

James R. Hawkins (SBN 192925)
Christina M. Lucio (SBN 253677)
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676
James@Jameshawkinsaplc.com
Christina@Jameshawkinsaplc.com

Attorneys for Plaintiff CARLOS SANTOS,
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CARLOS SANTOS, individually and on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

UNITED AIRLINES, INC., a Delaware
corporation; and DOES 1-50 inclusive

Defendants.

Case No.

COMPLAINT

Assigned for All Purposes To:

Hon.

Dept.:

COMPLAINT FOR DAMAGES FOR:

- 1) **Violation of the Fair Credit Reporting Act for Failure to Make Proper Disclosures [15 U.S.C. § 1681, et seq.];**
- 2) **Violation of the Fair Credit Reporting Act for Failure to Obtain Proper Authorization;**
- 3) **Failure to Make Proper Disclosure In Violation of ICRAA**
- 4) **Failure to Make Proper Disclosure In Violation of CCRAA**
- 5) **Failure to Accurately Pay Overtime Wages;**
- 6) **Failure to Provide Lawful Meal Periods;**
- 7) **Failure To Authorize And Permit Lawful Rest Periods;**
- 8) **Failure to Timely Pay Wages Owed Upon Separation From Employment;**
- 9) **Knowing and Intentional Failure to Comply With Itemized Wage**

Statement Provisions;
10) Violation of the Unfair Competition Law;

DEMAND FOR JURY TRIAL

Plaintiff CARLOS SANTOS ("Plaintiff"), an individual, assert claims against defendant UNITED AIRLINES, INC., a Delaware corporation, and DOES 1-50, inclusive (collectively "United Airlines" or "Defendant") as follows:

INTRODUCTION

1. This is a Class Action, pursuant to California Code of Civil Procedure section 382, on behalf of Plaintiff and any and all persons who are or were employed by Defendants as hourly, non-exempt employees, however titled, by Defendant at airports in the State of California within four (4) years prior to the filing of the Complaint in this action until the resolution of this lawsuit and whose job duties did not consist of over 50% administrative, executive or professional duties (collectively referred to as the "Class" or "Class Members" or "Non-Exempt Employees").

2. During the "liability period," as defined as the applicable statute of limitations for each and every cause of action contained herein, Defendants consistently maintained and enforced against its Non-Exempt Employees unlawful practices and policies in violation of California state wage and hour laws, including failing to lawfully and accurately pay Plaintiff and Class Members for all hours worked, including minimum wages and overtime; failing to lawfully provide meal and rest periods; failing to pay one hour of pay at the employee's regular rate of pay when legally mandated meal or rest periods were not lawfully provided; failing to accurately pay overtime; failing to provide accurate itemized wage statements; failing to timely pay all wages earned during employment and at the time of separation, and failing to keep accurate records; and failing to properly pay vacation.

3. Defendants implemented uniform policies and practices that deprived Plaintiff and Class Members of earned wages, including minimum wages, premium wages, and overtime wages; properly paid vacation wages and sick leave; and lawful meals and/or rest breaks.

1 4. Such actions and policies, as described above and further herein, were and continue
2 to be in violation of the California Labor Code. Plaintiff, on behalf of himself and all Class
3 members, brings this action pursuant to the California Labor Code, including sections 201, 202,
4 203, 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 227.3, 245-249, 510, 512, 516, 558, 1174, 1194,
5 1194.2, 1195, 1197, 1198, applicable IWC California Wage Orders and California Code of
6 Regulations, Title 8, section 11000 *et seq.*, seeking unpaid wages, unpaid meal and rest period
7 compensation, penalties, liquidated damages, and reasonable attorneys' fees and costs.

8 5. Plaintiff also alleges that during the relevant time period, Defendants improperly
9 conducted background checks, conducted background checks without proper authorization, and
10 obtained consumer credit reports on Plaintiff and Class Members when they applied for
11 employment in violation of the Fair Credit Reporting Act ("FCRA"), 15 USC §1681 *et seq.*, the
12 California Investigative Consumer Reporting Agencies Act ("ICRAA")(Cal. Civ. Code § 1786 *et*
13 *seq.*), the California Consumer Credit Reporting Agencies Act, ("CCRAA"), Civ. Code §1785.1 *et*
14 *seq.*

15 6. The FCRA, ICRAA and CCRA Classes include the members of the Class, but also
16 include other prospective employees, employees, and former employees of Defendants during the
17 relevant time period.

18 7. Plaintiff, individually and on behalf of the FCRA, ICRAA and CCRA Classes, seeks
19 compensatory and statutory damages, penalties, and punitive damages due to Defendants'
20 systematic and willful violations of the FCRA, ICRAA, and CCRAA.

21 8. Plaintiff, on behalf of himself and others similarly situated, pursuant to Business and
22 Professions Code sections 17200-17208, also seeks restitution from Defendants for their failure to
23 pay to Plaintiffs and Class Members all of their wages, including overtime and premium wages,
24 and properly paid sick leave and vacation wages.

25 **JURISDICTION AND VENUE**

26 9. This action is brought as a Class Action on behalf of Plaintiff and similarly situated
27 employees of Defendants pursuant to California Code of Civ. Proc. Section 382. The monetary
28 damages and restitution sought by Plaintiff exceeds the minimum jurisdiction limits of the

1 California Superior Court and will be established according to proof at trial.

2 10. This Court has jurisdiction over this action pursuant to the California Constitution
3 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except
4 those given by statute to other courts.

5 11. This Court has jurisdiction over this Action pursuant to California Code of Civil
6 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

7 12. This Court has jurisdiction over Defendants because, upon information and belief,
8 each Defendant is either a resident of California, has sufficient minimum contacts in California, or
9 otherwise intentionally avails itself of the California market so as to render the exercise of
10 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
11 substantial justice. Defendants have done and are doing business throughout California.

12 13. The unlawful acts alleged herein have a direct effect on Plaintiff and the other
13 similarly situated Non-Exempt Employees within San Francisco County and it is believed that
14 Defendants have employed over one hundred Class Members as Non-Exempt Employees
15 throughout the state.

16 14. The California Superior Court also has jurisdiction in this matter because the
17 individual claims of the Class Members described herein are presently believed to be under the
18 seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the
19 aggregate potential damages and recovery by all of the claims of the Plaintiff's Class, including
20 attorneys' fees, placed in controversy by Plaintiff's class-wide claims, is presently believed to be
21 under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005.
22 Further, there is no federal question at issue, as the issues herein are based solely on California
23 statutes and law, including the Labor Code, IWC Wage Orders, the California Code of Civil
24 Procedure, the California Civil Code, and the California Business and Professions Code.

25 15. Venue is proper in this Court because one or more of the Defendants reside, transact
26 business, or have offices in this County, and the acts or omissions alleged herein took place in this
27 County.
28

1 **PARTIES**

2 16. United Airlines, Inc., is a Delaware corporation in good standing that is authorized
3 to do business throughout the state. United Airlines headquarters are located at 233 S. Wacker
4 Drive Chicago, IL 60606 United States.

5 17. United Airlines operates throughout the United States and in six different continents
6 including eleven airports in California. United Airlines provides air transportation services,
7 transporting both people and cargo through its mainline and regional operations. United Airlines
8 also sells fuel and offers catering, ground handling, and maintenance services for third parties.

9 18. Plaintiff Carlos Santos is and during the liability period has been, a resident of
10 California.

11 19. Plaintiff was employed by Defendant during the liability period as an hourly, non-
12 exempt employee. Specifically, Plaintiff was employed as a Ramp Service Agent in San Francisco,
13 CA.

14 20. Plaintiff and the members of the putative class were employed by Defendants as
15 hourly, non-exempt employees, however titled, (the "Class Members" or "Non-Exempt
16 Employees") at airports during the liability period.

17 21. Plaintiff and the members of the FCRA Class are all prospective employees and/or
18 current employees employed by, or formerly employed by Defendants in California who, as a
19 condition of employment, were required to submit to a background check at any time during the
20 period beginning five years prior to the filing of this Complaint to the present.

21 22. Plaintiff and the members of the ICRAA and CCRA Classes are all prospective
22 employees and/or current employees employed by, or formerly employed by Defendants in
23 California who, as a condition of employment, were required to submit to a background check at
24 any time during the period beginning seven years prior to the filing of this Complaint to the present.

25 23. The FCRA, ICRAA and CCRA Classes include the members of the Class, but also
26 include other prospective employees, employees, and former employees of Defendants during the
27 relevant time period.
28

24. Whenever in this complaint reference is made to any act, deed, or conduct of Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through one or more of Defendants' officers, directors, agents, employees, or representatives, who was actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of Defendants.

25. The true names and capacities of Defendants, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

26. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are the partners, agents, or principals and co-conspirators of Defendants and of each other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the liability of the Defendants as alleged herein.

27. Plaintiff is further informed and believes, and thereon alleges, that at all times material herein, each Defendant was completely dominated and controlled by its co-Defendants and each was the alter ego of the other. Whenever and wherever reference is made in this complaint to any conduct by Defendant or Defendants, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever and wherever reference is made to individuals who are not named as Defendants in this complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times acted on behalf of Defendants named in this complaint within the scope of their respective employments.

FACTUAL ALLEGATIONS

28. During the relevant time frame, Defendants compensated Plaintiff and the Class Members based upon an hourly wage.

1 29. Plaintiff and the Class Members were, and at all times pertinent hereto, have been
2 non-exempt employees within the meaning of the California Labor Code, and the implementing
3 rules and regulations of the IWC California Wage Orders. They are subject to the protections of
4 the IWC Wage Orders and the Labor Code.

5 30. Plaintiff was employed as an hourly, non-exempt employee of Defendants from
6 August 2016 through August 2019 at the airport in San Francisco, California.

7 31. The members of the putative class provided services as employees of Defendants
8 throughout the state of California during the liability period.

9 32. Plaintiff typically worked five days a week, averaging 40 hours a week.

10 33. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
11 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
12 requirements of California's wage and employment laws.

13 34. All Class Members, including Plaintiff, are similarly situated in that they are all
14 subject to Defendants' uniform policies and systemic practices as specified herein.

15 35. Plaintiff and Class Members frequently worked in excess of eight (8) hours a day
16 and/or over forty (40) hours in a workweek, but were not properly paid for such time at a rate of
17 time and one-half the employee's regular rate of pay per hour, or double time for hours worked
18 over twelve in a day or for hours worked over eight on the seventh day in a workweek.

19 36. Defendants failed to pay overtime at the regular hourly rate because they did not
20 factor all forms of compensation into the regular rate for overtime purposes including shift
21 differentials, bonuses, and incentives.

22 37. Plaintiff and Class Members were also often required to work shifts in excess of
23 five hours without being provided a lawful meal period and over ten hours in a day without being
24 provided a second lawful meal period as required by law.

25 38. Indeed, during the relevant time, as a consequence of Defendants' staffing and
26 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
27 Defendants frequently failed to provide Plaintiff and the Class Members timely, legally complaint
28

uninterrupted 30-minute meal periods on shifts over five hours as required by law.

39. Meal periods were frequently late or cut short, and on occasion Plaintiff and the Class Members were required to miss meal periods altogether.

40. Moreover, Plaintiff and, upon information and belief, the other Class Members were not allowed to leave the premises during meals and rest breaks. Such an exercise of control over Class Members during rest periods is inconsistent with the employer's obligations under the Labor Code and the mandates of *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257 (2016).

41. In addition, Plaintiff and, upon information and belief, the other Class Members were required to eat food purchased from outside inside the United Airlines break room and could not eat in the terminals.

42. On information and belief, Plaintiff and Class Members did not waive their rights to meal periods under the law.

43. Plaintiff and the Class Members were not provided with valid lawful on-duty meal periods.

44. Despite the above-mentioned meal period violations, Defendants often failed to compensate Plaintiff, and on information and belief, often failed to compensate Class Members, one additional hour of pay at their regular rate as required by California law when meal periods were not timely or lawfully provided in a compliant manner.

45. Plaintiff is informed and believes, and thereon alleges, that Defendants know, should know, knew, and/or should have known that Plaintiff and the other Class Members were entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7 but were not receiving such compensation.

46. Defendant also failed to keep an accurate record of meal periods as required by Wage Order 9-2001 and Labor Code section 1198.

47. In addition, during the relevant time frame, Plaintiff and the Non-Exempt Employees were systematically not authorized and permitted to take one net ten-minute paid, rest period for every four hours worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.

1 48. Defendants maintained and enforced scheduling practices, policies, and imposed
2 work demands that frequently required Plaintiff and Class Members to forego their lawful, paid
3 rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
4 requisite rest periods were not timely authorized and permitted.

5 49. Despite the above-mentioned rest period violations, Defendants did not
6 compensate Plaintiff, and on information and belief, did not pay Class Members one additional
7 hour of pay at their regular rate as required by California law, including Labor Code section 226.7
8 and the applicable IWC wage order, for each day on which lawful rest periods were not
9 authorized and permitted.

10 50. Defendants also failed to provide accurate, lawful itemized wage statements to
11 Plaintiff and the Class Members in part because of the above specified violations. In addition,
12 upon information and belief, Defendants omitted an accurate itemization of all applicable hourly
13 rates in effect during the pay period and the corresponding number of hours worked at each
14 hourly rate by the employee from Plaintiff and the Class Members' wage statements.

15 51. Defendants have also made it difficult to determine applicable rates of pay and
16 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-
17 exempt Employees, including Plaintiff, during the liability period because they did not implement
18 and preserve a lawful record-keeping method to record all hours worked, meal periods, and non-
19 provided rest and meal periods owed to employees as required for non-exempt employees by 29
20 U.S.C. section 211(c), California Labor Code section 226, and applicable California Wage
21 Orders.

22 52. Plaintiff is informed and believes, and thereon alleges, that at all times herein
23 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
24 thereof for resignations without prior notice as the case may be) they had a duty to accurately
25 compensate Plaintiffs and Class Members for all wages owed including minimum wages,
26 commissions, overtime, meal and rest period premiums, and that Defendants had the financial
27 ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed
28 to do so in part because of the above-specified violations.

53. Defendant also violated Labor Code sections 245 to 249 by failing to pay employees for sick time at the proper rate.

54. In addition, Defendant violated Labor Code section 227.3 by failing to properly pay Plaintiff and Class Members earned vacation at their “final rate” as required by statute.

55. Plaintiff is informed and believes that Defendants' violation of the Labor Code and the IWC wage order 9-2001 as specified herein was willful and deliberate.

56. Plaintiff and the Class Members are covered by applicable California IWC Wage Orders and corresponding applicable provisions of the California Code of Regulations, Title 8, section 11000 *et seq.*

57. Plaintiff is informed and believes, and based thereon alleges, that Defendants currently employ and during the relevant period have employed thousands of hourly, non-exempt employees in the State of California.

FCRA ALLEGATIONS

58. In addition to the violations set forth above, Defendants violated the Fair Credit Reporting Act 15 U.S.C. § 1681, et seq. (“FCRA”). Plaintiff asserts these claims arising under the FCRA on a class-wide basis.

59. Plaintiff and the members of the FCRA Class are all prospective employees and/or current employees employed by, or formerly employed by Defendants in California who, as a condition of employment, were required to submit to a background check at any time during the period beginning five years prior to the filing of this Complaint to the present. (“FCRA Class”)

60. The FCRA provides individuals with a number of rights. Specifically, pertaining to employment-related background checks, the FCRA provides that a prospective employee must give valid consent to the background check. The FCRA requires a signed authorization and disclosure from the applicant, sometimes referred to as a “consent” form. The authorization and disclosure form must be executed and signed by the applicant prior to an employer requesting or conducting a background check. Importantly, no extraneous information can be attached or included on the consent form. The authorization and disclosure must stand alone.

61. In violation of 15 U.S.C. § 1681b(b)(2), Defendants failed to provide proper

1 disclosures to employees and applicants prior to causing such background checks and consumer
2 reports to be procured, and failed to secure requisite authorizations prior to conducting such
3 background checks.

1 62. In violation of 15 U.S.C. § 1681b(b)(2)(A)(ii) Defendants have obtained consumer
2 reports without proper authorization and consent as required by the FCRA. This triggers statutory
3 damages under the FCRA in the amount of up to \$1,000 for each applicant that Defendants obtained
4 a consumer report without a facially valid authorization, as well as punitive damages, equitable
5 relief, and attorneys' fees and costs.

6 63. Plaintiff brings the First and Second Cause of Action on behalf of the FCRA Class.
7 The FCRA CLASS is broader than the Class of Non-Exempt Employees otherwise referenced
8 herein.

9 64. To the extent equitable tolling operates to toll claims by the FCRA CLASS against
10 Defendant, the FCRA CLASS PERIOD should be adjusted accordingly.

11 65. Defendant, as a matter of corporate policy, practice and procedure, and in violation
12 of The Fair Credit Reporting Act 15 U.S.C. § 1681, et seq., intentionally, knowingly, and
13 willfully, engaged in a practice whereby Defendant uniformly, unfairly, unlawfully, and
14 deceptively instituted a practice of obtaining consumer reports without valid authorization to do
15 so.

16 66. The FCRA CLASS is so numerous that joinder of all FCRA CLASS Members is
17 impracticable.

18 67. Defendant uniformly violated the rights of the FCRA SUBCLASS by violating
19 The Fair Credit Reporting Act 15 U.S.C. § 1681, et seq., by (a) unlawfully, unfairly and/or
20 deceptively having in place company policies, practices and procedures that uniformly obtained
21 credit reports on prospective employees without first obtaining valid authorization consent forms;
22 (b) failing to make proper, clear and conspicuous disclosures; (c) violating FCRA's standalone
23 document requirement by including extraneous information relating to various state disclosure
24 requirements in the disclosure; (d) failing to make clear and conspicuous disclosures; (e) failing
25 to obtain proper authorizations; and (f) illegally procuring credit and background reports.

26 68. Common questions of law and fact exist as to members of the FCRA
27 CLASS, including, but not limited, to the following:
28

- a. Whether Defendant required the FCRA CLASS Members to sign a background check disclosure and authorization forms;
- b. Whether Defendant's background check disclosure and authorization forms comply with the FCRA;
- c. Whether Defendant violated the FCRA by including a liability release in its background check disclosure and authorization forms;
- d. Whether Defendant violated the FCRA by including surplusage and/or extraneous information in its background check disclosure and authorization forms;
- e. Whether DEFENDANT violated the FCRA by procuring consumer report information based on invalid authorizations;
- f. Whether DEFENDANT violated the FCRA by procuring consumer report information without valid authorizations;
- g. Whether DEFENDANT's violations of the FCRA were willful;
- h. The proper measure of statutory damages and punitive damages.

69. This Class Action meets the statutory prerequisites for the maintenance of a Class Action in that:

- a. The persons who comprise the FCRA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. The members of the FCRA CLASS are readily ascertainable from Defendant's business records.
- c. Nearly all factual, legal, statutory, and declaratory relief issues that are raised in this Complaint are common to the FCRA CLASS will apply uniformly to every member of the FCRA CLASS;

- 1 d. The claims of the representative Plaintiff are typical of the claims of
2 each member of the FCRA CLASS. Plaintiff, like all the other
3 members of the FCRA CLASS, had a credit report obtained on her
4 behalf by Defendant prior to obtaining valid authorization to do so
5 in violation of the FCRA as described herein. Plaintiff and the
6 members of the FCRA CLASS were and are similarly or identically
7 harmed by the same unlawful, deceptive, unfair and pervasive
8 pattern of misconduct engaged in by Defendant; and,
- 9 e. The representative Plaintiff will fairly and adequately represent and
10 protect the interest of the FCRA CLASS, and has retained counsel
11 who are competent and experienced in Class Action litigation.
12 There are no material conflicts between the claims of the
13 representative PLAINTIFF and the members of the FCRA CLASS
14 that would make class certification inappropriate. Counsel for the
15 FCRA CLASS will vigorously assert the claims of all employees in
16 the FCRA CLASS.

17 70. In addition, the prosecution of separate actions will create the risk of inconsistent
18 or varying adjudications with respect to individual members of the FCRA CLASS which would
19 establish incompatible standards of conduct for the parties opposing the FCRA CLASS; and/or,
20 adjudication with respect to individual members of the FCRA CLASS which would as a practical
21 matter be dispositive of interests of the other members not party to the adjudication or
22 substantially impair or impede their ability to protect their interests.

23 71. Common questions of law and fact exist as to members of the FCRA CLASS, with
24 respect to the practices and violations of the FCRA set forth above, and predominate over any
25 question affecting only individual FCRA CLASS Members, and a Class Action is superior to
26 other available methods for the fair and efficient adjudication of the controversy.

27
28

1 72. A Class Action is superior to other available methods for the fair and efficient
2 adjudication of this litigation because class treatment will obviate the need for unduly and
3 unnecessary duplicative litigation that is likely to result in the absence of certification of this
4 Action.

5 73. In the context of employment litigation because as a practical matter a substantial
6 number of individual FCRA CLASS Members will avoid asserting their legal rights out of fear of
7 retaliation by Defendant, which may adversely affect an individual's job with Defendant or with a
8 subsequent employer, the Class Action is the only means to assert their claims through a
9 representative.

10 **CLASS ACTION ALLEGATIONS**

11 74. Plaintiff brings this action on his own behalf, as well as on behalf of each and every
12 other person similarly situated, and thus, seeks class certification under California Code of Civil
13 Procedure §382.

14 75. All claims alleged herein arise under California law for which Plaintiff seeks relief
15 as authorized by California law.

16 76. The **PROPOSED CLASS** is comprised of and defined as: All persons currently or
17 formerly employed by Defendants as non-exempt employees, however titled, working for
18 Defendants at airports in the State of California within the four (4) years prior to the filing of the
19 Complaint in this action until the resolution of this lawsuit and whose job duties did not consist of
20 over 50% administrative, executive or professional duties. ("Non-Exempt Employees" or "Class
21 Members")

22 77. Plaintiff also seeks to represent Subclasses included in the Plaintiff's Class, which
23 are composed of Class Members satisfying the following definitions:

24 a. All Class Members who were not accurately paid overtime for hours worked
25 over eight in a day or over forty in a workweek (**collectively "Overtime Subclass"**);

26 b. All Class Members who worked more than five (5) hours in a workday and
27 were not provided with a timely, uninterrupted lawful meal period of net thirty (30) minutes, and
28 were not paid compensation of one hour premium wages at the employee's regular rate in lieu

thereof (hereinafter collectively referred to as the “**First Meal Period Subclass**”);

c. All Class Members who worked more than ten (10) hours in a workday and were not provided with a timely, uninterrupted lawful second meal period of net thirty (30) minutes, and were not paid compensation of one hour premium wages at the employee’s regular rate in lieu thereof (hereinafter collectively referred to as the “**Second Meal Period Subclass**”);

d. All Class Members who worked more than three and a half hours in a workday and were not authorized and permitted to take a lawful net 10-minute rest period for every four (4) hours or major fraction thereof worked per day and were not paid compensation of one hour premium wages at the employee’s regular rate in lieu thereof (hereinafter collectively referred to as the “**Rest Period Subclass**”);

e. All Class Members who did not receive all owed wages at the time of separation or within 72 hours in the case of resignation (hereinafter collectively referred to as the “**Waiting Time Subclass**”);

f. All Class Members who were not provided with accurate and complete itemized wage statements (hereinafter collectively referred to as the “**Inaccurate Wage Statement Subclass**”);

g. All Class Members who were employed by Defendants and subject to Defendant’s Unfair Business Practices (hereinafter collectively referred to as the “**Unfair Business Practices Subclass**”).

2. The **PROPOSED ICRAA CLASS** is defined as: All of Defendant's current and former employees, and prospective applicants for employment who applied for a job with Defendants in California and were required to submit to a background/credit check at any time during the period beginning five years prior to the filing of this action and ending on the date that final judgement is entered in this action.

3. The **PROPOSED CCRAA CLASS** is defined as: All of Defendant's current and former employees, and prospective applicants for employment with a mailing address in California who applied for a job with Defendants in California and were required to submit to a

1 background/credit check at any time during the period beginning seven years prior to the filing of
2 this action and ending on the date that final judgement is entered in this action.

3 78. Plaintiff reserves the right, under Rule 3.765, California Rules of Court, to amend
4 or modify the descriptions of the Classes and Subclasses to provide greater specificity as
5 appropriate, or if it should be deemed necessary by the Court or to further divide the Class Members
6 into additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to
7 the Class Members or the Plaintiffs' Class includes the members of each of the Subclasses.

8 79. As set forth in further detail below, this action has been brought and may properly
9 be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure
10 because there is a well-defined community of interest in the litigation, and the proposed Class and
11 Subclasses are easily ascertainable through Defendants' records.

12 a. Numerosity: The members of the Classes and Subclasses are so numerous
13 that joinder of all members of the Classes and Subclasses would be unfeasible and impractical. The
14 membership of the entire Class, the FCRA, ICRAA, and CCRA Classes, and Subclasses is
15 unknown to Plaintiff at this time, however, the Class is estimated to included hundreds of
16 individuals. Accounting for employee turnover during the relevant periods necessarily increases
17 this number substantially. Plaintiff alleges Defendants' employment records would provide
18 information as to the number and location of all members of the Classes. Joinder of all members
19 of the proposed Classes is not practicable.

20 b. The proposed classes are easily ascertainable. The number and identity of
21 the class members are determinable from Defendants' payroll records and time records for each
22 class member.

23 c. Commonality: There are common questions of law and fact as to the Classes
24 and Subclasses that predominate over questions affecting only individual Class Members. These
25 common questions of law and fact include, without limitation:

26 1) Whether Defendants accurately calculated and paid all Class Members
27 overtime premiums for the hours which Plaintiff and Class Members worked in excess of eight (8)
28 hours per day and/or forty (40) hours per week;

1 2) Whether Defendants had a policy and practice of providing lawful, timely
2 meal periods in accordance with Labor Code § 512, as well as the applicable Industrial Welfare
3 Commission (“IWC”) wage order;

4 3) Whether Defendants required employees to remain on the premises during
5 meal periods;

6 4) Whether Defendants had a policy and practice of complying with Labor
7 Code section 226.7 and IWC Wage Order on each instance that a lawful meal period was not
8 provided;

9 5) Whether Defendants failed to authorize and permit a lawful, net 10-minute
10 rest period to the Class Members for every four (4) hours or major fraction thereof worked;

11 6) Whether Defendants required employees to remain on the premises during
12 rest periods;

13 7) Whether Defendants had a policy and practice of complying with Labor
14 Code section 226.7 and the IWC Wage Order on each instance that a lawful rest period was not
15 provided;

16 8) Whether Defendants failed to timely pay all wages, including without
17 limitation properly calculated premium wages, minimum wages, straight time wages, sick wages,
18 vacation wages, overtime and commissions, upon separation in accordance with Labor Code
19 sections 201-202;

20 9) Whether Defendants omitted required information from itemized wage
21 statements;

22 10) Whether Defendants failed to maintain accurate records of Class Members'
23 earned wages, work periods, meal periods and deductions as required by the Labor Code and Wage
24 Order 9-2001;

25 11) Whether Defendants failed to timely pay earned wages, including without
26 limitation proper overtime, during employment in violation of Labor Code § 204 and 210;

27 12) Whether Defendants engaged in unfair competition in violation of section
28 17200 et seq. of the Business and Professions Code;

- 1 13) Whether Defendants' conduct was willful and/or reckless;
- 2 14) Whether Defendants failed to provide accurate itemized wage statements in
- 3 violation of Labor Code § 226;
- 4 15) Whether Defendants willfully failed to provide the class with stand-alone
- 5 written disclosures before obtaining a credit or background report in compliance with the statutory
- 6 mandates;
- 7 16) Whether Defendants willfully failed to identify the name, address, telephone
- 8 number, and/or website of the investigative consumer reporting agency conducting the
- 9 investigation;
- 10 17) Whether Defendants willfully failed to identify the source of the credit
- 11 report performed;
- 12 18) Whether Defendants willfully failed to comply with the FCRA, ICRAA,
- 13 and/or the CCRAA.
- 14 19) The appropriate amount of damages, restitution, and/or monetary penalties
- 15 resulting from Defendants' violations of California law.

16 d. Typicality: Plaintiff is qualified to, and will fairly and adequately protect the

17 interests of each member of the Classes and Subclasses with whom he has a well-defined

18 community of interest. Plaintiff's claims herein alleged are typical of those claims which could be

19 alleged by any member of the Classes and/or Subclasses, and the relief sought is typical of the relief

20 which would be sought by each member of the Class and/or Subclasses in separate actions. All

21 members of the Class and/or Subclasses have been similarly harmed by Defendants' failure to

22 provide lawful meal and rest periods, failure to provide accurate wage statements, failure to timely

23 pay wages during employment and at termination, failure to properly pay overtime wages, failure

24 to properly pay vacation wages and sick wages, and failure to accurately and timely pay all wages

25 earned including all owed premium and overtime wages, all due to Defendants' policies and

26 practices that affected each member of the Class and/or Subclasses similarly. Further, Defendants

27 benefited from the same type of unfair and/or wrongful acts as to each member of the Class and/or

28

1 Subclasses.

2 e. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect the
3 interests of each member of the Classes and/or Subclasses with whom he has a well-defined
4 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that
5 he has an obligation to make known to the Court any relationships, conflicts, or differences with
6 any member of the Classes and/or Subclasses, and no such relationships or conflicts are currently
7 known to exist. Plaintiff's attorneys and the proposed counsel for the Classes and Subclasses are
8 versed in the rules governing class action discovery, certification, litigation, and settlement and
9 experienced in handling such matters. Other former and current employees of Defendants may also
10 serve as representatives of the Classes and Subclasses if needed.

11 f. Superiority: The nature of this action makes the use of class action
12 adjudication superior to other methods. A class action will achieve economies of time, effort,
13 judicial resources, and expense, which would not be achieved with separate lawsuits. The
14 prosecution of separate actions by individual members of the Classes and/or Subclasses would
15 create a risk of inconsistent and/or varying adjudications with respect to the individual members of
16 the Classes and/or Subclasses, establishing incompatible standards of conduct for the Defendants,
17 and resulting in the impairment of the rights of the members of the Classes and/or Subclasses and
18 the disposition of their interests through actions to which they were not parties. Thus, a class action
19 is superior to other available means for the fair and efficient adjudication of this controversy
20 because individual joinder of all Class Members is not practicable, and questions of law and fact
21 common to the Class predominate over any questions affecting only individual Class Members.
22 Each member of the Class has been damaged and is entitled to recovery by reason of Defendants'
23 unlawful policies and practices as stated herein. Defendants' policies and practices have affected
24 each member of the Class and/or Subclasses similarly. Class action treatment will allow those
25 similarly situated persons to litigate their claims in the manner that is most efficient and economical
26 for both parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be
27 encountered in the management of this action that would preclude its maintenance as a class action.

28

1 g. Public Policy Considerations: Employers in the state of California violate
2 employment and labor laws every day. However, current employees are often afraid to assert their
3 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
4 because they believe their former employers may damage their future endeavors through negative
5 references and/or other means. The nature of this action allows for the protection of current and
6 former employees' rights without fear of retaliation or damage. Additionally, the citizens of
7 California have a significant interest in ensuring employers comply with California's labor laws
8 and in ensuring those employers who do not are prevented from taking further advantage of their
9 employees.

10 **CLASS ACTION CLAIMS**

11 **FIRST CAUSE OF ACTION**

12 **FOR FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF THE FCRA**

13 **[15 U.S.C. § 1681b(b)(2)(A)(i), ET SEQ.]**

14 **(By PLAINTIFF and the FCRA CLASS and Against All Defendants)**

15 80. PLAINTIFF, and the other members of the FCRA CLASS, reallege and
16 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
17 Complaint.

18 81. 15 U.S.C. §1681b(b)(2)(A)(i) provides that
19 a person may not procure a consumer report, or cause a consumer report to be procured,
20 for employment purposes with respect to any consumer, unless -
21 (i) a clear and conspicuous disclosure has been made in writing to the consumer at any
22 time before the report is procured or caused to be procured, in a document that consists
23 solely of the disclosure, that a consumer report may be obtained for employment purposes.

24 82. The purported disclosures are embedded with extraneous information and are not
25 clear and unambiguous disclosures in standalone documents. Moreover, Defendants have
26 unlawfully included a release in the disclosure documents.

27 83. DEFENDANT violated 15 U.S.C. § 1681b(b)(2)(A)(i) of the FCRA by failing to
28 make proper disclosure to Plaintiff and members of the FCRA CLASS as required by the statute
before the report is procured or caused to be procured.

84. The violations of the FCRA were willful.

85. Upon information and belief, DEFENDANT knew that it was required to make required disclosure to FCRA CLASS MEMBERS and/or that its background check forms should not include extraneous information that is prohibited by the FCRA, and acted in deliberate disregard of its obligations and the rights of PLAINTIFF and other FCRA CLASS Members under 15 U.S.C. § 1681b(b)(2)(A)(i).

86. PLAINTIFF and the other FCRA CLASS Members are entitled to statutory damages of not less than \$100 and not more than \$1,000 for every violation of the FCRA, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

87. PLAINTIFF and FCRA CLASS Members are also entitled to punitive damages for these violations, pursuant to 15 U.S.C. § 1681n(a)(2).

88. PLAINTIFF and FCRA CLASS Members are further entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).

SECOND CAUSE OF ACTION

FOR FAILURE TO OBTAIN PROPER AUTHORIZATION IN VIOLATIONS OF
THE FCRA [15 U.S.C. § 1681B(B)(2)(A)(ii)]

(By PLAINTIFF and the FCRA CLASS and Against All Defendants)

89. PLAINTIFF, and the other members of the FCRA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

90. DEFENDANT violated the FCRA by procuring consumer reports relating to PLAINTIFF and other FCRA CLASS Members without proper authorization as alleged herein. See 15 U.S.C. § 1681b(b)(2)(A)(ii).

91. The violations of the FCRA were willful. DEFENDANT acted in deliberate disregard of its obligations and the rights of PLAINTIFF and other FCRA CLASS Members under 15 U.S.C. § 1681b(b)(2)(A)(ii).

1 92. PLAINTIFF and the FCRA CLASS Members are entitled to statutory damages of
2 not less than \$100 and not more than \$1,000 for every violation of the FCRA, pursuant to 15
3 U.S.C. § 1681n(a)(1)(A).

4 93. PLAINTIFF and the FCRA CLASS Members are also entitled to punitive
5 damages for these violations, pursuant to 15 U.S.C. § 1681n(a)(2).

6 94. PLAINTIFF and the FCRA CLASS Members are further entitled to recover their
7 costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF ICRAA (CAL.**

10 **CIV. CODE §1786 ET SEQ.)**

11 **(By Plaintiff and the ICRAA SUBCLASS Against all Defendants)**

12 95. Plaintiff incorporates all paragraphs of this Complaint is if fully alleged herein.

13 96. Defendants are "persons" as defined by Section 1786.2(n) of the Investigative
14 Consumer Reporting Agencies Act ("ICRAA").

15 97. Plaintiff and ICRAA SUBCLASS members are "consumers" within the meaning
16 Section 1786.2(b) of the ICRAA, because they are "individuals."

17 98. Section 1786.2(c) of the ICRAA defines "investigative consumer report" as: a
18 consumer report in which information on a consumer's character, general reputation, personal
19 characteristics, or mode of living is obtained through any means.

20 99. Thus a background checks qualifies as an investigative consumer report under the
21 ICRAA

22 100. Section 1786.16(a)(2) of the ICRAA provides, in relevant part:

23 If, at any time. an investigative consumer report is sought for employment purposes... the
24 person seeking the investigative consumer report may procure the report, or cause the
25 report to be made, only if all of the following apply:

26 (B) The person procuring or causing the report to be made provides a clear and
27 conspicuous disclosure in writing to the consumer at any time before the report is
28 procured or caused to be made in a document that consists solely of the disclosure, that:

1 (An investigative consumer report may be obtained.

2 (ii) The permissible purpose of the report is identified.

3 (iii) The disclosure may include information on the consumer's character, general
4 reputation, personal characteristics, and mode of living.

5 (iv) Identifies the name, address, and telephone number of the investigative consumer
6 reporting agency conducting the investigation.

7 (v) Notifies the consumer in writing of the nature and scope of the investigation
8 requested, including a summary of the provisions of Section 1786.22.

9 (vi) Notifies the consumer of the Internet Web site address of the investigative
10 consumer reporting agency identified in the clause (iv), or, if the agency has no Internet
11 Web site address, the telephone number of the agency, where the consumer may find
12 information about the investigative reporting agency's privacy practices, including
13 whether the consumer's personal information will be sent outside the United States or its
14 territories and information that complies with subdivision (d) of Section 1786.20. ...

15 (C) The consumer has authorized in writing the procurement of the report.

16 101. As described above, Plaintiff alleges that in evaluating him and other ICRAA
17 SUBCLASS members for employment or during employment, Defendants procured or caused to
18 be prepared investigative consumer reports (e.g. background checks), as defined by Cal. Civ.
19 Code §1786.2(c).

20 102. The purported disclosures provided by Defendants to Plaintiff and the ICRAA
21 SUBCLASS do not provide the information required by statute and are not clear and
22 unambiguous disclosures in stand-alone documents. Thus, they do not meet the requirements
23 under the law.

24 103. Under the ICRAA, it is unlawful to procure or cause to be procured, a consumer
25 report investigative consumer report for employment purposes unless the disclosure is made in a
26 document that consists solely of the disclosure and the consumer has authorized, in writing, the
27 procurement of the report. Cal. Civ. Code § 1786.16(a)(2)(B)-(C). The failure to include all
28 relevant information and the inclusion of extraneous information, therefore, violates the statute.

1 110. Plaintiff and CCRAA SUBCLASS members are “consumers” within the meaning
2 of Section 1785.3(b) of the CCRAA, because they are “natural individuals.”

3 111. Section 1785.3(c) of the ICRAA defines “consumer credit report” as:

4 Any written, oral, or other communication or any information by a consumer credit
5 reporting agency bearing on a consumer's credit worthiness, credit
6 standing, or credit capacity, which is used or is expected to be used, or collected in whole
7 or in part, for the purpose of serving as a factor in establishing the consumer's eligibility
8 for: ... (2) employment purposes...

9 112. Thus a credit report qualifies as a consumer credit report under the CCRAA.

10 113. Section 1785.20.5(a) of the CCRAA provides, in relevant part:

11 Prior to requesting a consumer credit report for employment purposes, the user of the
12 report shall provide written notice to the person involved. The notice shall inform the
13 person that a report will be used, and shall identify the specific basis under subdivision (a)
14 of Section 1024.5 of the Labor Code for use of the report. The notice shall also inform the
15 person of the source of the report, and shall contain a box that the person may check off to
16 receive a copy of the credit report. If the consumer indicates that he or she wishes to
17 receive a copy of the report, the user shall request that a copy be provided to the person
18 when the user requests its copy from the credit reporting agency. The report to the user
19 and to the subject person shall be provided contemporaneously and at no charge to the
20 subject person.

21 114. As described above, Plaintiff alleges that in evaluating him and other CCRAA
22 SUBCLASS members for employment or during employment, Defendants procured or caused to
23 be prepared consumer credit reports (e.g. credit reports), as defined by Cal. Civ. Code §
24 1785.3(c).

25 115. The notice provided to Plaintiff and the CCRAA SUBCLASS members in
26 connection with this consumer credit report failed to comply with the requirements for the CCRA
27 by, inter alia, failing to identify the specific basis under subdivision (a) of Section 1024.5 of the
28

1 Labor Code for use of the report; failing to include a box for CCRA Subclass members to check
2 to obtain a copy of the report; and failing to provide a copy of said report as required by law.

3 116. This constitutes a violation of the Civil Code section 1785.20.5.

4 117. Upon information and belief, Plaintiff alleges that Defendants have a policy and
5 practice of failing to provide adequate written disclosures to applicants and employees and
6 obtaining proper authorizations, before, procuring credit reports or causing credit reports to be
7 procured as described above. Pursuant to that policy and practice, Defendants procured credit
8 reports or caused credit report to be procured for Plaintiff and CCRAA SUBCLASS members
9 without first providing a written notice in compliance with § 1785.20.5(a) of the CCRAA, as
10 described above.

11 118. Defendants' conduct in violation of § 1785.20.5(a) of the CCRAA was and is
12 willful and/or grossly negligent. Defendants acted in deliberate or reckless disregard of their
13 obligations and the rights of applicants and employees, including Plaintiff and class members.

14 119. As a result of Defendants' illegal procurement of credit reports by way of their
15 inadequate notice, as set forth above, Plaintiff and class members have been injured including, but
16 not limited to, having their privacy and statutory rights invaded in violation of the CCRAA.

17 120. Plaintiff, on behalf of himself and all CCRAA SUBCLASS members, seeks all
18 available remedies pursuant to Cal. Civ. Code § 1785.31, including statutory damages and/or
19 actual damages, punitive damages, injunctive relief, and attorneys' fees and costs.

20 121. In the alternative to Plaintiff's allegation that these violations were willful,
21 Plaintiff alleges that the violations were negligent and seeks the appropriate remedy, if any, under
22 Cal. Civ. Code § 1785.31(a)(1), including but not limited to. actual damages and attorneys' fees
23 and costs.

24 **FIFTH CAUSE OF ACTION**

25 **FAILURE TO ACCURATELY PAY OVERTIME WAGES**

26 **(By Plaintiff and the Overtime Subclass Against Defendants)**

27 122. Plaintiff incorporates by reference each and every paragraph above, and realleges
28 each and every allegation contained above as though fully set forth herein.

1 123. At all times relevant, pursuant to Labor Code section 510, 1194, and the IWC
2 wage order 9-2001, non-exempt employees working for more than eight (8) hours in a day or
3 forty (40) hours in a work week were entitled to overtime compensation at the rate of one and
4 one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or
5 forty (40) hours in a work week. An employee who works more than twelve (12) hours in a day
6 or in excess of eight (8) hours in a day on the seventh day of work in a particular work week is
7 entitled to overtime compensation at a rate of twice the regular rate of pay.

8 124. California law requires that in determining the regular rate of pay for purposes of
9 calculating the proper overtime premium pay, the employer must consider not only straight
10 hourly wage compensation but must also include payment of all remuneration earned during the
11 applicable time period.

12 125. At times, Plaintiff and the Members of the Subclass received additional
13 remuneration, including non-discretionary bonuses, shift differentials, and/or incentive pay during
14 pay periods in which they had worked over eight hours in a day or over forty hours in a week.
15 Defendants failed to account for the additional remuneration when calculating Plaintiffs' and
16 similarly situated employees' overtime rate of pay. This policy, practice, and/or procedure resulted
17 in Defendants paying its hourly non-exempt employees less overtime than they should have
18 received.

19 126. Upon information and belief, Defendants knew or should have known Plaintiffs
20 and the Class Members were undercompensated.

21 127. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of wages
22 owed violates the provisions of Labor Code §510, §1194, §1197, §1198, and Wage Order 9-2001
23 and is therefore unlawful.

24 128. Accordingly, Defendants owe Plaintiff and Class Members wages, including
25 overtime wages, and have failed and refused, and continue to fail and refuse, to pay Plaintiffs and
26 Class Members the wages owed.

27 129. Pursuant to Labor Code §1194, Plaintiffs and Class Members are entitled to recover
28

1 their unpaid compensation, as well as interest, costs, and attorneys' fees.

2 130. In addition, pursuant to Labor Code §1194.2(a), Plaintiff and the Class Members
3 are entitled to "recover liquidated damages in an amount equal to the wages unlawfully unpaid
4 and interest thereon."

5 131. Also, pursuant to Labor Code §1197.1, Plaintiff and the Class Members are
6 entitled to claim all applicable civil penalties as a direct result of Defendants' policy and practice
7 of paying a wage less than the minimum fixed by an order of the commission.

8 132. Accordingly, Plaintiff and Class Members are entitled to recover their unpaid
9 wages, including overtime compensation, as well as interest, costs, and attorneys' fees.

10 **SIXTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE LAWFUL MEAL PERIODS**

12 **(By Plaintiff and the Meal Period Subclasses Against All Defendants)**

13 133. Plaintiff incorporates by reference and realleges each and every allegation contained
14 above, as though fully set forth herein.

15 134. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
16 period of more than five (5) hours without providing a meal break of not less than thirty (30)
17 minutes in which the employee is relieved of all of his or her duties, except that when a work period
18 of not more than six (6) hours will complete the day's work the meal period may be waived by
19 mutual consent of the employer and employee.

20 135. Similarly, pursuant to Labor Code § 512, no employer shall employ an employee
21 for a work period of more than ten (10) hours without providing a second meal break of not less
22 than thirty (30) minutes in which the employee is relieved of all of his or her duties. A second meal
23 break may only be waived by mutual consent, and if the employee did not waive his or her first
24 meal period, and the employee's work day will not exceed twelve hours.

25 136. For the four (4) years preceding the filing of this lawsuit, Defendants failed to
26 provide Plaintiff and Class Members timely and uninterrupted first meal periods of not less than
27 thirty (30) minutes within the first five hours of a shift.

1 137. For the four (4) years preceding the filing of this lawsuit, Defendants also failed to
2 provide Plaintiff and Class Members timely and uninterrupted second meal periods of not less than
3 thirty (30) minutes on shifts longer than ten hours.

4 138. Indeed, during the relevant time, as a consequence of Defendants' staffing and
5 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
6 Plaintiff and the Class Members were frequently not provided with legally required meal periods
7 of at least thirty uninterrupted minutes.

8 139. As set forth above, Plaintiff and, upon information and belief, the Class Members
9 were not allowed to leave the premises during meal breaks.

10 140. In addition, under certain circumstances, Defendants required Class Members to
11 take breaks in certain locations.

12 141. On information and belief, Plaintiff and Class Members did not waive their rights
13 to meal periods under the law.

14 142. Plaintiff and the Class Members were not provided with valid lawful on-duty meal
15 periods.

16 143. Plaintiff and the Class Members were not paid one hour of pay at their regular rate
17 for each day that a first or second meal period was not lawfully provided.

18 144. As a proximate result of the aforementioned violations, Plaintiff and the Class
19 Members have been damaged in an amount according to proof at time of trial.

20 145. Pursuant to Labor Code § 226.7, Plaintiff and Class Members are entitled to recover
21 one (1) hour of premium pay for each day in which a meal period violation occurred. They are also
22 entitled to recover reasonable attorneys' fees, cost, interest, and penalties as applicable.

23 146. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to
24 represent have been deprived of premium wages in amounts to be determined at trial, and are
25 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
26 under Labor Code sections 218.6, 226.7, 512 and the applicable IWC Wage Orders, and Civil Code
27 section 3287.

- 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

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

154. By their failure to authorize and permit Plaintiff and the Class Members to take a lawful, net ten (10) minute rest period free from work duties every four (4) hours or major fraction thereof worked, including failure to provide two (2) total rest periods on six to ten hour shifts and three (3) total ten (10) minute rest periods on days on which Plaintiff and the other Class Members work(ed) work a third rest period for shifts in excess of ten (10) hours, and by their failure to provide compensation for such unprovided rest periods as alleged herein, Defendants willfully violated the provisions of Labor Code sections 226.7 and the applicable IWC Wage Order(s).

155. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 218.6, 226.7, the applicable IWC Wage Orders, and Civil Code 3287.

EIGHTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION

(By Plaintiff and the WAITING TIME SUBCLASS Against All Defendants)

156. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

157. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages due within seventy-two (72) hours of separation of employment.

158. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

159. Plaintiff and Class Members are entitled to unpaid overtime, accurately paid sick leave (sick leave taken was paid at the improper rate), accurately paid vacation wages, and unpaid premiums.

1 160. More than thirty (30) days have passed since affected Waiting Time Subclass
2 Members have left Defendants' employ, and on information and belief, they have not received
3 payment pursuant to Labor Code § 203.

4 161. Plaintiff and Waiting Time Subclass Members are thus entitled to 30 days' wages
5 as a penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

6 **NINTH CAUSE OF ACTION**

7 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**
8 **EMPLOYEE WAGE STATEMENT PROVISIONS**

9 **By Plaintiff and Wage Statement Subclass Against Defendants**

10 162. Plaintiff repeats and incorporates herein by reference each and every allegation set
11 forth above, as though fully set forth herein.

12 163. Labor Code section 226(a) reads in pertinent part: "Every employer shall,
13 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
14 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
15 when wages are paid by personal check or cash, an accurate itemized statement in writing
16 showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions...
17 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
18 name of the employee and only the last four digits of his or her social security number or an
19 employee identification number other than a social security number, (8) the name and address of
20 the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the
21 pay period and the corresponding number of hours worked at each hourly rate by the
22 employee....".

23 164. In addition, California Labor Code § 246(i) provides that "an employer shall
24 provide an employee with written notice that sets forth the amount of paid sick leave available, or
25 paid time off an employer provides in lieu of sick leave, for use on either the employee's itemized
26 wage statement described in section 226 or in a separate writing provided on the designated pay
27 date with the employee's payment of wages."

28 165. During all relevant periods, Defendants willfully violated California Labor Code

1 section 226 by failing to provide accurate itemized wage statements that properly and accurately
2 itemized the actual hours worked, rates of pay including overtime, meal and rest period
3 premiums, and sick leave balance.

4 166. By failing to keep accurate records and provide accurate itemized wage statements
5 as required by section 226, Defendants have injured Plaintiffs and Class Members by making it
6 confusing and difficult to calculate the total hours worked by the employee, sick leave earned and
7 available, vacation wages earned and available, unpaid wages, losses, and expenditures (including
8 wages, interest, and penalties thereon) due Plaintiffs and Class Members.

9 167. Pursuant to Labor Code section 226, and in light of Defendants' violations
10 addressed above, Plaintiff and the Wage Statement Class Members are each entitled to recover up
11 to a maximum of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

12 TENTH CAUSE OF ACTION

13 VIOLATION OF THE UNFAIR COMPETITION LAW

14 **By Plaintiff and Class and the FCRA Class, ICRAA Class, and CCRA Class**

15 **Against All Defendants**

16 168. Plaintiff incorporates by reference and realleges each and every allegation contained
17 above, as though fully set forth herein.

18 169. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
19 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
20 general public. Plaintiff also seeks to enforce important rights affecting the public interest within
21 the meaning of the California Code of Civil Procedure § 1021.5.

22 170. Defendants' policies, activities, and actions as alleged herein are violations of
23 California law and constitute unlawful business acts and practices in violation of California
24 Business and Professions Code §§ 17200, *et seq.*

25 171. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be
26 predicated on the violation of any state or federal law.

27 172. The state law violations, including violations of the relevant IWC Wage Order,
28 detailed herein above are the predicate violations for this cause of action. By way of example only,

1 in the instant case Defendants' policy of failing to lawfully provide Plaintiff and the Class with
2 timely, legally complaint meal and rest periods or pay one (1) hour of premium pay when a meal
3 or rest period was not lawfully provided violates Labor Code § 512, and § 226.7, and the IWC
4 Wage Order 9-2001. Defendants further violated the law through their policies of failing to fully
5 and accurately compensate Plaintiff and the Class Members for all hours worked, including
6 overtime, failing to properly pay sick leave according to the regular rate in violation of Labor Code
7 § 245-249, failing to properly pay vacation at the final rate in violation of Labor Code § 227.3; and
8 failing to provide accurate itemized wage statement as specified above.

9 173. Defendants also violated Business and Professions Code section 17200 et seq.
10 through its unlawful practices in connection with background checks and consumer reports as set
11 forth herein.

12 174. Plaintiff and the Class Members have been personally aggrieved by Defendants'
13 unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

14 175. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff
15 and the Class Members are entitled to restitution of the wages withheld and retained by Defendants
16 during a period that commences four (4) years prior to the filing of this complaint; an award of
17 attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of
18 costs.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff pray judgment against Defendants, as follows:

21 **Class Certification**

- 22 1. That this action be certified as a class action;
23 2. That Plaintiff be appointed as the representative of the Classes;
24 3. That Plaintiff be appointed as the representative of the Subclasses; and
25 4. That counsel for Plaintiff be appointed as counsel for the Classes and Subclasses.
- 26
27
28

1 **On the First and Second Causes of Action**

2 **Violation of FCRA**

- 3 1. A determination and judgment that Defendant willfully violated the 15 U.S.C. §
4 1681(b)(2)(A)(i) and(ii) of the FCRA by failing to make requisite disclosures and/or
5 including liability release language in its background check disclosure and authorization
6 form and/or by obtaining consumer reports on Plaintiff and FCRA CLASS Members
7 without having proper authorization to do so;
- 8 2. Pursuant to 15 U.S.C. § 1681n(a)(1)(A), an award of statutory damages to Plaintiff and
9 the members of the FCRA CLASS in an amount equal to \$1,000 for Plaintiff and each
10 FCRA CLASS Member for Defendant's willful violation of the FCRA:
- 11 3. Pursuant to 15 U.S.C. § 1681n(a)(2), an award of punitive damages to Plaintiff and other
12 FCRA CLASS Members;
- 13 4. An award for costs of suit and reasonable attorneys' fees pursuant to 15 U.S.C. §
14 1681n(a)(3); and,
- 15 5. Such other and further relief as the Court deems just and equitable.

16 **On the Third Cause of Action**

17 **Violation of ICRAA**

18 **(Class Claim)**

- 19 1. A determination and judgment that Defendant willfully violated the ICRAA by failing to
20 make requisite complete clear and conspicuous disclosures and/or including extraneous
21 information in its background check disclosure and authorization form and/or by
22 obtaining consumer reports on Plaintiff and ICRAA SUBCLASS Members without
23 having proper authorization to do so;
- 24 2. An award of actual damages and/or statutory damages to Plaintiff and the members of the
25 ICRAA SUBCLASS
- 26 3. An award of punitive damages to Plaintiff and other ICRAA SUBCLASS Members;
- 27 4. An award for costs of suit and reasonable attorneys' fees pursuant to Cal Civ. Code §
28 1786.50;

1 5. Such other and further relief as the Court deems just and equitable.

2 **On the Fourth Cause of Action**

3 Violation of CCRAA

4 (Class Claim)

- 5 1. A determination and judgment that Defendant willfully violated the CCRAA by omitting
6 the check box to request a copy of the credit report and/or by failing to make requisite
7 complete clear and conspicuous disclosures and/or including extraneous information in its
8 background check disclosure and authorization form and/or by obtaining consumer reports
9 on Plaintiff and CCRAA SUBCLASS Members without having proper authorization to do
10 so;
- 11 2. Injunctive relief;
- 12 3. An award of actual damages and/or statutory damages to Plaintiff and the members of the
13 CCRAA SUBCLASS
- 14 4. An award of punitive damages to Plaintiff and other CCRAA SUBCLASS Members;
- 15 5. An award for costs of suit and reasonable attorneys' fees pursuant to statute;
- 16 6. Such other and further relief as the Court deems just and equitable.

17 **On the Fifth Cause of Action**

18 (Failure to Accurately Pay Overtime)

- 19 1. For the unpaid balance of the full amount of any overtime wages owed, as well as
20 interest thereon,
- 21 2. Penalties according to statute,
- 22 3. Liquidated damages,
- 23 4. Reasonable attorneys' fees, and costs of suit;
- 24 5. For interest and
- 25 6. For such other and further relief as the Court deems proper.

26 **On the Sixth Cause of Action**

(Failure to Provide Lawful Meal Periods)

1. For one (1) hour of premium pay for each day in which a required meal period was not lawfully provided;
2. For reasonable attorneys' fees and costs pursuant to statute; and
3. For such other and further relief as the Court deems proper.

On the Seventh Cause of Action

(Failure to Authorize and Permit Lawful Rest Periods)

1. For one (1) hour of premium pay for each day in which a required rest period was not lawfully authorized and permitted; and
2. For reasonable attorneys' fees and costs pursuant to statute; and
3. For such other and further relief as the Court deems proper.

On the Eighth Cause of Action

(Failure to Timely Pay Wages At Separation)

1. For unpaid wages;
2. For penalties pursuant to Labor Code § 203;
3. For interest;
4. For reasonable attorneys' fees and costs pursuant to statute; and
5. For such other and further relief as the Court deems proper.

On the Ninth Cause of Action

(Failure to Provide Accurate Itemized Wage Statements)

1. For statutory penalties, including penalties pursuant to Labor Code section 226;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the Court deems proper;

On the Tenth Cause of Action

(Violation of the Unfair Competition Law)

1. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of sums to Plaintiff and Class Members for the Defendants' past failure to pay overtime wages, premium wages, proper sick leave and vacation, for Defendants' failure to make disclosures and

1 obtain requisite authorizations, and for premium wages for meal and rest periods that were not
2 provided to Plaintiff and Class Members over the last four (4) years in an amount according to
3 proof;

4 2. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to
5 recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194;

6 3. For pre-judgment interest on any unpaid overtime wages due from the day that such
7 amounts were due;

8 4. For costs of suit incurred herein that Plaintiff and Class Members are entitled to
9 recover under the Labor Code; and

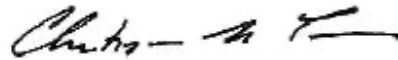
10 5. For such other and further relief as the Court deems proper.

11
12 **DEMAND FOR JURY TRIAL**

13 Plaintiff, on behalf of the Class and Subclasses, respectfully demand a jury trial in this
14 matter.

15 Respectfully submitted,

16
17 Dated: August 11, 2020



18 JAMES HAWKINS, APLC
19 James R. Hawkins, Esq.
Christina M. Lucio, Esq.

20 Attorneys for Plaintiff CARLOS SANTOS, on behalf of
21 himself and all others similarly situated
22
23
24
25
26
27
28