

James R. Hawkins, Esq. SBN 192925
Isandra Fernandez, Esq. SBN 220482
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
TEL: (949) 387-7200
FAX: (949) 387-6676

Attorneys for Plaintiff, BRIAN REDHAIR
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

BRIAN R. REDHAIR on behalf of himself and
all others similarly situated

Plaintiff,

vs.

PROGRESSIVE CASUALTY INSURANCE
COMPANY, an Ohio corporation, and DOES 1
through 50, inclusive,

Defendants.

Case No.
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

CLASS ACTION COMPLAINT

- 1) Failure to pay Lawful Wages**
- 2) Failure to Timely Pay Wages**
- 3) Knowing and Intentional Failure to
Comply With Itemized Employee
Wage Statement Provisions**
- 4) Violations of the Unfair Competition
Law**

JURY TRIAL DEMANDED

Plaintiff BRIAN R. REDHAIR on behalf of himself and all others similarly situated
assert claims against Defendant PROGRESSIVE CASUALTY INSURANCE COMPANY and
DOES 1 through 50, inclusive (hereinafter collectively referred to as "Defendants") as follows:

I.

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, brought
against Defendant PROGRESSIVE CASUALTY INSURANCE COMPANY and any

1 subsidiaries and affiliated companies (hereinafter “Defendants” and/or “PROGRESSIVE
2 CASUALTY”) on behalf of Plaintiff BRIAN R. REDHAIR (hereinafter “Plaintiff”) and all
3 employees not classified as “Exempt” or primarily employed in executive, professional, or
4 administrative capacities, who worked at PROGRESSIVE CASUALTY “call centers” in
5 California. (hereinafter referred to as “Non-Exempt Employees” and/or “Class Members”).

6 2. During the liability period, defined as the applicable statute of limitations for each
7 and every cause of action contained herein, Defendants enforced shift schedules, employment
8 policies and practices, and workload requirements wherein Plaintiff and all other Non Exempt
9 Employees: (1) were not paid proper wages they earned for all hours they worked including
10 proper overtime and/or minimum wage; (2)

11 3. During the liability period, Defendants have also failed to maintain accurate
12 itemized records reflecting total hours worked and have failed to provide Non Exempt
13 Employees with accurate, itemized wage statements reflecting total hours worked and
14 appropriate rates of pay for those hours worked.

15 4. During the liability period, Defendants have also failed to pay all wages owed to
16 Class Members in a timely manner during their employment and/or when their employment
17 ended.

18 5. Plaintiff, on behalf of himself and all Class Members, bring this action pursuant to
19 Labor Code sections 201, 202, 203, 204, 210, 218.5, 225, 226, 1194, 1198, 1199 California
20 Code of Regulations, Title 8, section 11040 *et seq.* and any other applicable Industrial Welfare
21 Commission (“IWC”) Wage Orders, seeking unpaid lawful wages, penalties and other equitable
22 relief, and reasonable attorneys’ fees and costs.

23 6. Plaintiff, on behalf of himself and others similarly situated, pursuant to Business
24 and Professions Code sections 17200-17208, also seeks restitution from Defendants for their
25 failure to pay all overtime wages and rest and meal period premiums to each of their Non-
26 Exempt Employees.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

22
23
24
25
26
27
28

1 IV.

2 **FACTUAL BACKGROUND**

3 12. Defendants PROGRESSIVE CASUALTY, an Ohio corporation, provide
4 insurance services including, but not limited to, personal, automobile, life and health insurance.
5 Defendants operate and have operated “call centers” in California and other locations across the
6 country where telephone-dedicated employees, handle phone calls regarding the generic servicing
7 of Defendants’ various customer accounts.

8 13. Plaintiff was employed by PROGRESSIVE CASUALTY on or about February
9 13, 2017. Upon being hired, Plaintiff occupied hourly non-exempt position of Customer Service
10 Representative until on or about June 2018. Thereafter, Plaintiff occupied the hourly, non-
11 exempt position of Service Assistant Representative until the last day of his employment in or
12 about March 2020.

13 14. During the relevant time period, Plaintiff and Class Members frequently worked
14 well over eight (8) hours in a day and forty (40) hours in a work week. For instance, during his
15 employment, Plaintiff typically worked six days a week, over 8 hours per shift and frequently no
16 less than twelve (12) hours per shift.

17 15. During the relevant time period, PROGRESSIVE CASUALTY paid Plaintiff
18 and Class Members a non- discretionary bonus and/or incentive payment. Defendant failed to
19 include said non-discretionary bonuses/incentive payments in the calculation of the regular rate
20 of pay for purposes of calculating overtime wages. As a result, Defendant failed to accurately
21 calculate and thus underpaid the overtime wages paid to Plaintiff and Class Members

22 16. During the relevant time period, Plaintiff and Class Members were suffered to
23 perform work under the control of the Defendant without compensation of at least minimum
24 wage and overtime. More specifically, Plaintiff and Class Members were required to perform
25 work “off the clock” while uploading their computers and files for the day’s work. Plaintiff and
26 the Class Members would need to boot up their computers in order to access the system to log in
27 their hours work hours. The time Plaintiff and Class Members spent logging in and booting their
28

1 computers to access the computer system to then be able to log in to their work station was time
2 spent uncompensated and while under the control of Defendant. Plaintiff estimated that the
3 minimum time it took to boot their computers and access the system to log in was between five
4 (5) to seven (7) minutes.

5 17. Defendant was aware of this time and knew or should of known that Plaintiff and
6 Class Members were suffered or permitted to work all without compensation. Plaintiff and Class
7 Members did not receive wages for the time in booting up their computers and accessing log in
8 prior to clocking in for their shifts

9 18. During the relevant time period, Defendants also systematically failed to record
10 and pay Plaintiff and Class Members the correct split- shift premium wages when they worked
11 split shifts. Plaintiff frequently worked split-shifts while employed by Defendants. By example,
12 Plaintiff would at times work from 12 midnight to 1:00 a.m. and then work from 3:00 a.m. to
13 4:30 a.m. and then from 6:00 am to 6:30 am and thereafter from 2 pm to 11 p.m.

14 19. During the relevant time period Defendants willfully failed to pay all earned
15 wages in a timely manner to Plaintiff and, upon information and belief, to Non Exempt
16 Employees during their employment.

17 20. During the relevant time period Defendants willfully failed to pay all earned
18 wages in a timely manner to Plaintiff and, upon information and belief, to affected Non Exempt
19 Employees, upon or after termination of their employment with Defendants.

20 21. Defendants have also failed to maintain accurate itemized records reflecting total
21 hours worked and have failed to provide Non- Exempt Employees with accurate, itemized wage
22 statements accurately reflecting total hours worked and appropriate rates of pay for hours
23 worked.

24 22. Plaintiff is informed and believes, and based thereon alleges, that PROGRESSIVE
25 CASUALTY INS. CO. currently employ and/or during the relevant period have employed over
26 one thousand employees at its call centers in the State of California in non-exempt hourly
27 positions.
28

23. Class Members employed by PROGRESSIVE CASUALTY, at all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders.

V.

CLASS ACTION ALLEGATIONS

24. Plaintiff seeks to represent a Class comprised of and defined as: All persons who are or were employed by PROGRESSIVE CASUALTY as “call center” employees in the state of California in hourly non- exempt positions within four (4) years prior to the date this lawsuit is filed (“liability period”) until resolution of this lawsuit (collectively referred to as the “Class” and/or Class Members”).

25. Plaintiff also seeks to represent Subclasses which are composed of persons satisfying the following definitions:

a. All persons who are or were employed by PROGRESSIVE CASUALTY as call center employees in the state of California in non- exempt positions and were not accurately and fully paid all lawful wages owed to them for all hours worked, including minimum wages;

b. All persons who are or were employed by PROGRESSIVE CASUALTY as call center employees in the state of California in non- exempt positions and were not accurately and fully paid all lawful wages owed to them for hours worked, including overtime wages;

c. All persons who are or were employed by PROGRESSIVE CASUALTY as call center employees in the state of California in non- exempt positions and received a non-discretionary bonus and/or incentive pay and were not accurately and fully paid overtime compensation;

d. All persons who are or were employed by PROGRESSIVE CASUALTY as call center employees in the state of California in non- exempt positions and were not accurately paid a split- shift differential when they worked a split shift;

e. All persons who are or were employed by PROGRESSIVE CASUALTY

1 as call center employees in the state of California in hourly non- exempt positions who, within
2 the liability period, were not timely paid all wages due and owed to them during their
3 employment with Defendants;

4 f. All persons who are or were employed by PROGRESSIVE CASUALTY
5 as call center employees in the state of California in hourly non- exempt positions who, within
6 the liability period, were not timely paid all wages due and owed to them upon the termination of
7 their employment with Defendants; and

8 g. All persons who are or were employed by PROGRESSIVE CASUALTY
9 as call center employees in the state of California in hourly non- exempt positions who, within
10 the liability period, were not provided with accurate and complete itemized wage statements.

11 26. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend
12 or modify the class description with greater specificity or further division into subclasses or
13 limitation to particular issues.

14 27. This action has been brought and may properly be maintained as a class action
15 under the provisions of section 382 of the Code of Civil Procedure because there is a well-
16 defined community of interest in the litigation and the proposed Class is easily ascertainable.

17 **A. Numerosity**

18 28. The potential members of the Class as defined are so numerous that joinder of all
19 the members of the Class is impracticable. While the precise number of Class Members has not
20 been determined at this time, Plaintiff is informed and believes that Defendants currently employ,
21 and/or during the relevant time period employed, approximately over one thousand Non-Exempt
22 Employees in California who are or have been affected by Defendants' unlawful practices as
23 alleged herein.

24 **B. Commonality**

25 29. There are questions of law and fact common to the Class predominating over any
26 questions affecting only individual Class Members. These common questions of law and fact
27 include, without limitation:
28

- i. Whether Defendants violated Labor Code §§510, 1194 and applicable IWC Wage Orders by failing to pay all earned wages including overtime compensation to Non-Exempt Employees who worked in excess of eight (8) hours in a work day and/or more than forty (40) hours in a workweek and /or more than twelve (12) hours in a work day for the time spent under the control of Defendants during the work shift.
- ii. Whether Defendants violated Labor Code §§510, 1194 and applicable IWC Wage Orders by failing to pay the correct overtime compensation to Non-Exempt Employees who worked in excess of eight (8) hours in a work day and/or more than forty (40) hours in a workweek and /or more than twelve (12) hours in a work day and received a non-discretionary incentive payment and/or bonus.
- iii. Whether Defendants also violated Labor Codes sections 200, 1194, and 1197 for failing to pay minimum wages for time spent under Defendants' control and "off the clock" without pay during the work shifts. Labor Code §1197 provides that employees are to be paid minimum wage for each hour worked, and cannot be averaged the minimum and the payment of a lesser wage than the established is unlawful;
- iv. Whether Defendants violated sections 201-203 of the Labor Code by failing to pay all earned wages and/or premium wages due and owing at the time that Plaintiff and any Class Members' employment with Defendants terminated;
- v. Whether Defendants violated section 204 of the Labor Code by failing to pay all earned wages and/or premium wages due and owing to Plaintiff and Class Members in a timely manner during their employment;
- vi. Whether Defendants violated sections 226 of the Labor Code and applicable IWC Wage Orders by failing to, among other violations, maintain accurate records of Non-Exempt Employees' earned wages, work periods, meal periods and deductions;
- vii. Whether Defendants violated section 17200 *et seq.* of the Business and Professions Code by failing to pay lawful wages owed including overtime and minimum wages to Non-Exempt Employees; failing to provide lawful rest and/or meal periods and failing to pay compensation in lieu thereof; failing to pay wages due and owing at the

time the employee's employment with Defendants terminated failing to keep accurate records all in violation of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 512, 1194, 1199 and applicable IWC Wage Orders.

viii. Whether Defendants violated section 17200 *et seq.* of the Business and Professions Code and Labor Code sections §§201, 202, 203, 204, 226, 1194, 1199, and applicable IWC Wage Orders which violation constitutes a violation of fundamental public policy;

C. Typicality

30. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff and all members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of California laws, regulations, and statutes as alleged herein.

D. Adequacy of Representation

31. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Counsel who represents Plaintiff is competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

32. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' unlawful policy and/or practice herein complained of.

33. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VI.
CAUSES OF ACTION

First Cause of Action

Failure to Pay All Lawful Wages Owed
(Against All Defendants)

34. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

35. As set forth herein, during the liability Defendants' policies, practices and work shift requirements resulted in Plaintiff and Non-Exempt Employees working "off the clock" and not receiving compensation for all earned wages including minimum wage and overtime in violation of California state wage and hour laws.

36. During the liability period, Defendants' policies and/or practices resulted in Plaintiff and Non Exempt Employees working "off the clock" and in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without receiving the proper compensation at the rate of time and one-half (1 1/2) of such employee's regular rate of pay and/or in excess of twelve (12) hours in a work day without receiving the proper compensation of double such employee's regular rate.

37. During the liability period, Defendants' policies and/or practices resulted in the underpaying of overtime wages paid to Non-Exempt Employees by failing to include non-discretionary incentive payments in the regular rate for purposes of calculating overtime compensation.

38. During the liability period, Defendants' policies and/or practices resulted in Plaintiff and Non Exempt Employees not receiving minimum wages for time spent under the control of Defendants and "off the clock" without pay. Labor Code §1197 provides that employees are to be paid minimum wage for each hour worked, and cannot be averaged the minimum and the payment of a lesser wage than the established is unlawful.

1 39. During the liability period, Defendant's policies and practices resulted in the
2 failure to timely pay wages owed to Non Exempt Employees for all hours worked during their
3 employment.

4 40. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
5 represent have been deprived of compensation for all earned wages including minimum wage
6 and overtime wages in amounts to be determined at trial, and are entitled to recovery of such
7 amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code
8 section 1194.

9 41. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
10 described herein and below.

11
12 **Second Cause of Action**
13 Failure to Timely Pay Wages Due at Termination
 (Against All Defendants)

14 42. Plaintiff repeats and incorporates herein by reference each and every allegation set
15 forth above, as though fully set forth herein.

16 43. Sections 201 and 202 of the California Labor Code require Defendants to pay its
17 employees all wages due within 72 hours of termination of employment. Section 203 of the
18 Labor Code provides that if an employer willfully fails to timely pay such wages the employer
19 must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in
20 full or an action is commenced. The penalty cannot exceed 30 days of wages.

21 44. Affected class members are entitled to compensation for all lawful wages earned
22 and not paid as set forth herein but to date have not received such compensation therefore
23 entitling them Labor Code section 203 penalties.

24 45. More than 30 days have passed since Plaintiff and affected Class Members have
25 left Defendants' employ, and on information and belief, have not received payment pursuant to
26 Labor Code §203. As a consequence of Defendants' willful conduct in not paying all earned
27
28

1 wages, certain Class Members are entitled to 30 days' wages as a penalty under Labor Code
2 section 203 for failure to pay legal wages.

3 46. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
4 described herein and below.

5 **Third Cause of Action**
6 Knowing and Intentional Failure to Comply With Itemized Employee
7 Wage Statement Provisions
(Against All Defendants)

8 47. Plaintiff repeats and incorporates herein by reference each and every allegation set
9 forth above, as though fully set forth herein.

10 48. Section 226(a) of the California Labor Code requires Defendants to itemize in
11 wage statements all deductions from payment of wages and to accurately report total hours
12 worked by Plaintiff and the members of the proposed class. IWC Wage Orders require
13 Defendants to maintain time records showing, among others, when the employee begins and ends
14 each work period, meal periods, split shift intervals and total daily hours worked in an itemized
15 wage statement, and must show all deductions and reimbursements from payment of wages, and
16 accurately report total hours worked by Plaintiff and the members of the proposed class.

17 49. As set forth herein, Defendants have failed to record all or some of the items
18 delineated in Industrial Wage Orders and Labor Code §226 including, but not limited to, failing
19 to accurately record and/or state all time worked and correct rate of pay on wage statements
20 issued to Plaintiff and Class Members

21 50. Plaintiff and Class Members have been injured by Defendants' actions by
22 rendering them unaware of the full compensation to which they were entitled under applicable
23 provisions of the California Labor Code and applicable IWC Wage Orders.

24 51. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a
25 maximum of \$4,000.00 each for record-keeping violations.

26 52. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
27 described herein and below.
28

Fourth Cause of Action
Violation of Unfair Competition Law
(Against All Defendants)

53. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

54. Business & Professions Code Section 17200 provides:

As used in this chapter, unfair competition shall mean and include any ***unlawful, unfair*** or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.) (Emphasis added.)

55. Defendants' violations of the Labor Code and Wage Order provisions set forth above constitute unlawful and/or unfair business acts or practices.

56. The actions of Defendants, as alleged within this Complaint, constitute false, fraudulent, unlawful, unfair, fraudulent and deceptive business practices, within the meaning of Business and Professions Code section 17200, *et seq.*

57. Plaintiff and Class Members have been personally aggrieved by Defendants' unlawful and unfair business acts and practices alleged herein.

58. As a direct and proximate result of the unfair business practices of Defendants, and each of them, Plaintiff, individually and on behalf of all employees similarly situated, is entitled to restitution of all wages which have been unlawfully withheld from Plaintiff and members of the Plaintiffs Class as a result of the business acts and practices described herein.

59. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described herein and below.

VII.

PRAYER

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action;
2. For compensatory damages in an amount according to proof with interest thereon;

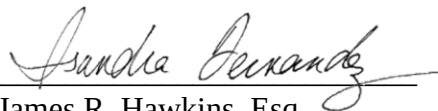
- 1 3. For economic and/or special damages in an amount according to proof with interest
2 thereon;
3 4. For premium pay and penalties pursuant to Labor Code §203;
4 5. For attorneys' fees, interests and costs of suit under Labor Code §§ 226,1194
5 6. For such other and further relief as the Court deems just and proper.
6

7 **DEMAND FOR JURY TRIAL**
8

9 Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.
10
11

12 **Dated: February 22, 2021**

JAMES HAWKINS, APLC

13
14 

15 James R. Hawkins, Esq.

16 Isandra Y. Fernandez, Esq.

17 Attorneys for Plaintiff

18 Brian Redhair
19
20
21
22
23
24
25
26
27
28