits due to Plaintiffs and Class Members;
5. For disgorged profits from Defendants' unfair and unlawful business practices;
6. For all interest accrued to date pursuant to Cal. Lab. Code § 218.6;
7. For waiting time penalties pursuant to Cal. Lab. Code § 203;
8. For liquidated damages in an amount equal to the actual damages in this case pursuant to 29 U.S.C. § 216(b);
9. For costs of suit and expenses incurred herein pursuant to Cal. Lab. Code § 218.5 and § 1194, and 29 U.S.C. § 216(b);
10. For reasonable attorneys' fees pursuant to Cal. Lab. Code § 218.5 and § 1194, Cal. Civ Proc. Code § 1021.5 and 29 U.S.C. § 216(b);
11. For appropriate equitable relief;

12. For all such other and further relief the Court may deem just and proper.

Dated: June 30, 2016

**CLARK LAW GROUP**



R. Craig Clark
Dawn M. Berry

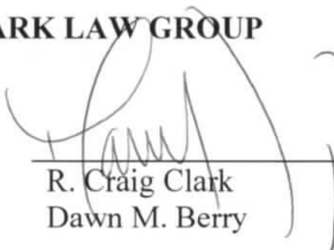
Attorneys for Plaintiffs and the Putative Class

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a jury trial on all issues triable to a jury.

Dated: June 30, 2016

**CLARK LAW GROUP**



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