

1 DAVID G. SPIVAK ESQ. (SBN 179684)
david@spivaklaw.com
2 MAYA CHEAITANI ESQ. (SBN 335777)
maya@spivaklaw.com
3 CHRISTINA J. PREJEAN ESQ. (SBN 314772)
christina@spivaklaw.com
4 THE SPIVAK LAW FIRM
5 8605 Santa Monica Bl., PMB 42554
West Hollywood, CA 90069
6 Telephone: (213) 725-9094
7 Facsimile: (213) 634-2485

8 WALTER L. HAINES ESQ. (SBN 71075)
walter@uelglaw.com
9 UNITED EMPLOYEES LAW GROUP
10 4276 Katella Ave, Suite 301
Los Alamitos, CA 90720
11 Telephone: (562) 256-1047
12 Facsimile: (562) 256-1006

13 Attorneys for Plaintiff(s),
14 JONATHAN SMITH-CAMPOS, and all others similarly situated

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF SAN DIEGO**
(UNLIMITED JURISDICTION)

17 JONATHAN SMITH-CAMPOS, on behalf of
18 himself and all others similarly situated, and as an
19 “aggrieved employee” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

20 *Plaintiff(s),*

21 vs.

22 BAY CITY MARINE, INC., a California
23 corporation; and DOES 1–50, inclusive,

24 *Defendant(s).*

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

07/15/2022 at 04:27:00 PM
Clerk of the Superior Court
By Shameka Simpson, Deputy Clerk

Case No. 37-2022-00008232

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201- 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
7. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 Plaintiff, Jonathan Smith-Campos (hereafter “Plaintiff” or “Smith-Campos”), on behalf of
2 himself and all others similarly situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class and representative action for alleged violations of the
5 California Labor Code, Industrial Welfare Commission Order No. 9-2001 (hereafter “the Wage
6 Order”), and the California Business and Professions Code against Defendants Bay City Marine,
7 Inc., a California corporation, and Does 1 through 50, inclusive (collectively “Defendants”).

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 him and other similarly situated workers for unpaid wages, statutory penalties, interest, and
10 related relief. These claims are based on Defendants’ failures to:

11 (A) Pay all wages, including minimum, regular, overtime and doubletime
12 wages, earned for all hours worked at the correct rates of pay;

13 (B) Provide all meal periods;

14 (C) Authorize and permit all rest breaks;

15 (D) Pay premium wages for unprovided meal periods;

16 (E) Pay premium wages for unprovided rest breaks;

17 (F) Indemnify for necessary work-related expenditures;

18 (G) Issue only accurate and complete itemized wage statements;

19 (H) Issue statements of the total hours of rest and recovery periods; and

20 (I) Timely pay wages upon termination of employment

21 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
22 restitution, statutory penalties, attorneys’ fees, costs, and related relief through this class action.

23 **II. THE PARTIES**

24 3. Plaintiff Jonathan Smith-Campos is a resident of California. At all relevant times,
25 Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section
26 11050 and an “aggrieved employee” within the meaning of Labor Code Section 2699 (c).

27 4. Defendant Bay City Marine, Inc. is a corporation organized and existing under the
28 laws of California and also a citizen of California based on Plaintiff’s information and belief.



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
2 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
3 is informed and believes and thereon alleges that said Defendants are legally responsible for the
4 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
5 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
6 when ascertained.

7 6. Plaintiff is informed and believes and thereon alleges that, at all relevant times
8 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
9 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
10 within the course and scope of such agency, employment, direction and control, and with the
11 approval and ratification of each of the other Defendants.

12 7. At all relevant times, in perpetrating the acts and omissions alleged herein,
13 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
14 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
15 Members or otherwise complying with their rights in accordance with applicable California labor
16 laws as alleged herein.

17 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
18 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
19 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
20 described class in accordance with applicable laws as alleged herein.

21 **III. CLASS ALLEGATIONS**

22 9. This action has been brought and may be maintained as a class action pursuant to
23 California Code of Civil Procedure section 382 because there is a well-defined community of
24 interest among the persons who comprise the readily ascertainable class defined below and
25 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
26 a class action.

27 10. **Class Definition:** The Class is defined as follows: All persons Defendants
28 employed in California hourly, non-exempt employees, individuals performing work comparable



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 to the aforementioned, compensated comparably to the aforementioned, individuals in similar
2 positions, at any time during the period beginning four years prior to the filing of this action and
3 ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

4 11. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
5 right to amend or modify the class definition with greater specificity, by further division into
6 subclasses and/or by limitation to particular issues.

7 12. **Numerosity:** The Class Members are so numerous that the individual joinder of
8 each individual Class Member is impractical. While Plaintiff does not currently know the exact
9 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
10 minimum required for numerosity under California laws.

11 13. **Commonality and Predominance:** Common questions of law and fact exist as to
12 all Class Members and predominate over any questions which affect only individual Class
13 Members. These questions include, but are not limited to:

14 A. Whether Defendants failed to pay all wages earned to Class Members for
15 all hours worked at the correct rates of pay, including meal period premium, and rest period
16 premium wages;

17 B. Whether Defendants failed to provide the Class Members with all meal
18 periods in compliance with California law;

19 C. Whether Defendants failed to authorize and permit the Class Members to
20 take all rest periods in compliance with California law;

21 D. Whether Defendants failed to indemnify the Class Members for the
22 reasonable expenses they incurred during the course of performing their duties;

23 E. Whether Defendants knowingly and intentionally failed to provide the
24 class with accurate and complete itemized wage statements;

25 F. Whether Defendants willfully failed to provide the class with timely final
26 wages;

27 G. Whether Defendants engaged in unfair competition within the meaning of
28 Business and Professions Code sections 17200, et seq., with respect to the Class; and



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 H. Whether Class Members are entitled to restitution of money or property
2 that Defendants may have acquired from them through alleged Labor Code violations.

3 14. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
4 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
5 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
6 Code, the Wage Order, and the Business and Professions Code.

7 15. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
8 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
9 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
10 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
11 Members.

12 16. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
13 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
14 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
15 Plaintiff and absent Class Members.

16 17. **Superiority:** A class action is vastly superior to other available means for fair and
17 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
18 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
19 and efficiently prosecute their common claims in a single forum without the unnecessary
20 duplication of effort and expense that numerous individual actions would entail. In addition, the
21 monetary amounts due to many individual Class Members are likely to be relatively small and
22 would thus make it difficult, if not impossible, for individual Class Members to both seek and
23 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
24 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
25 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

26 **IV. STATEMENT OF FACTS**

27 18. IWC Wage Order 9-2001 ("the Wage Order") applies to "all persons employed in
28 the transportation industry whether paid on a time, piece rate, commission, or other basis" Wage



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

Order, § 1. The Wage Order defines “Transportation Industry” to mean “any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles.” Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants, Smith-Campos, and all of the Class Members were covered by the Wage Order because the Defendants operated, and Smith-Campos, and all of the Class Members worked for, one or more establishments operated as ship repair. Accordingly, Smith-Campos and all of the other Class Members are entitled to the protections the Wage Order provides.

19. On approximately August 30, 2021, the Defendants began to employ Smith-Campos in National City in the position of hourly, non-exempt rigger. The Defendants continuously employed him in that capacity until on or about November 1, 2021 when his employment ended.

20. At all relevant times, the Defendants issued wages to Smith-Campos and all of the other Class Members on a basis and paid them by the hour. At all relevant times, the Defendants classified Smith-Campos and all of the other Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

21. At all relevant times, the Defendants failed to provide Smith-Campos and all of the other Class Members with all timely 30-minute, off-duty meal periods. The Defendants directed Smith-Campos and the other Class Members to record on their time and payroll records that they they had taken a 30 minute meal period within the first five hours of work even though they did not received such meal periods. The Defendants also failed to pay premium wages for days on which they failed to provide Smith-Campos and all of the other Class Members with meal periods as required by law.

22. At all relevant times, the Defendants failed to authorize and permit Smith-Campos and all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Defendants also failed to pay premium wages for days on



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 which they failed to authorize and permit Smith-Campos and all of the other Class Members to
2 take rest breaks as required by law.

3 23. At all relevant times, the Defendants required Smith-Campos and all of the other
4 Class Members to incur certain business expenses in the course of performing their duties. The
5 Defendants required Smith-Campos and all of the other Class Members to supply mobile phones
6 to perform their job duties. However, the Defendants did not provide these items and did not
7 reimburse Smith-Campos and the other Class Members for these items.

8 24. At all relevant times, the Defendants failed to issue to Smith-Campos and all of
9 the other Class Members complete and accurate wage statements that state all hours worked at
10 the correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed
11 to state on the wage statements they issued to Smith-Campos and all of the other Class Members
12 the unpaid wages discussed above. The wage statements fail to state all meal period premium
13 wages earned, all rest break premium wages earned, and related information.

14 25. At all relevant times, the Defendants also failed to timely pay Smith-Campos and
15 all of the other Class Members all earned wages as described above during and at the conclusion
16 of employment.

17 26. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
18 unlawful practices and policies, Plaintiff and the Class Members were:

- 19 A. Not provided with all off duty meal periods;
20 B. Not authorized and permitted to take all rest break periods;
21 C. Not paid one hour's pay for each workday in which Defendants failed to
22 authorize and permit them to take one or more timely rest periods;
23 D. Not paid one hour's pay for each workday in which Defendants failed to
24 provide them with one or more timely meal periods;
25 E. Not indemnified for all necessary business expenditures incurred during
26 the discharge of their duties;
27 F. Not provided with accurate and complete wage statements; and

28 ///



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 G. Not timely paid all earned and unpaid wages at the time their employment
2 ended.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PROVIDE MEAL PERIODS**

5 **Lab. Code §§ 226.7, 512 and 1198**

6 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

7 27. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

8 28. At all relevant times during the applicable limitations period, Plaintiff and the
9 Class Members have been employees of Defendants and entitled to the benefits and protections
10 of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

11 29. In relevant part, California Labor Code § 1198 states:

12 The maximum hours of work and the standard conditions of labor fixed by the
13 commission shall be the maximum hours of work and the standard conditions of
14 labor for employees. The employment of any employee for longer hours than those
fixed by the order or under conditions of labor prohibited by the order is unlawful.

15 30. In relevant part, In relevant part, California Labor Code § 512 states:

16 An employer shall not employ an employee for a work period of
17 more than five hours per day without providing the employee with
18 a meal period of not less than 30 minutes, except that if the total
19 work period per day of the employee is no more than six hours, the
meal period may be waived by mutual consent of both the
employer and employee.

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

23 31. In relevant part, Section 11 of the Wage Order states:

24 Meal Periods:

25 (A) No employer shall employ any person for a work period of more
26 than five (5) hours without a meal period of not less than 30
27 minutes, except that when a work period of not more than six (6)
hours will complete the day's work the meal period may be waived
by mutual consent of the employer and the employee.

28 (B) An employer may not employ an employee for a work period of



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

(E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

32. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

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

33. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

34. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 directed Smith-Campos and the other Class Members to record on their time and payroll records
2 that they had taken a 30-minute meal period within the first five hours of work even though they
3 did not receive such meal periods.

4 35. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
5 with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members
6 their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants
7 failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class
8 Members with timely meal periods.

9 36. Plaintiff is informed and believes and thereon alleges that, at all relevant times
10 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
11 which resulted in Defendants not providing the and the Class Members with all off-duty meal
12 periods required by California law.

13 37. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
14 suffered damages in amounts subject to proof to the extent they were not paid additional wages
15 owed for all meal periods not provided to them.

16 38. By reason of the above, Plaintiff and the Class Members are entitled to premium
17 wages for workdays in which one or more meal periods were not provided to them pursuant to
18 California Labor Code § 226.7.

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

21 **Lab. Code §§ 226.7 and 1198**

22 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

23 39. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

24 40. At all relevant times during the applicable limitations period, Plaintiff and the
25 Class Members have been employees of Defendants and entitled to the benefits and protections
26 of California Labor Code §§ 226.7 and 1198, and the Wage Order.

27 ///

28 ///



41. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

42. In relevant part, Section 12 of the Wage Order states:

Rest Periods:

(c) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

43. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

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

44. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period

1 of work, or major fraction thereof.

2 45. Defendants intentionally failed to authorize and permit Plaintiff and the Class
3 Members to take all 10-minute rest periods free from any work duties in accordance with the
4 Wage Order.

5 46. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
6 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
7 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
8 Plaintiff and the other Class Members to take timely rest periods.

9 47. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
10 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
11 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
12 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
13 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
14 to authorize and permit them to take 10-minute rest periods every four hours worked or major
15 fraction thereof.

16 48. Plaintiff is informed and believes and thereon alleges that, at all relevant times
17 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
18 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
19 take all rest breaks required by California law.

20 49. Defendants failed to provide Plaintiff with all required rest breaks in accordance
21 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
22 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
23 which resulted in Defendants not providing the Class Members with all rest breaks required by
24 California law.

25 50. Defendants failed to pay Plaintiff the additional wages required by California
26 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
27 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
28 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 Class Members with additional wages for all rest breaks not provided to them as required by
2 California Labor Code § 226.7.

3 51. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
4 suffered damages in amounts subject to proof to the extent they were not paid additional wages
5 owed for all rest breaks not provided to them.

6 52. By reason of the above, Plaintiff and the Class Members are entitled to premium
7 wages for workdays in which one or more rest breaks were not provided to them pursuant to
8 California Labor Code § 226.7.

9 **THIRD CAUSE OF ACTION**

10 **FAILURE TO INDEMNIFY**

11 **Lab. Code §§ 1198 and 2802**

12 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

13 53. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

14 54. In pertinent part, California Labor Code § 2802(a) states: "An employer shall
15 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
16 consequence of the discharge of his or her duties." Additionally, the Wage Order states,

17 (A) When uniforms are required by the employer to be worn by the
18 employee as a condition of employment, such uniforms shall be provided
and maintained by the employer.

19 ...

20 (B) When tools or equipment are required by the employer or are necessary to
21 the performance of a job, such tools and equipment shall be provided and
22 maintained by the employer, except that an employee whose wages are at
least two (2) times the minimum wage provided herein may be required to
provide and maintain hand tools and equipment customarily required by
the trade or craft.

23 Wage Order, § 9(A) and (B).

24 55. California Labor Code § 1198 prohibits employers from employing their
25 employees under conditions prohibited by the Wage Order.

26 56. At all relevant times, Defendants required Plaintiff and the Class Members to incur
27 certain business expenses in the course of performing their duties.

28 ///



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 F. The inclusive dates of the period for which the employee is paid;

2 G. The name of the employee and his or her social security number, except

3 that by January 1, 2008, only the last four digits of his or her social security number or an

4 employee identification number other than a social security number may be shown on the itemized

5 statement;

6 H. The name and address of the legal entity that is the employer; and

7 I. All applicable hourly rates in effect during the pay period and the

8 corresponding number of hours worked at each hourly rate by the employee.

9 61. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury

10 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if

11 the employer fails to provide accurate and complete information as required by California Labor

12 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement

13 alone one or more of the following:

14 A. The amount of the gross wages or net wages paid to the employee during

15 the pay period or any of the other information required to be provided on the itemized wage

16 statement pursuant to California Labor Code § 226(a);

17 B. Which deductions the employer made from gross wages to determine the

18 net wages paid to the employee during the pay period;

19 C. The name and address of the employer and, if the employer is a farm labor

20 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name

21 and address of the legal entity that secured the services of the employer during the pay period;

22 D. The name of the employee and only the last four digits of his or her social

23 security number or an employee identification number other than a social security number; and

24 E. The number of piece-rate units earned and the piece rate.

25 62. “Promptly and easily determine,” as stated in California Labor Code § 226(e),

26 means a reasonable person would be able to readily ascertain the information without reference

27 to other documents or information.

28 ///

63. Similarly, section 6(B) of the Wage Order states

Every employer who has control over wages, hours, or working conditions shall semimonthly or at the time of each payment of wages furnish each employee an itemized statement in writing showing:

- (1) all deductions;
- (2) the inclusive dates of the period for which the employee is paid;
- (3) the name of the employee or the employee's social security number; and
- (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. (See Labor Code Section 226.)

This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee's wages.

64. As alleged herein, at all relevant times during the applicable limitations period, Defendants violated California Labor Code section 226 because they did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. Defendants failed to state in the wage statements they issued to Plaintiff and the other Class Members all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). Defendants knowingly and intentionally did not issue either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, statements to Plaintiff and the Class Members that state all meal period premium wages earned, and all rest break premium wages earned.

65. Defendants' failure to provide Plaintiff and the other Class Members with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the other Class Members with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

66. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate

1 wage statements were violated and they were misled about the amount of wages they had actually
2 earned and were owed. In addition, the absence of accurate information on their wage statements
3 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
4 and mathematical computations to determine the amounts of wages owed, has caused difficulty
5 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
6 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
7 and the other Class Members were not able to ascertain from the wage statements whether
8 Defendants complied with their obligations under California Labor Code section 226(a).

9 **FIFTH CAUSE OF ACTION**

10 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

11 **(Lab. Code §§ 201, 202, and 203)**

12 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

13 67. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 68. At all relevant times during the applicable limitations period, Plaintiffs and the
15 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
16 of California Labor Code §§ 201–203, and the Wage Order.

17 69. Labor Code § 201 provides that all earned and unpaid wages of an employee who
18 is discharged are due and payable immediately at the time of discharge.

19 70. Labor Code § 202 provides that all earned and unpaid wages of an employee who
20 quits after providing at least 72-hours notice before quitting are due and payable at the time of
21 quitting and that all earned and unpaid wages of an employee who quits without providing at least
22 72-hours notice before quitting are due and payable within 72 hours.

23 71. The Defendants failed to pay Smith-Campos and all of the other Class Members
24 whose employment ended all of the earned but unpaid wages described above by the conclusion
25 of their employment with Smith-Campos, including unprovided meal period premium wages, and
26 unprovided rest break premium wages.

27 72. By failing to pay such earned wages to Plaintiff and the Class Members,
28 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

§ 201 or § 202.

73. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Class Members all of their earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

74. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, *et seq.*)

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

75. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

76. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, *et seq.*

77. The unlawful conduct of Defendants alleged herein amount to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to compensate employees for all earned wages.

78. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class Members were deprived of meal and rest period premium wages and reimbursement for mobile phones and their use, and comparable money and property.

79. Pursuant to California Business & Professions Code § 17203, Plaintiff and the Class Members are entitled to restitution of all monies rightfully belonging to them that



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

80. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

SIXTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

81. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

82. The "Aggrieved Employees" are all members of the Class defined above who Defendants employed during the period beginning September 14, 2020, and ending on the date that final judgment is entered in this action.

83. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

84. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the aggrieved employees on such intervals for all wages earned and all hours worked.

85. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 512, and 2802.

86. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

87. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code 201, 202, 203, 204, 226, 226.7, 512, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each aggrieved employee for initial violation and one thousand dollars (\$1,000.00) for each aggrieved employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code § 512, fifty dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts established by California Labor Code § 558).

D. For violations of California Labor Code §§ 201, 202, 203, 226.7, and 2802 one



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

88. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated February 17, 2022, Plaintiff filed written notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s written notice to the LWDA dated February 17, 2022, is attached as **Exhibit A**. Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it does not intend to investigate these allegations.

89. Pursuant to California Labor Code § 2699(g), Plaintiff and the aggrieved employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in connection with their claims for civil penalties.

V. PRAYER FOR RELIEF

90. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for relief and judgment against Defendants as follows:

A. An order that the action be certified as a class action with respect to Plaintiff’s claims for violations of California law;

B. An order that Plaintiff be appointed class representative;

C. An order that counsel for Plaintiff be appointed class counsel;

D. Unpaid wages, including missed meal period, and missed rest period wages;

E. Statutory penalties, including waiting time penalties;

F. Civil Penalties;



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- G. Restitution;
- H. Declaratory relief;
- I. Actual damages;
- J. Pre-judgment interest;
- K. Costs of suit;
- L. Reasonable attorneys' fees; and
- M. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: July 8, 2022

By: 

DAVID G. SPIVAK,
MAYA CHEAITANI,
CHRISTINA J. PREJEAN, Attorneys
for Plaintiff(s), JONATHAN SMITH-
CAMPOS, and all others similarly
situated



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

EXHIBIT A



THE SPIVAK LAW FIRM

EMPLOYEE RIGHTS

8605 Santa Monica Bl PMB 42554 West Hollywood CA 90069 Mail
15303 Ventura Bl Ste 900 Sherman Oaks CA 91403 Office
(213) 725-9094 Tel
(213) 634-2485 Fax
spivaklaw.com Web

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

February 17, 2022

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Jonathan Smith-Campos / Bay City Marine

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Jonathan Smith-Campos (hereafter “Smith-Campos” or “Complainant”) provides notice that Bay City Marine, Inc., a California corporation, and related entities (collectively “the Bay City Marine Employers” or “the Employers”) violated his rights and those of all other individuals the Bay City Marine Employers have employed or otherwise contracted with in California as hourly, non-exempt, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 512, 2802, and related Labor Code provisions. On behalf of himself and all other Aggrieved Employees, Smith-Campos hereby provides this notice to the Labor & Workforce Development Agency and the Bay City Marine Employers and their agents and representatives.

At all relevant times, the Bay City Marine Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Smith-Campos and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 9-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately August 30, 2021, the Bay City Marine Employers began to employ Smith-Campos in National City in the position of hourly, non-exempt rigger. The Bay City Marine Employers continuously employed him in that capacity until on or about November 18, 2021 when his employment ended.

At all relevant times, the Bay City Marine Employers issued wages to Smith-Campos and all of the other Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant times, the Bay City Marine Employers classified Smith-Campos and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

At all relevant times, the Bay City Marine Employers failed to provide Smith-Campos and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Bay City Marine Employers directed Smith-Campos and the other Aggrieved Employees to record on their time and payroll records that they they had taken a 30 minute meal period within the first five hours of work even though they did not received such meal periods. The Bay City Marine Employers also failed to pay premium wages for days on which it failed to provide Smith-Campos and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Bay City Marine Employers failed to authorize and permit Smith-Campos and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Bay City Marine Employers also failed to pay premium wages for days on which it failed to authorize and permit Smith-Campos and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Bay City Marine Employers required Smith-Campos and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Bay City Marine Employers required Smith-Campos and all of the other Aggrieved Employees to supply mobile phones, and related items to perform their job duties. However, the Bay City Marine Employers did not provide these items and did not reimburse Smith-Campos and the other Aggrieved Employees for these items.

At all relevant times, the Bay City Marine Employers failed to issue to Smith-Campos and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Bay City Marine Employers knowingly and intentionally failed to state on the wage statements they issued to Smith-Campos and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all meal period premium wages earned, all rest break premium wages earned.

The Bay City Marine Employers also failed to timely pay Smith-Campos and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Bay City Marine Employers failed to maintain accurate employee records of Smith-Campos and all of the other Aggrieved Employees.

For the reasons stated herein, Smith-Campos alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Bay City Marine Employers failed to provide Smith-Campos and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (b) The Bay City Marine Employers failed to authorize and permit Smith-Campos and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (c) The Bay City Marine Employers failed to compensate Smith-Campos and all of the other Aggrieved Employees at one hour's pay for each day in which the Bay City Marine Employers failed to provide them with one or more meal periods as required by law;
- (d) The Bay City Marine Employers failed to compensate Smith-Campos and all of the other Aggrieved Employees at one hour's pay for each day in which the Bay City Marine Employers failed to authorize and permit them to take one or more rest breaks as required by law;

- (e) The Bay City Marine Employers failed to indemnify Smith-Campos and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (f) The Bay City Marine Employers knowingly and intentionally failed to provide Smith-Campos and all of the other Aggrieved Employees with accurate and complete wage statements;
- (g) The Bay City Marine Employers willfully failed to timely pay Smith-Campos and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Bay City Marine Employers and when their employment ended; and
- (h) The Bay City Marine Employers failed to maintain accurate employment records pertaining to Smith-Campos and all of the other Aggrieved Employees.

Accordingly, Smith-Campos now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Bay City Marine Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Transportation Industry" to mean, "any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles." Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Bay City Marine Employers, Smith-Campos, and all of the Aggrieved Employees were covered by the Wage Order because the Bay City Marine Employers operated, and Smith-Campos, and all of the Aggrieved Employees worked for, one or more establishments operated to repair ships. Accordingly, Smith-Campos and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

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

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.

- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not

limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Bay City Marine Employers failed to provide Smith-Campos and all of the other Aggrieved Employees with all timely meal periods. The Bay City Marine Employers denied Smith-Campos and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Bay City Marine Employers directed Smith-Campos and the other Aggrieved Employees to record on their time and payroll records that they they had taken a 30 minute meal period within the first five hours of work even though they did not received such meal periods. Furthermore, the Bay City Marine Employers failed to pay premium wages for days on which they failed to provide Smith-Campos and all of the other Aggrieved Employees with timely meal periods. Accordingly, Smith-Campos now seeks civil penalties for these Labor Code violations that the Bay City Marine Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health

Standards Board, or the Division of Occupational Safety and Health.

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

The Bay City Marine Employers failed to authorize and permit Smith-Campos and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Bay City Marine Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, the Bay City Marine Employers failed to pay Smith-Campos and all of the other Aggrieved Employees premium wages on workdays the Bay City Marine Employers failed to provide Smith-Campos and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Smith-Campos now seeks civil penalties for these Labor Code violations that the Bay City Marine Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Bay City Marine Employers required Smith-Campos and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Bay City Marine Employers required Smith-Campos and all of the other Aggrieved Employees to supply mobile phones, and related items to perform their job duties. However, the Bay City Marine Employers did not provide these items and did not reimburse Smith-Campos and the other Aggrieved Employees for these items. Accordingly, Smith-Campos seeks civil penalties for these Labor Code violations that the Bay City Marine Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent

violation, per pay period (penalties set by Labor Code section 2699(f)(2));
and

2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be 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, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;

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.

At all relevant times during the applicable limitations period, the Bay City Marine Employers violated Labor Code section 226 because they did not properly, completely, and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Bay City Marine Employers failed to state in the wage statements they issued to Smith-Campos and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Bay City Marine Employers knowingly and intentionally failed to state on the wage statements they issued to Smith-Campos and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all meal period premium wages earned, all rest break premium wages earned, and other required information. Accordingly, Smith-Campos seeks civil penalties for the Labor Code violations that the Bay City Marine Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the

following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Bay City Marine Employers failed to compensate Smith-Campos and all of the other Aggrieved Employees for wages earned, including unprovided meal period premium wages, unprovided rest break premium wages, and related compensation, at the intervals stated above. As a result, the Bay City Marine Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Smith-Campos now seeks civil penalties for the Labor Code violations that the Bay City Marine Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Bay City Marine Employers failed to pay Smith-Campos and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Smith-Campos, including unprovided meal period premium wages, unprovided rest break premium wages and related compensation. By failing to pay Smith-Campos and all of the other Aggrieved Employees as set forth above at the end of employment, the Bay City Marine Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Smith-Campos seeks civil penalties from the Bay City Marine Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:
 - (1) Full name, home address, occupation and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.
 - (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Bay City Marine Employers failed to compensate Smith-Campos and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all meal period premium wages earned, all rest break premium wages earned and related information. As a result, the Bay City Marine Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Smith-Campos and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Smith-Campos seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

- 1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
- 2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

LWDA / The Bay City Marine Employers
Re: Jonathan Smith-Campos
February 17, 2022
Page 17 of 17

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Jonathan Smith-Campos will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David G. Spivak Esq.
david@spivaklaw.com
cc: Jonathan Smith-Campos

Mr. Walter L. Haines Esq.
United Employees Law Group
4276 Katella Ave
Suite 301
Los Alamitos CA 90720
walter@uelglaw.com

Bay City Marine, Inc.
c/o Agent for service of process
Mr. Steve Johnston
Bay City Marine, Inc.
1625 Cleveland Ave.
National City CA 91950

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 15303 Ventura Bl Ste 900 Sherman Oaks CA 91403.

On July 8, 2022, I served the foregoing document described as **FIRST AMENDED COMPLAINT** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

Thomas E. Daugherty, Esq.
Klinedinst P.C.
501 W. Broadway
Suite 600
San Diego, CA 92201
TDaugherty@klinedinstlaw.com

____ (BY MAIL) I caused such an envelope to be mailed by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of The Spivak Law Firm, 15303 Ventura Bl Ste 900 Sherman Oaks CA 91403.

XXXX (BY EMAIL) Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address stacy@spivaklaw.com.

EXECUTED on July 8, 2022, at Thousand Oaks, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Stacy Sussman



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403