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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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Paula Self, Linda Duncan, Sheri Kiddy, and  
Leslie Demull, and Timothy Van Hoose  
Individually and on Behalf of Others  
Similarly Situated,

Plaintiffs,

vs.

TPUSA, Inc. and Teleperformance Group,  
Inc., Corporations,

Defendants.

**FIRST AMENDED COMPLAINT  
PROPOSED COLLECTIVE AND  
CLASS ACTION**

**JURY DEMANDED**

Case No.: 2:08-CV-395 PMW

Judge: Hon. Paul M. Warner

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Representative Plaintiffs, Paula Self, Linda Duncan, Sheri Kiddy, Leslie Demull, and Timothy Van Hoose (hereafter referred to as "Representative Plaintiffs"), by and through their attorneys Jesse S. Brar and Sharon L. Preston, upon personal knowledge as to matters concerning themselves and upon information and belief as to other matters, and as and for their Complaint

against TPSUA, Inc. and Teleperformance Group, Inc. (hereinafter "Teleperformance" and/or "Defendant"), allege as follows:

### **NATURE OF THE ACTION**

1. The Fair Labor Standards Act of 1938, as amended (29 U.S.C. §§ 201 et seq.)(hereafter "FLSA") provides for minimum standards for both wages and overtime compensation.
2. Utah Payment of Wages Act (Utah Code Ann. §§ 34-28-1 to -19)(hereafter "UPWA") provides additional protections to workers, including, but not necessarily limited to, entitlement to regular (non-overtime) wages for all time worked.
3. The Defendant, Teleperformance, is a Utah-registered Corporation in the primary business of operating "Contact Centers" (commonly referred to as "call centers") which provide telephone-based customer service to the customers of Defendant's numerous business clients.
4. Teleperformance has approximately 39 Contact Centers at various locations throughout the United States, and employs about 12,400 Service Agents or Customer Service Agents or Customer Service Representatives (or comparable positions with different titles) (hereafter, "Customer Service Representatives" or "CSRs") to receive and handle various types of phone calls from customers.
5. Teleperformance also has a "Work at Home" ("WAHA") program, through which Teleperformance employees throughout the United States work at home as CSRs, and, using Teleperformance equipment, receive and handle phone calls from customers.
6. The WAHA employees are assigned specific work hours, and are subject to and bound by Teleperformance policies and practices during their assigned work hours.

7. Teleperformance CSRs, whether they work at the Contact Centers or at home through the WAHA program, are hourly-paid, non-exempt employees that are entitled under the FLSA to overtime pay for any time worked above 40 hours in a work week.

8. The Representative Plaintiffs are currently employed or were previously employed as CSRs with Teleperformance's facilities in Utah and Ohio (whether at the Contact Centers or through the WAHA program).

9. As set forth in detail below, it is Teleperformance's nationwide policy and practice to require and/or cause CSRs to engage in work without compensation prior to the beginning of the official shift, at the end of the official shift, and during the continuous workday; all in violation of the provisions of the FLSA, the UPWA, and the Wage and Hour Laws of the states of Florida, Georgia, Idaho, Illinois, Indiana, Missouri, New Mexico, Ohio, Pennsylvania, South Carolina, and Texas.

10. With regards to claims under the FLSA, and pursuant to 29 U.S.C. § 216(b), Representative Plaintiffs bring this action on behalf of themselves, and as a Collective Action on behalf of all other persons similarly situated nation-wide (hereafter referred to as the "FLSA Nationwide Class"). (See Consent Forms attached as Exhibit 1).

11. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and with regards to claims under the UPWA; claims under the Wage and Hour Laws of the states of Florida, Georgia, Idaho, Illinois, Indiana, Missouri, New Mexico, Ohio, Pennsylvania, South Carolina, and Texas; and claims for breach of contract and unjust enrichment/quantum meruit under the laws of those States (hereafter referred to as "State Claims") – Representative Plaintiffs bring this action on behalf of themselves, and a Class Action on behalf of all others similarly situated who are

currently or were previously employed by Teleperformance within the States of Florida, Georgia, Idaho, Illinois, Indiana, Missouri, New Mexico, Ohio, Pennsylvania, South Carolina, Texas, and Utah (hereafter referred to as the "State Subclasses").

12. With regards to the claims under the FLSA, the Representative Plaintiffs, on behalf of themselves and the FLSA Nationwide Class, seek unpaid overtime compensation and interest thereon, liquidated damages and other penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

13. With regards to the claims under UPWA, Representative Plaintiffs, on behalf of themselves and the proposed Utah Class, seek unpaid regular non-overtime wages and interest thereon, pre- and post-judgment interest, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

14. With regards to the other State Claims, Representative Plaintiffs, on behalf of themselves and the proposed State Subclasses, seek unpaid regular non-overtime wages and interest thereon, pre- and post-judgment interest, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

15. With regards to the proposed FLSA Nationwide Class, the statutory period during which recovery of unpaid overtime compensation is sought begins on May 15, 2005 and continues through the trial date, since the violations of the FLSA have been ongoing and willful since and during that time period.

16. This action is brought to redress and end this long-time pattern of willful and unlawful conduct by Teleperformance.

## **JURISDICTION AND VENUE**

17. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331 and Section 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b).

18. This Court had diversity jurisdiction under 28 U.S.C. §1332, and supplemental jurisdiction to consider claims arising under state laws, pursuant to 28 U.S.C. §1367.

19. This Court has original jurisdiction over the state law claims in this action pursuant to the federal Class Action Fairness Act (“CAFA”), 28 U.S.C. §1332(d), because this is a class action in which:

- a. There are 100 or more members in Plaintiffs' proposed state law classes;
- b. At least some members of the proposed classes have different state citizenship from Defendant;
- c. The members of the proposed state classes are citizens of the States of Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, New Mexico, Ohio, Pennsylvania, South Carolina, Texas, and Utah;
- d. Teleperformance is multinational corporation incorporated in Paris, France, and registered and conducts business in various states in the United States; and
- e. The claims of the proposed class members exceed \$5,000,000 in the aggregate, exclusive of costs and interest.

20. In addition, this Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiffs' state law wage and hour claims, because those claims derive from a common nucleus of operative facts.

21. Defendant is subject to personal jurisdiction in the District of Utah.

22. The state law claims of the Representative Plaintiffs' and the members of the proposed State Class are so closely related to their FLSA claims that they form part of the same case or controversy.

23. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c), because Defendant, Teleperformance, is located within this district and is subject to personal jurisdiction within this district. Moreover, many of the violations alleged in this suit took place in Utah, where during the proposed class periods, as defined below, Teleperformance has operated and continues to operate.

24. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202..

## **PARTIES**

### **Plaintiffs**

25. Representative Plaintiffs Paula Self, Linda Duncan, Sheri Kiddy, Leslie Demull, and Timothy Van Hoose are natural persons and, during the relevant time periods identified herein, are or were employed by Teleperformance as Customer Service Representatives.

26. Plaintiff Paula Self is resident of Utah and is currently employed by the Defendant as a WAHA Customer Service Representative. Prior to starting in the WAHA program on September 28, 2007, Ms. Self worked as a CSR in Defendant's Salt Lake City Contact Center from August 20, 2007 to September 28, 2007.

27. Plaintiff Linda Duncan is resident of Utah and is employed by the Defendant as a WAHA Customer Service Representative. Prior to starting in the WAHA program in August 2007, Ms.

Duncan worked as a CSR in Defendant's Salt Lake City Contact Center from September 23, 2004 to August 2007.

28. Plaintiff Sheri Kiddy is resident of Utah and is employed by the Defendant as a WAHA Customer Service Representative. Prior to starting in the WAHA program in August 2007, Ms. Kiddy worked as a CSR in Defendant's Salt Lake City Contact Center from September 6, 2004 to August 2007.

29. Plaintiff Leslie Demull is resident of Utah and has been employed by the Defendant as a Customer Service Representative in its Salt Lake City Contact Center since date June 2004.

30. Plaintiff Timothy Van Hoose is a resident of the State of Ohio, and worked as a CSR in Defendant's Columbus, Ohio, Contact Center from July 9, 2007 to April 23, 2008.

### **Defendants**

31. Teleperformance is a corporation organized in Paris, France. TPUSA, Inc. and Teleperformance Group, Inc. are part of Teleperformance.

32. Teleperformance is a public company listed on the NYSE/Euronext Stock Exchange.

33. Teleperformance (formerly Teleperformance USA) was established in 1993 in Salt Lake City, Utah.

34. TPUSA, Inc. and Teleperformance Group, Inc. are corporations.

35. TPUSA, Inc. is a corporation that is registered and conducts business in the State of Utah.

36. Teleperformance USA was previously registered with the Utah Department of Corporations as "doing business as" ("DBA") "Teleperformance USA, Inc.," but since 2005 that status has been inactive.

37. Teleperformance Group, Inc. is a corporation registered in the State of Florida and conducts business in the State of Utah.

38. In 2006, Teleperformance merged its two U.S. business entities, Teleperformance USA and CallTech Communications, LLC and retained the Teleperformance name.

39. Americall Group (hereinafter “Americall”) was acquired by the Teleperformance Group, Inc. in 1998.

40. Americall has its corporate headquarters in the State of Illinois and contact centers in Illinois, Indiana, Missouri and Florida.

41. Defendants TPUSA, Inc. and Teleperformance Group, Inc., includes its former or current subsidiaries CallTech Communications, LLC, and Americall Group (AGI).

42. Defendants TPUSA, Inc. and Teleperformance Group, Inc, including its former or current subsidiaries CallTech Communications, LLC, and Americall Group (AGI) conduct business in the following states: Florida, Georgia, Idaho, Illinois, Indiana, Missouri, New Mexico, Ohio, Pennsylvania, South Carolina, Texas, and Utah.

43. Teleperformance maintains control, oversight, and direction over the operation of the Contact Centers and other facilities and offices in which the Representative Plaintiffs and the members of the proposed classes currently or previously worked , including the payroll and other employment practices therein.

44. Teleperformance employed, upon information and belief, hundreds of Customer Service Representatives in Utah at any one time during the relevant time periods, and Plaintiffs believe the Nationwide Collective Class included thousands of CSAs (including current and former employees who worked for Teleperformance during the relevant periods).

### **COMMON FACTUAL ALLEGATIONS FOR ALL CLAIMS**

45. Representative Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

46. Representative Plaintiffs and members of the proposed FLSA and Utah classes are currently or were previously employed by the Defendant.

47. Defendant has consistently practiced and continues to practice a nationwide policy of permitting, encouraging, and/or requiring its Customer Service Representatives, including Representative Plaintiffs and members of both proposed classes, to work without compensation, as follows:

#### **Pre-Shift Issues**

48. Defendant established a system by which “pay start time” (i.e., the time at which the employee would start to be compensated) was triggered only by the CSR being fully logged into the Teleperformance computer system.

49. Defendant required CSRs to perform certain activities prior to the “pay start time;” namely, booting up certain programs and going through the sometime-lengthy process of logging into the Teleperformance computer system) without compensating the CSRs for the time involved in these activities.

50. Defendant established a system by which the CSRs were considered “late” if the CSRs were not fully logged into the Teleperformance computer system by the official start time of the shift, thus requiring the CSRs to report to work early in order to perform any necessary preliminary activities prior to “being fully logged in.”

51. Defendant engaged in a consistent practice of scheduling a greater number of CSRs for each shift than the number of available and functioning workstations, and thus causing and/or requiring CSRs to wait for a functioning workstation, and/or report to work 10-30 minutes early in order to avoid waiting for a functioning and available workstation.

52. When CSRs reported to work early for the reasons set forth above, or when they reported to work on time but had to wait for an available and functioning workstation, they were not compensated for this time, but, again, were only compensated from the time they were fully logged into the Teleperformance computer system.

### **Continuous Workday Issues**

53. After the official start time of the shift (i.e., when the CSRs were required to, and did, report physically to work), the CSRs would not be paid for any period during the continuous workday when the CSRs were not actively logged onto the Teleperformance computer system for any reason.

54. After the official start time of the shift (i.e., when the CSRs were required to, and did, report physically to work), the CSRs would not be paid for any period during the continuous workday when the CSRs were not actively logged onto the Teleperformance computer system because of equipment malfunctions.

55. After the official start time of the shift (i.e., when the CSRs were required to, and did, report physically to work), the CSRs would not be paid for any period during the continuous workday when the CSRs were not actively logged onto the Teleperformance computer system during short restroom breaks of approximately five minutes.

56. After the official start time (i.e., when the CSRs were required to, and did, report physically to work), the CSRs would not be paid for any period during the continuous workday when the CSRs were not actively logged onto the Teleperformance computer system because of employee or equipment errors causing a “log out,” and the subsequent time required to log back into the system.

57. After the official start time (i.e., when the CSRs were required to, and did, report physically to work), the CSRs would not be paid for any period during the continuous workday when the CSRs were not actively logged onto the Teleperformance computer system because they were engaged in conversations with supervisors and other work-related activities.

58. The CSRs were given a limited permissible amount of time between customer service calls; for example, 40 seconds (this time was referred to as the “after call work time,” or “ACW time”), and Teleperformance did not pay the CSRs for any “ACW time” that exceeded the prescribed time limit, even though the ACW time occurred during the continuous workday, and even through work-related activities were performed during that time, such as taking notes, talking to supervisors, etc.

### **Post-shift Issues**

59. Teleperformance established a system whereby the shift officially ended (for purposes of compensation) at the moment the CSRs were no longer actively logged into the Teleperformance computer system, and did not pay the CSRs for necessary work performed after that moment (such as fully closing down the systems, conversations with supervisors, turning in paperwork, etc.).

### **Claims Specific to WAHA Employees**

60. In addition to all of the issues set forth above, the WAHA CSRs were required, during their scheduled shift (and continuous workday) to travel to the Contact Centers to transport their equipment for repairs when the equipment malfunctioned, and to wait for the equipment to be repaired or replaced, and the CSRs were not paid for the this time.

61. The WAHA CSR's were also required to travel to the Contact Centers for the purpose of attending meetings, and were not paid for their travel time to and from the meetings, although the meetings took place during their scheduled shifts (and continuous workday).

62. The amount of uncompensated work time (as described above in Paragraphs 48-61) that the Representative Plaintiffs and proposed Utah and FLSA class members amounts to approximately thirty (30) to sixty (60) minutes per day per person.

### **COLLECTIVE AND CLASS ACTION ALLEGATIONS**

63. Representative Plaintiffs hereby incorporate each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

64. Representative Plaintiffs bring this action individually and as collective and class actions, on behalf of all persons similarly situated to them, including the following proposed Plaintiff Classes:

65. FLSA Nationwide Class: All persons who are, or have been, employed by the Defendant Teleperformance anywhere in the United States as Customer Service Representatives in Contact Centers or through the WAHA programs anytime from May 15, 2005 onward, and who, by means of the practices set forth above in Paragraphs 48-61 above, worked any time in excess of 40 hours in a single work week without compensation.

66. State Subclasses: All persons who are, or have been, employed by Defendant Teleperformance in the States of Florida (FL-Subclass), Georgia (GA-Subclass), Idaho (ID-Subclass), Illinois (IL-Subclass), Indiana (ID-Subclass), Missouri (MO-Subclass), New Mexico (NM-Subclass), Ohio (OH-Subclass), Pennsylvania (PA-Subclass), South Carolina (SC-Subclass), Texas (TX-Subclass), and Utah (UT-Subclass), as Customer Service Representatives in Contact Centers or through the WAHA program, and who, by means of the practices set forth above in Paragraphs 48-61 above, worked any regular, non-overtime hours without compensation.

67. Representative Plaintiffs do not know the precise numbers of employees included in the FLSA Nationwide Class and the State Subclasses, but believe the numbers to be more than 12,000.

**Collective Action Allegations for the FLSA Claims**

68. The FLSA Claim has been brought and may properly be maintained as a Collective Action under 29 U.S.C. § 216 because members of the proposed FLSA Nationwide Class were subjected to the identical policies and practices (as alleged in Paragraphs 48-61) to which the Representative Plaintiffs have been subjected, and have thereby been similarly deprived of overtime compensation to which they were lawfully entitled under FLSA.

69. The members of the proposed FLSA Nationwide Class would benefit from the issuance of a court-supervised notice of the present lawsuit and the opportunity to join the present lawsuit as party plaintiffs (by filing written consent with the Court, pursuant to 29 U.S.C. § 216(b)).

70. The members of the proposed FLSA Nationwide Class are known to Teleperformance, are readily identifiable, and can be located through Teleperformance's records.

71. Pursuant to 29 U.S.C. § 216(b), the Representative Plaintiffs and certain members of the proposed FLSA Nationwide Class hereby submit their written consents to serve as party plaintiffs and to join the proposed FLSA Nationwide Class. (Attached hereto as Exhibit 1).

72. Defendant, its officers and directors are excluded from each of these Classes.

**Class Action Allegations for State Law Claims**

73. The State Law claims may properly be maintained as a Class Action under Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Classes are easily ascertainable, and the following Rule 23 requirements are met:

74. Numerosity: The total number of members of the proposed State Subclasses exceeds 12,000 individuals. The members of the class are so numerous that joinder of all members is impractical, and a class action is the only available method for the fair and efficient adjudication of this controversy;

75. Commonality: There are common questions and issues of fact and law which predominate over any issues solely affecting individual members, by means of the policies and practices set forth above in Paragraphs 48-61; specifically, these common questions of law and fact include, but are not limited to:

- i. Whether Representative Plaintiffs and members of the proposed State Subclasses performed non-overtime work for which they were not compensated by Teleperformance;
- ii. Whether Teleperformance unlawfully failed to pay non-overtime compensation in violation of the Wage and Hour laws of the states of

Florida, Georgia, Idaho, Indiana, Illinois, New Mexico, Ohio, Pennsylvania, South Carolina, Texas, and Utah;

- iii. Whether Teleperformance breached its contract with Representative Plaintiffs and members of the proposed State Subclasses by failing to pay them wages in accordance with their written and/or oral agreement;
- iv. Whether Teleperformance was unjustly enriched by the uncompensated non-overtime work performed by Representative Plaintiffs and the members of the proposed State Subclasses for work performed;
- v. Whether Representative Plaintiffs and members of the proposed State Subclasses are entitled to equitable and/or injunctive relief.

76. Typicality: The Representative Plaintiffs' state claims are typical of the claims of the proposed State Subclasses, in that the claims are grounded in the allegation that the Defendant failed to pay non-overtime wages to CSRs by means of the policies and practices set forth above in Paragraphs 48-61, in violation of State wage and hour/wage payment statutes, in breach of contract, and pursuant to the doctrine of Quantum Meruit/Unjust Enrichment.

77. Superiority of Class Action: Since the damages suffered by members of the proposed State Subclasses (e.g, UT-Subclass) (although not inconsequential) may be relatively small, the expense and burden of individual litigation by each member will likely make it impractical for the State Subclass members to seek redress individually for the wrongful conduct alleged herein. Moreover, separate actions by each individual member of the proposed State Subclass, and the resulting multiplicity of lawsuits, would cause undue hardship and expense for the Court and the

litigants. Finally, the prosecution of separate actions would also create a risk of inconsistent rulings.

78. Adequacy of Representative Plaintiffs: The Representative Plaintiffs in this class action are adequate representatives of the State Subclasses, since the Representative Plaintiffs' claims are identical to those of the proposed State Subclasses, and thus, the Representative Plaintiffs have the same interests in this litigation as the State Subclass Members. The Representative Plaintiffs are committed to vigorous prosecution of this case, and have retained competent counsel who are experienced in litigation of this nature. The Representative Plaintiffs are not subject to any individual defenses unique from those conceivably applicable to the proposed State Subclasses as a whole. The Representative Plaintiffs anticipate no management difficulties in this litigation.

## COUNT I

### **FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF THE FAIR LABOR STANDARDS ACT (The FLSA Nationwide Class)**

79. Representative Plaintiffs hereby incorporate each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

80. At all times relevant hereto, Representative Plaintiffs have been and continue to be entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201, et seq.

81. At all times relevant hereto, Teleperformance has been an employer as defined under 29 U.S.C. § 203(b) and (d).

82. At all times relevant hereto, Teleperformance has been an "enterprise engaged in commerce or in the production of goods for commerce" as defined under 29 U.S.C. §203(s)(1).

83. Defendant's failure to pay overtime compensation for any time worked by the CSRs in excess of 40 hours was in violation of the FLSA, 29 U.S.C. §§ 206 and 207.

84. Representative Plaintiffs and members of the proposed FLSA Class typically worked a 40-hour on-the-clock work week (i.e., time when the CSRs were logged into the Teleperformance computer system and were considered "on the clock" for pay purposes); and thus, the uncompensated work performed by the CSRs, as described in Paragraphs 48-61, was often above-and-beyond the 40-hour "on the clock" work week.

85. The practices and policies described in Paragraphs 48-61, by which means the Representative Plaintiffs and proposed FLSA Class members were deprived of overtime pay, is a company-wide practice which is applied to CSRs at Teleperformance Contact Centers nationwide.

86. Representative Plaintiffs and members of the proposed FLSA Class are entitled to unpaid overtime compensation beginning three years prior to the filing of this Complaint because Teleperformance acted knowingly and willfully and/or showed reckless disregard as to whether their conduct was prohibited by the FLSA.

87. As a result of the aforesaid willful violations of the FLSA's overtime pay provisions, Teleperformance is liable pursuant to 29 U.S.C. § 216(b) for unpaid overtime compensation, together with an additional amount as liquidated damages, pre-judgment and post-judgment interest, reasonable attorneys' fees, and costs of this action.

## **COUNT II**

### **FAILURE TO MAINTAIN PROPER RECORDS IN VIOLATION OF THE FLSA (The FLSA Nationwide Class)**

88. Representative Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

89. Defendants violated provisions of the FLSA by failing to make, keep, and preserve adequate and accurate records of the employment of Representative Plaintiffs, and members of the proposed FLSA Nationwide Class, concerning their wages, hours and other conditions of employment; more specifically, the records kept by defendants failed to adequately and accurately disclose among other things, hours worked each work day, the total hours worked each work week, and/or the total overtime compensation for each work week.

## **COUNT III**

### **FAILURE TO PAY WAGES FOR ALL HOURS WORKED IN VIOLATION OF UTAH LAW (Utah State Subclass)**

90. Representative Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

91. Defendant, in violation of UPWA, failed to pay regular non-overtime wages to the Representative Plaintiffs, and members of the proposed Utah Class, by means of the policies and practices set forth above in Paragraphs 48-61.

92. There were times when the CSRs worked “on the clock” (i.e., time when the CSRs were logged into the Teleperformance computer system, and considered “on the clock” for pay

purposes) less than 40 hours; and in such cases, at least some portion of the uncompensated work which the CSRs performed (as described in Paragraphs 48-61) were regular, non-overtime hours.

93. As a direct and proximate result of Teleperformance's violations of the UPWA, as set forth herein, Representative Plaintiffs and members of the proposed Utah Class have sustained damages, including loss of earnings for hours of regular time worked for Defendant, in an amount to be established at trial.

94. The Representative Plaintiffs and the members of the proposed Utah Class are entitled to an award of the full amount of the unpaid regular wages, beginning four years prior to the filing of this Complaint, as well as pre- and post-judgment interest, and such other legal and equitable relief as the Court deems just and proper.

#### **COUNT IV**

##### **VIOLATIONS OF STATE WAGE AND HOUR LAWS (State Subclasses)**

95. Representative Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

96. There were times when the CSRs worked “on the clock” (i.e., time when the CSRs were logged into the Teleperformance computer system, and considered “on the clock” for pay purposes) less than 40 hours; and in such cases, at least some portion of the uncompensated work which the CSRs performed (as described in Paragraphs 48-61) were regular, non-overtime hours.

97. Defendant failed to pay regular non-overtime wages to the Representative Plaintiffs, and members of the proposed State Subclasses for these states, by means of the policies and practices

set forth above in Paragraphs 48-61, in violation of the Wage and Hour Laws of Florida, Georgia, Idaho, Indiana, Illinois, New Mexico, Ohio, Pennsylvania, South Carolina, and Texas;

98. As a direct and proximate result of Teleperformance's violations of the Wages and Hour Laws of Florida, Georgia, Idaho, Indiana, Illinois, New Mexico, Ohio, Pennsylvania, South Carolina, and Texas, the Representative Plaintiffs and members of the proposed State Subclasses have sustained damages, including loss of earnings for hours of regular (non-overtime) hours worked for Defendant, in an amount to be established at trial.

99. The Representative Plaintiffs and the members of the proposed State Subclasses for the states of Florida, Georgia, Idaho, Indiana, Illinois, New Mexico, Ohio, Pennsylvania, South Carolina, and Texas, are entitled to an award of the full amount of the unpaid regular wages, beginning four years prior to the filing of this Complaint, as well as pre- and post-judgment interest, and such other legal and equitable relief as the Court deems just and proper.

## **COUNT V**

### **BREACH OF CONTRACT (State Subclasses)**

85. Representative Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

86. Defendant expressly made an offer, orally and in writing, to pay Representative Plaintiffs and members of the proposed State Subclasses for the states of Florida, Georgia, Idaho, Indiana, Illinois, New Mexico, Ohio, Pennsylvania, South Carolina, Texas, and Utah, a specific rate of regular, non-overtime compensation for each hour worked.

88. Representative Plaintiffs and each member of the proposed State Subclasses for the states of Florida, Georgia, Idaho, Indiana, Illinois, New Mexico, Ohio, Pennsylvania, South Carolina, Texas, and Utah, performed work pursuant to the offer made by Defendant, and were entitled to receive the agreed-upon wages.

90. Defendant breached its contractual obligation to the Representative Plaintiffs and members of the proposed State Subclasses for the states of Florida, Georgia, Idaho, Indiana, Illinois, New Mexico, Ohio, Pennsylvania, South Carolina, Texas, and Utah (pursuant to the practices and policies described above in Paragraphs 48-61) by failing to pay the full amount of agreed-upon wages and compensation for each hour worked.

91. Representative Plaintiffs and each member of the proposed State Subclasses for the states of Florida, Georgia, Idaho, Indiana, Illinois, New Mexico, Ohio, Pennsylvania, South Carolina, Texas, and Utah, suffered damages because they performed work and were not paid the agreed-upon wages and other compensation for each hour worked.

92. The Representative Plaintiffs and the members of the proposed State Subclasses for the states of Florida, Georgia, Idaho, Indiana, Illinois, New Mexico, Ohio, Pennsylvania, South Carolina, Texas, and Utah, are entitled to an award of the full amount of the unpaid non-overtime wages, as well as pre- and post-judgment interest, and such other legal and equitable relief as the Court deems just and proper.

## COUNT VI

### QUANTUM MERUIT/UNJUST ENRICHMENT (State Subclasses)

93. Representative Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

94. Representative Plaintiffs and the members of the proposed State Subclasses for the states of Florida, Georgia, Idaho, Indiana, Illinois, New Mexico, Ohio, Pennsylvania, South Carolina, Texas, and Utah, conferred a substantial benefit on Defendant by performing the non-overtime work described above in Paragraphs 48-61.

95. Defendant had knowledge of the uncompensated work performed by the Representative Plaintiffs and the members of the proposed State Subclasses for the states of Florida, Georgia, Idaho, Indiana, Illinois, New Mexico, Ohio, Pennsylvania, South Carolina, Texas, and Utah, and in fact, knowingly permitted, encouraged and/or required that such work be performed.

96. Representative Plaintiffs and the members of the proposed State Subclasses for the states of Florida, Georgia, Idaho, Indiana, Illinois, New Mexico, Ohio, Pennsylvania, South Carolina, Texas, and Utah, performed this work with the expectation of receiving compensation and/or the fear of being disciplined or discharged for refusing to work as requested.

97. Defendant benefited significantly by accepting the benefits of the labor of the Representative Plaintiffs and members of the proposed State Subclasses for the states of Florida, Georgia, Idaho, Indiana, Illinois, New Mexico, Ohio, Pennsylvania, South Carolina, Texas, and Utah, and withholding compensation for such labor.

98. It would be inequitable for EG&G to retain the benefits and profits obtained from the work performed by Representative Plaintiffs and members of the proposed State Subclasses for

the states of Florida, Georgia, Idaho, Indiana, Illinois, New Mexico, Ohio, Pennsylvania, South Carolina, Texas, and Utah, without paying them for their work.

99. The Representative Plaintiffs and the members of the proposed State Subclasses for the states of Florida, Georgia, Idaho, Indiana, Illinois, New Mexico, Ohio, Pennsylvania, South Carolina, Texas, and Utah, are entitled to an award for the full value of the uncompensated work they performed (as described above in Paragraphs 48-61), as well as pre- and post-judgment interest, and such other legal and equitable relief as the Court deems just and proper.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Representative Plaintiffs, on behalf of themselves and members of the proposed FLSA Nationwide Class and State Subclasses, pray for judgment and the following specific relief against defendant Teleperformance as follows:

1. That the Court declare, adjudge and decree that this action is a proper class/collective action and certify the proposed FLSA Class and the State Subclasses under 29 U.S.C. § 216 and FRCP Rule 23, respectively;
2. That this Court designate the Representative Plaintiffs as Class Representatives and their lawyers as Class Counsel;
3. That, at the earliest possible time, Representative Plaintiffs be allowed to give notice of this collective action, to all members of the proposed FLSA Nationwide Class and State Subclasses, with such notice informing them that this civil action has been filed, the nature of the action, and of their right to join this lawsuit;
4. Damages and restitution in an amount to be proven at trial;

5. Liquidated damages, pre-judgment and post-judgment interest, as provided by law;
6. An award to Representative Plaintiffs and members of the proposed FLSA Nationwide and State Subclasses of reasonable attorneys' fees and costs pursuant to the FLSA and State laws;
7. Appropriate equitable and injunctive relief to remedy Teleperformance's violations of the FLSA and the State Wage and Hour Laws, including but not necessarily limited to an order enjoining Teleperformance from continuing its unlawful practices; and
8. All other relief as this Court may deem proper.

**JURY DEMAND**

Representative Plaintiffs and the members of the proposed FLSA Nationwide Class and the proposed Utah Class hereby demand trial by jury on all issues triable of right by jury.

Respectfully Submitted,

Dated: June 23, 2008

A handwritten signature in black ink, appearing to read "J. Brar", written over a horizontal line.

Jesse S. Brar  
Sharon L. Preston

*Attorneys for Plaintiffs*

## Certificate of Service

I hereby certify that on June 23, 2008, I electronically filed the forgoing with the Clerk of the Court using the CM/ECF system which sent the notice of such filing to the following:

Gerry B. Holman  
Dunn & Dunn  
505 E. 200 S. 2<sup>nd</sup> Floor  
Salt Lake City, UT 84102  
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San Diego, CA 92130  
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I also certify that on June 23, 2008, I filed a copy of the forgoing with the Clerk of the Court and a copy was served on the following:

Gerry B. Holman  
Dunn & Dunn  
505 E. 200 S. 2<sup>nd</sup> Floor  
Salt Lake City, UT 84102  
(801) 521-6677

/s/Jesse Brar  
Jesse S. Brar