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Putative Collective, Class, Aggrieved
Employees and the State of California***

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

CONRAD RELOJ, on behalf of all
others similarly situated,

Plaintiff,

v.

GOVERNMENT EMPLOYEES
INSURANCE COMPANY INC. d/b/a
GEICO,

Defendant.

Case No. 3:21-cv-01751-L-MSB

**FIRST AMENDED COLLECTIVE,
CLASS, AND PAGA COMPLAINT**

DEMAND FOR JURY TRIAL

1 Plaintiff Conrad Reloj (“Plaintiff”), on behalf of himself and all others similarly
2 situated, by and through his attorneys, pursuant to this Court’s January 30, 2025
3 Order, files this First Amended Complaint against Defendant Government
4 Employees Insurance Company Inc. d/b/a GEICO (“GEICO” or “Defendant”)
5 seeking to recover for Defendant’s violations of the Fair Labor Standards Act of
6 1938, 29 U.S.C. §§ 201 *et seq.* (“FLSA”); applicable California Labor Code
7 provisions; applicable Industrial Welfare Commission (“IWC”) Wage Orders; the
8 Unfair Business Practices Act; and California Business and Professions Code §§
9 17200, *et seq.* (“UCL”); Sections 2699(a) and (f) of the California Private Attorneys
10 General Act (“PAGA”) Plaintiff files this Complaint and complains and alleges as
11 follows:

12 **INTRODUCTION**

13 1. This is a collective and class action complaint against GEICO to
14 challenge its policies and practices of: (1) failing to pay non-exempt, hourly
15 employees who work as Auto Claim and/or Damage Adjusters for all hours worked;
16 (2) failing to pay required minimum wage; (3) failing to pay required overtime wages;
17 (4) failing to authorize, permit, and/or make meal and rest periods available, and
18 failing to pay premium pay for these missed breaks; (5) failing to provide accurate,
19 itemized wage statements; and (6) failing to pay all wages after termination of
20 employment.

21 2. Plaintiff also brings this as a PAGA enforcement action against GEICO
22 on behalf of individuals who work or worked for GEICO as Auto Claim and/or
23 Damage Adjusters (“Adjusters”) in California, including similar roles with different
24 titles, and have been subject to Defendant’s policies and practices alleged herein (the
25 “Aggrieved Employees”).¹ Throughout the relevant time period, Plaintiff alleges that

26
27 ¹ It is the intent of the parties that Aggrieved Employees includes all Auto Claim
28 and/or Damage Adjusters who are or were Aggrieved Employees in *Herzog v.*

1 he and Aggrieved Employees have been denied payment for all hours worked,
2 including overtime, and did not receive compliant meal or rest breaks.

3 3. Plaintiff Conrad Reloj is a former non-exempt, hourly employee who
4 worked as an Auto Damage Adjuster for GEICO in San Diego, California. In this
5 role, Plaintiff investigated auto insurance claims to ascertain the extent of any liability
6 on behalf of Defendant, who furnishes car insurance. Plaintiff seeks to represent other
7 current and former non-exempt, hourly employees of Defendant who work or worked
8 for GEICO as Auto Claim and/or Damage Adjusters, including similar roles with
9 different titles (collectively “Adjusters”), in California. Plaintiff alleges that
10 Defendant has engaged in unlawful patterns and practices of failing to meet the
11 requirements of the FLSA, the California Labor Code, and the California Business
12 and Professions Code.

13 4. Plaintiff and putative Collective and Class Members perform off-the-
14 clock work for which they are not adequately compensated. Plaintiff and putative
15 Collective and Class Members must complete a certain number of claims or
16 inspections in their scheduled hours (their “quota”), and pressure from GEICO to
17 meet these quotas within the allotted 7.75 paid hours per day often causes the
18 Adjusters to start working while off-the-clock before they are scheduled to begin the
19 workday and after they are scheduled to end their shift. Failure to meet GEICO’s
20 quota within scheduled hours results in negative implications for the performance
21 metrics of Plaintiff and putative Collective and Class Members, including
22 compensation ramifications and/or disciplinary action.

23
24 *GEICO*, San Diego Superior Court Case No. 37-2020-00045064CU-OE-CTL, and
25 *Reloj v. GEICO*, Alameda Superior Court Case No. 21CV003563, notwithstanding
26 the fact that such Aggrieved Employees may not have experienced violations within
27 1 year of the filing of this amendment. Defendant hereby waives all time-based
28 defenses pertaining to PAGA claims asserted herein except to the extent that such
time-based defenses could be asserted with respect to the timeliness of claims in the
two aforementioned cases.

1 5. Because of these issues, Defendant does not pay Plaintiff and putative
2 Collective and Class Members for all hours worked, including minimum wage and
3 overtime. Ultimately, the time that Defendant requires Plaintiff and putative
4 Collective and Class Members to work without compensation deprives them of
5 substantial amounts of pay to which they are entitled under federal law and the laws
6 of California.

7 6. To the extent that Plaintiff and putative Collective and Class Members
8 regularly work in excess of eight hours per day and forty hours per week, this off-
9 the-clock work should be compensated at overtime rates. However, Defendant fails
10 to pay Plaintiff and the putative Collective and Class Members for any of this work
11 performed, including the required overtime premiums, in violation of the FLSA and
12 the California Labor Code.

13 7. Plaintiff and other putative Collective and Class Members regularly work
14 in excess of eight hours per days and are routinely denied timely and compliant meal
15 and rest periods, and the requisite pay for working through such breaks.

16 8. As a result of Defendant's pressure on Adjusters to meet the requisite
17 quota within the scheduled hours of paid time, Defendant routinely refuses to
18 authorize, permit, and/or make available full, timely, uninterrupted thirty-minute
19 meal periods as required by law. Instead, Plaintiff and putative Collective and Class
20 Members regularly work past the fifth hour of work without the opportunity to take
21 a meal break. Even when they do receive some form of timely meal break, it is often
22 interrupted as Plaintiff and putative Collective and Class Members are encouraged
23 and often required to perform work during their break.

24 9. Defendant likewise routinely refuses to authorize or permit Plaintiff and
25 putative Collective and Class Members to take ten-minute rest periods as required by
26 California law.

27 10. As a result of the above violations, Defendant fails to provide Plaintiff
28 and putative Collective and Class Members with accurate, itemized wage statements.

11. Defendant is also liable for violation of the Unfair Business Practices Act for the violations described above.

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

13. Plaintiff files this action to recover all penalties, and other damages on behalf of himself and Aggrieved Employees.

14. Plaintiff seeks full compensation on behalf of himself and putative Collective and Class Members for all unpaid wages, unpaid overtime, noncompliant meal and rest periods, waiting time penalties, and premium pay. Plaintiff also seeks declaratory and injunctive relief, including restitution. Finally, Plaintiff seeks reasonable attorneys' fees and costs under the FLSA, PAGA, California Labor Code, and California Code of Civil Procedure § 1021.5.

PARTIES

15. Plaintiff Conrad Reloj worked for GEICO as an Adjuster in San Diego, California. Plaintiff was employed by GEICO from 1999 until December 2020.

16. Plaintiff's duties as an Adjuster include inspecting vehicles for collision and comprehensive damages; customer service via the phone or in-person engagement; submitting claims on behalf individuals for vehicle repairs; submitting

1 online forms in real time; and issuing checks on behalf of GEICO for insurance
2 payouts.

3 17. Plaintiff resides in the State of California and is over eighteen years of
4 age. Plaintiff has been a resident of the State of California all relevant times described
5 herein.

6 18. Defendant GEICO is a Maryland corporation. On information and belief,
7 Defendant is a wholly owned subsidiary of Berkshire Hathaway, Inc., and its
8 headquarters are located at 5260 Western Avenue, Chevy Chase, Maryland, 20815.
9 Defendant does business throughout the United States and maintains 18 regional
10 offices which include offices in San Diego, California, in addition to its headquarters
11 in Chevy Chase, Maryland.

12 19. At all relevant times, Defendant has done business under the laws of
13 California, has places of business in the State of California, including in this judicial
14 district, and has employed Putative Class Members in this judicial district. Defendant
15 is a “person” as defined in California Labor Code § 18 and California Business and
16 Professions Code § 17201. Defendant is also an “employer” as that term is used in
17 the California Labor Code, the FLSA, and the IWC Wage Orders.

18 **JURISDICTION AND VENUE**

19 20. The FLSA authorizes private rights of action to recover damages for
20 violation of the FLSA’s wage and hour provisions. 29 U.S.C. § 216(b). This Court
21 has original federal question jurisdiction under 28 U.S.C. § 1331. This Court has
22 supplemental jurisdiction over the California Labor Code and PAGA claims under
23 28 U.S.C. § 1367(a) because they are so related to this action that they form part of
24 the same case or controversy.

25 21. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b). At all
26 material times Defendant has been actively conducting business in the State of
27 California and within the geographic area encompassing the Southern District of
28 California judicial district.

FACTUAL ALLEGATIONS

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

23. Plaintiff and putative Collective and Class Members are current or former Adjusters in California. The duties of Adjusters, including Plaintiff, include but are not limited to processing insurance claims, calling customers, inspecting vehicles for collision and comprehensive damages, maintaining and managing accurate funds for the issuance of claim payments, submitting reports online in real time, and driving to customer homes or working in auto body shops to assess vehicle damage.

24. As Adjusters, Plaintiff and putative Collective and Class Members are expected to meet GEICO's required quota of processing or working on a certain number of claims or inspections and taking a certain number of customer calls within a given period. Plaintiff is informed, believes, and thereon alleges that the policies and practices of Defendant have at all relevant times been similar for Plaintiff and the putative Collective and Class Members, regardless of location in California.

25. While working for Defendant, Plaintiff and putative Collective and Class Members are scheduled to work approximately seven hours and 45 minutes per day, five days a week, for a total of approximately 38.75 hours per week. Plaintiff and putative Collective and Class Members work these scheduled hours. However, Plaintiff and putative Collective and Class Members are regularly required by GEICO management to work additional hours beyond this scheduled time while off-the-clock and without receiving compensation. Plaintiff and putative Collective and Class Members typically work eight and a half to ten hours per day to fulfill the required workload and do not receive pay for all time worked in violation of the FLSA. For numerous workweeks during their employment by GEICO, Plaintiff and putative Collective and Class Members worked off-the-clock and without compensation

1 during overtime hours (more than 8 hours a day in California and more than 40 hours
2 per week in all other states).

3 26. GEICO disincentivizes Plaintiff and putative Collective and Class
4 Members from reporting this off-the-clock or unrecorded time because reporting such
5 time would negatively impact Plaintiff and putative Collective and Class Members'
6 productivity metrics and evaluations. If an employee does not meet the required quota
7 of claims, inspections and/or customer calls, the consequence is being written up or
8 placed on probation or reduced performance metric scores causing negative
9 ramifications for pay increases and promotion opportunities.

10 27. In some instances, Plaintiff and putative Collective and Class Members
11 begin the workday one hour prior to the start of their paid scheduled shifts to perform
12 work activities which include, among other tasks, handling claims and calling
13 customers and repair shops. This time worked is unpaid. Moreover, under
14 Defendant's company-wide practice, Defendant requires Plaintiff and putative
15 Collective and Class Members to log into Defendant's online system to submit claims
16 and other documentation in real time. Therefore, Defendant knows or should know
17 that work is being performed on its online system without compensation.

18 28. Plaintiff and putative Collective and Class Members continue working
19 after their shift ends to complete tasks including, but not limited to, submitting
20 paperwork and claims, and following up on customer calls. These tasks are completed
21 while being logged into Defendant's online system and are tracked in real time.
22 Plaintiff and putative Collective and Class Members are not compensated for this
23 time that Defendant requires, suffers, and/or permits them to work.

24 29. Defendant also requires Plaintiff and putative Collective and Class
25 Members to work off-the-clock to attend meetings, outside of their scheduled shifts
26 and without pay.

27 30. Plaintiff and putative Collective and Class Members use their personal
28 vehicles to travel to semi-annual conference meetings. Travel time as well as the time

1 spent at the conference meetings is also unpaid.

2 31. In addition to claims and/or inspections quotas, Defendant utilizes a
3 performance rating system that tracks volume, efficiency, and customer satisfaction
4 in answering customer calls. As a result, Plaintiff and putative Collective and Class
5 Members take customer calls before, during, and after scheduled shifts and must
6 bring their cell phones to their unpaid meal breaks as a means of keeping their
7 performance metrics high.

8 32. All of this time that Defendant requires Plaintiff and putative Collective
9 and Class Members to work without compensation deprives them of substantial
10 amounts of pay to which they are entitled under federal and California law, including
11 overtime premium pay for hours worked in excess of 40 per workweek.

12 33. Moreover, Defendant routinely denies timely and compliant off-duty
13 meal and rest periods for two primary reasons: (1) Defendant does not authorize,
14 permit, and/or make available timely meal and rest breaks for Plaintiff and putative
15 Collective and Class Members; and (2) Defendant knows or has reason to know that
16 Plaintiff and putative Collective and Class Members are too busy with work during
17 the day to have time to take bona fide meal and rest breaks.

18 34. For example, Plaintiff and putative Collective and Class Members are
19 allocated a 30 to 45-minute meal break to be taken at no specific time during a
20 shift. But, due to Defendant's required workload and quotas, Plaintiff and putative
21 Collective and Class Members are often unable to take such breaks at all. Even when
22 they do receive some form of meal break, Plaintiff and putative Collective and Class
23 Members are often interrupted to perform work or answer customer calls, even
24 though they are off-the-clock in Defendant's timekeeping records. As a result,
25 Plaintiff and putative Collective and Class Members regularly work through unpaid
26 time that is allocated for a meal break. Defendant knows or should know about such
27 uncompensated work performed during unpaid meal breaks.

28 35. In addition, on information and belief, Defendant and its managers

1 routinely manipulate the timecards of these employees to make it appear that they
2 took a timely and compliant meal break in order to avoid paying additional wages
3 and penalties.

4 36. Plaintiff and putative Collective and Class Members are routinely denied
5 full, timely, and uninterrupted rest periods as well. While Defendant denies compliant
6 meal periods to these workers on most workdays, it virtually never provides
7 compliant rest periods.

8 37. When Plaintiff and putative Collective and Class Members experience
9 untimely or interrupted meal and rest breaks, or do not receive these breaks at all,
10 Defendant fails to pay them the required premium pay.

11 38. Defendant does not provide Plaintiff and putative Collective and Class
12 Members with accurate wage statements as required by California law. These
13 workers receive wage statements that do not reflect all hours worked, premium pay
14 for missed meal and rest breaks, and applicable overtime premiums.

15 39. Defendant does not provide Plaintiff and putative Collective and Class
16 Members with full payment of all wages owed at the end of employment. These
17 workers are owed wages and premium pay for all time worked, overtime, and missed
18 meal and rest breaks when their employment ends. These amounts remain unpaid
19 after voluntary and involuntary termination. As a consequence, Defendant is subject
20 to waiting time penalties under the California Labor Code.

21 40. Plaintiff is informed, believes, and thereon alleges that Defendant's
22 unlawful conduct has been widespread, repeated, and consistent as to the putative
23 Collective and Class members and throughout Defendant's operations in California.

24 41. Defendant's conduct was knowing, willful, carried out in bad faith, and
25 caused significant damages to Plaintiff and putative Collective and Class members in
26 an amount to be determined at trial. Defendant did not take requisite steps to ensure
27 that Plaintiff and putative Collective and Class members were paid for all time
28 worked. Upon information and belief, Defendant did not conduct any study or audit

1 of its compensation practices to ensure that Plaintiff and putative Collective and Class
2 members did not perform work without compensation during any breaks.

3 **COLLECTIVE ACTION ALLEGATIONS UNDER THE FLSA**

4 42. Plaintiff brings the First Count (the FLSA claim) as an “opt-in” collective
5 action pursuant to 29 U.S.C. § 216(b) on behalf of himself and a proposed collection
6 of similarly situated employees defined as:

7 All current and former non-exempt, hourly employees of
8 Defendant working as Auto Claim and/or Damage
9 Adjusters (including similar roles with different titles)
10 throughout California during the time period from three
years prior to the filing of the complaint until resolution of
this action. (the “Collective”).

11 43. Plaintiff, individually and on behalf of other similarly situated persons
12 defined above, seeks relief on a collective basis challenging Defendant’s policies and
13 practices of failing to accurately record all hours worked and failing to properly pay
14 for all hours worked, including overtime compensation and required minimum
15 wages. The number and identity of other similarly situated persons yet to opt-in and
16 consent to be party-Plaintiff may be determined from Defendant’s records, and
17 potential opt-ins may be easily and quickly notified of the pendency of this action.

18 44. Plaintiff’s claims for violations of the FLSA may be brought and
19 maintained as an “opt-in” collective action pursuant to § 216(b) of the FLSA because
20 Plaintiff’s FLSA claims are similar to the claims of the members of the Collective.

21 45. The members of the Collective are similarly situated, as they have
22 substantially similar job duties and requirements and are subject to a common policy,
23 practice, or plan that requires them to perform work “off-the-clock” and without
24 compensation in violation of the FLSA.

25 46. Plaintiff is representative of the members of the Collective and is acting
26 on behalf of their interests as well as his own interests in bringing this action.

27 47. Plaintiff will fairly and adequately represent and protect the interests of
28 the members of the Collective. Plaintiff has retained counsel competent and

1 experienced in employment and wage and hour class action and collective action
2 litigation.

3 48. The similarly situated members of the Collective are known to
4 Defendant, are readily identifiable, and may be located through Defendant's records.
5 These similarly situated employees may readily be notified of this action and allowed
6 to "opt-in" to this case pursuant to 29 U.S.C. § 216(b) for the purpose of collectively
7 adjudicating their claims for unpaid wages, unpaid overtime compensation,
8 liquidated damages (or, alternatively, interest), and attorneys' fees and costs under
9 the FLSA.

10 49. Plaintiff contemplates providing a notice or notices to the Collective, as
11 approved by the Court, to be delivered via United States Mail. The notice or notices
12 shall, among other things, advise each of the recipients that they shall be entitled to
13 "opt in" to the FLSA Action if they so request by the date specified within the notice,
14 and that any judgment on the FLSA Action, whether favorable or not, entered in this
15 case will bind all FLSA collective members who timely request inclusion in the class.

16 **CLASS ACTION ALLEGATIONS UNDER FED. R. CIV. P. 23**

17 50. Plaintiff brings the Second through Eighth Counts (the California Class
18 Claims) as an "opt-out" class action pursuant to Federal Rule of Civil Procedure 23.
19 The California Class is initially defined as:

20 All current and former non-exempt hourly employees of
21 Defendant working as Auto Claim and/or Damage
22 Adjusters (including similar roles with different titles)
23 throughout the State of California during the time period
from four years prior to the filing of the complaint until
resolution of this action. (the "California Class").

24 51. **Numerosity:** Defendant has employed potentially thousands of non-
25 exempt, hourly Adjusters during the applicable statutory period. The number of
26 California Class members are therefore far too numerous to be individually joined in
27 this lawsuit.

28 52. **Existence and Predominance of Common Questions:** There are

1 questions of law and fact common to Plaintiff and the California Class members that
2 predominate over any questions affecting only individual members of the Class.

3 These common questions of law and fact include, without limitation:

- 4 a. Whether Defendant fails to authorize and permit, make available,
5 and/or provide California Class members meal periods to which they
6 are entitled in violation of the Labor Code and Wage Orders;
- 7 b. Whether Defendant fails to authorize and permit, make available,
8 and/or provide California Class members meal periods to which they
9 are entitled in violation of Business and Professions Code §§ 17200
10 *et seq.*;
- 11 c. Whether Defendant fails to authorize and permit, make available,
12 and/or provide California Class members rest periods to which they
13 are entitled in violation of the Labor Code and Wage Orders;
- 14 d. Whether Defendant fails to authorize and permit, make available,
15 and/or provide California Class Members rest periods to which they
16 are entitled in violation of Business and Professions Code §§ 17200
17 *et seq.*;
- 18 e. Whether Defendant fails to compensate California Class members for
19 all hours worked, including minimum wages and overtime
20 compensation, in violation of the Labor Code and Wage Orders;
- 21 f. Whether Defendant fails to compensate California Class members for
22 all hours worked in violation of Business and Professions Code §§
23 17200 *et seq.*;
- 24 g. Whether Defendant has a policy and/or practice of requiring
25 California Class members to perform work off-the-clock and without
26 compensation;
- 27 h. Whether Defendant fails to provide California Class members with
28 timely, accurate itemized wage statements in violation of the Labor

Code and Wage Orders;

- i. Whether Defendant fails to pay California Class members all wages due upon the end of their employment in violation of the Labor Code and Wage Orders;
- j. Whether Defendant's failure to pay California Class members all wages due upon the end of their employment has been an unlawful, unfair, or fraudulent business act or practice in violation of Business and Professions Code §§ 17200 *et seq.*;
- k. The proper formula for calculating restitution, damages, and penalties owed to Plaintiff and the California Class members as alleged herein.

53. **Typicality**: Plaintiff's claims are typical of the claims of the California Class. Defendant's common policies, practices, and course of conduct in violation of law as alleged herein have caused Plaintiff and the California Class members to sustain the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the California Class.

54. **Adequacy**: Plaintiff will fairly and adequately represent and protect the interests of the California Class because Plaintiff's interests do not conflict with the interests of the members of the Class he seeks to represent. Plaintiff has retained Counsel competent and experienced in complex employment and wage and hour class action litigation and intends to prosecute this action vigorously. Plaintiff and his Counsel will fairly and adequately protect the interests of the Class.

55. **Superiority**: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all California Class members is not practicable, and questions of law and fact common to Plaintiff and putative Class Members predominate over any questions affecting only individual members of the Class. The injury suffered by each California Class member, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions against Defendant economically feasible.

1 Individualized litigation increases the delay and expense to all Parties and the Court.
2 By contrast, class action treatment will allow those similarly situated persons to
3 litigate their claims in the manner that is most efficient and economical for the parties
4 and the judicial system.

5 56. In the alternative, the Class may be certified because the prosecution of
6 separate actions by the individual members of the Class would create a risk of
7 inconsistent or varying adjudication with respect to individual members of the Class,
8 and, in turn, would establish incompatible standards of conduct for Defendant.

9 57. Class treatment will allow those similarly situated persons to litigate their
10 claims in the manner most efficient and economical for the Parties and the judicial
11 system.

12 58. Plaintiff knows of no difficulty that would be encountered in the
13 management of this litigation that would preclude its maintenance as a class action.

14 59. Plaintiff intends to send notice to all California Class members to the
15 extent required under applicable class action procedures. Plaintiff contemplates
16 providing a notice or notices to the California Class, as approved by the Court, to be
17 delivered through the United State Mail. The notice or notices shall, among other
18 things, advise the California Class that they shall be entitled to “opt out” of the class
19 certified for the California Action if they so request by a date specified within the
20 notice, and that any judgment on the California Action, whether favorable or not,
21 entered in this case will bind all California Class members except those who
22 affirmatively exclude themselves by timely opting out.

23 **FIRST CAUSE OF ACTION**
24 **Violation of the Fair Labor Standards Act**
(By Plaintiff and the Collective)

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

27 61. The FLSA requires that covered employees receive compensation for all
28 hours worked and overtime compensation at not less than one and one-half times the

1 regular rate of pay for all hours worked in excess of forty hours in a work week. 29
2 U.S.C. § 207(a)(1).

3 62. At all times material herein, Plaintiff and the Collective are covered
4 employees entitled to the rights, protections, and benefits provided under the FLSA.

5 63. Defendant is a covered employer required to comply with the FLSA's
6 mandates.

7 64. Defendant has violated the FLSA with respect to Plaintiff and the
8 Collective, by, inter alia, failing to compensate Plaintiff and the Collective for all
9 hours worked and, with respect to such hours, failing to pay the legally mandated
10 overtime premium for such work and/or minimum wage. See 29 U.S.C. § 206; 29
11 U.S.C. § 207 (a), (g); 29 C.F.R. § 531.35. Defendant has also violated the FLSA by
12 failing to keep required, accurate records of all hours worked by Plaintiff and the
13 Collective. 29 U.S.C. § 211(c).

14 65. Plaintiff and the Collective are victims of a uniform and company-wide
15 compensation policy of not paying for hours worked prior to the start of a shift and
16 after the shift ends. This uniform policy, in violation of the FLSA, has been applied
17 to current and former non-exempt, hourly Adjusters of Defendant, working in offices
18 throughout California.

19 66. Plaintiff and the Collective are entitled to damages equal to the mandated
20 pay, including straight time, and overtime premium pay within the three years
21 preceding the filing of the original complaint, plus periods of equitable tolling,
22 because Defendant has acted willfully and knew or showed reckless disregard for
23 whether the alleged conduct was prohibited by the FLSA.

24 67. Defendant has acted neither in good faith nor with reasonable grounds to
25 believe that its actions and omissions were not a violation of the FLSA, and as a result
26 thereof, Plaintiff and the Collective are entitled to recover an award of liquidated
27 damages in an amount equal to the amount of unpaid overtime pay and/or
28 prejudgment interest at the applicable rate. 29 U.S.C. § 216(b).

1 balance of the full amount of this minimum wage or
2 overtime compensation, including interest thereon,
reasonable attorneys' fees, and costs of suit.

3 75. IWC Wage Orders 7-2001(2)(G) and 4-2001(2)(K) define hours worked
4 as "the time during which an employee is subject to the control of an employer, and
5 includes all the time the employee is suffered or permitted to work, whether or not
6 required to do so...."

7 76. In violation of California law, Defendant knowingly and willfully refuses
8 to perform its obligation to provide Plaintiff and putative Class Members with
9 compensation for all time worked. Therefore, Defendant committed, and continues
10 to commit, the acts alleged herein knowingly and willfully, and in conscious
11 disregard of Plaintiff and California Class members' rights. Plaintiff and California
12 Class Members are thus entitled to recover nominal, actual, and compensatory
13 damages, plus interest, attorneys' fees, expenses and costs of suit.

14 77. As a proximate result of the aforementioned violations, Plaintiff and the
15 putative Class have been damaged in an amount according to proof at time of trial.

16 78. Wherefore, Plaintiff and the California Class request relief as hereinafter
17 provided.

18 **THIRD CAUSE OF ACTION**
Failure to Pay Minimum Wage
19 **(By Plaintiff and the California Class)**

20 79. Plaintiff re-alleges and incorporates the foregoing paragraphs as though
21 fully set forth herein.

22 80. Defendants have maintained policies and procedures that force Plaintiff
23 and California Class members to work off the clock, without compensation – let alone
24 the minimum wage. Due to Defendant's systematic denial of payment for all hours
25 worked, Plaintiff and California Class members are routinely compensated at a rate
26 that is less than the statutory minimum wage.

27 81. During the applicable statutory period, Labor Code §§ 1182.11, 1182.12,
28 and 1197, and the Minimum Wage Order were in full force and effect and required

1 that employees receive the minimum wage for all hours worked at the rate of eight
2 dollars (\$8.00) per hour commencing January 1, 2008, at the rate of nine dollars
3 (\$9.00) per hour commencing July 1, 2014, and at the rate of ten dollars (\$10.00) per
4 hour commencing January 1, 2016 and ending December 31, 2016. For employers
5 with 26 or more employees, the minimum wage for all hours worked was ten dollars
6 and fifty cents (\$10.50) per hour from January 1, 2017 to December 31, 2017,
7 inclusive; eleven dollars (\$11.00) per hour from January 1, 2018 to December 31,
8 2018, inclusive; and twelve dollars (\$12.00) per hour from January 1, 2019 to the
9 present.

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

14 83. Labor Code § 1194(a) provides as follows:

15
16 Notwithstanding any agreement to work for a lesser wage,
17 any employee receiving less than the legal minimum wage
18 or the legal overtime compensation applicable to the
19 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 attorneys’ fees, and costs of suit.

20 84. Labor Code § 1194.2 provides that, in any action under § 1194 to recover
21 wages because of the payment of a wage less than minimum wage fixed by an order
22 of the Commission, an employee shall be entitled to recover liquidated damages in
23 an amount equal to the wages unlawfully unpaid and interest thereon.

24 85. Plaintiff and the California Class members are not paid the statutory
25 minimum wage for any work performed prior to the start of the shift/before logging
26 in and any work performed after their scheduled shift ends even though they are under
27 Defendant’s control and cannot effectively use the time to their own benefit. This
28 time is compensable as a matter of law.

1 86. Defendant's unlawful compensation scheme has denied Plaintiff and the
2 California Class the minimum wages to which they are entitled under the law. As
3 explained above, Plaintiff and members of the California Class routinely have been
4 subject to the Defendant's control without pay and performed work for which they
5 are not compensated even at the statutory minimum wage.

6 87. As a direct and proximate result of Defendant's unlawful acts and/or
7 omissions, Plaintiff and the California Class members have been deprived of
8 minimum wages in an amount to be determined at trial, and are entitled to a recovery
9 of such amount, plus liquidated damages, plus interest thereon, attorneys' fees, and
10 costs of suit pursuant to Labor Code §§ 1194, 1194.2 and 1197.1.

11 88. Wherefore, Plaintiff and the California Class request relief as hereinafter
12 provided.

13 **FOURTH CAUSE OF ACTION**
14 **Failure to Pay Overtime Wages**
 (By Plaintiff and the California Class)

15 89. Plaintiff re-alleges and incorporates the foregoing paragraphs as though
16 fully set forth herein.

17 90. Defendant does not properly compensate Plaintiff and California Class
18 members with appropriate overtime premiums, including time-and-a half premiums
19 based on their regular rate of pay, as required by California law.

20 91. California Labor Code § 510(a) provides as follows:

21 Eight hours of labor constitutes a day's work. Any work in
22 excess of eight hours in one workday and any work in excess
23 of 40 hours in any one workweek and the first eight hours
24 worked on the seventh day of work in any one workweek
25 shall be compensated at the rate of no less than one and one-
26 half times the regular rate of pay for an employee. Any work
27 in excess of 12 hours in one day shall be compensated at the
28 rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on
any seventh day of a workweek shall be compensated at the
rate of no less than twice the regular rate of pay of an
employee. Nothing in this section requires an employer to
combine more than one rate of overtime compensation in
order to calculate the amount to be paid to an employee for
any hour of overtime work.

1 92. California Labor Code § 1194(a) provides as follows:

2 Notwithstanding any agreement to work for a lesser wage,
3 any employee receiving less than the legal minimum wage
4 or the legal overtime compensation applicable to the
5 employee is entitled to recover in a civil action the unpaid
6 balance of the full amount of this minimum wage or
7 overtime compensation, including interest thereon,
8 reasonable attorney's fees, and costs of suit.

9 93. California Labor Code § 200 defines wages as “all amounts for labor
10 performed by employees of every description, whether the amount is fixed or
11 ascertained by the standard of time, task, piece, commission basis or other method of
12 calculation.” All such wages are subject to California's overtime requirements,
13 including those set forth above.

14 94. Defendant's policies and practices of requiring Plaintiff and California
15 Class members to perform work off-the-clock before and after their paid shifts are
16 unlawful. Even absent this off-the-clock work, many of Defendant's hourly, non-
17 exempt employees who work as Adjusters, including Plaintiff and California Class
18 members, have worked over eight hours in a day and/or over forty hours in a week.
19 Accordingly, as a result of Defendant's unlawful policy alleged herein of requiring
20 Plaintiff and California Class members to perform off-the-clock work before the
21 beginning of their paid shifts, while clocked out on meal breaks, and at other times
22 Plaintiff and California Class members have worked overtime hours for Defendant
23 without being paid overtime premiums in violation of the California Labor Code,
24 applicable IWC Wage Orders, and other applicable law.

25 95. Defendant has knowingly and willfully refused to perform its obligations
26 to compensate Plaintiff and California Class members for all premium wages for
27 overtime work. Defendant is liable to Plaintiff and California Class members alleged
28 herein for the unpaid overtime and civil penalties, with interest thereon. Furthermore,
29 Plaintiff and California Class members are entitled to an award of attorneys' fees and
30 costs as set forth below.

1 96. As a proximate result of the aforementioned violations, Plaintiff and
2 California Class members have been damaged in an amount according to proof at
3 time of trial.

4 97. Wherefore, Plaintiff and the California Class request relief as hereinafter
5 provided.

6 **FIFTH CAUSE OF ACTION**
7 **Failure to Authorize, Permit, and/or Make Available Meal and Rest Periods**
8 **(By Plaintiff and the California Class)**

9 98. Plaintiff re-alleges and incorporates the foregoing paragraphs as though
10 fully set forth herein.

11 99. Defendant failed to make available and prevented full, timely,
12 uninterrupted, compliant meal and rest breaks for Plaintiff and California Class
13 members and required them to continue working during these breaks.

14 100. Defendant also failed to Plaintiff and California Class members one hour
15 of premium pay for missed breaks.

16 101. California Labor Code §§ 226.7 and 512 and the applicable IWC Wage
17 Orders require Defendant to authorize, permit, and/or make available timely and
18 compliant meal and rest periods to its employees. Labor Code §§ 226.7 and 512 and
19 the IWC Wage Orders prohibit employers from employing an employee for more
20 than five hours without a meal period of not less than thirty minutes, and from
21 employing an employee more than ten hours per day without providing the employee
22 with a second meal period of not less than thirty minutes. Labor Code § 226.7 and
23 the applicable Wage Orders also require employers to authorize and permit
24 employees to take ten minutes of net rest time per four hours, or major fraction thereof
25 of work, and to pay employees their full wages during those rest periods. Unless the
26 employee is relieved of all duty during the thirty-minute meal period and ten-minute
27 rest period, the employee is considered “on duty” and the meal or rest period is
28 counted as time worked under the applicable Wage Orders.

102. Under Labor Code § 226.7(b) and the applicable Wage Orders, an

1 employer who fails to authorize, permit, and/or make available a required meal period
2 must, as compensation, pay the employee one hour of pay at the employee's regular
3 rate of compensation for each workday that the meal period was not authorized and
4 permitted and/or not made available. Similarly, an employer must pay an employee
5 denied a required rest period one hour of pay at the employee's regular rate of
6 compensation for each workday that the rest period was not authorized and permitted
7 and/or not made available.

8 103. Despite these requirements, Defendant has knowingly and willfully
9 refused to perform its obligations to authorize and permit and/or make available to
10 Plaintiff and California Class members the ability to take the timely and compliant
11 off-duty meal and rest periods to which they are entitled.

12 104. Defendant has also failed to pay Plaintiff and California Class members
13 one hour of pay for each timely, compliant, off-duty meal and/or rest period that they
14 are denied.

15 105. Defendant's conduct described herein violates California Labor Code §§
16 226.7 and 512 and the applicable Wage Orders. Therefore, pursuant to Labor Code
17 § 226.7(b), Plaintiff and California Class members are entitled to compensation for
18 the failure to authorize and permit and/or make available meal and rest periods, plus
19 interest, attorneys' fees, expenses, and costs of suit.

20 106. As a proximate result of the aforementioned violations, Plaintiff and
21 California Class have been damaged in an amount according to proof at time of trial.

22 107. Wherefore, Plaintiff and the California Class request relief as hereinafter
23 provided.

24 **SIXTH CAUSE OF ACTION**
25 **Waiting Time Penalties Pursuant to Labor Code §§ 201-203**
26 **(By Plaintiff and the California Class)**

27 108. Plaintiff re-alleges and incorporates the foregoing paragraphs as though
28 fully set forth herein.

109. Some California Class members have left their employment with

1 Defendant during the statutory period, at which time Defendant owed them unpaid
2 wages. These earned, but unpaid, wages derive from time spent working outside of
3 their scheduled and paid shifts, including opening the store and logging into computer
4 system, answering business calls completing paperwork and submissions in order to
5 obtain pay and reimbursements, working through meal periods, performing other
6 work-related activities, as well as unpaid overtime compensation.

7 110. California Labor Code § 201 provides:

8 If an employer discharges an employee, the wages earned
9 and unpaid at the time of discharge are due and payable
10 immediately.

11 111. Labor Code § 202 provides:

12 If an employee not having a written contract for a definite
13 period quits his or her employment, his or her wages shall
14 become due and payable not later than 72 hours thereafter,
15 unless the employee has given 72 hours previous notice of
16 his or her intention to quit, in which case the employee is
17 entitled to his or her wages at the time of quitting.

18 112. Labor Code § 203 provides, in relevant part:

19 If an employer willfully fails to pay, without abatement or
20 reduction, in accordance with Sections 201, 201.5, 202, and
21 205.5, any wages of an employee who is discharged or who
22 quits, the wages of the employee shall continue as a penalty
23 from the due date thereof at the same rate until paid or until
24 an action therefor is commenced; but the wages shall not
25 continue for more than 30 days.

26 113. Defendant willfully refused, and continues to refuse, to provide Plaintiff
27 and the putative Class with pay for off-the-clock work, including but not limited to
28 work performed while clocked out during meal periods, and with meal and rest period
premium pay. As alleged above, Defendant knew and continues to know that Plaintiff
and California Class members perform off-the-clock work before and after their
scheduled or paid shifts. Defendant is aware Plaintiff and California Class members
miss or have interrupted meal and rest breaks as a result of Defendant's unlawful
policies and practices, but Defendant nevertheless refuses to pay for work performed

1 during meal breaks or to authorize premium pay for missed or interrupted meal and
2 rest periods.

3 114. Accordingly, Defendant willfully refused and continues to refuse to pay
4 members of the California Class that left their employment with Defendant all the
5 wages that were due and owing to them upon the end of their employment. As a
6 result of Defendant's actions, California Class Members have suffered and continue
7 to suffer substantial losses, including lost earnings and interest.

8 115. Defendant's willful failure to pay the former employees the wages due
9 and owing them constitutes a violation of Labor Code §§ 201-202. As a result,
10 Defendant is liable to them for all penalties owing pursuant to Labor Code §§ 201-
11 203.

12 116. Labor Code § 203 provides that an employee's wages will continue as a
13 penalty up to thirty days from the time the wages were due. Therefore, Plaintiff and
14 California Class members are entitled to such penalties pursuant to Labor Code §
15 203, plus interest.

16 117. As a proximate result of the aforementioned violations, Defendant is
17 liable to Plaintiff and California Class members alleged herein for the amounts
18 described, with interest thereon, in an amount according to proof at time of trial.

19 118. Wherefore, Plaintiff and the California Class request relief as hereinafter
20 provided.

21 **SEVENTH CAUSE OF ACTION**
22 **Violations of Labor Code § 226 – Itemized Wage Statements**
(By Plaintiff and the California Class)

23 119. Plaintiff re-alleges and incorporates the foregoing paragraphs as though
24 fully set forth herein.

25 120. Defendant does not provide Plaintiff and California Class members with
26 accurate itemized wage statements as required by California law.

27 121. California Labor Code § 226(a) provides:
28

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

122. The IWC Wage Orders also establish this requirement. (See IWC Wage
Orders 4-2001(7) and 7-2001(7)).

123. Labor Code § 226(e) provides:

An employee suffering injury as a result of a knowing and
intentional failure by an employer to comply with
subdivision (a) is entitled to recover the greater of all actual
damages or fifty dollars (\$50) for the initial pay period in
which a violation occurs and one hundred dollars (\$100) per
employee for each violation in a subsequent pay period, not
exceeding an aggregate penalty of four thousand dollars
(\$4,000), and is entitled to an award of costs and reasonable
attorney's fees.

124. Plaintiff and the California Class seeks to recover actual damages, costs,
and attorneys' fees under this section.

125. Defendant fails to provide timely, accurate, itemized wage statements to
Plaintiff and California Class members in accordance with Labor Code § 226(a) and
the IWC Wage Orders. In particular, the wage statements the Defendant provides its

1 employees, including to Plaintiff and California Class members, do not accurately
2 reflect the actual hours worked, actual gross wages earned, or actual net wages
3 earned. This is because, in part, Defendant does not count as “hours worked” the off-
4 the-clock time its hourly, non-exempt employees who work as Adjusters spend
5 performing certain work activities outside of their scheduled paid shifts answering
6 business calls on their mobile phone, logging into the computer system, and other
7 work-related activities.

8 126. Defendant’s failure to comply with Labor Code § 226(a) was and
9 continues to be knowing and intentional. Although, as alleged herein, Defendant was
10 aware that Plaintiff and California Class members performed off-the-clock work
11 outside of their scheduled and paid shifts, Defendant systematically fails to include
12 this time worked in their wage statements.

13 127. Plaintiff and California Class members have suffered injury as a result of
14 Defendant’s knowing and intentional failure to provide timely, accurate itemized
15 wage statements to them in accordance with Labor Code § 226(a). As a result of
16 Defendant’s violations, Plaintiff and the putative Class are required to undertake the
17 difficult and costly task of attempting to reconstruct Defendant’s incomplete and
18 inaccurate time and pay records to ensure that they are paid for all hours worked as
19 required by California law.

20 128. As a proximate result of the aforementioned violations, Defendant is
21 liable to Plaintiff and putative Class Members alleged herein for the amounts
22 described, with interest thereon, in an amount according to proof at time of trial.
23 Furthermore, Plaintiff is entitled to an award of attorneys’ fees and costs as set forth
24 below, pursuant to Labor Code § 226(e).

25 129. Wherefore, Plaintiff and the California Class request relief as hereinafter
26 provided.

27 ///

28 ///

EIGHTH CAUSE OF ACTION

**Violation of California Business and Professions Code §§ 17200, *et seq.*
(By Plaintiff and the California Class)**

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

131. The UCL, California Business and Professions Code §§ 17200, *et seq.*, prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business acts or practices.

132. Business and Professions Code § 17204 allows a person injured by the unfair business acts or practices to prosecute a civil action for violation of the UCL.

133. Labor Code § 90.5(a) states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

134. Beginning at an exact date unknown to Plaintiff and California Class members, but at least since the date four years prior to the filing of this suit, Defendant has committed acts of unfair competition as defined by the UCL by engaging in the unlawful, unfair, and fraudulent business acts and practices described in this Complaint, including, but not limited to:

- a. violations of Labor Code §§ 200, 204, 1194, and 1198 and applicable IWC Wage Orders pertaining to the payment of wages for all hours worked;
- b. violations of Labor Code § 510 and applicable IWC Wage Orders pertaining to overtime;
- c. violations of Labor Code §§ 226.7 and 512 and applicable IWC Wage Orders pertaining to meal and rest breaks;
- d. violations of Labor Code §§ 201-203 pertaining to waiting time; and

1 e. violations of Labor Code § 226 regarding accurate, timely itemized
2 wage statements.

3 135. The violations of these laws and regulations, as well as of the
4 fundamental California public policies protecting wages and discouraging overtime
5 labor underlying them, serve as unlawful predicate acts and practices for purposes of
6 Business and Professions Code §§ 17200, et seq.

7 136. The acts and practices described above constitute unfair, unlawful, and
8 fraudulent business practices, and unfair competition, UCL. Among other things, the
9 acts and practices have taken from Plaintiff and California Class members wages
10 rightfully earned by them, while enabling the Defendant to gain an unfair competitive
11 advantage over law-abiding employers and competitors.

12 137. Business and Professions Code § 17203 provides that the Court may
13 make such orders or judgments as may be necessary to prevent the use or employment
14 by any person of any practice which constitutes unfair competition. Injunctive relief
15 is necessary and appropriate to prevent Defendant from repeating the unlawful, unfair
16 and fraudulent business acts and practices alleged above.

17 138. As a direct and proximate result of the aforementioned acts and practices,
18 Plaintiff and California Class members have suffered a loss of money and property,
19 in the form of unpaid wages which are due and payable to them.

20 139. Business and Professions Code § 17203 provides that the Court may
21 restore to any person in interest any money or property which may have been acquired
22 by means of such unfair competition. Plaintiff and California Class members are
23 entitled to restitution pursuant to Business and Professions Code § 17203 for all
24 wages and payments unlawfully withheld from employees during the four-year
25 period prior to the filing of this Complaint.

26 140. Plaintiff's success in this action will enforce important rights affecting
27 the public interest and, in that regard, Plaintiff sues on behalf of herself and others
28 similarly situated. Plaintiff and California Class members seek and are entitled to

1 unpaid wages, declaratory relief, and all other equitable remedies owing to them.

2 141. Plaintiff herein take it upon herself to enforce these laws and lawful
3 claims. There is a financial burden involved in pursuing this action, the action is
4 seeking to vindicate a public right, and it would be against the interests of justice to
5 penalize Plaintiff by forcing him to pay attorneys' fees from the recovery in this
6 action. Attorneys' fees are appropriate pursuant to Code of Civil Procedure § 1021.5
7 and otherwise.

8 142. Wherefore, Plaintiff and the California Class request relief as hereinafter
9 provided.

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

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

13 144. Labor Code § 2699(a) provides:

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

23 145. Labor Code Labor Code § 203 provides, in relevant part:

24 If an employer willfully fails to pay, without abatement
25 or reduction, in accordance with Sections 201, 201.5,
26 202, and 205.5, any wages of an employee who is
27 discharged or who quits, the wages of the employee
28 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 or more
than 30 days.

26 146. Labor Code § 226(a) provides:

1 An employer, semimonthly or at the time of each
2 payment of wages, shall furnish to his or her
3 employees, either as a detachable part of the check,
4 draft, or voucher paying the employee's wages, or
5 separately if wages are paid by personal check or cash,
6 an accurate itemized statement in writing showing (1)
7 gross wages earned, (2) total hours worked by the
8 employee, except as provided in subdivision (j), (3) the
9 number of piece-rate units earned and any applicable
10 piece rate if the employee is paid on a piece-rate basis,
11 (4) all deductions, provided that all deductions made
12 on written orders of the employee may be aggregated
13 and shown as one item, (5) net wages earned, (6) the
14 inclusive dates of the period for which the employee is
15 paid, (7) the name of the employee and only the last
16 four digits of his or her social security number or an
17 employee identification number other than a social
18 security number, (8) the name and address of the legal
19 entity that is the employer, and (9) all applicable hourly
20 rates in effect during the pay period and the
21 corresponding number of hours worked at each hourly
22 rate by the employee...

12
13 147. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each
14 failure by Defendant, as alleged above, to timely pay all wages owed to Plaintiff and
15 other Aggrieved Employees in compliance with Labor Code §§ 201-202 in the
16 amounts established by Labor Code § 203. Plaintiff seeks such penalties as an
17 alternative to the penalties available under Labor Code § 203, as prayed for herein.

18 148. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for
19 each failure by Defendant, alleged above, to provide Plaintiff and other Aggrieved
20 Employees an accurate, itemized wage statement in compliance with Labor Code §
21 226(a) in the amounts established by Labor Code § 226(e). Plaintiff seeks such
22 penalties as an alternative to the penalties available under Labor Code § 226(e), as
23 prayed for herein.

24 149. Labor Code § 256 provides: "The Labor Commissioner shall impose a
25 civil penalty in an amount not exceeding 30 days pay as waiting time under the terms
26 of Section 203."

27 150. Plaintiff also seeks civil penalties pursuant to Sections 226.3 and 256 of
28 the California Labor Code. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff

1 provided the Labor and Workforce Development Agency (“LWDA”) with notice of
2 his intentions to file this claim. Sixty-five calendar days have passed without notice
3 from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this
4 civil action in compliance with § 2699.3(a).

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

7 152. Plaintiff alleges that Defendant is liable to Plaintiff, other Aggrieved
8 Employees, and the State of California for the civil penalties set forth in this
9 Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys’
10 fees and costs as set forth below.

11 153. Wherefore, Plaintiff requests relief as hereinafter provided.

12 **TENTH CAUSE OF ACTION**

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

14 154. Plaintiff re-alleges and incorporates the foregoing paragraphs as though
15 fully set forth herein.

16 155. Labor Code § 2699(f) provides:

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

23 156. Labor Code § 510(a) provides:

24 Eight hours of labor constitutes a day’s work. Any
25 work in excess of eight hours in one workday and any
26 work in excess of 40 hours in any one workweek and
27 the first eight hours worked on the seventh day of work
28 in any one workweek shall be compensated at the rate
of no less than one and one-half times the regular rate
of pay for an employee. Any work in excess of 12 hours
in one day shall be compensated at the rate of no less
than twice the regular rate of pay for an employee.

1 157. Labor Code § 512(a) provides:

2
3 An employer shall not employ an employee for a work
4 period of more than five hours per day without
5 providing the employee with a meal period of not less
6 than 30 minutes, except that if the total work period per
7 day of the employee is no more than six hours, the meal
8 period may be waived by mutual consent of both the
9 employer and employee. An employer shall not employ
10 an employee for a work period of more than 10 hours
11 per day without providing the employee with a second
12 meal period of not less than 30 minutes, except that if
13 the total hours worked is no more than 12 hours, the
14 second meal period may be waived by mutual consent
15 of the employer and the employee only if the first meal
16 period was not waived.

17 158. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for each
18 violation of Labor Code § 510, alleged above, as well as any provision regulating
19 hours and days of work in any order of the IWC.

20 159. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(f) for
21 each failure by Defendant, alleged above, to provide Plaintiff and other Aggrieved
22 Employees compliant meal and rest periods in compliance with Labor Code § 512.

23 160. Plaintiff further seeks civil penalties pursuant to Labor Code § 2802 for
24 each failure by Defendant, alleged above, to reimburse and indemnify Plaintiff and
25 Aggrieved Employees for all necessary expenditures and losses by Plaintiff and
26 Aggrieved Employees in direct consequence of the discharge of their duties.

27 161. To the extent that any other violation alleged herein does not carry
28 penalties under Labor Code § 2699(a), Plaintiff seeks civil penalties pursuant to
29 Labor Code § 2699(f) for Plaintiff and other Aggrieved Employees for each pay
30 period in which he or she was aggrieved, in the amounts established by Labor Code
31 § 2699(f).

32 162. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the
33 LWDA with notice of his intention to file this claim. Sixty-five calendar days have
34 passed without notice from the LWDA. Plaintiff satisfied the administrative

1 prerequisites to commence this civil action in compliance with § 2699.3(a).

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

4 164. Plaintiff alleges that Defendant is liable to Plaintiff, other Aggrieved
5 Employees, and the State of California for the civil penalties set forth in this
6 Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys'
7 fees and costs as set forth below.

8 165. Wherefore, Plaintiff requests relief as hereinafter provided.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for relief as follows:

11 166. Damages and restitution according to proof at trial for all unpaid wages
12 and other injuries, as provided by the FLSA, California Labor Code, and other laws
13 of the State of California.

14 167. For a declaratory judgment that Defendant has violated the FLSA,
15 California Labor Code, the laws of the State of California, and public policy as
16 alleged herein;

17 168. For a declaratory judgment that Defendant has violated California
18 Business and Professions Code §§ 17200, *et seq.*, as a result of the aforementioned
19 violations of the California Labor Code and of California public policy protecting
20 wages;

21 169. For preliminary, permanent, and mandatory injunctive relief prohibiting
22 Defendant, its officers, agents, and all those acting in concert with them from
23 committing in the future those violations of law herein alleged;

24 170. For an equitable accounting to identify, locate, and restore to all current
25 and former employees the wages they are due, with interest thereon;

26 171. For an order awarding Plaintiff and the Collective and Class Members
27 liquidated and compensatory damages, including lost wages, earnings, and other
28 employee benefits, restitution, and all other sums of money owed to Plaintiff and

1 Members of the Collective and the Class, together with interest on these amounts,
2 according to proof;

3 172. For an order awarding Plaintiff and the Class Members civil penalties
4 pursuant to the California Labor Code provisions cited herein, with interest thereon;

5 173. For an award of reasonable attorneys' fees as provided by the FLSA,
6 California Labor Code, California Code of Civil Procedure § 1021.5, and the laws of
7 the State of California.

8 174. For all costs of suit;

9 175. For interest on any damages and/or penalties awarded, as provided by
10 applicable law;

11 176. For an order awarding the State of California, Plaintiff, and Aggrieved
12 Employees civil penalties provided under the PAGA;

13 177. For an award of reasonable attorneys' fees as provided by the California
14 Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5; and/or any
15 other applicable law;

16 178. For interest on penalties awarded as provided by applicable law; and

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

18 Date: January 31, 2025

Respectfully submitted,

/s/ Carolyn H. Cottrell

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Ori Edelstein (SBN 268145)

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

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff
and the putative Collective and Class are entitled to a jury.

Respectfully submitted,

Date: January 31, 2025

/s/ Carolyn H. Cottrell
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

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