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 on behalf of himself and others similarly situated

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 12 FOR THE COUNTY OF ALAMEDA

13 CURTIS WOOTON, on behalf of himself and
 14 others similarly situated,

15 Plaintiff,

16 vs.

17 BAY SHIP & YACHT CO., a California
 Corporation; and DOES 1 through 50,
 18 inclusive,

19 Defendants.

Case No. 23CV027484
CLASS ACTION

Assigned for All Purposes To:
 Hon. Brad Seligman
 Dept.: 23

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Recovery of Reporting Time Pay
4. Meal-Period Liability Under Labor Code § 226.7;
5. Rest-Break Liability Under Labor Code § 226.7;
6. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
7. Violation of Labor Code § 226(a);
8. Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5;
9. Penalties Pursuant to Labor Code § 203;
10. Violation of Business & Professions Code § 17200 *et seq.*; and
11. Penalties Pursuant to Labor Code § 2699, *et seq.*

DEMAND FOR JURY TRIAL

04/13/2023

Chad Firke, Executive Officer / Clerk of the Court

By: L. Wiley Deputy

1 Plaintiff CURTIS WOOTON, (“Plaintiff”) on behalf of himself and all others similarly
2 situated (collectively, “Employees”; individually, “Employee”) complains of Defendants, and each
3 of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants BAY SHIP &
8 YACHT CO., a California Corporation, and DOES 1 through 50 (all defendants being collectively
9 referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each of them, violated
10 various provisions of the California Labor Code, relevant orders of the Industrial Welfare
11 Commission (IWC) and California Business & Professions Code, and seeks redress, therefore.

12 2. Plaintiff is a resident of California and during the time period relevant to this
13 Complaint and was employed by Defendants as a non-exempt hourly employee within the State of
14 California at Defendants’ facilities and offices in California. Plaintiff and the other Class members
15 worked for Defendants in California and Alameda County, and in other nonexempt positions,
16 throughout California and, and consistently worked at Defendants’ behest without being paid all
17 wages due. More specifically, Plaintiff and the other similarly situated Class members were
18 employed by Defendants and worked at Defendants’ offices and other facilities where the conduct
19 giving rise to the allegations in this Class Action Complaint occurred. Upon information and
20 belief, Plaintiff were employed by Defendants and (1) shared similar job duties and
21 responsibilities, (2) was subjected to the same policies and practices, and (3) endured similar
22 violations at the hands of Defendants as the other Employee Class members who served in similar
23 and related positions.

24 3. Defendants required Plaintiff and the Employees in the Class to perform work
25 while remaining under Defendants’ control before and after being on the clock for their daily work
26 shift. Defendants further failed to accurately record time worked by Plaintiff and the Employee
27 Class members by rounding hours worked to the nearest quarter hour to their detriment.
28 Defendants thus failed to pay Plaintiff and the Class members for all hours worked, and provided

1 them with inaccurate wage statements that prevented Plaintiff and the Class from learning of these
2 unlawful pay practices. Defendants also failed to provide Plaintiff and the Class with lawful meal
3 and rest periods, as employees were not provided with the opportunity to take timely,
4 uninterrupted, and duty-free meal and rest periods as required by the Labor Code.

5 **THE PARTIES**

6 **A. The Plaintiff**

7 4. Plaintiff CURTIS WOOTON has resided in California and during the time period
8 relevant to this Complaint and was employed by Defendants as a non-exempt hourly employee
9 within the State of California at Defendants' facilities and offices in California.

10 **B. The Defendants**

11 5. Defendant BAY SHIP & YACHT CO., ("BSY") is a California corporation with its
12 principle executive offices in Alameda, California, and has been listed as the employer on the
13 wage statements issued during the relevant time period. BSY lists California address in Alameda
14 California with the California Secretary of State and employs Plaintiff and the Class members in
15 Alameda County, including at Defendants' offices and facilities in Alameda, California, and
16 throughout California and conducts business throughout California.

17 6. The true names and capacities, whether individual, corporate, associate, or
18 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
19 unknown to Plaintiff, who therefore sue these Defendants by such fictitious names under Code of
20 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
21 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
22 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
23 this Complaint to reflect the true names and capacities of the Defendants designated herein as
24 Does 1 through 50 when their identities become known.

25 7. Plaintiff is informed and believe and thereon alleges that each Defendant acted in
26 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
27 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
28 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in

1 all respects as the employers or joint employers of Employees. Defendants, and each of them,
2 exercised control over the wages, hours or working conditions of Employees, or suffered or
3 permitted Employees to work, or engaged, thereby creating a common law employment
4 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
5 employed Employees.

6 **JURISDICTION AND VENUE**

7 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
8 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
9 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
10 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
11 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
12 obligations and liabilities giving rise to this lawsuit occurred at least in part in Alameda County
13 and Defendants maintain and operate company offices and facilities in Alameda County and
14 employ Plaintiff and other Class members in California Alameda County and throughout
15 California.

16 **FACTUAL BACKGROUND**

17 9. The Employees who comprise the Class and Collective, including Plaintiff, is a
18 nonexempt employee pursuant to the applicable Wage Order of the IWC. Defendants hire
19 Employees who work in nonexempt positions at the direction of Defendants in the State of
20 California. Plaintiff and the Class members were either not paid by Defendants for all hours
21 worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically,
22 prior to clocking in to start their shifts as employees had to have team meetings, check the dry
23 docks to make sure boats could safely dock, and secure the yard boats. Furthermore, the
24 uncompensated time included the time Employees worked off-the-clock during meal periods and
25 as a result of Defendants' policy of requiring the Employees to keep their radios on throughout
26 their meal periods. Additionally, Defendants required the Employee Class members to clock in
27 and out by submitting their hours and also for supervisors to monitor the Employee Class
28 members' time. The timekeeping system thus permitted Defendants to record clock in and clock

1 out times to the real-time minute. However, rather than paying Plaintiff and the Class members for
2 all hours and minutes they actually worked, Defendants followed a uniform policy and practice of
3 rounding all time entries to the nearest quarter hour (i.e., to the nearest 15 minute time increment),
4 and generally did so to the detriment of the Employees, and these unlawfully rounded time entries
5 were inputted into Defendants' payroll system from which wage statements and payroll checks
6 were created. Defendants did so with the ostensible intent of paying Class members only for the
7 hours they were scheduled to work, rather than the hours they were actually under Defendants'
8 control. Plaintiff contends this policy is not neutral and results, over time, to the detriment of the
9 Class members by systematically undercompensating them. Plaintiff also contends that
10 Defendants failed to pay Plaintiff and the Class members all wages due and owing, failed to
11 provide meal and rest breaks, and failed to furnish accurate wage statements, all in violation of
12 various provisions of the California Labor Code and applicable Wage Orders.

13 10. Additionally, from at least four (4) years prior to the filing of this lawsuit and
14 continuing to the present, Defendants' policies and practices required them to call in or show up to
15 work but not being paid half said Employees' usual or scheduled day's work in violation of
16 California law.

17 11. During the course of Plaintiff and the Class members' employment with
18 Defendants, they were not paid all wages they were owed, including for all work performed and
19 for all overtime hours worked and were forced to work during their meal and rest breaks to keep
20 labor budgets low.

21 12. Defendants had also either failed to maintain timekeeping records for Plaintiff that
22 would permit him to discover the nature and extent of Defendants' unlawful rounding or has
23 refused to produce them to Plaintiff in response to his timely request to be provided with them.

24 13. As a matter of uniform Company policy, Plaintiff and the Class members were
25 required to work during their meal and rest breaks which were not compensated by Defendants in
26 violation of the California Labor Code. Plaintiff and the Class members were also not paid regular
27 wages and overtime for the time they were required to comply with other requirements imposed
28 upon them, which they had to complete while working through their meal and rest breaks and

1 without compensation. As a result Plaintiff and the Class members worked shifts over eight (8)
2 hours in a day and over forty (40) hours in a work week, but they were not paid at the appropriate
3 overtime rate for all such hours, including by being required to perform work duties and tasks
4 without pay and while off-the-clock and due to Defendants' unlawful rounding which caused
5 overtime to begin accruing before it did in Defendants' timekeeping and payroll systems. As a
6 result, Plaintiff and the Class members worked substantial overtime hours during their
7 employment with Defendants for which they were not compensated, in violation of the California
8 Labor Code, applicable IWC Wage Orders.

9 14. As a result of the above described unlawful rounding, the daily work demands and
10 pressures to work through breaks, and the other wage violations they endured at Defendants'
11 hands, Plaintiff and the Class members were not properly paid for all wages earned and for all
12 wages owed to them by Defendants, including when working more than eight (8) hours in any
13 given day and/or more than forty (40) hours in any given week. As a result of Defendants'
14 unlawful policies and practices, Plaintiff and Class members incurred overtime hours worked for
15 which they were not adequately and completely compensated. To the extent applicable,
16 Defendants also failed to pay Plaintiff and the Class members at an overtime rate of 1.5 times the
17 regular rate for the first eight hours of the seventh consecutive work day in a week and overtime
18 payments at the rate of 2 times the regular rate for hours worked over eight (8) on the seventh
19 consecutive work day, as required under the Labor Code, applicable IWC Wage Orders.

20 15. Therefore, from at least four (4) years prior to the filing of this lawsuit and
21 continuing to the present, Defendants had a consistent policy or practice of failing to pay
22 Employees for all hours worked, and failing to pay minimum wage for all time worked as required
23 by California Law.

24 16. Additionally from at least four (4) years prior to the filing of this lawsuit and
25 continuing to the present, Defendants had a consistent policy or practice of failing to pay
26 Employees overtime compensation at premium overtime rates for all hours worked in excess of
27 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
28 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding

1 sections of IWC Wage Orders.

2 17. Additionally from at least four (4) years prior to the filing of this lawsuit and
3 continuing to the present, Defendants have regularly required Employees to work shifts in excess
4 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty
5 (30) minutes and shifts in excess of ten (10) hours without providing them with second meal
6 periods of not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one
7 hour of wages at each Employee’s effective regular rate of pay, for each meal period that
8 Defendants failed to provide or deficiently provided.

9 18. From at least four (4) years prior to the filing of this lawsuit and continuing to the
10 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
11 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
12 Defendant pay Employees premium pay for each day on which requisite rest breaks were not
13 provided or were deficiently provided at one hour of wages at each Employee’s effective regular
14 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

15 19. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
16 continuing to the present, Defendants have consistently failed to provide Employees with timely,
17 accurate, and itemized wage statements as required by California wage-and-hour laws.
18 Specifically, the wage statements given to Employees by Defendants failed to accurately account
19 for wages, overtime, and premium pay for deficient meal periods and rest breaks, all of which
20 Defendants knew or reasonably should have known were owed to Employees, as alleged
21 hereinabove. The wage statements provided to Employees were confusing and required
22 Employees to engage in discovery and refer to outside sources to verify whether their pay was
23 correct and potentially resulting in a miscalculation by the Employees.

24 20. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
25 continuing to the present, Defendants have consistently failed to provide Employees with timely,
26 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

27 21. From at least four (4) years prior to the filing of this lawsuit and continuing to the
28 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the

1 performance of their job duties for Defendants including, but not limited to, the cell phone usage,
2 costs for a uniform, life jackets, tools such as hammers and drills, gloves, headlamp, and work
3 boots which were necessary to perform their duties under Defendants' employ in violation of
4 Labor Code § 2802.

5 22. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
6 continuing to the present, Defendants have consistently failed to keep accurate time and wage
7 records as required by California wage-and-hour laws.

8 23. Additionally from at least four (4) years prior to filing this lawsuit and continuing
9 to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to
10 Employees at the time of their termination of within seventy-two (72) hours of their resignation, as
11 required by California wage-and-hour laws.

12 24. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
13 Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.4, 226.7, 510, 512, 558, 558.1,
14 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq*, and 2802.

15 25. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
16 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
17 enjoyed from their violations of Labor Code.

18 **CLASS ALLEGATIONS**

19 26. Plaintiff bring this class action on behalf of himself an all others similarly situated
20 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows:
21 all individuals employed by Defendants, at any time within four (4) years of the filing of this
22 lawsuit and have been employed by Defendants within the State of California.

23 27. Further, Plaintiff seeks to represent the following Subclasses composed of and
24 defined as follows:

25 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
26 compensated for all hours worked for Defendants at the applicable minimum wage.

27 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
28 compensated for all hours worked for Defendants at the required rates of pay, including for all

1 hours worked in excess of eight in a day and/or forty in a week.

2 c. Subclass 3. Recovery of Reporting Time Pay. All Class members who were subject
3 to Defendants' policy and/or practice of not compensating reporting time pay.

4 d. Subclass 4. Meal Period Subclass. All Class members who were subject to
5 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
6 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

7 e. Subclass 5. Rest Break Subclass. All Class members who were subject to
8 Defendants' policy and/or practice of failing to authorize and permit Employees to take
9 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
10 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

11 f. Subclass 6. Payroll Records Subclass. All Class members who were subject to
12 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
13 by California wage-and-hour laws.

14 g. Subclass 7. Wage Statement Subclass. All Class members who, within the
15 applicable limitations period, were not provided with accurate itemized wage statements.

16 h. Subclass 8. Failure to Reimburse for Necessary Business Expenditures. All Class
17 members who were subject to Defendants failing to reimburse for expenses necessarily incurred in
18 the performance of Employees job duties for Defendants which were necessary to perform their
19 duties under Defendants' employ.

20 i. Subclass 9. Termination Pay Subclass. All Class members who, within the
21 applicable limitations period, either voluntarily or involuntarily separated from their employment
22 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
23 termination.

24 j. Subclass 10. UCL Subclass. All Class members who are owed restitution as a
25 result of Defendants' business acts and practices, to the extent such acts and practices are found to
26 be unlawful, deceptive, and/or unfair.

27 28. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
28 modify the class description with greater particularity or further division into subclasses or

1 limitation to particular issues.

2 29. This action has been brought and may properly be maintained as a class action
3 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
4 of interest in litigation and proposed class is easily ascertainable.

5 **A. Numerosity**

6 30. The potential members of the class as defined are so numerous that joinder of all
7 the member of the class is impracticable. While the precise number of class member has not been
8 determined at this time, Plaintiff is informed and believe that Defendants employ or, during the
9 time period relevant to this lawsuit, employed more than 100 individuals were employed by
10 Defendant's within the State of California.

11 31. Accounting for employee turnover during the relevant time period increases this
12 number substantially. Plaintiff alleges that Defendants' employment records will provide
13 information as to the number and location of all class members.

14 **B. Commonality**

15 32. There are questions of law and fact common to the class that predominate over any
16 questions affecting only individual class members. These common questions of law and fact
17 include:

- 18 a. Whether Defendants failed to pay Employees minimum wages;
- 19 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 20 c. Whether Defendants failed to pay Employees overtime as required under Labor
21 Code § 510;
- 22 d. Whether Defendants failed to pay Employees reporting time pay;
- 23 e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
24 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
25 premium pay in lieu thereof;
- 26 f. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
27 Orders, by failing to provide Employees with requisite rest breaks or premium pay
28 in lieu thereof;

- 1 g. Whether Defendants violated Labor Code § 226(a);
- 2 h. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 3 i. Whether Defendants failed to reimburse Employees for necessary business
- 4 expenses;
- 5 j. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
- 6 wages and compensation due and owing at the time of termination of employment;
- 7 k. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 8 l. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*; and
- 9 m. Whether Employees are entitled to equitable relief pursuant to Business and
- 10 Professions Code § 17200 *et seq.*

11 **C. Typicality**

12 33. The claims of the named plaintiffs are typical of those of the other Employees.

13 Employees all sustained injuries and damages arising out of and caused by Defendant's common

14 course of conducts in violation of statutes, as well as regulations that have the force and effect of

15 law, as alleged herein.

16 **D. Adequacy of Representation**

17 34. Plaintiff will fairly and adequately represent and protect the interest of Employees.

18 Counsel who represents Employees are experienced and competent in litigating employment class

19 actions.

20 **E. Superiority of Class Action**

21 35. A class action is superior to other available means for the fair and efficient

22 adjudication of this controversy. Individual joinder of all Employees is not practicable, and

23 questions of law and fact common to all Employees predominate over any questions affecting only

24 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of

25 Defendants' illegal policies or practices of failing to compensate Employees properly.

26 36. Class action treatment will allow those persons similarly situated to litigate their

27 claims in the manner that is most efficient and economical for the parties and the judicial system.

28 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

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FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Against All Defendants)

37. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in full herein.

38. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a consistent policy of misstating Employees time records and failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with working during meal periods, regarding rounding of timekeeping entries and time off the clock Employees without compensation. Specifically, prior to clocking in to start their shifts as employees had to have team meetings, check the dry docks to make sure boats could safely dock, and secure the yard boats. Furthermore, the uncompensated time included the time Employees worked off-the-clock during meal periods and as a result of Defendants’ policy of requiring the Employees to keep their radios on throughout their meal periods. Additionally, Defendants had a consistent policy of failing to pay Employees for hours worked during alleged meal periods for which Employees were consistently denied, as also addressed herein. Defendants, and each of them, have also intentionally and improperly rounded, changed, adjusted and/or modified Employee hours, while benefiting Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the Class members, including by unlawful rounding to their detriment. Moreover, Defendants did not pay Plaintiff and Employees at the applicable minimum wage for all hours worked. Defendants’ uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

39. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states:

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

40. The applicable minimum wages fixed by the commission for work during the

1 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
2 therefore entitled to double the minimum wage during the relevant period.

3 41. The minimum wage provisions of California Labor Code are enforceable by private
4 civil action pursuant to California Labor Code § 1194(a) which states:

5 Notwithstanding any agreement to work for a lesser wage, any
6 employee receiving less than the legal minimum wage or the legal
7 overtime compensation applicable to the employee is entitled to
8 recover in a civil action the unpaid balance of the full amount of
9 this minimum wage or overtime compensation, including interest
10 thereon, reasonable attorney's fees and costs of suit.

11 42. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
12 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

13 43. California Labor Code § 1194.2 also provides for the following remedies:

14 In any action under Section 1194 . . . to recover wages because of
15 the payment of a wage less than the minimum wages fixed by an
16 order of the commission, an employee shall be entitled to recover
17 liquidated damages in an amount equal to the wages unlawfully
18 unpaid and interest thereon.

19 44. Defendants have the ability to pay minimum wages for all time worked and have
20 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
21 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

22 45. Wherefore, Employees are entitled to recover the unpaid minimum wages
23 (including double minimum wages), liquidated damages in an amount equal to the minimum
24 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
25 to California Labor Code § 1194(a).

26 **SECOND CAUSE OF ACTION**

27 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

28 **(Against All Defendants)**

46. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
full herein.

47. By their conduct, as set forth herein, Defendants violated California Labor Code §
510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:

1 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
2 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
3 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
4 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
5 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
6 paying Employees wages for all hours worked including time off the clock as prior to clocking in
7 to start their shifts as employees had to have team meetings, check the dry docks to make sure
8 boats could safely dock, and secure the yard boats. Furthermore, the uncompensated time
9 included the time Employees worked off-the-clock during meal periods and as a result of
10 Defendants' policy of requiring the Employees to keep their radios on throughout their meal.
11 Defendants also consistently improperly rounded down, changed, adjusted Employees time
12 records, paid Employees less than their time records showed as demonstrated by Employees'
13 timesheets which reveal little variance between the hours worked by employees on a daily basis.

14 48. Employees regularly worked over 8 hours on a given day without receiving
15 overtime compensation.

16 49. Defendants' failure to pay compensation in a timely fashion also constituted a
17 violation of California Labor Code § 204, which requires that all wages shall be paid
18 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
19 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
20 and overtime compensation earned by Employees. Each such failure to make a timely payment of
21 compensation to Employees constitutes a separate violation of California Labor Code § 204.

22 50. Employees have been damaged by these violations of California Labor Code §§
23 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

24 51. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
25 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for the
26 full amount of all their unpaid wages and overtime compensation, with interest, plus their
27 reasonable attorneys' fees and costs.

28 ///

THIRD CAUSE OF ACTION
RECOVERY OF REPORTING TIME PAY
(Against All Defendants)

52. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in full herein.

53. The IWC Wage Orders, require that reporting time pay be provided to any employee who is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work.

54. Plaintiff is informed and believes and thereon alleges that all or substantially all of Defendants' hourly paid employees are subject to Defendants' policies and practices requiring them to call in or otherwise show up to work but not being paid half said Employees' usual or scheduled day's work.

55. Therefore, Employees are owed the unpaid balance of said wages pursuant to the Wage order according to proof at trial, Interest pursuant to Labor Code §§ 218.6 and 1194(a), Civil Code §§ 3287 and § 3289, and reasonable attorneys' fees and costs and/or penalties pursuant to Labor Code § 558(a).

FOURTH CAUSE OF ACTION
MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7
(Against All Defendants)

56. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in full herein.

57. Employees regularly worked shifts greater than five (5) hours and greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of more than five (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second meal period of not less than thirty (30) minutes.

58. Defendants failed to provide Employees with meal periods as required under the Labor Code. Employees were consistently required to work through their meal periods which they

1 were consistently denied. Moreover, Defendants' policy of requiring the Employees to keep their
2 radios on throughout their meal periods and to respond to any emergencies or other situations that
3 needed to be addressed prevented Employees from taking their breaks. Employees were also
4 required to take meal periods after working well beyond the five (5) hour shifts. Furthermore,
5 Employees were regularly required to work for more than 10 hours in a given shift without
6 receiving a second uninterrupted thirty (30) minute meal period as required by law.

7 59. Moreover, Defendants failed to compensate Employees for each meal period not
8 provided or inadequately provided, as required under Labor Code § 226.7.

9 60. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
10 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal
11 period not provided or deficiently provided, a sum to be proven at trial.

12 **FIFTH CAUSE OF ACTION**

13 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

14 **(Against All Defendants)**

15 61. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
16 full herein.

17 62. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
18 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
19 not less than ten (10) minutes for each consecutive four (4) hour shift.

20 63. Defendants failed to provide Employees with timely rest breaks of not less than ten
21 (10) minutes for each consecutive four (4) hour shift. Moreover, Defendants' policy of requiring
22 the Employees to keep their radios on throughout their rest breaks and to respond to any
23 emergencies or other situations that needed to be addressed prevented Employees from taking
24 their breaks.

25 64. Moreover, Defendants did not compensate Employees with an additional hour of
26 pay at each Employee's effective hourly rate for each day that Defendants failed to provide them
27 with adequate rest breaks, as required under Labor Code § 226.7.

28 65. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in

1 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
2 worked without the required rest breaks, a sum to be proven at trial.

3 **SIXTH CAUSE OF ACTION**

4 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

5 **IN VIOLATION OF LABOR CODE § 2802**

6 **(Against All Defendants)**

7 66. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
8 full herein.

9 67. Under Labor Code § 2802(a) an employer must indemnify its employees for all
10 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
11 of his or her duties, or of his or her obedience to the directions of the employer.

12 68. Employees incurred necessary expenditures in the performance of their job duties
13 for Defendants, namely the cost of cell phone usage, costs for a uniform, life jackets, tools such as
14 hammers and drills, gloves, headlamp, and work boots which were necessary to perform their
15 duties under Defendants' employ. From four (4) years prior to the original filing of this lawsuit
16 and continuing to the present, Defendants consistently failed to reimburse Employees for these
17 necessarily incurred business expenses.

18 69. As a result of the unlawful acts of Defendants, Employees have been deprived of
19 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
20 plus interest and penalties thereon, attorneys' fees, and costs.

21 **SEVENTH CAUSE OF ACTION**

22 **VIOLATION OF LABOR CODE § 226(a)**

23 **(Against All Defendants)**

24 70. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
25 full herein.

26 71. California Labor Code § 226(a) requires an employer to furnish each of his or her
27 employees with an accurate, itemized statement in writing showing the gross and net earnings,
28 total hours worked, and the corresponding number of hours worked at each hourly rate; these

1 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
2 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
3 statements may be given to the employee separately from the payment of wages; in either case the
4 employer must give the employee these statements twice a month or each time wages are paid.

5 72. Defendants failed to provide Employees with accurate itemized wage statements in
6 writing, as required by the Labor Code. Specifically, the wage statements given to Employees by
7 Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal
8 and rest periods, and reflected the incorrect hours worked due to the rounding all of which
9 Defendants knew or reasonably should have known were owed to Employees, as alleged
10 hereinabove.

11 73. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
12 Employees suffered injuries, including among other things confusion over whether they received
13 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
14 forcing them to make mathematical computations to analyze whether the wages paid in fact
15 compensated them correctly for all hours worked.

16 74. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
17 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
18 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
19 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
20 award of costs and reasonable attorneys' fees.

21 75. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a
22 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for
23 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
24 employee for each pay period.

25 76. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and
26 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be
27 shown according to proof.

28 ///

1 **EIGHTH CAUSE OF ACTION**
2 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE §§ 1174**
3 **AND 1174.5**
4 **(Against All Defendants)**

5 77. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
6 full herein.

7 78. California Labor Code § 1174 requires that all employers shall keep accurate time
8 and wage records for all employees. California Labor Code § 1174.5 further requires that any
9 employee suffering injury due to a willful violation of the aforementioned obligations may seek
10 damages, including civil penalties, from the employer.

11 79. During the course of Plaintiff's and Employees' employment, Defendants
12 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
13 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
14 overtime, and premium pay as discussed above.

15 80. Accordingly, Defendants are liable for civil penalties pursuant to the California
16 Labor Code §§ 1174.5. for the three (3) years prior to the filing of this Complaint.

17 **NINTH CAUSE OF ACTION**
18 **VIOLATION OF LABOR CODE § 203**
19 **(Against All Defendants)**

20 81. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
21 full herein.

22 82. Numerous Employees are no longer employed by Defendants; they either quit
23 Defendants' employ or were fired therefrom.

24 83. Defendants failed to pay these Employees all wages due and certain at the time of
25 termination or within seventy-two (72) hours of resignation.

26 84. The wages withheld from these Employees by Defendants remained due and owing
27 for more than thirty (30) days from the date of separation of employment.

28 85. Defendants' failure to pay wages, as alleged above, was willful in that Defendants

1 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
2 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
3 to thirty (30) days from the date they were due.

4 **TENTH CAUSE OF ACTION**

5 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

6 **(Against All Defendants)**

7 86. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
8 full herein.

9 87. Plaintiff, on behalf of himself, Employees, and the general public, brings this claim
10 pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in
11 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the
12 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
13 meaning of Code of Civil Procedure
14 § 1021.5.

15 88. Plaintiff is a "person" within the meaning of Business & Professions Code
16 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
17 relief, restitution, and other appropriate equitable relief.

18 89. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
19 business practices.

20 90. Wage-and-hour laws express fundamental public policies. Paying employees their
21 wages and overtime, providing them with meal and rest periods, etc., are fundamental public
22 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
23 to enforce minimum labor standards, to ensure that employees are not required or permitted to
24 work under substandard and unlawful conditions, and to protect law-abiding employers and their
25 employees from competitors who lower costs to themselves by failing to comply with minimum
26 labor standards.

27 91. Defendants have violated statutes and public policies. Through the conduct alleged
28 in this Complaint Defendants have acted contrary to these public policies, have violated specific

1 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
2 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
3 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
4 guaranteed to all employees under the law.

5 92. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
6 violation of the Business & Professions Code § 17200 *et seq.*

7 93. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
8 overtime, failing to provide meal and rest periods, etc., either knew or in the exercise of reasonable
9 care should have known that their conduct was unlawful; therefore their conduct violates the
10 Business & Professions Code § 17200 *et seq.*

11 94. As a proximate result of the above-mentioned acts of Defendants, Employees have
12 been damaged, in a sum to be proven at trial.

13 95. Unless restrained by this Court Defendants will continue to engage in such
14 unlawful conduct as alleged above. Pursuant to the Business & Professions Code this Court should
15 make such orders or judgments, including the appointment of a receiver, as may be necessary to
16 prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice
17 prohibited by the Business & Professions Code, including but not limited to the disgorgement of
18 such profits as may be necessary to restore Employees to the money Defendants have unlawfully
19 failed to pay.

20 **ELEVENTH CAUSE OF ACTION**

21 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**

22 **(Against All Defendants)**

23 96. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
24 full herein.

25 97. Plaintiff and Employees are aggrieved employees as defined under Labor Code §
26 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
27 alleged violators, Defendants.

28 98. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'

violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the penalty provisions, without limitation, based on the following California Labor Code sections: 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.4, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq*, and 2802.

99. The penalties shall be allocated as follows: 75% to the Labor and Workforce Development Agency (LWDA) and 25% to the affected employee.

100. Employees also seek any and all penalties and remedies set forth in Labor Code § 558, which states:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

101. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

102. Plaintiff has exhausted their administrative remedy by sending a certified letter to the LWDA and Defendants postmarked on February 7, 2023. The LWDA has not provided notice

1 of its intent to investigate the alleged violations within 65 calendar days of the postmark date of
2 the letters.

3 **RELIEF REQUESTED**

4 WHEREFORE, Plaintiff prays for the following relief:

- 5 1. For an order certifying this action as a class action;
- 6 2. For compensatory damages in the amount of the unpaid minimum wages for work
7 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
8 the filing of this action, as may be proven;
- 9 3. For liquidated damages in the amount equal to the unpaid minimum wage and
10 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 11 4. For compensatory damages in the amount of the hourly wage made by Employees
12 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
13 years prior to the filing of this action, as may be proven;
- 14 5. For compensatory damages in the amount of all unpaid wages, including overtime
15 and double-time pay, as may be proven;
- 16 6. For recovery of the unpaid balance of the full amount of the reporting time pay due
17 pursuant to the applicable Wage Order as may be proven;
- 18 7. For compensatory damages in the amount of the hourly wage made by Employees
19 for each day requisite rest breaks were not provided or were deficiently provided where no
20 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
21 be proven;
- 22 8. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 23 9. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
24 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
- 25 10. For penalties pursuant to Labor Code § 1174.5, as may be proven;
- 26 11. For restitution for unfair competition pursuant to Business & Professions Code
27 § 17200 *et seq.*, including disgorgement or profits, as may be proven;
- 28 12. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;

1 13. For compensatory damages in the amount of all previously unreimbursed business
2 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
3 from four (4) years prior to the original filing of this action, as may be proven;

4 14. For an order enjoining Defendants and their agents, servants, and employees, and
5 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
6 duties adumbrated in this Complaint;

7 15. For all general, special, and incidental damages as may be proven;

8 16. For an award of pre-judgment and post-judgment interest;

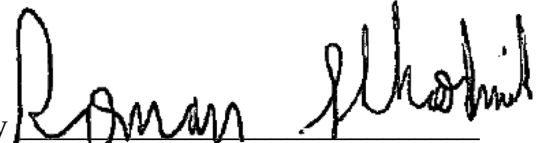
9 17. For an award providing for the payment of the costs of this suit;

10 18. For an award of attorneys' fees; and

11 19. For such other and further relief as this Court may deem proper and just.

12
13 DATED: April 13, 2023

DAVID YEREMIAN & ASSOCIATES, INC.

14
15 By 

16 David Yeremian
17 Roman Shkodnik
18 Attorneys for Plaintiff
19 CURTIS WOOTON
20 and the putative class
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DATED: April 13, 2023

By Roman Elsharif

David Yeremian
Roman Shkodnik
Attorneys for Plaintiff
CURTIS WOOTON
and the putative class

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 2540 Foothill Blvd., Suite 201 La Crescenta, CA 91214.

BAY SHIP & YACHT CO.
William C. Elliott, Agent for Service
2900 Main St #2100
Alameda, CA 94501

[] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Natalia Bermudes