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** Admitted pro hac vice*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

RYLAND GIMENEZ and STEPHEN
GIMENEZ, on behalf of themselves and all
others similarly situated,
Plaintiffs,

v.

ALACRITY SOLUTIONS GROUP, LLC
f/k/a WORLEY CLAIMS SERVICES,
LLC,
Defendant.

Case No. 30-2020-01175645-CU-OE-CXC

**FIRST AMENDED CLASS ACTION AND
PAGA COMPLAINT**

DEMAND FOR JURY TRIAL

Assigned for All Purposes To: Hon. Judge Peter
Wilson

Date *Gimenez* Action Filed:
December 22, 2020
Trial Date: Not Set

1 Plaintiffs Ryland Gimenez and Stephen Gimenez (together, “Plaintiffs”), individually and
2 on behalf of all others similarly situated as class representatives, by their attorneys, upon personal
3 knowledge as to themselves and upon information and belief as to other matters, allege as
4 follows:

5 **NATURE OF THE ACTION**

6 1. Defendant Alacrity Solutions Group, LLC f/k/a Worley Claims Services, LLC
7 (“Alacrity”), a leading provider of insurance claims services, operates throughout the United
8 States, including in California.

9 2. Throughout the relevant period, it has been Defendant’s policy to deprive
10 individuals who provide or provided insurance claims adjusting and reviewing services for
11 Defendant and who Defendant classifies or classified and pays or paid as independent contractors,
12 however variously titled (collectively, “Independent Adjusters”), including Plaintiffs, of earned
13 overtime wages by uniformly misclassifying them as independent contractors instead of
14 employees.

15 3. Plaintiffs allege that Defendant violated and continues to violate California wage
16 and hour protections applicable to Independent Adjusters because they should be classified as
17 employees rather than independent contractors. These violations include: (1) the failure to pay
18 Independent Adjusters required overtime or double time compensation; (2) failure to provide
19 meal and rest breaks; (3) failure to timely pay wages due upon termination of employment; (4)
20 failure to timely pay wages due by the payroll periods specified by the Labor Code; (5) failure to
21 provide legally sufficient wage statements; and (6) failure to reimburse Independent Adjusters for
22 business expenses.

23 4. Plaintiffs bring these claims under the California Labor Code, California Industrial
24 Welfare Commission Wage Order No. 4-2001 (“Wage Order 4”), and Unfair Competition Law
25 (“UCL”), on behalf of all Independent Adjusters who worked in California from June 27, 2016,¹
26 through the date of the final disposition of this action (the “Class”).

27 ¹ Per Emergency Rule 9 of the Judicial Council’s Emergency Rules Related to COVID-19,
28 all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6,
2020 until October 1, 2020. Accordingly, Plaintiffs’ claims were tolled during that time period.

5. Plaintiff Ryland Gimenez also brings this action on behalf of himself and all similarly situated current and former Independent Adjusters who worked for Defendant in California from July 2, 2019² through the date of final disposition of this action (“Aggrieved Employees”) to recover penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code. §§ 2698, *et seq.*, for violations of the California Labor Code as set forth herein.

THE PARTIES

Plaintiff Ryland Gimenez

6. Ryland Gimenez worked for Defendant in Orange County as an Independent Adjuster from approximately May 2017 through approximately July 2020.

7. His duties included providing repair estimates for water, fire, and other damage to residential homes, at Alacrity's direction.

8. Throughout the course of his work at Alacrity, he worked five to seven days per week, approximately 50 to 80 hours a week, from approximately 7:00 a.m. until he finished adjusting claims between 5:00 p.m. and 9:00 p.m. each day.

9. Defendant failed to pay Ryland Gimenez overtime when he worked days of more than 8 hours and/or weeks of more than 40 hours or double time when he worked days of more than 12 hours.

10. Specifically, during the week ending November 15, 2019, Ryland Gimenez worked more than 60 hours without receiving overtime pay.

11. Defendant paid him a commission based on the number and size of the claims he processed.

12. Defendant did not pay him a salary.

13. Defendant failed to provide Ryland Gimenez with the opportunity to take meal and rest breaks.

² Per Emergency Rule 9 of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Accordingly, Plaintiffs' claims were tolled during that time period.

1 ***Plaintiff Stephen Gimenez***

2 14. Stephen Gimenez worked for Defendant in Napa Valley, Sacramento, and the
3 greater Los Angeles area as an Independent Adjuster from approximately April 2017 through
4 approximately August 2019.

5 15. His duties included providing repair estimates for water, fire, and other damage to
6 residential homes, at Alacrity's direction.

7 16. Throughout the course of his work at Alacrity, he worked five to seven days per
8 week, approximately 60-80 hours per week, from approximately 7:00 a.m. until he finished
9 adjusting claims between 5:00 p.m. or 9:00 p.m. each day.

10 17. Defendant failed to pay him overtime when he worked days of more than 8 hours
11 and/or weeks of more than 40 hours or double time when he worked days of more than 12 hours.

12 18. Specifically, during the week ending September 20, 2018, he worked more than 60
13 hours without receiving overtime pay.

14 19. Defendant paid him a commission based on the number and size of the claims he
15 processed.

16 20. Defendant did not pay him a salary.

17 21. Defendant failed to provide him with the opportunity to take meal and rest breaks.

18 ***Defendant Alacrity***

19 22. Defendant maintains control, oversight, and direction over Plaintiffs, including the
20 payroll and other employment practices that governed Plaintiffs' work.

21 23. Alacrity is a limited liability company organized under the laws of Delaware.

22 24. Alacrity provides insurance claims services throughout the United States.

23 25. Alacrity is actively conducting business in the state of California.

24 26. At all material times, Alacrity has been an "employer," and Plaintiffs have been its
25 "employees," under the California Labor Code and Wage Order 4.

26 **JURISDICTION AND VENUE**

27 27. The Court has jurisdiction over Plaintiffs' claims under the California Labor Code.

28 28. The Court has personal jurisdiction over this matter because Defendant conducts

1 substantial business activity in California and engages in the unlawful acts described herein in
2 California.

3 29. Venue is proper in this county under California Code of Civil Procedure § 395.5
4 because a substantial part of the events and omissions giving rise to the claims alleged herein
5 occurred in this county.

6 30. Notice of the claims alleged herein was provided to the California Labor &
7 Workforce Development Agency (“LWDA”) on December 22, 2020 and to Defendant on
8 December 23, 2020. The LWDA has not taken any action with regard to the claims, including
9 providing notice of an intent to pursue the claims.

10 **CLASS ACTION ALLEGATIONS**

11 31. Plaintiffs bring their Claims for Relief for violations of the California Labor Code,
12 Wage Order 4, and California’s Unfair Competition Law pursuant to Cal. Code of Civ. Proc. §
13 382, on behalf of a class of individuals who have worked for Alacrity as Independent Adjusters in
14 California between June 27, 2016, and the date of final judgment in this matter (the “Class”).

15 32. The Class is so numerous that joinder of all members is impracticable. Plaintiffs
16 are informed and believe, and on that basis allege, that during the class period Defendant has
17 employed hundreds of persons who fall within the Class definition.

18 33. The identity of Class members is ascertainable through Defendant’s records or by
19 public notice.

20 34. Plaintiffs’ claims are typical of Class members’ claims because Plaintiffs and the
21 Class were subjected to the same policies and practices that violated California law. Plaintiffs’
22 job duties and claims were and are typical of those of the Class members.

23 35. Plaintiffs will fairly and adequately represent and protect the interests of the Class
24 members. Plaintiffs’ counsel are experienced in employment law class actions and will fairly and
25 adequately represent and protect the interests of the Class members.

26 36. Common questions of law and fact exist as to members of the Class that
27 predominate over any individualized questions, including the following:

28 a. Whether Independent Adjusters are employees or independent contractors;

- b. Whether Defendant failed to pay Independent Adjusters overtime;
- c. Whether Defendant failed to provide itemized wage statements;
- d. Whether Defendant failed to provide meal and rest breaks;
- e. Whether Defendant made unlawful wage deductions;
- f. Whether Defendant failed to timely pay wages due during and upon termination of employment;
- g. Whether Defendant failed to reimburse Independent Adjusters for reasonable and necessary business expenses;
- h. Whether Defendant's policies and practices violated the UCL, California Labor Code §§ 201-204, 226, 226.7, 226.8, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2802 and Wage Order 4;
- i. Whether Defendant's classification of Independent Adjusters as independent contractors was willful; and
- j. The proper measure of damages sustained by members of the Class.

37. Class treatment would benefit the courts and Class members. The damages suffered by individual Class members are relatively small compared to the significant expense and burden of individual prosecution of this litigation. Class certification will obviate the need for unduly duplicative litigation which might result in inconsistent judgments about Defendant's practices.

FACTUAL BACKGROUND

A. Defendant Controls and Directs Independent Adjusters' Work.

38. Defendant controls Independent Adjusters' work and limits their freedom and discretion through policies that dictate how and when Independent Adjusters complete their day-to-day assignments.

39. For example, Defendant exercises significant control over Independent Adjusters' day-to-day assignments and tasks by requiring them to follow standard operating procedures covering the details of their jobs on virtually every phase of the adjusting process including, but not limited to, the following topics:

- 1 a. The adjusting software to purchase and use to adjust claims (“Xactimate”);
- 2 b. Time limits to make first contact with home owners after claims are assigned;
- 3 c. Time limits for scheduling inspections;
- 4 d. How to greet home owners;
- 5 e. When and how to upload inspection information;
- 6 f. Making corrections to claim files as required by Alacrity’s quality control department;
- 7 g. The specific items that must be included in each file documentation, including a
- 8 summary of oral conversations with the home owners on particular subjects, the
- 9 number of photos to be taken, and settlement notes;
- 10 h. How to calculate the cost of repair and enter repair information into Xactimate;
- 11 i. Preparing findings and estimates using Alacrity’s and its customers’ guidelines;
- 12 j. The items to photograph (e.g., “brittleness test” for roof shingles), the order the photos
- 13 should be taken and presented in the claim file, and the naming convention for all
- 14 photos;
- 15 k. How to fill out the fields in Xactimate when estimating the minimum labor costs;
- 16 l. What attire to wear, such as shirts and hats, identifying them as representatives of
- 17 Alacrity;
- 18 m. and other facets of the adjuster’s jobs.
- 19 40. Independent Adjusters must follow Alacrity’s dress code policy.
- 20 41. Defendant has the authority to discipline Independent Adjusters, including by
- 21 terminating them.
- 22 42. Defendant also exercises control over Independent Adjusters’ employment
- 23 conditions by employing a manager that accompanies them to their worksites to oversee their
- 24 work.
- 25 43. Defendant sets Independent Adjusters’ rates of pay.
- 26 44. Defendant has the authority to terminate Independent Adjusters, including by
- 27 refusing to assign them work.
- 28

1 **B. Independent Adjusters Perform Work that is in the Usual Course of Defendant's**
2 **Business.**

3 45. Independent Adjusters perform work that is in the usual course of Alacrity's
4 business.

5 46. Alacrity is engaged in the business of providing loss appraisal services for its
6 customers, typically national insurance companies such as Liberty Mutual. Alacrity's customers
7 outsource their recurring claims adjuster needs to Alacrity. Alacrity advertises that its "end-to-
8 end service offering includes LOSS ADJUSTING."³

9 47. Alacrity claims: "[o]ur team of claims professionals . . . is highly skilled at
10 assessing the loss; establishing rapport with claimants and applicable authorities; verifying
11 coverage; conducting scene investigations and gathering statements; and providing necessary
12 reporting."⁴

13 48. Alacrity assigns Independent Adjusters to perform claims adjusting services for its
14 customers.

15 **C. Defendant Unilaterally Labels Independent Adjusters as "Independent**
16 **Contractors;" Independent Adjusters Do Not Operate Independently Established**
17 **Businesses.**

18 49. Defendant unilaterally determined that Independent Adjusters would be labeled
19 "independent contractors." However, Independent Adjusters do not operate independently
20 established businesses.

21 50. Independent Adjusters do not solicit, advertise, or otherwise hold themselves out
22 to the community as being in a separate business that provides claims or loss adjustment services.

23 **D. Independent Adjusters Regularly Work More Than 8 Hours a Day and/or 40 Hours**
24 **a Week.**

25 51. Independent Adjusters regularly work days of more than 8 hours and weeks of
26 more than 40 hours.

27 52. Defendant does not pay Independent Adjusters daily or weekly overtime.

28 ³ <https://www.alacritysolutions.com/lines-of-business/residential/>

⁴ *Id.*

1 **E. Defendant Does Not Pay Independent Adjusters for Training Time.**

2 53. Defendant requires Independent Adjusters to complete training before it assigns
3 them claims to process on their own. In particular, Defendant requires and required Independent
4 Adjusters, including Ryland Gimenez and Stephen Gimenez, to shadow a current Independent
5 Adjuster that provided training on Alacrity's claims adjusting services. This training period lasts
6 approximately two to four weeks.

7 54. Defendant fails and failed to pay any wages to Independent Adjusters during this
8 training period.

9 **F. Defendant Does Not Reimburse Independent Adjusters' Expenses.**

10 55. Defendant requires Independent Adjusters to spend significant amounts of money
11 on out-of-pocket expenses, such as insurance, cell phone service, laptops, cameras, high speed
12 Internet connection, ladders, hand tools, personal protective equipment, software licenses, the
13 cost of cleaning and maintaining their cars, and other similar expenses. Defendant fails and failed
14 to reimburse them for these expenses.

15 56. Defendant does not reimburse Independent Adjusters for all of the car mileage
16 they accrue while performing services for Alacrity.

17 **G. Defendant Fails to Provide Independent Adjusters with Accurate Wage Statements.**

18 57. Because Defendant misclassifies Independent Adjusters as contractors, it also fails
19 to provide accurate wage notices and wage statements. The notices and statements that are
20 provided do not clearly itemized earnings in such a way that Independent Adjusters can readily
21 identify whether they received all pay for which they are eligible under the law, such as hours
22 worked and unpaid overtime.

23 58. Payroll records similarly fail to track all pay accurately, as well as paid sick leave
24 accrued and taken.

25 **H. Defendant Fails to Provide Independent Adjusters with the Opportunity to Take a**
26 **Meal and Rest Break.**

27 59. For Independent Adjusters who work five or more hours in a day, Defendant does
28 not provide a 30-minute meal break during which they are relieved from all work duties.

60. Defendant does not provide a 10-minute rest break during which Independent Adjusters are relieved of all work duties, for each shift of at least three and one-half hours.

61. Defendant lacks a meal or rest break policy under which Independent Adjusters are informed of the right to take appropriate meal and rest breaks.

62. Defendant's policies and practices incentivize Independent Adjusters to miss, cut short, or interrupt their breaks, in violation of the applicable Wage Order and Labor Code.

I. Defendant's Violations of the Law Are Willful.

63. Defendant's violations of the law described herein are willful.

64. Upon information and belief, Defendant adopted its policy of classifying Independent Adjusters as independent contractors to avoid its obligations under California wage and hour laws.

65. Defendant has continued to classify Independent Adjusters as independent contractors despite the California Supreme Court's decision in *Dynamex Operations W., Inc. v. Superior Court*, No. S222732, 4 Cal.5th 903 (2018).

66. Defendant's refusal to reclassify Independent Adjusters as employees despite the substantial risk that its policy is unlawful is knowing and voluntary and constitutes willful misclassification.

FIRST CLAIM FOR RELIEF

**(Unfair Business Practices, Cal. Bus. & Prof. Code § 17200,
Brought by Plaintiffs on Behalf of Themselves and the Class)**

67. Plaintiffs on behalf of themselves and all members of the Class, reallege and incorporate by reference all other paragraphs as if they were set forth again herein.

68. At all relevant times, Defendant has been an employer, and Plaintiffs and Class members were, are, or will be employees under California law entitled to the protections of the California Labor Code and Wage Order 4.

69. California Labor Code §§ 510, 1194, 1198, and Wage Order 4 provide for compensation with overtime pay for time worked over eight hours in a day or 40 hours in a week.

70. California Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and Wage Order 4 provide for compensation of at least the minimum wage for all hours worked.

1 71. California Labor Code §§ 226.7, 512, and Wage Order 4 provide for a 30-minute
2 meal break for employees who work five hours or more in a day and for 10-minute breaks for
3 every three and one-half hours worked.

4 72. California Labor Code §§ 201-202 require Defendant to timely pay wages due to
5 Plaintiffs and separated Class members upon termination of employment.

6 73. California Labor Code § 204 requires Defendant to timely pay wages due to
7 Plaintiffs and Class members by the payroll periods specified by the statute.

8 74. California Labor Code §§ 226, 1174, and Wage Order 4 require Defendant to
9 provide accurate wage notices and properly itemized wage statements.

10 75. California Labor Code § 2802 and Wage Order 4 provide for the reimbursement of
11 Plaintiffs' and Class members' expenses incurred while carrying out their employment or to
12 comply with Defendant's requirements.

13 76. Defendant's conduct, as alleged, violates the UCL, Cal. Bus. & Prof. Code §
14 17200 *et seq.*, which prohibits, *inter alia*, unfair competition in the form of any unlawful, unfair,
15 deceptive, or fraudulent business practices. Plaintiffs bring this cause of action individually and
16 as representatives of all others subject to Defendant's unlawful acts and practices.

17 77. By failing to pay Independent Adjusters' work-related expenses, minimum wages,
18 and overtime; failing to provide meal and rest breaks; failing to timely pay wages during and
19 upon termination of employment; and violating requirements for wage statements, Defendant
20 committed unlawful and unfair acts as defined by the UCL.

21 78. Defendant's practices, as alleged, constitute unlawful acts because such acts
22 violate the California Labor Code sections and Wage Order 4 as detailed above.

23 79. Defendant's practices, as alleged, also constitute unfair acts because such acts are
24 contrary to public policy.

25 80. As a result of these unlawful and/or unfair business practices, Defendant reaped
26 unfair benefits and illegal profits at the expense of Plaintiffs and Class members. Defendant must
27 disgorge these ill-gotten gains and restore to Plaintiffs and Class members all expense
28 reimbursement, overtime, and other wages owed. Defendant's actions deprived Plaintiffs and

1 each member of the Class of their expenses and full pay; consequently, Plaintiffs and members of
2 the Class have lost money and property, and they are entitled to restitution in the amount of their
3 expenses and pay that Defendant withheld. Pursuant to California Code of Civil Procedure §
4 1021.5, Plaintiffs and Class members are entitled to payment of their attorneys' fees, costs, and
5 expenses incurred in bringing this action.

6
7 **SECOND CLAIM FOR RELIEF**
8 **(Overtime Claim, Cal. Labor Code §§ 510, 1194, 1198 & Wage Order 4,**
9 **Brought by Plaintiffs on Behalf of Themselves and the Class)**

10 81. Plaintiffs on behalf of themselves, and all members of the Class, reallege and
11 incorporate by reference all other paragraphs as if they were set forth again herein.

12 82. The foregoing conduct, as alleged, constitutes violations of California Labor Code
13 §§ 510, 1194, 1198, and Wage Order 4, which require one and one-half times the employee's
14 regular rate of pay for time worked over eight hours in a workday or over 40 hours in a week and
15 double the employee's regular rate of pay for time worked over twelve hours in a workday.

16 83. Although Plaintiffs and an identifiable portion of Class members periodically
17 worked more than eight or twelve hours in a day or 40 hours in a week, Defendant has a policy
18 and practice of failing and refusing to pay them overtime and thus violated and continues to
19 violate the above-referenced overtime provisions of the Labor Code and Wage Order 4.

20 84. Plaintiffs, on behalf of themselves and Class members, seek the amount of the
21 respective unpaid wages owed them, interest, attorneys' fees and costs pursuant to Cal. Labor
22 Code § 1194 and Wage Order 4, and such other legal and equitable relief as the Court deems just
23 and proper.

24 **THIRD CLAIM FOR RELIEF**
25 **(Minimum Wage Claim, Cal. Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1,**
26 **1198, Wage Order 4, Brought by Plaintiffs on Behalf of Themselves and the Class)**

27 85. Plaintiffs, on behalf of themselves and all members of the Class, reallege and
28 incorporate by reference all other paragraphs as if they were set forth again herein.

86. Defendant's failure to pay Independent Adjusters any wages during training time,
as alleged, constitutes violations of California Labor Code §§ 1182.12, 1194, 1194.2, 1197,
1197.1, 1198, and Wage Order 4, which protect Plaintiffs and Class members' right to earn a

1 minimum wage and provide for damages for violations of that right.

2 87. Plaintiffs, on behalf of themselves and Class members, seek the amount of the
3 respective unpaid wages owed them, interest, liquidated damages, attorneys' fees and costs
4 pursuant to Cal. Labor Code § 1194 and Wage Order 4, and such other legal and equitable relief
5 as the Court deems just and proper.

6 **FOURTH CLAIM FOR RELIEF**
7 **(Meal and Rest Break Claim, Cal. Labor Code §§ 218.5, 226.7 & 512, Wage Order 4,**
8 **Brought by Plaintiffs on Behalf of Themselves and the Class)**

9 88. Plaintiffs, on behalf of themselves and all members of the Class, reallege and
10 incorporate by reference all other paragraphs as if they were set forth again herein.

11 89. The foregoing conduct, as alleged, constitutes violations of California Labor Code
12 §§ 226.7, 512, and Wage Order 4, which provide for a 30-minute meal break for employees who
13 work five hours or more in a day and for 10-minute breaks for every three and one-half hours
14 worked.

15 90. Although Plaintiffs and an identifiable portion of Class members periodically
16 worked five hours or more in a day, Defendant had a policy and practice of failing to provide
17 lawful meal and rest breaks. Defendant thus violated and continues to violate the above-
18 referenced meal and rest break provisions of the Labor Code.

19 91. Pursuant to Defendant's policy of classifying Independent Adjusters as
20 independent contractors, Defendant lacks a meal or rest break policy that complies with
21 California law. In the absence of such policies, and because Defendant's policies and practices
22 incentivize Independent Adjusters to work constantly, Plaintiffs and Independent Adjusters
23 regularly work five or more hours in a day without taking an off-duty meal break and work more
24 than three and one-half hours without taking an off-duty rest break.

25 92. Plaintiffs, on behalf of themselves and the Class members, seek the amount of the
26 respective pay owed them – one hour of compensation for each workday that the meal period is
27 not provided and one hour of compensation for each workday that the rest period is not provided
28 – interest, attorneys' fees and costs, and such other legal and equitable relief as the Court deems
just and proper.

FIFTH CLAIM FOR RELIEF
**(Timely Wage Payment Due upon Termination Claim, Cal. Labor Code §§ 201, 202 & 203,
Brought by Plaintiffs on Behalf of Themselves and the Class)**

93. Plaintiffs, on behalf of themselves and all members of the Class, reallege and incorporate by reference all other paragraphs as if they were set forth again herein.

94. California Labor Code §§ 201 and 202 require Defendant to pay its employees all wages due upon termination within the time specified by law. California Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, up to a maximum of thirty days of wages.

95. Defendant's failure to pay timely wages at separation is willful under Labor Code § 203 because Defendant knew or should have known that Plaintiffs and Class members worked overtime hours, yet it failed to pay them overtime premiums for the work they performed upon the termination of their employment.

96. Plaintiffs and all Class members who ceased employment with Defendant are entitled to unpaid compensation, but to date have not received such compensation.

97. More than thirty days have passed since Plaintiffs and certain Class members left Defendant's employ.

98. Plaintiffs, on behalf of themselves and the Class members, seek waiting time penalties pursuant to Section 203, attorneys' fees and costs, and such other legal and equitable relief as the Court deems just and proper.

SIXTH CLAIM FOR RELIEF
**(Failure to Timely Pay Wages By Each Payroll Period, Cal. Labor Code §§ 204, 210,
Brought by Plaintiffs on Behalf of Themselves and the Class)**

99. Plaintiffs, on behalf of themselves and all members of the Class, reallege and incorporate by reference all other paragraphs as if they were set forth again herein.

100. California Labor Code § 204 requires Defendant to timely pay Plaintiffs and Class members their earned minimum wages and overtime premiums by the payroll periods specified by the statute.

1 101. Defendant’s failure to timely pay Plaintiffs and Class members their wages earned
2 by each payroll period was and is willful. Defendant knew or should have known that Plaintiffs
3 and Class members were not paid for their training time and worked overtime hours, yet it failed
4 to pay them their earned wages within the payroll periods specified by the statute.

5 102. California Labor Code § 210(a) provides that employers who fail to pay wages as
6 provided in § 204 are subject to statutory penalties of: (1) one hundred dollars (\$100) for each
7 failure to pay each employee for any initial violation; and (2) two hundred dollars (\$200) for each
8 failure to pay each employee, plus 25 percent of the amount unlawfully withheld, for each
9 subsequent violation, or any willful or intentional violation.

10 103. Plaintiffs, on behalf of themselves and the Class members, seek penalties pursuant
11 to California Labor Code § 210, attorneys’ fees and costs, and such other legal and equitable
12 relief as the Court deems just and proper.

13 **SEVENTH CLAIM FOR RELIEF**
14 **(Wage Statement Claim, Cal. Labor Code §§ 226(a), and Wage Order 4, Brought by**
 Plaintiffs on Behalf of Themselves and the Class)

15 104. Plaintiffs, on behalf of themselves and all members of the Class, reallege and
16 incorporate by reference all other paragraphs as if they were set forth again herein.

17 105. The foregoing conduct, as alleged, constitutes a violation of California Labor Code
18 § 226 and Wage Order 4, which provide requirements for properly itemized wage statements.
19 Defendant’s wage statements do not clearly itemize hours worked, the hourly wage, overtime, or
20 earnings in a way that Plaintiffs and Class members can readily identify whether they received all
21 applicable pay for which they were eligible. Defendant thus violated and continues to violate
22 California Labor Code § 226 and Wage Order 4.

23 106. Defendant’s failure to provide accurate wage statements is “knowing and
24 intentional” under Labor Code § 226(e) because Defendant knows that its wage statements do not
25 accurately report hours worked or accurately report gross and net wages earned. Plaintiffs and
26 Class members suffer injury as a result of Defendant’s violation of Labor Code § 226 because
27 Plaintiffs and Class members cannot promptly and easily determine from the wage statement
28 alone their hours worked, expense reimbursement due, and actual total gross and net wages

1 earned.

2 107. Plaintiffs, on behalf of themselves and Class members, seek to recover the greater
3 of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurred
4 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to
5 exceed an aggregate penalty of four thousand dollars (\$4,000), as well as costs and attorneys'
6 fees.

7 **EIGHTH CLAIM FOR RELIEF**
8 **(Expense Reimbursement Claim, Cal. Lab. Code § 2802 and Wage Order 4,**
9 **Brought by Plaintiffs on Behalf of Themselves and the Class)**

10 108. Plaintiffs, on behalf of themselves and all members of the Class, reallege and
11 incorporate by reference all other paragraphs as if they were set forth again herein.

12 109. The foregoing conduct, as alleged, constitutes a violation of California Labor Code
13 § 2802, which provides for the reimbursement of expenses incurred while carrying out
14 employment or to comply with employer requirements.

15 110. Under Wage Order 4, “[w]hen tools or equipment are required by the employer or
16 are necessary to the performance of a job, such tools and equipment shall be provided and
17 maintained by the employer[.]”

18 111. Independent Adjusters, including Plaintiffs, have incurred and continue to incur
19 expenses that include, car mileage and car maintenance, insurance, cell phone service, laptops,
20 cameras, high speed Internet connection at home, ladders, hand tools, personal protective
21 equipment, software licenses, and other similar expenses.

22 112. Defendant had a policy and practice of failing and refusing to reimburse Plaintiffs
23 and Class members for all of their work-related expenses and thus violated and continues to
24 violate California Labor Code § 2802 and Wage Order 4.

25 113. Plaintiffs, on behalf of themselves and Class members, seek the amount of the
26 respective unpaid expenses owed them, interest, attorneys’ fees and costs pursuant to Labor Code
27 § 2802(b) and (c) and Wage Order 4, and such other legal and equitable relief as the Court deems
28 just and proper.

NINTH CLAIM FOR RELIEF
**(Private Attorneys General Act Claim, Cal. Lab. Code §§ 2698, *et seq.*,
Brought by Plaintiff Ryland Gimenez Individually and on Behalf of
Aggrieved Employees)**

114. Plaintiff Gimenez, on behalf of himself and all Aggrieved Employees, realleges and incorporates by reference all other paragraphs as if they were set forth again herein.

115. Plaintiff is an Aggrieved Employee under PAGA, as he was employed by Defendant during the applicable statutory period and suffered one or more of the California Labor Code violations set forth herein. Accordingly, he seeks to recover on behalf of himself and all other current and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

116. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following California Labor Code provisions:

a. Failure to pay proper overtime or double time wages, in violation of California Labor Code §§ 510, 1994 and 1998 and Wage Order 4;

b. Failure to pay any wages, including the minimum wage, during an initial training period that lasts approximately two to four weeks, in violation of California Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198;

c. Failure to provide required meal and rest breaks, in violation of California Labor Code §§ 218.5, 226.7, 512, and Wage Order 4;

d. Failure to timely pay wages during employment and upon separation, in violation of California Labor Code §§ 201, 202, 203, and 204;

e. Failure to provide legally sufficient wage statements or keep proper payroll records, in violation of California Labor Code §§ 226 and 1174 and Wage Order 4;

f. Failure to provide reimbursement for reasonable and necessary business expenditures, including costs associated with insurance, cell phone service, laptops, cameras, high speed Internet connection, ladders, hand tools, personal protective equipment, software licenses, mileage, the cost of cleaning and maintaining Independent Adjusters' cars, and other similar expenses, in violation of California Labor Code § 2802 and Wage Order 4; and

g. Willful misclassification of Independent Adjusters as independent contractors when

1 they are actually employees under California law, in violation of California Labor Code § 226.8.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray for relief as
4 follows:

- 5 A. Certification of the Class;
- 6 B. Designation of Plaintiffs as Representatives of the Class;
- 7 C. Designation of Plaintiffs' counsel of record as Class Counsel for the Class;
- 8 D. A declaratory judgment that the practices complained of herein are unlawful;
- 9 E. An injunction against Defendant and its officers, agents, successors, employees,
10 representatives, and any and all persons acting in concert with it, as provided by law, from
11 engaging in each of the unlawful practices, policies, and patterns set forth herein;
- 12 F. Statutory penalties;
- 13 G. An award of damages and restitution to be paid by Defendant according to proof;
- 14 H. Pre-judgment and post-judgment interest, as provided by law;
- 15 I. Attorneys' fees, pursuant to Labor Code §§ 218.5, 226(e), 1194, 2802, Code of
16 Civil Procedure § 1021.5, and all other bases for fees in the Labor Code and Wage Order 4;
- 17 J. Costs of suit, including expert fees and costs;
- 18 K. An appropriate service payment to Plaintiffs for their service as Class
19 Representatives; and
- 20 L. Such other injunctive and equitable relief as the Court may deem just and proper.

21 WHEREFORE, Plaintiff Ryland Gimenez, individually and on behalf of the Aggrieved
22 Employees requests the following relief:

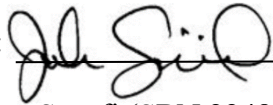
- 23 A. Civil penalties provided, per violation, under the California Private Attorneys
24 General Act, California Labor Code §§ 2698, *et seq.*

25 **DEMAND FOR JURY TRIAL**

26 Plaintiffs hereby demand a jury trial on all causes of action and claims alleged herein.
27
28

1 Dated: March 1, 2021

Respectfully submitted,

2 By: 

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28 *Admitted pro hac vice