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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 KYLE JENSEN, an individual;
12 CHRISTOPHER BEATTY, an individual;
for themselves and those similarly situated,

13 Plaintiff,

14 v.

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

18 Defendants.
19
20

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

CLASS ACTION

THIRD AMENDED COMPLAINT

21 **TO ALL INTERESTED PARTIES HEREIN AND TO THEIR ATTORNEYS OF**
22 **RECORD:**

23 COMES NOW, Plaintiffs KYLE JENSEN (“Jensen”) and CHRISTOPHER BEATTY
24 (“Beatty”) (collectively “Plaintiffs”), individually and on behalf of all other similarly
25 situated current and former employees of Defendant SECORP INDUSTRIES, a Louisiana
26 Partnership (herein “Secorp”) and Does 1 through 100, inclusive (herein, Secorp and Does
27 1 through 100, inclusive, are collectively referred to as “Defendants”), and each of them,
28 for legal relief to redress unlawful violations of Plaintiff’s rights under California law and

1 the rights of those similarly situated. Plaintiffs brings their claims against Defendant as a
2 California statewide class action pursuant to Federal Rules of Civil Procedure, Rule 23.

3 **INTRODUCTION**

4 1. California wage-and-hour laws apply within its territorial boundaries. *Sullivan v.*
5 *Oracle Corp.*, 51 Cal.4th 1191, 1197. California’s wage-and-hour laws apply to “wage earners
6 of California” when they perform work in its coastal waters, including waters outside the state’s
7 territorial boundaries. *California Tidewater Marine W., Inc. v. Bradshaw*, 14 Cal. 4th 557, 579
8 (1996). Those same laws apply on oil platforms on the Outer Continental Shelf off the coast of
9 California. *Newton v. Parker Drilling Mgmt. Servs., Ltd.*, --- F.3d ---, 2018 WL 706490, *15
10 (9th Cir. Feb. 5, 2018).

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

18 3. California Labor Code section 500, subdivision (b) defines a “workweek” as “any
19 seven consecutive days, starting with the same calendar day each week.” It goes on to explain
20 that a “‘Workweek’ is a fixed and regularly recurring period of 168 hours, seven consecutive
21 24-hour periods.”

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

1 5. The employees’ hitches begin on California soil, where the employees wait for a
2 vessel to transport them to an oil platform. While they wait, Defendants mandate that the
3 employees attend safety briefings. The employees board their vessel and travel to an oil platform
4 on the Outer Continental Shelf, a trip that can last between 30 minutes to two hours, depending
5 on which platform they will perform their duties.

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

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

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

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

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

21 11. California law defines as “hours worked” as “the time during which an employee
22 is subject to the control of an employer, and includes all the time the employee is suffered or
23 permitted to work, whether or not required to do so.” 8 Cal. Code Regs. § 11160(2)(J). “An
24 employee who is subject to an employer’s control does not have to be working during that time
25 to be compensated.” *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 592 (2000). ““When an
26 employer directs, commands or restrains an employee from leaving the work place ... and thus
27 prevents the employee from using the time effectively for his or her own purposes, that employee
28 remains subject to the employer’s control. According to [the definition of hours worked], that

1 employee must be paid.” *Id.* at 583. An employer cannot exclude sleep time for employees
2 working shifts of 24 hours. *Mendiola v. CPS Sec. Sols., Inc.*, 60 Cal. 4th 833, 848-49 (2015).

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

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

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28 //

1 **THE PARTIES**

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

5 15. At all times herein mentioned and relevant, Jensen was and is an individual
6 residing in the State of California, in the County of Ventura.

7 16. At all times herein mentioned, Plaintiff Christopher Beatty was an employee of
8 Defendants, working off the coast of and in the State of California, within the last four (4) years
9 as an offshore H2S Gas Tech / Medic.

10 17. At all times herein mentioned and relevant, Beatty was and is an individual
11 residing in the State of California, in the County of Los Angeles.

12 18. At all times herein mentioned, Plaintiffs are informed and believe and, based on
13 such information and belief, thereon allege that Secorp, is a Louisiana partnership that does
14 business and maintains an office in the County of Ventura, California, located at 2550 Eastman
15 Ave, No. 3, Ventura, California 93003.

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

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

24 **VENUE AND JURISDICTION**

25 21. Venue is proper in this Court pursuant to 28 U.S.C. §§ 84(c)(2) and 1391, as well
26 as 28 U.S.C. § 1441(a), because this is the judicial district and division of this Court in which a
27 substantial part of the events or omissions giving rise to Plaintiff's claims occurred and where
28 Plaintiffs reside.

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

4 23. This Court has federal question jurisdiction under 28 U.S.C. § 1331, and the Outer
5 Continental Shelf Lands Act (“OCSLA,” 43 U.S.C. § 1331, *et seq.*), which specifies that United
6 States district courts shall have jurisdiction over all “cases and controversies arising out of, or
7 in connection with...any operation conducted on the outer Continental Shelf which involves
8 exploration, development, or production of the minerals, of the subsoil and seabed of the outer
9 Continental Shelf, or which involves rights to such minerals....Proceedings with respect to any
10 such case or controversy may be instituted in the judicial district in which any defendant resides
11 or may be found....” 43 U.S.C. § 1349(b)(1). The “OCSLA explicitly provides that district
12 courts have federal question jurisdiction over claims occurring on the Outer Continental Shelf.”
13 *Barker v. Hercules Offshore, Inc.*, 713 F.3d 208, 220 (5th Cir. 2013) (internal citations omitted).

14 **CLASS ACTION ALLEGATIONS**

15 24. Plaintiffs bring the causes of action stated herein on their own behalf and on behalf
16 of all persons similarly situated. The class consists of all hourly and otherwise non-exempt,
17 California-based employees of Defendants, who, at any time within four years from the date of
18 filing of this lawsuit, worked on oil platforms off the California coast for periods of 24 hours or
19 more (hereinafter the “Putative Class”).

20 25. The Putative Class represents over 30 persons and is so numerous that the joinder
21 of each member of the putative class is impracticable.

22 26. There is a well-defined community of interest in the questions of law and fact
23 affecting the class Plaintiffs represent. The Putative Class members’ claims against Defendants
24 involve questions of common or general interest, in that each was employed by Defendants, and
25 each was not paid wages owed based on the same failure to compensate for all hours during
26 which they were subject to the control of Defendants, including hours in excess of their
27 scheduled shifts and during meal and rest periods. These questions are such that proof of a state
28 of facts common to the members of the Putative Class will entitle each member to the relief

1 requested in this complaint.

2 27. The members of the Putative Class that Plaintiffs represent have no plain, speedy
3 or adequate remedy at law against Defendants, other than by maintenance of this class action,
4 because Plaintiffs are informed and believes, and on such information and belief alleges, that
5 the damage to each member of the Putative Class may be relatively small and that it would be
6 economically infeasible to seek recovery against Defendants other than by a class action.

7 28. Plaintiffs will fairly and adequately represent the interest of the Putative Class,
8 because Plaintiffs are a member of the Putative Class, and Plaintiff's claims are typical of those
9 in the Putative Class.

10 29. Plaintiff Jensen is currently employed by Defendants.

11 30. Plaintiff Beatty stopped working for Defendants in or around December 2017.

12 31. Plaintiffs were assigned to work on several platforms off the coast of California
13 but were assigned to stay overnight during their hitches.

14 32. Plaintiffs are/were employed by Defendants during the four years preceding the
15 filing of the Complaint. Plaintiffs worked primarily as offshore paramedics and H2 Gas Techs
16 (sometimes referred to as dispatchers as well).

17 33. Plaintiffs were at all relevant times herein alleged paid an hourly rate.

18 34. During the employment with Defendants, Plaintiffs sometimes worked on an oil
19 platform in the California coastal waters, performing non-exempt work.

20 35. During the employment with Defendants, Plaintiffs sometimes worked onshore in
21 California, performing non-exempt work. Each of Plaintiffs' hitches (multiple-day periods of
22 work) began onshore in California and ended onshore in California.

23 36. During the employment with Defendants, Plaintiffs' offshore shifts typically
24 lasted seven or more days. They typically received pay for only 13 hours each day while on the
25 oil platforms, but nothing for the remaining 11 hours of restricted stand-by which were also
26 spent on the platforms.

27 37. Plaintiffs did not receive compensation for all hours worked on the platform.

28 38. Plaintiffs could not reasonably leave the platform during their multiple-day shift.

1 39. Plaintiffs could not leave the platforms for their meal or rest periods.

2 40. Because of not being able to leave the platform for his meal or rest periods, they
3 would remain subject to Defendant’s control, “on duty,” and “on call” as those terms are defined
4 under California law. All time subject to an employer’s control is compensable, and on-duty
5 and on-call meal and rest periods are not permitted under California law.

6 41. For each on duty meal or rest period, a California employer is required to pay its
7 employees one extra hour of pay at their normal hourly rate (known as a meal or rest period
8 “premium” wage).

9 42. Defendants did not pay Plaintiffs one extra hour of pay for each on duty meal
10 period. Nor did Defendants pay Plaintiffs an extra hour of pay for each on duty rest period, as
11 required by California law.

12 43. Plaintiffs were denied accurate paycheck stubs, which lacked, among other things
13 required under California law, the requisite amount of overtime/doubletime, meal period, and
14 rest period premium wages earned each pay period.

15 44. As a condition of his employment, Plaintiffs were required to wear safety
16 gear/attire while on the platforms. Defendants did not furnish Plaintiffs with such safety
17 gear/attire and did not reimburse them for said business expenses which they incurred.

18 **FIRST CAUSE OF ACTION**

19 ***Failure to Pay California Overtime and Doubletime Premium Wages***

20 **(Action Brought by Plaintiffs on Behalf of Themselves**

21 **And the Class Against All Defendants)**

22 45. Plaintiffs incorporate by reference and re-alleges each and every one of the
23 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
24 forth herein.

25 46. California law requires payment of overtime premium pay for all hours worked
26 by non-exempt employees in excess of eight in one day or 40 hours in one week and for the first
27 eight hours on the seventh-straight day of work in one workweek. Lab. Code § 510; 8 Cal. Code
28 Regs. § 11160, subd. 3(A). It further requires payment of doubletime premium pay for all hours

1 worked by non-exempt employees in excess of twelve hours in one day or in excess of eight
2 hours on the seventh-straight day of work in a single workweek. Lab. Code § 510; 8 Cal. Code
3 Regs. § 11160, subd. 3(A).

4 47. Plaintiff and the Putative Class regularly worked hours for which they were not
5 paid the overtime or doubletime premium wages under California law. Defendants violated the
6 California Labor Code’s overtime and doubletime provisions in numerous respects, including
7 but not limited to the following:

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

13 i. Time spent on the employer’s premises due to the reasonable
14 inability to leave;

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

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

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

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

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

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

27 b. Failing to compensate Plaintiff and the Putative Class at the correct
28 overtime rate of pay for overtime hours worked because Defendants failed to include the

1 following in the Putative Class’s regular hourly rates of pay:

- 2 i. Compensation for performance-related bonuses;
- 3 ii. Compensation for meals provided by the employer; and
- 4 iii. Compensation for lodging provided by the employer.

5 48. Plaintiff and the Putative Class seek such overtime and doubletime premium
6 wages owed to them for the three-year period measured backward from the date of the filing of
7 the initial Complaint in this matter. (In the Unfair Competition cause of action stated herein and
8 brought pursuant to the UCL, Plaintiff and the Putative Class seek restitution of unpaid overtime
9 and doubletime wages due for the four-year period measured backward from the date of the
10 filing of the initial Complaint in this matter.)

11 49. The exact amount of overtime and doubletime premium wages owed will not be
12 fully ascertained until discovery is completed. Until Defendants produce the necessary
13 documents for an accounting, Plaintiffs are unable to determine the exact amount of overtime
14 and doubletime premium wages owed.

15 50. Plaintiffs seek interest on all overtime and doubletime premium wages owed to
16 them for the three-year period measured backward from the date of the filing of the initial
17 Complaint in this matter pursuant to Labor Code section 1194. (In the Unfair Competition cause
18 of action stated herein and brought pursuant to the UCL, Plaintiff and the Putative Class seek
19 interest on all unpaid overtime and doubletime wages due for the four-year period measured
20 backward from the date of the filing of the initial Complaint in this matter.)

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

23 **SECOND CAUSE OF ACTION**

24 ***Failure to Provide Lawful Meal and Rest Periods***

25 **(Action Brought by Plaintiffs on Behalf of Themselves**

26 **And the Class Against All Defendants)**

27 52. Plaintiffs incorporate by reference and re-alleges each and every one of the
28 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set

1 forth herein.

2 53. California law provides that no employer shall employ any person for a work
3 period of more than five hours without a meal period of not less than 30 minutes. Lab. Code §§
4 226.7, 512, 8 Cal. Code Regs. § 11160, subd. 10.

5 54. Employees are entitled to “a paid 10-minute rest period per four hours of work.”
6 *Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864, 870; 8 Cal. Code Regs. § 11050, subd.
7 12(A). “State law prohibits on-duty and on-call rest periods. During required rest periods,
8 employers must relieve their employees of all duties and relinquish any control over how
9 employees spend their break time.” *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 385-386
10 (2016).

11 55. “If an employer fails to provide an employee a ... meal ... period in accordance
12 with a state law..., the employer shall pay the employee one additional hour of pay at the
13 employee’s regular rate of compensation for each workday that the ... meal ... period is not
14 provided.” Lab. Code § 226.7; 8 Cal. Code Regs. § 11160, subd. 10.

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

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

22 58. At all times relevant hereto, Plaintiffs and the other members of the Putative Class
23 have worked more than five hours in a workday (and often more than ten, fifteen hours, and
24 twenty hours). At all relevant times hereto, Defendants have failed to provide meal periods for
25 every five-hour work period and to provide rest periods for every four hours of work as required
26 by California law, because Plaintiffs and the Putative Class could not reasonably leave the work
27 premises and were not relieved of all duty and subject to their employer’s control for their meal
28 and rest periods.

1 59. Plaintiffs and the other members of the Putative Class are informed and believe,
2 and based upon that information and belief allege, that Defendants know or should have known
3 that Plaintiffs and the Putative Class were entitled to lawful meal and rest periods but purposely
4 elected not to provide these mandated periods.

5 60. Plaintiffs seek meal and rest period premium wages owed to him and the Putative
6 Class for the three-year period measured backward from the date of the filing of the initial
7 Complaint in this matter. (In the Unfair Competition cause of action stated herein and brought
8 pursuant to the UCL, Plaintiffs and the Putative Class seek restitution of unpaid meal and rest
9 period premium wages due for the four-year period measured backward from the date of the
10 filing of the initial Complaint in this matter.)

11 61. The exact amount of meal and rest period premium wages owed will not be fully
12 ascertained until discovery is completed. Until Defendants produce the necessary documents
13 for an accounting, Plaintiffs are unable to determine the exact amount of meal period premium
14 wages owed.

15 62. Labor Code section 218.6 states, “[I]n any action brought for the nonpayment of
16 wages, the court shall award interest on all due and unpaid wages at the rate of interest specified
17 in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the
18 wages were due and payable as provided in Part 1 (commencing with Section 200) of Division
19 2.” Plaintiffs and the Putative Class seek such interest on all meal and rest period 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, Plaintiffs and the Putative Class seek interest on all unpaid meal
23 and rest period premium wages due for the four-year period measured backward from the date
24 of the filing of the initial Complaint in this matter.)

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THIRD CAUSE OF ACTION

Failure to Reimburse Business Related Expenses

(Action Brought by Plaintiffs on Behalf of Themselves

And the Class Against All Defendants)

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5 63. Plaintiffs incorporate 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 set
7 forth herein.

8 64. California Labor Code section 2802 and interpreting case law provides that
9 California employees must be reimbursed for their employment-related expenses, including
10 mileage reimbursement, tools, uniforms and other items used for business purposes.

11 65. Section 2802 of the California Labor Code states in pertinent part that

12 An employer shall indemnify his or her employee for all necessary
13 expenditures or losses incurred by the employee in direct consequence
14 of the discharge of his or her duties, or of his or her obedience to the
15 directions of the employer, even though unlawful, unless the
employee, at the time of obeying the directions, believed them to be
unlawful.

16 Lab. Code § 2802.

17 66. Defendants violated, and are continuing to violate, section 2802 by requiring
18 Plaintiffs and the Putative Class to purchase and use their own safety gear/attire for work-related
19 purposes, without reimbursement, and by failure to fully provide reimbursement for the purchase
20 of necessary work-related apparel. By this and similar acts, the Defendants have violated section
21 2802.

22 67. Plaintiffs and those similarly situated employees of Defendants incurred
23 substantial expenses in order to perform their jobs and for the benefit of the defendant
24 employers, which were not fully reimbursed.

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

27 69. California Labor Code section 2802(c) provides that the employee may recover
28

1 all reasonable costs, including attorneys' fees, for enforcing the employee's right under this
2 section. Plaintiffs have incurred costs and attorneys' fees, and will continue to incur costs and
3 attorneys' fees to enforce their rights and the rights of similarly situated employees of
4 Defendants' under section 2802. Plaintiffs are entitled to recover their reasonable attorneys'
5 fees and costs in an exact amount to be proven at trial.

6 **FOURTH CAUSE OF ACTION**

7 ***Unfair Competition***

8 **(Action Brought by Plaintiffs on Behalf of Themselves**

9 **And the Class Against All Defendants)**

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

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

16 72. It is alleged that Defendants have willfully failed to pay Plaintiffs and the Putative
17 Class, overtime, doubletime, meal, and rest period premium wages under California law or to
18 lawfully reimburse Plaintiffs and the Putative Class for their work-related expenditures, as
19 alleged throughout this Complaint. The failures to pay such premium wages and expense
20 reimbursement constitute unfair business practices under California Business and Professions
21 Code section 17200.

22 73. As a result of the conduct of Defendants, Defendants profited from breaking the
23 law. Plaintiffs and the Putative Class seek disgorgement of this unlawfully obtained benefit
24 (plus interest thereon) for the four-year period measured backward from the date of filing of the
25 initial Complaint in this matter.

26 74. California Business and Professions Code section 17203, under the authority of
27 which a restitutionary order may be made, provides:
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1 Any person who engages, has engaged, or proposes to engage in
2 unfair competition may be enjoined in any court of competent
3 jurisdiction. The court may make such orders or judgments,
4 including the appointment of a receiver, as may be necessary to
5 prevent the use of employment by any person of any practice which
6 constitutes unfair competition, as defined in this chapter, or as may
7 be necessary to restore to any person in interest any money or
8 property, real or personal, which may have been acquired by means
9 of such unfair competition. Any person may pursue representative
10 claims or relief on behalf of others only if the claimant meets the
11 standing requirements of Section 17204 and complies with Section
12 382 of the Code of Civil Procedure, but these limitations do not
13 apply to claims brought under this chapter by the Attorney General,
14 or any district attorney, county counsel, city attorney, or city
15 prosecutor in this state.

16 Bus. & Prof. Code § 17203.

17 75. As a result of the alleged aforesaid actions, Plaintiffs and the Putative Class have
18 suffered injury in fact and have lost money as a result of such unfair competition. It is requested
19 that this Court order restitution under the UCL.

20 76. Plaintiffs seek unreimbursed expenses owed to him and the Putative Class for the
21 three-year period measured backward from the date of the filing of the initial Complaint in this
22 matter. (In the Unfair Competition cause of action stated herein and brought pursuant to the
23 UCL, Plaintiffs and the Putative Class seek restitution of the unreimbursed business expenses
24 due for the four-year period measured backward from the date of the filing of the initial
25 Complaint in this matter.)

26 77. Plaintiffs also seek an injunction preventing Defendants from continuing to violate
27 California’s wage-and-hour laws.

28 **FIFTH CAUSE OF ACTION**

Pay Stub Violations

(Action Brought by Plaintiffs on Behalf of Themselves

And the Class Against All Defendants)

78. Plaintiffs incorporate by reference and re-alleges each and every one of the
allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set

1 forth herein.

2 79. California Labor Code section 226 provides, in relevant part:

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

16 Lab. Code § 226(a).

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

22 81. Pursuant to Labor Code section 226(e), damages are appropriate. At this time,
23 Plaintiffs believes and alleges 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 82. However, the exact amount of damages under Labor Code section 226(e) will not
26 be fully ascertained until discovery is completed. Until Defendants produce the necessary
27 documents for an accounting, Plaintiffs will be unable to determine the exact amount of damages
28

1 under Labor Code section 226(e).

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

4 **SIXTH CAUSE OF ACTION**

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

6 **(Action Brought by Plaintiffs on Behalf of Themselves**

7 **And the Class Against All Defendants)**

8 84. Plaintiffs incorporate 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 85. It is alleged that Defendants intentionally denied Plaintiffs and their similarly
12 situated co-workers wages that should have been paid and have violated Labor Code provisions.

13 86. Pursuant to Labor Code sections 2698 *et seq.* ("PAGA"), Plaintiffs are entitled to
14 recover civil penalties on behalf of themselves and other persons who are or were employed by
15 the alleged violator and against whom one or more of the alleged violations was committed.
16 Plaintiffs are therefore pursuing civil penalties for violations of the Labor Code sections set forth
17 herein.

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

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

26 89. Labor Code section 201 requires immediate payment of all wages owed at the
27 termination of employment. It is alleged that within the last year, Defendants' employees in
28 California have been terminated and have not received all wages owed at their termination.

1 There is no civil penalty associated with violation of section 201, but Plaintiffs seek civil
2 penalties on behalf of themselves and all others similarly situated under Labor Code section
3 2699, subd. (f).

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

11 91. Labor Code section 203 provides that "[i]f an employer willfully fails to pay,
12 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and
13 205.5, any wages of an employee who is discharged or who quits, the wages of the employee
14 shall continue as a penalty from the due date thereof at the same rate until paid or until an action
15 therefor is commenced; but the wages shall not continue for more than 30 days." For violation
16 of this provision, Plaintiffs seek civil penalties on behalf of themselves and all other similarly
17 situated under Labor Code section 256.

18 92. Labor Code section 204 makes wages due no less frequently than twice a month
19 for non-exempt employees for work performed each pay period. Defendants have violated
20 section 204 with respect to Plaintiffs and their similarly situated coworkers by not paying them
21 all wages due for work performed each pay period. Plaintiffs seek civil penalties on behalf of
22 themselves and all other similarly situated under Labor Code section 210.

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

1 94. Labor Code section 226, subdivision (a), requires a California employer to include
2 very specific information on an employee's paycheck stub. The required information includes
3 the total number of overtime hours worked and the correct rates of pay. Lab. Code § 226(a).
4 Subdivision (e) sets forth statutory penalties for the violation of section 226(a). Plaintiffs seek
5 to recover said penalties on behalf of themselves and all others similarly situated.

6 95. Labor Code section 226.3 sets forth civil penalties for violation of section 226,
7 subdivision (a). Plaintiffs seek said penalties against Defendants on behalf of themselves and
8 all other similarly situated employees for violation of section 226, subdivision (a).

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

13 97. Labor Code section 510 provides that an employer shall pay overtime premium
14 wages to non-exempt employees who work over eight hours in a workday or over 40 hours in a
15 workweek. Defendants violated Labor Code section 510 by not paying overtime premium
16 wages to non-exempt employees who worked over eight hours in a day and Labor Code section
17 510.

18 98. Labor Code section 512 provides that an employer shall provide its non-exempt
19 employees with one off-duty meal period for each five-hour work period. Defendants violated
20 Labor Code section 512 by not providing off-duty meal periods to its non-exempt employees
21 for every five-hour work period.

22 99. Labor Code section 558 provides for civil penalties against an employer who
23 violates sections 510 and 512. Plaintiffs seek said penalties against Defendants on behalf of
24 themselves and all other similarly situated employees for violation of sections 510 and 512.

25 100. Labor Code section 1197 requires that employers may not pay less than the
26 mandated minimum wage. Defendants violated section 1197 by not paying Plaintiffs and their
27 similarly situated coworkers at least the minimum wage for all hours worked. The civil penalty
28 for violations of section 1197 is enumerated in Labor Code section 1197.1. Plaintiffs seek said

1 penalties against Defendants on behalf of themselves and all other similarly situated employees
2 for violations of section 1197.

3 101. Plaintiffs also seek any civil penalties allowable under the Labor Code that arise
4 out of the same set of operative facts as the claims made in this complaint.

5 102. Plaintiffs have fully complied with the statutory requirements of Labor Code
6 section 2699.3. Plaintiffs gave notice by a letter (and email to paga@dir.ca.gov) dated February
7 9, 2016 and by certified mail to the California Labor and Workforce Development Agency
8 (“LWDA”) postmarked February 9, 2018, and the employer via certified mail of the specific
9 provisions of the Labor Code alleged to have been violated, including the facts and theories to
10 support the alleged violations. More than 65 days have passed since the abovementioned letter
11 was sent via certified mail to the LWDA, as described in Labor Code section 2699.3(2)(A).
12 Plaintiffs have not yet received notice from the LWDA indicating its intent to either pursue or
13 not pursue an investigation or action for penalties against Defendants. Plaintiffs have therefore
14 added this claim.

15 103. Defendants’ failure to pay wages due and owing to Plaintiffs and those similarly
16 situated, as indicated in prior paragraphs, was willful. Defendants have knowingly refused to
17 pay any portion of the amount due and owing Plaintiffs and their similarly situated employees.
18 Further, Defendants have not taken any actions to “cure” the Labor Code violations pursuant to
19 California Labor Code section 2699 et seq.

20 104. By failing to pay Plaintiffs and the current and past aggrieved employees,
21 Defendants have violated numerous California Labor Code provisions, all as set forth
22 hereinabove. Civil penalties are therefore appropriate.

23 **SEVENTH CAUSE OF ACTION**

24 ***Violation of Labor Code Section 203***

25 **(Action Brought by Plaintiff Beatty on Behalf of Himself**

26 **And the Class Against All Defendants)**

27 105. Plaintiff Beatty incorporates by reference and re-alleges each and every one of the
28 allegations contained in the preceding and foregoing paragraphs of this Complaint as though

1 fully set forth herein.

2 106. Pursuant to California Labor Code section 203, it is alleged that Defendants have
3 willfully failed to pay without abatement or reduction all the wages of Plaintiff Beatty.

4 107. Defendants are aware that they owe the wages claimed yet have willfully failed to
5 make payment.

6 108. Because of Defendants willful failure to pay all wages owed at termination,
7 Plaintiff Beatty seeks wages and penalties pursuant to Labor Code section 203 on behalf of
8 himself and those similarly situated. According to Labor Code section 203, these penalties
9 consist of up to 30 days of pay for Plaintiff Beatty and those similarly situated at their regular
10 rate of pay, including overtime.

11 109. Plaintiff Beatty has been available and ready to receive wages owed to him.

12 110. Plaintiff Beatty has never refused to receive any payment, nor has Plaintiff Beatty
13 been absent from his regular place of residence.

14 111. Defendants' failure to pay wages due and owing to Plaintiff Beatty as indicated in
15 prior paragraphs was willful. Defendants have knowingly refused to pay any portion of the
16 amount due and owing Plaintiff Beatty and those similarly situated.

17 112. Pursuant to Labor Code sections 218.5, Plaintiff Beatty requests the Court to
18 award him reasonable attorney's fees and costs incurred in this action.

19 113. Plaintiff Beatty also request all unpaid wages, Labor Code section 203 penalties
20 and interest. The exact amount of actual wages and Labor Code section 203 penalties owed will
21 not be fully ascertained until discovery is completed. Until Defendants produce the necessary
22 documents for an accounting, Plaintiff Beatty is unable to determine the exact amount of wages
23 and Labor Code section 203 penalties owed.

24 **PRAYER FOR RELIEF**

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

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

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

3 3. For attorney’s fees and costs pursuant to Labor Code sections 203, 226, 1194, and
4 2802(c);

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

6 5. For all penalties and/or other amounts owed under Labor Code section 203;

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

9 7. For an appointment of a receiver to perform an accounting of all monies owed to
10 these employees;

11 8. For any and all injunctive relief this Court deems necessary pursuant to Business
12 and Professions Code section 17203;

13 9. For unreimbursed expenses, according to proof, plus interest thereon pursuant to
14 Labor Code section 2802(b);

15 10. For civil penalties for each aggrieved employee, for each violation alleged
16 aforesaid, to be distributed in accordance with Labor Code section 2699;

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

18 12. For costs of suit; and

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

20
21 DATED: September 14, 2018

STRAUSS & STRAUSS, APC

22
23 By: 

24
25 _____
26 Michael A. Strauss
27 Aris E. Karakalos
28 Andrew C. Ellison
Attorneys for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiffs Kyle Jensen and Christopher Beatty hereby demand a trial by jury.

DATED: September 14, 2018

STRAUSS & STRAUSS, APC

By: 

Michael A. Strauss
Aris E. Karakalos
Andrew C. Ellison
Attorneys for Plaintiffs

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 9/24/2018 at 11:52 AM PDT and filed on 9/24/2018

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

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

Filer: Kyle Jensen
Christopher Beatty

Document Number: 46

Docket Text:

THIRD AMENDED COMPLAINT against Defendant Secorp Industries amending Amended Complaint/Petition[25], filed by Plaintiffs Kyle Jensen, Christopher Beatty(Attorney Michael Anthony Strauss added to party Christopher Beatty(pty:pla))(Strauss, Michael)

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

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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 :

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