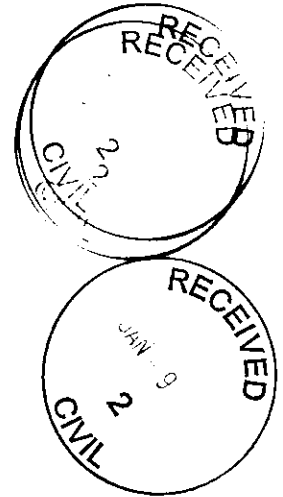


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8 *Attorneys for Plaintiff, Anthony Marc Mostajo on*  
9 *behalf of himself and all other similarly situated*



10 SUPERIOR COURT OF CALIFORNIA  
11 COUNTY OF SACRAMENTO

12  
13 ANTHONY MARC MOSTAJO, on behalf of  
14 himself and all others similarly situated,

15 Plaintiff,

16 vs.

17 NATIONWIDE MUTUAL INSURANCE  
18 COMPANY, and Does 1 through 50, inclusive,

19 Defendants.

No.

**CLASS ACTION COMPLAINT**

Unlimited Civil Case  
The Amount Demanded Exceeds  
\$25,000

20 Plaintiff Anthony Marc Mostajo ("Mostajo" or "Plaintiff"), by his attorneys, brings this  
21 action on behalf of himself and all other similarly situated and the general public, and on  
22 information and belief, except those allegations that pertain to the named Plaintiff and his  
23 attorneys (which are alleged on personal knowledge), hereby alleges as follows:

24 1. This action alleges Defendant Nationwide Mutual Insurance Company  
25 (hereinafter "Nationwide" or "Defendant"): (1) failed to pay Plaintiff, and those similarly  
26 situated, overtime pay in violation of California Labor Code section 1194 and applicable  
27 Industrial Welfare Commission Orders; (2) failed to pay Plaintiff and those similarly situated,  
28 wages for all time worked; and, (3) failed to provide accurate wage statements to Plaintiff, and

1 those similarly situated, as required by California Labor Code section 226, in that the wage  
2 statements did not include all hours worked or wages earned.

3         2. This action seeks relief for unremedied violations of California law, including,  
4 inter alia; damages, and/or restitution, as appropriate, to members of the proposed Class, and to  
5 victims of the practices at issue, who have not been paid for regular and overtime hours worked,  
6 who have not timely received all wages due on termination, and who have failed to receive  
7 accurate wage statements. Plaintiff is informed and believes that the damages, back wages,  
8 restitution, penalties, interest and attorneys' fees do not exceed an aggregate of \$4,999,999.99  
9 and that the pro-rata value of Plaintiff's individual claims, including damages, back wages,  
10 restitution, interest, attorneys' fees, and penalties, does not exceed \$74,999.99.

11         3. Plaintiff is an adequate and proper class representative. Plaintiff brings this action  
12 in his individual capacity, on behalf of all others similarly situated, and pursuant to California  
13 Business & Professions Code section 17204, on behalf of the general public. Plaintiff is a former  
14 employec of Defendant. Throughout his employment with Defendant, Defendant employed  
15 Plaintiff as a claims adjuster in California. Defendant also referred to the claims adjusters as  
16 claim representatives. Defendant classified the claims adjusters as non-exempt employees.  
17 While employed as a claims adjuster within the four years of the filing of this complaint,  
18 Plaintiff worked regular and overtime hours on a routine basis. Even though Defendant  
19 classified the claims adjusters as non-exempt, thereby entitling the claims adjusters to receive  
20 compensation for all hours worked and overtime compensation for all time worked in excess of 8  
21 hours in one day and 40 hours in one week, Defendant did not pay the claims adjusters for all  
22 hours and/or overtime worked. Although the number of claims assigned to the claims adjusters  
23 continually increased, thereby making it impossible for the claims adjusters to complete all of the  
24 tasks required without working more than 8 hours in one day or 40 hours in one week, Defendant  
25 employed a policy and practice of not allowing claims adjusters to report and/or receive  
26 compensation for all of the hours and overtime worked. This policy and practice resulted in the  
27 claims adjusters working off the clock without receiving compensation. Defendant was at all  
28 times aware of the fact that the claims adjusters were working hours for which they were

1 receiving no compensation or improper compensation because, among other things, Defendant's  
2 electronic records reflect the hours when claims adjusters entered and exited the office, logged in  
3 and off of the computer, and sent emails. Because of Defendant's actions, it (1) failed to pay  
4 wages for all time worked; (2) failed to pay overtime wages for overtime worked; and, (3) failed  
5 to provide accurate wage statements to employees as required by California Labor Code section  
6 226, in that the wage statements did not include all hours worked or wages earned.

7 4. During his employment, Plaintiff complained about the additional work  
8 assignments which required claims adjusters to work overtime hours for which they received no  
9 compensation. Plaintiff also complained that Defendant was targeting older claims adjusters, of  
10 which Plaintiff was one, with criticism and negative reviews, which resulted in terminations, so  
11 that Defendant would not have to pay higher overtime. Because Plaintiff was one of the older  
12 and more tenured claims adjusters, and as a result of his complaints, Plaintiff was repeatedly  
13 subjected to harassing and hostile treatment by his manager, including unjust and unwarranted  
14 criticisms of his performance, which ultimately culminated in Defendant's constructive  
15 termination of Plaintiff in November of 2015. No action was taken to either investigate  
16 Plaintiff's complaints or to stop the harassing and hostile behavior.

17 5. As a proximate result of Defendant's harassment and discrimination, Plaintiff  
18 suffered and continues to suffer substantial losses in earnings, bonuses, deferred compensation  
19 and other employment benefits, and has suffered and continues to suffer embarrassment, anger,  
20 humiliation, frustration and other highly unpleasant mental anguish all in an amount according to  
21 proof.

22 6. Plaintiff filed a timely charge of discrimination, retaliation, and wrongful  
23 termination with the Department of Fair Employment and Housing ("DFEH") and, on or about  
24 May 2, 2016, received a timely notice of the right to sue in California Superior Court pursuant to  
25 California Government Code section 12965(b), permitting Plaintiff to bring this action.  
26 Therefore, Plaintiff exhausted all of his administrative remedies.

27 7. Defendant, in doing the acts and failing to do the acts as herein alleged, acted  
28 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, and

1 in conscious disregard of said Plaintiff's rights. In addition, Defendant abused its position of  
2 authority and ratified the discriminatory conduct of their employees. Plaintiff is thus entitled to  
3 recover punitive damages from Defendant, in an amount according to proof.

4 8. Defendant, is, and at all relevant times was, doing business in the State of  
5 California and is an employer under applicable Industrial Welfare Commission Orders.

6 9. The names and capacities of defendants sued herein under California Code of  
7 Civil Procedure section 474 as Does 1 through 50, inclusive, are presently not known to Plaintiff,  
8 who therefore sues these defendants by such fictitious names. Plaintiff will seek to amend this  
9 Complaint and include these Doe Defendant's names and capacities when they are ascertained.  
10 Each of the fictitiously named defendants is responsible in some manner for the conduct alleged  
11 herein and for the injuries suffered by Plaintiff.

12 10. At all times mentioned in the causes of action alleged herein, each and every  
13 Defendant was an agent and/or employee of each and every other Defendant. In doing the things  
14 alleged in the causes of action stated herein, each and every Defendant was acting within the  
15 course and scope of this agency or employment and was acting with the consent, permission and  
16 authorization of each of the remaining Defendant. All actions of each Defendant as alleged in  
17 the causes of action stated herein were ratified and approved by every other Defendant or their  
18 officers or managing agents.

19 11. This action seeks relief on behalf of a class comprised of persons in the employ of  
20 Defendant in California as claims adjusters, also referred to as claim representatives, from  
21 January of 2013 to the present ("the Class");

22 12. The Class is sufficiently numerous, consisting of more than 50 individuals but  
23 fewer than 100, geographically dispersed throughout California, such that the joinder of all Class  
24 Members in one action is impracticable, and the disposition of whose claims in a class action  
25 will provide substantial benefits to both the parties and the Court.

26 13. There is a well-defined community of interest in the questions of law and fact  
27 involved affecting the parties to be represented. The questions of law and fact common to the  
28 Class predominate over questions that may affect individual Class Members, including but not

1 limited to the following:

- 2 a. Whether Defendant implemented and engaged in a systematic practice  
3 whereby it unlawfully failed to pay all earned regular and overtime pay to  
4 employees;
- 5 b. Whether Defendant implemented and engaged in a systematic practice  
6 whereby it unlawfully failed to pay all wages due to employees;
- 7 c. Whether Defendant implemented and engaged in a systematic practice  
8 whereby it failed to provide accurate wage statements to employees;
- 9 d. Whether the systematic acts and practices of Defendant as alleged herein  
10 violated, inter alia, applicable provisions of the California Labor Code,  
11 including but not limited to sections 201, 204, 226, 510, 558, 1174, 1194,  
12 2698, applicable Industrial Welfare Commission Orders, and California  
13 Business & Professions Code section 17200, et seq.

14 14. Because Plaintiff worked regular and overtime hours on a regular basis for which  
15 he was not compensated, and failed to receive timely and accurate wage statements, Plaintiff is  
16 asserting claims that are typical of the claims of the Class.

17 15. Plaintiff will fairly and adequately represent and protect the interests of the Class  
18 in that he has no disabling conflict of interest that would be antagonistic to those of the other  
19 members of the Class. Plaintiff retained counsel who is competent and experienced in the  
20 prosecution of class action wage and hour violations.

21 16. Plaintiff and the members of the Class have all similarly suffered irreparable harm  
22 and damages as a result of Defendant's unlawful and wrongful conduct, including but not limited  
23 to Defendant's systematic failure to pay regular and overtime wages, systematic failure to pay all  
24 wages due, and systematic failure to provide accurate wage statements makes class treatment  
25 especially appropriate. Absent this action, Defendant's unlawful conduct will continue  
26 unremedied and uncorrected.

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**FIRST CAUSE OF ACTION**

**(Failure to Pay Overtime Wages Pursuant to California Labor Code § 1194 on Behalf of Plaintiff and the Class)**

17. Plaintiff and the members of the Class incorporate by reference the allegations contained in the foregoing paragraphs of this complaint as if fully set forth herein.

18. During all relevant periods, Defendant required Plaintiff and the members of the Class to work in excess of 8 hours per day and 40 hours per week. Defendant, however, did not pay Plaintiff and the members of the class for all regular and overtime hours worked.

19. During all relevant periods, both the California Labor Code and the pertinent Wage Orders required that all work performed by an employee in excess of 8 hours per day and 40 hours per week to be compensated at one and one-half times the employee's regular rate of pay.

20. Plaintiff and the members of the Class are therefore entitled to the relief requested below.

**SECOND CAUSE OF ACTION**

**(Violation Of California Labor Code Section 226 on Behalf of Plaintiff and the Class)**

21. Plaintiff and the members of the Class incorporate by reference the allegations contained in the foregoing paragraphs of this complaint as if fully set forth herein.

22. During all relevant periods, Defendant failed to pay Plaintiff and the members of the proposed class for all hours worked and overtime owed. This failure violated California Labor Code sections 510 and 1194.

23. As a result of Defendant's failure to pay for all hours worked and overtime owed, Defendant failed to provide Plaintiff and the members of the proposed class with accurate wage statements as required by California Labor Code section 226.

**THIRD CAUSE OF ACTION**

**(Unlawful, Unfair And Fraudulent Business Practices Pursuant To Business & Professions Code Section 17200, et seq. on behalf of Plaintiff and the Class)**

24. Plaintiff and the members of the Class incorporate by reference the allegations contained in the foregoing paragraphs of this Complaint as if fully set forth herein.



1           32. Defendant was, at all times material hereto, an employer within the meaning of  
2 California Government Code section 12926(d), and as such, is barred from discriminating on the  
3 basis of age.

4           33. During his employment, Defendant targeted Plaintiff, and the other older claims  
5 adjusters with more tenure, engaging in unjust criticisms and negative performance evaluations  
6 and reviews, resulting in Plaintiff's termination, and the terminations of other older claims  
7 adjusters. These actions were taken so that Defendant could avoid paying the higher overtime  
8 rates owed to Plaintiff and the older and more tenured claims adjusters. Plaintiff complained  
9 about this behavior to his supervisors. Instead of addressing Plaintiff's complaints, Plaintiff was  
10 repeatedly subjected to harassing and hostile treatment by his manager, including unjust and  
11 unwarranted criticisms of his performance, which ultimately culminated in Defendant's  
12 constructive termination of Plaintiff in November of 2015.

13           34. Defendant discriminated against Plaintiff on the basis of his age in violation of  
14 California Government Code sections 12940 by engaging in a course of conduct intentionally  
15 designed to discriminate against Plaintiff on the basis of his age. This conduct culminated in  
16 Defendant's unlawful, discriminatory constructive termination of Plaintiff in November of 2015.

17           35. As a proximate result of Defendant's discrimination, Plaintiff suffered and  
18 continues to suffer substantial losses and in earnings, bonuses, deferred compensation and other  
19 employment benefits, and has suffered and continues to suffer embarrassment, anger,  
20 humiliation, frustration and other highly unpleasant mental anguish all in an amount according to  
21 proof.

22           36. Plaintiff filed a timely charge of discrimination and wrongful termination with the  
23 Department of Fair Employment and Housing ("DFEH") and, on or about May 2, 2016, received  
24 a timely notice of the right to sue in California Superior Court pursuant to California  
25 Government Code section 12965(b), permitting Plaintiff to bring this action. Therefore, Plaintiff  
26 exhausted all of his administrative remedies.

27           37. Defendant, in doing the acts and failing to do the acts as herein alleged, acted  
28 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, and



1 in conscious disregard of said Plaintiff's rights. In addition, Defendant abused its position of  
2 authority and ratified the discriminatory conduct of its employees. Plaintiff is thus entitled to  
3 recover punitive damages from Defendant, in an amount according to proof. As a result of  
4 Defendant's discriminatory acts as alleged herein, Plaintiff is entitled to an award of reasonable  
5 attorneys' fees and costs of suit as provided by California Government Code section 12965(b).

6 **FIFTH CAUSE OF ACTION**

7 **(On Behalf of Plaintiff Anthony Marc Mostajo Only --**  
8 **Retaliation In Violation of Cal. Gov. Code § 12940 (h))**

9 38. Plaintiff incorporates by reference the allegations contained in the foregoing  
10 paragraphs as if fully set forth herein.

11 39. During his employment, Defendant targeted Plaintiff, and the other older claims  
12 adjusters with more tenure, engaging in unjust criticisms and negative performance evaluations  
13 and reviews, resulting in Plaintiff's termination, and the terminations of other older claims  
14 adjusters. These actions were taken so that Defendant could avoid paying the higher overtime  
15 rates owed to Plaintiff and the older and more tenured claims adjusters. Plaintiff complained  
16 about this behavior to his supervisors. Instead of addressing Plaintiff's complaints, Plaintiff was  
17 repeatedly subjected to harassing and hostile treatment by his manager, including unjust and  
18 unwarranted criticisms of his performance, which ultimately culminated in Defendant's  
19 constructive termination of Plaintiff in November of 2015.

20 40. Defendant retaliated against Plaintiff due to his opposition to the Defendant's  
21 practices that discriminated against Plaintiff, and other claims adjusters, on the basis of their age  
22 in violation of California Government Code section 12940 (h) by engaging in a course of  
23 conduct intentionally designed to discriminate against Plaintiff due to his opposition to  
24 Defendant's discriminatory actions. This conduct culminated in Defendant's unlawful,  
25 discriminatory constructive termination of Plaintiff in November of 2015.

26 41. Plaintiff filed a timely charge of discrimination, retaliation, and wrongful  
27 termination with the DFEH and, on or about May 2, 2016, received a timely a notice of the right  
28 to sue in California Superior Court pursuant to California Government Code section 12965(b)

1 permitting Plaintiff to bring this action. Therefore, Plaintiff exhausted all of his administrative  
2 remedies.

3 42. The foregoing conduct caused Plaintiff to suffer severe emotional distress.  
4 Plaintiff has suffered and continues to suffer pain, loss of sleep, discomfort, anxiety, anger,  
5 frustration and other emotional distress, and will continue to suffer said emotional distress in the  
6 future in an amount according to proof.

7 43. As a proximate result of Defendant's discrimination against Plaintiff, Plaintiff has  
8 suffered and continues to suffer losses in earnings and other employment benefits and has  
9 suffered and continues to suffer embarrassment, anger, humiliation, frustration and other highly  
10 unpleasant mental anguish all to her damage in an amount according to proof.

11 44. Defendant, in doing the acts and failing to do the acts as herein alleged, acted  
12 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, and  
13 in conscious disregard of said Plaintiff's rights. In addition, Defendant abused its position of  
14 authority and ratified the discriminatory conduct of its employees. Plaintiff is thus entitled to  
15 recover punitive damages from Defendant, according to proof. As a result of Defendant's  
16 retaliatory acts as alleged herein, Plaintiff is entitled to an award of reasonable attorney's fees  
17 and costs of suit as provided by California Government Code section 12965(b).

18 **SIXTH CAUSE OF ACTION**

19 **(On Behalf of Plaintiff Anthony Marc Mostajo Only --**  
20 **Failure To Take Reasonable Steps To**  
21 **Prevent Discrimination and Retaliation: Cal. Gov. Code §§ 12940(h) and (k))**

22 45. Plaintiff incorporates by reference the allegations contained in the foregoing  
23 paragraphs as if fully set forth herein.

24 46. During his employment, Plaintiff alerted Defendant to discriminatory practices  
25 taken toward Plaintiff and other older claims adjusters due to their age. Defendant failed to  
26 address these complaints.

27 47. At all relevant times herein, Defendant failed to take all reasonable steps  
28 necessary to prevent discrimination from occurring, in violation of California Government Code  
section 12940(k).







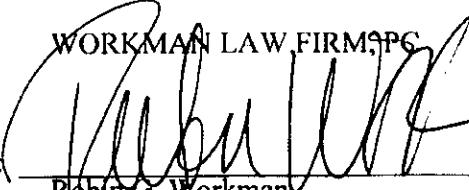
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- 3. For special damages, including lost wages, in an amount according to proof, plus interest thereon at the legal rate;
- 4. For costs of suit incurred herein;
- 5. For an award of attorneys' fees, and;
- 6. For such other relief as this Court deems just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

Date: January 9, 2017

By:   
WORKMAN LAW FIRM, PC  
Robin G. Workman  
*Attorneys for Plaintiff Anthony Marc Mostajo, and all others similarly situated*