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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

11 UNLIMITED JURISDICTION

13 MAYNOR GALINDO, on behalf of himself
14 and all others similarly situated, and the
general public,

15 *Plaintiff,*

16 v.

17 PHILLIPS 66 COMPANY, a Delaware
company; PHILLIPS 66 PIPELINE LLC, a
18 Delaware limited liability company;
19 PHILLIPS 66 SPECTRUM CORPORATION,
a Delaware corporation; and DOES 1 through
20 50, inclusive,

21 *Defendants.*

Case No. **21STCV38806**

REPRESENTATIVE ACTION

COMPLAINT

1. Civil Penalties (Lab. Code § 2698, *et seq.*)

1 Plaintiff MAYNOR GALINDO ("Plaintiff"), on behalf of himself, all other similarly
2 situated aggrieved employees, the general public, and the State of California complains and alleges
3 as follows:

4 **INTRODUCTION**

5 1. Plaintiff brings this representative action against defendant PHILLIPS 66
6 COMPANY, a Delaware corporation; PHILLIPS 66 PIPELINE LLC, a Delaware limited liability
7 company; PHILLIPS 66 SPECTRUM CORPORATION, a Delaware corporation; and DOES 1
8 through 50, inclusive, (collectively referred to as "Defendants") for alleged violations of the Labor
9 Code. As set forth below, Plaintiff alleges that Defendants have

- 10 (1) failed to provide Plaintiff and all other similarly situated individuals with meal
11 periods;
- 12 (2) failed to provide them with rest periods;
- 13 (3) failed to pay them premium wages for missed meal and/or rest periods;
- 14 (4) failed to pay them premium wages for missed meal and/or rest periods at the regular
15 rate of pay;
- 16 (5) failed to pay them at least minimum wage for all hours worked;
- 17 (6) failed to pay them overtime wages at the correct rate;
- 18 (7) failed to pay them double time wages at the correct rate;
- 19 (8) failed to pay them overtime and/or double time wages by failing to include all
20 applicable remuneration in calculating the regular rate of pay;
- 21 (9) failed to provide them with accurate written wage statements; and
- 22 (10) failed to pay them all of their final wages following separation of employment.

23 Based on these alleged violations, Plaintiff now brings this representative action to civil and
24 statutory penalties, and related relief on behalf of himself and all others similarly situated, all other
25 aggrieved employees, and the State of California.

26 **JURISDICTION AND VENUE**

27 2. This Court has subject matter jurisdiction to hear this case because the penalties sought
28 by Plaintiff from Defendants exceeds the minimal jurisdictional limits of the Superior Court of the

1 State of California.

2 3. Venue is proper in Los Angeles County pursuant to Code of Civil Procedure
3 §§395(a) and 395.5 in that liability arose there, because at least some of the transactions that are the
4 subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices,
5 transacts business, and/or has an agent therein.

6 **PARTIES**

7 4. Plaintiff is and was, and at all relevant times mentioned herein, an individual
8 residing in the State of California.

9 5. Plaintiff is informed and believes, and thereupon alleges, that Defendant PHILLIPS
10 66 COMPANY is, and at all relevant times mentioned herein, a Delaware corporation doing
11 business in the State of California.

12 6. Plaintiff is informed and believes, and thereupon alleges, that Defendant PHILLIPS
13 66 PIPELINE LLC is, and at all relevant times mentioned herein, a Delaware limited liability
14 company doing business in the State of California.

15 7. Plaintiff is informed and believes, and thereupon alleges, that Defendant PHILLIPS
16 66 SPECTRUM CORPORATION is, and at all relevant times mentioned herein, a Delaware
17 corporation doing business in the State of California.

18 8. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
19 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
20 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants
21 when ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of the
22 fictitiously named defendants are responsible in some manner for the occurrences, acts and
23 omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these
24 defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and
25 capacities of the DOE defendants when ascertained.

26 9. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
27 mentioned herein, some or all of the defendants were the representatives, agents, employees,
28 partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some

1 or all of the other defendants, and, in doing the things alleged herein, were acting within the course
2 and scope of such relationship and with the full knowledge, consent, and ratification by such other
3 defendants.

4 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

5 10. Plaintiff worked for Defendants as an hourly, non-exempt employee from
6 approximately July 8, 2019 through June 10, 2020.

7 **On-Call Time**

8 11. Plaintiff and the putative class were assigned to work mandatory on-call shifts
9 approximately two (2) to three (3) times in every two week period. During their “on-call”
10 assignment Plaintiff and the putative class would be required to report to the refinery within two
11 hours if they were called in, typically the on-call period would be designated as two hours before
12 the start of their shift and two hours after the end of their shift. Frequently, Plaintiff and the putative
13 class would be on-call between 2 a.m. and 6 a.m. If Plaintiff and the putative class were called in to
14 work at the refinery while being on call, they could not find a replacement to come in for them.
15 Additionally, they could not travel on on-call days. During that period, Plaintiff and the putative
16 class would be on standby without pay.

17 12. Defendants assigned Plaintiff and the putative class to work mandatory on-call shifts
18 one week in advance so that they knew what dates they were to be on call.

19 13. Plaintiff and the putative class typically worked 2 to 4 hours each day during each
20 on-call shift. During these mandatory on-call shifts, Plaintiff and putative class would work
21 substantial amounts of hours and was not compensated by Defendants.

22 14. Defendants knowingly assigned Plaintiff and the putative class to work on-call shifts
23 but failed to pay them for this time.

24 **Security Check and Off-the-Clock**

25 15. During the applicable limitations period, Plaintiff and the putative class had to work
26 off-the-clock because they were not paid for all hours worked including, but not limited to, work
27 duties performed before clocking in and after clocking out. Plaintiff and the putative class arrived
28 at their work facility with a badge and would be subjected to a security check where any bags they

1 had would be inspected thoroughly. Plaintiff and the putative class would then line up with other
2 employees to wait for a golf cart that would take Plaintiff and the putative class up to a control
3 room at the top of a hill. In the control room there was a kiosk mounted against the wall where
4 Plaintiff and the putative class would clock in. In total, this process of getting through security and
5 waiting to be taken to their clock-in location via golf cart would regularly take between five (5)
6 and fifteen (15) minutes. Plaintiff and the putative class would regularly arrive substantially earlier
7 than their scheduled working time of 4 a.m. or 4 p.m. to make sure that they didn't miss the golf
8 cart that traveled up the hill in the morning to take them to their unit. In total, the process of going
9 through security and being taken to the control room could take as long as fifteen (15) minutes per
10 day – time which was unpaid by Defendants. Plaintiff and the putative class were required to go
11 through the security check prior to clocking in at the beginning of each work shift and were
12 required to clock out first at the end of each work shift prior to going through the security check.

13 16. Based on the above, Defendants' security check practices and off-the-clock on site
14 travel time have resulted in substantial amounts of time not recorded as hours worked therefore
15 resulting in substantial amounts of wages not paid to Plaintiff and the putative class.

16 **Missed Meal Periods**

17 17. Defendant's written policies failed to advise Galindo and the aggrieved employees
18 of their legal rights to take meal periods in accordance with California law. Specifically,
19 Defendants have a practice and/or policy of requiring Galindo and the aggrieved employees to take
20 their meal periods after the fifth hour of work, when they take their meal periods at all. Plaintiff
21 and the putative class were regularly not provided with any meal periods due to (1) Defendants'
22 policy of not scheduling each meal period as part of each work shift; (2) chronically understaffing
23 each work shift with not enough workers; (3) imposing so much work on each employee such that
24 it made it unlikely that an employee would be able to take their breaks if they wanted to finish their
25 work on time; and (4) no formal written meal and rest period policy that encouraged employees to
26 take their meal and rest periods. Accordingly, Galindo and the aggrieved employees were not
27 provided with legally mandated uninterrupted meal periods of at least thirty minutes pursuant to
28 California law. When Galindo would try to take a meal break, he would get resistance from his

1 supervisors, including, but not limited to supervisor Beto Plascencia. Beto would regularly refuse
2 their requests to take a meal period, but occasionally, after repeated requests Beto would acquiesce.
3 On at least one occasion, after requesting a late meal period Beto responded, “fine. Go take your
4 fucking break.” There was a repeated, systematic refusal to allow Plaintiff and the putative class to
5 take their meal periods, especially during any sort of crisis in the refinery.

6 18. Plaintiff and the putative class were instructed by management not to take their
7 meal periods because Plaintiff and the putative class were responsible for operating major
8 equipment, signing off on maintenance reports, taking sample of products to ensure compliance,
9 doing hourly rounds in a large refinery, and promptly addressing mechanical failure during
10 outages. When there was an outage, for example the one Galindo was given responsibility for in
11 Unit 60, Plaintiff and the putative class regularly worked through the entirety of their 12-hour shift
12 without a meal period or rest break. During an outage, Plaintiff and the putative class worked 13
13 days straight, then had one day off, then worked another 13 days straight, repeating this process
14 until the outage was solved. Working was particularly dangerous and stressful during an Outage.
15 Plaintiff and the putative class were expected to handle major machinery with only two workers.
16 Upon learning that Plaintiff and the putative class were being given responsibility over an Outage
17 on Unit 60 machinery, Union Rep Lisa Bowman called Madeleine Chernesky (Refinery Operations
18 Manager) to inquire as to why only two men were being required to handle an Outage at major
19 machinery. This type of job regularly requires larger groups of workers and a coordinator. Plaintiff
20 and the putative class regularly requested that their managers, including but not limited to Beto,
21 send in a supervisor and/or more workers to assist with the problems. By shortstaffing, Defendants’
22 regularly deprived Plaintiff and the putative class of any meal periods and/or rest periods. When
23 Plaintiff and the putative class requested more personnel, they were told by Raudell [surname
24 unknown] to get their jobs done or else it would “seem like you can’t do your job.” Plaintiff and
25 the putative class regularly worked up to 12-hour shifts without any meal period.

26 19. In addition, Galindo and the aggrieved employees did not execute valid on-duty
27 meal period waivers that complied with California law. Therefore, Galindo and the aggrieved
28 employees were not provided with an uninterrupted, duty-free meal period of at least thirty

1 minutes.

2 **Missed Rest Periods**

3 20. Plaintiff and the putative class were not provided with rest periods of at least ten
4 (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants'
5 policy of not scheduling each rest period as part of each work shift; (2) chronically understaffing
6 each work shift with not enough workers; (3) imposing so much work on each employee such that
7 it made it unlikely that an employee would be able to take their breaks if they wanted to finish their
8 work on time; and (4) no formal written meal and rest period policy that encouraged employees to
9 take their meal and rest periods. Galindo and aggrieved employees were regularly deprived of any
10 rest period due to the volume of their workload

11 21. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
12 provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked
13 due to complying with Defendants' productivity requirements that required Plaintiff and the
14 putative class to work through their rest periods in order to complete their assignments on time.

15 **Regular Rate of Pay**

16 22. The regular rate of pay under California law includes all remuneration for
17 employment paid, on behalf of the employer, to the employee. This requirement includes, but is
18 not limited, to, shift differentials, shift premiums, and/or non-discretionary bonuses.

19 23. During the applicable limitations period, Defendants violated the rights of Plaintiff
20 and the putative class under the above-referenced Labor Code sections by failing to pay them
21 overtime wages for all overtime hours worked and premiums for meal and/or rest break violations
22 in violation of Labor Code §§ 510, 1194, and 1198 as a result of not correctly calculating their
23 regular rate of pay to include all applicable remuneration, including, but not limited to, shift
24 differentials, shift premiums, and/or non-discretionary bonuses.

25 **Wage Statements**

26 24. Plaintiff and the putative class were not provided with accurate wage statements as
27 mandated by law pursuant to Labor Code § 226.

28 25. Defendants failed to comply with Labor Code 0167 226(a)(1) as "gross wages

1 earned” were not accurately reflected in that all hours worked, including overtime, “off-the-clock”
2 work, and/or premiums for meal and/or rest break violations were not included.

3 26. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours
4 worked by the employee” were not accurately reflected in that all hours worked, including
5 overtime, “off-the-clock” work were not included.

6 27. Defendants failed to comply with Labor Code section 226(a)(4) as “all deductions”
7 were not accurately reflected in that deductions, even “aggregated and shown as one item,” were not
8 included.

9 28. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages
10 earned” were not accurately reflected in that all hours worked, including overtime, “off-the-clock”
11 work, and/or premiums for meal and/or rest break violations, were not included.

12 29. Defendants failed to comply with Labor Code section 226(a)(6) as “the inclusive
13 dates of the period for which the employee is paid” were not included.

14 30. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
15 hourly rates in effect during the pay period and the corresponding number of hours worked at each
16 hourly rate by the employee” were not accurately reflected in that all hours worked, including
17 overtime, “off-the-clock” work, were not included.

18 **FIRST CAUSE OF ACTION**

19 **CIVIL PENALTIES**

20 **(Lab. Code §§ 2698 *et seq.*)**

21 31. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

22 32. During the applicable limitations period, Defendants have violated Labor Code §§
23 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1194, 1197, and 1198.

24 33. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of
25 himself and other current and former employees, to bring a representative civil action to recover
26 civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not,
27 be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

28 34. Plaintiff, a former employee against whom Defendants committed one or more of the

1 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
2 within the meaning of Labor Code § 2699(c).

3 35. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
4 § 2699.3. Notice was timely provided to the California Labor & Workforce Development Agency
5 (“LWDA”) and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an
6 intent to intervene.

7 36. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
8 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510,
9 512, 1194, 1197, and 1198.

- 10 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 1194, and 1198,
11 one hundred dollars (\$100) for each employee per pay period for each initial
12 violation and two hundred dollars (\$200) for each employee per pay period
13 for each subsequent violation (penalties set by Labor Code § 2699(f)(2));
- 14 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding
15 thirty (30) days’ pay as waiting time (penalties set by Labor Code § 256);
- 16 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
17 employee for each initial violation that was neither willful nor intentional,
18 two hundred dollars (\$200) for each employee, plus 25% of the amount
19 unlawfully withheld from each employee, for each initial violation that was
20 either willful or intentional, and two hundred dollars (\$200) for each
21 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
22 from each employee, for each subsequent violation, regardless of whether the
23 subsequent violation was either willful or intentional (penalties set by Labor
24 Code § 210);
- 25 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
26 employee for each initial violation that was neither willful nor intentional,
27 two hundred dollars (\$200) for each employee, plus twenty-five percent
28 (25%) of the amount unlawfully withheld from each employee, for each

1 initial violation that was either willful or intentional, and two hundred dollars
2 (\$200) for each employee, plus twenty-five percent (25%) of the amount
3 unlawfully withheld from each employee, for each subsequent violation,
4 regardless of whether the subsequent violation was either willful or
5 intentional (penalties set by Labor Code § 225.5);

6 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
7 citation, two hundred and fifty dollars (\$250) for each employee for each
8 violation. Alternatively, if an initial citation or its equivalent occurred before
9 the filing of this action, one thousand dollars (\$1,000) for each employee for
10 each violation (penalties set by Labor Code § 226.3);

11 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
12 employee for each initial pay period for which the employee was underpaid,
13 and one hundred dollars (\$100) for each employee for each subsequent pay
14 period for which the employee was underpaid (penalties set by Labor Code §
15 558);

16 vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each
17 aggrieved employee for each initial violation of Labor Code § 1197 that was
18 intentional and two hundred and fifty dollars (\$250) for each aggrieved
19 employee per pay period for each subsequent violation of Labor Code §
20 1197, regardless of whether the initial violation was intentional (penalties set
21 by Labor Code § 1197.1);

22 viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable
23 attorneys' fees and costs in connection with Plaintiff's claims for civil
24 penalties.

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- (1) Pre-judgment interest;
- (2) Statutory penalties;
- (3) Civil penalties;
- (4) Costs of suit;
- (5) Reasonable attorneys' fees; and
- (6) Such other relief as the Court deems just and proper.

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