

FILED BY FAX

ALAMEDA COUNTY

April 09, 2021

CLERK OF
THE SUPERIOR COURT
By Joanne Downie, Deputy

CASE NUMBER:

RG21094836

Carolyn Hunt Cottrell (SBN 166977)
 Kyle G. Bates (SBN 299114)
 SCHNEIDER WALLACE
 COTTRELL KONECKY LLP
 2000 Powell Street, Suite 1400
 Emeryville, California 94608
 Tel: (415) 421-7100; Fax: (415) 421-7105
ccottrell@schneiderwallace.com
kbates@schneiderwallace.com

*Attorneys for Plaintiff, Aggrieved Employees,
 and the State of California*

SUPERIOR COURT OF CALIFORNIA**COUNTY OF ALAMEDA**

SAUL GONZALEZ, on behalf of the State of
 California and Aggrieved Employees,

Plaintiff,

vs.

GOVERNMENT EMPLOYEES INSURANCE
 COMPANY (GEICO), inclusive,

Defendant.

Case No.

**COMPLAINT FOR PENALTIES
 PURSUANT TO SECTIONS 2699(a)
 and (f) OF THE CALIFORNIA
 PRIVATE ATTORNEYS GENERAL
 ACT**

Plaintiff Saul Gonzalez ("Plaintiff"), on behalf of the State of California and Aggrieved Employees, and complains and alleges as follows:

INTRODUCTION

1. Plaintiff, Saul Gonzalez, individually and on behalf of all other former and current employees brings this enforcement action against Defendant Government Employees Insurance Company ("Defendant" or "GEICO") on behalf of individuals who worked for Defendants as non-exempt hourly employees and have been subject to Defendants policies and practices (the "Aggrieved Employees"). Throughout the relevant time period, Plaintiff and Aggrieved

1 Employees have been denied for payment for all hours worked, including overtime, and did not
2 receive compliant meal or rest breaks. This case implicates Defendant's longstanding policies
3 and practices, which fails to properly compensate non-exempt employees for work performed
4 "off-the-clock."

5 2. Defendant's conduct violates the Labor Code by knowingly and willfully requiring
6 Plaintiff and Aggrieved Employees to perform work and/or remain on duty for the benefit of the
7 Defendant while off-the-clock. Plaintiff and Aggrieved Employees bring these claims to
8 challenge Defendant's policies and practices of: (1) failing to pay non-exempt, hourly employees
9 who work as Auto Claim Adjusters for all hours worked; (2) failing to pay required minimum
10 wage; (3) failing to pay required overtime wages; (4) failing to authorize, permit, and/or make
11 meal and rest periods available, and failing to pay premium pay for these missed breaks; (5)
12 failing to provide accurate, itemized wage statement; and (6) failing to pay all wages after
13 termination of employment.

14 3. Plaintiff files this action to recover all penalties, and other damages on behalf of
15 himself and Aggrieved Employees. Plaintiff seeks to remedy the sweeping practices Defendant
16 has integrated into its time tracking and payroll.

17 PARTIES

18 4. Plaintiff Saul Gonzalez is an individual over the age of eighteen, and at all times
19 relevant to this Complaint was a resident of the State of California. Plaintiff was employed as an
20 Auto Claim Adjuster in Baldwin Park, California from June 2018 to December 2019.

21 5. Plaintiff is informed, believes, and thereon alleges that GEICO is a Maryland
22 corporation and is a wholly owned subsidiary of Berkshire Hathaway, Inc. Defendant does
23 business throughout the United States, including California, and maintains 18 regional offices
24 which includes offices in San Diego, California; Buffalo and Woodbury, New York; Dallas and
25 Houston, Texas; and Fredericksburg, Virginia Beach, and Springfield, Virginia, in addition to
26 its headquarters in Chevy Chase, Maryland.

1 6. Plaintiff is informed, believes, and thereon alleges that Defendant directly controls
2 the operations of its agents, managers, and employees throughout its locations in California.

3 7. At all material times, Defendant has done business under the laws of California,
4 has places of business in the State of California, including this County, and has employed
5 Aggrieved Employees in this County and elsewhere in California. Defendant is “person[s]” as
6 defined in Labor Code § 18, and “employer[s]” as that term is used in the Labor Code and the
7 IWC Wage Orders regulating wages, hours, and working conditions.

8 8. Upon information and belief, Defendant employs Aggrieved Employees, because
9 Defendant, directly or indirectly, controls the employment terms, pay practice, timekeeping
10 practices, and daily work of Plaintiff and Aggrieved Employees.

11 **SUBJECT MATTER JURISDICTION AND VENUE**

12 9. This Court has jurisdiction over Plaintiff’s claims for penalties pursuant to the
13 PAGA. The Court also has jurisdiction over Defendant because Defendant does business in the
14 State of California, is authorized to do business in California, and is registered with the
15 California Secretary of State.

16 10. Defendant operates multiple locations and employs aggrieved employees in
17 California.

18 11. Venue is proper in this County pursuant to Code of Civil Procedure § 395(a)
19 and/or 395.5. Defendant conducts business, has jobsites, and employs Aggrieved Employees in
20 this County, as a result, the causes of action asserted arose in whole or in part in this County.

21 **FACTUAL ALLEGATIONS**

22 12. Defendant is in the business of providing vehicle insurance, property insurance,
23 and business insurance. Defendant operates in all fifty states, including California.

24 13. Plaintiff and Aggrieved Employees are current or former non-exempt, hourly
25 employees who work, or have worked, for Defendant as Auto Claim Adjusters.
26
27
28

1 14. Plaintiff worked for the Defendant in Baldwin Park, California as a non-exempt
2 Auto Claims Adjuster from June 2018 until December 2019. While working for Defendant, the
3 Plaintiff was scheduled to work seven and a half hours per day, five days a week, totaling
4 approximately 37.5 hours per week.

5 15. Plaintiff and other Aggrieved Employees job duties included but were not limited
6 to processing insurance claims, calling customers, inspecting vehicles for collision and
7 comprehensive damages, maintaining, managing accurate funds for the issuance of claim
8 payments, submitting reports online in real time, and driving to customer homes or working in
9 auto body shops to evaluate vehicle damage.

10 16. As a matter of course, Defendant regularly required Plaintiff and Aggrieved
11 Employees to work additional hours beyond their scheduled time while off-the-clock without
12 compensation. Plaintiff would work eight and half to ten hours per day for numerous workweeks
13 during his employment without compensation. Specifically, Plaintiff and Aggrieved Employees
14 would perform work tasks before the beginning and after the end of their paid shifts, including
15 but not limited to, adjusting vehicles, printing and completing paperwork, and discussing claims
16 with other GEICO employees or affiliates (including those who work in body shops servicing
17 vehicles).

18 17. In some instances, Plaintiff and Aggrieved Employees began the workday one
19 hour prior to the start of their paid shifts to perform work activities which included handling
20 claims, calling customers, and driving autobody shops and customers' homes to evaluate
21 damaged vehicles and submit claims.

22 18. Under Defendant's company-wide practice, Defendant required Plaintiff and
23 Aggrieved Employees to login to Defendant's online system to submit claims and other
24 documentation in real time. Plaintiff and Aggrieved Employees were not allowed to login to the
25 online system for the day until the time of their scheduled shift even if they began working an
26 hour sooner. This time was unpaid.
27

1 19. Additionally, Plaintiff and Aggrieved Employees would continue to work after
2 their shift ended to complete task including, but not limited to, submitting paperwork and claims,
3 and following up on customer calls.

4 20. Plaintiff and Aggrieved Employees were disincentivized to report this unrecorded
5 time for fear that it would negatively impact their evaluations.

6 21. Defendant also required Plaintiff and Aggrieved Employees to work off-the-clock
7 to attend meetings, again outside of their scheduled shifts and without pay.

8 22. As a result of these policies, Defendant denied Plaintiff and Aggrieved Employees
9 compensation which they are lawfully owed from the additional off-the-clock pre and post-shift
10 work.

11 23. Furthermore, Defendants did not provide Plaintiff and Aggrieved Employees with
12 compliant meal and rest break periods. Specifically, Plaintiff and Aggrieved Employees were
13 often unable to take meal and/or rest breaks due to their workload and quota requirements.

14 24. Defendant utilized a call rating system to rate call volume and efficiency in
15 answering customer calls. Plaintiff and Aggrieved Employees were graded based on how quickly
16 and how often they answer their phones, and how quickly they responded to work-related emails.
17 Thus, Plaintiff and Aggrieved Employees were encouraged and often required to bring their cell
18 phones to their meal and rest breaks as a means of keeping the call answer rate high. These grades
19 affected when and whether they were considered for promotion, including pay increases.

20 25. As a result, Plaintiff and Aggrieved Employees did not receive uninterrupted meal
21 breaks and were under Defendant's control throughout their entire shift.

22 26. Plaintiff and Aggrieved employees also did not receive penalty pay for missed
23 meal or rest breaks.

24 27. Furthermore, Defendant did not provide Plaintiff and Aggrieved Employees with
25 full payment of all wages owed at the end of employment. These workers are owed wages and
26 premium pay for all time worked, overtime, and missed meal and rest breaks when their
27

1 employment ends. These amounts remained unpaid after voluntary and involuntary termination.
2 As a consequence, Defendant is subject to waiting time penalties under the California Labor
3 Code.

4 28. Plaintiff is informed, believes, and thereon alleges that Defendant's unlawful
5 conduct has been widespread, repeated, and consistent as to the Aggrieved Employees and
6 throughout Defendant's operations in California.

7 29. Defendant's conduct is willful, is carried out in bad faith, and causes significant
8 damages to non-exempt hourly employees in an amount to be determined at trial.

9
10 **FIRST CAUSE OF ACTION**
11 **Penalties Pursuant to § 2699(a) of the Private Attorneys General Act**

12 30. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
13 forth herein.

14 31. Labor Code § 2699(a) provides:

15 Notwithstanding any other provision of law, any provision of this code that
16 provides for a civil penalty to be assessed and collected by the Labor and
17 Workforce Development Agency or any of its departments, divisions,
18 commissions, boards, agencies or employees, for a violation of this code,
19 may, as an alternative, be recovered through a civil action brought by an
20 aggrieved employee on behalf of himself or herself and other current or
21 former employees.

22 32. Labor 226.7 Code §§ 201 and 202 require employers to immediately pay wages
23 earned and unpaid to an employee that is discharged, and to pay an employee who quits within
24 72 hours after he or she quits, at the latest.

25 33. Labor Code § 203 provides, in relevant part:

26 If an employer willfully fails to pay, without abatement or reduction, in
27 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
28 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.

34. Labor Code § 256 provides: "The Labor Commissioner shall impose a civil

1 penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.”

2 35. Labor Code § 225.5 provides that every person who unlawfully withholds wages
3 due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil
4 penalty of \$100 for any initial violation for each failure to pay each employee and \$200 for each
5 subsequent violation, or any willful or intentional violation, for each failure to pay each employee.

6 36. Labor Code § 226(a) provides:

7
8 Every employer shall, semimonthly or at the time of each payment of
9 wages, furnish each of his or her employees, either as a detachable part
10 of the check, draft, or voucher paying the employee's wages, or
11 separately when wages are paid by personal check or cash, an accurate
12 itemized statement in writing showing (1) gross wages earned, (2) total
13 hours worked by the employee, except for any employee whose
14 compensation is solely based on a salary and who is exempt from
15 payment of overtime under subdivision (a) of Section 515 or any
16 applicable order of the Industrial Welfare Commission, (3) the number
17 of piece-rate units earned and any applicable piece rate if the employee
18 is paid on a piece-rate basis, (4) all deductions, provided that all
19 deductions made on written orders of the employee may be aggregated
20 and shown as one item, (5) net wages earned, (6) the inclusive dates of
21 the period for which the employee is paid, (7) the name of the employee
22 and his or her social security number, (8) the name and address of the
23 legal entity that is the employer, and (9) all applicable hourly rates in
24 effect during the pay period and the corresponding number of hours
25 worked at each hourly rate by the employee. The deductions made from
26 payments of wages shall be recorded in ink or other indelible form,
27 properly dated, showing the month, day, and year, and a copy of the
28 statement or a record of the deductions shall be kept on file by the
employer for at least four years at the place of employment or at a central
location within the State of California.

37. Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be
subject to a civil penalty in the amount of two hundred fifty dollars
(\$250) per employee per violation in an initial citation and one thousand
dollars (\$1,000) per employee for each violation in a subsequent citation,
for which the employer fails to provide the employee a wage deduction
statement or fails to keep the records required in subdivision (a) of
Section 226. The civil penalties provided for in this section are in

1 addition to any other penalty provided by law.

2 38. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
3 Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees
4 in compliance with Labor Code §§ 201-202, and to pay wages owed at the end of employment to
5 Plaintiff and Aggrieved Employees in compliance with Labor Code § 203.

6 39. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each
7 failure by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate,
8 itemized wage statement in compliance with Labor Code § 226(a).

9 40. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each
10 violation of Labor Code § 510, alleged above, as well as any provision regulating hours and days
11 of work in any order of the IWC.

12 41. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
13 Workforce Development Agency ("LWDA") with notice of his intention to file this claim. Forty-
14 eight calendar days have passed without notice from the LWDA. Plaintiff satisfied the
15 administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

16 42. Plaintiff seeks the aforementioned penalties on behalf of the State, other
17 Aggrieved Employees, and himself as set forth in Labor Code § 2699(g)(i).

18 43. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California
19 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled
20 to an award of attorneys' fees and costs as set forth below.

21 44. Wherefore, Plaintiff requests relief as hereinafter provided.

22
23 **SECOND CAUSE OF ACTION**

24 **Penalties Pursuant to § 2699(f) of the Private Attorneys General Act**

25 45. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
26 forth herein.

27 46. Labor Code § 2699(f) provides:
28

1 For all provisions of this code except those for which a civil penalty is
2 specifically provided, there is established a civil penalty for a violation of
3 these provisions, as follows: . . . (2) If, at the time of the alleged violation,
4 the person employs one or more employees, the civil penalty is one
5 hundred dollars (\$100) for each aggrieved employee per pay period for
6 the initial violation and two hundred dollars (\$200) for each aggrieved
7 employee per pay period for each subsequent violation.

8 47. Labor Code § 200 defines wages as “all amounts for labor performed by
9 employees of every description, whether the amount is fixed or ascertained by the standard of
10 time, task, piece, commission basis or method of calculation.”

11 48. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any
12 employment are due and payable twice during each calendar month....”

13 49. IWC Wage Orders 7-2001(2)(G) and 4-2001(2)(K) define hours worked as “the
14 time during which an employee is subject to the control of an employer, and includes all the time
15 the employee is suffered or permitted to work, whether or not required to do so.”

16 50. Labor Code § 1198 makes it unlawful for employers to employ employees under
17 conditions that violate the Wage Order.

18 51. Labor Code § 2802 requires employers to indemnify employees for all necessary
19 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
20 her duties.

21 52. To the extent than any violation alleged herein does not carry penalties under
22 Labor Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for
23 Plaintiff and Aggrieved Employees each pay period in which he or she was aggrieved, in the
24 amounts established by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code §
25 2699(f) for Defendant’s violations of Labor Code §§ 1182.12, 1194, 1197, 204, and 2802.

26 53. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA
27 with notice of his intention to file this claim. More than forty-eight calendar days have passed
28 without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence
this civil action in compliance with § 2699.3(a).

54. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and himself as set forth in Labor Code § 2699(g)(i).

55. Defendants are liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

56. Wherefore, Plaintiff requests relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For the Court to declare, adjudge, and decree that Defendants have violated the California Labor Code as alleged herein;
2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees civil penalties provided under the PAGA;
3. For an award of reasonable attorneys' fees as provided by the California Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5; and/or any other applicable law;
4. For interest on penalties awarded as provided by applicable law;
5. For all costs of suit; and
6. For such other and further relief as this Court deems just and proper.

Dated: April 8, 2021

Respectfully submitted,



Carolyn Hunt Cottrell
Kyle G. Bates
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

Attorneys for Plaintiff, Aggrieved Employees, and
the State of California