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VERONICA O'BOY, on behalf of themselves, and all others similarly situated

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MICHELLE RENEE MCGRATH and
VERONICA O'BOY on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

WYNDHAM RESORT
DEVELOPMENT CORPORATION,
an Oregon Corporation; WYNDHAM
VACATION OWNERSHIP, INC., a
Delaware Corporation; WYNDHAM
VACATION RESORTS, INC., a
Delaware Corporation; WYNDHAM
WORLDWIDE OPERATIONS, INC.,
a Delaware Corporation, and DOES 1
through 10, Inclusive,

Defendants

CASE NO. 15-CV-1631 JM (KSC)

**AMENDED CONSOLIDATED
COMPLAINT**

1. Failure to Pay Minimum and Overtime Wages (Lab. Code §§ 510, 1194, 1197);
2. Failure to Timely Pay Wages at Separation (Lab. Code §§201-203);
3. Failure to Provide Accurate Itemized Wage Statements (Lab. Code §226(a)(b));
4. Failure to Reimburse Reasonable Business Expenses (Lab. Code §2802);
5. Failure to Authorize and Permit Paid Rest Periods (Lab. Code § 226.7);
6. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512);
7. Violation of Unfair Business

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) Practices Act (Bus. & Prof. Code
) §§17200-17208).

DEMAND FOR JURY TRIAL

Plaintiffs MICHELLE RENEE MCGRATH (“McGrath”) and VERONICA O’BOY (“O’Boy”) (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, complain and allege as follows:

I.
INTRODUCTION

1. The purpose of this Amended Consolidated Complaint is to combine herein the allegations, violations, and causes of action set forth in the operative complaint in the civil action pending in the United States Court for the Southern District of California, titled *McGrath v. Wyndham Resort Development Corporation, et al.*, Case No. 15-cv-1631-JM-KSC and the operative complaint in the civil action pending in the United States District Court, Central District of California, Western Division, titled *O’Boy v. Wyndham Vacation Ownership, Inc.*, Case No. 8:17-cv-00653-JVS-JCG.

2. This case arises from Defendants’ use of compensation policies which result in the failure to pay employees minimum wages for all hours worked; failure to authorize and permit paid rest periods; failure to provide meal periods; failure to provide proper wage statements, and failure to pay all wages owed to separated employees in a timely manner. Plaintiff McGrath and Plaintiff O’Boy were employed with Defendants in California from February 2013 to July 2013 and March 2014 to September 2014, respectively, as Salespersons and this action is brought on behalf of Salespersons and other similarly situated California employees of Defendants Wyndham Resort Development Corporation, Wyndham Vacation Ownership, Inc., Wyndham Worldwide Operations, Inc., [Wyndham Vacation Resorts, Inc.](#), and Does 1-10 (referred to as “WYNDHAM,”

1 “Company,” or “Defendants”). Plaintiff McGrath also worked for Defendants
2 from August 2013 to March 2015 as a Sales Administrative Coordinator and was
3 paid hourly.

4 3. During the class period, Defendants had a consistent policy of failing
5 to pay for all hours worked, including time spent on non-sales activities and rest
6 breaks. Defendants failed to pay wages, including minimum wages for all hours
7 worked to Salespersons in California, including Plaintiffs, in violation of
8 California state wage and hour laws.

9 4. During the class period, Defendants had a consistent policy of failing
10 to authorize and permit paid rest breaks and to provide timely, compliant meal
11 breaks to Salespersons in California, including Plaintiffs, in violation of California
12 state wage and hour laws.

13 5. During the class period, Defendants knowingly provided inaccurate
14 wage statements to Salespersons, including Plaintiffs, that did not include, among
15 other things, the correct hourly rate of pay.

16 6. During the class period, Defendants had a consistent policy of failing
17 to pay Salespersons in California, including Plaintiffs, all wages due at
18 termination, in violation of California state wage and hour laws.

19 7. During the class period, Defendants had a consistent policy of failing
20 to reimburse Salespersons in California, including Plaintiffs, for all necessary and
21 reasonable business expenses incurred, in violation of California state wage and
22 hour laws.

23 8. Plaintiffs, individually and on behalf of all Class Members, bring this
24 action pursuant to Labor Code §§ 201, 202, 203, 204, 226.7, 512 1194, 1194.2,
25 1197 and 2802 and applicable California Industrial Wage Commission (“IWC”)
26 Wage Orders seeking unpaid wages, reimbursement of business expenses,
27 penalties, equitable relief, and reasonable attorneys’ fees and costs.

28 9. Plaintiffs, individually and on behalf of all Class members, bring this

1 action pursuant to Business and Professions Code §§ 17200-17208, seeking
2 injunctive relief, restitution, and disgorgement of all benefits obtained by
3 Defendants by failing to pay minimum wages.

4 **II.**

5 **JURISDICTION AND VENUE**

6 10. The *McGrath v. Wyndham Development Corporation, et al.* action
7 was removed from the Superior Court of the State of California, County of San
8 Diego, to the United States District Court for the Southern District of California
9 by Defendants.

10 11. The *O'Boy v. Wyndham Vacation Ownership, Inc.* action was
11 removed from the State of California, County Orange to the United States District
12 Court for the Central District of California, Western Division by Defendants.

13 12. This Court has original jurisdiction of this action under the Class
14 Action Fairness Act of 2005 ("CAFA"), codified in part by 28 U.S.C. 1332(d).

15 13. Venue is proper in the Southern District of California pursuant to 28
16 U.S.C. 1391 because Defendants (i) are subject to personal jurisdiction in this
17 District, and/or (ii) committed the wrongful conduct against certain members of
18 the Plaintiff Class, including Plaintiff McGrath, in this District.

19 **III.**

20 **THE PARTIES**

21 **A. The Plaintiffs**

22 14. Plaintiff MICHELLE RENEE MCGRATH is a resident of San Diego
23 County, California, and was employed by Defendants in San Diego County as a
24 Salesperson from February 2013 to July 2013.

25 15. Plaintiff VERONICA O'BOY is a resident of California, and was
26 employed by Defendants in Sonoma County as a Salesperson from March 2014 to
27 September 2014.

28 **B. The Defendants**

1 compensated solely by commission, and recoverable advances on commissions,
2 based on sales of Defendants' products and services, but are not paid for time
3 spent in non-sales activities, including remaining on the work premises waiting to
4 make sales presentations to clients, and time spent on rest periods. Upon
5 information and belief, these employees have not been paid wages for all hours
6 worked.

7 21. During all, or a substantial portion, of the proposed Class Period,
8 Plaintiffs and the members of the Plaintiff Class were employed by Defendants,
9 and each of them, in California.

10 22. Plaintiffs and each Plaintiff Class member were Salespersons covered
11 under one or more Industrial Welfare Commission (IWC) Wage Orders, including
12 7-2001, Labor Code § 1194, and/or other orders, regulations and statutes, which
13 required Defendants to pay Plaintiffs and Plaintiff Class members for all hours
14 worked throughout the Class Period.

15 23. Plaintiffs are informed, believe, and allege, Defendants failed to
16 maintain necessary records, failed to monitor and record time and tasks showing
17 when Plaintiffs and the members of the Plaintiff Class engaged in non-sales
18 activities.

19 24. During the class period, Plaintiffs and members of the Plaintiff Class
20 were employed by Defendants and paid on a commission basis.

21 25. During the class period, Plaintiffs and members of the Plaintiff Class
22 were required to report to, and remain at work, and perform tasks for but were not
23 compensated.

24 26. During the class period, Plaintiffs and members of the Plaintiff Class
25 were not authorized and permitted to take a paid rest period.

26 27. During the class period, Plaintiffs and members of the Plaintiff Class
27 were required to work in excess of five hours per day without being provided a
28 30-minute uninterrupted meal period.

1 **Plaintiff “Wage Statement Subclass”**

2 All members of the Plaintiff Class to whom Defendants
3 improperly failed to provide accurate itemized wage
4 statements under Labor Code § 226(b).

- 5 33. Plaintiffs seek to certify a subclass of employees defined as:

6 **Plaintiff “Expense Reimbursement Subclass”**

7 All members of the Plaintiff Class to whom Defendants
8 improperly failed to reimburse necessary and reasonable
9 business expenses under Labor Code § 2802.

- 10 34. Plaintiffs seek to certify a subclass of employees defined as follows:

11 **Plaintiff “Rest Period Subclass”**

12 All members of the Plaintiff Class who were not
13 authorized and permitted to take a paid rest period for
14 every four hours worked or major fraction thereof.

- 15 35. Plaintiffs seek to certify a subclass of employees defined as:

16 **Plaintiff “Meal Period Subclass”**

17 All members of the Plaintiff Class who were not provided
18 a compliant, timely meal period for each day in which the
19 Class Member worked in excess of five and/or ten hours
20 in a day.

- 21 36. Plaintiffs seek to certify a subclass of employees defined as:

22 **Plaintiff “Overtime Subclass”**

23 All members of the Plaintiff Class who were not paid all
24 overtime wages earned.

- 25 37. Plaintiff seeks to certify a subclass of employees defined as:

26 **Plaintiff “UCL Subclass”**

27 All members of the “Minimum Wage” “Overtime,” and
28 “Expense Reimbursement,” Subclass who (1) were
 subject to unlawful, illegal, unfair and/or deceptive
 business acts /and or practices by Defendants and (2) are

1 entitled to restitution of unpaid wages and expense
2 reimbursement.

3 38. Plaintiffs reserve the right to amend or modify the Class description
4 with greater specificity or further division into subclasses or limitation to
5 particular issues.

6 39. This action has been brought and may be maintained as a class action
7 pursuant to Rule 23 because there is a well-defined common interest of many
8 persons and it is impractical to bring them all before the court.

9 40. **Ascertainable Class:** The proposed class and subclasses are
10 ascertainable because they can be identified and located using Defendants' payroll
11 and personnel records.

12 41. **Numerosity:** The potential members of the Class and Subclasses as
13 defined are so numerous that joinder of all members would be unfeasible and
14 impractical. The disposition of their claims through this class action will benefit
15 both the parties and this Court. The number of members of the Class and
16 Subclasses is unknown to Plaintiffs at this time, however, it is estimated that the
17 Class and Subclasses number in excess of 2,000 individuals. The number and
18 identity of the members is readily ascertainable through inspection of Defendants'
19 records.

20 42. **Typicality:** The claims of Plaintiffs are typical of the claims of all
21 members of the Class and Subclasses because all members of the Class and
22 Subclasses sustained similar injuries and damages arising out of Defendants'
23 common course of conduct in violation of law and the injuries and damages of all
24 members of the Class and Subclasses were caused by Defendants' wrongful
25 conduct in violation of law, as alleged.

26 43. **Adequacy:** Plaintiffs are adequate representatives of the Class and
27 Subclasses, will fairly protect the interests of the members of the Class and
28 Subclasses, have no interests antagonistic to the members of the Class and

1 Subclasses, and will vigorously pursue this suit. Plaintiffs' attorneys are
2 competent, skilled and experienced in litigating large employment law class
3 actions.

4 44. **Superiority**: A class action is superior to other available means for
5 the fair and efficient adjudication of this controversy. Individual joinder of all
6 Class Members is not practicable, and questions of law and fact common to the
7 Class predominate over questions affecting only individual Class members. Each
8 Class member has been damaged and is entitled to recovery by reason of
9 Defendants' illegal policy and/or practice of failing to pay minimum wages. A
10 Class action will allow those similarly situated to litigate their claims in the most
11 efficient and economical manner for the parties and the judicial system. Plaintiffs
12 are unaware of any difficulties that are likely to be encountered in the
13 management of this action that would preclude its maintenance as a class action.

14 45. There are common questions of law and fact as to the members of the
15 Class and Subclasses which predominate over questions affecting only individual
16 members of the Class and Subclasses including, without limitation:

- 17 a. Whether Defendants violated California law and IWC Wage Order 7-
18 2001 by failing to properly compensate Plaintiff Class members for
19 all hours worked;
- 20 b. Whether Defendants violated California labor laws by failing to pay
21 Plaintiff Class members for hours worked in non-sales activities;
- 22 c. Whether Defendants violated California labor laws by failing to
23 authorize and permit paid rest periods to Plaintiff Class members for
24 every four hours worked or major fraction thereof;
- 25 d. Whether Defendants violated California labor laws by failing to
26 separately compensate Plaintiff Class members for rest periods;
- 27 e. Whether Defendants violated California labor laws by failing to
28 provide meal periods to Plaintiff Class members for work periods in

1 excess of five hours and/or ten hours;

2 f. Whether Defendants violated California labor law by failing to
3 accurately calculate and pay overtime to Plaintiff Class members.

4 g. Whether the Plaintiff Class is entitled to waiting time penalties under
5 § 203;

6 h. Whether Defendants violated California labor law by failing to
7 provide Plaintiff Class members with accurate itemized wage
8 statements;

9 i. Whether Defendants owe Plaintiff Class members reimbursement for
10 business expenses under § 2802;

11 j. Whether Defendants violated §§ 17200, *et seq.* of the Business and
12 Professions Code; Labor Code §§ 226, 1194; IWC Wage Order 7-
13 2001, and other applicable IWC Wage Orders which constitutes a
14 violation of fundamental public policy;

15 h. Whether Plaintiff Class and Subclasses are entitled to equitable relief
16 pursuant to Business and Professions Code, §§ 17200, *et seq.*

17 **VI.**

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 **Failure to Pay Minimum and Overtime Wages**

21 **[Labor Code §§ 510, 1194, 1197]**

22 **(Plaintiffs and members of the Minimum Wage and Overtime Subclass
23 against each Defendant)**

24 46. Plaintiffs incorporate the preceding paragraphs of this Complaint.

25 47. By their failure to pay wages for hours during which non-sales work
26 was performed, Defendants failed to pay minimum and overtime wages earned
27 and violated provisions of Labor Code §§ 510, 1194, 1197 and IWC Wage Order
28 7-2001.

48. Labor Code § 1194.2 provides for liquidated damages equal to

1 unlawfully unpaid minimum wages, with interest.

2 49. Defendants' unlawful acts deprived Plaintiffs and the Class and
3 Subclasses Plaintiffs seek to represent of minimum wages in amounts to be
4 determined at trial, and they are entitled to recover these amounts, along with
5 liquidated damages, interest, attorneys' fees, and costs.

6 50. Plaintiffs and the Class and Subclasses Plaintiffs seek to represent
7 request relief as described below.

8 **SECOND CAUSE OF ACTION**

9 **Failure to Pay Wages Due at Termination [Labor Code § 203]**
10 **(Plaintiffs and the Waiting Time Subclass against each Defendant)**

11 51. Plaintiffs incorporate the preceding paragraphs of this Complaint.

12 52. Defendant had a consistent and uniform policy, practice and
13 procedure of willfully failing to lawfully pay the earned and unpaid wages of
14 Defendants' former employees. Labor Code §§ 201 and 202 require Defendants to
15 pay its employees all wages due within the time required by law. Section 203 of
16 the Labor Code provides that if an employer willfully fails to timely pay such
17 wages the employer must, as a penalty, continue to pay the subject employee's
18 wages until the back wages are paid in full or an action is commenced. The
19 penalty cannot exceed 30 days of wages.

20 53. Members of the Waiting Time Subclass are no longer employed by
21 Defendant.

22 54. Defendants willfully failed to pay Waiting Time Subclass Members
23 the sum due at the time of their termination or within seventy-two (72) hours of
24 their resignation, and failed to pay those sums for thirty (30) days thereafter.

25 55. Defendants' willful failure to pay wages to the Waiting Time
26 Subclass Members violates Labor Code § 203 because Defendants knew wages
27 were due to the Subclass Members, but Defendants failed to pay them.

1 56. Plaintiffs and the members of the Plaintiff Class and Subclasses
2 Plaintiffs seek to represent request relief as described below.

3 **THIRD CAUSE OF ACTION**

4 **Failure to Reimburse Business Expenses [Labor Code § 2802]**
5 **(Plaintiffs and the Expense Reimbursement Subclass against each Defendant)**

6 57. Plaintiffs incorporate the preceding paragraphs of this Complaint.

7 58. Pursuant to California Labor Code § 2802, Defendants are required
8 to fully reimburse Plaintiffs and the members of the Plaintiff Class and Subclass,
9 for all out-of-pocket expenses incurred by them in the performance of their job
10 duties, including but not limited to, transportation costs relating to mileage and
11 parking, and cell phone expenses. Plaintiffs and the members of the Plaintiff
12 Class and Subclass they seek to represent were employed by Defendants as
13 Salespersons or Sales Representatives, or other similar titles, which required them
14 to incur expenses in the performance of their job duties.

15 59. For the four (4) year period preceding the filing of this Complaint,
16 Plaintiffs and the members of the Plaintiff Class and Subclass have been required
17 to personally incur and pay for these expenses in the discharge of their
18 employment duties, all without reimbursement from Defendants.

19 60. Defendants have a policy of regularly and consistently refusing to
20 fully reimburse Plaintiffs and the members of the Plaintiff Class and Subclass for
21 such expenses, in violation of California law.

22 61. As a result of these violations, Plaintiffs and the members of the
23 Plaintiff Class and Subclass have been damaged in an amount according to proof
24 at the time of trial, but in an amount in excess of the minimum jurisdiction of this
25 Court.

26 62. Pursuant to Labor Code §§ 2802 and 2804, Plaintiffs and the
27 members of the Plaintiff Class and Subclass are entitled to recover from
28 Defendants the full amount of the expenses incurred in the performance of their

1 job duties, plus interest, reasonable attorney's fees and costs of suit.

2 63. Plaintiffs and the members of the Plaintiff Class and Subclass
3 Plaintiffs seek to represent request relief as described below.

4 **FOURTH CAUSE OF ACTION**

5 **Failure to provide itemized wage statements [Labor Code § 226(a)]**
6 **(Plaintiffs and the Wage Statement Subclass against each Defendant)**

7 64. Plaintiffs incorporate all preceding paragraphs of this Complaint.

8 65. Section 226(a) of the California Labor Code requires Defendant to
9 itemize in wage statements all deductions from payment of wages and to
10 accurately report, among other things, the total hours worked by Plaintiff and the
11 members of the proposed Class, and all hourly wage rates earned, the number of
12 pieces completed, the pay per piece, the basis for commissions paid. Defendant
13 has knowingly and intentionally failed to comply with Labor Code § 226(a) on
14 wage statements provided to Plaintiffs and members of the Wage Statement
15 Subclass because, among other reasons, the wage statements failed to accurately
16 set forth all hourly rates earned, and the basis for all wages earned, including
17 commissions.

18 66. As a consequence of Defendants' knowing and intentional failure to
19 comply with Labor Code § 226(a), Plaintiffs and the members of the Wage
20 Statement Subclass are entitled to actual damages or penalties not to exceed
21 \$4,000 for each employee pursuant to Labor Code § 226(b), together with interest
22 and attorneys' fees and costs.

23 67. Plaintiffs and the members of the Plaintiff Class and Subclasses
24 Plaintiffs seek to represent request relief as described below.

25 **FIFTH CAUSE OF ACTION**

26 **Failure to Authorize and Permit Paid Rest Breaks**
27 **[Labor Code 226.7 and IWC Wage Order]**
28 **(Plaintiffs and the Minimum Wage and Rest Period Subclasses**
against each Defendant)

1 68. Plaintiffs incorporate all preceding paragraphs of this Complaint.

2 69. The applicable IWC wage order also required employers to authorize
3 and permit employees to take a net 10-minute rest period for every four hours or
4 major fraction thereof, which insofar as practicable shall be taken in the middle of
5 each work period. In addition, the IWC Wage Order requires that the authorized
6 rest period time shall be counted as hours worked for which there shall be no
7 deductions.

8 70. The applicable IWC Wage Order further requires an employer who
9 fails to authorize and permit an employee to take a rest period to pay the employee
10 one additional hour of pay at the employee's regular rate of pay for each workday
11 that the rest period is not provided.

12 71. By failing to provide paid ten-minute rest periods for every four
13 hours or major fraction thereof worked per day, by failing to provide separate
14 compensation for these periods, and by failing to pay the employee one additional
15 hour of pay at the employee's regular rate of pay for each workday that the rest
16 period was not provided, Defendants willfully violated the provisions of Labor
17 Code section 226.7 and the applicable IWC Wage Orders.

18 72. Defendants' unlawful acts deprived Plaintiffs and the Plaintiff Class
19 and Minimum Wage and Rest Period Subclasses of minimum and premium wages
20 and/or other compensation in amounts to be determined at trial, and they are
21 entitled to recover such amounts, plus interest, attorneys' fees, and costs.

22 73. Plaintiffs and the members of the Plaintiff Class and Subclasses
23 Plaintiffs seek to represent request relief as described below.

24 **SIXTH CAUSE OF ACTION**

25 **Failure to Provide Meal Periods**

26 **[Labor Code §§ 226.7, 512, and IWC Wage Order]**

27 **(Plaintiffs and the Meal Period Subclass against each Defendant)**

28 74. Plaintiffs incorporate all preceding paragraphs of this Complaint.

75. Pursuant to California Labor Code section 512, an employer may not

1 employ an employee for a work period of more than five hours per day without
2 providing the employee with an uninterrupted meal period of not less than thirty
3 minutes, except that if the total work period per day of the employee is not more
4 than six hours, the meal period may be waived by mutual consent of both the
5 employer and the employee.

6 76. A second meal period of not less than thirty minutes is required if an
7 employee works more than ten hours per day, except that if the total hours worked
8 is no more than 12 hours, the second meal period may be waived by mutual
9 consent of the employer and the employee but only if the first meal period was not
10 waived.

11 77. If an employer fails to provide an employee a meal period, the
12 employer must pay one additional hour of pay at the employee's regular rate of
13 pay for each workday that the meal period is not provided.

14 78. As a result of Defendants' policies, as well as the productivity
15 requirements and work schedules implemented and enforced by Wyndham,
16 Plaintiffs and members of the Meal Period Subclass were often unable to take off
17 duty meal periods and/or were not fully relieved of their duties for meal periods.
18 Plaintiff and other Plaintiff Class members were required to perform work as
19 directed by Defendants for more than five (5) and ten (10) hours during a workday
20 (as the case may be) without receiving a lawful meal period(s) and without
21 payment of one additional hour of pay at the employee's regular rate of pay for
22 each workday that the meal period was not provided.

23 79. Plaintiffs and the Meal Period Subclass did not voluntarily or
24 willfully waive their meal periods.

25 80. As a result of Defendants' failure to provide lawful meal periods or
26 compensation in lieu thereof, Plaintiffs and the Meal Period Subclass were not
27 paid all wages as required by California Labor Code section 204.

28 81. Defendants' unlawful acts deprived Plaintiffs and the Meal Period

1 Subclass of premium wages and/or other compensation in amounts to be
2 determined at trial, and they are entitled to recover such amounts, plus interest,
3 attorneys' fees, and costs.

4 82. Plaintiffs and the members of the Plaintiff Class and Subclasses
5 Plaintiffs seek to represent request relief as described below.

6 **SEVENTH CAUSE OF ACTION**

7 **Violations of the Unfair Competition Law**

8 **[Business and Professions Code §§ 17200 et seq.]**

9 **(Plaintiffs and the Minimum Wage, Overtime, and Expense Reimbursement
Subclasses against each Defendant)**

10 83. Plaintiffs incorporate all preceding paragraphs of this Complaint.

11 84. Defendants' failure to pay Plaintiffs and members of the Plaintiff
12 Class and sub-classes for all hours worked, as required by Wage Orders and the
13 Labor Code, as alleged, constitutes unlawful activity prohibited by Business and
14 Professions Code §§ 17200 et seq.

15 85. The actions of Defendants in failing to pay Plaintiffs and members of
16 the Plaintiff Class in a lawful manner, constitute false, unfair, fraudulent and
17 deceptive business practices, within the meaning of Business and Professions
18 Code, §§ 17200, et seq.

19 86. Plaintiffs are entitled to an injunction, specific performance under
20 Business and Professions Code, § 17202, and/or other equitable relief against such
21 unlawful practices in order to prevent future loss, for which there is no adequate
22 remedy at law, and to avoid a multiplicity of lawsuits. Plaintiffs bring this cause
23 individually and as a member of the general public as a representative of all others
24 subject to Defendants' unlawful acts and practices.

25 87. This cause of action is brought as a cumulative remedy as provided in
26 Business and Professions Code § 17205, and is intended as an alternative remedy
27 for restitution for Plaintiffs, and each Plaintiff Subclass Member, for the four (4)
28 year period before the filing of this Complaint, and as the primary remedy during

1 the fourth year before the filing of this Complaint.

2 88. As a result of Defendants' unlawful and unfair business practice of
3 failing to pay earned wages, each Plaintiff Class Member and Subclass Member
4 has suffered damages and is entitled to restitution in an amount according to
5 proof.

6 89. The illegal conduct alleged is continuing and there is no indication
7 that Defendants will discontinue such activity in the future. Plaintiffs allege that if
8 Defendants are not enjoined from the conduct set forth in this Complaint, they will
9 continue to fail to provide minimum wages as required by law.

10 90. Plaintiffs further request the court issue a preliminary and permanent
11 injunction prohibiting Defendants from continuing to fail to pay minimum wages.

12 91. Plaintiffs and the members of the Plaintiff Class and sub-classes
13 Plaintiffs seek to represent request relief as described below.

14 **VI.**
15 **DEMAND FOR JURY TRIAL**

16 Plaintiffs demand trial of their claims by jury to the extent authorized by
17 law.

18 **VII.**
19 **PRAYER FOR RELIEF**

20 Plaintiffs pray for judgment as follows:

21 1. That the Court determine this action may be maintained as a class
22 action and certify the Plaintiffs Class and each Plaintiff Sub-Class;

23 2. That the Court determine that the failure of the Defendants to pay
24 minimum wage compensation to the Plaintiffs and each Plaintiff Class member be
25 adjudged and decreed to violate the applicable IWC Wage Orders, regulations and
26 statutes;

1 3. That Defendants be ordered to pay and judgment be entered for
2 minimum wages for Plaintiffs and each Plaintiff Class member, according to
3 proof;

4 4. That Defendants be ordered to pay and judgment be entered for
5 Labor Code §203 penalties to Plaintiffs and each Plaintiff Sub-Class member,
6 according to proof;

7 5. That Defendants be ordered to pay, and judgment be entered, for
8 expense reimbursements to Plaintiffs and each Plaintiff Sub-Class member,
9 according to proof, §2802;

10 6. That Defendants be ordered to pay, and judgment be entered, for
11 Labor Code §§ 226.7 and 512 premium pay and penalties to Plaintiffs and each
12 Plaintiff Sub-Class members, according to proof;

13 6. That Defendants be found to have engaged in unfair competition in
14 violation of Business and Professions Code § 17200;

15 7. That Defendants be ordered to pay restitution to Plaintiffs, each
16 Plaintiff Class member and each Plaintiff Sub-Class member, due to Defendants'
17 unlawful and unfair competition, including disgorgement of wrongfully obtained
18 profits, wrongfully withheld wages according to proof, and interest, under
19 Business and Professions Code, §§ 17203 and 17204;

20 8. That Defendants be enjoined from further acts of unfair competition
21 and specifically from failing to pay minimum wage compensation to Class
22 members;

23 9. That Plaintiffs, Plaintiff Class members, and Plaintiff Sub-Class
24 members be awarded attorneys' fees and costs pursuant to statute, including but
25 not limited to, Labor Code §§ 226, 1194 and 2802, and Code of Civil Procedure §
26 1021.5;

27 10. Determine the appropriate remedy to compensate Plaintiffs, Plaintiff
28 Class and Sub-Class members, as required to promote fairness and justice,

1 including but not limited to establishing procedures for compensation, and fluid
2 recovery if appropriate;

3 11. Prejudgment Interest; and

4 12. Any other relief as this court deems proper.

5 Dated: July 3, 2017

COHELAN KHOURY & SINGER

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By: _____

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Michael D. Singer, Esq.

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Jeff Geraci, Esq.

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Attorneys for Plaintiff MICHELLE RENEE
MCGRATH and the putative class

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Dated: July 3, 2017

FARNAES & LUCIO, APC

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By: _____

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the putative class

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