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Attorneys for Plaintiff Archie Shakespeare

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

Archie Shakespeare, an individual, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

Ameri-Force Craft Services, Inc. and Does 1
through 10,

Defendants.

Case No. 37-2021-00013962-CU-OE-CTL
CLASS ACTION

Complaint for:

- 1. Failure to Pay Compensation Due**
- 2. Wage Statement Violations**
- 3. Violation of Cal. Business & Professions Code Section 17203**

Demand for Jury Trial

Plaintiff Archie Shakespeare ("Plaintiff"), individually and on behalf of all other persons
similarly situated, alleges:

1. Plaintiff is employed in San Diego County by Defendants as a non-exempt employee.
2. Defendant Ameri-Force Craft Services, Inc. is a Delaware corporation. Its principal place of
business as listed with the California Secretary of State is 9485 Regency Square Blvd., Suite 300,
Jacksonville, FL 32225.

- 1 3. Defendants acted as employers, co-employers and/or joint employers of Plaintiff and the class
2 members.
- 3 4. Plaintiff does not presently know the true names and capacities of the defendants named as Does
4 1 through 10 and therefore sues such defendants by these fictitious names. Plaintiff believes that
5 the Doe defendants are persons or entities who are involved in the acts set forth below, either as
6 independent contractors, suppliers, agents, servants, employees, or joint employers of the known
7 defendants, or through conspiring with the known Defendants to perform these acts for financial
8 gain and profit in violation of Plaintiff's and class members' rights. Plaintiff will request leave of
9 Court to amend this Complaint to set forth their true names, identities and capacities when
10 Plaintiff ascertains them.
- 11 5. Each of the Defendants has been or is the principal, officer, director, agent, employee, joint
12 employer, representative and/or co-conspirator of each of the other defendants and in such
13 capacity or capacities participated in the acts or conduct alleged herein and incurred liability
14 therefor. At an unknown time, some of the Defendants conspired with other Defendants to
15 commit the wrongful acts described herein. These wrongful acts were committed in furtherance
16 of such conspiracy. Defendants aided and abetted each other in committing the wrongful acts
17 alleged herein. Each of the Defendants acted for personal gain or in furtherance of their own
18 financial advantage in committing the acts alleged herein.
- 19 6. The named Defendants and the Doe defendants are hereinafter referred to collectively as
20 "Defendants."

21 **CLASS ACTION ALLEGATIONS**

22

- 23 7. Plaintiff brings the first three causes of action for himself and on behalf of the following classes:

24 **Unpaid Wages Class**

25 All non-exempt employees of any of the Defendants who worked in California within the
26 period beginning four years prior to the filing of this action through the date set by the
27 Court and were not paid for time spent waiting for and going through an entrance and exit
28 security process prior to, during, or after their shifts, donning or doffing required personal

protective equipment, having their temperatures checked, or traveling between security check point and where they were working.

Unpaid Overtime Class

All non-exempt employees of any of the Defendants who worked in California within the period who received per diems and worked overtime during the period for which the per diems were paid but were not paid overtime at a rate that included the per diems in the calculated overtime rate.

Wage Statement Sub-Class

All members of the Unpaid Wages Class who received wage statements at any time within the period beginning one year prior to the filing of this action through the date set by the Court.

8. The term “class members” includes the Plaintiff and all class members.

9. During all or a portion of the class period, Plaintiff and class members were employed by Defendants in California.

10. **Numerosity.** The number of class members is so numerous that joinder of all members is impractical. The names and addresses of the class members are identifiable through documents maintained by the Defendants, and the class members may be notified of the pendency of this action by published and/or mailed notice. Plaintiff believed to be more than 50 class members.

11. **Existence and Predominance of Common Questions of Law and Fact.** Common questions of law and fact exist as to all class members. These questions predominate over the questions affecting only individual members. These common legal and factual questions include, among other questions:

- a. Whether Defendants paid class members for all hours worked as required by California law for time spent waiting for and going through security processes or donning or doffing required personal protective equipment.
- b. Whether Defendants paid class members for all hours worked as required by California law for time spent traveling between the security check points and where they were working.
- c. Whether Defendants paid class members for overtime at the proper overtime rate.

- 1 d. Whether Defendants violated Labor Code Section 226 by failing to timely furnish
2 Plaintiff and class members accurate wage statements; and
3 e. Whether Defendants engaged in unfair competition in violation of California Business &
4 Professions Code Section 17200, *et seq.*

- 5 12. **Typicality.** Plaintiff's class claims are typical of the class members' claims. Plaintiff and all
6 class members sustained injuries and damages arising out of Defendants' common course of
7 conduct in violation of the law as alleged herein. Plaintiff is entitled to the same relief under the
8 class action causes of action as the class members.
- 9 13. **Adequacy.** Plaintiff will adequately and fairly protect the interests of the class members.
10 Defendants employed Plaintiff during the class period, and Plaintiff is an adequate representative
11 for the class members because Plaintiff has no interest adverse to the interests of the class
12 members and Plaintiff has retained legal counsel with substantial experience in civil litigation,
13 employment law and class action litigation. Plaintiff and Plaintiff's counsel will fairly and
14 adequately protect the class members' interests.
- 15 14. **Superiority.** A class action is superior to other available means of fair and efficient adjudication
16 of the class members' claims. Joinder of all class members is impractical. Class action treatment
17 will allow numerous similarly situated persons to prosecute their common claims in a single
18 forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense
19 that numerous individual actions would cause to such plaintiffs or to the court system. Further,
20 the damages of many class members may be relatively small and the burden and expenses of
21 individual litigation would make it difficult or impossible for individual class members to seek
22 and obtain relief, while a class action will serve an important public interest. Furthermore,
23 questions of law and fact common to the class members predominate over questions affecting
24 only individual members, and a class action is superior to other available methods for fair and
25 efficient adjudication of the controversy. Individual litigation would present the potential for
26 inconsistent or contradictory judgments. By contrast, the class action device will result in
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substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in one case.

**First Cause of Action
Failure to Pay Wages for Hours Worked
(Against All Defendants)**

15. Plaintiff realleges all the preceding paragraphs.

16. Labor Code Section 1197 in relevant part provides:

The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

17. Paragraph 4 of the applicable Wage Order provides in relevant part:

(B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

18. The following allegations as to Plaintiff are believed to apply to all class members.

19. Before being allowed to work, Plaintiff was required to stop at a security check point where a guard would scan Plaintiff's employee badge before allowing Plaintiff to enter the secured site where Plaintiff worked. There were lines of employees that Plaintiff was required to wait in to go through this security process. After going through the mandatory security entrance process, Plaintiff was required to have his temperature checked, put on personal protective equipment and then travel to the location where Plaintiff worked. Plaintiff was not paid for this time.

20. After Plaintiff stopped working, Plaintiff had to take off all the protective gear and also had to travel from the location where Plaintiff worked to the security exit check point. There, Plaintiff had to wait to go through the mandatory exit process, which included waiting in line. Plaintiff was not paid for this time.

21. Defendants did not compensate Plaintiff and other class members for such hours worked and, to the extent such hours worked exceeded eight hours in a day or 40 hours in a week, Defendants did not compensate Plaintiff and other class members at the correct overtime rate.

1 22. Plaintiff received a daily per diem. Plaintiff did not receive this per diem on days Plaintiff did not
2 work. When Plaintiff worked less than six hours in a day, his daily per diem was reduced. On
3 occasion, Plaintiff worked overtime and was paid overtime. The overtime rate, however, was not
4 calculated by taking into account the per diem payments as required by California law.
5 Therefore, Plaintiff was not paid the correct overtime rate.

6 23. Plaintiff and class members are entitled to liquidated damages pursuant to Labor Code Section
7 1194.2.

8 24. Plaintiff has incurred and is entitled to attorneys' fees, costs, and interest.
9

10 **Second Cause of Action**
Wage Statement and Record-Keeping Violations
(Against All Defendants)
11

12 25. Plaintiff realleges all the preceding paragraphs.

13 26. Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to
14 maintain and furnish Plaintiff and class members with accurate and complete wage statements
15 reflecting all the information required under Section 226(a) and/or 1174.

16 27. Defendants violated Section 226(a)(1) as to Plaintiff and other class members by failing to
17 provide them statements of wages that accurately showed gross wages actually earned.

18 28. Defendants violated Section 226(a)(2) by failing to provide Plaintiff and other class members
19 statements of wages that accurately showed the total hours actually worked by Plaintiff and other
20 class members.

21 29. Defendants violated Section 226(a)(5) by failing to provide Plaintiff and other class members
22 with statements of wages that accurately showed net wages actually earned.

23 30. Defendants violated Section 226(a)(9) by failing to provide Plaintiff and other class members
24 with statements of wages that accurately showed the applicable hourly rates in effect during the
25 pay period and the corresponding number of hours worked at each hourly rate by failing
26 accurately to show the actual number of hours worked at the applicable hourly rate at which they
27 were to be paid.
28

- 1 31. Plaintiff and class members are suffered injury as a result of Defendants' violations. Moreover,
2 Defendants' failure to furnish Plaintiff and class members with complete and accurate itemized
3 wage statements resulted in actual injury because such failures led to, among other things, the
4 non-payment of all the wages due them and deprived them of the information necessary to
5 identify the discrepancies in Defendants' reported data.
6 32. Plaintiff and the other class members are entitled to damages and/or penalties pursuant to Labor
7 Code Section 226.

8 **Third Cause of Action**
9 **Violation of California Business and Professions Code Section 17200, et seq.**
10 **(Against All Defendants)**

- 11 33. Plaintiff realleges all the preceding paragraphs.
12 34. Business & Professions Code Section 17200 provides:
13 As used in this chapter, unfair competition shall mean and include any **unlawful, unfair**
14 or fraudulent business act or practice and unfair, deceptive, untrue or misleading
15 advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of
16 Part 3 of Division 7 of the Business and Professions Code.) (Emphasis added.)
17 35. Defendants' violations of the Labor Code and Wage Order provisions set forth above constitute
18 unlawful and/or unfair business acts or practices.
19 36. Business & Professions Code Section 17203 provides:
20 Any person who engages, has engaged, or proposes to engage in unfair competition may
21 be enjoined in any court of competent jurisdiction. The court may make such orders or
22 judgments, including the appointment of a receiver, as may be necessary to prevent the
23 use or employment by any person of any practice which constitutes unfair competition, as
24 defined in this chapter, or as may be necessary to restore to any person in interest any
25 money or property, real or personal, which may have been acquired by means of such
26 unfair competition.
27 37. Defendants have been unjustly enriched because of Defendants' unlawful and/or unfair business
28 acts and/or practices.
38. Plaintiff and the class members are entitled to restitution of the money and/or property by which
Defendants were unjustly enriched.

- 1 39. Plaintiff and the class members are further entitled to and seek a declaration that the above-
2 described business practices are unfair, unlawful and/or fraudulent and injunctive relief
3 restraining Defendants, and each of them, from engaging in any of the above-described unfair,
4 unlawful and/or fraudulent business practices in the future.
- 5 40. Plaintiff and the class members have no plain, speedy, and/or adequate remedy at law to redress
6 the injuries that they have suffered because of Defendants' unfair, unlawful and/or fraudulent
7 business practices.
- 8 41. If Defendants are not enjoined from the conduct alleged herein, they will continue to violate their
9 legal obligations.
- 10 42. Plaintiff is entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure
11 Section 1021.5.

12 WHEREFORE, Plaintiff demands a jury trial and requests that judgment be entered against all
13 Defendants as follows:

- 14 1. Certification of this action as a class action and the appointment of Plaintiff as the representative
15 of the classes and Plaintiff's counsel as lead counsel for the classes;
- 16 2. Damages for unpaid wages;
- 17 3. Liquidated damages;
- 18 4. Compensatory damages according to proof;
- 19 5. Statutory penalties pursuant to Labor Code Section 226(e);
- 20 6. Restitution pursuant to Business & Professions Code Sections 17200, *et seq.*;
- 21 7. Prejudgment interest;
- 22 8. Reasonable attorneys' fees;
- 23 9. Costs as allowed by law;
- 24 10. A declaratory judgment that the practices complained of herein are unlawful under the Labor
25 Code and/or the Unfair Competition Law and injunctive relief requiring termination or
26 modification of the unlawful practices alleged;
- 27
28

1 11. Such other relief as this Court shall deem just and proper.

2 Dated: March 31, 2021

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3
4 BY: 

PETER R. DION-KINDEM, P.C.

PETER R. DION-KINDEM

Attorney for Plaintiff Archie Shakespeare

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8 **Demand for Jury Trial**

9 Plaintiff demands a jury trial.

10 Dated: March 31, 2020

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11
12 BY: 

PETER R. DION-KINDEM, P.C.

PETER R. DION-KINDEM

Attorney for Plaintiff Archie Shakespeare