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FILED
Superior Court of California
County of Los Angeles

07/25/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: M. Molinar Deputy

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF LOS ANGELES**

9 IRIS ASTUDILLO, and CRYSTAL
10 DELGADO, individuals, on behalf of
themselves, and on behalf of all persons
11 similarly situated,

12 Plaintiffs,

13 vs.

14 T O R R A N C E H E A L T H
15 ASSOCIATION, INC., a California
Corporation; and DOES 1 through 50,
16 inclusive,

17 Defendants.
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Case No. **20STCV18424**

SECOND AMENDED CLASS ACTION
COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. VIOLATION OF THE FAIR CREDIT REPORTING ACT FOR FAILURE TO MAKE PROPER DISCLOSURES [15 U.S.C. § 1681, *et seq.*];
10. VIOLATION OF THE FAIR CREDIT REPORTING ACT FOR FAILURE TO OBTAIN PROPER AUTHORIZATION [15 U.S.C. § 1681, *et seq.*];
11. VIOLATION OF THE INVESTIGATIVE CONSUMER REPORTING AGENCIES ACT FOR FAILURE TO MAKE PROPER DISCLOSURES [California Civil Code § 1786, *et seq.*];
12. VIOLATION OF THE CONSUMER CREDIT REPORTING AGENCIES ACT FOR FAILURE TO OBTAIN PROPER DISCLOSURES [California Civil Code § 1785, *et seq.*];
13. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 210, 233, 246;
14. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE § 2699, *et seq.*].

DEMAND FOR A JURY TRIAL

1 Plaintiffs Iris Astudillo and Crystal Delgado (“PLAINTIFFS”), individuals, on behalf of
2 themselves and all other similarly situated current and former employees, allege on information and
3 belief, except for their own acts and knowledge, which are based on personal knowledge, the following:

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5 **THE PARTIES**

6 1. Defendant Torrance Health Association, Inc. (“DEFENDANT”) is a California
7 corporation that at all relevant times mentioned herein conducted and continues to conduct substantial
8 and regular business throughout the State of California.

9 2. DEFENDANT provides medical and surgical hospital services. The Hospital offers
10 hospice, emergency care, clinical research, laboratory testing, bariatric surgery, and other medical
11 services. Torrance Health Association serves patients and communities of Torrance, California.

12 3. Plaintiff Astudillo was employed by DEFENDANT in California and was classified as
13 a non-exempt employee entitled to overtime pay and meal and rest periods from May 2019 to October
14 of 2019. Plaintiff Astudillo was at all times relevant mentioned herein classified by DEFENDANT as
15 a non-exempt employee paid on an hourly basis. In connection with Plaintiff Astudillo’s employment
16 application, Plaintiff Astudillo completed DEFENDANT’s standard application materials. Among other
17 things, these application materials included a background investigation disclosure and authorization form.

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19 4. Plaintiff Delgado was employed by DEFENDANT in California and was classified as a
20 non-exempt employee entitled to overtime pay and meal and rest periods from November 2016 to
21 November 1, 2018. Plaintiff Delgado was at all times relevant mentioned herein classified by
22 DEFENDANT as a non-exempt employee paid on an hourly basis. In connection with Plaintiff Delgado’s
23 employment application, Plaintiff Delgado completed DEFENDANT’s standard application materials.
24 Among other things, these application materials included a background investigation disclosure and
25 authorization form.

26 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California class,
27 defined as all individuals who are or previously were employed by DEFENDANT in California and
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1 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
2 beginning on the date four (4) years prior to the filing of this Complaint and ending on the date as
3 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the
4 aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

5 6. During the employment application process PLAINTIFFS executed the background check
6 disclosure and authorization form permitting DEFENDANT to have a third-party obtain a consumer
7 report, which form included, among other things, extraneous information pertaining to the background
8 check to be “all encompassing,” and additional state law notices.

9 7. The Fair Credit Reporting Act 15 U.S.C. § 1681, *et seq.* (“FCRA”), Investigative
10 Consumer Reporting Agencies Act Cal. Civ. Code § 1786, *et seq.* (“ICRAA”), and the Consumer Credit
11 Reporting Agencies Act Cal. Civ. Code § 1785, *et seq.* (“CCRAA”), provide individuals with a number
12 of rights. Specifically, pertaining to employment-related background checks, the FCRA, ICRAA, and
13 CCRAA provide that a prospective employee must give valid consent to the background check. The
14 FCRA, ICRAA, and CCRAA require a signed authorization and disclosure from the applicant, sometimes
15 referred to as a “consent” form. The authorization and disclosure form must be executed and signed by
16 the applicant prior to an employer requesting or conducting a background check. Importantly, no
17 extraneous information can be attached or included on the consent form. *The authorization and*
18 *disclosure must stand alone.*

19 8. PLAINTIFFS also bring this Class Action on behalf of themselves and a nationwide class,
20 defined as all employees or prospective employees of DEFENDANT in the United States who executed
21 DEFENDANT’s standard background check disclosure form (the “FCRA CLASS”) at any time during
22 the period beginning on the date five (5) years prior to the filing of this Complaint and ending on the date
23 as determined by the Court (the “FCRA CLASS PERIOD”). The amount in controversy for the
24 aggregate claim of FCRA CLASS Members is under five million dollars (\$5,000,000.00).

25 9. PLAINTIFFS also bring this Class Action on behalf of themselves and a California class,
26 defined as all persons in California who executed DEFENDANT’s standard background check disclosure
27 form (the “ICRAA CLASS”) at any time during the period beginning five (5) years prior to the filing
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1 of this Complaint and ending on the date as determined by the Court (the “ICRAA CLASS PERIOD”).
2 The amount in controversy for the aggregate claim of ICRAA CLASS Members is under five million
3 dollars (\$5,000,000.00).

4 10. PLAINTIFFS also bring this Class Action on behalf of themselves and a California class,
5 defined as all persons in California who executed DEFENDANT’s standard background check disclosure
6 form that were not provided a valid written notice compliant with the terms of Cal. Civ. Code §
7 1785.20.5(a) (the “CCRAA Class”) at any time during the period beginning seven (7) years prior to the
8 filing of this Complaint and ending on the date as determined by the Court (the “CCRAA CLASS
9 PERIOD”). The amount in controversy for the aggregate claim of CCRAA CLASS Members is under
10 five million dollars (\$5,000,000.00).

11 11. PLAINTIFFS bring this Class Action on behalf of themselves and a CALIFORNIA
12 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
13 CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice which failed
14 to lawfully compensate these employees for all their overtime worked and meal and rest breaks missed.
15 DEFENDANT’s uniform policy and practice alleged herein was an unlawful, unfair and deceptive
16 business practice whereby DEFENDANT retained and continues to retain wages due PLAINTIFFS and
17 the other members of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the
18 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief
19 for the named PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been
20 economically injured by DEFENDANT’s past and current unlawful conduct, and all other appropriate
21 legal and equitable relief.

22 12. The true names and capacities, whether individual, corporate, subsidiary, partnership,
23 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to
24 PLAINTIFFS who therefore sue these Defendants by such fictitious names pursuant to Cal. Civ. Proc.
25 Code § 474. PLAINTIFFS will seek leave to amend this Complaint to allege the true names and
26 capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFFS are informed and
27 believe, and based upon that information and belief allege, that the Defendants named in this Complaint,
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1 including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events
2 and happenings that proximately caused the injuries and damages hereinafter alleged.

3 13. The agents, servants and/or employees of the Defendants and each of them acting on
4 behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant
5 and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf
6 of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant
7 are legally attributable to the other Defendants and all Defendants are jointly and severally liable to
8 PLAINTIFFS and the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate
9 result of the conduct of the Defendants' agents, servants and/or employees.

10 11 **THE CONDUCT**

12 14. In violation of 15 U.S.C. § 1681b(b)(2)(A)(I), Cal. Civ. Code § 1786.16(a)(2), and Cal.
13 Civ. Code § 1785.20.5(a), DEFENDANT has unlawfully inserted extraneous language, including but not
14 limited to, additional state law notices that do not relate to the Fair Credit Reporting Act, as well as
15 extraneous language that does not relate to the ICRAA and CCRAA. DEFENDANT included the
16 additional state law notices and extraneous language into its form purporting to grant DEFENDANT and
17 its third-party background checking company the authority to obtain and use consumer report information
18 for employment purposes. The FCRA, ICRAA, and CCRAA prohibit this practice and require that the
19 form granting the authority to access and use consumer report information for employment purposes be
20 a stand alone form, and not include any additional information or agreements. DEFENDANT's form is
21 contrary to the plain language of the statute and unambiguous regulatory guidance from the Federal Trade
22 Commission ("FTC"), ICRAA, and CCRAA.

23 15. In violation of 15 U.S.C. § 1681b(b)(2)(A)(ii) , Cal. Civ. Code § 1786.16(a)(2), and Cal.
24 Civ. Code § 1785.20.5(a), DEFENDANT has obtained consumer reports without proper authorization
25 because the authorization and disclosure form signed by PLAINTIFFS and other members of the FCRA
26 CLASS, ICRAA CLASS, and CCRAA CLASS failed to comply with the requirements of the FCRA,
27 ICRAA, and CCRAA. The inclusion of, including but not limited to, additional state law notices and
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1 other extraneous language in DEFENDANT's disclosure and authorization form invalidates the purported
2 consent and also triggers statutory damages under the FCRA in the amount of up to \$1,000, and under
3 the ICRAA in the amount of \$10,000, for each applicant that DEFENDANT obtained a consumer report
4 without a facially valid authorization or proper disclosures, as well as actual damages, punitive damages,
5 equitable relief, and attorneys' fees and costs.

6 16. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required
7 to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked, meaning the time
8 during which an employee is subject to the control of an employer, including all the time the employee
9 is suffered or permitted to work. DEFENDANT from time to time required PLAINTIFFS and
10 CALIFORNIA CLASS Members to work without paying them for all the time they were under
11 DEFENDANT's control. PLAINTIFFS were from time to time interrupted by work assignments while
12 clocked out of DEFENDANT's timekeeping system, during what should have been PLAINTIFFS' off
13 duty meal period. Indeed there were many days where PLAINTIFFS did not even receive a partial lunch.
14 As a result, the PLAINTIFFS and other CALIFORNIA CLASS Members forfeited minimum wage and
15 overtime compensation by regularly working without their time being accurately recorded and without
16 compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy and
17 practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked is
18 evidenced by DEFENDANT's business records.

19 17. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues to fail
20 to accurately calculate and pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for
21 their overtime worked. DEFENDANT systematically, unlawfully and unilaterally failed to accurately
22 calculate minimum and overtime wages for time worked by PLAINTIFFS and other members of the
23 CALIFORNIA CLASS in order to avoid paying these employees the correct compensation. As a result,
24 PLAINTIFFS and the other members of the CALIFORNIA CLASS forfeited wages due them for
25 working without compensation at the correct rates. DEFENDANT's uniform policy and practice to not
26 pay the members of the CALIFORNIA CLASS the correct minimum and overtime wages for all time
27 worked in accordance with applicable law is evidenced by DEFENDANT's business records.

1 18. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA
2 CLASS Members were also from time to time unable to take thirty (30) minute off duty meal breaks and
3 were not fully relieved of duty for their meal periods. PLAINTIFFS and other CALIFORNIA CLASS
4 Members were required to perform work as ordered by DEFENDANT for more than five (5) hours
5 during some shifts without receiving a meal break from time to time. Further, DEFENDANT failed to
6 provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period for some
7 workdays in which these employees were required by DEFENDANT to work ten (10) hours of work
8 from time to time. PLAINTIFFS and other members of the CALIFORNIA CLASS therefore forfeited
9 meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate
10 policy and practice.

11 19. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA
12 CLASS Members were also from time to time unable to take rest breaks. During the CALIFORNIA
13 CLASS PERIOD, PLAINTIFFS and other CALIFORNIA CLASS Members were also required to work
14 in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees
15 were denied their first rest periods of at least ten (10) minutes for every shift worked of at least two (2)
16 to four (4) hours, a first and second rest period of at least ten (10) minutes for every shift worked of
17 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes
18 for every shift worked of ten (10) hours or more from time to time. PLAINTIFFS and other
19 CALIFORNIA CLASS Members were also not provided with one hour wages in lieu thereof. As a result
20 of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS Members were from
21 time to time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.
22 Additionally, the applicable California Wage Order requires employers to provide employees with off-
23 duty rest periods, which the California Supreme Court defined as time during which an employee is
24 relieved from all work related duties and free from employer control. In so doing, the Court held that the
25 requirement under California law that employers authorize and permit all employees to take rest period
26 means that employers must relieve employees of all duties and relinquish control over how employees
27 spend their time which includes control over the locations where employees may take their rest period.

1 Employers cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
2 five minutes back. Here, DEFENDANT's uniform policy restricted PLAINTIFFS and other
3 CALIFORNIA CLASS Members from unconstrained walks and was unlawful based on Defendant's rule
4 which stated PLAINTIFFS and other CALIFORNIA CLASS Members could not leave the work premises
5 during their rest period.

6 20. DEFENDANT underpays sick pay wages to PLAINTIFF and other CALIFORNIA
7 CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code
8 Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-discretionary
9 remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay to
10 PLAINTIFF and other CALIFORNIA CLASS Members at their base rates of pay.

11 21. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt employees
12 be calculated by dividing the employee's total wages, not including overtime premium pay, by the
13 employee's total hours worked in the full pay periods of the prior 90 days of employment.

14 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at the
15 regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely earned non-discretionary
16 incentive wages which increased their regular rate of pay. However, when sick pay was paid, it was paid
17 at the base rate of pay for PLAINTIFF and members of the CALIFORNIA CLASS, as opposed to the
18 correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

19 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and other
20 members of CALIFORNIA CLASS their correct wages and accordingly owe waiting time penalties
21 pursuant to Cal. Lab Code Section 203. Further, PLAINTIFF is informed and believes and thereon
22 alleges that such failure to pay sick pay at regular rate was willful, such that PLAINTIFF and members
23 of the California CLASS whose employment has separated are entitled to waiting time penalties pursuant
24 to Cal. Lab. Code Sections 201-203.

25 24. Plaintiff Astudillo sought employment with DEFENDANT in December of 2018. Plaintiff
26 Delgado sought employment with DEFENDANT in or around November of 2016. In connection with
27 their employment applications, PLAINTIFFS completed DEFENDANT's standard application materials.
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1 These application materials included a background check disclosure and authorization form and included
2 on the form was extraneous information as described herein. Following their submission of the
3 employment application materials, DEFENDANT's third party conducted a background check on
4 PLAINTIFFS and PLAINTIFFS were subsequently hired to work for DEFENDANT. PLAINTIFFS
5 discovered DEFENDANT's violations only when they obtained and reviewed their personnel files from
6 DEFENDANT and discovered that DEFENDANT had procured and/or caused to be procured a consumer
7 report regarding them for employment purposes based on the illegal disclosure and authorization form.
8 PLAINTIFFS were not aware and were confused that the form they signed authorized the credit check
9 as it contained the all encompassing language and additional state law notice amongst other language.
10 PLAINTIFFS would not have signed DEFENDANT's authorization form had it contained a sufficiently
11 clear disclosure, as required in the statute.

12 25. The background check disclosure and authorization form disclosed that DEFENDANT
13 intended to conduct a background investigation on the applicant that would involve investigating the
14 applicant's work record, references and education.

15 26. The inclusion of the extraneous information in the background check disclosure and
16 authorization form violates the FCRA, 15 U.S.C. § 1681, *et seq.*, ICRAA, Cal. Civ. Code § 1786, *et seq.*,
17 and CCRAA, Cal. Civ. Code § 1785, *et seq.*.

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

- 20 (i) a clear and conspicuous disclosure has been made in writing to the consumer at any time
21 before the report is procured or caused to be procured, ***in a document that consists solely***
22 ***of the disclosure***, that a consumer report may be obtained for employment purposes; and
(ii) the consumer has authorized in writing (which authorization may be made on the
document referred to in clause(I)) the procurement of the report.

23 15 U.S.C. §§ 1681b(b)(2)(A)(I)-(ii) (emphasis added).

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

- 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 procured or caused
28 to be made ***in a document that consists solely of the disclosure***, 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 reporting agency*** conducting the investigation.
- 6 (v) Notifies the consumer in writing of the nature and scope of the investigation
7 requested, including the provisions of Section 1786.22.
- 8 (vi) ***Notifies the consumer of the Internet Web site address of the investigative
consumer reporting agency*** identifies in clause (iv), or, ***if the agency has no
Internet Web site address, the telephone number of the agency***, where the
9 consumer may find information about the investigative reporting agency's privacy
10 practices, including whether the consumer's personal information will be sent
11 outside the United States or its territories and information that complies with
subdivision (d) of Section 1786.20. This clause shall become operative on January
1, 2012.

12 (C) The consumer has authorized in writing the procurement of the report Cal. Civ. Code
13 1786.16(a)(2) (emphasis added).

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

16 Prior to requesting a consumer credit report for employment purposes, the user of the
17 report shall provide written notice to the person involved. The notice shall inform the
18 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. . . .***

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

20 30. After PLAINTIFFS executed the background check disclosure and authorization form in
21 late 2018, DEFENDANT obtained a consumer report on PLAINTIFFS notwithstanding the fact that the
22 background check disclosure and authorization form was invalid under the requirements of the FCRA,
23 ICRAA, and CCRAA.

24 31. Although the disclosure and the authorization form required by the FCRA and ICRAA
25 may be combined in a single document, federal and state laws delineated herein have warned that the
26 form should not include any extraneous information. Further, the federal and state laws delineated herein
27 have also specifically warned that the inclusion of such extraneous information in a disclosure form will
28 violate Section 604(b)(2)(A) of the FCRA [15 U.S.C. §§ 1681b(b)(2)(A)], Cal. Civ. Code §

1 1786.16(a)(2), and/or Cal. Civ. Code § 1785.20.5(a), which require that a disclosure consist solely of the
2 disclosure that a consumer report may be obtained for employment purposes.

3 32. By including additional state law notices and the “all Encompassing” extraneous
4 information in its background check disclosure and authorization form, DEFENDANT willfully
5 disregarded the FTC’s regulatory guidance and violated 15 U.S.C. §§ 1681b(b)(2)(A), as well Cal. Civ.
6 Code § 1786.16(a)(2) and Cal. Civ. Code § 1785.20.5(a).

7 33. DEFENDANT as a matter of corporate policy, practice and procedure, intentionally,
8 knowingly and systematically failed to reimburse and indemnify PLAINTIFFS and the other
9 CALIFORNIA CLASS Members for required business expenses incurred by PLAINTIFFS and other
10 CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf of
11 DEFENDANT. Under California Labor Code Section 2802, employers are required to indemnify
12 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802
13 expressly states that "an employer shall indemnify his or her employee for all necessary expenditures or
14 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
15 her obedience to the directions of the employer, even though unlawful, unless the employee, at the time
16 of obeying the directions, believed them to be unlawful."

17 34. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
18 Members as a business expense, were required by DEFENDANT to use personal cellular phones as a
19 result of and in furtherance of their job duties as employees for DEFENDANT but were not reimbursed
20 or indemnified by DEFENDANT for the cost associated with the use of the personal cellular phones for
21 DEFENDANT’s benefit. As a result, in the course of their employment with DEFENDANT,
22 PLAINTIFFS and other members of the CALIFORNIA CLASS incurred unreimbursed business
23 expenses which included, but were not limited to, costs related to the use of their personal cellular phones
24 all on behalf of and for the benefit of DEFENDANT. As a result, in the course of their employment with
25 DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA CLASS incurred unreimbursed
26 business expenses which included, but were not limited to, costs related to travel all on behalf of and for
27 the benefit of DEFENDANT.
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35. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct net and gross wages earned. Aside from the violations listed above, DEFENDANT failed to issue to Plaintiff Astudillo an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided Plaintiff Astudillo and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

36. Specifically as to PLAINTIFFS, as a result of the rigorous work schedule imposed by DEFENDANT, PLAINTIFFS were also from time to time unable to take off duty meal and rest breaks and was not fully relieved of duty for her meal and rest periods. PLAINTIFFS were required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFFS with a second off-duty meal period each workday in which they were required by DEFENDANT to work ten (10) hours of work. PLAINTIFFS therefore forfeited meal and rest breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice. When PLAINTIFFS worked overtime in the same pay period they earned incentive wages and/or missed meal and rest breaks, DEFENDANT also provided PLAINTIFFS with a paystub that failed to accurately display PLAINTIFFS' correct rates of overtime pay for certain pay periods in violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid PLAINTIFFS the overtime compensation still owed to them or any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFFS individually does not exceed the sum or value of \$75,000.

JURISDICTION AND VENUE

37. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees of DEFENDANT

1 pursuant to Cal. Code of Civ. Proc. § 382. The Court has Jurisdiction under the FCRA. (15 U.S.C. §§
2 1681n, 1681p.)

3 38. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395
4 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT and DEFENDANT (i)
5 currently maintains and at all relevant times maintained offices and facilities in this County and/or
6 conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in
7 this County against members of the CALIFORNIA CLASS.

8 THE CALIFORNIA CLASS

9
10 39. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
11 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
12 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who
13 are or previously were employed by DEFENDANT in California and classified as non-exempt
14 employees (the "CALIFORNIA CLASS") at any time during the period beginning on the date four (4)
15 years prior to the filing of this Complaint and ending on the date as determined by the Court (the
16 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of
17 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

18 40. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
19 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

20 41. The California Legislature has commanded that "all wages... ..earned by any person in
21 any employment are due and payable twice during each calendar month, on days designated in advance
22 by the employer as the regular paydays", and further that "[a]ny work in excess of eight hours in one
23 workday and any work in excess of 40 hours in any one workweek . . . shall be compensated at the rate
24 of no less than one and one-half times the regular rate of pay for an employee." (Lab. Code § 204 and
25 § 510(a).) The Industrial Welfare Commission (IWC), however, is statutorily authorized to "establish
26 exemptions from the requirement that an overtime rate of compensation be paid... ..for executive,
27 administrative, and professional employees, provided [inter alia] that the employee is primarily engaged
28 in duties that meet the test of the exemption, [and] customarily and regularly exercises discretion and

1 independent judgment in performing those duties...” (Lab. Code § 510(a).) Neither PLAINTIFFS nor
2 the other members of the CALIFORNIA CLASS and/or the CALIFORNIA LABOR SUB-CLASS
3 qualify for exemption from the above requirements.

4 42. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
5 CLASS Member was paid for all time worked and wages for missed meal and rest breaks. The
6 DEFENDANT, however, as a matter of uniform and systematic policy and procedure fails to have in
7 place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to
8 ensure that each and every CALIFORNIA CLASS Member is paid the appropriate minimum and
9 overtime wages, so as to satisfy their burden. This common business practice applicable to each and
10 every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair,
11 and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the “UCL”) as causation,
12 damages, and reliance are not elements of this claim.

13 43. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS
14 Members is impracticable.

15 44. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
16 California law by:

- 17 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
18 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
19 company policies, practices and procedures that failed to pay all minimum and
20 overtime wages due the CALIFORNIA CLASS for all time worked;
- 21 (b) Committing an act of unfair competition in violation of the California Unfair
22 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
23 unfairly, and/or deceptively having in place a company policy, practice and
24 procedure that failed to correctly compensation due to PLAINTIFFS and the
25 members of the CALIFORNIA CLASS;
- 26 (c) Committing an act of unfair competition in violation of the California Unfair
27 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
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1 provide mandatory meal and rest breaks to PLAINTIFFS and the CALIFORNIA
2 CLASS members;

3 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
4 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by failing to
5 reimburse PLAINTIFFS and the CALIFORNIA CLASS members with necessary
6 expenses incurred in the discharge of their job duties; and,

7 (e) Violating The Fair Credit Reporting Act 15 U.S.C. § 1681, *et seq.*, by
8 unlawfully, unfairly and/or deceptively having in place company policies,
9 practices and procedures that uniformly obtained credit reports on prospective
10 employees without first obtaining valid authorization consent forms.

11 45. This Class Action meets the statutory prerequisites for the maintenance of a Class Action
12 as set forth in Cal. Code of Civ. Proc. § 382, in that:

13 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the
14 joinder of all such persons is impracticable and the disposition of their claims as
15 a class will benefit the parties and the Court;

16 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
17 raised in this Complaint are common to the CALIFORNIA CLASS will apply
18 uniformly to every member of the CALIFORNIA CLASS;

19 (c) The claims of the representative PLAINTIFFS are typical of the claims of each
20 member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other members
21 of the CALIFORNIA CLASS, were non-exempt employees paid on an hourly
22 basis who was subjected to the DEFENDANT's practice and policy which failed
23 to pay the correct rate of overtime wages due to the CALIFORNIA CLASS for
24 all overtime worked by the CALIFORNIA CLASS and thereby systematically
25 underpaid overtime compensation to the CALIFORNIA CLASS. PLAINTIFFS
26 sustained economic injury as a result of DEFENDANT's employment practices.
27 PLAINTIFFS and the members of the CALIFORNIA CLASS were and are
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1 similarly or identically harmed by the same unlawful, deceptive, unfair and
2 pervasive pattern of misconduct engaged in by DEFENDANT; and,

- 3 (d) The representative PLAINTIFFS will fairly and adequately represent and protect
4 the interest of the CALIFORNIA CLASS, and have retained counsel who are
5 competent and experienced in Class Action litigation. There are no material
6 conflicts between the claims of the representative PLAINTIFFS and the members
7 of the CALIFORNIA CLASS that would make class certification inappropriate.
8 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
9 CALIFORNIA CLASS Members.

10 46. In addition to meeting the statutory prerequisites to a Class Action, this action
11 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 12 (a) Without class certification and determination of declaratory, injunctive, statutory
13 and other legal questions within the class format, prosecution of separate actions
14 by individual members of the CALIFORNIA CLASS will create the risk of:
- 15 1) Inconsistent or varying adjudications with respect to individual members
16 of the CALIFORNIA CLASS which would establish incompatible
17 standards of conduct for the parties opposing the CALIFORNIA CLASS;
18 and/or,
- 19 2) Adjudication with respect to individual members of the CALIFORNIA
20 CLASS which would as a practical matter be dispositive of interests of
21 the other members not party to the adjudication or substantially impair
22 or impede their ability to protect their interests.
- 23 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on
24 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
25 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
26 DEFENDANT uniformly failed to pay all wages due. Including the correct
27 overtime rate, for all worked by the members of the CALIFORNIA CLASS as
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1 required by law;

2 1) With respect to the First Cause of Action, the final relief on behalf of the
3 CALIFORNIA CLASS sought does not relate exclusively to restitution
4 because through this claim PLAINTIFFS seek declaratory relief holding
5 that the DEFENDANT's policy and practices constitute unfair
6 competition, along with declaratory relief, injunctive relief, and
7 incidental equitable relief as may be necessary to prevent and remedy the
8 conduct declared to constitute unfair competition;

9 (c) Common questions of law and fact exist as to the members of the CALIFORNIA
10 CLASS, with respect to the practices and violations of California law as listed
11 above, and predominate over any question affecting only individual
12 CALIFORNIA CLASS Members, and a Class Action is superior to other
13 available methods for the fair and efficient adjudication of the controversy,
14 including consideration of:

15 1) The interests of the members of the CALIFORNIA CLASS in
16 individually controlling the prosecution or defense of separate actions in
17 that the substantial expense of individual actions will be avoided to
18 recover the relatively small amount of economic losses sustained by the
19 individual CALIFORNIA CLASS Members when compared to the
20 substantial expense and burden of individual prosecution of this
21 litigation;

22 2) Class certification will obviate the need for unduly duplicative litigation
23 that would create the risk of:

24 A. Inconsistent or varying adjudications with respect to individual
25 members of the CALIFORNIA CLASS, which would establish
26 incompatible standards of conduct for the DEFENDANT; and/or,

27 B. Adjudications with respect to individual members of the
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CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

47. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

(a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS;

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

(c) The members of the CALIFORNIA CLASS are so numerous that it is impractical

1 to bring all members of the CALIFORNIA CLASS before the Court;

2 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be able
3 to obtain effective and economic legal redress unless the action is maintained as
4 a Class Action;

5 (e) There is a community of interest in obtaining appropriate legal and equitable
6 relief for the acts of unfair competition, statutory violations and other
7 improprieties, and in obtaining adequate compensation for the damages and
8 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
9 CLASS;

10 (f) There is a community of interest in ensuring that the combined assets of
11 DEFENDANT are sufficient to adequately compensate the members of the
12 CALIFORNIA CLASS for the injuries sustained;

13 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
14 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
15 respect to the CALIFORNIA CLASS as a whole;

16 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the
17 business records of DEFENDANT; and,

18 (i) Class treatment provides manageable judicial treatment calculated to bring a
19 efficient and rapid conclusion to all litigation of all wage and hour related claims
20 arising out of the conduct of DEFENDANT as to the members of the
21 CALIFORNIA CLASS.

22 48. DEFENDANT maintains records from which the Court can ascertain and identify by job
23 title each of DEFENDANT's employees who have been systematically, intentionally and uniformly
24 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
25 PLAINTIFFS will seek leave to amend the Complaint to include any additional job titles of similarly
26 situated employees when they have been identified.

THE CALIFORNIA LABOR SUB-CLASS

49. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Thirteenth Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS classified as non-exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period beginning on the date three (3) years prior to the filing of the complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

50. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate overtime compensation for the overtime worked by PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-CLASS Members overtime wages at the correct amount to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

51. DEFENDANT maintains records from which the Court can ascertain and identify by name and job title, each of DEFENDANT’s employees who have been systematically, intentionally and uniformly subjected to DEFENDANT’s company policy, practices and procedures as herein alleged. PLAINTIFFS will seek leave to amend the complaint to include any additional job titles of similarly situated employees when they have been identified.

52. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable.

1 53. Common questions of law and fact exist as to members of the CALIFORNIA LABOR
2 SUB-CLASS, including, but not limited, to the following:

- 3 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
4 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
5 violation of the California Labor Code and California regulations and the
6 applicable California Wage Order;
- 7 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS were entitled
8 to overtime compensation for overtime worked under the overtime pay
9 requirements of California law;
- 10 (c) Whether DEFENDANT failed to accurately record the applicable overtime rates
11 for all overtime worked by PLAINTIFFS and the other members of the
12 CALIFORNIA LABOR SUB-CLASS;
- 13 (d) Whether DEFENDANT failed to provide PLAINTIFFS and the other members
14 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
15 statements;
- 16 (e) Whether DEFENDANT has engaged in unfair competition by the above-listed
17 conduct;
- 18 (f) The proper measure of damages and penalties owed to the members of the
19 CALIFORNIA LABOR SUB-CLASS; and,
- 20 (g) Whether DEFENDANT's conduct was willful.

21 54. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under
22 California law by:

- 23 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
24 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS the
25 correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab.
26 Code § 1194;
- 27 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
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1 pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS
2 the correct minimum wage pay for which DEFENDANT is liable pursuant to
3 Cal. Lab. Code §§ 1194 and 1197;

4 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the
5 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
6 statement in writing showing all accurate and applicable overtime rates in effect
7 during the pay period and the corresponding amount of time worked at each
8 overtime rate by the employee;

9 (d) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
10 employee is discharged or quits from employment, the employer must pay the
11 employee all wages due without abatement, by failing to tender full payment
12 and/or restitution of wages owed or in the manner required by California law to
13 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
14 their employment; and,

15 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the
16 CALIFORNIA LABOR SUB-CLASS members with necessary expenses
17 incurred in the discharge of their job duties.

18 55. This Class Action meets the statutory prerequisites for the maintenance of a Class Action
19 as set forth in Cal. Code of Civ. Proc. § 382, in that:

20 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
21 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
22 is impracticable and the disposition of their claims as a class will benefit the
23 parties and the Court;

24 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
25 raised in this Complaint are common to the CALIFORNIA LABOR SUB-
26 CLASS and will apply uniformly to every member of the CALIFORNIA
27 LABOR SUB-CLASS;

- 1 (c) The claims of the representative PLAINTIFFS are typical of the claims of each
2 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the
3 other members of the CALIFORNIA LABOR SUB-CLASS, were non-exempt
4 employees who were subjected to DEFENDANT's practice and policy which
5 failed to pay the correct rate of overtime wages due to the CALIFORNIA
6 LABOR SUB-CLASS for all overtime worked. PLAINTIFFS sustained
7 economic injury as a result of DEFENDANT's employment practices.
8 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS
9 were and are similarly or identically harmed by the same unlawful, deceptive,
10 unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and,
11 (d) The representative PLAINTIFFS will fairly and adequately represent and protect
12 the interest of the CALIFORNIA LABOR SUB-CLASS, and have retained
13 counsel who are competent and experienced in Class Action litigation. There are
14 no material conflicts between the claims of the representative PLAINTIFFS and
15 the members of the CALIFORNIA LABOR SUB-CLASS that would make class
16 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-
17 CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-
18 CLASS Members.

19 56. In addition to meeting the statutory prerequisites to a Class Action, this action
20 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 21 (a) Without class certification and determination of declaratory, injunctive, statutory
22 and other legal questions within the class format, prosecution of separate actions
23 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
24 the risk of:
25 1) Inconsistent or varying adjudications with respect to individual members
26 of the CALIFORNIA LABOR SUB-CLASS which would establish
27 incompatible standards of conduct for the parties opposing the
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CALIFORNIA LABOR SUB-CLASS; or,

- 2) Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due. Including the correct overtime rate, for all overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

(c) Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

1 A. Inconsistent or varying adjudications with respect to individual
2 members of the CALIFORNIA LABOR SUB-CLASS, which
3 would establish incompatible standards of conduct for the
4 DEFENDANT; and/or,

5 B. Adjudications with respect to individual members of the
6 CALIFORNIA LABOR SUB-CLASS would as a practical matter
7 be dispositive of the interests of the other members not parties to
8 the adjudication or substantially impair or impede their ability to
9 protect their interests;

10 3) In the context of wage litigation because a substantial number of
11 individual CALIFORNIA LABOR SUB-CLASS Members will avoid
12 asserting their legal rights out of fear of retaliation by DEFENDANT,
13 which may adversely affect an individual's job with DEFENDANT or
14 with a subsequent employer, the Class Action is the only means to assert
15 their claims through a representative; and,

16 4) A class action is superior to other available methods for the fair and
17 efficient adjudication of this litigation because class treatment will
18 obviate the need for unduly and unnecessary duplicative litigation that is
19 likely to result in the absence of certification of this action pursuant to
20 Cal. Code of Civ. Proc. § 382.

21 57. This Court should permit this action to be maintained as a Class Action pursuant to Cal.
22 Code of Civ. Proc. § 382 because:

23 (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-
24 CLASS predominate over any question affecting only individual CALIFORNIA
25 LABOR SUB-CLASS Members;

26 (b) A Class Action is superior to any other available method for the fair and efficient
27 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
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1 CLASS because in the context of employment litigation a substantial number of
2 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
3 their rights individually out of fear of retaliation or adverse impact on their
4 employment;

5 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
6 it is impractical to bring all members of the CALIFORNIA LABOR SUB-
7 CLASS before the Court;

8 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members,
9 will not be able to obtain effective and economic legal redress unless the action
10 is maintained as a Class Action;

11 (e) There is a community of interest in obtaining appropriate legal and equitable
12 relief for the acts of unfair competition, statutory violations and other
13 improprieties, and in obtaining adequate compensation for the damages and
14 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
15 LABOR SUB-CLASS;

16 (f) There is a community of interest in ensuring that the combined assets of
17 DEFENDANT are sufficient to adequately compensate the members of the
18 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

19 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
20 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
21 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;

22 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
23 ascertainable from the business records of DEFENDANT. The CALIFORNIA
24 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
25 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
26 PERIOD; and,

27 (i) Class treatment provides manageable judicial treatment calculated to bring a
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1 efficient and rapid conclusion to all litigation of all wage and hour related claims
2 arising out of the conduct of DEFENDANT as to the members of the
3 CALIFORNIA LABOR SUB-CLASS.
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5 **THE FCRA CLASS ALLEGATIONS**

6 58. PLAINTIFFS bring the Ninth and Tenth Causes of Action pursuant to Cal. Code of Civ.
7 Proc. § 382, on behalf of a nationwide Class, defined as all employees or prospective employees of
8 DEFENDANT in the United States who executed DEFENDANT's standard background check
9 disclosure form (the "FCRA CLASS") at any time during the period beginning on the date five (5) years
10 prior to the filing of this Complaint and ending on the date as determined by the Court (the "FCRA
11 CLASS PERIOD"). The amount in controversy for the aggregate claim of FCRA CLASS Members is
12 under five million dollars (\$5,000,000.00). 1. To the extent equitable tolling operates to toll
13 claims by the FCRA CLASS against DEFENDANT, the FCRA CLASS PERIOD should be adjusted
14 accordingly.

15 59. DEFENDANT, as a matter of corporate policy, practice and procedure, and in violation
16 of The Fair Credit Reporting Act 15 U.S.C. § 1681, *et seq.*, intentionally, knowingly, and wilfully,
17 engaged in a practice whereby DEFENDANT uniformly, unfairly, unlawfully, and deceptively instituted
18 a practice of obtaining consumer reports without valid authorization to do so.

19 60. The FCRA CLASS is so numerous that joinder of all FCRA CLASS Members is
20 impracticable.

21 61. DEFENDANT uniformly violated the rights of the FCRA CLASS by:

- 22 (a) Violating The Fair Credit Reporting Act 15 U.S.C. § 1681, *et seq.*, by
23 unlawfully, unfairly and/or deceptively having in place company policies,
24 practices and procedures that uniformly obtained credit reports on prospective
25 employees without first obtaining valid authorization consent forms.

26 62. Common questions of law and fact exist as to members of the FCRA CLASS, including,
27 but not limited, to the following:
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- (a) Whether DEFENDANT required the FCRA CLASS Members to sign a background check disclosure and authorization form;
- (b) Whether DEFENDANT's background check disclosure and authorization form complies with the Fair Credit Reporting Act 15 U.S.C. § 1681, *et seq.* ("FCRA");
- (c) Whether DEFENDANT violated the FCRA by including extraneous information in its background check disclosure and authorization form; and,
- (d) Whether DEFENDANT violated the FCRA by procuring consumer report information based on invalid authorizations;
- (e) Whether DEFENDANT's violations of the FCRA were willful;
- (f) The proper measure of statutory damages and punitive damages; and,
- (g) The proper form of injunctive and declaratory relief.

63. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, 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) 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;
- (c) The claims of the representative PLAINTIFFS are typical of the claims of each member of the FCRA CLASS. PLAINTIFFS, like all the other members of the FCRA CLASS, had a credit report obtained on their behalf by DEFENDANT prior to obtaining valid authorization to do so in violation of the FCRA as described herein. PLAINTIFFS and the members of the FCRA CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and,
- (d) The representative PLAINTIFFS will fairly and adequately represent and protect

1 the interest of the FCRA CLASS, and have retained counsel who are competent
2 and experienced in Class Action litigation. There are no material conflicts
3 between the claims of the representative PLAINTIFFS and the members of the
4 FCRA CLASS that would make class certification inappropriate. Counsel for the
5 FCRA CLASS will vigorously assert the claims of all employees in the FCRA
6 CLASS.

7 64. In addition to meeting the statutory prerequisites to a Class Action, this Action is
8 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

9 (a) Without class certification and determination of declaratory, statutory and other
10 legal questions within the class format, prosecution of separate actions by
11 individual members of the FCRA CLASS will create the risk of:

- 12 1) Inconsistent or varying adjudications with respect to individual members
13 of the FCRA CLASS which would establish incompatible standards of
14 conduct for the parties opposing the FCRA CLASS; and/or,
15 2) Adjudication with respect to individual members of the FCRA CLASS
16 which would as a practical matter be dispositive of interests of the other
17 members not party to the adjudication or substantially impair or impede
18 their ability to protect their interests.

19 (b) The parties opposing the FCRA CLASS have acted or refused to act on grounds
20 generally applicable to the FCRA CLASS, making appropriate class-wide relief
21 with respect to the FCRA CLASS as a whole;

22 (c) Common questions of law and fact exist as to the members of the FCRA CLASS,
23 with respect to the practices and violations of the FCRA as listed above, and
24 predominate over any question affecting only individual FCRA CLASS
25 Members, and a Class Action is superior to other available methods for the fair
26 and efficient adjudication of the controversy, including consideration of:

- 27 1) The interests of the members of the FCRA CLASS in individually
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1 controlling the prosecution or defense of separate actions in that the
2 substantial expense of individual actions will be avoided to recover the
3 relatively small amount of economic losses sustained by the individual
4 FCRA CLASS Members when compared to the substantial expense and
5 burden of individual prosecution of this litigation;

6 2) Class certification will obviate the need for unduly duplicative litigation
7 that would create the risk of:

8 A. Inconsistent or varying adjudications with respect to individual
9 members of the FCRA CLASS, which would establish
10 incompatible standards of conduct for DEFENDANT; and/or,

11 B. Adjudications with respect to individual members of the FCRA
12 CLASS would as a practical matter be dispositive of the interests
13 of the other members not parties to the adjudication or
14 substantially impair or impede their ability to protect their
15 interests;

16 3) In the context of employment litigation because as a practical matter a
17 substantial number of individual FCRA CLASS Members will avoid
18 asserting their legal rights out of fear of retaliation by DEFENDANT,
19 which may adversely affect an individual's job with DEFENDANT or
20 with a subsequent employer, the Class Action is the only means to assert
21 their claims through a representative; and,

22 4) A Class Action is superior to other available methods for the fair and
23 efficient adjudication of this litigation because class treatment will
24 obviate the need for unduly and unnecessary duplicative litigation that is
25 likely to result in the absence of certification of this Action pursuant to
26 Cal. Code of Civ. Proc. § 382.

27 65. This Court should permit this Action to be maintained as a Class Action pursuant to Cal.
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1 Code of Civ. Proc. § 382, because:

- 2 (a) The questions of law and fact common to the FCRA CLASS predominate over
3 any question affecting only individual FCRA CLASS Members because
4 DEFENDANT's employment practices were uniform and systematically applied
5 with respect to the FCRA CLASS;
- 6 (b) A Class Action is superior to any other available method for the fair and efficient
7 adjudication of the claims of the members of the FCRA CLASS because in the
8 context of employment litigation a substantial number of individual FCRA
9 CLASS Members will avoid asserting their rights individually out of fear of
10 retaliation or adverse impact on their employment;
- 11 (c) The members of the FCRA CLASS are so numerous that it is impractical to bring
12 all members of the FCRA CLASS before the Court;
- 13 (d) PLAINTIFFS, and the other FCRA CLASS Members, will not be able to obtain
14 effective and economic legal redress unless the action is maintained as a Class
15 Action;
- 16 (e) There is a community of interest in obtaining appropriate legal and equitable
17 relief for the acts of statutory violations and other improprieties, and in obtaining
18 adequate compensation for the injuries which DEFENDANT's actions have
19 inflicted upon the FCRA CLASS;
- 20 (f) There is a community of interest in ensuring that the combined assets of
21 DEFENDANT are sufficient to adequately compensate the members of the
22 FCRA CLASS for the injuries sustained;
- 23 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
24 FCRA CLASS, thereby making final class-wide relief appropriate with respect
25 to the FCRA CLASS as a whole;
- 26 (h) The members of the FCRA CLASS are readily ascertainable from the business
27 records of DEFENDANT. The FCRA CLASS consists of all employees or
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prospective employees of DEFENDANT in the United States who executed DEFENDANT's standard FCRA disclosure form allowing DEFENDANT to obtain a consumer report during the FCRA CLASS PERIOD; and,

- (i) Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all FCRA claims arising out of the conduct of DEFENDANT as to the members of the FCRA CLASS.

66. DEFENDANT maintains records from which the Court can ascertain and identify by name and job title, each of DEFENDANT's employees who have been systematically, intentionally and uniformly subjected to DEFENDANT's corporate policy, practices and procedures as herein alleged. PLAINTIFFS will seek leave to amend the Complaint to include any additional job titles of similarly situated employees when they have been identified.

THE ICRAA CLASS

67. PLAINTIFFS bring the Eleventh Cause of Action pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a statewide California Class, defined as all persons in California who executed DEFENDANT's standard background check disclosure form (the "ICRAA CLASS") at any time during the period beginning five (5) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "ICRAA CLASS PERIOD"). To the extent equitable tolling operates to toll claims by the ICRAA CLASS against DEFENDANT, the ICRAA CLASS PERIOD should be adjusted accordingly. The amount in controversy for the aggregate claim of ICRAA CLASS Members is under five million dollars (\$5,000,000.00).

68. DEFENDANT, as a matter of corporate policy, practice and procedure, and in violation of Investigative Consumer Reporting Agencies Act Cal. Civ. Code § 1786, *et seq.*, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT uniformly, unfairly, unlawfully, and deceptively instituted a practice of obtaining consumer reports without valid authorization to do so.

69. The ICRAA CLASS is so numerous that joinder of all ICRAA CLASS Members is impracticable.

1 70. DEFENDANT uniformly violated the rights of the ICRAA CLASS by:

- 2 (a) Violating Investigative Consumer Reporting Agencies Act Cal. Civ. Code §
3 1786, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
4 company policies, practices and procedures that uniformly obtained credit reports
5 on without first obtaining valid authorization consent form.

6 71. Common questions of law and fact exist as to members of the ICRAA CLASS, including,
7 but not limited, to the following:

- 8 (a) Whether DEFENDANT required the ICRAA CLASS Members to sign a
9 background check disclosure and authorization form;
10 (b) Whether DEFENDANT's background check disclosure and authorization form
11 complies with the Investigative Consumer Reporting Agencies Act Cal. Civ.
12 Code § 1786, *et seq.*;
13 (c) Whether DEFENDANT violated the ICRAA by including extraneous
14 information in its background check disclosure and authorization form;
15 (d) Whether DEFENDANT violated the ICRAA by procuring consumer report
16 information based on invalid authorizations;
17 (e) Whether DEFENDANT's violations of the ICRAA were willful;
18 (f) The proper measure of statutory damages and punitive damages; and,
19 (g) The proper form of injunctive and declaratory relief.

20 72. This Class Action meets the statutory prerequisites for the maintenance of a Class Action
21 as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 22 (a) The persons who comprise the ICRAA CLASS are so numerous that the joinder
23 of all such persons is impracticable and the disposition of their claims as a class
24 will benefit the parties and the Court;
25 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are raised in
26 this Complaint are common to the ICRAA CLASS will apply uniformly to every
27 member of the ICRAA CLASS;
28

1 (c) The claims of the representative PLAINTIFFS are typical of the claims of each
2 member of the ICRAA CLASS. PLAINTIFFS, like all the other members of the
3 ICRAA CLASS, had a credit report and background check obtained on
4 PLAINTIFFS' behalf by DEFENDANT prior to obtaining valid authorization to
5 do so in violation of the ICRAA as described herein. PLAINTIFFS and the
6 members of the ICRAA CLASS were and are similarly or identically harmed by
7 the same unlawful, deceptive, unfair and pervasive pattern of misconduct
8 engaged in by DEFENDANT; and,

9 (d) The representative PLAINTIFFS will fairly and adequately represent and protect
10 the interest of the ICRAA CLASS, and have retained counsel who are competent
11 and experienced in Class Action litigation. There are no material conflicts
12 between the claims of the representative PLAINTIFFS and the members of the
13 ICRAA CLASS that would make class certification inappropriate. Counsel for
14 the ICRAA CLASS will vigorously assert the claims of all ICRAA CLASS
15 members.

16 73. In addition to meeting the statutory prerequisites to a Class Action, this Action is
17 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

18 (a) Without class certification and determination of declaratory, statutory and other
19 legal questions within the class format, prosecution of separate actions by
20 individual members of the ICRAA CLASS will create the risk of:

21 1) Inconsistent or varying adjudications with respect to individual members
22 of the ICRAA CLASS which would establish incompatible standards of
23 conduct for the parties opposing the CLASS; and/or,

24 2) Adjudication with respect to individual members of the ICRAA CLASS
25 which would as a practical matter be dispositive of interests of the other
26 members not party to the adjudication or substantially impair or impede
27 their ability to protect their interests.
28

- 1 (b) The parties opposing the ICRAA CLASS have acted or refused to act on grounds
2 generally applicable to the ICRAA CLASS, making appropriate class-wide relief
3 with respect to the ICRAA CLASS as a whole; and
- 4 (c) Common questions of law and fact exist as to the members of the ICRAA
5 CLASS, with respect to the practices and violations of the ICRAA as listed
6 above, and predominate over any question affecting only individual ICRAA
7 CLASS Members, and a Class Action is superior to other available methods for
8 the fair and efficient adjudication of the controversy, including consideration of:
- 9 1) The interests of the members of the ICRAA CLASS in individually
10 controlling the prosecution or defense of separate actions in that the
11 substantial expense of individual actions will be avoided to recover the
12 relatively small amount of economic losses sustained by the individual
13 ICRAA CLASS Members when compared to the substantial expense and
14 burden of individual prosecution of this litigation;
- 15 2) Class certification will obviate the need for unduly duplicative litigation
16 that would create the risk of:
- 17 A. Inconsistent or varying adjudications with respect to individual
18 members of the ICRAA CLASS, which would establish
19 incompatible standards of conduct for DEFENDANT; and/or,
- 20 B. Adjudications with respect to individual members of the ICRAA
21 CLASS would as a practical matter be dispositive of the interests
22 of the other members not parties to the adjudication or
23 substantially impair or impede their ability to protect their
24 interests;
- 25 3) In the context of employment litigation because as a practical matter a
26 substantial number of individual ICRAA CLASS Members will avoid
27 asserting their legal rights out of fear of retaliation by DEFENDANT,
28

1 which may adversely affect an individual's job with DEFENDANT or
2 with a subsequent employer, the Class Action is the only means to assert
3 their claims through a representative; and,

- 4 4) A Class Action is superior to other available methods for the fair and
5 efficient adjudication of this litigation because class treatment will
6 obviate the need for unduly and unnecessary duplicative litigation that is
7 likely to result in the absence of certification of this Action pursuant to
8 Cal. Code of Civ. Proc. § 382.

9 74. This Court should permit this Action to be maintained as a Class Action pursuant to Cal.
10 Code of Civ. Proc. § 382, because:

- 11 (a) The questions of law and fact common to the ICRAA CLASS predominate over
12 any question affecting only individual ICRAA CLASS Members because
13 DEFENDANT's employment practices were uniform and systematically applied
14 with respect to the ICRAA CLASS;
- 15 (b) A Class Action is superior to any other available method for the fair and efficient
16 adjudication of the claims of the members of the ICRAA CLASS because in the
17 context of employment litigation a substantial number of individual ICRAA
18 CLASS Members will avoid asserting their rights individually out of fear of
19 retaliation or adverse impact on their employment;
- 20 (c) The members of the ICRAA CLASS are so numerous that it is impractical to
21 bring all members of the ICRAA CLASS before the Court;
- 22 (d) PLAINTIFFS, and the other ICRAA CLASS Members, will not be able to obtain
23 effective and economic legal redress unless the action is maintained as a Class
24 Action;
- 25 (e) There is a community of interest in obtaining appropriate legal and equitable
26 relief for the acts of statutory violations and other improprieties, and in obtaining
27 adequate compensation for the injuries which DEFENDANT's actions have
28

1 inflicted upon the ICRAA CLASS;

2 (f) There is a community of interest in ensuring that the combined assets of
3 DEFENDANT are sufficient to adequately compensate the members of the
4 CLASS for the injuries sustained;

5 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
6 ICRAA CLASS, thereby making final class-wide relief appropriate with respect
7 to the ICRAA CLASS as a whole;

8 (h) The members of the ICRAA CLASS are readily ascertainable from the business
9 records of DEFENDANT; and,

10 (i) Class treatment provides manageable judicial treatment calculated to bring an
11 efficient and rapid conclusion to all litigation of all ICRAA claims arising out of
12 the conduct of DEFENDANT as to the members of the ICRAA CLASS.

13 **THE CCRAA CLASS**

14
15 75. PLAINTIFFS bring the Twelfth Cause of Action pursuant to Cal. Code of Civ. Proc. §
16 382, on behalf of a statewide Class, defined as all persons in California who executed DEFENDANT's
17 standard background check disclosure form that were not provided a valid written notice compliant with
18 the terms of Cal. Civ. Code § 1785.20.5(a) (the "CCRAA CLASS") at any time during the period
19 beginning seven (7) years prior to the filing of this Complaint and ending on the date as determined by
20 the Court (the "CCRAA CLASS PERIOD"). To the extent equitable tolling operates to toll claims by
21 the CCRAA CLASS against DEFENDANT, the CCRAA CLASS PERIOD should be adjusted
22 accordingly. The amount in controversy for the aggregate claim of CCRA CLASS Members is under
23 five million dollars (\$5,000,000.00).

24 76. DEFENDANT, as a matter of corporate policy, practice and procedure, and in violation
25 of the Consumer Credit Reporting Agencies Act Cal. Civ. Code § 1785, *et seq.*, intentionally,
26 knowingly, and wilfully, engaged in a practice whereby DEFENDANT uniformly, unfairly, unlawfully,
27 and deceptively instituted a practice of obtaining consumer reports without valid authorization to do so.
28

1 77. The CCRAA CLASS is so numerous that joinder of all CCRAA CLASS Members is
2 impracticable.

3 78. DEFENDANT uniformly violated the rights of the CCRAA CLASS by:

- 4 (a) Violating the Consumer Credit Reporting Agencies Act Cal. Civ. Code § 1785,
5 *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
6 policies, practices and procedures that uniformly obtained credit reports on
7 without first obtaining valid authorization consent form.

8 79. Common questions of law and fact exist as to members of the CCRAA CLASS,
9 including, but not limited, to the following:

- 10 (a) Whether DEFENDANT required the CCRAA CLASS Members to sign a
11 background check disclosure and authorization form;
12 (b) Whether DEFENDANT's background check disclosure and authorization form
13 complies with the Consumer Credit Reporting Agencies Act Cal. Civ. Code §
14 1785, *et seq.*;
15 (c) Whether DEFENDANT violated the CCRAA by including additional state law
16 notices in its background check disclosure and authorization form;
17 (d) Whether DEFENDANT violated the CCRAA by procuring consumer report
18 information based on invalid authorizations;
19 (e) Whether DEFENDANT's violations of the CCRAA were willful;
20 (f) The proper measure of statutory damages and punitive damages; and,
21 (g) The proper form of injunctive and declaratory relief.

22 80. This Class Action meets the statutory prerequisites for the maintenance of a Class Action
23 as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 24 (a) The persons who comprise the CCRAA CLASS are so numerous that the joinder
25 of all such persons is impracticable and the disposition of their claims as a class
26 will benefit the parties and the Court;
27 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are raised in
28

1 this Complaint are common to the CCRAA CLASS will apply uniformly to every
2 member of the CCRAA CLASS;

3 (c) The claims of the representative PLAINTIFFS are typical of the claims of each
4 member of the CCRAA CLASS. PLAINTIFFS, like all the other members of the
5 CCRAA CLASS, had a credit report and background check obtained on
6 PLAINTIFFS' behalf by DEFENDANT prior to obtaining valid authorization to
7 do so in violation of the CCRAA as described herein. PLAINTIFFS and the
8 members of the CLASS were and are similarly or identically harmed by the same
9 unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by
10 DEFENDANT; and,

11 (d) The representative PLAINTIFFS will fairly and adequately represent and protect
12 the interest of the CCRAA CLASS, and have retained counsel who are
13 competent and experienced in Class Action litigation. There are no material
14 conflicts between the claims of the representative PLAINTIFFS and the members
15 of the CCRAA CLASS that would make class certification inappropriate.
16 Counsel for the CCRAA CLASS will vigorously assert the claims of all CCRAA
17 CLASS members.

18 81. In addition to meeting the statutory prerequisites to a Class Action, this Action is
19 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

20 (a) Without class certification and determination of declaratory, statutory and other
21 legal questions within the class format, prosecution of separate actions by
22 individual members of the CCRAA CLASS will create the risk of:

- 23 1) Inconsistent or varying adjudications with respect to individual members
24 of the CCRAA CLASS which would establish incompatible standards of
25 conduct for the parties opposing the CCRAA CLASS; and/or,
26 2) Adjudication with respect to individual members of the CCRAA CLASS
27 which would as a practical matter be dispositive of interests of the other
28

1 members not party to the adjudication or substantially impair or impede
2 their ability to protect their interests.

3 (b) The parties opposing the CCRAA CLASS have acted or refused to act on
4 grounds generally applicable to the CCRAA CLASS, making appropriate class-
5 wide relief with respect to the CCRAA CLASS as a whole; and

6 (c) Common questions of law and fact exist as to the members of the CCRAA
7 CLASS, with respect to the practices and violations of the CCRAA as listed
8 above, and predominate over any question affecting only individual CCRAA
9 CLASS Members, and a Class Action is superior to other available methods for
10 the fair and efficient adjudication of the controversy, including consideration of:

11 1) The interests of the members of the CCRAA CLASS in individually
12 controlling the prosecution or defense of separate actions in that the
13 substantial expense of individual actions will be avoided to recover the
14 relatively small amount of economic losses sustained by the individual
15 CCRAA CLASS Members when compared to the substantial expense
16 and burden of individual prosecution of this litigation;

17 2) Class certification will obviate the need for unduly duplicative litigation
18 that would create the risk of:

19 A. Inconsistent or varying adjudications with respect to individual
20 members of the CCRAA CLASS, which would establish
21 incompatible standards of conduct for DEFENDANT; and/or,

22 B. Adjudications with respect to individual members of the CCRAA
23 CLASS would as a practical matter be dispositive of the interests
24 of the other members not parties to the adjudication or
25 substantially impair or impede their ability to protect their
26 interests;

27 3) In the context of employment litigation because as a practical matter a
28

1 substantial number of individual CCRAA CLASS Members will avoid
2 asserting their legal rights out of fear of retaliation by DEFENDANT,
3 which may adversely affect an individual's job with DEFENDANT or
4 with a subsequent employer, the Class Action is the only means to assert
5 their claims through a representative; and,

6 4) A Class Action is superior to other available methods for the fair and
7 efficient adjudication of this litigation because class treatment will
8 obviate the need for unduly and unnecessary duplicative litigation that is
9 likely to result in the absence of certification of this Action pursuant to
10 Cal. Code of Civ. Proc. § 382.

11 82. This Court should permit this Action to be maintained as a Class Action
12 pursuant to Cal. Code of Civ. Proc. § 382, because:

- 13 (a) The questions of law and fact common to the CCRAA CLASS predominate over
14 any question affecting only individual CCRAA CLASS Members because
15 DEFENDANT's employment practices were uniform and systematically applied
16 with respect to the CCRAA CLASS;
- 17 (b) A Class Action is superior to any other available method for the fair and efficient
18 adjudication of the claims of the members of the CCRAA CLASS because in the
19 context of employment litigation a substantial number of individual CCRAA
20 CLASS Members will avoid asserting their rights individually out of fear of
21 retaliation or adverse impact on their employment;
- 22 (c) The members of the CCRAA CLASS are so numerous that it is impractical to
23 bring all members of the CCRAA CLASS before the Court;
- 24 (d) PLAINTIFFS, and the other CCRAA CLASS Members, will not be able to
25 obtain effective and economic legal redress unless the action is maintained as a
26 Class Action;
- 27 (e) There is a community of interest in obtaining appropriate legal and equitable
28

1 relief for the acts of statutory violations and other improprieties, and in obtaining
2 adequate compensation for the injuries which DEFENDANT's actions have
3 inflicted upon the CCRAA CLASS;

4 (f) There is a community of interest in ensuring that the combined assets of
5 DEFENDANT are sufficient to adequately compensate the members of the
6 CCRAA CLASS for the injuries sustained;

7 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
8 CCRAA CLASS, thereby making final class-wide relief appropriate with respect
9 to the CCRAA CLASS as a whole;

10 (h) The members of the CCRAA CLASS are readily ascertainable from the business
11 records of DEFENDANT; and,

12 (i) Class treatment provides manageable judicial treatment calculated to bring an
13 efficient and rapid conclusion to all litigation of all CCRAA claims arising out
14 of the conduct of DEFENDANT as to the members of the CCRAA CLASS.

15
16 **FIRST CAUSE OF ACTION**

17 **For Unlawful Business Practices**

18 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

19 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

20 83. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
21 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

22 84. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof. Code §
23 17021.

24 85. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines
25 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
26 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as
27 follows:
28

1 Any person who engages, has engaged, or proposes to engage in unfair competition may
2 be enjoined in any court of competent jurisdiction. The court may make such orders or
3 judgments, including the appointment of a receiver, as may be necessary to prevent the
4 use or employment by any person of any practice which constitutes unfair competition,
as defined in this chapter, or as may be necessary to restore to any person in interest any
money or property, real or personal, which may have been acquired by means of such
unfair competition.

5 Cal. Bus. & Prof. Code § 17203.

6 86. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in
7 a business practice which violated California law, including but not limited to, the applicable Wage
8 Order(s), the California Code of Regulations and the California Labor Code including Sections 204, 210,
9 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198 & 2802, The Fair Credit Reporting Act 15 U.S.C. §
10 1681, *et seq.*, Investigative Consumer Reporting Agencies Act Cal. Civ. Code § 1786, *et seq.*
11 (“ICRAA”), and the Consumer Credit Reporting Agencies Act Cal. Civ. Code § 1785, *et seq.*
12 (“CCRAA”), for which this Court should issue declaratory and other equitable relief pursuant to Cal.
13 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
14 unfair competition, including restitution of wages wrongfully withheld.

15 87. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair in
16 that these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or
17 substantially injurious to employees, and were without valid justification or utility for which this Court
18 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
19 Professions Code, including restitution of wages wrongfully withheld.

20 88. By the conduct alleged herein, DEFENDANT’s practices were deceptive and fraudulent
21 in that DEFENDANT’s uniform policy and practice failed to pay PLAINTIFF, and other members of
22 the CALIFORNIA CLASS, minimum wages due, overtime wages for overtime worked and premiums
23 for missed meal and rest breaks, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
24 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court
25 should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
26 restitution of wages wrongfully withheld.

27 89. By the conduct alleged herein, DEFENDANT’s practices were also unlawful, unfair and
28

1 deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and the other members
2 of the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

3 90. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
4 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide all legally
5 required meal breaks to PLAINTIFFS and the other members of the CALIFORNIA CLASS as required
6 by Cal. Lab. Code §§ 226.7 and 512.

7 91. Therefore, PLAINTIFFS demand, on behalf of themselves and on behalf of each
8 CALIFORNIA CLASS Member, overtime wages and one (1) hour of pay for each workday in which
9 an off-duty meal period was not timely provided for each five (5) hours of work, and/or one (1) hour
10 of pay for each workday in which a second off-duty meal period was not timely provided for each ten
11 (10) hours of work.

12 92. PLAINTIFFS further demand, on behalf of themselves and each member of the
13 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off duty paid
14 rest period was not timely provided as required by law.

15 93. By and through the unlawful and unfair business practices described herein,
16 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the other
17 members of the CALIFORNIA CLASS, including earned wages for all overtime worked, and has
18 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of
19 these employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete
20 against competitors who comply with the law.

21 94. All the acts described herein as violations of, among other things, the Industrial Welfare
22 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were
23 unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were
24 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.
25 Bus. & Prof. Code §§ 17200, *et seq.*

26 95. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled to, and
27 do, seek such relief as may be necessary to restore to them the money and property which
28

1 DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the CALIFORNIA
2 CLASS have been deprived, by means of the above described unlawful and unfair business practices,
3 including earned but unpaid wages for all overtime worked.

4 96. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further entitled
5 to, and do, seek a declaration that the described business practices are unlawful, unfair and deceptive,
6 and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and
7 unfair business practices in the future.

8 97. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain, speedy
9 and/or adequate remedy at law that will end the unlawful and unfair business practices of
10 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a result
11 of the unlawful and unfair business practices described herein, PLAINTIFFS and the other members of
12 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic
13 harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair
14 business practices.

15
16 **SECOND CAUSE OF ACTION**

17 **For Failure To Pay Minimum Wages**

18 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

19 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

20 **and Against All Defendants)**

21 98. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB- CLASS,
22 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
23 Complaint.

24 99. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS bring
25 a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the
26 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay
27 minimum wages to PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members.

1 100. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
2 policy, an employer must timely pay its employees for all hours worked.

3 101. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
4 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
5 minimum so fixed is unlawful.

6 102. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
7 including minimum wage compensation and interest thereon, together with the costs of suit.

8 103. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and the other
9 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they
10 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
11 intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the
12 CALIFORNIA LABOR SUB-CLASS.

13 104. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
14 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
15 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFFS and the
16 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

17 105. In committing these violations of the California Labor Code, DEFENDANT inaccurately
18 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFFS
19 and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal
20 attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor
21 Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

22 106. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
23 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive the
24 correct minimum wage compensation for their time worked for DEFENDANT.

25 107. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT required,
26 permitted or suffered PLAINTIFFS and LABOR SUB-CLASS members to work without paying them
27 for all the time they were under DEFENDANT'S control. PLAINTIFFS and the other members of the
28 CALIFORNIA LABOR SUB-CLASS were paid less for time worked than they were entitled to,

1 constituting a failure to pay all earned wages.

2 108. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation
3 to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for the true time
4 they worked, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS have
5 suffered and will continue to suffer an economic injury in amounts which are presently unknown to them
6 and which will be ascertained according to proof at trial.

7 109. DEFENDANT knew or should have known that PLAINTIFFS and the other members
8 of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time worked.
9 DEFENDANT systematically elected, either through intentional malfeasance or gross nonfeasance, to
10 not pay employees for their labor as a matter of uniform company policy, practice and procedure, and
11 DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFFS and the other
12 members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time
13 worked.

14 110. In performing the acts and practices herein alleged in violation of California labor laws,
15 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time
16 worked and provide them with the requisite compensation, DEFENDANT acted and continues to act
17 intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of the
18 CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for their legal rights, or the
19 consequences to them, and with the despicable intent of depriving them of their property and legal
20 rights, and otherwise causing them injury in order to increase company profits at the expense of these
21 employees.

22 111. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
23 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as
24 the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California
25 Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined
26 to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their
27 employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these
28 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties

1 are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
2 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS and other
3 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

4
5 **THIRD CAUSE OF ACTION**

6 **For Failure To Pay Overtime Compensation**

7 **[Cal. Lab. Code §§ 204, 510, 1194 and 1198]**

8 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

9 112. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS,
10 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
11 Complaint.

12 113. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS bring
13 a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the
14 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate the
15 applicable rates for all overtime worked by PLAINTIFFS and other members of the CALIFORNIA
16 LABOR SUB-CLASS and DEFENDANT's failure to properly compensate the members of the
17 CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work performed in excess of
18 eight (8) hours in a workday and/or forty (40) hours in any workweek.

19 114. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
20 policy, an employer must timely pay its employees for all hours worked.

21 115. Cal. Lab. Code § 510 further provides that employees in California shall not be employed
22 more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they
23 receive additional compensation beyond their regular wages in amounts specified by law.

24 116. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
25 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code
26 § 1198 further states that the employment of an employee for longer hours than those fixed by the
27 Industrial Welfare Commission is unlawful.

28 117. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and the other

1 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of overtime
2 they worked. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
3 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFFS and the other
4 members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed to pay these
5 employees the correct applicable overtime wages for all overtime worked.

6 118. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
7 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
8 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFFS and the
9 other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked, including, the
10 work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

11 119. In committing these violations of the California Labor Code, DEFENDANT inaccurately
12 calculated the applicable overtime rates and consequently underpaid the actual time worked by
13 PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted
14 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
15 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
16 regulations.

17 120. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
18 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by DEFENDANT
19 to work for DEFENDANT and were not paid for all the time they worked including overtime work.

20 121. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
21 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive full
22 compensation for all overtime worked.

23 122. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
24 from the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFFS
25 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFFS and the
26 other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective
27 bargaining agreement that would preclude the causes of action contained herein this Complaint. Rather,
28 PLAINTIFFS bring this Action on behalf of themselves and the CALIFORNIA LABOR SUB-CLASS

1 based on DEFENDANT's violations of non-negotiable, non-waiveable rights provided by the State of
2 California.

3 123. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the other
4 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were
5 entitled to, constituting a failure to pay all earned wages.

6 124. DEFENDANT failed to accurately pay PLAINTIFFS and the other members of the
7 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in excess
8 of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
9 though PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were required
10 to work, and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay
11 using the applicable overtime rate as evidenced by DEFENDANT's business records and witnessed by
12 employees.

13 125. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation
14 to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for the true time
15 they worked, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS have
16 suffered and will continue to suffer an economic injury in amounts which are presently unknown to them
17 and which will be ascertained

18 126. DEFENDANT knew or should have known that PLAINTIFFS and the other members
19 of the CALIFORNIA LABOR SUB-CLASS were under compensated for their overtime worked.
20 DEFENDANT systematically elected, either through intentional malfeasance or gross nonfeasance, to
21 not pay employees for their labor as a matter of uniform company policy, practice and procedure, and
22 DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFFS and the other
23 members of the CALIFORNIA LABOR SUB-CLASS the applicable overtime rate.

24 127. In performing the acts and practices herein alleged in violation of California labor laws,
25 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time
26 worked and provide them with the requisite overtime compensation, DEFENDANT acted and continues
27 to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of the
28 CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for their legal rights, or

1 the consequences to them, and with the despicable intent of depriving them of their property and legal
2 rights, and otherwise causing them injury in order to increase company profits at the expense of these
3 employees.

4 128. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
5 therefore request recovery of all unpaid wages, including overtime wages, according to proof, interest,
6 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as
7 provided by the California Labor Code and/or other applicable statutes. To the extent overtime
8 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have
9 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202,
10 and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203,
11 which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members.
12 DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further,
13 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
14 statutory costs.

15 16 **FOURTH CAUSE OF ACTION**

17 **For Failure to Provide Required Meal Periods**

18 **[Cal. Lab. Code §§ 226.7 & 512]**

19 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

20 129. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS,
21 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
22 Complaint.

23 130. During the CALIFORNIA LABOR SUB-CLASS PERIOD, from time to time
24 DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the
25 other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
26 Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA LABOR SUB-
27 CLASS MEMBERS does not prevent these employees from being relieved of all of their duties for the
28 legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFFS and

1 other CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved of duty
2 by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
3 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks
4 prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. Further,
5 DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members with
6 a second off-duty meal period in some workdays in which these employees were required by
7 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFFS and other
8 members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
9 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

10 131. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC
11 Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
12 Members who were not provided a meal period, in accordance with the applicable Wage Order, one
13 additional hour of compensation at each employee's regular rate of pay for each workday that a meal
14 period was not provided.

15 132. As a proximate result of the aforementioned violations, PLAINTIFFS and CALIFORNIA
16 LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek
17 all wages earned and due, interest, penalties, expenses and costs of suit.

18
19 **FIFTH CAUSE OF ACTION**

20 **For Failure to Provide Required Rest Periods**

21 **[Cal. Lab. Code §§ 226.7 & 512]**

22 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

23 133. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS,
24 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
25 Complaint.

26 134. From time to time, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS
27 Members were required to work in excess of four (4) hours without being provided ten (10) minute rest
28 periods. Further, from time to time these employees were denied their first rest periods of at least ten

1 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period
2 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
3 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
4 more. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were also not provided
5 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS and
6 other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods
7 by DEFENDANT and DEFENDANT's managers.

8 135. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC
9 Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
10 Members who were not provided a rest period, in accordance with the applicable Wage Order, one
11 additional hour of compensation at each employee's regular rate of pay for each workday that rest period
12 was not provided.

13 136. As a proximate result of the aforementioned violations, PLAINTIFFS and CALIFORNIA
14 LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek
15 all wages earned and due, interest, penalties, expenses and costs of suit.

16
17 **SIXTH CAUSE OF ACTION**

18 **For Failure to Provide Accurate Itemized Statements**

19 **[Cal. Lab. Code § 226]**

20 **(By Plaintiff Astudillo and the CALIFORNIA LABOR SUB-CLASS and Against All**
21 **Defendants)**

22 137. Plaintiff Astudillo, and the other members of the CALIFORNIA LABOR SUB-CLASS,
23 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
24 Complaint.

25 138. Cal. Labor Code § 226 provides that an employer must furnish employees with an
26 "accurate itemized" statement in writing showing:

27 (1) gross wages earned,

28 (2) total hours worked by the employee, except for any employee whose compensation is solely

1 based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
2 515 or any applicable order of the Industrial Welfare Commission,
3 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
4 on a piece-rate basis,
5 (4) all deductions, provided that all deductions made on written orders of the employee may be
6 aggregated and shown as one item,
7 (5) net wages earned,
8 (6) the inclusive dates of the period for which the employee is paid,
9 (7) the name of the employee and his or her social security number, except that by January 1,
10 2008, only the last four digits of his or her social security number or an employee identification
11 number other than a social security number may be shown on the itemized statement,
12 (8) the name and address of the legal entity that is the employer, and
13 (9) all applicable hourly rates in effect during the pay period and the corresponding number of
14 hours worked at each hourly rate by the employee.

15 139. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
16 employees with an accurate itemized wage statement in writing showing, among other things, gross
17 wages earned and all applicable hourly rates in effect during the pay period and the corresponding
18 amount of time worked at each hourly rate. From time to time, DEFENDANT violated Cal. Lab. Code
19 § 226 by failing to provide wage statements that identified the correct net and gross wages earned. Aside
20 from the violations listed above, DEFENDANT failed to issue to Plaintiff Astudillo an itemized wage
21 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time
22 to time DEFENDANT provided Plaintiff Astudillo and the other members of the CALIFORNIA
23 LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code § 226.

24 140. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226,
25 causing injury and damages to Plaintiff Astudillo and the other members of the CALIFORNIA LABOR
26 SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct rates
27 for the overtime worked and the amount of employment taxes which were not properly paid to state and
28 federal tax authorities. These damages are difficult to estimate. Therefore, Plaintiff Astudillo and the

1 other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages
2 of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
3 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an
4 amount according to proof at the time of trial (but in no event more than four thousand dollars
5 (\$4,000.00) for Plaintiff Astudillo and each respective member of the CALIFORNIA LABOR SUB-
6 CLASS herein).

7
8 **SEVENTH CAUSE OF ACTION**

9 **For Failure to Reimburse Employees for Required Expenses**

10 **[Cal. Lab. Code § 2802]**

11 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

12 141. PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS members reallege and
13 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

14
15 142. Cal. Lab. Code § 2802 provides, in relevant part, that:

16 An employer shall indemnify his or her employee for all necessary expenditures or
17 losses incurred by the employee in direct consequence of the discharge of his or her
18 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them to
be unlawful.

19 143. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing
20 to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for
21 required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. Specifically,
22 DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
23 members for expenses which included, but were not limited to, the cost associated with the use of their
24 personal cellular phones for DEFENDANT's benefit. As a result, in the course of their employment with
25 DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS incurred
26 unreimbursed business expenses which included, but were not limited to, the costs related to the use of
27 their personal cellular phones all on behalf of and for the benefit of DEFENDANT. These expenses are
28

1 necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct
2 to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by
3 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to
4 indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for
5 these expenses as an employer is required to do under the laws and regulations of California.

6 144. PLAINTIFFS therefore demand reimbursement for expenditures or losses incurred by
7 her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties for
8 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate
9 and costs under Cal. Lab. Code § 2802.

11 **EIGHTH CAUSE OF ACTION**

12 **For Failure to Pay Wages When Due**

13 **[Cal. Lab. Code §§ 201, 202 and 203]**

14 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

15 145. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS,
16 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
17 Complaint.

18 146. Cal. Lab. Code § 200 states that:

19 As used in this article:

20 (a) "Wages" includes all amounts for labor performed by employees of every
description, whether the amount is fixed or ascertained by the standard of time,
task, piece, Commission basis, or other method of calculation.

21 (b) "Labor" includes labor, work, or service whether rendered or performed
22 under contract, subcontract, partnership, station plan, or other agreement if the
labor to be paid for is performed personally by the person demanding payment.

23 147. Cal. Lab. Code § 201 states, in relevant part, that "If an employer discharges an
24 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

25 148. Cal. Lab. Code § 202 states, in relevant part, that:

26 If an employee not having a written contract for a definite period quits his or her
27 employment, his or her wages shall become due and payable not later than 72
28 hours thereafter, unless the employee has given 72 hours previous notice of his or
her intention to quit, in which case the employee is entitled to his or her wages at
the time of quitting. Notwithstanding any other provision of law, an employee

1 who quits without providing a 72-hour notice shall be entitled to receive payment
2 by mail if he or she so requests and designates a mailing address. The date of the
3 mailing shall constitute the date of payment for purposes of the requirement to
4 provide payment within 72 hours of the notice of quitting.

5 149. There was no definite term in PLAINTIFFS' or any other CALIFORNIA LABOR SUB-
6 CLASS Members' employment contract.

7 150. Cal. Lab. Code § 203 states:

8 If an employer willfully fails to pay, without abatement or reduction, in
9 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
10 who is discharged or who quits, the wages of the employee shall continue as a
11 penalty from the due date thereof at the same rate until paid or until an action
12 therefor is commenced; but the wages shall not continue for more than 30 days.

13 151. When PLAINTIFFS left employment with DEFENDANT, DEFENDANT still owed
14 PLAINTIFFS wages for work performed because PLAINTIFFS were not compensated correctly for
15 their overtime worked and meal and rest breaks missed. To date, DEFENDANT has not paid
16 PLAINTIFFS these wages still owed to them. As such, DEFENDANT has not fully paid PLAINTIFFS
17 all wages still owed to them or any penalty wages that are now owed to them under California Labor
18 Code § 203.

19 152. The employment of PLAINTIFFS and many other CALIFORNIA LABOR SUB-CLASS
20 Members has terminated, yet as to those individuals whose employment terminated, DEFENDANT did
21 not timely tender payment of all wages owed as required by law.

22 153. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
23 members of the CALIFORNIA LABOR SUB-CLASS whose employment terminated, PLAINTIFFS
24 demands thirty days of pay as penalty for not paying all wages due at time of termination for all
25 individuals in the CALIFORNIA LABOR SUB-CLASS who terminated employment during the
26 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and statutory costs as allowed.

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NINTH CAUSE OF ACTION

1 **For Failure to Make Proper Disclosure in Violation of the FCRA**

2 **[15 U.S.C. § 1681b(b)(2)(A)(I), *et seq.*]**

3 **(By PLAINTIFFS and the FCRA CLASS and Against All Defendants)**

4 154. PLAINTIFFS, and the other members of the FCRA CLASS, reallege and incorporate by
5 this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

6 155. DEFENDANT violated 15 U.S.C. § 1681b(b)(2)(A)(I) of the FCRA by including
7 extraneous information in DEFENDANT's background check disclosure and authorization form that
8 PLAINTIFFS and other FCRA CLASS Members were required to execute as a condition of employment
9 with DEFENDANT.

10 156. The violations of the FCRA were willful. DEFENDANT knew that its background check
11 disclosure and authorization form should not include extraneous information that is prohibited by the
12 FCRA, and acted in deliberate disregard of its obligations and the rights of PLAINTIFFS and other
13 FCRA CLASS Members under 15 U.S.C. § 1681b(b)(2)(A)(I).

14 157. PLAINTIFFS and the other FCRA CLASS Members are entitled to statutory damages
15 of not less than \$100 and not more than \$1,000 for every violation of the FCRA, pursuant to 15 U.S.C.
16 § 1681n(a)(1)(A).

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

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

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27 **TENTH CAUSE OF ACTION**

28 **For Failure to Obtain Proper Authorization in Violations of the FCRA**

1 [15 U.S.C. § 1681b(b)(2)(A)(ii)]

2 (By PLAINTIFFS and the FCRA CLASS and Against All Defendants)

3 160. PLAINTIFFS, and the other members of the FCRA CLASS, reallege and incorporate by
4 this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

5 161. DEFENDANT violated the FCRA by procuring consumer reports relating to
6 PLAINTIFFS and other FCRA CLASS Members without proper authorization as alleged herein. See
7 15 U.S.C. § 1681b(b)(2)(A)(ii).

8 162. The violations of the FCRA were willful. DEFENDANT acted in deliberate disregard
9 of its obligations and the rights of PLAINTIFFS and other FCRA CLASS Members under 15 U.S.C.
10 § 1681b(b)(2)(A)(ii).

11 163. PLAINTIFFS and the FCRA CLASS Members are entitled to statutory damages of not
12 less than \$100 and not more than \$1,000 for every violation of the FCRA, pursuant to 15 U.S.C. §
13 1681n(a)(1)(A).

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

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

18
19 **ELEVENTH CAUSE OF ACTION**

20 **For Failure to Obtain Proper Authorization in Violation of the ICRAA**

21 **[Cal. Civ. Code § 1786 *et seq.*]**

22 **(By PLAINTIFFS and the ICRAA CLASS and Against All Defendants)**

23 166. PLAINTIFFS, and the other members of the ICRAA CLASS, reallege and incorporate
24 by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

25 167. DEFENDANT is a "person" as defined by Section 1786.2(a) of the Investigative
26 Consumer Reporting Agencies Act ("ICRAA").

27 168. PLAINTIFFS and ICRAA CLASS members are "consumers" within the meaning of
28 Section 1786.2(b) of the ICRAA because they are "individuals."

1 169. Section 1786.2(c) of the ICRAA defines “investigative consumer report” as:

2 “a consumer report in which information on a consumer’s character, general reputation,
3 personal characteristics, or mode of living is obtained through any means.”

4 170. Thus, a background check qualifies as an investigative consumer report under the
5 ICRAA.

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

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

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

13 (i) An investigative consumer report may be obtained.

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

15 (iii) The disclosure may include information on the consumer’s character, general
16 reputation, personal characteristics, and mode of living.

17 (iv) Identifies the ***name, address, and telephone number of the investigative***
18 ***consumer reporting agency*** conducting the investigation.

19 (v) Notifies the consumer in writing of the nature and scope of the investigation
20 requested, including the provisions of Section 1786.22.

21 (vi) ***Notifies the consumer of the Internet Web site address of the investigative***
22 ***consumer reporting agency*** identifies in clause (iv), or, ***if the agency has no***
23 ***Internet Web site address, the telephone number of the agency***, where the
24 consumer may find information about the investigative reporting agency’s
25 privacy practices, including whether the consumer’s personal information will
26 be sent outside the United States or its territories and information that complies
27 with subdivision (d) of Section 1786.20. This clause shall become operative on
28 January 1, 2012.

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

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

173. As described above, PLAINTIFFS allege that in evaluating their and other class members
for employment, DEFENDANT procured or caused to be prepared investigative consumer report (e.g.
background checks), as defined by Cal. Civ. Code § 1786.2(c).

1 174. Because the purported disclosures are embedded with extraneous information, and are
2 not clear and unambiguous disclosures in stand-alone documents, they do not meet the requirements
3 under the law.

4 175. Under the ICRAA, it is unlawful to procure or cause to be prepared, a consumer report
5 or investigative consumer report for employment purposes unless the disclosure is made in a document
6 that consists solely of the disclosure and the consumer has authorized, in writing, the procurement of
7 the report. Cal. Civ. Code § 1786.16(a)(2)(B)-(C). The inclusion of the extraneous information,
8 therefore, violates § 1786.16(a)(2)(B) of the ICRAA.

9 176. By including the extraneous information, DEFENDANTS willfully violated §
10 1786.16(a)(2)(B) of the ICRAA. Additionally, the inclusion of the extraneous provisions causes the
11 disclosure to fail to be “clear and conspicuous” and thus violates § 1786.16(a)(2)(B).

12 177. Based upon facts that are likely to have evidentiary support after a reasonable opportunity
13 for investigation and discovery, PLAINTIFFS allege that DEFENDANT has a policy and practice of
14 failing to provide adequate written disclosures to applicants and employees, before procuring
15 background checks or causing background checks to be procured, as described above. Pursuant to that
16 policy and practice, DEFENDANT procured background checks or caused background checks to be
17 procured for PLAINTIFFS and class members without first providing a written disclosure in compliance
18 with § 1786.16(a)(2)(B) of the ICRAA, as described above.

19 178. DEFENDANT’s conduct in violation of § 1786.16(a)(2)(B) of the ICRAA was and is
20 willful and/or grossly negligent. DEFENDANT acted in deliberate or reckless disregard of their
21 obligations and the rights of applicants and employees, including PLAINTIFFS and class members.
22 DEFENDANT’s willful conduct is reflected by, among other things, the following facts:

- 23 (A) DEFENDANT is a large corporation with access to legal advice;
24 (B) DEFENDANT required a purported authorization to perform credit and
25 background checks in the process of employing the class members which,
26 although defective, evidences DEFENDANT’s awareness of and willful failure
27 to follow the governing laws concerning such authorizations; and,
28 (C) The plain language of the statute unambiguously indicates that inclusion of

extraneous information in a disclosure form violates the disclosure and authorization requirements, and that the disclosure form must contain the name, address, phone number, and/or website address of the investigative consumer reporting agency conducting the investigation.

179. As a result of DEFENDANT's illegal procurement of background reports by way of their inadequate disclosures, as set forth above, PLAINTIFFS and class members have been injured including, but not limited to, having their privacy and statutory rights invaded in violation of the ICRAA.

180. PLAINTIFFS, on behalf of themselves 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.

181. In the alternative to PLAINTIFFS' allegation that these violations were willful or grossly negligent, PLAINTIFFS allege 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.

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TWELFTH CAUSE OF ACTION

For Failure to Make Proper Disclosures in Violation of the CCRAA

[Cal. Civ. Code § 1785 *et seq.*]

(By PLAINTIFFS and the CCRAA CLASS and Against All Defendants)

182. PLAINTIFFS, and the other members of the CCRAA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

183. DEFENDANT is a "person" as defined by Section 1785.3(j) of the Consumer Credit Reporting Agencies Act ("CCRAA").

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

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

4 any written, oral, or other communication of any information by a consumer credit
5 reporting agency bearing on a consumer’s credit worthiness, credit standing, or credit
6 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. . . .

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

8 186. Section 1785.20.5(a) of the CCRAA provides, in relevant part:

9 Prior to requesting a consumer credit report for employment purposes, the user of the
10 report shall provide written notice to the person involved. The notice shall inform the
11 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).

12 187. As described above, PLAINTIFFS allege that in evaluating their and other class
13 members for employment, DEFENDANT procured or caused to be prepared consumer credit reports
14 (e.g. credit reports), as defined by Cal. Civ. Code § 1785.3(c).

15 188. The disclosure provided by DEFENDANT does not identify the specific basis under
16 subdivision (a) of Section 1024.5 of the Labor Code for use of the credit report. This omission
17 clearly violates § 1785.20.5(a) of the CCRAA, as delineated above.

18 189. Based upon facts that are likely to have evidentiary support after a reasonable
19 opportunity for investigation and discovery, PLAINTIFFS allege that DEFENDANT has a policy
20 and practice of failing to provide adequate written disclosures to applicants and employees, before
21 procuring credit reports or causing credit reports to be procured, as described above. Pursuant to that
22 policy and practice, DEFENDANT procured credit reports or caused credit reports to be procured
23 for PLAINTIFFS and class members without first providing a written notice in compliance with §
24 1785.20.5(a) of the CCRAA, as described above.

25 190. DEFENDANT’S conduct in violation of § 1785.20.5(a) of the CCRAA was and is
26 willful and/or grossly negligent. DEFENDANT acted in deliberate and reckless disregard of their
27 obligations and the rights of applicants and employees, including PLAINTIFFS and class members.
28

1 DEFENDANT's willful conduct is reflected by, among other things, the following facts:

- 2 (A) DEFENDANT is a large corporation with access to legal advice;
- 3 (B) DEFENDANT required a purported authorization to perform credit checks in
- 4 the process of employing class members which, although defective, evidences
- 5 DEFENDANT's awareness of and willful failure to follow the governing laws
- 6 concerning such authorizations; and,
- 7 (C) The plain language of the statute unambiguously indicate that failure to
- 8 include the provisions identified above violates the CCRAA's notice
- 9 requirements, and that the notice must identify the specific basis under
- 10 subdivision (a) of Section 1024.5 of the Labor Code for use of the credit
- 11 report and must identify the source of any credit report.

12 191. As a result of DEFENDANT's illegal procurement of credit reports by way of their

13 inadequate notice, as set forth above, PLAINTIFFS and class members have been injured including, but

14 not limited to, having their privacy and statutory rights invaded in violation of the CCRAA.

15 192. PLAINTIFFS, on behalf of themselves and all class members, seek all available remedies

16 pursuant to Cal. Civ. Code § 1785.31, including statutory damages and/or actual damages, punitive

17 damages, injunctive relief, and attorneys' fees and costs.

18 193. In the alternative to PLAINTIFFS' allegation that these violations were willful,

19 PLAINTIFFS allege that the violations were negligent and seek the appropriate remedy, if any, under

20 Cal. Civ. Code § 1785.31(a)(1), including but not limited to actual damages and attorneys' fees and

21 costs.

22

23 **THIRTEENTH CAUSE OF ACTION**

24 **Failure to Pay Sick Pay Wages**

25 **[Cal. Lab. Code §§ 201-204, 210, 233, 246]**

26 **(By Plaintiffs and Against All Defendants)**

27 194. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS

28 allege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this

1 Complaint.

2 195. Cal. Lab Code § 223 provides that an employer must permit an employee to use
3 accrued sick leave in accordance with Cal. Lab. Code § 246.5 at the employee's then current rate of
4 entitlement. Cal Lab Code § 246 provides that an employee is entitled to sick pay wages for use of
5 accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically, once accrued sick leave is used
6 as paid sick time, an employee has a vested right to sick pay wages, which an employer must
7 calculate and compensate based on one of two calculations: (i) "Paid sick time or nonexempt
8 employees shall be calculated in the same manner as the regular rate of pay or the workweek in
9 which the employee uses paid sick time, whether or not the employee actually works overtime in
10 that workweek," or (ii) "Pay sick time for nonexempt employees shall be calculated by dividing the
11 employee's total wages, not including overtime premium pay, by the employee's total hours worked
12 in the full pay periods of the prior 90 days of employment." Under Cal Lab. Code § § 218 and 233,
13 employees may sue to recover underpaid sick pay wages as damages.

14 196. As a matter of policy and practice, DEFENDANT pays sick pay wages to Plaintiff
15 and the other members of the CALIFORNIA LABOR SUB-CLASS at the incorrect rate of pay.
16 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS regularly use accrued sick leave in
17 workweeks in which they also earn non-hourly remuneration. As a matter of policy and practice,
18 DEFENDANT pays sick pay wages to PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
19 at a base hourly rate of pay, as opposed to the regular rate of pay, which would consider all non-
20 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the
21 employee's total wages not including overtime premium pay, by the employee's total hours worked
22 in the full pay periods of the prior 90 days of employment. As a result, DEFENDANT underpaid
23 sick pay wages to PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS .

24 197. Cal Lab. Code § 204 provides that wages generally are due and payable twice during
25 each calendar moth and are to be paid no later than the payday for the next regular payroll period.
26 Consistent with Cal Lab. Code § 204, Cal Lab. Code § 246 specifically requires that, upon use of
27 accrued sick leave, vested sick pay wages are due and to be paid no later than the payday for the
28 next regular payroll period after accrued sick leave is used as paid sick time. Similarly, Cal Lab.

1 Code § 201 provides that if an employer discharges an employee, wages earned and paid at the time
2 of discharge are due and payable immediately. Cal Lab. Code § 202 provides that an employee is
3 entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her
4 employment, unless the employee has given 72-hour notice of his or her intention to quit, in which
5 case the employee is entitled to his or her wages at the time of quitting. The Labor Code penalizes
6 untimely payments. For example, Cal Lab. Code § 203 provides that if an employer wilfully fails to
7 pay wages owed in accordance with Cal Lab. Code § 201-202, then the wages of the employee shall
8 continue as a penalty from the due date, and at the same rate until paid, but the wages shall not
9 continue for more than thirty (30) days. Likewise, Cal Lab. Code § 210 provides penalties for
10 violations of Cal Lab. Code § 204 and untimely payments during employment. Under Cal Lab. Code
11 §§ 203, 210, and 218, employees may sue to recover applicable penalties.

12 198. As alleged herein and as a matter of policy and practice, DEFENDANT routinely
13 underpays sick pay wages and thus do not timely pay PLAINTIFF and the CALIFORNIA LABOR
14 SUB-CLASS, all owing and underpaid sick pay wages. As a result, DEFENDANTS violates Cal.
15 Lab. Code §§ 201-204, 210, 223, and 246, among other Labor Code provisions. PLAINTIFF is
16 informed and believes that DEFENDANT was advised by skilled lawyers and knew, or should have
17 known, of the mandates of the Labor Code as it relates to Plaintiff's allegations, especially since the
18 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also include
19 those benefits to which an employee is entitled as a part of his or her compensation, including
20 money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth Cole Prods., Inc.*, 40
21 Cal. 4th 1094, 1103 (2007) (emphasis added). Because Defendant's wilfully fail to timely pay
22 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS all sick pay wages
23 due, DEFENDANTS are subject to all applicable penalties.

24 199. Such a pattern, practice and uniform administration of corporate policy is unlawful and
25 entitles PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS to underpaid sick pay wages,
26 including interest thereon, applicable penalties attorney's fees and costs of suit.

27 **FOURTEENTH CAUSE OF ACTION**

28 **For Violation of the Private Attorneys General Act**

[Cal. Lab. Code §§ 2698, *et seq.*]

(By Plaintiff Iris Astudillo Against All Defendants)

200. Plaintiff Astudillo realleges and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

201. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

202. Plaintiff Astudillo, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to herself and all individuals who are or previously were employed by DEFENDANT in California and who were classified as non exempt employees ("AGGRIEVED EMPLOYEES") during the time period of January 20, 2019 until a date as determined by the Court (the "PAGA PERIOD").

203. On January 20, 2020, Plaintiff Astudillo gave written notice by electronic mail to the Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. *See Exhibit #1*, attached hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff Astudillo to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff Astudillo may pursue a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

204. The policies, acts and practices heretofore described were and are an unlawful business

1 act or practice because DEFENDANT (a) failed to provide Plaintiff Astudillo and the other
2 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record and
3 provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay
4 overtime wages, (e) failed to pay wages when due, and (f) failed to reimburse employees for required
5 expenses, all in violation of the applicable Labor Code sections listed in Labor Code §§201, 202, 203,
6 204, 210, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, and the applicable
7 Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ Plaintiff Astudillo
8 hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act
9 of 2004 as the representative of the State of California for the illegal conduct perpetrated on Plaintiff
10 Astudillo and the other AGGRIEVED EMPLOYEES.

11 205. All of the conduct and violations alleged herein occurred during the PAGA PERIOD. To
12 the extent that any of the conduct and violations alleged herein did not affect Plaintiff Astudillo during
13 the PAGA PERIOD, Plaintiff Astudillo seeks penalties for those violations that affected other
14 AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018 AJDAR 12157 (Certified
15 for Publication 12/19/18).

16
17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
19 severally, as follows:

20 1. On behalf of the CALIFORNIA CLASS:

- 21 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS
22 as a class action pursuant to Cal. Code of Civ. Proc. § 382;
23 B) An order temporarily, preliminarily and permanently enjoining and restraining
24 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
25 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld
26

27 ¹Plaintiffs specifically exclude and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 from compensation due to PLAINTIFFS and the other members of the CALIFORNIA
2 CLASS; and,

3 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for
4 restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFFS and
5 to the other members of the CALIFORNIA CLASS.

6 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

7 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
8 Thirteenth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a
9 class action pursuant to Cal. Code of Civ. Proc. § 382;

10 B) Compensatory damages, according to proof at trial, including compensatory damages for
11 minimum wage overtime compensation due PLAINTIFFS and the other members of the
12 CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR
13 SUB-CLASS PERIOD plus interest thereon at the statutory rate;

14 C) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the
15 applicable IWC Wage Order;

16 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
17 a violation occurs and one hundred dollars (\$100) per each member of the
18 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not
19 exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs
20 for violation of Cal. Lab. Code § 226;

21 E) Recovery of damages including sick pay wages and interest thereon, penalties, costs and
22 attorneys' fees, pursuant to Sections 203, 210, 218, 218.5, 218.6, 2243, 246, and 248.5;

23 F) The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA
24 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs
25 of suit;

26 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;
27 and,

28 H) The wages of all terminated individuals in the CALIFORNIA LABOR SUB-CLASS as

a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On behalf of the FCRA CLASS:

- A) That the Court certify the Ninth and Tenth Causes of Action asserted by the FCRA CLASS as a Class Action pursuant to Cal. Code of Civ. Proc. § 382;
- B) A determination and judgment that DEFENDANT willfully violated the 15 U.S.C. § 1681(b)(2)(A)(I) and(ii) of the FCRA by improperly including extraneous information in its background check disclosure and authorization form and by obtaining consumer reports on PLAINTIFFS and FCRA CLASS Members without having proper authorization to do so;
- C) Pursuant to 15 U.S.C. § 1681n(a)(1)(A), an award of statutory damages to PLAINTIFFS and the members of the FCRA CLASS in an amount equal to \$1,000 for PLAINTIFFS and each FCRA CLASS Member for DEFENDANT's willful violation of the FCRA;
- D) Pursuant to 15 U.S.C. § 1681n(a)(2), an award of punitive damages to PLAINTIFFS and other FCRA CLASS Members;
- E) An award for costs of suit and reasonable attorneys' fees pursuant to 15 U.S.C. § 1681n(a)(3); and,
- F) Such other and further relief as the Court deems just and equitable.

4. On behalf of the ICRAA CLASS and CCRAA CLASS:

- A) That the Court certify the Eleventh and Twelfth Causes of Action asserted by the ICRAA CLASS and CCRAA CLASS as a Class Action pursuant to Cal. Code. Of Civ. Proc. § 382;
- B) Statutory penalties;
- C) Civil penalties;
- D) Punitive damages;
- E) Injunctive relief;
- F) Costs of suit;
- G) Interest;

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- H) Restitution;
- I) Reasonable attorneys’ fees; and,
- J) Such other relief as the Court deems just and proper.

6. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

- A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

7. On all claims:

- A) An award of interest, including prejudgment interest at the legal rate;
- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties, attorneys’ fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or §2802.

Dated: July 25, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicolas J. De Blouw
Nicholas J. De Blouw
Attorneys for Plaintiff

DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: July 25, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicolas J. De Blouw
Nicholas James De Blouw
Attorneys for Plaintiff

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS E-MAIL:

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WRITERS EXT:

1004

January 20, 2020

CA2029

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Torrance Health Association, Inc.
Certified Mail # 70192280000189178342
William Larson
3330 Lomita Blvd.
Torrance, CA 90505

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Torrance Health Association, Inc. in California and classified as non-exempt employees during the time period of January 20, 2019 until a date as determined by the Court. Our offices represent Plaintiff Iris Astudillo (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Torrance Health Association, Inc. (“Defendant”). Plaintiff was employed by Defendant in California from May of 2019 to October of 2019 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for all of their time worked, including minimum and overtime wages, and for all of their missed meal and rest breaks. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged

violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.