

Robert W. Ottinger (SBN 156825)
Paraskevi Batsikas (SBN 341675)
THE OTTINGER FIRM, P.C.
535 Mission Street, 14th Floor
San Francisco, CA 94105
robert@ottingerlaw.com
paraskevi@ottingerlaw.com
Tel: 415-262-0096
Fax: 212-571-0505

Attorneys for Plaintiff

ELECTRONICALLY
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Superior Court of California,
County of San Francisco
08/21/2023
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BY: DAEJA ROGERS
Deputy Clerk

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

JESSE GARCIA, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

WYNDHAM VACATION OWNERSHIP,
INC. d/b/a WYNDHAM DESTINATIONS, a
Delaware Corporation; TRAVEL + LEISURE
CLUBS AND RENTALS, LLC d/b/a
TRAVEL + LEISURE, CO., a Delaware
Limited Liability Company; and DOES 1-50,
inclusive,

Defendants.

Case Number:

CGC-23-608538

COMPLAINT

1. Failure to Pay Overtime Wages
(Cal. Labor Code §§ 510, 558.1, 1194, and
1198)
2. Failure To Provide Meal Periods (Cal. Lab.
Code §§ 226.7, 512 & 1198);
3. Failure To Provide Rest Periods (Cal. Lab.
Code §§ 226.7 & 1198);
4. Failure to Provide Accurate, Itemized Wage
Statements (Cal. Lab. Code § 226);
5. Waiting Time Penalties (Cal. Lab. Code § 201-
203);
6. Unfair Competition (Cal. Bus. & Prof. Code §
17200, *et seq.*);

JURY TRIAL DEMANDED

1 Plaintiff JESSE GARCIA, individually and on behalf of all others similarly situated (collectively
2 “Plaintiffs” or “Class Members”), complains and alleges upon personal knowledge and information and
3 belief as follows:

4 **INTRODUCTION**

5 1. Plaintiff brings this class action against Defendants WYNDHAM VACATION
6 OWNERSHIP, INC. d/b/a WYNDHAM DESTINATIONS (“Wyndham”), TRAVEL + LEISURE CLUBS
7 AND RENTALS, LLC d/b/a TRAVEL + LEISURE, CO. (“Travel + Leisure”), and DOES 1-50
8 (collectively “Defendants”) individually and on behalf of other persons similarly situated in California
9 (collectively referred to as “Class Members”) from the date four years prior to the filing of this Complaint
10 through the date of trial in this action.

11 2. Plaintiff is employed by Defendants as an In-House Marketing Coordinator since April
12 2023. His job duties include, among other things, recruiting customers to timeshare meetings and
13 presentations and engaging with customers during scheduled meetings and presentations. Plaintiff often
14 works long hours and is not afforded timely uninterrupted meal or rest breaks. Further, Plaintiff has not
15 been appropriately compensated for overtime hours when working in excess of eight (8) hours in one
16 workday or seven consecutive days in the one workweek.

17 3. Such practices were widespread, and Plaintiff has observed a high turnover of managers
18 and employees as a result of Defendants’ unlawful uniform policies and practices. As a result of these
19 vacancies and because Plaintiff has been required to fill in for other positions, Plaintiff has been forced to
20 work longer hours exacerbating the already unlawful working conditions. Plaintiff is further deprived of
21 opportunities to earn commissions based on recruiting customers, resulting in lower compensation than a
22 typical employee performing tasks under his position.

23 4. Defendants violate California law by maintaining policies and practices that systematically
24 fail to provide employees with the substantive protections of California’s Labor Code. Due to Defendants’
25 unlawful policies and practices, Defendants failed to pay Plaintiff and Class Members overtime wages;
26 failed to provide Plaintiff and Class Members off-duty, uninterrupted meal and rest periods; failed to
27 furnish Plaintiff and Class Members timely, itemized wage statements showing, among other things,
28 accurate gross and net pay amounts; and failed to timely pay Class Members final wages resulting in owed

1 waiting time penalties. Plaintiff also alleges that Defendants' acts, which violated the California Labor
2 Code, constitute predicate unlawful and unfair business practices in violation of the California Unfair
3 Competition Laws.

4 **JURISDICTION AND VENUE**

5 5. Plaintiff is informed and believes, and thereon alleges that Defendants were, at all relevant
6 times, operating within the state of California and thus subject to the jurisdiction of California courts by
7 reason of "minimum contacts"; transacted and conducted business in the state of California; and are thus
8 subject to the jurisdiction of all laws, regulations, and court decisions rendered by the state of California.

9 6. Jurisdiction is conferred on this Court as to all causes of action because they arise under
10 state statutory or common law. Jurisdiction is proper in this Court because alleged damages exceed
11 \$25,000.00, exclusive of costs and attorneys' fees.

12 7. Venue is proper in this Court under Code of Civil Procedure Section 395.5 because
13 Defendants employ individuals in this County, Defendants' liability arose in this County, and Defendants
14 continue to conduct business in this County.

15 **PARTIES**

16 8. Plaintiff resides in San Francisco, California.

17 9. Defendant Wyndham is a corporation formed under the laws of the state of Delaware and
18 existing and operating in the state of California and within this County.

19 10. Defendant Travel + Leisure is a limited liability company formed under the laws of the state
20 of Delaware and existing and operating in the state of California and within this County.

21 11. Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their true names
22 and capacities are unknown to Plaintiff. When their true names and capacities are ascertained, Plaintiffs
23 will amend this Complaint by inserting their true names and capacities herein. Plaintiffs are informed and
24 believe and thereon allege that each of the fictitiously-named Defendants is responsible in some manner
25 for the occurrences herein alleged, and that the damages of Plaintiff and the Class Members herein alleged
26 were proximately caused by such Defendants.

27 **GENERAL ALLEGATIONS**

28 12. Defendants are in the business travel and leisure providing vacation ownership and rentals.

1 13. Plaintiff and Class Members worked for Defendants in the State of California, including the
2 County of San Francisco, as non-exempt, hourly employees.

3 14. Plaintiff was employed by Defendants from July 22, 2017 through September 5, 2017 and
4 April 10, 2023 to the present as an In-House Marketing Coordinator. Since April 10, 2023, Plaintiff is
5 employed by Defendants as an hourly-paid, non-exempt employee.

6 15. During his employment and to date, Plaintiff was not provided with off-duty, uninterrupted
7 meal periods of at least thirty minutes for each work period of five or more hours before the end of the fifth
8 hour of work, or premium pay in lieu thereof. Further, Plaintiff was neither informed of his right to nor
9 provided with rest breaks of no less than ten minutes of net rest time for each four-hour work period, or
10 major portion thereof, or premium pay in lieu thereof.

11 16. Moreover, Defendants failed to pay Plaintiff at the appropriate overtime rate for all overtime
12 hours. Defendants further failed to pay Plaintiff at the appropriate overtime rate for his seventh consecutive
13 day of work in one workweek.

14 17. As a result, Defendant deprived Plaintiff of itemized wage statements detailing, among
15 other things, accurate gross and net wages.

16 18. Upon information and belief, Defendant deprived Class Members of timely final wages due
17 to its systematic failure to compensate employees for premium pay for missed meal and rest breaks.

18 19. The abuses suffered by Plaintiff were in no way unique to him. Instead, Defendants' labor
19 violations are widespread and systemic.

20 20. Defendants had authority to hire and terminate Plaintiff and other Class Members; to set
21 work rules and conditions governing Plaintiff and other Class Members' employment; to supervise their
22 daily employment activities; and authority over the compensation paid to Plaintiff and other Class
23 Members. Defendants directly hired and paid wages and benefits to Plaintiff and the other Class Members.

24 21. Defendants continue to employ hourly-paid and/or non-exempt employees within the State
25 of California.

26 22. Upon information and belief, like Plaintiff, other Class Members did not receive proper
27 meal and rest breaks, or premium pay in lieu thereof, nor were they paid the appropriate overtime rate for
28 all overtime hours worked and all work performed on the seventh consecutive day of work in one work

1 week. As a result, Defendants deprived Plaintiff and Class members of accurate, itemized wage statements.

2 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a
3 uniform policy and systematic scheme of wage abuse against their hourly-paid and/or non-exempt
4 employees within the State of California. This scheme involved, *inter alia*, missed or interrupted meal
5 periods and rest breaks, or premium pay in lieu thereof, and failing to provide accurate, itemized wage
6 statements.

7 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
8 should have known that Defendants failed to provide Plaintiff and the other Class Members off-duty,
9 uninterrupted meal and rest periods during the relevant time as required under the applicable Industrial
10 Welfare Commission (“IWC”) Wage Orders and thus, they are entitled to any and all applicable penalties.

11 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
12 should have known that Plaintiff and the Class Members were entitled to receive all meal periods or
13 payment of one additional hour of pay at their regular rate of pay when a meal period was missed, and they
14 did not receive all meal periods or payment of one additional hour of pay at Plaintiff’s and Class Members’
15 regular rate of pay when a meal period was missed.

16 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
17 should have known that Plaintiff and the other Class Members were entitled to receive all rest periods or
18 payment of one additional hour of pay at Plaintiff’s and the other Class Members’ regular rate of pay
19 when a rest period was missed, and they did not receive all rest periods or payment of one additional hour
20 of pay at Plaintiff’s and the other Class Members’ regular rate of pay when a rest period was missed.

21 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
22 should have known that Plaintiff and the other Class Members were entitled to receive all wages owed to
23 them during their employment, including overtime wages. Plaintiff and the other Class Members did not
24 receive payment of all wages, including overtime wages and meal and rest period premiums within any
25 time permissible under California Labor Code § 204.

26 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
27 should have known that they had a duty to compensate Plaintiff and the other Class Members pursuant to
28 California law, and that Defendants had the financial ability to pay such compensation, but willfully,

1 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and the other Class
2 Members that they were properly paid all wages, in order to increase Defendants' profits.

3 29. At all material times set forth herein, Defendants failed to pay Plaintiff and Class Members
4 overtime pay for all overtime hours worked.

5 30. At all material times set forth herein, Defendants failed to provide the requisite
6 uninterrupted meal and rest periods to Plaintiff and the other Class Members.

7 31. At all material times set forth herein, Defendants failed to provide complete or accurate
8 wage statements to Plaintiff and the other Class Members.

9 32. At all material times set forth herein, Defendants failed to keep complete or accurate
10 payroll records for Plaintiff and the other Class Members.

11 33. At all material times set forth herein, Defendants failed to properly compensate Plaintiff
12 and the other Class Members pursuant to California law in order to increase Defendants' profit.

13 34. California Labor Code § 218 states that nothing in Article 1 of the Labor Code shall limit
14 the right of any wage claimant to "sue directly... for any wages or penalty due to him [or her] under this
15 article."

16 **CLASS ACTION ALLEGATIONS**

17 35. Plaintiff incorporates all the preceding paragraphs of this Complaint as if fully set forth
18 herein.

19 36. Class Members: Plaintiff brings this action on behalf of himself, and all others similarly
20 situated pursuant to Cal. Code of Civil Procedure § 382 on behalf of the following class: All persons
21 employed by Defendants in California as hourly and/or otherwise non-exempt employees during the period
22 beginning four years before the filing of this action and ending when final judgment is entered ("Class
23 Members").

24 37. **Reservations of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to
25 amend or modify the class definitions with greater specificity, by further division into subclasses, and/or
26 by limitation to particular issues.

27 38. **Numerosity:** Plaintiff is informed and believes, and thereon allege that Class Members are
28 so numerous that the individual joinder of each class member is impractical. Plaintiff is informed, believes,

1 and thereon alleges that the actual number exceeds the minimum number required for numerosity purposes
2 under Code of Civil Procedure § 382.

3 39. **Predominant Common Questions:** Plaintiff is informed, believes, and thereon alleges
4 that common questions of law and fact exist as to all Class Members and predominate over any questions
5 that only affect individual class members. These questions include, but are not limited to:

- 6 a. Whether Defendants, as matters of policy or practice, have failed to pay Class Members
7 for all overtime hours worked at the appropriate overtime rate.
- 8 b. Whether Defendants have failed to maintain a policy or practice of compensating Class
9 Members for all overtime hours worked, including hours worked on the seventh
10 consecutive day of work in one workweek.
- 11 c. Whether Defendants have, as matters of policy or practice, failed to compensate Class
12 Members for all overtime hours worked.
- 13 d. Whether Defendants lack any mechanism for paying overtime wages to Class Members.
- 14 e. Whether Defendants are liable to Class Members for restitution of overtime wages.
- 15 f. Whether, by failing to pay all overtime wages to Class Members, Defendants have failed
16 to provide them with written wage statements that accurately reflect their gross and net
17 wages earned.
- 18 g. Whether, by failing to pay overtime wages to Class Members, Defendants are liable to
19 them for waiting time penalties under Labor Code § 203.
- 20 h. Whether Defendants, as matters of policy or practice, have failed to relieve Class Members
21 of all duty for meal periods before the end of the fifth hour, or when necessary, before the
22 tenth hour.
- 23 i. Whether Defendants have failed to maintain a policy or practice that reasonably permits
24 Class Members to take net rest periods of ten minutes for each four-hour work period, or
25 major portion thereof.
- 26 j. Whether Defendants have, as matters of policy or practice, failed to make good faith efforts
27 to provide Class Members with rest periods during the middle of each four-hour work
28 period.

- 1 k. Whether Defendants lack any mechanism for paying premium wages to Class Members
2 when they are not provided with timely meal and/or rest periods.
- 3 l. Whether Defendants are liable to Class Members for restitution of premium wages.
- 4 m. Whether, by failing to pay premium wages to Class Members, Defendants have failed to
5 provide them with written wage statements that accurately reflect their gross and net wages
6 earned.
- 7 n. Whether, by failing to pay premium wages to Class Members, Defendants are liable to
8 them for waiting time penalties under Labor Code § 203.
- 9 o. Whether, by withholding wages from Class Members, Defendants have committed a
10 violation of Labor Code § 221.
- 11 p. Whether Defendants had a corporate policy and practice of failing to pay their hourly-paid
12 or non-exempt employees within the State of California for all missed meal periods and
13 rest breaks in violation of California law.
- 14 q. Whether Defendants complied with wage reporting as required by the California Labor
15 Code, including, *inter alia*, section 226.
- 16 r. Whether Defendants failed to pay timely and complete wages to former employees at
17 termination in violation of California Labor Code §§ 201, 202, and 203.
- 18 s. Whether Defendants kept complete and accurate payroll records as required by the
19 California Labor Code, including *inter alia*, section 1174(d).
- 20 t. Whether Defendants' conduct was willful or reckless.
- 21 u. Whether Defendants engaged in unfair business practices in violation of California
22 Business & Professions Code section 17200, *et seq.*
- 23 v. The appropriate amount of damages, restitution, and/or monetary penalties resulting from
24 Defendants' violation of California law.
- 25 w. Whether Plaintiff and the other Class Members are entitled to compensatory damages
26 pursuant to the California Labor Code?

27 40. **Typicality:** Plaintiff is informed, believes, and thereon allege that his claims are typical
28 of Class Members' claims in that Defendants have policies and practices that violate the Labor Code,

1 Wage Order, and Business and Professions Code as alleged herein that enable them to seek the same relief
2 as they are under the same theories of recovery.

3 41. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and protect
4 the interests of Class Members in that he has no interests that are adverse to Class Members and are
5 represented by counsel experienced in employment and wage and hour class action litigation.

6 42. **Superiority:** A class action is superior to other available means for fair and efficient
7 adjudication of class members' claims and offers significant benefits to the parties and the court. A class
8 action will allow a number of similarly situated persons to simultaneously and efficiently prosecute their
9 common claims in a single forum without the unnecessary duplication of effort and expense that numerous
10 individual actions would entail. The monetary amounts due to many class members are likely to be
11 relatively small, thus making it difficult, if not impossible, for individual class members to seek and obtain
12 relief. Moreover, a class action will serve important public interests by enabling the non-waivable
13 statutory rights of class members to be effectively asserted, and fundamental public policies to be
14 vindicated, in one proceeding. A class action will also provide a means for vindicating the rights of current
15 employees who are less likely to come forward to assert those rights based on fears of employer reprisal.
16 Finally, a class action will prevent the potential for inconsistent or contradictory judgments inherent in
17 individual litigation and address the problems inherent in random and fragmentary enforcement.

18
19 **FIRST CAUSE OF ACTION**
20 ***Failure to Pay Overtime Wages***
(Cal. Labor Code §§ 510, 558.1, 1194, and 1198)
(As to All Defendants)

21 43. Plaintiff re-alleges and incorporates all the preceding paragraphs of this Complaint as if
22 fully set forth herein.

23 44. At all relevant times, Plaintiff and Class Members have been non-exempt employees of
24 Defendant entitled to the full protections of the Labor Code and of Wage Order 4-2001.

25 45. Cal. Lab. Code § 1198 makes it unlawful for an employer to employ any person under
26 conditions of employment that violate the Wage Order.

27 46. Section 2(K) of Wage Order 4-2001 defines "hours worked" as "the time during which an
28 employee is subject to the control of the employer, [which] includes all the time the employee is suffered

1 or permitted to work, whether or not required to do so.”

2 47. Cal. Lab. Code §§ 510 and 1194, and Section 3 of Wage Order 4-2001, require employers
3 to pay overtime wages to their non-exempt employees at no less than one and one-half times their regular
4 rates of pay for all hours worked in excess of eight hours in one workday, all hours worked in excess of
5 forty hours in one workweek, and for the first eight hours worked on a seventh consecutive workday.

6 48. Defendants failed to pay Plaintiff for all overtime hours worked at the appropriate
7 overtime rate, including for the first eight hours of work on his seventh consecutive workday in a
8 workweek.

9 49. Plaintiff is informed, believes, and thereon alleges that, at all relevant times and as matters
10 of policy or practice, Defendants have failed to pay Class Members at the appropriate overtime rate for
11 all overtime hours worked due to class-wide policies and practices.

12 50. Plaintiff is informed, believes, and thereon alleges that Defendant fails to include all
13 wages earned in computing the regular rate of pay for calculating overtime premiums, in violation of
14 Labor Code § 510.

15 51. Pursuant to Labor Code §§ 1194(a), Plaintiff, on behalf of himself and Class Members,
16 seeks to recover earned and unpaid overtime wages, interest thereon, as well as awards of reasonable
17 costs and attorneys’ fees, all in amounts subject to proof.

18
19 **SECOND CAUSE OF ACTION**
20 ***Failure to Provide Meal Periods***
(Cal. Labor Code §§ 226.7, 512, 1198)
(As to All Defendants)

21 52. Plaintiff re-alleges and incorporates all the preceding paragraphs of this Complaint as if
22 fully set forth herein.

23 53. Cal. Labor Code § 512 and Section 11 of IWC Wage Order 5-2001 impose an affirmative
24 obligation on employers to provide non-exempt employees with a first uninterrupted, duty-free meal
25 period of at least thirty minutes for each work period of five or more hours before the end of the fifth
26 hour of work.

27 54. Cal. Labor Code § 512 and Section 11 of IWC Wage Order 5-2001 impose an affirmative
28 obligation on employers to provide employees with a second uninterrupted, duty-free meal period of at

1 least thirty minutes for each work period of more than ten hours before the end of the tenth hour of work.

2 55. Cal. Labor Code § 226.7 and Section 11 of IWC Wage Order 5-2001 require employers to
3 pay non-exempt employees an additional hour of premium wages at the employee's regular rate of
4 compensation on each workday that the employee is not provided with a meal period.

5 56. Cal. Labor Code § 1198 makes it unlawful for an employer to employ any person under
6 conditions of employment that violate an IWC Wage Order.

7 57. At relevant times during his employment, Defendants failed to relieve Plaintiff of all duty
8 for a first uninterrupted meal period of at least thirty minutes before the end of his fifth hour of work
9 and/or for a second uninterrupted meal period of at least thirty minutes before the end of his tenth hour of
10 work.

11 58. At all relevant times during his employment, Defendants failed to pay Plaintiff premium
12 wages on those workdays Defendants failed to relieve Plaintiff of all duty for a first and/or second
13 uninterrupted meal period in accordance with Cal. Labor Code § 512 and Section 11 of IWC Wage Order
14 5-2001.

15 59. Plaintiff is informed, believes, and thereon alleges that, at all relevant times, Defendant
16 has maintained policies and practices with respect to employee scheduling and meal periods that have
17 prevented Class Members from being relieved of all duty for a first uninterrupted meal period of at least
18 thirty minutes before the end of their fifth hour of work and/or for a second uninterrupted meal period of
19 at least thirty minutes before the end of their tenth hour of work and have failed to pay them premium
20 wages on those workdays.

21 60. Pursuant to Labor Code § 226.7, Plaintiff seeks to recover premium wages on behalf of
22 themselves and Class Members in amounts subject to proof.

23 61. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the
24 common fund doctrine, Plaintiff, individually and on behalf of Class Members, seeks awards of
25 reasonable attorneys' fees and costs in amounts subject to proof at trial.

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THIRD CAUSE OF ACTION
Failure to Provide Rest Periods
(Cal. Labor Code §§ 226.7 and 1198)
(As to All Defendants)

62. Plaintiff re-alleges and incorporates all the preceding paragraphs of this Complaint as if fully set forth herein.

63. Section 12 of IWC Wage Order 5-2001 imposes an affirmative obligation on employers to permit and authorize employees to take required rest periods at a rate of no less than ten minutes of net rest time for each four-hour work period, or major portion thereof, that must be in the middle of each work period insofar as it is practicable.

64. Cal. Labor Code § 226.7 requires employers to pay non-exempt employees an additional hour of premium wages at the employee's regular rate of compensation on each workday that the employee is not provided with a rest period.

65. Cal. Labor Code § 1198 makes it unlawful for an employer to employ any person under conditions of employment that violate the IWC Wage Order.

66. At relevant times during his employment, Defendants failed to authorize and permit Plaintiff to take net rest periods of at least ten minutes for each four-hour work period, or major portion thereof, and failed to pay him premium wages on those workdays.

67. Plaintiff is informed, believes, and thereon alleges that, at all relevant times, Defendants have maintained policies and practices with respect to employee scheduling and rest periods that have failed to authorize and/or reasonably permit Class Members to take net rest periods for each four-hour work period, or major portion thereof.

68. Pursuant to Cal. Labor Code § 226.7, Plaintiff seeks to recover premium wages individually and on behalf of Class Members in amounts subject to proof.

69. Pursuant to Cal. Code of Civil Procedure §1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the Class Members, seeks awards of reasonable attorneys' fees and costs in amounts subject to proof.

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FOURTH CAUSE OF ACTION
Failure to Provide Accurate, Itemized Wage Statements
(Cal. Labor Code § 226)
(As to All Defendants)

70. Plaintiff re-alleges and incorporates all the preceding paragraphs of this Complaint as if fully set forth herein.

71. Pursuant to Cal. Labor Code § 226(a), Defendants are obligated to provide Plaintiff and Class Members, either semimonthly or at the time of each payment of wages, accurate itemized statements showing, among other things, the gross and net wages earned by each individual.

72. By failing to pay premium wages to Plaintiff as set forth above, Defendants have furnished him with written wage statements that do not accurately reflect, among other things, their amounts of gross and net wages earned.

73. Plaintiff is informed, believes, and thereon alleges that by failing to pay Plaintiff and Class Members for all hours worked as set forth above, Defendants have also furnished them with written wage statements that do not accurately reflect, among other things, their amounts of gross and net wages earned.

74. Plaintiff is informed, believes, and thereon alleges that Defendants' failures to provide him and Class Members with accurate wage statements has been knowing and intentional, in that Defendants have, at all relevant times, had the ability to provide them with accurate itemized wage statements but, instead, have knowingly and intentionally provided them with inaccurate wage statements as a result of not keeping accurate records of all their hours worked, their meal period start and stop times, their rest period start and stop times, and amounts of wages earned.

75. Plaintiff is informed, believes, and thereon alleges that he and Class Members have suffered injuries due to Defendants' failures to provide them with accurate written wage statements in that, among other things, their legal rights to receive accurate wage statements have been violated, they have been misled about the amounts of wages they have earned, they have been prevented from immediately challenging allegedly unlawful pay practices, they have needed or will need to reconstruct time and pay records and perform mathematical computations to determine the amount of wages they have earned, and/or they have had inaccurate information about their wages and deductions submitted to

1 government agencies.

2 76. Pursuant to Cal. Labor Code § 226(e), Plaintiff, individually and on behalf of all Class
3 Members, seeks to recover greater of actual damages or \$50 for the initial pay period in which a § 226(a)
4 violation occurred; the greater of actual damages or \$100 for each violation of § 226(a) in a subsequent
5 pay period, up to the greater of actual damages or an aggregate of \$4,000 penalty per Class Member, as
6 well as awards of reasonable attorneys' fees and costs, in amounts subject to proof.

7
8 **FIFTH CAUSE OF ACTION**
9 **Waiting Time Penalties**
10 **(Cal. Labor Code § 201-203)**
11 **(As to All Defendants)**

12 77. Plaintiff re-alleges and incorporates all the preceding paragraphs of this Complaint as if
13 fully set forth herein.

14 78. Cal. Labor Code § 201 provides that all of the earned and unpaid wages of an employee
15 who is discharged become due and payable immediately at the time of discharge.

16 79. Cal. Labor Code § 202 provides that all of the earned and unpaid wages of an employee
17 who quits become due and payable at the time of quitting if the employee gives at least 72-hours' notice
18 before quitting, or within 72 hours of quitting if the employee gives less than 72-hours' notice before
19 quitting.

20 80. Cal. Labor Code § 203 provides that the wages of an employee will continue as a penalty
21 for up to thirty calendar days if the employer willfully fails to timely pay any earned and unpaid wages to
22 the employee in the times set forth in Cal. Labor Code §§ 201-202.

23 81. Plaintiff is informed, believes, and thereon alleges that, by failing to pay Class Members
24 earned premium wages, Defendants have failed to timely pay them all earned and unpaid wages in
25 violation of Cal. Labor Code §§ 201-202.

26 82. Plaintiff is informed, believes, and thereon alleges that, at all relevant times, Defendants'
27 failures to pay Class Members earned and unpaid wages in violation of Cal. Labor Code §§ 201-202 have
28 been willful, in that Defendants have had the ability to fully comply with the requirements set forth in
those statutes, but have deliberately chosen to maintain policies and practices with respect to payroll that

1 are incompatible with those requirements.

2 83. Pursuant to Cal. Labor Code § 203, Plaintiff on behalf of all Class Members seeks up to
3 thirty days of wages as waiting time penalties in amounts subject to proof.

4 84. Pursuant to Cal. Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or
5 the common fund doctrine, Plaintiff on behalf of all Class Members, seeks awards of reasonable
6 attorneys' fees and costs in amounts subject to proof.

7
8 **SIXTH CAUSE OF ACTION**
9 **Unfair Competition**
10 **(Cal. Bus. and Prof. Code §§ 17200, *et seq.*)**
11 **(As to All Defendants)**

12 85. Plaintiff re-alleges and incorporates all the preceding paragraphs of this Complaint as if
13 fully set forth herein.

14 86. Cal. Bus. and Prof. Code § 17200 defines "unfair competition" to include any unlawful
15 business practice.

16 87. Cal. Bus. and Prof. Code § 17203 allows a person who has lost money or property as a
17 result of unfair competition to bring a class action in accordance with Cal. Code of Civil Procedure § 382
18 to recover money or property that may have been acquired from similarly situated persons by means of
19 unfair competition.

20 88. As set forth above, Plaintiff has lost money or property in the form of premium wages as a
21 result of Defendants' unlawful failures to pay him those wages, and related failures to maintain accurate
22 records, in violation of the requirements of the California Labor Code and IWC Wage Order 5-2001.

23 89. Plaintiff is informed, believes, and thereon alleges that, at all relevant times and as set
24 forth above, Defendants have acquired or may have acquired money or property in the form of earned
25 premium wages from Class Members by means of unfair competition resulting from Defendants'
26 unlawful failures to pay them those wages, and related failures to maintain accurate records, in violation
27 of the requirements of the California Labor Code and IWC Wage Order 5-2001.

28 90. Pursuant to Cal. Bus. and Prof. Code § 17203, Plaintiff, individually and on behalf of all
Class Members, seeks restitution of all moneys and property, including, but not limited to, earned

1 premium wages, that Defendants either acquires or may have acquired from them by means of unfair
2 competition in amounts subject to proof.

3 91. Pursuant to Cal. Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or
4 the common fund doctrine, Plaintiff, individually and on behalf of all Class Members, seeks awards of
5 reasonable attorneys' fees and costs in amounts subject to proof.

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for relief as follows:

9 A. A declaratory judgment that the actions, conduct, and practices of Defendants complained
10 of herein violated the laws of the State of California;

11 B. An injunction and order permanently restraining Defendants from engaging in such
12 unlawful conduct;

13 C. An order that the action be certified as a class action;

14 D. An order that the named Plaintiff herein be appointed as class representative;

15 E. An order that counsel for Plaintiff be appointed class counsel;

16 F. An award of damages in amount to be determined at trial, plus prejudgment interest, to
17 compensate Plaintiff for all monetary and/or economic hardship, including, but not limited to, the loss of
18 past and future income, wages, compensation, and other benefits of employment;

19 G. An award of damages in an amount to be determined at trial, plus prejudgment interest, to
20 compensate Plaintiff for all non-monetary and compensatory harm;

21 H. That the Court decree and adjudge that Defendants violated Cal. Bus. and Prof. Code §§
22 17200, *et seq.*, by failing to provide Plaintiff and Class Members all earned wages, failing to provide meal
23 breaks and rest periods to Plaintiff and Class Members, failing to provide Plaintiff and Class Members
24 with accurate itemized wage statements, and failing to timely pay Class Members' wages as required by
25 the California Labor Code;

26 I. For injunctive relief to ensure compliance with this section, pursuant to Cal. Bus. and Prof.
27 Code §§ 17200, *et seq.*;

28 J. An award of damages for any and all other monetary and/or non-monetary losses suffered

1 by Plaintiff and Class Members in an amount to be determined at trial, plus prejudgment interest;

2 K. For reasonable attorneys' fees and costs, including expert witness fees, pursuant to Cal.
3 Code of Civil Procedure § 1021.5;

4 L. For punitive damages, as allowed by law;

5 M. For costs of suit herein incurred; and

6 N. Such additional and further relief as this Court may deem just and proper.

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9 Dated: August 21, 2023

10 San Francisco, CA

Respectfully submitted,

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12 Robert W. Ottinger (SBN 156825)
13 THE OTTINGER FIRM, P.C.
14 535 Mission Street, 14th Floor
15 San Francisco, CA 94105
16 robert@ottingerlaw.com
17 Tel: 415-262-0096
18 Fax: 212-571-0505
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