

1 **MARLIN & SALTZMAN**

2 Louis M. Marlin, Esq. [Bar No. 054053]  
3 Stanley D. Saltzman, Esq. [Bar No. 090058]  
4 203 N. Golden Circle, Suite 310  
5 Santa Ana, CA 92705  
6 (714) 560-9300 Fax: (714) 560-9313

7 **LAW OFFICES OF R. REX PARRIS**

8 R. Rex Parris, Esq. [SBN 96567]  
9 963 West Avenue J  
10 Lancaster, CA 93534  
11 (661) 949-2595 Fax: (661) 949-7524

12 **MAZURSKY, SCHWARTZ & ANGELO**

13 Arnold W. Schwartz, Esq. [SBN 63436]  
14 10990 Wilshire Blvd., Suite 1200  
15 Los Angeles, CA 90024-3927  
16 (310) 478-5838 Fax: (310) 478-1232

17 Attorneys For: Plaintiffs and Plaintiff Class

18 **SUPERIOR COURT OF CALIFORNIA**

19 **COUNTY OF LOS ANGELES**

20 DANNY BEDNAR an individual; WILLIAM  
21 SEKLY, an individual; each on his own behalf  
22 and on behalf of all others similarly situated,

23 Plaintiffs

24 vs.

25 ALLSTATE INSURANCE COMPANY, an  
26 Illinois corporation; ALLSTATE PROPERTY  
27 AND CASUALTY INSURANCE COMPANY,  
28 an Illinois corporation; ALLSTATE  
INDEMNITY COMPANY, an Illinois  
corporation; GREG BLEIFFER, an individual;  
Does 1 through 200, inclusive,

Defendants.

CASE NO.:  
(Class Action)

**COMPLAINT FOR DAMAGES**

1. **Failure to Pay Overtime Compensation in Violation of California Labor Code § 1194;**
2. Failure to Pay Compensation at Time of Termination in Violation of California Labor Code §§ 201-203;
3. Declaratory Relief;
4. Accounting; and
5. Injunctive Relief

**DEMAND FOR JURY TRIAL**

Plaintiffs allege as follows:

**INTRODUCTION**



1 California Labor Code and regulations promulgated thereunder. Defendants practice and policy is,  
2 and, at all relevant times has been, to fail and refuse to pay overtime compensation due and owing to  
3 the Plaintiffs and members of their class in violation of California law. Defendants, and each of them,  
4 have instituted an unlawful policy and practice of treating Plaintiffs as exempt from the legal  
5 obligations under California law to pay overtime compensation and of failing and refusing to pay  
6 Plaintiffs and members of the Plaintiff Class overtime pay for overtime worked, notwithstanding that  
7 Plaintiffs and members of the Plaintiff Class are not exempt and are entitled to overtime pay for  
8 overtime worked. Allstate Defendants have treated all of their claims adjusters as exempt from  
9 California s overtime pay requirements and has refused to pay all such members of the class overtime,  
10 notwithstanding the fact that all such claims adjusters are not exempt and are indeed entitled to overtime  
11 pay under California s wage and hour laws. Allstate Defendants have willfully failed and refused, and  
12 continue to fail and refuse, to pay members of the Plaintiff Class wages (including overtime pay) due  
13 and owing at the time Plaintiff Class members employment with Allstate Defendants terminated in a  
14 timely and prompt manner as required by Labor Code §§201-203..

15 5. Plaintiffs and members of the Plaintiff Class previously were or presently are Allstate  
16 claims adjusters working in California who were not and are not exempt employees under California  
17 law. Plaintiffs neither had nor presently have managerial responsibility over other employees.

18 THE PARTIES

19 6. Plaintiff DANNY BEDNAR resides in Los Angeles County, State of California. Said  
20 plaintiff was employed by Allstate Defendants as a claims adjuster in Allstates Woodland Hills,  
21 California, Branch Claims Office from December 17, 1990 to April 15, 1998. Mr. Bednar is a member  
22 of the Plaintiff Class and of Sub-Class No. 1.

23 7. Plaintiff WILLIAM SEKLY resides in Los Angeles County, State of California. Said  
24 plaintiff was employed by Allstate Defendants as a claims adjuster in Allstates Woodland Hills,  
25 California, Branch Claims Office from February 9, 1987 to August 7, 1998. Mr. Sekly is a member  
26 of the Plaintiff Class and of Sub-Class No. 1.



1 or managing agents of Allstate Defendants, in the course and scope of the agency for the benefit of  
2 themselves, each other and the benefit of Allstate Defendants.

3 CLASS ACTION ALLEGATIONS

4 14. Plaintiffs bring this action as a class action on behalf of the following defined class and  
5 sub-class:

6 **All persons who, since November 27, 1996 have been employed or are currently**  
7 **employed in California as claims adjusters by the Allstate Defendants.**

8 **Sub-Class No. 1: Any member of the Plaintiff Class whose**  
9 **employment with the Allstate Defendants has**  
10 **terminated**

11 15. Plaintiffs are informed and believe, and on that basis, allege that during the class period,  
12 several thousand persons have been employed by Allstate Defendants as claims adjusters in the State  
13 of California. Because several thousand persons have been employed by Allstate Defendants as claims  
14 adjusters, the members of the Plaintiff Class are so numerous that joinder of all members is impossible  
15 and/or impracticable.

16 16. Plaintiffs' claims are typical of the members of the Plaintiff Class. Plaintiffs, like other  
17 members of the class of claims adjusters working for Allstate in California, were subjected to  
18 Allstate's policy and practice of refusing to pay overtime in violation of California wage and hour law.  
19 Plaintiffs' job duties and claims were and are typical of those of other class members who worked for  
20 Allstate as claims adjusters in California.

21 17. A class action is superior to other available methods for the fair and efficient adjudication  
22 of this controversy.

23 18. Plaintiffs will fairly and adequately protect the interests of the members of the class and  
24 have retained counsel competent and experienced in both class action and employment litigation.

25 19. Common questions of law and fact exist as to all members of the Plaintiff Class and  
26 predominate over any questions affecting solely individual members of the Plaintiff Class. Among the

1 questions of law and fact common to the Plaintiff Class are:

- 2 1) Whether Defendants unlawfully failed to pay overtime compensation in  
3 violation of California Labor Code §1194.
- 4 b) Whether Plaintiffs and whether the Plaintiff Class of claims adjusters are  
5 entitled to overtime pay for overtime hours worked under the overtime pay  
6 requirements of California law;
- 7 3) Whether Defendants can require members of the Plaintiff Class to work  
8 overtime hours without compensation as a condition of their employment;
- 9 d) Whether Allstate s policy and practice of failing to pay overtime to claims  
10 adjusters violates applicable provisions of California law, including applicable  
11 Labor Code sections, applicable Industrial Welfare Commission Orders and  
12 applicable state regulations;
- 13 5) Whether Defendants unlawfully failed to promptly pay compensation owing  
14 (including unpaid overtime pay) to members of the Plaintiff Class upon the  
15 termination of their employment in violation of California Labor Code §§201-  
16 203;
- 17 f) Whether Defendants at the time of employment termination willfully withheld  
18 compensation owing to members of the Plaintiff Class and are liable to  
19 members of the Plaintiff Class for waiting time penalties pursuant to California  
20 Labor Code §§201-203; and
- 21 7) Whether the members of the Plaintiff Class sustained damages, and, if so, the  
22 proper measure of such damages.

23 20. Plaintiffs know of no difficulty which will be encountered in the management of this  
24 litigation which would preclude its maintenance as a class action.

25 21. The names and addresses of the Plaintiff Class are available from Defendants. Notice will  
26 be provided to the Plaintiff Class via first class mail and/or by the use of techniques and a form of

1 notice similar to those customarily used in class actions.

2 FIRST CAUSE OF ACTION  
3 (FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF CALIFORNIA  
4 LABOR CODE §§1194 ON BEHALF OF THE PLAINTIFF CLASS AND  
AGAINST ALL DEFENDANTS)

5 22. Plaintiffs hereby incorporate by reference Paragraphs 1 through 21 above as if fully set  
6 forth herein.

7 23. Plaintiffs allege, on the basis of information and belief, that Allstate Defendants employ  
8 claims adjusters in numerous branch and/or claims offices throughout the State of California. From at  
9 least November 27, 1996 to the present time, Allstate Defendants, Defendant Greg Bleiffer and Does  
10 1 through 200 have engaged in a regular practice of requiring the Plaintiff Class of claims adjusters to  
11 work hours considerably in excess of eight hours per day and/or 40 hours per week. Upon information  
12 and belief, Plaintiffs allege that said defendants have a regular practice of requiring the Plaintiff Class  
13 to work at least between 50 and 60 or more hours in any given work week.

14 24. The laws of the State of California require an employer, such as Defendant Allstate, to pay  
15 overtime compensation to all non-exempt employees. Plaintiffs and members of the Plaintiff Class are  
16 not exempt from overtime pay requirements under California law.

17 25. Members of the Plaintiff Class are not exempt from the right to receive overtime pay under  
18 California law and are not exempt from the requirement that their employer pay them overtime  
19 compensation under California law. Members of the Plaintiff Class do not presently and have not at  
20 any time during the class period qualified under any exemption from the requirement that their employer  
21 pay overtime compensation under California law. Members of the Plaintiff Class are entitled to be  
22 paid overtime compensation for all overtime hours worked.

23 26. Defendants have failed and refused and continue to fail and refuse to pay members of the  
24 Plaintiff Class overtime compensation owed to the members of the Plaintiff Class for overtime hours  
25 worked as required by California wage and hour laws.

26 27. As a result of the actions of Defendants in failing and refusing to pay overtime

1 compensation, the Plaintiffs and the Plaintiff Class were damaged by not receiving overtime  
2 compensation which they should have received, but did not receive. Plaintiffs and members of the  
3 Plaintiff Class are entitled to compensation for unpaid overtime, together with pre-judgment interest.

4 28. Plaintiffs and the Plaintiff Class are entitled to receive an award of reasonable  
5 attorneys fees and costs pursuant to Labor Code §1194.

6 SECOND CAUSE OF ACTION  
7 (FAILURE TO PAY COMPENSATION AT THE TIME OF TERMINATION  
8 IN VIOLATION OF CALIFORNIA LABOR CODE §§201-203  
9 ON BEHALF OF SUB-CLASS NO. 1 AND AGAINST ALL DEFENDANTS)

9 29. Plaintiffs hereby incorporate by reference Paragraphs 1 through 28 above as though fully  
10 set forth herein.

11 30. California Labor Code §201 requires an employer who discharges an employee to pay  
12 compensation due and owing at said employee immediately upon discharge. California Labor Code  
13 §202 requires an employer to promptly pay compensation due and owing to an employee within 72  
14 hours of that employee s termination of employment by resignation. California Labor Code §203  
15 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation  
16 in a prompt and timely manner as required pursuant to California Labor Code §201 and §202  
17 respectively, said employer is liable to said employee for waiting time penalties as described herein.

18 31. Defendants have willfully failed and refused, and continues to fail and refuse, to pay  
19 compensation and wages, including unpaid overtime pay, to the members of Sub-Class No. 1 whose  
20 employment terminated in a timely manner as required by Labor Code §§201-202.

21 32. Defendants failure to timely pay overtime compensation and wages to members of Sub-  
22 Class No. 1 at the time of termination of employment as alleged in Paragraph 30 is willful. Allstate  
23 Defendants have willfully failed and refused and continue to willfully fail to pay compensation owed  
24 (including unpaid overtime) in a prompt manner to Sub-Class No. 1 members whose employment  
25 terminated as is required under California Labor Code §§201-203. As a result, Allstate Defendants  
26 are liable to members of Sub-Class No. 1 for waiting time penalties under California Labor Code §203

1 in an amount to be ascertained at trial, together with prejudgment interest.

2 THIRD CAUSE OF ACTION  
3 (DECLARATORY RELIEF AGAINST ALL DEFENDANTS)

4 33. Plaintiffs hereby re-allege Paragraphs 1 through 32 of this Complaint as if fully set forth  
5 herein.

6 34. An actual controversy has arisen between the Plaintiffs and the Plaintiff Class, on the one  
7 hand, and Defendants, on the other hand, relating to the following matters:

- 8 1) Whether Defendant Allstate has unlawfully failed to pay overtime compensation  
9 in violation of California Labor Code §1194 to Plaintiffs and to members of the  
10 Plaintiff Class;
- 11 b) Whether Defendant Allstate has unlawfully failed to pay compensation owing  
12 (including unpaid overtime pay) in a timely manner to the members of the  
13 Plaintiff Class whose employment terminated as required by Labor Code  
14 §§201-203;
- 15 3) Whether Defendants, and each of them, can require members of the Plaintiff  
16 Class to work overtime hours without compensation as a condition of their  
17 employment;
- 18 d) What amounts the Plaintiffs and the Plaintiff Class are entitled to receive in  
19 overtime pay;
- 20 5) What amounts members of the Plaintiff Class are entitled to receive in interest  
21 on unpaid compensation due and owing; and
- 22 5) What amounts Plaintiffs and the Plaintiff Class are entitled to receive from  
23 Defendants in waiting time penalties.

24 35. Plaintiffs and the Plaintiff Class further seek entry of a declaratory judgment against all  
25 defendants herein and in Plaintiffs favor which declares Defendants practices as heretofore alleged  
26 to be unlawful, and which provides for recovery of all sums determined by this Court to be owed by

1 Defendants, and each of them, to the Plaintiffs and the Plaintiff Class.

2 FOURTH CAUSE OF ACTION  
3 (FOR AN ACCOUNTING AGAINST ALL DEFENDANTS)

4 36. Plaintiffs hereby incorporate by reference Paragraphs 1 through 35 above as if fully set  
5 forth herein.

6 37. The Plaintiffs are owed wages which equal the sum of overtime compensation not paid by  
7 Defendant Allstate to the Plaintiffs and the members of the Plaintiff Class, statutory interest on such  
8 compensation, and each of them, and waiting time penalties owed to the members of the Plaintiff Class  
9 whose employment terminated.

10 38. The Plaintiffs do not know the precise amount of compensation due to the Plaintiffs and to  
11 each member of the Plaintiff Class. Upon information and belief plaintiffs allege that Defendants, and  
12 each of them, possess records from which the amount of compensation due and owing to each of the  
13 members of the Plaintiff Class herein can be determined.

14 39. The amount of statutory interest and penalties owed to each of the members of the Plaintiff  
15 Class is based on the amount of compensation owed to members of the Plaintiff Class by Defendants.  
16 This amount can only be determined by an accounting of books and records in the possession of  
17 Defendants, and each of them.

18 FIFTH CAUSE OF ACTION  
19 (REQUEST FOR INJUNCTIVE RELIEF AGAINST ALL DEFENDANTS)

20 40. The Plaintiffs incorporate Paragraphs 1 through 39 of this Complaint as though fully set  
21 forth herein.

22 41. Allstate Defendants, Defendant Bleiffer and Does 1 through 200 have applied Allstate s  
23 policies as heretofore alleged, and threaten to apply said policies, to all Plaintiff Class members who  
24 are currently employees of Allstate Defendants, including Defendant s failure to pay overtime  
25 compensation in violation of Labor Code §1194 and Defendant s failure to pay compensation at the time  
26 of termination in violation of Labor Code §§201-203.





- 1                                   prejudgment interest shown at the maximum rate allowed by law;
- 2                   (d)    For declaratory judgment on the Third Cause of Action;
- 3                   (e)    For an accounting relief on the Fourth Cause of Action;
- 4                   (f)    For preliminary and permanent injunctive relief on the Fifth Cause of Action;
- 5                   (g)    For disgorgement, restitution, injunctive relief and attorneys fees on the Sixth
- 6                                   Cause of Action;
- 7                   (h)    Awarding Plaintiffs their reasonable attorneys fees, costs, and expenses
- 8                                   incurred pursuant to applicable provisions of California law, including, but not
- 9                                   limited to, California Labor Code §§218.5 and 1194 and Code of Civil
- 10                                  Procedure §1021.5;
- 11                   (i)    For waiting time penalties pursuant to California Labor Code §203;
- 12                   (j)    For costs of suit incurred herein; and
- 13                   (k)    For such other and further relief as this Court deems just and proper.

14 Dated: November 21, 2000

**MARLIN & SALTZMAN  
LAW OFFICES OR R. REX PARRIS  
MAZURSKY, SCHWARTZ & ANGELO**

15  
16  
17 By: \_\_\_\_\_  
18 Louis M. Marlin of Marlin & Saltzman  
19 Attorneys for Plaintiffs and Class Plaintiffs

20 **DEMAND FOR JURY TRIAL**

21 Plaintiffs and Plaintiff Class hereby demand a trial by jury of the causes of action and claims  
22 asserted herein.

23 [signature page follows]  
24 Dated: November 21, 2000

**MARLIN & SALTZMAN  
LAW OFFICES OR R. REX PARRIS  
MAZURSKY, SCHWARTZ & ANGELO**

25  
26 By: \_\_\_\_\_

Louis M. Marlin of Marlin & Saltzman  
Attorneys for Plaintiffs and Class Plaintiffs

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

I:\DATA\WP51\0340\Pleadings\Allstate complaint.wpd

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