

WHITEHEAD EMPLOYMENT LAW

JACOB N. WHITEHEAD, ESQ. (SBN 266123)

reception@jnwpc.com

15615 Alton Parkway, Suite 175

Irvine, CA 92618

Tel. No.: (949) 936-4001

Facsimile: (949) 450-1588

Attorneys for Plaintiffs, LILLIA HUPP, an individual; ERIC Brown, an individual; and PHILIP URIBE, an individual, each on their own behalf, and on behalf of all others similarly-situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

LILLIA HUPP an individual; ERIC BROWN, an individual; and PHILIP URIBE, each on their own behalf, and on behalf of all others similarly-situated,

Plaintiffs,

v.

ARTHUR J. GALLAGHER SERVICE COMPANY, a Delaware corporation; GALLAGHER BASSETT SERVICES, INC., a Delaware corporation; ARTHUR J. GALLAGHER & CO. (ILLINOIS), an Illinois corporation; ARTHUR J GALLAGHER & CO. INSURANCE BROKERS OF CALIFORNIA, INC., a California corporation; ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC., an Illinois corporation; and DOES 1 through 25, inclusive,

Defendants.

CASE NO. 30-2020-01145295-CU-OE-CXC

CLASS ACTION COMPLAINT FOR:

- 1. FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF LABOR CODE §§ 226.7, 512, AND 1198, AND IWC WAGE ORDER NO. 4-2001;**
- 2. FAILURE TO PROVIDE REST PERIODS IN VIOLATION OF LABOR CODE §§ 226.7 AND 1198, AND IWC WAGE ORDER NO. 4-2001;**
- 3. FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS IN VIOLATION OF LABOR CODE § 1174;**
- 4. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS IN VIOLATION OF LABOR CODE § 226;**
- 5. FAILURE TO REIMBURSE BUSINESS EXPENSES IN VIOLATION OF LABOR CODE § 2802;**

Assigned for All Purposes

Judge Peter Wilson

4. The acts complained of herein occurred, occur, and will occur at least in part within the time period from four (4) years preceding the filing of the Complaint, up to and through the time of trial for this matter.

5. Defendants violated numerous provisions of the California Labor Code, including Labor Code §§ 200-203, 204, 226(a), 226.7, 510, 512, 1174, 1194, and 2802, for unpaid wages including unpaid wages, for rest and meal break violations and unpaid premiums for such meal and rest break violations, for failure to maintain records of all hours worked, for inaccurately itemized wage statements, for failure to timely pay at least twice monthly, for failure to pay all final wages upon termination or resignation, and for unreimbursed expenses incurred in the discharge of work related duties.

6. Plaintiffs bring this action each of them as an individual and on behalf of all others similarly situated, and seek compensation for all uncompensated work, liquidated and/or other damages as permitted by applicable law, as well as attorneys' fees, applicable penalties as provided by statute, plus interest and costs.

7. The Court has jurisdiction over Plaintiffs' and putative Class Members' claims pursuant to Business and Professions Code sections 17200-17208, and they seek injunctive relief and restitution of ill-gotten benefits arising from Defendants' unlawful business acts and practices under California Business and Professions Code sections 17200-17208.

8. Venue is proper in this judicial district, pursuant to Code of Civil Procedure section 395. Plaintiffs are both residents of California and worked for in Orange County, California. Defendants conduct business throughout the state of California, including in Orange County, and the unlawful acts alleged herein have a direct effect on Plaintiffs and those similarly situated within the State of California and within the County of Orange.

THE PARTIES

9. Plaintiff, LILLIA HUPP was at all times relevant to this Complaint an adult individual who lived in the city of Lake Forest, California and was working for Defendants in the City of Aliso Viejo, in Orange County, California.

1 10. Plaintiff, ERIC BROWN, was at all times relevant to this Complaint an adult
2 individual who lived in the city of Murrieta, California and was working for Defendants in the
3 City of Aliso Viejo, in Orange County California.

4 11. Plaintiff, PHILIP URIBE, was at all times relevant to this Complaint an adult
5 individual who lived in the City of Lake Forest, California and was working for Defendants in
6 the City of Aliso Viejo, in Orange County, California.

7 12. At all times relevant to this Complaint, Defendant GALLAGHER BASSETT
8 SERVICES, INC. is and was a Delaware corporation conducting regular business throughout
9 California, where it employed Plaintiffs and the putative Class Members.

10 13. At all times relevant to this Complaint, Defendant, ARTHUR J. GALLAGHER
11 SERVICE COMPANY is and was a Delaware corporation, which surrendered its right to conduct
12 business in California on December 29, 2011, yet upon information and belief and based thereon,
13 Plaintiffs allege that during the relevant period ARTHUR J. GALLAGHER SERVICE
14 COMPANY was nevertheless conducting regular business throughout the State of California,
15 where it employed Plaintiffs and the putative Class Members.

16 14. At all times relevant to this Complaint, Defendant ARTHUR J. GALLAGHER &
17 CO. (ILLINOIS) is and was an Illinois corporation duly registered as a foreign corporation with
18 the California Secretary of State, conducting regular business throughout the State of California,
19 where it employed Plaintiffs and the putative Class Members.

20 15. At all times relevant to this Complaint, Defendant ARTHUR J GALLAGHER &
21 CO. INSURANCE BROKERS OF CALIFORNIA, INC. was and is a California corporation
22 conducting regular business throughout California, where it employed Plaintiffs and the putative
23 Class Members.

24 16. At all times relevant to this Complaint, Defendant ARTHUR J. GALLAGHER
25 RISK MANAGEMENT SERVICES, INC. was and is an Illinois corporation, duly registered as
26 a foreign corporation with the California Secretary of State, conducting regular business
27 throughout the State of California, where it employed Plaintiffs and the putative Class Members.
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1 17. Plaintiffs are unaware of the true names or capacities of Defendants sued herein
2 under the fictitious names DOES 1–25, inclusive, but pray for leave to amend and serve such
3 fictitiously-named Defendants pursuant to California Code of Civil Procedure section 474 once
4 their names and capacities become known.

5 18. Plaintiffs are informed and believe, and thereon allege, that DOES 1–25, inclusive,
6 are the partners, agents, owners, shareholders, managers, principals or employees of Defendants
7 and/or and were acting on behalf of Defendants.

8 19. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts
9 and omissions alleged herein was performed by or is attributable to Defendants, each acting as
10 the agent for the other, with legal authority to act on the other’s behalf. The acts of any and all
11 Defendants were in accordance with, and represent the policy of, each of the other Defendants.

12 20. At all times herein mentioned, Defendants, and each of them, ratified each and
13 every act or omission complained of herein. At all times herein mentioned, Defendants, and each
14 of them, aided and abetted the acts and omissions of each and all of the other Defendants in
15 proximately causing the damages herein alleged.

16 21. Plaintiffs are informed and believe, and thereon allege, that each of the Defendants
17 is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
18 occurrences and transactions alleged herein.

19
20 **ALTER EGO, AGENCY AND JOINT EMPLOYER**

21 22. Plaintiffs are informed and believe, and based thereon allege, that there exists such
22 a unity of interest and ownership between Defendants that the individuality and separateness of
23 Defendants have ceased to exist.

24 23. Plaintiffs are informed and believe, and based thereon allege, that despite the
25 formation of purported corporate existence, Defendants are in reality one and the same including,
26 but not limited to, because:

- 27 a. Defendants are completely dominated and controlled by the same persons
28 and/or entities who committed the violations of laws as set forth in this

1 complaint, and who have hidden and currently hide behind corporate
2 formalities to perpetrate frauds, circumvent statutes, or accomplish some
3 other wrongful or inequitable purpose;

4 b. Defendants have acted on behalf of those persons and/or entities who violate,
5 or cause to be violated, the provisions of law cited herein;

6 c. Defendants are owners, managers, officers, or managing agents of the
7 persons and/or entities who violate, or cause to be violated, the provisions of
8 law cited herein, and the term “managing agent” has the same meaning as in
9 subdivision (b) of Section 3294 of the California Civil Code;

10 d. Defendants derive actual and significant monetary benefits by and through
11 the persons and/or entities who violate, or cause to be violated, the provisions
12 of law cited herein, by using them as funding sources for their own personal
13 expenditures;

14 e. Plaintiffs are informed and believe that Defendants, while really one and the
15 same, were segregated to appear as though separate and distinct for purposes
16 of perpetrating a fraud, circumventing a statute, or accomplishing some other
17 wrongful or inequitable purpose;

18 f. Plaintiffs are informed and believe that Defendants do not comply with all
19 requisite corporate formalities to maintain a legal and separate corporate
20 existence; and

21 g. Plaintiffs are informed and believe, and based thereon allege, that the
22 business affairs of Defendants are, and at all times relevant were, so mixed
23 and intermingled that the same cannot reasonably be segregated, and the
24 same are in inextricable confusion. Each of Defendants at all times relevant
25 was used by one another as a mere shell and conduit for the conduct of certain
26 of Defendants’ affairs, and is, and was, the alter ego of the others. The
27 recognition of the separate existence of Defendants would not promote
28 justice in that it would permit Defendants to insulate themselves from

1 liability to Plaintiffs for violations of the Labor Code and other statutory
2 violations. The corporate existence of Defendants should be disregarded in
3 equity and for the ends of justice because such disregard is necessary to avoid
4 fraud and injustice to Plaintiffs herein.

5 24. Accordingly, Defendants constitute the alter ego of one another, and the fiction of
6 their separate corporate existence must be disregarded.

7 25. As a result of the aforementioned facts, Plaintiffs are informed and believe, and
8 based thereon allege that Defendants were Plaintiffs' joint employers by virtue of a joint
9 enterprise, and that Plaintiffs were employees of Defendants. Plaintiffs performed services for
10 each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants
11 shared control of Plaintiffs as employees, either directly or indirectly, and the manner in which
12 Defendants' business was and is conducted.

13 **GENERAL ALLEGATIONS**

14 26. Plaintiff, LILLIA HUPP's employment with Defendants began on or about August
15 12, 2012 and ended January 22, 2020. During the relevant period Plaintiff, LILLIA HUPP
16 worked as a Senior Resolutions Manager at Defendants' branch in Aliso Viejo, California.

17 27. Plaintiff, ERIC BROWN's employment with Defendants began on or about March
18 of 2015 and ended on or about November of 2019. Plaintiff, ERIC BROWN worked as a Senior
19 Resolutions Manager Defendants' branch in Aliso Viejo, California.

20 28. Plaintiff, PHILIP URIBE'S employment with Defendants began on or about
21 March 24, 2015 and ended on or about January 31, 2020. Plaintiff, PHILIP URIBE worked as a
22 Senior Claims Adjustor at Defendants' branch in Aliso Viejo, California.

23 29. Plaintiffs were primarily engaged in performing job same and substantially similar
24 job duties administering workers compensation claims during their employment with Defendants.

25 30. Upon information and belief, and thereupon Plaintiffs allege that at all times
26 relevant, the putative Class Members were employed by Defendants in California and were
27 primarily engaged in performing job duties administering workers compensation claims during
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1 their employment with Defendants. Defendants initially gave certain of the Plaintiffs and putative
2 Class Members the title of “Claims Examiners,” which title Defendants later changed to
3 “Resolution Managers.”

4 31. Defendants did not provide Plaintiffs and their co-workers with any mechanism to
5 clock in or clock out, so there was no way or means for them to log or record actual hours worked.
6 Instead, Defendants only paid Plaintiffs and all the other examiners/resolution managers for seven
7 (7) hours per day for a total of thirty-five (35) hours per week, no matter how many hours anyone
8 actually works/or worked. In or about 2018, when one of Plaintiffs’ co-workers complained about
9 unpaid wages to Human Resources (“HR”), HR’s response was, *"We can't tell management what*
10 *to do."*

11 32. Because of the workload demands, Plaintiffs and the other similarly situated
12 claims/resolution managers never received rest breaks. On rare occasions they would try to force
13 themselves to briefly walk away from their desk to take lunch breaks but, more often than not,
14 Plaintiffs would eat lunch at their desk while working, just to keep up with the work

15 33. For example, in September of 2019, Defendants placed Plaintiff, Lillia Hupp on
16 “active caseload,” and assigned her to work one hundred and eighty (180) active claims, with
17 eight additional new claims coming in per week. The one hundred and eighty (180) cases Plaintiff
18 was assigned were backlog files that had not been worked or touched by anyone since March of
19 2019. Plaintiff-Hupp’s supervisor told her on October 23, 2019 that she had to have every single
20 case updated “with zero exceptions” by October 31st, 2019. Plaintiff-Hupp told Defendants what
21 they were asking was humanly impossible. The files were then split between Plaintiff-Hupp and
22 two other supervisors, yet Plaintiff-Hupp was still working 15-17 hours a day to get all the files
23 up to date. On one occasion Plaintiff-Hupp worked until 12:30 a.m. and was back in the office
24 at 5:30 a.m. the next morning. That morning Plaintiff-Hupp emailed her supervisor, Jennifer
25 Havins and told her how late she had worked and told her she was completely exhausted and
26 couldn't keep up with the caseload. Plaintiff-Hupp’s supervisor benignly responded to her by
27 email, merely saying, *"I hope you get some sleep tonight."* No matter how much she was already
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1 struggling and the long hours Plaintiff-Hupp was working, Defendants kept piling on her caseload,
2 perfectly aware of but failing to ever pay her for the long hours she was working. On January 22,
3 2020, Defendants terminated Plaintiff-Hupp for not keeping up with her caseload.

4 34. Furthermore, in the course of executing their job duties, Plaintiffs were required
5 to use their personal cell phone numerous times each week in order to communicate with workers
6 compensation claimants, with co-workers, with doctors, and with defense attorneys on the files
7 they were working. Plaintiffs were required to give their personal cell phone numbers to those
8 individuals. However, at no time have Defendants ever reimbursed Plaintiffs for the expenses
9 they incurred in using their personal cell phones in performing their work-related duties.
10 Plaintiffs allege on information and belief that the putative Class Members likewise were required
11 to use their personal cell phones numerous times each week in order to communicate with
12 claimants, with doctors, and with attorneys on the files they were working, but that at no time
13 have Defendants ever reimbursed the putative Class Members for the expenses they incurred in
14 using their personal cell phones in performing their work-related duties.

15 35. Plaintiff, Eric Brown and other similarly-situated putative Class Members were
16 occasionally required to travel to other locations for meetings or trainings and were never paid
17 for mileage or reimbursed for gasoline expenses incurred for such work-related travel.

18 36. At all times relevant, the Plaintiffs' heavy workload required them to work up to
19 fifteen and sometimes as many as seventeen hours per workday. Plaintiffs' workload sometimes
20 required them to work on weekends as well.

21 37. On January 31, 2020, Plaintiff-Urbe voluntarily quit his employment due to the
22 extreme case overload and working too many long hours without being fully compensated.

23 38. Plaintiffs allege on information and belief that, at all times relevant, each of the
24 putative Class Member's heavy workload required him/her to work up to between fifteen and
25 seventeen (15-17) hours per workday, and to sometimes work on weekends as well.

26 39. At all times relevant, Defendants did not require Plaintiffs to record or report the
27 amount of time they worked each workday.
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1 40. Plaintiffs allege on information and belief that, at all times relevant, Defendants
2 did not require any of the putative Class Members to record or report the amount of time they
3 worked each workday.

4 41. At all times relevant, Defendants did not relieve Plaintiffs of all duties and allow
5 them to take an uninterrupted meal period of at least 30 minutes starting no later than the
6 completion of the fifth hour worked each workday. Moreover, Plaintiffs' meal and rest breaks
7 were often interrupted by work-related phone calls. Plaintiffs were never compensated for the
8 time they performed work during their meal and rest breaks.

9 42. Plaintiffs allege on information and belief that, at all times relevant, Defendants
10 did not relieve each of the putative Class Members of all duties and allow them to take an
11 uninterrupted meal period of at least 30 minutes starting no later than the completion of the fifth
12 hour worked each workday. Plaintiffs further allege on information and belief that the putative
13 Class Members' meal and rest breaks were often interrupted by work-related phone calls.
14 Plaintiffs further allege on information and belief that the putative Class Members were never
15 compensated for the time they performed work during their meal and rest breaks.

16 43. At all times relevant, Defendants did not relieve Plaintiffs of all duties and allow
17 them to take a second uninterrupted meal periods of at least 30 minutes on workdays when they
18 worked more than ten (10) hours.

19 44. Plaintiffs allege on information and belief that, at all times relevant, Defendants
20 did not relieve each of the putative Class Members of all duties and allow them to take a second
21 uninterrupted meal period of at least 30 minutes on workdays when they worked more than ten
22 (10) hours.

23 45. At all times relevant, Defendants did not relieve Plaintiffs of all duties and allow
24 them to take an uninterrupted rest break of at least ten (10) minutes for each four (4) hours worked
25 or major fraction thereof.

26 46. Plaintiffs allege on information and belief that, at all times relevant, Defendants
27 did not relieve each of the putative Class Members of all duties and allow them to take an
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uninterrupted rest break of at least ten (10) minutes for each four (4) hours worked or major fraction thereof.

47. At all times relevant, Defendants did not pay Plaintiffs any “premium pay” equal to one hour of pay for each workday that Defendants failed to provide Plaintiffs a meal period or rest break.

48. Plaintiffs allege on information and belief that, at all times relevant, Defendants did not pay each of the putative Class Members any “premium pay” equal to one hour of pay for each workday Defendants failed to provide the putative Class Members a meal period or rest break.

49. At all times relevant, Defendants failed to pay Plaintiffs for the total number of hours they worked each pay period. To date, Defendants still have not paid Plaintiffs for all hours they worked for Defendants.

50. Plaintiffs allege on information and belief that, at all times relevant, Defendants failed to pay each putative Class Member for the total number of hours they worked each pay period. Plaintiffs allege on information and belief that, to date, Defendants still have not paid the putative Class Members for all hours they worked for Defendants.

51. At all times relevant, Defendants failed to provide Plaintiffs with itemized wage statements that accurately reported the total number of hours they had worked and the total amount of pay they earned in each pay period.

52. Plaintiffs allege on information and belief that, at all times relevant, Defendants failed to provide each Aggrieved Employee with itemized wage statements that accurately reported the total number of hours they had worked and the total amount of pay they had earned in each pay period.

53. At all times relevant, Defendants failed to timely pay Plaintiffs all wages earned at least twice monthly.

54. Plaintiffs allege on information and belief that, at all times relevant, Defendants failed to timely pay each of the putative Class Members all wages earned at least twice monthly.

1 55. At all times relevant, Defendants failed to maintain accurate payroll records
2 showing the hours worked and wages earned each workday by Plaintiffs.

3 56. Plaintiffs allege on information and belief that, at all times relevant, Defendants
4 failed to maintain accurate payroll records showing the hours worked and wages earned each
5 workday by each of the putative Class Members.

6 57. Defendants did not pay Plaintiffs all final wages they were owed on the dates they
7 separated or were discharged from their employment relationship with Defendants.

8 58. Plaintiffs allege on information and belief that, at all times relevant, Defendants
9 have not paid the putative Class Members whose employment was terminated by Defendants all
10 final wages on their termination date.

11 59. Plaintiffs allege on information and belief that, at all times relevant, Defendants
12 have not paid the putative Class Members who resigned their employment all final wages within
13 72 hours of their resignation.

14 60. Defendants engaged in, approved, and ratified the following unlawful practices
15 and policies against Plaintiffs and the putative Class Members:

16 a.) Failing to provide Plaintiffs and the putative Class Members meal periods in
17 violation of Labor Code sections 226 and 226.7, and IWC Order No. 4.

18 b.) Failing to provide Plaintiffs and the putative Class Members rest periods in
19 violation of Labor Code section 226.7 and IWC Order No. 4.

20 c.) Failing to maintain accurate records of hours worked and wages earned by
21 Plaintiffs and the putative Class Members in violation of Labor Code sections 226
22 and 1174, and IWC Order No. 4.

23 d.) Failing to furnish timely and accurate itemized wage statements to Plaintiffs
24 and the putative Class Members in violation of Labor Code Section 226.

25 e.) Failing to timely pay Plaintiffs and the putative Class Members all wages due
26 each and every pay period in violation of Labor Code section 204.
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1 f.) Failing to pay Plaintiffs and the putative Class Members formerly employed
2 by Defendants all final wages in accordance with the requirements of Labor Code
3 sections 201 and 202.

4 g.) Failing to reimburse Plaintiffs and the putative Class Members for business-
5 expenses, such as personal cell phone expenses necessarily incurred in the
6 discharge of their duties;

7 h.) Engaging in unfair business practices in violation of Business and
8 Professions Code Section 17200 et seq.

9 61. On information and belief, Plaintiffs allege that Defendants' actions as described
10 throughout this Complaint were willful.

11 62. Because Defendants failed to comply with Labor Code section 226(a) by failing
12 to provide itemized wage statements showing all deductions from payment of wages and
13 accurately reporting total hours worked, Plaintiffs and the putative Class Members are entitled to
14 penalties not to exceed \$4,000 for each employee pursuant to Labor Code section 226(b).

15 63. Plaintiffs and the putative Class Members seek injunctive relief, compensation for
16 all uncompensated work, and/or all other damages permitted by applicable law, as well as
17 attorneys' fees, penalties, interest, and costs.

18 64. In addition, and pursuant to the Private Attorneys General Act ("PAGA"),
19 Plaintiffs has given notice to the Labor and Workforce Development Agency ("LWDA") of the
20 Labor Code violations alleged in this complaint. (A true and correct copy of Plaintiffs' June 8,
21 2020, amended PAGA notice is attached hereto as **Exhibit A.**) At the appropriate time, absent
22 action by the LWDA or the Division of Labor Standards Enforcement ("DLSE"), Plaintiffs will
23 file an amended complaint seeking all recoverable penalties for Labor Code violations as
24 permitted and proscribed by the PAGA. An amended complaint will include allegations and
25 remedies available under Labor Code sections 2699, 2699.5, and 2933.3, among others. *See* Cal.
26 Labor Code § 2933.3(a)(2)(C) ("Notwithstanding any other provisions of law, a plaintiff may as
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1 a matter of right amend an existing complaint to add a cause of action arising under this part
2 within 60 days of the time periods specified in this part.”)

3 **CLASS ALLEGATIONS**

4 65. Plaintiffs bring this class action on behalf of themselves and all others similarly
5 situated as a class action pursuant to California Code of Civil Procedure section 382. Plaintiffs
6 seek to represent a Class composed of and defined as follows:

7 **The Class:**

8 “All persons who are employed or were employed by Defendants in the State
9 of California as a “Claims Examiner” and/or “Resolution Manager,” and
10 who, within four (4) years of the filing of this Complaint, have suffered any
11 of the following: were not paid by Defendants all of their lawful wages for
12 all hours worked; were not provided California Labor Code-complaint
13 meal or rest breaks by Defendants; were not compensated by Defendants
14 for unprovided meal or rest breaks; were not provided timely and
15 accurately itemized wage statements by Defendants; were not timely paid
16 all final wages due and owed by Defendants upon their termination or
17 resignation of employment; and who were not reimbursed by Defendants
18 for business expenses such as personal cell phone expenses incurred in the
19 discharge of their work-related duties.”

20 66. Plaintiffs reserve the right under California Rules of Court, Rule 3.765,
21 subdivision (b), to amend or modify the class and/or subclass descriptions with greater specificity
22 or further division into subclasses or limitation to particular issues.

23 67. This action has been brought and may be properly maintained as a class action
24 under the provisions of the Code of Civil Procedure section 382 because there is a well-defined
25 community of interest and the proposed Class is easily ascertainable.

26 a. **Numerosity:** Plaintiffs are informed and believe, and on that basis allege, that
27 during the Class Period, hundreds of putative Class Members have been employed
28 by Defendants in the State of California. Because so many putative Class Members
have been employed by Defendants, the Members of the Class are so numerous that
joinder of all Members is impossible and/or impracticable.

b. **Commonality:** Common questions of law, in fact, exist as to all Members of the
Class and predominate over any questions affecting solely individual Members of

1 the putative Class. Among the questions of law and fact, that are relevant to the
2 adjudication of putative Class Members claims are as follows:

- 3 i. Whether Defendants had/have policies and/or practices resulting in hours
4 worked by Plaintiffs and the putative Class Members not being accurately
5 recorded by Defendants;
- 6 ii. Whether Defendants had/have policies and/or practices resulting in hours
7 worked by Plaintiffs and the putative Class Members not being compensated;
- 8 iii. Whether Defendants had/have policies and/or practices failing to provide
9 meal periods to Plaintiffs and the putative Class Members;
- 10 iv. Whether Defendants had/have policies and/or practices failing to provide
11 break periods to Plaintiffs and the putative Class Members;
- 12 v. Whether Defendants had/have policies and/or practices failing to provide
13 “premium pay” to Plaintiffs and the putative Class Members for unprovided
14 meal periods;
- 15 vi. Whether Defendants had/have policies and/or practices failing to provide
16 “premium pay” to Plaintiffs and the putative Class Members for unprovided
17 rest periods;
- 18 vii. Whether Defendants had/have policies and/or practices resulting Defendants’
19 failure to maintain accurate payroll records.
- 20 viii. Whether Defendants had/have policies and/or practices resulting Defendants’
21 failure to provide *accurate* itemized wage statements to Plaintiffs and the
22 putative Class Members;
- 23 ix. Whether Defendants had/have policies and/or practices resulting in
24 Defendant’s failure to timely pay Plaintiffs and the putative Class Members
25 at least twice monthly;
- 26 x. Whether Defendants had/have policies and/or practices resulting in
27 Defendants’ failure to timely pay Plaintiffs and those putative Class
28 Members who separated from their employment with Defendants during the

relevant period, all final wages owed upon their resignation or termination of employment;

xi. Whether Defendants failed to fully reimburse Plaintiffs and the putative Class Members for their employment-related expenses;

xii. Whether Plaintiffs and the putative Class Members are owed unpaid wages as a result of Defendants' conduct and, if so, the exact amounts owed, as well as interest, penalties, costs, and attorneys' fees; and

xiii. Whether Defendants violated the Unfair Competition Law of California, §17200, *et seq.*, by unlawfully failing to pay all wages due to Plaintiffs and the putative Class Members for all hours worked, depriving Plaintiffs and the putative Class Members of meal periods and rest periods, failing to provide "premium pay" to Plaintiffs and the putative Class Members for meal periods and rest periods not provided, failing to reimburse Plaintiffs and the putative Class Members for all work related business expenses, failing to timely pay Plaintiffs and the putative Class Members wages at least twice monthly, failing to timely pay Plaintiffs and the putative Class Members all final wages due upon separation or termination of employment, failing to maintain accurate payroll records for Plaintiffs and the putative Class Members, and failing to furnish Plaintiffs' Class with *accurate* itemized wage statements.

c. **Typicality:** Plaintiffs' claims are typical of the Members of the Class. Plaintiffs, like other similarly-situated Members of the Class working for Defendants in California, were subjected to Defendants' unlawful policies and/or practices as alleged above. Plaintiffs' job duties were typical of those of the Class.

d. **Adequacy of Representation:** Plaintiffs will fairly and adequately protect the interests of the Members of the Class and have retained counsel competent and experienced in both class action and employment litigation.

e. **Superiority:** Questions of law or fact common to the Class predominate over any questions solely affecting individual Class Members, and class action is superior to

1 other available methods for the fair and efficient adjudication of this controversy.
2 Class action treatment will allow a large number of similarly-situated Class
3 Members to simultaneously and efficiently prosecute their common claims in a
4 single forum without the needless duplication of effort and expense that numerous
5 individual actions would entail.

6 68. In addition, a class action will serve the important public interest of permitting
7 Class Members harmed by Defendants' unlawful policies and/or practices to effectively pursue
8 recovery of the sums owed to them.

9 69. Plaintiffs do not know of any difficulty that will be encountered in the management
10 of this litigation which would preclude its maintenance as a class action.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PROVIDE MEAL PERIODS**

13 **In Violation of Labor Code §§ 226.7, 512, 1198, and IWC Order No. 4**

14 **(As to Defendants and Does 1- 25, inclusive)**

15 70. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as
16 though fully set forth herein.

17 71. Labor Code section 226.7 prohibits employers from requiring an employee to
18 work during any meal or rest or recovery period mandated by law.

19 72. Labor Code section 512 provides in relevant part: "An employer shall not employ
20 an employee for a work period of more than five hours per day without providing the employee
21 with a meal period of not less than 30 minutes An employer shall not employ an employee
22 for a work period of more than 10 hours per day without providing the employee with a second
23 meal period of not less than 30 minutes"

24 73. Labor Code section 1198 provides: "The maximum hours of work and the standard
25 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
26 conditions of labor for employees. The employment of any employee for longer hours than those
27 fixed by the order or under conditions of labor prohibited by the order is unlawful."
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1 74. IWC Order No. 4, which applies to the occupation of Plaintiffs and the putative
2 Class Members, requires employers to provide meal periods consistent with the provisions of
3 Labor Code section 512.

4 75. Defendants did not provide compliant meal periods to Plaintiffs and the putative
5 Class Members, in violation of Labor Code sections 226.7, 512, 1198, and IWC Order No. 4.

6 76. Throughout the statutory period alleged herein, Plaintiffs and the putative Class
7 Members regularly worked for more than five (5) hours during a work period without being
8 provided the mandatory thirty (30) minute meal period for each five (5) hours of work as required
9 by California law, and without being compensated for unprovided meal periods. (*See Brinker*
10 *Restaurant Corp., et al. v. Superior Court* (2012) 52 Cal. 4th 1004, 1040-41 ["The employer
11 satisfies this obligation if it relieves its employees of all duty, relinquishes control over their
12 activities and permits them a reasonable opportunity to taken an uninterrupted 30-minute break,
13 and does not impede or discourage them from doing so... [A] first meal period [is required] no
14 later than the end of an employee's fifth hour of work, and a second meal period [is required] no
15 later than the end of an employee's 10th hour of work.").

16 77. Defendants discouraged, dissuaded, impeded, and failed to provide Plaintiffs and
17 the putative Class Members with uninterrupted, duty free meal periods of not less than thirty (30)
18 minutes as required by the Labor Code and IWC Order No. 4.

19 78. Despite failing to provide meal periods to Plaintiffs and the putative Class
20 Members, Defendants failed to pay one (1) hour of premium pay to Plaintiffs and the putative
21 Class Members for each day Defendants failed to provide a meal period.

22 79. As a result of Defendants' failure to provide compliant meal periods and failure to
23 provide "premium pay" for unprovided meal periods to Plaintiffs and the putative Class Members,
24 Plaintiffs and the putative Class Members seek an award of all unpaid "premium pay" Defendants
25 owe them in an amount that exceeds the jurisdictional minimum of this Court to be ascertained
26 according to proof at trial.
27
28

1 80. Labor Code section 558(a) provides in relevant part: “Any employer or other
2 person acting on behalf of an employer who violates, or causes to be violated, a section of this
3 chapter or any provision regulating hours and days of work in any order of the Industrial Welfare
4 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars
5 (\$50) for each underpaid employee for each pay period for which the employee was underpaid in
6 addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation,
7 one hundred dollars (\$100) for each underpaid employee for each pay period for which the
8 employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

9 81. As a result of Defendants' failure to provide compliant meal periods and failure to
10 provide “premium pay” for unprovided meal periods to Plaintiffs and the putative Class Members
11 in violation of Labor Code section 512 and IWC Order No. 4, Plaintiffs and the putative Class
12 Members seek an award of penalties pursuant to Labor Code section 558.

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PROVIDE REST PERIODS**

15 **In Violation of Labor Code §§ 226.7, 1198, and IWC Order No. 4**

16 **(As to Defendants and Does 1 – 25, inclusive)**

17 82. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as
18 though fully set forth herein.

19 83. Labor Code section 226.7 prohibits employers from requiring an employee to
20 work during any meal or rest or recovery period mandated by law.

21 84. IWC Order No. 4, which applies to the occupation of Plaintiffs and the putative
22 Class Members, requires employers to permit all employees to take rest periods of at least ten (10)
23 minutes net rest time per four (4) hours worked or major fraction thereof. (*See also, Brinker,*
24 *supra*, 53 Cal. 4th at 1029 (“Employees are entitled to 10 minutes of rest for shifts worked from
25 three and one-half to six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to
26 14 hours, and so on.”)).
27
28

85. Throughout their employment with Defendants, Plaintiffs and the putative Class members were not relieved of all duties and permitted by Defendants to take a full, uninterrupted ten-minute rest period for every four (4) hours worked or major fraction thereof.

86. Despite failing to provide rest periods to Plaintiffs and the putative Class Members, Defendants failed to pay one (1) hour of premium pay to Plaintiffs and the putative Class Members for each day during every pay periods in which Defendants failed to provide a rest period.

87. As a result of Defendants' failure to provide rest periods and failure to provide “premium pay” for unprovided rest periods, Plaintiffs and the putative Class members seek an award of all unpaid “premium pay” Defendants owe them in an amount that exceeds the jurisdictional minimum of this Court to be ascertained according to proof at trial.

88. Labor Code section 558(a) provides in relevant part: “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.”

89. As a result of Defendants' failure to provide rest periods and failure to provide “premium pay” for unprovided rest periods in violation of Labor Code section 512 and IWC Order No. 4, Plaintiffs and the putative Class Members seek an award of penalties pursuant to Labor Code section 558.

THIRD CAUSE OF ACTION

FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS

In Violation of Cal. Labor Code § 1174

(As to Defendants and Does 1-25, inclusive)

1 90. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as
2 though fully set forth herein.

3 91. Labor Code section 1174 provides in relevant part that every person employing
4 labor in this state shall “[k]eep, at a central location in the state or establishments at which
5 employees are employed, payroll records showing the hours worked daily by and the wages paid
6 to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
7 employed at the respective plants or establishments.”

8 92. At all times relevant, Defendants willfully failed to keep accurate payroll records
9 showing the hours worked and wages earned daily by Plaintiffs and the putative Class Members.

10 93. Labor Code section 1174.5 provides that any employer who willfully fails to
11 maintain the records required by Labor Code section 1174 shall be subject to a civil penalty of
12 five hundred dollars.

13 94. As a result of Defendants’ violation of Labor Code section 1174, Plaintiffs and the
14 putative Class Members seek an award of penalties pursuant to Labor Code section 1174.5.

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

17 **In Violation of Labor Code § 226**

18 **(As to Defendants, and Does 1-25, inclusive)**

19 95. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as
20 though fully set forth herein.

21 96. At all times relevant, Labor Code section 226(a) required employers to “furnish
22 each of [its] employees, either as a detachable part of the check, draft, or voucher paying the
23 employee’s wages, or separately when wages are paid by personal check or cash, an itemized
24 statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee,
25 ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, and
26 (9) all applicable hourly rates in effect during the pay period and the corresponding number of
27 hours worked at each hourly rate by the employee.”
28

1 97. As alleged above, Defendants violated Labor Code section 226(a) by failing to
2 provide accurate itemized wage statements to Plaintiffs and the putative Class Members.

3 98. Labor Code section 226(e)(1) provides: “An employee suffering injury as a result
4 of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
5 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
6 a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
7 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled
8 to an award of costs and reasonable attorney’s fees.”

9 99. Labor Code section 226(h) provides: “An employee may also bring an action for
10 injunctive relief to ensure compliance with this section, and is entitled to an award of costs and
11 reasonable attorney’s fees.”

12 100. As a result of Defendants’ violation of Labor Code section 226, Plaintiffs and the
13 putative Class Members seek an award of penalties pursuant to Labor Code section 226(e)(1),
14 and injunctive relief, attorneys’ fees, and costs pursuant to Labor Code section 226(h).
15

16 **FIFTH CAUSE OF ACTION**

17 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

18 **In Violation of Labor Code § 2802**

19 **(As to Defendants and Does 1 – 25, Inclusive)**

20 101. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as
21 though fully set forth herein.

22 102. Labor Code Section 2802 provides that an employer shall indemnify his or her
23 employees for all necessary expenditures or losses incurred by the employee in direct
24 consequence of the discharge of his or her duties.

25 103. As alleged above, Defendants engage or engaged in the routine practice requiring
26 Plaintiffs and the putative Class Members to use their personal cellphones for internal business
27 and work-related communications and activities. In the course of executing their job duties,
28 Plaintiffs were routinely required to use their personal cell phones in order to communicate with

1 workers compensation claimants, with doctors, and with defense attorneys on the files they were
2 working. However, at no time have Defendants ever reimbursed Plaintiffs for the expenses they
3 incurred in using their personal cell phones in performing their work-related duties. Plaintiffs
4 allege on information and belief that the putative Class Members likewise were required to use
5 their personal cell phones numerous times each week in order to communicate with claimants,
6 with doctors, and with attorneys on the files they were working, but that at no time have
7 Defendants ever reimbursed the putative Class Members for the expenses they incurred in using
8 their personal cell phones in performing their work-related duties.

9 104. Furthermore, Plaintiff Eric Brown and other similarly situated putative Class
10 Members were required to travel to attend meetings or trainings to other locations other than their
11 normally place of work in Aliso Viejo. However at no time have Defendants ever reimbursed
12 Plaintiff, Eric Brown and similarly-situated putative Class Members for gasoline expenses
13 incurred or any form of mileage reimbursement for such work-related travel.

14 105. As a result of Defendants' violation of Labor Code section 2802, Plaintiffs and the
15 putative Class Members seek reimbursement for all business-related expenses they have incurred
16 working for Defendants in an amount to be determined at trial, with interest thereon, plus
17 attorneys' fees.
18

19 **SIXTH CAUSE OF ACTION**

20 **FAILURE TO TIMELY PAY WAGES TWICE MONTHLY**

21 **In Violation of Labor Code § 204**

22 **(As to Defendants and Does 1 – 25, inclusive)**

23 106. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as
24 though fully set forth herein.

25 107. California Labor Code section 204(a) provides in relevant part: "All wages, other
26 than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any
27 employment are due and payable twice during each calendar month, on days designated in
28 advance by the employer as the regular paydays."

108. As a result of Defendants' failure to pay Plaintiffs and the putative Class Members for the work they performed during their meal and rest breaks, Defendants violated Labor Code section 204 by failing to timely pay Plaintiffs all wages earned in each pay period.

109. Labor Code section 218 states in relevant part: “Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article.”

110. Labor Code section 218.5 provides that the court shall award reasonable attorney's fees and costs to the prevailing party in any action brought for the nonpayment of wages.

111. As a result of Defendants' violation of Labor Code section 204, Plaintiffs and the putative Class Members seek an award of all unpaid wages in an amount that exceeds the jurisdictional minimum of this court to be ascertained according to proof at trial, and attorney's fees and costs pursuant to Labor Code section 218.5.

SEVENTH CAUSE OF ACTION

FAILURE TO TIMELY PAY FINAL WAGES UPON TERMINATION

In Violation of Labor Code §§ 201-202

(As to Defendants and Does 1 -25, inclusive)

112. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

113. Labor Code section 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

114. Labor Code section 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

115. As alleged above, Defendants willfully violated Labor Code section 201 with respect to Plaintiffs by failing to pay them all wages owed immediately on the date Defendants

1 discharged them or within 72 hours after termination when such Plaintiff or putative Class
2 Member provided advance notice of their intention to quit.

3 116. On information and belief, Plaintiffs allege that Defendants willfully violated
4 Labor Code sections 201 and 202 with respect to those putative Class Members who separated
5 from and ceased their employment with Defendant during the Class Period by failing to timely pay
6 all wages owed in accordance with those provisions.

7 117. Labor Code section 203 provides that an employer who willfully fails to pay,
8 without abatement or reduction, in accordance with sections 201 and 202, any wages of an
9 employee who is discharged or who quits, the wages of the employee shall continue as a penalty
10 from the due date thereof at the same rate until paid or until an action therefore is commenced,
11 but the wages shall not continue for more than 30 days.

12 118. Labor Code section 218 states in relevant part: "Nothing in this article shall limit
13 the right of any wage claimant to sue directly or through an assignee for any wages or penalty due
14 him under this article."

15 119. Labor Code section 218.5 provides that the court shall award reasonable attorney's
16 fees and costs to the prevailing party in any action brought for the nonpayment of wages.

17 120. As a result of Defendants' violation of Labor Code sections 201 and 202, Plaintiffs
18 and the putative Class Members seek an award of all unpaid wages in an amount that exceeds the
19 jurisdictional minimum of this court to be ascertained according to proof at trial, "waiting time
20 penalties" pursuant to Labor Code section 203, and attorney's fees and costs pursuant to Labor
21 Code section 218.5.
22

23 **EIGHTH CAUSE OF ACTION**

24 **UNFAIR BUSINESS PRACTICES**

25 **In Violation of Bus. & Prof. Code §17200 et seq.**

26 **(As to Defendants and Does 1-25, inclusive)**

27 121. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as
28 though fully set forth herein

1 122. Business & Professions Code section 17200 *et seq.* prohibits acts of unfair
2 competition, which includes any "unlawful and unfair business practices." It is the policy of this
3 State to enforce minimum labor standards, to ensure that employees are not required or permitted
4 to work under substandard and unlawful conditions, and to protect those employers who comply
5 with the law from losing competitive advantage to other employers who fail to comply with labor
6 standards and requirements.

7 123. Business & Professions Code section 17203 provides in relevant part that the court
8 may "restore to any person in interest any money or property, real or person, which may have
9 been acquired by means of such unfair competition."

10 124. Business and Professions Code section 17203 also provides that any person who
11 meets the standing requirements of Section 17204 and complies with California Code of Civil
12 Procedure Section 382 may pursue representative claims for relief on behalf of others.

13 125. Business & Professions Code Section 17204 allows any "person who has suffered
14 injury in fact and has lost money or property as a result of such unfair competition" to prosecute
15 a civil action for violation of the Unfair Business Practices Act.

16 126. Pursuant to Section 17204, Plaintiffs and the putative Class Members are entitled
17 to enforce all applicable provisions of the Labor Code.

18 127. Through the conduct alleged herein, Defendants acted contrary to these public
19 policies and have engaged in unlawful and/or unfair business practices in violation of Business
20 & Professions Code section 17200 *et seq.*, depriving Plaintiffs and the putative Class Members
21 of the rights, benefits, and privileges guaranteed to employees under California law.

22 128. Throughout the Class Period, Defendants have committed unlawful, unfair, and/or
23 fraudulent business acts and practices as defined and in violation of Business & Professions Code
24 section 17200 *et seq.*, including failure to pay all wages earned, failure to timely pay wages twice
25 monthly, failure to timely pay wages upon separation or termination, failure to provide compliant
26 meal periods and rest periods, failure to pay "premium pay" for each meal period or rest period
27 not provided, failure to maintain accurate payroll records, failure to provide accurate itemized
28

1 wage statements, and failure to reimburse for cell phone expenses incurred in the discharge of job
2 duties—all in violation of the Labor Code sections cited herein. By so doing, Defendants have
3 unlawfully withheld wages and penalties owed to Plaintiffs and the putative Class Members in an
4 amount that exceeds the jurisdictional minimum of this Court to be ascertained according to proof
5 at trial.

6 129. The violations of these laws and regulations, as well as of fundamental California
7 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of
8 Business and Professions Code Section 17200 et seq.

9 130. The acts and practices described above have allowed Defendants to gain an unfair
10 competitive advantage over law-abiding employers and competitors.

11 131. By engaging in these practices, which are unfair business practices within the
12 meaning of Business & Professions Code section 17200, *et. seq.*, Defendants have reaped unfair
13 benefits and illegal profits at the expense of Plaintiffs and the putative Class Members. Plaintiffs
14 and other similarly-situated putative Class Members are therefore, entitled to restitution pursuant
15 to Business and Professions Code Section 17203 and 17208 for all wages and other compensation
16 unlawfully withheld from them during the four-year period prior to the filing of the complaint.
17 Defendants must disgorge these ill-gotten gains and restore to Plaintiffs and the putative Class
18 Members the wrongfully withheld wages and penalties pursuant to Section 17203 of the
19 California Business and Professions Code.

20 132. Injunctive relief is necessary and appropriate to prevent Defendants from repeating
21 their unlawful, unfair and fraudulent business acts and practices described herein.

22 133. Pursuant to Section 17203 and/or any other applicable law, Plaintiffs and the
23 putative Class Members seek an order-preventing Defendants from engaging in unlawful, unfair
24 and fraudulent conduct and preventing Defendants from profiting and benefiting from their illegal
25 and wrongful acts.
26
27
28

134. Plaintiffs' success in this action will enforce important rights affecting the public interest. Therefore, Plaintiffs sue on their own behalf and on behalf of other similarly-situated employees.

135. An award of attorneys' fees is appropriate pursuant to California Civil Code Section 1021.5 because 1) this action will confer a significant benefit upon a large class of persons; and 2) there is a financial burden involved in pursuing this action; and 3) it would be against the interest of justice to force Plaintiffs to pay attorneys' fees from any amount recovered in this action.

PRAYER FOR RELIEF

Plaintiffs, each on their own behalf, and on behalf of the similarly-situated putative Class Members, request relief as follows:

1. For an order, pursuant to California Code of Civil Procedure Section 382, certifying this action as a class action, appointing Plaintiffs as Class Representative and Plaintiffs' attorney as Class Counsel;

2. For a declaratory judgment that Defendants have violated California labor laws and public policy, as alleged herein;

3. For a declaratory judgment that Defendants have violated California Business and Professions Code sections 17200 et seq. as a result of the aforementioned violations of the Labor Code and of California public policy protecting workers by ensuring that workers are paid for all hours worked;

4. For a permanent and mandatory injunction prohibiting Defendants, its officers, agents, employees, affiliated companies and all those working in concert with them from committing future violations of the laws and public policies described herein;

5. For an award of restitution;

6. For an order imposing all statutory and/or civil penalties provided by law, including, but not limited to penalties under California Labor Code Sections 201-204, 226, 226.7, 558, 1194 and applicable IWC Wage Orders, together with interest on those amounts;

7. For an order awarding Plaintiffs, each on their own behalf and on behalf of the putative Class Members compensatory damages, including, but not limited to all unpaid wages, premium pay wages, and other compensation, according to proof, and interest on these amounts;

8. For award of attorneys' fees and costs as provided by California Labor code sections 218.5, 226, 558, 1194, and 2802, and Civil Code section 1021.5

9. An award and administrative priority claim against the Defendants in favor of the Plaintiffs and the putative Class Members equal to the sum of their unpaid wages and unpaid work-related expenses, pursuant to California Labor Code sections 201, 202, 203 and 2802; and

10. For such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

DATED: June 26, 2020

WHITEHEAD EMPLOYMENT LAW

By:

JACOB N. WHITEHEAD
Attorney For Plaintiffs and
The Putative Class

Exhibit A



June 8, 2020

Via Online Filing

California Labor & Workforce Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified Mail (Return Receipt Requested)

Arthur J. Gallagher Service Company
c/o CORPORATION SERVICE COMPANY, doing business in California as
CSC – Lawyers Incorporating Service (C1592199)
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Gallagher Bassett Services, Inc.
c/o CORPORATION SERVICE COMPANY, doing business in California as
CSC – Lawyers Incorporating Service (C1592199)
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Arthur J. Gallagher & Co. (Illinois)
c/o CORPORATION SERVICE COMPANY, doing business in California as
CSC – Lawyers Incorporating Service (C1592199)
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Arthur J. Gallagher & Co. Insurance Brokers of California, Inc.
c/o CORPORATION SERVICE COMPANY, doing business in California as
CSC – Lawyers Incorporating Service (C1592199)
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Arthur J. Gallagher Risk Management Services, Inc.
c/o CORPORATION SERVICE COMPANY, doing business in California as
CSC – Lawyers Incorporating Service (C1592199)
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: *LWDA Case No. CM-781994-20*
Amended Notice Pursuant to the Private Attorneys General Act, California Labor
Code § 2699.3 (the “PAGA”)

Dear Sir or Madam:

Plaintiff, Lillia Hupp (“Plaintiff”), has retained our firm to represent her and other similarly-situated current and former employees who were paid by Arthur J. Gallagher Service Company, a Delaware corporation whose corporate registration with the California Secretary of State was surrendered in 1999. Currently, there are at least four affiliated corporations whose registrations with the California Secretary of State are active: (1) Gallagher Bassett Services, Inc., a Delaware corporation; (2) Arthur J. Gallagher & Co. (Illinois), an Illinois corporation; (3) Arthur J. Gallagher & Co. Insurance Brokers of California, Inc., a California corporation; and (4) Arthur J. Gallagher Risk Management Services, Inc., an Illinois corporation. Plaintiff does not presently know which of the aforementioned corporations is responsible for paying Plaintiff and the Aggrieved Employees through the surrendered Arthur J. Gallagher Service Company, and Plaintiff therefore names all of those corporations as “Defendants.”

Defendants formerly employed Plaintiff and currently employ or formerly employed other similarly-situated employees throughout California (collectively, the “Aggrieved Employees”). During their employment with Defendants, Plaintiff and the Aggrieved Employees were or have been primarily engaged in performing non-exempt job duties as “Claims Examiners,” which Defendants later called “Resolution Managers” (hereinafter, “Covered Positions”). Plaintiff alleges that Defendants have committed numerous violations of the California Labor Code injuring Plaintiff and the Aggrieved Employees.

This letter formally serves to notify Defendants of Plaintiff’s intent to file a PAGA class action complaint against Defendants stating causes of action against Defendants for violations of the Labor Code seeking wages, penalties, attorney’s fees, costs, interest, and injunctive relief due to Defendants’ failure to provide compliant rest periods and meal periods, failure to timely pay all wages due, failure to provide accurate time records, failure to issue accurately itemized wage statements, failure to pay all wages due upon termination or separation of employment, and failure to pay the applicable overtime rate during the relevant time period. Plaintiff alleges that Defendants have violated and are continuing to violate numerous provisions of the California Labor Code including sections 201-202, 204, 226, 226.7, 510, 512, 1174, 1194, and 2802 as further detailed below. Plaintiff is informed and believes that the alleged Labor Code violations are ongoing, systematic, and uniform. If Defendants fails to cure the alleged violations, Plaintiff will bring an action against Defendants under the PAGA as provided by California law.¹

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency (“LWDA”). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1,

Facts and Theories Supporting the Alleged Labor Code Violations

Plaintiff and the Aggrieved Employees currently work or formerly worked for Defendants throughout the state of California during the relevant time period. During their employment with Defendants, Plaintiff and the Aggrieved Employees were primarily engaged in performing non-exempt job duties as “Claims Examiners,” which Defendants later called “Resolution Managers” (hereinafter, “Covered Positions”).

At all times relevant, Defendants assigned Plaintiff and the Aggrieved Employees workloads that required them to work more than eight (8) hours per week and more than forty (40) hours per week. At times relevant, Plaintiff and the Aggrieved Employees’ heavy workloads required them to routinely work up to between fifteen and seventeen (15-17) hours per workday. At all times relevant, Defendants did not provide a mechanism or a policy that required or supported Plaintiff and the Aggrieved Employees ability to record or report all hours they actually worked each workday.

At all times relevant, Defendants paid Plaintiff for seven (7) hours of work per workday even though Plaintiff worked far more hours than that each workday. On information and belief, Plaintiff alleges that she and one or more of the other Aggrieved Employees complained to Defendant’s Human Resources personnel about unpaid overtime within the relevant time period. On information and belief, Plaintiff alleges that Human Resources responded to workers who complained about the unpaid overtime, “we can’t tell management what to do,” or words to that effect.

At all times relevant, Plaintiff and the Aggrieved Employees’ heavy workloads prevented them from taking meal periods or rest periods. However, Defendants never paid Plaintiff or the similarly situated Aggrieved Employees, any “premium” pay wages for failing to provide proper and compliant meal periods and rest periods.

At all times relevant, Defendants failed to provide Plaintiff and the Aggrieved Employees with itemized wage statements that accurately reported the total number of hours they worked and the accurate total amount of wages each had earned in each pay period. At all times relevant, Defendants failed to pay Plaintiff and the Aggrieved Employees for the total number of hours they had worked each pay period. To date, Defendants still have not paid Plaintiff and the Aggrieved Employees for all hours they worked for the Defendants throughout the statutory period.

1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.

On information and belief, Plaintiff alleges that at all times relevant, Defendants assigned her and the Aggrieved Employees a workload that required them to work more than eight (8) hours per week and more than forty (40) hours per week. On information and belief, Plaintiff alleges that at all times relevant, Defendants did not require her or the Aggrieved Employees to record or report the amount of time they worked each workday. On information and belief, Plaintiff alleges that at all times relevant, Defendants only paid her and the Aggrieved Employees for seven (7) hours of work per workday even though she and the Aggrieved Employees worked far more – in fact more often than not, double that amount of hours during their working shifts.

Furthermore, at all relevant times during the statutory period, Plaintiff and the Aggrieved Employees routinely utilized their personal cell phones to conduct their work-related duties. Part of those duties included contacting workers compensation claimants, medical providers and defense counsel to discuss matters related to claims they were working on. Many of the Aggrieved Employees were working from home and when they did so, they were utilizing their personal computers and internet services in order to perform their work duties. At no time have defendants ever reimbursed Plaintiff or the Aggrieved Employees for the expenses they necessarily incurred in the use of their personal cell phones, computers and internet in order to perform their work-related duties.

A. Failure to Pay Overtime Compensation

At all times relevant, Labor Code section 510 was in force and effect. Section 510 provides in relevant part: “Any work in excess of eight hours in one workday and any work in excess of 40 hours in one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate for pay for an employee.”

At all times relevant, Labor Code section 1194 was in force and effect. Subdivision (a) of Section 1194 provides in relevant part that “any employee receiving less than . . . the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

At all times relevant, Plaintiff and the Aggrieved Employees performed work for Defendants. During their employment with Defendants, Plaintiff and the Aggrieved Employees worked more than eight (8) hours in one workday and/or more than forty (40) hours in one workweek. Defendants knew or should have known that Plaintiff and the Aggrieved Employees worked overtime hours.

Plaintiff and the Aggrieved Employees were not paid overtime compensation for all the overtime hours they worked. Defendants are therefore liable for nonpayment of overtime compensation to Plaintiff and the Aggrieved Employees in an amount to be determined according to proof at trial. Defendants are further liable for interest thereon, reasonable attorney’s fees, and costs of suit.

B. Failure to Provide Meal Periods & Rest Periods

At all times relevant, Labor Code section 512 was in force and effect. Subdivision (a) of Section 512 provides in relevant part: “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes” Subsection (a) of Section 512 further provides in relevant part: “An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes”

At all times relevant, Labor Code section 516 was in force and effect. Subsection (a) of Section 516 authorizes the Industrial Welfare Commission (“IWC”) to adopt or amend working condition orders with respect to meal periods and rest periods. At all times relevant, IWC Orders relating to the provision of meal periods and rest periods to California employees were in force and effect.

At all times relevant, Defendants failed to provide meal periods and rest periods to Plaintiff and the Aggrieved Employees in compliance with the Labor Code and IWC Orders. At all times relevant, Labor Code section 226.7 was in force and effect. Subdivision (c) of Section 226.7 states in relevant part: “If an employer fails to provide an employee a meal or rest or recovery period in accordance with state law . . . the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

As a result of Defendants’ failure to provide meal periods and rest periods to Plaintiff and the Aggrieved Employees in compliance with the Labor Code and IWC Orders, Defendant are liable to pay Plaintiff and the Aggrieved Employees one additional hour of pay at each employee’s regular rate of compensation for each workday that a meal or rest or recovery period was not provided.

C. Failure to Provide Accurate Itemized Wage Statements

At all times relevant, Labor Code section 226 was in force and effect. Subdivision (a) of Section 226 requires employers to provide accurate itemized wage statements showing, among other things, the total hours worked by the employee and the net wages earned. As a result of Defendants’ failure to pay Plaintiff and the Aggrieved Employees all overtime compensation they earned, as well Defendants’ failure to pay Plaintiff and the Aggrieved Employees “premium pay” for all meal periods and rest periods Defendants failed to provide them, Defendants likewise failed to provide accurate itemized wage statements to Plaintiff and the Aggrieved Employees.

Subdivision (e) of Labor Code section 226 provides that an employee suffering injury as a result of a knowing and intentional failure to provide accurate itemized wage statements is entitled to an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award of costs and reasonable attorney’s fees. As a result of Defendants’ knowing and intentional failure to provide accurate itemized wage statements to Plaintiff and the Aggrieved Employees, Defendants are liable to pay each of them penalties, attorney’s fees, and costs as set forth in Labor Code section 226(e).

D. Failure to Timely Pay All Wages Earned Twice Monthly

At all times relevant, Labor Code section 200 was in force and effect. Subdivision (a) of Section 200 defines “wages” as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” Subdivision (b) of Section 200 defines “labor” as all work or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

At all times relevant, Labor Code section 204 was in force and effect. Subdivision (a) of Section 204 requires employers to pay employees all wages earned no less than twice monthly. As a result of Defendants’ failure to pay Plaintiff and the Aggrieved Employees all overtime compensation they earned, as well Defendants’ failure to pay Plaintiff and the Aggrieved Employees “premium pay” for all meal periods and rest periods Defendants failed to provide them, Defendants likewise violated Labor Code section 204 by failing to pay them all wages earned no less than twice monthly.

At all times relevant, Labor Code section 210 was in force and effect. Section 210 provides in relevant part that an employer that violates Labor Code section 204 is subject to a penalty of one hundred dollars (\$100.00) for any initial violation for each failure to pay each employee, and two hundred dollars for each subsequent violation or any willful or intentional violation, plus 25 percent of the amount unlawfully withheld.

At all times relevant, Labor Code section 218 was in force and effect. Section 218 provides that “nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article.” As a result of Defendants’ willful and intentional violations of Labor Code section 204, Defendants are liable to Plaintiff and the Aggrieved Employees for the penalties described above.

E. Failure to Maintain Accurate Records of All Hours Worked by Plaintiff and the Aggrieved Employees

At all times relevant, Labor Code section 1174 was in force and effect. Subdivision (d) of Section 1174 provides in relevant part that every employer must: “Keep, at a central location in the state or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.” Defendants violated Labor Code section 1174 by failing to track and maintain accurate payroll records showing the hours worked daily by Plaintiff and the Aggrieved Employees.

At all times relevant, Labor Code section 1174.5 was in force and effect. Section 1174.5 provides in relevant part that any employer who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174 is subject to a civil penalty of five hundred

dollars (\$500.00). As a result of Defendants' violation of Labor Code section 1174, Defendants are liable to Plaintiff and the Aggrieved Employees for these civil penalties.

F. Failure to Pay All Wages Due Upon Separation or Termination of Employment

At all times relevant, Labor Code section 201 was in force and effect. Subdivision (a) of Section 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code section 202 was in force and effect. Subdivision (a) of Section 202 provides that if employees not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code section 203 was in force and effect. Subdivision (a) of Section 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with sections 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than 30 days.

Defendants violated Labor Code sections 201 and 202 by failing to timely pay Plaintiff and the Aggrieved Employees all wages earned within the required time limits. Defendants are therefore liable to Plaintiff and the Aggrieved Employees for the "waiting time penalties" set forth in Labor Code section 203.

G. Failure To Reimburse Necessary Work Related Expenses (Labor Code Section 2802)

At all times relevant, Labor Code Section 2802 was in force and effect. Under Labor Code Section 2802, *"(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."*

As indicated above, the Plaintiff and Aggrieved employees utilized their personal cell phones/data/internet service and personal computer devices in the routine course of performing their work-related duties with no reimbursement from Defendants. The Plaintiff and Aggrieved employees did not waive their rights to such reimbursement.

The Defendants have failed to reimburse the Plaintiff and the Aggrieved Employees for their work related expenses. As a consequence, pursuant to Section 2802, the Plaintiff and the Aggrieved Employees are entitled to recover their expenses plus attorneys' fees, interest, expenses and costs of suit.

Conclusion

Defendants have violated the foregoing provisions of the California Labor Code. Plaintiff requests that the LWDA investigate the above allegations and provide notice of the allegations under PAGA's provisions. Alternatively, Plaintiff requests that the LWDA inform her if it does not intend to investigate these violations, so that she may bring an action under the PAGA for the violations discussed in this letter.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW



Jacob N. Whitehead, Esq.