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SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

FLAVIO ALCARAZ, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

STAPLES CONTRACT &
COMMERCIAL, LLC.; Does 1 through 20,
inclusive,

Defendants.

Case No.

CLASS ACTION

COMPLAINT FOR DAMAGES:

1. Violation of California Unfair Competition Law (Business & Professions Code § 17200 *et seq.*
2. Failure to Provide Accurate Wage Statements;
3. Failure to Pay Overtime Wages;
4. Failure to Provide Meal and Rest Periods;
5. Failure to Pay Minimum Wage for All Hours Worked;
6. Civil Penalties Pursuant to Private Attorney General Act, Labor Code § 2698 *et seq.*
7. Violation of the Fair Credit Reporting Act, failure to make proper disclosures (15 U.S.C. § 1681, *et seq.*);
8. Violation of the Fair Credit reporting Act, failure to obtain proper authorization (15 U.S.C. § 1681, *et seq.*);
9. Violation of the Investigative Consumer Reporting Agencies Act, failure to make proper disclosures (California Civil Code § 1786, *et seq.*);
10. Violation of the Consumer Credit Reporting Agencies Act, failure to obtain proper disclosures (California Civil Code § 1785, *et seq.*);

JURY TRIAL DEMANDED

1 Plaintiff FLAVIO ALCARAZ (“Plaintiff”), on behalf of himself and all other similarly
2 situated employees hereby files this Complaint against Defendant STAPLES CONTRACT &
3 COMMERCIAL, LLC; and, Does 1 through 20 (collectively referred to as “Defendants”). Plaintiff
4 alleges the following:

5 **INTRODUCTION**

6 1. This is a class and representative action brought by Plaintiff seeking damages for
7 failure to provide meal and rest periods, failure to pay minimum and overtime wages, inaccurate
8 wage statements, failure to pay all wages owed at time of termination of employment, and derivative
9 civil and statutory penalties. Plaintiff is also seeking damages for Defendant’s failure to obtain
10 proper consent for background and consumer reports, and for failure to provide proper disclosures,
11 when obtaining background and consumer reports on Plaintiff and similarly situated employees.
12 Plaintiff seeks these damages and penalties, plus interest and attorney’s fees, on behalf of himself
13 and similarly situated employees.

14 **JURISDICTION AND VENUE**

15 2. The Sacramento County Superior Court has jurisdiction in this matter due to alleged
16 violations of California Labor Code §§ 201-203, 226, 226.3, 2698 *et seq.*, Business and Professions
17 Code § 17200 *et seq.*

18 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some
19 of the wrongful acts and violations of law asserted herein occurred within Sacramento County.

20 **PARTIES**

21 4. Plaintiff FLAVIO ALCARAZ is over the age of eighteen (18) and is a resident of the
22 State of California and an employee of Defendant.

23 5. Plaintiff is informed and believes, and thereupon alleges, that Defendant STAPLES
24 CONTRACT & COMMERCIAL, LLC is now and/or at all times mentioned in this Complaint a
25 Delaware Limited Liability Company and the owner and operator of an industry, business and/or
26 facility licensed to do business and actually doing business in the State of California.

27 6. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly
28 and severally, have acted with deliberate indifference and conscious disregard to the rights of all

1 employees. Plaintiff is further informed and believes, and based thereon alleges, that Defendants
2 were at all relevant times advised by skilled California employment law attorneys and knew the
3 requirements of the California Labor Code with respect to employee wage statements, payment of
4 wages, and provision of meal and rest periods.

5 7. Defendants proximately caused Plaintiff and similarly situated employees to be
6 subjected to the unlawful practices, wrongs, complaints, injuries, and/or damages alleged in this
7 Complaint.

8 8. Plaintiff is further informed and believes, and thereon alleges, that each of the
9 Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or
10 joint venturer of the remaining defendants and was acting within the course and scope of that
11 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the
12 Defendants herein gave consent to, ratified and authorized the acts alleged herein to each of the
13 remaining defendants. The true names and capacities of the defendants named herein Does 1 through
14 20, inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiff, who
15 therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure
16 section 474. Plaintiff will amend this complaint to show such true names and capacities of Does 1
17 through 20, inclusive, when they have been determined.

18 9. On November 17, 2023, Plaintiff filed his Labor Code § 2699.3 Private Attorney
19 General Act (“PAGA”) notice with the California Labor & Workforce Development Agency
20 (“LWDA”). As of the date of the filing of this Complaint, the LWDA has not informed Plaintiff that
21 it intends to investigate Plaintiff’s PAGA claims. As such, Plaintiff may proceed in this Court to file
22 his Complaint, including his PAGA claims, and seek civil penalties on behalf of the State of
23 California, himself, and similarly aggrieved employees.

24 **CLASS ALLEGATIONS**

25 10. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a
26 class action pursuant to California Code of Civil Procedure section 382. The class that Plaintiff
27 seeks to represent are composed of and defined as follows:
28

1 All non-exempt employees who were employed by Defendant in California at any
2 time four (4) years prior to the filing of this Action up to the date that this matter is
3 certified as a class action.

4 11. This action has been brought and may be properly maintained as a class action,
5 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
6 defined community of interest in the litigation and the proposed classes are easily ascertainable.

7 (a) Numerosity: The Plaintiff Class is so numerous that the individual joinder of all
8 members is impracticable under the circumstances of this case. While the exact
9 number of class members is unknown to Plaintiff at this time, Plaintiff is informed
10 and believes that Defendant may have employed hundreds of individuals falling
11 within the above stated class definitions throughout the State of California during the
12 applicable statute of limitations, who were subjected to the practices outlined in this
13 Complaint. As such, joinder of all members of the Plaintiff Class is not practicable.

14 (b) Common Questions Predominate: Common questions of law and fact exist as to all
15 members of the Plaintiff Class and predominate over questions that affect only
16 individual members of the class. These common questions of law and fact include,
17 without limitation, the following:

- 18 (1) Whether Defendant provided meal and rest breaks to its employees as
19 required under the Labor Code;
- 20 (2) Whether Defendant accurately stated all required information on
21 paystubs issued to members of the Plaintiff Class;
- 22 (3) Whether Defendant maintained the time and payroll records for its
23 employees as required under the California Labor Code;
- 24 (4) Whether Defendant paid all wages due to its employees at the time of
25 termination of employment;
- 26 (5) Whether Defendant paid all overtime and double time wages earned by
27 its employees;
- 28 (6) Whether Defendant failed to pay all wages earned by employees,
including minimum wages;

(7) Whether Defendant failed to provide required disclosures when seeking authorization to perform background checks and consumer enquiries on Plaintiff and similarly situated employees;

(8) Whether Defendant failed to obtain consent when seeking authorization to perform background checks and consumer enquiries on Plaintiff and similarly situated employees.

(c) Typicality: Plaintiff's claims are typical of the claims of the members of the Plaintiff Class. Plaintiff also sustained damages arising out of Defendant's common course of conduct in violation of the law as complained of herein. Defendant failed to provide meal and rest breaks, failed to pay all overtime and double time hours worked by its employees, failed to pay all wages due at time of termination, failed to provide legally compliant pay stubs to their employees, and failed to obtain consent for, and provide required disclosures for, background and consumer checks. As a result, each putative class member will have the same basis for their legal claims.

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. Plaintiff resides in California and is an adequate representative of the putative class as he has no interests that are adverse to those of absent class members. Additionally, Plaintiff has retained counsel who have substantial experience in complex civil litigation and wage and hour matters.

(e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the classes is impracticable. Class action treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as damages suffered by each individual member of the classes may be relatively small, the expenses and burden of the individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, and an

1 important public interest will be served by addressing the matter as a class action.

2 The cost to the court system of adjudication of such individualized litigation would be
3 substantial. Individualized litigation would also present the potential for inconsistent
4 or contradictory judgments.

5 12. Plaintiff is unaware of any difficulties that are likely to be encountered in the
6 management of this action that would preclude its maintenance as a class action.

7 **GENERAL ALLEGATIONS**

8 13. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 12 as
9 though fully set forth herein.

10 14. Defendant owns and operates a business that sells and delivers business supplies
11 and services to other businesses throughout California and the United States.

12 15. Plaintiff was employed by Defendant as a driver from approximately January 24,
13 2022 to October 9, 2023. Plaintiff and similarly situated employees worked for Defendant as
14 non-exempt employees in California and are/ were paid on hourly basis.

15 16. During the relevant period, Defendant did not allow Plaintiff and similarly
16 situated employees to take their statutorily required meal periods. Defendant failed to provide
17 Plaintiff and other similarly situated employees a 30-minute, duty-free meal period before the
18 end of the fifth hour of work as required under the law. Plaintiff and similarly situated employees
19 regularly missed their meal periods and/ or they were provided late. Plaintiff estimates that he
20 was not provided with meal breaks 80-90% of the time, and he was never paid a missed meal
21 penalty.

22 17. Defendant also failed to provide rest periods to Plaintiff and similarly situated
23 employees for every 4 hours worked or major fraction thereof.

24 18. The reason that Plaintiff and similarly situated employees were unable to take
25 meal and rest breaks was that Defendant overloaded Plaintiff and similarly situated employees
26 with work. Additionally, chronic understaffing it made it practically impossible for Plaintiff and
27 similarly situated employees to take meal and rest breaks. Defendant imposed strict requirements
28 on performance related to the number of deliveries achieved. Plaintiff and similarly situated

1 employees would sometimes clock out for meal breaks but be forced to work anyway because of
2 work demands. This resulted in minimum wage violations for off-the-clock work. If Plaintiff and
3 similarly situated employees missed a meal punch Defendant's agents would make them sign a
4 corrective form the day before payroll, even if they had not been provided a meal and/ or rest
5 period.

6 19. When Defendant required Plaintiff and similarly situated employees to work
7 through their meal and/or rest periods, Defendant failed to pay Plaintiff and similarly situated
8 employees all statutorily required meal and rest period premiums owed.

9 20. These practices of Defendant have also resulted in unpaid minimum and overtime
10 wages.

11 21. Additionally, Plaintiff and similarly situated employees were required to use their
12 personal cell phones for work purposes but were not reimbursed for this business expense.

13 22. Defendant also failed to supply Plaintiff and similarly situated aggrieved
14 employees legally compliant wage statements that accurately reflected, among other things, the
15 amount of meal and rest period premium pay owed to them. As a result, Plaintiff and similarly
16 situated employees were deprived of the information necessary to determine the total wages
17 owed to them from their wage statements alone. *See Naranjo v. Spectrum Sec. Servs., Inc.*, 13
18 Cal. 5th 93, 121 (2022).

19 23. Defendant also did not provide its employees all wages, including, without
20 limitation, unpaid meal and rest break premium pay, owed upon their termination or within
21 seventy-two (72) hours of their separation from employment. *See Naranjo*, 13 Cal. 5th at 118.

22 24. In connection with their employment application, Plaintiff and similarly situated
23 employees completed Defendant's standard application materials. Among other things, these
24 application materials included a background investigation disclosure and authorization form.

25 25. This form was entitled "Customer Disclaimer." The Customer Disclaimer form
26 permitting Defendant to have a third-party obtain a consumer report, included, among other
27 things, extraneous information pertaining to an exculpatory clause limiting liability for
28

1 Defendant, information regarding a medical exam, and “at will employment” language, among
2 other extraneous language.

3 26. 20. In violation of 15 U.S.C. § 1681b(b)(2)(A)(I), Cal. Civ. Code § 1786.16(a)(2),
4 and Cal. Civ. Code § 1785.20.5(a), Defendant has unlawfully inserted extraneous language,
5 including but not limited to, an exculpatory clause limiting liability for Defendant and “at will
6 employment” language that does not relate to the Fair Credit Reporting Act, as well as
7 extraneous language that does not relate to the ICRAA and CCRAA. Defendant included this
8 extraneous language into its form purporting to grant Defendant and its third-party background
9 checking company the authority to obtain and use consumer report information for employment
10 purposes. The FCRA, ICRAA, and CCRAA prohibit this practice and require that the form
11 granting the authority to access and use consumer report information for employment purposes
12 be a stand alone form, and not include any additional information or agreements. Defendant’s
13 form is contrary to the plain language of the statute and unambiguous regulatory guidance from
14 the Federal Trade Commission (“FTC”), ICRAA, and CCRAA.

15 27. In violation of 15 U.S.C. § 1681b(b)(2)(A)(ii) , Cal. Civ. Code § 1786.16(a)(2),
16 and Cal. Civ. Code § 1785.20.5(a), DEFENDANT has obtained consumer reports without proper
17 authorization because the authorization and disclosure form signed by Plaintiff and other
18 similarly situated employees failed to comply with the requirements of the FCRA, ICRAA, and
19 CCRAA. The inclusion of, including but not limited to, an exculpatory clause limiting liability
20 for Defendant and “at will employment” language and other extraneous language in Defendant’s
21 disclosure and authorization form invalidates the purported consent and also triggers statutory
22 damages under the FCRA in the amount of up to \$1,000, and under the ICRAA in the amount of
23 \$10,000, for each applicant that Defendant obtained a consumer report without a facially valid
24 authorization or proper disclosures, as well as actual damages, punitive damages, equitable relief,
25 and attorneys’ fees and costs.

26 28. Following their submission of the employment application materials, Defendant’s third
27 party vendor conducted a background check on Plaintiff and similarly situated employees and they
28 were then hired to work for Defendant. Plaintiff only discovered Defendant’s violations when he

1 obtained and reviewed his personnel files from Defendant and discovered that Defendant had procured
2 and/or caused to be procured a consumer report regarding him for employment purposes based on the
3 illegal disclosure and authorization form. Plaintiff and similarly situated employees were not aware and
4 were confused that the form they were signing authorized the credit check as it contained the “at will
5 employment” language , the exculpatory clause limiting liability of Defendant, and the medical exam
6 amongst other language. Plaintiff would not have signed Defendant’s authorization form had it
7 contained a sufficiently clear disclosure, as required in the statute.

8 29. The background check disclosure and authorization form disclosed that Defendant
9 intended to conduct a background investigation on the applicant that would involve investigating
10 the applicant’s work record, references and education. The inclusion of the extraneous
11 information in the background check disclosure and authorization form violates the FCRA, 15
12 U.S.C. § 1681, et seq., ICRAA, Cal. Civ. Code § 1786, et seq., and CCRAA, Cal. Civ. Code §
13 1785, et seq.

14 30. Under the FCRA, it is unlawful to procure a consumer report or cause a consumer
15 report to be procured for employment purposes, unless:

16 (i) a clear and conspicuous disclosure has been made in writing to the consumer at
17 any time before the report is procured or caused to be procured, in a document that
18 consists solely of the disclosure, that a consumer report may be obtained for
19 employment purposes; and

20 (ii) the consumer has authorized in writing (which authorization may be made on the
21 document referred to in clause(I)) the procurement of the report.

22 15 .S.C. §§ 1681b(b)(2)(A)(I)-(ii) (emphasis added).

23 31. Under the ICRAA, it is unlawful to procure a consumer report or cause a
24 consumer report to be procured for employment purposes, unless:

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

1 (i) 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 the provisions of Section 1786.22.

9 (vi) *Notifies the consumer of the Internet Web site address of the investigative*
10 *consumer reporting agency identifies in clause (iv), or, if the agency has no*
11 *Internet Web site address, the telephone number of the agency,* where the consumer
12 may find information about the investigative reporting agency's privacy practices,
13 including whether the consumer's personal information will be sent outside the
14 United States or its territories and information that complies with subdivision (d) of
15 Section 1786.20. This clause shall become operative on January 1, 2012.

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

17 Cal. Civ. Code 1786.16(a)(2) (emphasis added).

18 32. Under the CCRAA, it is unlawful to procure a consumer report or cause a
19 consumer report to be procured for employment purposes, unless:

20 Prior to requesting a consumer credit report for employment purposes,
21 the user of the report shall provide written notice to the person
22 involved. The notice shall inform the person that a report will be used,
23 and **shall identify the specific basis under subdivision (a) of Section**
1024.5 of the Labor Code for use of the report. The notice shall
also inform the person of the source of the report. . . .

24 Cal. Civ. Code 1785.20.5(a) of the CCRAA (emphasis added).

25 33. After Plaintiff and similarly situated employees executed the background check
26 disclosure and authorization forms at the time of hire with Defendant, Defendant obtained
27 consumer reports on Plaintiff and similarly situated employees notwithstanding the fact that the
28

1 background check disclosure and authorization form was invalid under the requirements of the
2 FCRA, ICRAA, and CCRAA.

3 34. Although the disclosure and the authorization form required by the FCRA and
4 ICRAA may be combined in a single document, federal and state laws delineated herein have
5 warned that the form should not include any extraneous information. Further, the federal and
6 state laws delineated herein have also specifically warned that the inclusion of such extraneous
7 information in a disclosure form will violate Section 604(b)(2)(A) of the FCRA [15 U.S.C. §§
8 1681b(b)(2)(A)], Cal. Civ. Code § 1786.16(a)(2), and/or Cal. Civ. Code § 1785.20.5(a), which
9 require that a disclosure consist solely of the disclosure that a consumer report may be obtained
10 for employment purposes.

11 35. By including exculpatory clause and the “at will employment” extraneous
12 information in its background check disclosure and authorization form, Defendant willfully
13 disregarded the FTC’s regulatory guidance and violated 15 U.S.C. §§ 1681b(b)(2)(A), as well
14 Cal. Civ. Code § 1786.16(a)(2) and Cal. Civ. Code § 1785.20.5(a).

15 36. Plaintiff brings this Class Action on behalf of himself and similarly situated
16 employees in order to fully compensate herself and Class Members for their losses incurred
17 during the class period caused by Defendant’s uniform policies and practices which failed to
18 lawfully compensate these employees.

19 37. Defendant’s uniform policies and practices alleged herein were unlawful, unfair
20 and deceptive business practices whereby Defendant retained and continues to retain wages due
21 Plaintiff and the other Class Members. Plaintiff and the other Class Members seek an injunction
22 enjoining such conduct by Defendant in the future, relief for the named Plaintiff and the other
23 Class Members who have been economically injured by Defendant’s past and current unlawful
24 conduct, and all other appropriate legal and equitable relief.

25 38. Plaintiff is informed and believes that Defendant committed numerous other
26 violations of the California Labor Code, including but not limited to those identified in her
27 PAGA letter. Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745 (2018),
28

1 Plaintiff intends to seek civil penalties for all violations of the California Labor Code, whether he
2 experienced them personally or not.

3 39. Defendant's uniform policies and practices to fail to provide all overtime and
4 double time wages to Plaintiff and Class Members, to not pay minimum wages, to fail to provide
5 meal and rest periods, to fail to provide all wages owed at time of termination, to fail to provide
6 timely wages during employment, and not to provide compliant wage statements are evidenced
7 by Defendant's business records.

8 **FIRST CAUSE OF ACTION**
9 **(Unfair Competition)**

10 40. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 39 as
11 though fully set forth herein.

12 41. Unfair competition shall mean and include any unlawful, unfair or fraudulent
13 business act or practice and unfair, deceptive, untrue or misleading advertising and any act
14 prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the
15 Business and Professions Code. *See* Cal. Bus. and Prof. Code §§ 17200 *et seq.*

16 42. As described above, Defendant committed numerous violations of the California
17 Labor Code throughout the employment relationship.

18 43. Plaintiff is also informed and believes and thereon alleges that such actions and/or
19 conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and
20 Professions Code section 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products*
21 *Co.*, 23 Cal. 4th 163 (2000).

22 44. As a direct and legal result of Defendant's conduct, as alleged herein, pursuant to
23 the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
24 restitution of all withheld wages as a result of its unfair business practices, including, but not
25 limited to, public injunctive relief, pursuant to B&P Code § 17203, and interest and penalties
26 pursuant to B&P §§ 17203, 17208, violations of Labor Code §§ 1194, 226, and 226.7, all in an
27 amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this
28 Action.

SECOND CAUSE OF ACTION
(Failure to Provide Accurate Wage Statements)

45. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 44 as though fully set forth herein.

46. According to Labor Code section 226(a), an employer must provide an itemized statement to an employee, semi-monthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

47. Defendant failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in Labor Code section 226(a). Defendant failed to list on the wage statements provided to Plaintiff and similarly situated employees wage statements listing all hours worked and the applicable rates of pay and overtime and double time rates. Plaintiff alleges that Defendant failed to provide accurate itemized wage statements in accordance with Labor Code section 226(a) to all members of the Class.

1 48. Additionally, Plaintiff alleges he suffered injury as a result of Defendant's
2 knowing and intentional failure to provide accurate and complete information as required by any
3 one or more of items (1) to (9), inclusive, of Labor Code section 226, subdivision (a), and
4 Plaintiff cannot promptly and easily determine (*i.e.* a reasonable person in each Plaintiff's
5 position would not be able to readily ascertain the information without reference to other
6 documents or information) from the wage statement alone. Cal. Lab Code § 226(e)(2)(B)(iv).

7 49. Defendant's underpayment of wages also caused the calculations on the wage
8 statements issued to Defendants' employees to be incorrect and legally noncompliant.

9 50. As a proximate cause of Defendant's failure to provide accurate statements,
10 Plaintiff and Class Members were damaged and are entitled to statutory and civil penalties under
11 the Labor Code, and attorney's fees and costs, in an amount to be proven at trial.

12 **THIRD CAUSE OF ACTION**
13 **(Failure to Pay Overtime Wages)**

14 51. Plaintiff incorporates by reference and re-allege paragraphs 1 through 50 as
15 though fully set forth herein.

16 52. During the period Plaintiff and similarly situated employees were employed by
17 Defendant, Defendant was required to compensate them one and one-half (1½) times the regular
18 rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per
19 week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours
20 per day. See California Labor Code §§ 510, 1194. Although Plaintiff and similarly situated
21 employees regularly worked in excess of eight (8) hours a day and/or forty (40) hours per week,
22 Defendant failed to pay all overtime and double time wages owed to them.

23 53. Defendant failed to pay overtime and double time for all hours worked over 8
24 hours in a day and 40 hours in a week. Specifically, Plaintiff and similarly situated employees
25 were paid a "sign on" bonus, that was only earned and paid after Plaintiff and similarly situated
26 employees worked for Defendant for specified lengths of time, making the "sign on" bonus a
27 retention bonus, and thus non-discretionary. Defendant failed to include the non-discretionary
28

1 bonus in the regular rate of pay when calculating the overtime rate during the months in which
2 the bonus was earned.

3 54. Plaintiff and Class members were non-exempt employees under the
4 administrative, executive, or professional exemptions of the applicable Wage Order and
5 California Labor Code section 510.

6 55. Defendant's conduct described herein violates California Labor Code sections 510
7 and 1194, and Wage Orders. As a proximate result of Defendant's conduct, Plaintiff and Class
8 members have been damaged and deprived of overtime wages, in an amount to be established at
9 trial. Plaintiff now seeks these wages, attorney's fees and costs, and interest pursuant to
10 California Labor Code section 1194.

11 **FOURH CAUSE OF ACTION**
12 **(Failure to Provide Meal and Rest Periods)**

13 56. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 55 as
14 though fully set forth herein.

15 57. An employer must provide an employee a meal period and/or rest period in
16 accordance with the applicable Wage Order and Labor Code sections 226.7 and 512.

17 58. Labor Code section 510 and Wage Order 5-2001, section 11(A) require an
18 employer to provide a meal period of not less than thirty (30) minutes for each work period of
19 more than five (5) hours. If an employee works longer than ten (10) hours in a workday, the
20 employer must provide a second meal period.

21 59. Labor Code section 510 and Wage Order 5-2001 section 12(A) require an
22 employer to provide a rest period of not less than ten (10) minutes for each work period of more
23 than four (4) hours or a major fraction thereof.

24 60. Plaintiff alleges that Defendant failed to provide Plaintiff and similarly situated
25 employees with meal breaks of at least thirty (30) minutes for several work periods that Plaintiff
26 and similarly situated employees worked more than five (5) hours in a day, or to take a second
27 meal break of at least thirty (30) minutes for several work periods that Plaintiff and similarly
28 situated employees worked more than ten (10) hours in a day.

1 61. Plaintiff further alleges that Defendant failed to provide rest breaks of at least ten
2 (10) minutes for each work period that she and similarly situated employees worked for four (4)
3 hours or major fraction thereof.

4 62. As a proximate cause of Defendant's failure to provide meal and rest periods,
5 Plaintiffs and members of the Class are entitled to one (1) hour of pay at the regular rate of
6 compensation for each meal period or rest period not provided, as a wage, from three (3) years of
7 the filing of this action, in an amount to be established at trial. See Labor Code § 226.7 and
8 Wage Order 5-2001 §§ 11(B), 12(B).

9
10 **FIFTH CAUSE OF ACTION**
11 **(Failure to Pay Minimum Wage for All Hours Worked)**

12 63. Plaintiff hereby incorporates by reference Paragraphs 1 through 60 of this
13 Complaint as if fully set forth herein and for a cause of action alleges as follows:

14 64. Defendants were required to compensate Plaintiff and similarly situated
15 employees with at least the State's minimum wage for all hours worked. See Cal. Labor Code §
16 1194; MW Order-2014; MW Order-2017.

17 65. Defendants were aware of their obligation to pay the minimum wages but failed to
18 do so.

19 66. Defendants' conduct described herein violates California Labor Code section
20 1194, and Wage Orders. As a proximate result of Defendants' conduct, Plaintiff and the Plaintiff
21 Class have been damaged and deprived of minimum wages, in an amount to be established at
22 trial. Plaintiff and the Class now seek these wages, liquidated damages pursuant to California
23 Labor Code section 1194.2, attorney's fees and costs, and interest pursuant to California Labor
24 Code sections 1194.

25 **SIXTH CAUSE OF ACTION**
26 **(Civil Penalties Pursuant to PAGA § 2698 et seq.)**

27 67. Plaintiff hereby incorporates by reference Paragraphs 1 through 66 of this
28 Complaint as if fully set forth herein and for a cause of action alleges as follows:

1 68. Plaintiff brings this cause of action as a proxy for the State of California and in
2 this capacity, seeks penalties on behalf of all Aggrieved Employees for Defendant's violations of
3 the California Labor Code, including but not necessarily limited to, those Labor Code violations
4 identified above and in Plaintiff's PAGA Notice AND Amended PAGA Notice to the LWDA.

5 69. On or about November 17, 2023, Plaintiff sent written notice to the LWDA
6 regarding Defendants' violations of the California Labor Code, pursuant to Labor Code section
7 2698, *et seq.*, PAGA. The LWDA has not informed Plaintiff that it intends to investigate
8 Plaintiff's PAGA claims and therefore Plaintiff may proceed in this Court to collect civil
9 penalties.

10 70. Plaintiff is thus entitled to recover civil penalties on behalf of the State of
11 California and all Aggrieved Employees for all violations of the Labor Code from November 17,
12 2022, through trial on this matter.

13 71. Defendant's conduct, as alleged herein, violated various sections of the California
14 labor Code, including but not limited to, the following:

15 72. Labor Code section 1174(d) requires employers to keep "payroll records showing
16 the hours worked daily by and the wages paid to . . . employees . . . These records shall be kept in
17 accordance with rules established for this purpose by the commission, but in any case shall be
18 kept on file for not less than three years." Defendant did not keep accurate information regarding
19 all hours worked by Plaintiff and similarly situated employees, largely by failing to accurately
20 record all hours worked. This was in violation of the Labor Code.

21 73. Labor Code section 226 requires employers to furnish to employees with "an
22 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by
23 the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the
24 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
25 written orders of the employee may be aggregated and shown as one item, (5) net wages earned,
26 (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee
27 and only the last four digits of his or her social security number or an employee identification
28 number other than a social security number, (8) the name and address of the legal entity that is

1 the employer . . . and (9) all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the employee” For the
3 reasons stated above, Defendant failed to comply with these requirements with respect to
4 Plaintiff and similarly situated employees in violation of the Labor Code.

5 74. Labor Code sections 201–203 require that all wages be paid to employees upon
6 separation and/or termination of employment. Here, for the reasons stated above, Defendant’s
7 employees did not receive all final wages due and owing to them at the time of termination or
8 seventy-two (72) hours thereafter as required by Labor Code sections 201–203. This is in
9 violation of the Labor Code.

10 75. Labor Code sections 510 and 1194 require employers to pay employees overtime
11 for any work in excess of eight (8) hours in one workday and any work in excess of forty (40)
12 hours in any one workweek. Employers must also pay overtime for the first eight (8) hours
13 worked on the seventh day of work in any one workweek. Finally, employers must pay double
14 time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked
15 in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above,
16 Plaintiff and similarly situated employees worked over eight (8) hours per day and forty (40)
17 hours per week and were not paid overtime wages at their regular rate of pay in violation of the
18 Labor Code.

19 76. During the period Plaintiff and similarly situated employees were employed by
20 Defendant they were entitled to be paid at least the State’s minimum wage rate for each hour that
21 they worked. See, e.g., IWC Wage Order MW-2014, MW-2017; IWC Wage Order No. 5-2001,
22 section (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendant did not pay
23 Plaintiff and similarly situated employees at least minimum wage for all hours worked. Thus,
24 Plaintiff and similarly situated employees were not paid at least the applicable state minimum
25 wage for all hours worked in violation of the Labor Code.

26 77. Labor Code section 226.7 and IWC Wage Order No. 4-2001, section 11(A)
27 require employers to provide employees meal periods of thirty (30) minutes per five (5) hours
28 worked. For the reasons stated above, Plaintiff and similarly situated employees were not

1 authorized and permitted to take legally compliant meal periods pursuant to California law.
2 Defendant also failed to pay all meal period premiums for its failure to provide meal periods.

3 78. Labor Code section 226.7 and IWC Wage Order No. 5-2001, section 12(A)
4 require employers to provide employees paid off-duty rest periods of ten (10) minutes per four
5 (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and similarly
6 situated employees were not authorized and permitted to take legally compliant rest periods
7 pursuant to California law in violation of the Labor Code. Defendant also failed to pay any rest
8 period premiums for their failure to provide rest periods.

9 79. Labor Code section 2802(a) states that “An employer shall indemnify his or her
10 employee for all necessary expenditures or losses incurred by the employee in direct
11 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
12 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
13 believed them to be unlawful.” For the reasons stated above, Defendant failed to pay required
14 reimbursements to Plaintiff and similarly situated employees for required business expenses in
15 violation of the Labor Code.

16 80. Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 761, 233
17 Cal. Rptr. 3d 502, 513 (2018), Plaintiff seeks civil penalties on behalf of the State of California
18 and all aggrieved employees for all violations of the California Labor Code, whether he
19 experienced them personally or not.

20 **SEVENTH CAUSE OF ACTION**

21 **(For Failure to Make Proper Disclosure in Violation of the FCRA)**

22 81. Plaintiff hereby incorporates by reference Paragraphs 1 through 80 of this
23 Complaint as if fully set forth herein and for a cause of action alleges as follows:

24 82. Defendant violated 15 U.S.C. § 1681b(b)(2)(A)(I) of the FCRA by including
25 extraneous information in Defendant’s background check disclosure and authorization form that
26 Plaintiff and similarly situated employees were required to execute as a condition of employment
27 with Defendant.
28

83. The violations of the FCRA were willful. Defendant knew that its background check disclosure and authorization form 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 similarly situated employees under 15 U.S.C. § 1681b(b)(2)(A)(I).

84. Plaintiff and similarly situated employees 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).

85. Plaintiff and similarly situated employees are also entitled to punitive damages for these violations, pursuant to 15 U.S.C. § 1681n(a)(2).

86. Plaintiff and similarly situated employees Plaintiff and similarly situated employees are further entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).

EIGHTH CAUSE OF ACTION

(For Failure to Obtain Proper Authorization in Violations of the FCRA)

87. Plaintiff hereby incorporates by reference Paragraphs 1 through 86 of this Complaint as if fully set forth herein and for a cause of action alleges as follows:

88. Defendant violated the FCRA by procuring consumer reports relating to Plaintiff and similarly situated employees without proper authorization as alleged herein. See 15 U.S.C. § 1681b(b)(2)(A)(ii).

89. The violations of the FCRA were willful. DEFENDANT acted in deliberate disregard of its obligations and the rights of Plaintiff and similarly situated employees under 15 U.S.C. § 1681b(b)(2)(A)(ii).

90. Plaintiff and similarly situated employees 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).

91. Plaintiff and similarly situated employees are also entitled to punitive damages for these violations, pursuant to 15 U.S.C. § 1681n(a)(2).

92. Plaintiff and similarly situated employees are further entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).

NINTH CAUSE OF ACTION

(For Failure to Obtain Proper Authorization in Violation of the ICRAA)

93. Plaintiff hereby incorporates by reference Paragraphs 1 through 86 of this Complaint as if fully set forth herein and for a cause of action alleges as follows:

94. Defendant is a “person” as defined by Section 1786.2(a) of the Investigative Consumer Reporting Agencies Act (“ICRAA”).

95. Plaintiff and similarly situated employees are “consumers” within the meaning of Section 1786.2(b) of the ICRAA because they are “individuals.”

96. Section 1786.2(c) of the ICRAA defines “investigative consumer report” as: “a consumer report in which information on a consumer’s character, general reputation, personal characteristics, or mode of living is obtained through any means.”

97. Thus, a background check qualifies as an investigative consumer report under the ICRAA.

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

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

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

- (i) An investigative consumer report may be obtained.
- (ii) The permissible purpose of the report is identified.
- (iii) The disclosure may include information on the consumer's character, general reputation, personal characteristics, and mode of living.

- 1 (iv) Identifies the name, address, and telephone number of the investigative
2 consumer reporting agency conducting the investigation.
- 3 (v) Notifies the consumer in writing of the nature and scope of the
4 investigation requested, including the provisions of Section 1786.22.
- 5 (vi)
- 6 (vii) Notifies the consumer of the Internet Web site address of the investigative
7 consumer reporting agency identifies in clause (iv), or, if the agency has
8 no Internet Web site address, the telephone number of the agency, where
9 the consumer may find information about the investigative reporting
10 agency's privacy practices, including whether the consumer's personal
11 information will be sent outside the United States or its territories and
12 information that complies with subdivision (d) of Section 1786.20. This
13 clause shall become operative on January 1, 2012.

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

15 99. As alleged above, because DEFENDANT's disclosures do not meet the
16 requirements of Section 101(c)(1) of 15 U.S.C. 7001, the disclosures do not satisfy Section
17 1786.16(a)(2) of the ICRAA requirement that the disclosures be made in writing.

18 100. As described above, Plaintiff alleges that in evaluating him and other classmembers
19 for employment, Defendant procured or caused to be prepared investigative consumer report (e.g.
20 background checks), as defined by Cal. Civ. Code § 1786.2(c).

21 101. Because the purported disclosures are embedded with extraneous information, and
22 are not clear and unambiguous disclosures in stand-alone documents, they do not meet the
23 requirements under the law.

24 102. Under the ICRAA, it is unlawful to procure or cause to be prepared, a consumer
25 report or investigative consumer report for employment purposes unless the disclosure is made in
26 a 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 inclusion of the
28 extraneous information, therefore, violates § 1786.16(a)(2)(B) of the ICRAA.

1 103. By including the extraneous information, Defendant willfully violated §
2 1786.16(a)(2)(B) of the ICRAA. Additionally, the inclusion of the extraneous provisions causes
3 the disclosure to fail to be “clear and conspicuous” and thus violates § 1786.16(a)(2)(B).

4 104. Based upon facts that are likely to have evidentiary support after a reasonable
5 opportunity for investigation and discovery, Plaintiff alleges that Defendant has a policy and
6 practice of failing to provide adequate written disclosures to applicants and employees, before
7 procuring background checks or causing background checks to be procured, as described above.
8 Pursuant to that policy and practice, Defendant procured background checks or caused
9 background checks to be procured for Plaintiff and class members without first providing a
10 written disclosure in compliance with § 1786.16(a)(2)(B) of the ICRAA, as described above.

11 105. Defendant’s conduct in violation of § 1786.16(a)(2)(B) of the ICRAA was
12 and is willful and/or grossly negligent. Defendant acted in deliberate or reckless disregard of
13 their obligations and the rights of applicants and employees, including PLAINTIFFS and class
14 members. Defendant’s willful conduct is reflected by, among other things, the following facts:

- 15 i. Defendant is a large corporation with access to legal advice;
- 16 ii. Defendant required a purported authorization to perform credit and
17 background checks in the process of employing the class members which,
18 although defective, evidences Defendant’s awareness of and willful failure to
19 follow the governing laws concerning such authorizations; and,
- 20 iii. The plain language of the statute unambiguously indicates that inclusion of
21 extraneous information in a disclosure form violates the disclosure and
22 authorization requirements, and that the disclosure form must contain the
23 name, address, phone number, and/or website address of the investigative
24 consumer reporting agency conducting the investigation.

25 106. As a result of Defendant’s illegal procurement of background reports by way
26 of their inadequate disclosures, as set forth above, Plaintiff and class members have been injured
27 including, but not limited to, having their privacy and statutory rights invaded in violation of the
28 ICRAA.

107. Plaintiff, on behalf of himself and all class members, seeks all available remedies pursuant to Cal. Civ. Code § 1786.50, including statutory damages and/or actual damages, punitive damages, and attorneys' fees and costs.

108. In the alternative to Plaintiff's allegation that these violations were willful or grossly negligent, Plaintiff alleges that the violations were negligent and seeks the appropriate remedy, if any, under Cal. Civ. Code § 1786.50(a), including actual damages and attorneys' fees and costs.

TENTH CAUSE OF ACTION

(For Failure to Make Proper Disclosures in Violation of the CCRAA)

109. Plaintiff hereby incorporates by reference Paragraphs 1 through 108 of this Complaint as if fully set forth herein and for a cause of action alleges as follows:

110. Defendant is a “person” as defined by Section 1785.3(j) of the Consumer Credit Reporting Agencies Act (“CCRAA”).

111. Plaintiff and similarly situated employees are “consumers” within the meaning Of Section 1785.3(b) of the CCRAA, because they are “natural individuals.”

112. Section 1785.3(c) of the ICRAA defines “consumer credit report” as: any written, oral, or other communication of any information by a consumer credit reporting agency bearing on a consumer’s credit worthiness, credit standing, or credit capacity, which is used or is expected to be used, or collected in whole or in part, for the purpose of serving as a factor in establishing the consumer’s eligibility: . . . (2) employment purposes. . . .

113. Thus, a credit report qualifies as a consumer credit report under the CCRAA.

114. Section 1785.20.5(a) of the CCRAA provides, in relevant part:
Prior to requesting a consumer credit report for employment purposes, the user of the report shall provide written notice to the person involved. The notice shall inform the person that a report will be used, and ***shall identify the specific basis under subdivision (a) of Section 1024.5 of the Labor Code for use of the report. The notice shall also inform the person of the source of the report. . . .***

(Emphasis added).

115. As described above, Plaintiff alleges that in evaluating him and other class members for employment, Defendant procured or caused to be prepared consumer credit reports (e.g. credit reports), as defined by Cal. Civ. Code § 1785.3(c).

1 116. The disclosure provided by Defendant does not identify the specific basis under
2 subdivision (a) of Section 1024.5 of the Labor Code for use of the credit report. This omission
3 clearly violates § 1785.20.5(a) of the CCRAA, as delineated above.

4 117. Based upon facts that are likely to have evidentiary support after a reasonable
5 opportunity for investigation and discovery, Plaintiff alleges that Defendant has a policy and
6 practice of failing to provide adequate written disclosures to applicants and employees, before
7 procuring credit reports or causing credit reports to be procured, as described above. Pursuant to
8 that policy and practice, Defendant procured credit reports or caused credit reports to be procured
9 for Plaintiff and class members without first providing a written notice in compliance with §
10 1785.20.5(a) of the CCRAA, as described above.

11 118. Defendant's conduct in violation of § 1785.20.5(a) of the CCRAA was and is
12 willful and/or grossly negligent. Defendant acted in deliberate and reckless disregard of their
13 obligations and the rights of applicants and employees, including Plaintiff and class members.
14 Defendant's willful conduct is reflected by, among other things, the following facts:

- 15 i. Defendant is a large corporation with access to legal advice;
- 16 ii. Defendant required a purported authorization to perform credit and
17 background checks in the process of employing the class members which,
18 although defective, evidences Defendant's awareness of and willful failure to
19 follow the governing laws concerning such authorizations; and,
- 20 iii. The plain language of the statute unambiguously indicates that inclusion of
21 extraneous information in a disclosure form violates the disclosure and
22 authorization requirements, and that the disclosure form must contain the
23 name, address, phone number, and/or website address of the investigative
24 consumer reporting agency conducting the investigation.

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

28 120. Plaintiff, on behalf of himself and all class members, seeks all available

1 remedies pursuant to Cal. Civ. Code § 1785.31, including statutory damages and/or actual
2 damages, punitive damages, injunctive relief, and attorneys' fees and costs.

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

7
8 **DAMAGES**

9 WHEREFORE Plaintiff requests relief as follows:

- 10 1. A jury trial;
11 2. For an order certifying the class;
12 3. For an order certifying Plaintiff's counsel as class counsel;
13 4. For an order appointing Plaintiff as class representative;
14 5. For penalties under the California Labor Code according to proof allowed by law;
15 6. For compensatory damages, including, but not limited to, unpaid wages, plus
16 interest, according to proof allowed by law;
17 7. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's
18 fees;
19 8. For injunctive relief;
20 9. For an award of prejudgment and post-judgment interest; and
21 10. For an award to Plaintiff of such other and further relief as the Court deems just and
22 proper.

23 Dated: January 16, 2024

Castle Law: California Employment Counsel, PC

24
25 By: 
26 Timothy B. Del Castillo
27 Kent L. Bradbury
28 Attorneys for Plaintiff FLAVIO ALCARAZ and the
Class

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JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: January 16, 2024

Castle Law: California Employment Counsel, PC

By:  _____
Timothy B. Del Castillo
Kent L. Bradbury
Attorneys for Plaintiff FLAVIO ALCARAZ and the
Class