

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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CHRISTOPHER AYALA, BENJAMIN :  
LAMKIN, AND NHAN NGUYEN :  
individually and on Behalf of :  
all others similarly situated, as Collective :  
and Class representatives, :  
:   
Plaintiffs, :  
:   
v. :  
:   
GOVERNMENT EMPLOYEES :  
INSURANCE COMPANY, :  
:   
Defendant. :  
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Case No. 7:18-cv-03583

**PLAINTIFFS’ FIRST AMENDED COLLECTIVE AND CLASS ACTION  
COMPLAINT & JURY DEMAND**

Plaintiffs Christopher Ayala, Benjamin Lamkin, and Nhan Nguyen (“Plaintiffs”) individually and on behalf of all others similarly situated, by their attorneys, Shavitz Law Group, P.A. and Nichols Kaster, PLLP allege as follows:

**NATURE OF THE ACTION**

1. This lawsuit seeks to recover overtime compensation for Plaintiffs and similarly situated individuals who work or worked as Auto Adjusters-In-Training or in comparable roles with different titles (“AITs”) for Defendant Government Employees Insurance Company (“Defendant” or “GEICO”) anywhere in the United States.
2. GEICO is an insurance company which provides various insurance products to its customers.
3. GEICO employs Auto Adjusters who handle insurance claims.
4. Upon information and belief, all Auto Adjusters must successfully complete

GEICO's required three to six-month training program prior to becoming an Auto Adjuster.

5. During this training period, GEICO classifies AITs as non-exempt and overtime pay eligible but GEICO does not pay them for all overtime hours worked during their workweeks.

6. By the conduct described herein, Defendant has violated the New York Labor Law, Art. 6 §§ 190 *et seq.*, Art. 5 § 162, and Art. 19, §§ 650 *et seq.* ("New York Act"), Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* ("FLSA"), and the California Labor Code by failing to pay AITs, including Plaintiffs Ayala, Lamkin, and Nguyen the overtime wages they have earned and to which they are entitled by law.

7. Plaintiff Ayala brings this action on behalf of himself and similarly situated current and former AITs who worked in New York for Defendant pursuant to Federal Rule of Civil Procedure 23 to remedy violations of the New York Act.

8. Plaintiffs Lamkin and Nguyen bring this action on behalf of themselves and similarly situated current and former AITs who worked for Defendant nationwide who elect to opt-in to this action pursuant to the FLSA and specifically, the collective action provision of 29 U.S.C. § 216(b), to remedy violations of the wage and hour provisions of the FLSA by Defendant that have deprived Plaintiffs and others similarly situated of their lawfully earned wages.

9. Plaintiff Nguyen also brings this action on behalf of himself and similarly situated current and former AITs who worked in California for Defendant pursuant to Federal Rule of Civil Procedure 23 to remedy violations of the California Labor Code.

**THE PARTIES**

**Plaintiff Christopher Ayala**

10. Plaintiff Christopher Ayala is an adult individual who is a resident of Yonkers, New York.

11. Plaintiff Ayala was employed by Defendant in New York (throughout Westchester County) from approximately May 2013 to June 2016. Plaintiff Ayala participated in Defendant's training program in Woodbury, New York and McLean, Virginia from approximately May 2013 to August 2013 as an AIT. During training, he also performed work for the training program in New Rochelle and the Bronx, New York and both inside and outside of Defendant's classroom training locations.

12. Pursuant to Defendant's policy, pattern, and/or practice, Ayala was not paid for approximately 12 overtime hours he worked each week as an AIT while studying and training to complete the requirements of GEICO's training program and to successfully pass the program to become a GEICO Auto Adjuster.

13. At all times relevant hereto, Plaintiff Ayala was a covered employee within the meaning of the New York Act.

**Plaintiff Benjamin Lamkin**

14. Plaintiff Benjamin Lamkin is an adult individual who is a resident of Mount Juliet, Tennessee.

15. Plaintiff Lamkin was employed by Defendant in Chicago, Illinois from approximately March 2015 to May 2016. Plaintiff Lamkin participated in Defendant's training program in Macon, Georgia and McLean, Virginia from approximately March 2015 to May 2015

as an AIT. During training he also performed work for the training program at an extended stay hotel in Macon, Georgia and both inside and outside of Defendant's classroom training locations.

16. Pursuant to Defendant's policy, pattern, and/or practice, Plaintiff Lamkin estimates that he was not paid for approximately 12 overtime hours he worked each week as an AIT while studying and training to complete the requirements of GEICO's training program and to successfully pass the program to become a GEICO Auto Adjuster.

17. At all times relevant hereto, Plaintiff Lamkin was a covered employee within the meaning of the FLSA.

18. A written consent form for Plaintiff Lamkin was previously filed with the Court.

**Plaintiff Nhan Nguyen**

19. Plaintiff Nhan Nguyen is an adult individual who is a resident of Reseda, California.

20. Plaintiff Nguyen was employed by Defendant in Canoga Park, California from approximately June 2015 to December 2015. Plaintiff Nguyen participated in Defendant's training program in San Diego, California and McClean, Virginia from approximately June 2015 to August 2015 as an AIT. During training, he also performed work for the training program in Reseda, California and both inside and outside of Defendant's classroom training locations.

21. Pursuant to Defendant's policy, pattern, and/or practice, Plaintiff Nguyen estimates that he was not paid for approximately 12 overtime hours he worked each week as an AIT while studying and training to complete the requirements of GEICO's training program and to successfully pass the program to become a GEICO Auto Adjuster.

22. At all times relevant hereto, Plaintiff Nguyen was a covered employee within the meaning of the FLSA and the California Labor Code.

23. A written consent form for Plaintiff Nguyen is attached as Exhibit A.

**Defendant**

24. GEICO is a Maryland corporation with a principal place of business in Chevy Chase, Maryland.

25. At all relevant times, Defendant was and is an “employer” within the meaning of the New York Act, FLSA, and the California Labor Code.

26. Throughout the relevant period, Defendant employed Plaintiffs and other AITs within the meaning of the New York Act, FLSA, and California Labor Code. Defendant has had substantial control over Plaintiffs’ working conditions and the unlawful policies and practices alleged herein.

27. At all times relevant, Defendant maintained control, oversight, and direction over Plaintiffs and other AITs, including timekeeping, payroll, and other employment practices that applied to them.

28. Defendant applies the same employment policies, practices, and procedures to all AITs.

29. At all times relevant, Defendant’s annual gross volume of sales made or business done was not less than \$500,000.

**JURISDICTION AND VENUE**

30. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337 and jurisdiction over Plaintiffs’ state-law claims pursuant to 28 U.S.C. § 1367.

31. This Court also has jurisdiction over Plaintiff Lamkin’s and Plaintiff Nguyen’s claims under the FLSA pursuant to 29 U.S.C. § 216(b).

32. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §

1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this District.

### **COMMON FACTUAL ALLEGATIONS**

33. Throughout their employment with Defendant, Plaintiffs and other AITs regularly worked in excess of 40 hours per week, such as those specific overtime hours identified above.

34. Defendant was aware that Plaintiffs and other AITs worked more than 40 hours per workweek, yet Defendant failed to pay them overtime compensation for all overtime hours worked.

35. AITs performed their required training duties (i.e., studying and training to complete the requirements of GEICO's training program and to successfully pass the program to become a GEICO Auto Adjuster) "off-the-clock."

36. GEICO required that AITs pass the training program to become an Auto Adjuster but did not provide Plaintiffs and AITs sufficient time to complete their training duties while "on-the-clock." Thus, Plaintiffs and AITs worked on and studied their training materials pre-shift and post-shift, while not clocked-in while at home and/or outside the classroom.

37. GEICO did not have a process or procedure for recording time worked outside of the office and failed to track all of the hours worked in training by Plaintiffs and AITs outside of the GEICO office.

38. All of the work that Plaintiffs and other AITs performed was assigned by Defendant and/or Defendant has been aware of all of the work that Plaintiffs and other AITs performed.

39. Upon information and belief, Defendant's unlawful conduct has been pursuant to a corporate policy or practice of minimizing labor costs by violating the New York Act, FLSA, and the California Labor Code.

40. Defendant was aware, or should have been aware, that the New York Act, FLSA, and the California Labor Code required it to pay Plaintiffs and other AITs overtime compensation for hours worked in excess of 40 per week.

41. Plaintiff Nguyen is no longer employed by Defendant, but Defendant has not paid him all wages due, including unpaid overtime wages.

42. Defendant's failure to pay Plaintiffs and other AITs overtime was willful. Defendant recklessly disregarded its obligation to ensure that it paid for all work performed and did not take action to make sure to Plaintiffs and AITs were paid for all hours worked. Defendant did not investigate or inquire whether Plaintiffs and AITs were paid for all time worked, including time working outside of the classroom training sessions. Defendant's unlawful conduct has been widespread, repeated, and consistent.

#### **COLLECTIVE ACTION ALLEGATIONS**

43. Plaintiffs Lamkin and Nguyen bring the First Cause of Action, pursuant to the FLSA, 29 U.S.C. § 216(b), on behalf of themselves and all similarly situated persons who work or have worked for Defendant as AITs at any GEICO location in the United States, on or after April 23, 2015, who elect to opt-in to this action (the "FLSA Collective").

44. All of the work that Plaintiffs Lamkin, Nguyen, and the FLSA Collective have performed has been assigned by Defendant, and/or Defendant has been aware of all of the work that Plaintiffs Lamkin, Nguyen, and the FLSA Collective have performed.

45. As part of its regular business practice, Defendant has intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiffs and the FLSA Collective. This policy and pattern or practice includes, but is not limited to:

- a. willfully failing to pay Plaintiffs Lamkin, Nguyen, and the members of the FLSA Collective overtime wages for all hours that they worked in excess of 40 hours per workweek; and
- b. willfully failing to record all of the time that its employees, including Plaintiffs Lamkin, Nguyen, and the FLSA Collective, have worked for the benefit of Defendant.

46. Defendant is aware or should have been aware that federal law required it to pay non-exempt employees, including Plaintiffs Lamkin, Nguyen, and the members of the FLSA Collective, an overtime premium for all hours worked in excess of 40 per workweek.

47. Defendant's unlawful conduct has been widespread, repeated, and consistent.

48. Defendant is liable under the FLSA for failing to properly compensate Plaintiffs Lamkin, Nguyen, and the FLSA Collective. Accordingly, notice should be sent to the FLSA Collective. There are numerous similarly situated current and former employees of Defendant who have been denied overtime pay in violation of the FLSA who would benefit from the issuance of a Court-supervised notice of this lawsuit and the opportunity to join.

#### **NEW YORK CLASS ACTION ALLEGATIONS**

49. Plaintiff Ayala brings the Second and Third Cause of Action under Rule 23 of the Federal Rules of Civil Procedure, on behalf of a class of persons consisting of all persons who have trained for Defendant as AITs in the State of New York (the "New York Class") at any point on or after April 23, 2012 to the date of judgment in this action (the "New York Class Period").

50. Excluded from the New York Class are Defendant's legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during

the class period has had, a controlling interest in Defendant; the Judge(s) to whom this case is assigned and any member of the Judge's immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the New York Class.

51. The persons in the New York Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is not known to Plaintiff Ayala, the facts on which the calculation of that number can be based are presently within the sole control of Defendant.

52. Upon information and belief, the size of the New York Class is at least 100 workers.

53. Defendant acted or refused to act on grounds generally applicable to the New York Class, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the New York Class as a whole.

54. The Second and Third Causes of Action are properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3). There are questions of law and fact common to the New York Class that predominate over any questions solely affecting individual members of the New York Class, including but not limited to:

- a. whether Defendant failed to keep true and accurate time records for all hours worked by Plaintiff Ayala and the New York Class;
- b. what proof of hours worked is sufficient where an employer fails in its duty to maintain true and accurate time records;
- c. whether Defendant failed and/or refused to pay Plaintiff Ayala and the New York Class for all hours worked in violation of the New York Act;
- d. the nature and extent of New York Class-wide injury and the appropriate measure of damages for the New York Class;
- e. whether Defendant have had a policy of failing to pay workers for time that they work;

- f. whether Defendant failed to compensate Plaintiff Ayala and the New York Class for all work Defendant required and/or suffered or permitted them to perform;
- g. whether Defendant failed to maintain and provide accurate wage statements; and
- h. whether Defendant correctly calculated and compensated Plaintiff Ayala and the New York Class for hours worked in excess of 40 per workweek.

55. Plaintiff Ayala's claims are typical of the claims of the New York Class sought to be represented. Plaintiff Ayala and the other New York Class members work or have worked for Defendant and have been subjected to their policy and pattern or practice of failing to pay overtime wages for all hours worked in excess of 40 hours per workweek failing to maintain and provide accurate wage statements. Defendant acted and/or refused to act on grounds generally applicable to the New York Class, thereby making injunctive and/or declaratory relief with respect to the New York Class appropriate.

56. Plaintiff Ayala will fairly and adequately represent and protect the interests of the New York Class. Plaintiff Ayala understands that, as a class representative, one assumes a fiduciary responsibility to the New York Class to represent its interests fairly and adequately. Ayala recognizes that as a class representative, one must represent and consider the interests of the New York Class just as one would represent and consider one's own interests. Plaintiff Ayala understands that in decisions regarding the conduct of the litigation and its possible settlement, one must not favor one's own interests over those of the New York Class. Plaintiff Ayala recognizes that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the New York Class. Plaintiff Ayala understands that in order to provide adequate representation, one must remain informed of developments in the litigation, cooperate with class counsel by providing them with information

and any relevant documentary material in one's possession, and testify, if required, in a deposition and in trial.

57. Plaintiff Ayala has retained the Shavitz Law Group, P.A. and Nichols Kaster, PLLP, which are competent and experienced in complex class action employment litigation.

58. A class action is superior to other available methods for the fair and efficient adjudication of this litigation – particularly in the context of wage litigation like the present action, where individual Plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The members of the New York Class have been damaged and are entitled to recovery as a result of Defendant's common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of the New York Class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant's practices.

59. This action is properly maintainable as a class action under Federal Rules of Civil Procedure 23(b)(3).

#### **CALIFORNIA CLASS ACTION ALLEGATIONS**

60. Plaintiff Nguyen brings the Fourth, Fifth, and Sixth Causes of Action under Rule 23 of the Federal Rules of Civil Procedure, on behalf of a class of persons consisting of all persons who have trained for Defendant as AITs in the State of California (the "California Class") at any point four (4) years prior to the filing of the First Amended Complaint to the date of judgment in this action (the "California Class Period").

61. Excluded from the California Class are Defendant's legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendant; the Judge(s) to whom this case is assigned and any member of the Judge's immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the California Class.

62. The persons in the California Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is not known to Plaintiff Nguyen, the facts on which the calculation of that number can be based are presently within the sole control of Defendant.

63. Upon information and belief, the size of the California Class is at least 100 workers.

64. Defendant acted or refused to act on grounds generally applicable to the California Class, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the California Class as a whole.

65. The Fifth, Sixth, and Seventh Causes of Action are properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3). There are questions of law and fact common to the California Class that predominate over any questions solely affecting individual members of the California Class, including but not limited to:

- A. whether Defendant failed to keep true and accurate time records for all hours worked by Plaintiff Nguyen and the California Class;
- B. what proof of hours worked is sufficient where an employer fails in its duty to maintain true and accurate time records;
- C. whether Defendant failed and/or refused to pay Plaintiff Nguyen and the California Class for all hours worked in violation of the California Labor Code;

- D. the nature and extent of California Class-wide injury and the appropriate measure of damages for the California Class;
- E. whether Defendant has had a policy of failing to pay workers for time that they work;
- F. whether Defendant failed to compensate Plaintiff Nguyen and the California Class for all work Defendant required and/or suffered or permitted them to perform;
- G. whether Defendant correctly calculated and compensated Plaintiff Nguyen and the California Class for hours worked in excess of 40 per workweek;
- H. whether Plaintiffs and the members of the California Class who are no longer employed by Defendant are entitled to waiting time penalties pursuant to California Labor Code § 203; and
- I. whether Defendant's violations of law discussed herein constitute illegal or unfair business practices under California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 *et seq.*

66. Plaintiff Nguyen's claims are typical of the claims of the California Class sought to be represented. Plaintiff Nguyen and the other California Class members work or have worked for Defendant and have been subjected to their policy and pattern or practice of failing to pay overtime wages for all hours worked in excess of 40 hours per workweek. Defendant acted and/or refused to act on grounds generally applicable to the California Class, thereby making injunctive and/or declaratory relief with respect to the California Class appropriate.

67. Plaintiff Nguyen will fairly and adequately represent and protect the interests of the California Class. Plaintiff Nguyen understands that, as a class representative, one assumes a fiduciary responsibility to the California Class to represent its interests fairly and adequately. Plaintiff Nguyen recognizes that as a class representative, one must represent and consider the interests of the California Class just as one would represent and consider one's own interests. Plaintiff Nguyen understands that in decisions regarding the conduct of the litigation and its possible settlement, one must not favor one's own interests over those of the California Class.

Plaintiff Nguyen recognizes that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the California Class. Plaintiff Nguyen understands that in order to provide adequate representation, one must remain informed of developments in the litigation, cooperate with class counsel by providing them with information and any relevant documentary material in one's possession, and testify, if required, in a deposition and in trial.

68. Plaintiff Nguyen has retained the Shavitz Law Group, P.A. and Nichols Kaster, PLLP, which are competent and experienced in complex class action employment litigation.

69. A class action is superior to other available methods for the fair and efficient adjudication of this litigation – particularly in the context of wage litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The members of the California Class have been damaged and are entitled to recovery as a result of Defendant's common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of the California Class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant's practices.

70. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

**FIRST CAUSE OF ACTION**  
**Fair Labor Standards Act – Overtime Wages**  
**(On Behalf of Plaintiffs Lamkin, Nguyen, and the FLSA Collective)**

71. Plaintiffs Lamkin and Nguyen reallege and incorporate by reference all allegations in all preceding paragraphs.

72. Defendant has engaged in a widespread pattern and practice of violating the FLSA, as described in this First Amended Complaint.

73. Plaintiffs Lamkin and Nguyen have consented in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b).

74. At all relevant times, Plaintiffs Lamkin, Nguyen, and other similarly situated current and former AITs were engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

75. The overtime wage provisions set forth in §§ 201 *et seq.* of the FLSA apply to Defendant.

76. Defendant is an employer engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

77. At all relevant times, Plaintiffs Lamkin, Nguyen, and other similarly AITs are, or were, employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

78. Defendant failed to pay Plaintiffs Lamkin, Nguyen, and other similarly situated current and former AITs the overtime wages to which they were entitled under the FLSA.

79. Defendant failed to keep, make, preserve, maintain, and furnish accurate records of time worked by Plaintiffs Lamkin, Nguyen, and the FLSA Collective.

80. Defendant's violations of the FLSA, as described in this First Amended Complaint, have been willful and intentional. Defendant failed to make a good faith effort to

comply with the FLSA with respect to their compensation of Plaintiffs Lamkin, Nguyen, and other similarly situated current and former employees.

81. Because Defendant's violations of the FLSA have been willful, a three-year statute of limitations applies to this Cause of Action, pursuant to 29 U.S.C. § 255.

82. As a result of Defendant's willful violations of the FLSA, Plaintiffs Lamkin, Nguyen, and all other similarly situated AITs have suffered damages by being denied overtime wages in accordance with 29 U.S.C. §§ 201 *et seq.*

83. As a result of the unlawful acts of Defendant, Plaintiffs Lamkin, Nguyen, and other similarly situated current and former AITs have been deprived of overtime compensation and other wages in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs and other compensation pursuant to 29 U.S.C. § 216(b).

**SECOND CAUSE OF ACTION**  
**New York Act – Overtime Wages**  
**(On Behalf of Plaintiff Ayala and the New York Class)**

84. Plaintiff Ayala realleges and incorporates by reference all allegations in all preceding paragraphs.

85. At all times relevant, Plaintiff Ayala and the members of the New York Class have been employees and Defendant has been an employer within the meaning of the New York Act. Plaintiff Ayala and the members of the New York Class are covered by the New York Act.

86. Defendant employed Plaintiff Ayala and the members of the New York Class as an employer in New York.

87. Defendant failed to pay Plaintiff Ayala and the members of the New York Class overtime wages for all overtime hours worked to which they are entitled under the New York

Act. Defendant failed to pay Plaintiff Ayala and the members of the New York Class for all overtime hours worked at a wage rate of one and one-half times their regular rates of pay.

88. Defendant failed to keep, make, preserve, maintain, and furnish accurate records of time worked by Plaintiff Ayala and the New York Class members.

89. Due to Defendant's intentional and willful violations of the New York Act, Plaintiff Ayala and the members of the New York Class are entitled to recover from Defendant their unpaid wages (including overtime wages), reasonable attorneys' fees and costs of the action, pre-judgment and post-judgment interest, and such other relief as provided by law.

**THIRD CAUSE OF ACTION**  
**New York Act Notice and Recordkeeping Claims**  
**(On Behalf of Plaintiff Ayala and the New York Class)**

90. Plaintiff Ayala realleges and incorporates by reference all allegations in all preceding paragraphs.

91. NYLL § 195(4) requires every employer to establish and maintain, for at least three years, *inter alia*, payroll records showing the hours worked, gross wages, deductions and net wages for each employee.

92. NYLL § 661 requires every employer to maintain, *inter alia*, true and accurate records of hours worked by each employee covered by an hourly minimum wage rate, and the wages paid to all employees.

93. 12 N.Y.C.R.R. § 142-2.6 requires every employer in miscellaneous industries to establish, maintain and preserve for six years weekly payroll records showing, *inter alia*, each employee's name, wage rate, number of hours worked daily and weekly, amount of gross and net wages, deductions from gross wages, and any allowances claimed as part of the minimum wage.

94. NYLL § 195(3) requires that every employer furnish each employee with a statement with every payment listing gross wages, deductions and net wages, and upon request of an employee, an explanation of the computation of wages.

95. 12 N.Y.C.R.R. § 142-2.7 requires every employer in miscellaneous industries to furnish each employee a statement with every payment of wages, listing hours worked, rates paid, gross and net wages, deductions, and allowances, if any, claimed as part of the minimum wage.

96. Defendant failed to comply with the notice and record keeping requirements of NYLL § 195(3), resulting in penalties under NYLL § 198 for Plaintiff Ayala and the New York Class.

**FOURTH CAUSE OF ACTION**  
**California State Labor Code – Failure to Pay Overtime**  
**(On Behalf of Plaintiff Nguyen and the California Class)**

97. Plaintiff Nguyen alleges and incorporates by reference the allegations in the preceding paragraphs.

98. At all times relevant to this action, Plaintiff Nguyen and the California Class were employed by Defendant within the meaning of the California Labor Code.

99. By the course of conduct set forth above, Defendant violated Cal. Labor Code §§ 510 and 1194.

100. The California Labor Code requires employers, such as Defendant, to pay overtime compensation to all non-exempt employees.

101. Plaintiff Nguyen and the California Class were non-exempt employees entitled to be paid proper overtime compensation for all hours worked.

102. During the relevant statutory period, Plaintiff Nguyen and the California Class worked in excess of eight hours in a work day and/or forty hours in a work week for Defendant.

103. During the relevant statutory period, Defendant failed and refused to pay the Plaintiff Nguyen and the California Class all wages due, including proper overtime compensation for all of their overtime hours worked.

104. Defendant had a policy and practice of failing and/or refusing to pay proper overtime pay to Plaintiff Nguyen and the California Class for all of their overtime hours worked.

105. As a result of Defendant's failure to pay wages earned and due, Defendant violated the California Labor Code.

106. Due to Defendant's intentional and willful violations of the California Labor Code, Plaintiff Nguyen and members of the California Class are entitled to recover from Defendant damages, including loss of earnings for hours of overtime worked on behalf of Defendant, prejudgment interest, attorneys' fees and costs, and other relief as provided by law.

**FIFTH CAUSE OF ACTION**  
**California Labor Code – Failure to Pay Final Wages**  
**(On behalf of Plaintiff Nguyen and the California Class)**

107. Plaintiff Nguyen alleges and incorporates by reference the allegations in the preceding paragraphs.

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

109. Plaintiff Nguyen and the California Class are entitled to unpaid overtime compensation, but to date have not received all such compensation.

110. As a consequence of Defendant's willful conduct in not paying proper compensation for all hours worked, Plaintiff Nguyen and the California Class who have separated from employment are entitled to up to thirty days' wages under Labor Code § 203.

**SIXTH CAUSE OF ACTION**  
**California Unfair Competition Law**  
**(On Behalf of Plaintiff Nguyen and the California Class)**

111. Plaintiff Nguyen alleges and incorporates by reference the allegations in the preceding paragraphs.

112. The foregoing conduct, as alleged, violates the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 *et seq.* The UCL prohibits unfair competition by prohibiting, *inter alia*, any unlawful or unfair business acts or practices.

113. Beginning at a date unknown to Plaintiff Nguyen, but at least as long ago as the year 2014, Defendant committed acts of unfair competition, as defined by the UCL, by, among other things, engaging in the acts and practices described herein. Defendant's conduct as herein alleged has injured Plaintiff Nguyen and the California Class by wrongfully denying them earned wages, and therefore was substantially injurious to Plaintiff Nguyen and the California Class.

114. Defendant engaged in unfair competition in violation of the UCL by violating, *inter alia*, each of the following laws. Each of these violations constitutes an independent and separate violation of the UCL:

- A. Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*
- B. California Labor Code §§ 510 & 1194

115. Defendant's course of conduct, acts, and practices in violation of the California laws mentioned in the above paragraph constitute a separate and independent violation of the UCL. Defendant's conduct described herein violates the policy or spirit of such laws or otherwise significantly threatens or harms competition.

116. The harm to Plaintiff and the California Class in being wrongfully denied lawfully earned wages outweighed the utility, if any, of Defendant's policies or practices and therefore, Defendant's actions described herein constitute an unfair business practice or act within the meaning of the UCL.

117. Pursuant to Business and Professions Code § 17200 *et seq.*, Plaintiff Nguyen and the California Class are entitled to restitution of the overtime earnings and other unpaid wages alleged herein that were withheld and retained by Defendant during a period that commences four years prior to the filing of this action, a permanent injunction requiring Defendant to pay required wages, an award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable law, and costs.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, individually and on behalf of all other similarly situated persons, pray for the following relief:

A. That, at the earliest possible time, Plaintiffs be allowed to give notice of this collective action, or that the Court issue such notice, to the Collective Members. Such notice should inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit, among other things;

B. Unpaid overtime pay, and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor regulations;

- C. Pre-judgment interest and post-judgment interest as provided by law;
- D. Appropriate equitable and injunctive relief to remedy violations, including but not necessarily limited to an order enjoining Defendant from continuing their unlawful practices;
- E. A reasonable incentive award for the Plaintiffs to compensate them for the time and effort they have spent protecting the interests of other AITs, and the risks they have undertaken.
- F. Certification of the New York claims in this action as a class action;
- G. Certification of the California claims in this action as a class action;
- H. Designation of Plaintiff Ayala as the New York Class Representative, and Plaintiff Nguyen as the California Class Representative
- I. An award of damages, appropriate statutory penalties, and restitution to be paid by Defendant pursuant to New York and California law according to proof;
- J. Pre-judgment and post-judgment interest as provided by law;
- K. Appropriate statutory penalties;
- L. Attorneys' fees and costs of the action; and
- M. Such other injunctive and equitable relief as this Court shall deem just and proper.

**JURY DEMAND**

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

Dated: May 31, 2018  
New York, New York

Respectfully submitted,



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