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

11 LOUIS NEWELL, an individual, for himself
12 and those similarly situated,

13 Plaintiff,

14 v.

15 ENSIGN UNITED STATES DRILLING
16 (CALIFORNIA) INC., a California
17 corporation; and DOES 1 through 100,
18 inclusive,

19 Defendants.

Case No.: BCV-15-100367

Assigned to: *Hon. Lorna Brumfield,*
Dept. 17

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

- 1) MINIMUM WAGE VIOLATIONS;
- 2) UNFAIR COMPETITION;
- 3) FAILURE TO TIMELY PAY FINAL WAGES;
- 4) FAILURE TO PROVIDE LAWFUL MEAL PERIODS;
- 5) FAILURE TO PAY OVERTIME AND DOUBLETIME PREMIUM WAGES;
- 6) PAY STUB VIOLATIONS; and
- 7) VIOLATION OF LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA")

Action filed: June 22, 2015

27 TO ALL INTERESTED PARTIES HEREIN AND TO THEIR ATTORNEYS OF
28 RECORD:

1 COMES NOW, Plaintiff Louis Newell (“Plaintiff”) and the putative class, and he
2 hereby submits the following First Amended Complaint against Ensign United States Drilling
3 (California) Inc. and DOES 1 through 100, inclusive (collectively “Defendants”), and each of
4 them as follows:

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6 **GENERAL ALLEGATIONS**

7 1. At all times herein mentioned, Plaintiff Louis Newell was an employee of
8 Defendants, working off of the coast of the State of California, within the last four (4) years.

9 2. At all times herein mentioned and relevant, Plaintiff was and is an individual
10 residing in the State of California.

11 3. At all times herein mentioned, Plaintiff is informed and believes and, based on
12 such information and belief, thereon alleges that Ensign United States Drilling (California)
13 Inc., is a California corporation that does business and maintains an office in the County of
14 Kern, California located at 7001 Charity Ave, Bakersfield, CA 93308.

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

21 5. Each of the Defendants acted as the agent or employee of the others and each
22 acted within the scope of that agency or employment.

23
24 **VENUE AND JURISDICTION**

25 6. Venue is appropriate in the Kern County Superior Court because, on information
26 and belief, Defendant maintains its principal place of business within the State within the
27 County. The unlawful employment practices complained of herein occurred in the offshore
28 waters of California in the Santa Barbara Channel.

1 19. The exact amount of minimum wages owed will not be fully ascertained until
2 discovery is completed. For example, time during which a worker cannot leave his or her
3 worksite, even sleeping time, may be considered “hours worked” under the law. Until
4 Defendants produce the necessary documents for an accounting, Plaintiff is unable to
5 determine the exact amount of minimum wages owed.

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

12 21. Plaintiff seeks liquidated damages in an amount equal to the minimum wages
13 due to him and the Putative Class under Labor Code section 1194.2.

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

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

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

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1 complies with Section 282 of the Code of Civil Procedure, but
2 these limitations do not apply to claims brought under his chapter
3 by the Attorney General, or any district attorney, county counsel,
4 city attorney, or city prosecutor in this state.

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

7 29. In this case, it is requested that this Court order such restitution.

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

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

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

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

16 4. For attorneys' fees and costs, pursuant to law;

17 5. For prejudgment interest on all amounts owed pursuant to Civil Code sections
18 3288 and 3291; and

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

20 **THIRD CAUSE OF ACTION**

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

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

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

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

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1 31. Labor Code section 201 provides, "If an employer discharges an employee, the
2 wages earned and unpaid at the time of discharge are due and payable immediately." Labor
3 Code section 202 provides generally that wages earned and unpaid at the time of an
4 employee's resignation must be paid within 72 hours thereof, unless the employee gives
5 notices of greater than 72 hours of his intent to resign, in which case the employee's final
6 wages must be paid on the employee's last day of work. Lab. Code § 202. Defendants did not
7 pay immediately all wages earned and unpaid to Plaintiff and the Putative Class upon
8 discharge or resignation. Defendants have refused and continue to refuse to pay said wages.

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

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

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

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

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

- 26 1. For waiting-time penalties under Labor Code section 203;
- 27 2. For costs of suit; and
- 28 3. For any other and further relief that the Court considers just and proper.

1 **FOURTH CAUSE OF ACTION**

2 ***Failure To Provide Lawful Meal Periods***

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

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

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

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

11 38. California law also holds that if the employer requires the employee to remain at
12 the work site or facility during the meal period, the meal period must be paid. This is true
13 even where the employee is relieved of all work duties during the meal period. *See Bono*
14 *Enterprises, Inc. v. Bradshaw*, 32 Cal. App. 4th 968 (1995).

15 39. If an employer fails to provide an employee a legally mandated meal period, the
16 employer shall pay the employee one hour of pay at the employee's regular rate of pay for
17 each five hours of work that the meal period is not provided. Lab. Code § 226.7.

18 40. Defendants have intentionally and improperly denied meal periods to Plaintiff
19 and the Putative Class in violation of Labor Code sections 226.7 and 512 and 8 Cal. Code
20 Regs. § 11160, subd. 10.

21 41. At all times relevant hereto, Plaintiff and the other members of the Putative
22 Class have worked more than five hours in a workday (and often more than ten, fifteen hours,
23 and twenty hours). At all relevant times hereto, Defendants have failed to provide meal
24 periods for every five-hour work period as required by California law.

25 42. Plaintiff and the other members of the Putative Class are informed and believe,
26 and based upon that information and belief allege, that Defendants know or should have
27 known that Plaintiff and the Putative Class were entitled to meal periods but purposely elected
28 not to provide these mandated periods.

1 43. Not only could Plaintiff and the Putative Class not leave the work premises for
2 meal breaks; in addition, Defendants did not relieve the employees of all duties or relinquish
3 their control, and as a result Plaintiff and the Putative Class did not have a reasonable
4 opportunity to take their meal periods even within the confines of the worksite.

5 44. Plaintiff seeks meal period premium wages owed to him and the Putative Class
6 for the statutory period measured backward from the date of the filing of the initial Complaint
7 in this matter.

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

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

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

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

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1 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

15 49. Plaintiff and the Putative Class regularly worked hours for which they were not
16 paid the overtime or doubletime premium wages. Defendants' overtime and doubletime wage
17 violations include, but are not limited to, the failure to pay any wages whatsoever to Plaintiff
18 and the Putative Class for 12 hours each workday, which time lawfully was considered
19 overtime and/or doubletime hours worked, or for doubletime hours worked on the final
20 working day of each seven- or fourteen-day "hitch."

21 50. Plaintiff and the Putative Class seek such overtime and doubletime premium
22 wages owed to them for the statutory period measured backward from the date of the filing of
23 the initial Complaint in this matter.

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

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

17 56. In this case, Defendants have failed to provide such wage deduction statements
18 to Plaintiffs and the Putative Class in that their wage deduction statements do not include,
19 without limitation, their gross wages earned, all hours worked, net wages earned, or all
20 applicable hourly rates in effect during the pay period, and the corresponding number of hours
21 worked at each hourly rate by the employee.

22 57. Pursuant to Labor Code section 226(e), damages are appropriate. At this time,
23 Plaintiffs believe and allege that they and the Putative Class are owed the maximum allowable
24 penalty under section 226(e) because Defendants failed to provide adequate paycheck stubs.

25 58. However, the exact amount of damages under Labor Code section 226(e) will
26 not be fully ascertained until discovery is completed. Until Defendants produce the necessary
27 documents for an accounting, Plaintiffs are unable to determine the exact amount of damages
28 under Labor Code section 226(e).

59. Pursuant to Labor Code section 226(e), Plaintiffs request the Court to award
Plaintiffs' reasonable attorney's fees and costs incurred by Plaintiffs in this action.

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

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- 1 1. For statutory penalties, pursuant to law;
- 2 2. For reasonable attorneys' fees pursuant Labor Code section 226;
- 3 3. For costs of suit; and
- 4 4. For any other and further relief that the Court considers just and proper.

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6 **SEVENTH CAUSE OF ACTION**

7 ***Civil Penalties Under The Labor Code Private Attorneys General Act ("PAGA")***

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

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

10 60. Plaintiffs incorporate by reference and re-allege each and every one of the
11 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully
12 set forth herein.

13 61. It is alleged that Defendants intentionally denied Plaintiff and his similarly
14 situated co-workers wages that should have been paid and have violated Labor Code
15 provisions.

16 62. Pursuant to Labor Code sections 2698 *et seq.*, Plaintiff is entitled to recover civil
17 penalties on behalf of himself and other persons who are or were employed by the alleged
18 violator and against whom one or more of the alleged violations was committed. PLAINTIFF
19 is therefore pursuing civil penalties for violations of the Labor Code sections set forth herein.

20 63. One or more of the alleged violations set forth herein was committed against
21 PLAINTIFF, and PLAINTIFF is therefore an "aggrieved employee" under Labor Code
22 Section 2699(c), which provides in relevant part, "(c) For purposes of this part, "aggrieved
23 employee" means any person who was employed by the alleged violator and against whom
24 one or more of the alleged violations was committed."

25 64. Labor Code section 200 defines "wages" as including all amounts for labor
26 performed by employers of every description, whether the amount is fixed or ascertained by
27 the standard of time, task, piece, commission basis, or other method of calculation.

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1 65. Labor Code section 201 requires immediate payment of all wages owed at the
2 termination of employment. It is alleged that within the last year, Defendants' employees in
3 California have been terminated and have not received all wages owed at their termination.
4 There is no civil penalty associated with violation of section 201, but Plaintiff seeks civil
5 penalties on behalf of himself and all others similarly situated under Labor Code section 2699,
6 subd. (f).

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

14 67. Labor Code section 204 makes wages due no less frequently than twice a month
15 for non-exempt employees for work performed each pay period. Defendants have violated
16 section 204 with respect to Plaintiff and his similarly-situated coworkers by not paying them
17 all wages due for work performed each pay period. Plaintiff seeks civil penalties on behalf of
18 himself and all other similarly situated under Labor Code section 210.

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

25 69. Labor Code section 226, subdivision (a), requires a California employer to
26 include very specific information on an employee's paycheck stub. The required information
27 includes the total number of overtime hours worked and the correct rates of pay. Lab. Code §
28 226(a). Subdivision (e) sets forth statutory penalties for the violation of section 226(a).

1 PLAINTIFF seeks to recover said penalties on behalf of himself and all others similarly
2 situated.

3 70. Labor Code section 226.3 sets forth civil penalties for violation of section 226,
4 subdivision (a). PLAINTIFF seeks said penalties against Defendants on behalf of himself and
5 all other similarly situated employees for violation of section 226, subdivision (a).

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

10 72. Labor Code section 510 provides that an employer shall pay overtime premium
11 wages to non-exempt employees who work over eight hours in a workday or over 40 hours in
12 a workweek. Defendants violated Labor Code § 510 by not paying overtime premium wages
13 to non-exempt employees who worked over eight hours in a day and Labor Code section 510.

14 73. Labor Code section 512 provides that an employer shall provide its non-exempt
15 employees with one off-duty meal period for each five-hour work period. Defendants violated
16 Labor Code section 512 by not providing off-duty meal periods to its non-exempt employees
17 for every five-hour work period.

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

21 75. Labor Code section 1197 requires that employers may not pay less than the
22 mandated minimum wage. Defendants violated section 1197 by not paying Plaintiff and his
23 similarly situated coworkers at least the minimum wage for all hours worked. The civil
24 penalty for violations of section 1197 is enumerated in Labor Code section 1197.1. Plaintiff
25 seeks said penalties against Defendants on behalf of himself and all other similarly situated
26 employees for violations of section 1197.

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

1 77. Plaintiff has fully complied with the statutory requirements of Labor Code
2 section 2699.3. Plaintiff gave notice by a letter dated June 18, 2015 and delivered by certified
3 mail to the California Labor and Workforce Development Agency and the employer of the
4 specific provisions of the Labor Code alleged to have been violated, including the facts and
5 theories to support the alleged violations. As of the date of this pleading, the Labor and
6 Workforce Development Agency has not indicated its intent to pursue an investigation or
7 action for penalties against Defendants.

8 78. Defendants' failure to pay wages due and owing to Plaintiff and those similarly
9 situated, as indicated in prior paragraphs, was willful. Defendants have knowingly refused to
10 pay any portion of the amount due and owing Plaintiff and his similarly situated employees.
11 Further, Defendants have not taken any actions to "cure" the Labor Code violations pursuant
12 to California Labor Code section 2699 et seq.

13 79. By failing to pay Plaintiff and the current and past aggrieved employees,
14 Defendants have violated numerous California Labor Code provisions, all as set forth
15 hereinabove. Civil penalties are therefore appropriate.

16 WHEREFORE, Plaintiff demands judgment against Defendants, and each of them, as
17 follows:

- 18 1. For civil penalties for each aggrieved employee, for each violation alleged
19 aforesaid, to be distributed in accordance with Labor Code section 2699;
 - 20 2. For attorneys' fees and costs pursuant to Labor Code section 2699(g);
 - 21 3. For any other and further relief that the Court considers just and proper.
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23 DATED: July 31, 2015

STRAUSS & PALAY, APC

24 By:



25 Brian D. Hefelfinger
26 Attorneys for Plaintiff and
27 the Putative Class
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