

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 3/18/2020 1:32 PM
Reviewed By: R. Walker
Case #20CV361771
Envelope: 4184399**

1 Shaun Setareh (SBN 204514)
shaun@setarehlaw.com
2 William M. Pao (SBN 219846)
william@setarehlaw.com
3 Alex McIntosh (SBN 320904)
alex@setarehlaw.com
4 SETAREH LAW GROUP
315 S. Beverly Dr., Suite 315
5 Beverly Hills, California 90212
Telephone (310) 888-7771
6 Facsimile (310) 888-0109

7 Attorneys for Plaintiff
JENNIFER GEIERMAN
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SANTA CLARA
11 UNLIMITED JURISDICTION
12

13 JENNIFER GEIERMAN, on behalf of herself,
and all others similarly situated, and the
14 general public,

15 *Plaintiff,*

16 vs.

17 GROCERY DELIVERY E-SERVICES USA,
INC., a Delaware Corporation; INSPERITY
18 BUSINESS SERVICES, L.P., a Texas Limited
Partnership; and DOES 1 through 50,
19 inclusive,

20 *Defendants.*
21
22
23
24
25
26
27
28

Case No. 20CV361771

Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

CLASS ACTION
FIRST AMENDED COMPLAINT

1. Violation of 15 U.S.C. §§ 1681b(b)(2)(A) (Fair Credit Reporting Act);
2. Violation of 15 U.S.C. §§ 1681d(a)(1) and 1681g(c) (Fair Credit Reporting Act);
3. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
4. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
5. Failure to Pay Hourly Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
6. Failure to Indemnify (Lab. Code § 2802);
7. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
8. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
9. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
10. Civil Penalties (Lab. Code §§ 2698 *et seq.*);

JURY TRIAL DEMANDED

COMES NOW, Plaintiff JENNIFER GEIERMAN ("Plaintiff"), on behalf of herself, and all others similarly situated, and the general public, complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this class action against Defendant GROCERY DELIVERY E-SERVICES USA, INC., a Delaware corporation; INSPERITY BUSINESS SERVICES, L.P., a Texas limited partnership; and DOES 1 through 50, inclusive (collectively referred to as "Defendants") for alleged violations of the Fair Credit Reporting Act ("FCRA") and similar California laws.

2. Plaintiff alleges that Defendants routinely acquire consumer, investigative consumer and/or consumer credit reports (referred to collectively as "credit and background reports") to conduct background checks on Plaintiff and other prospective, current and former employees and use information from credit and background reports in connection with their hiring process without providing proper disclosures and obtaining proper authorization in compliance with the law.

3. Plaintiff, individually and on behalf of all others similarly situated current, former and prospective employees, seeks compensatory and punitive damages due to Defendants' systematic and willful violations of the FCRA (15 U.S.C. §§ 1681 *et seq.*).

4. Plaintiff brings this class and representative action against Defendants for alleged violations of the Labor Code and Business and Professions Code. As set forth below, Plaintiff alleges that Defendants have

- (1) willfully misclassified her and all other similarly situated individuals as exempt.
- (2) failed to provide her and all other similarly situated individuals with meal periods;
- (3) failed to provide them with rest periods;
- (4) failed to pay them premium wages for missed meal and/or rest periods;
- (5) failed to pay them premium wages for missed meal and/or rest periods at the regular rate of pay;
- (6) failed to pay them at least minimum wage for all hours worked;

- 1 (7) failed to pay them overtime wages at the correct rate;
- 2 (8) failed to pay them double time wages at the correct rate;
- 3 (9) failed to pay them overtime and/or double time wages by failing to include all
- 4 applicable remuneration in calculating the regular rate of pay;
- 5 (10) failed to reimburse them for all necessary business expenses;
- 6 (11) failed to provide them with accurate written wage statements; and
- 7 (12) failed to pay them all of their final wages following separation of
- 8 employment.

9 Based on these alleged Labor Code violations, Plaintiff now brings this class and

10 representative action to recover unpaid wages, restitution and related relief on behalf of herself, all

11 others similarly situated, and the general public.

12 **JURISDICTION AND VENUE**

13 5. This Court has subject matter jurisdiction to hear this case because the monetary

14 damages and restitution sought by Plaintiff from Defendants conduct exceeds the minimal

15 jurisdiction of the Superior Court of the State of California.

16 6. Venue is proper in the County of Santa Clara pursuant to Code of Civil Procedure

17 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions

18 that are the subject matter of this Complaint occurred therein and/or each defendant is found,

19 maintains offices, transacts business and/or has an agent therein.

20 7. Venue is proper in Santa Clara County because Defendants' principal place of

21 business is in Germany, is incorporated under the laws of Delaware, does business in Santa Clara

22 County. As such, venue is proper in any county in California.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

PARTIES

8. Plaintiff JENNIFER GEIERMAN is, and at all relevant times mentioned herein, an individual residing in the State of California.

9. Plaintiff is informed and believes, and thereupon alleges that Defendant GROCERY DELIVERY E-SERVICES, INC., is, and at all relevant times mentioned herein, a Delaware corporation doing business in the State of California.

10. Plaintiff is informed and believes, and thereupon alleges that Defendant INSPERITY BUSINESS SERVICES, L.P., is, and at all relevant times mentioned herein, a Texas corporation doing business in the State of California.

11. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants when ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously named defendants are responsible in some manner for the occurrences, acts and omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE defendants when ascertained.

12. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times mentioned herein, some or all of the defendants were the representatives, agents, employees, partners, directors, associates, joint venturers, principals or co-participants of some or all of the other defendants, and in doing the things alleged herein, were acting within the course and scope of such relationship and with the full knowledge, consent and ratification by such other defendants.

13. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and conspired with one another, and aided and abetted one another to accomplish the occurrences, acts and omissions alleged herein.

///

///

1 **CLASS ALLEGATIONS**

2 14. This action has been brought and may be maintained as a class action pursuant to
3 Code of Civil Procedure section 382 because there is a well-defined community of interest among
4 the persons who comprise the readily ascertainable classes defined below and because Plaintiff is
5 unaware of any difficulties likely to be encountered in managing this case as a class action.

6 15. **Relevant Time Period:** The relevant time period is defined as the time period
7 beginning four years prior to the filing of this action until judgment is entered.

8 **FCRA Class:** All of Defendants' current, former and prospective applicants for
9 employment in the United States who applied for a job with Defendants at any time during
10 the period for which a background check was performed beginning five years prior to the
11 filing of this action and ending on the date that final judgment is entered in this action.

12 **Hourly Employee Class:** All persons employed by Defendants and/or any staffing agencies
13 and/or any other third parties in hourly or non-exempt positions in California during the
14 **Relevant Time Period.**

15 **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked in a
16 shift in excess of five hours during the **Relevant Time Period.**

17 **Rest Period Sub-Class:** All **Hourly Employee Class** members who worked a shift
18 of at least three and one-half (3.5) hours during the **Relevant Time Period.**

19 **Wage Statement Penalties Sub-Class:** All **Hourly Employee Class** members
20 employed by Defendants in California during the period beginning one year before
21 the filing of this action and ending when final judgment is entered.

22 **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members who
23 separated from their employment with Defendants during the period beginning three
24 years before the filing of this action and ending when final judgment is entered.

25 **UCL Class:** All **Hourly Employee Class** members employed by Defendants in California
26 during the **Relevant Time Period.**

27 **Expense Reimbursement Class:** All persons employed by Defendants in California who
28 incurred business expenses during the **Relevant Time Period.**

16. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
right to amend or modify the class definitions with greater specificity, by further division into sub-
classes and/or by limitation to particular issues.

17. **Numerosity:** The class members are so numerous that the individual joinder of each
individual class member is impractical. While Plaintiff does not currently know the exact number
of class members, Plaintiff is informed and believes, and thereupon alleges that the actual number

1 exceeds the minimum required for numerosity under California law.

2 18. **Commonality and Predominance:** Common questions of law and fact exist as to
3 all class members and predominate over any questions which affect only individual class members.

4 These common questions include, but are not limited to:

- 5 A. Whether Defendants failed to comply with the requirements of 15 U.S.C. §
6 7001 section 101(c)(1);
- 7 B. Whether Defendants willfully failed to provide the class with stand-alone
8 written disclosures before obtaining a credit or background report in
9 compliance with the statutory mandates;
- 10 C. Whether Defendants willfully failed to identify the name, address, telephone
11 number, and/or website of the investigative consumer reporting agency
12 conducting the investigation;
- 13 D. Whether Defendants willfully failed to comply with the FCRA
- 14 E. Whether Defendants intentionally and systematically misclassified hourly
15 non-exempt employees as exempt.
- 16 F. Whether Defendants maintained a policy or practice of failing to provide
17 employees with their meal periods;
- 18 G. Whether Defendants maintained a policy or practice of failing to provide
19 employees with their rest periods;
- 20 H. Whether Defendants failed to pay premium wages to class members when
21 they have not been provided with required meal and/or rest periods;
- 22 I. Whether Defendants failed to pay minimum and/or overtime wages to class
23 members as a result of policies that fail to provide meal periods in accordance
24 with California law;
- 25 J. Whether Defendants failed to pay minimum and/or overtime wages to class
26 members for all time worked;
- 27 K. Whether Defendants used payroll formulas that systematically fail to account
28 for non-discretionary bonuses and/or other applicable remuneration when

calculating regular rates of pay for class members;

L. Whether Defendants failed to pay overtime wages to class members as a result of incorrectly calculating their regular rates of pay;

M. Whether Defendants failed to pay premium wages to class members based on their respective “regular rates of compensation” by not including commissions and/or other applicable remuneration in calculating the rates at which those wages are paid;

N. Whether Defendants failed to reimburse class members for all necessary business expenses incurred during the discharge of their duties;

O. Whether Defendants failed to provide class members with accurate written wage statements as a result of providing them with written wage statements with inaccurate entries for, among other things, amounts of gross and net wages, and total hours worked;

P. Whether Defendants applied policies or practices that result in late and/or incomplete final wage payments;

Q. Whether Defendants are liable to class members for waiting time penalties under Labor Code section 203;

R. Whether class members are entitled to restitution of money or property that Defendants may have acquired from them through unfair competition;

19. **Typicality:** Plaintiff’s claims are typical of the other class members’ claims.

Plaintiff is informed and believes and thereupon alleges that Defendants have a policy or practice of failing to comply with the Labor Code and Business and Professions Code as alleged in this Complaint.

20. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise conflict with, the interests of absent class members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly and adequately represent and protect the interests of the other class members.

21. **Adequacy of Class Counsel:** Plaintiff’s counsel are adequate class counsel in that

1 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
2 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on
3 behalf of Plaintiff and absent class members.

4 22. **Superiority:** A class action is vastly superior to other available means for fair and
5 efficient adjudication of the class members' claims and would be beneficial to the parties and the
6 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
7 and efficiently prosecute their common claims in a single forum without the unnecessary
8 duplication of effort and expense that numerous individual actions would entail. In addition, the
9 monetary amounts due to many individual class members are likely to be relatively small and would
10 thus make it difficult, if not impossible, for individual class members to both seek and obtain relief.
11 Moreover, a class action will serve an important public interest by permitting class members to
12 effectively pursue the recovery of monies owed to them. Further, a class action will prevent the
13 potential for inconsistent or contradictory judgments inherent in individual litigation.

14 **GENERAL ALLEGATIONS**

15 23. Plaintiff worked for Defendants as a non-exempt hourly employee, misclassified as
16 exempt, from approximately June 25, 2018 through February 14, 2019.

17 24. When Plaintiff applied for employment, Defendants performed a background
18 investigation on Plaintiff.

19 25. Defendants did not provide legally compliant disclosure and authorization forms to
20 Plaintiff and the putative class as they contained extraneous and superfluous language.

21 **Misclassification as Exempt Employee**

22 26. Plaintiff and the putative class were misclassified as exempt employees when in fact
23 they were non-exempt. Plaintiff and the putative class regularly worked more than eight hours
24 each workday, and more than forty hours each workweek. Plaintiff and the putative class were
25 paid a fixed wage of \$14 per hour, far less than the statutory requirement of properly classified
26 exempt employees of at least two times the minimum wage, regardless of the hours they worked.
27 Furthermore, Defendants changed commission structures to only allow for employees to earn
28 commissions after their seventh sale of the week as opposed to the initial agreement of \$20 per

1 sale.

2 27. Plaintiff and the putative class did not perform duties, more than fifty percent (50%)
3 of the time, that would qualify them as exempt employees under the Professional, Executive or
4 Administrative exemptions.

5 28. Nor were Plaintiff and the putative class properly classified under the Outside
6 Salesperson exemption as they did not perform more than fifty percent (50%) of the time away
7 from the employer's place of business. The employer's *place of business* is any fixed location,
8 including the salesperson's home, that the salesperson uses as a place of business. (29 C.F.R. §
9 541.502) ("Thus, any fixed site, whether home or office, used by a salesperson as a headquarters or
10 for telephonic solicitation of sales is considered one of the employer's place of business, even
11 though the employer is not in any formal sense the owner or tenant of the property."). Plaintiff and
12 the putative class were required to go into Defendants offices three times per week and all other
13 hours worked were spent at job sites fixed by Defendants.

14 29. Accordingly, Plaintiff and the aggrieved employees were entitled to all the
15 protections afforded to them as non-exempt employees under California law.

16 30. As a result of being misclassified as an exempt employee, the time spent by Plaintiff
17 and the putative class were not accurately recorded by the timekeeping system utilized by
18 Defendants and therefore resulted in the failure to pay Plaintiff and the aggrieved employees for all
19 hours actually worked and overtime compensation.

20 **Missed Meal Periods**

21 31. Plaintiff and the aggrieved employees were not provided with meal periods of at
22 least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not
23 scheduling each meal period as part of each work shift; (2) requiring employees to travel to job
24 sites by themselves allowing for no relief to take meal periods; (3) Defendants' policy that
25 employees were not to leave their booths with their inventory unattended making it impossible for
26 employees to take a complaint meal period; and (4) intense pressure from Defendants on
27 employees to meet unattainable sales benchmarks that functionally encouraged them to work
28 through the entirety of their scheduled shifts.

32. During their employment with Defendants, Plaintiff and the aggrieved employees worked shifts of eight to twelve hours per day, without being afforded a meal break during the first five hours, and/or a second meal break after ten hours, as required by California law.

33. As a result of Defendants' policy, Plaintiff and the aggrieved employees were regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours worked nor were they provided with a second uninterrupted meal period when they worked shifts of eight to twelve hours per day due to complying with Defendants' productivity requirements that required Plaintiff and the aggrieved employees to work through their meal periods in order to comply with Defendants policy that sales booths were not to be unattended and to meet Defendants sales benchmarks.

Missed Rest Periods

34. Plaintiff and the aggrieved employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift; (2) requiring employees to travel to job sites by themselves allowing for no relief to take rest periods; (3) Defendants' policy that employees were not to leave their booths with their inventory unattended making it impossible for employees to take a complaint rest period; and (4) intense pressure from Defendants on employees to meet unattainable sales benchmarks that functionally encouraged them to work through the entirety of their scheduled shifts.

35. As a result of Defendants' policy, Plaintiff and the aggrieved employees were regularly not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked due to complying with Defendants' productivity requirements that required Plaintiff and the aggrieved employees to work through their meal periods in order to comply with Defendants policy that sales booths were not to be unattended and to meet Defendants sales benchmarks.

Clocking in/Off-the-Clock

36. Plaintiff and aggrieved employees were trained to clock in for each work shift using the “Humanity” application on their personal phones. Plaintiff and the aggrieved employees were

1 instructed not to clock in with application until their booths were set up at the job sites assigned by
2 Defendants. Plaintiff and the aggrieved employees were not compensated for any of the time spent
3 setting up their sales booths at the job sites.

4 37. Accordingly, by the time Plaintiff and the aggrieved employees set up their booths,
5 fifteen minutes or more may have already passed – all of which were not properly recorded as time
6 worked and which resulted in Plaintiff and the aggrieved employees being paid for all hours worked
7 by Defendants.

8 **Clocking Out/Off-the-Clock**

9 38. Similarly, upon clocking out for each work shift using the “Humanity” phone
10 application, Plaintiff and the aggrieved employees were required to tear down their booths and pack
11 them along with the inventory into their personal vehicles. Each employee was deemed to be
12 “clocked out,” at the end of their scheduled shifts which is the time recognized as the actual end
13 time for each workday and when Plaintiff and the aggrieved employees would stop being paid by
14 Defendants.

15 39. After clocking out with “Humanity”, it would take employees fifteen minutes or
16 more to pack up their booths and carefully place their inventory in their personal vehicles, all time
17 that was not properly recorded as time worked and which resulted in Plaintiff and the aggrieved
18 employees not being paid for all hours worked by Defendants

19 40. Plaintiff and the aggrieved employees were not paid for the time spent working off-
20 the-clock.

21 **Off-the-Clock Work**

22 41. Plaintiff and the aggrieved employees were not paid all wages earned as Defendants
23 directed, permitted or otherwise encouraged Plaintiff and the aggrieved employees to perform off-
24 the-clock work.

25 42. Plaintiff and the aggrieved employees regularly started work before their scheduled
26 work hours and were not paid for this time. Plaintiff and the aggrieved employees were instructed
27 by their trainers and managers to drive directly from their homes to their job sites on days that they
28 were not in Defendant’s offices. The drive could take anywhere from twenty minutes to an hour

1 each direction, but Plaintiff and the aggrieved employees were not considered by Defendants to be
2 on-the-clock until their booths were set up at their assigned sites. As a result, Plaintiff and the
3 aggrieved employees reported to work up to an hour before their scheduled shifts.

4 43. As a result of performing off-the-clock work that was directed, permitted or
5 otherwise encouraged by Defendants, Plaintiff and the aggrieved employees should have been paid
6 for this time. Instead, Defendants only paid Plaintiff and the aggrieved employees based on the
7 time they were clocked in for their shifts and did not pay Plaintiff and the aggrieved employees for
8 any of the time spent working off-the-clock.

9 44. Defendants knew or should have known that Plaintiff and the aggrieved employees
10 were performing work before and after their scheduled work shifts and failed to pay Plaintiff and
11 the aggrieved employees for these hours.

12 45. Defendants were aware of this practice and directed, permitted or otherwise
13 encouraged Plaintiff and the aggrieved employees to perform off-the-clock work.

14 46. As a result of Defendants' policies and practices, Plaintiff and the aggrieved
15 employees were not paid for all hours worked.

16 **Regular Rate of Pay**

17 47. The regular rate of pay under California law includes all remuneration for
18 employment paid to, on behalf of, the employee. This requirement includes, but is not limited, to,
19 commissions and non-discretionary bonuses.

20 48. During the applicable limitations period, Defendants denied Plaintiff and the
21 aggrieved employees their agreed upon commissions based upon the structure outlined in the
22 onboarding process. While initially Defendants set the commission structure as providing
23 employees a \$20 commission for every customer signed up for Defendants services, they later
24 modified the structure to only pay employees commissions after their seventh customer signed up
25 for the week.

26 49. Furthermore, Defendants had a policy granting non-discretionary bonuses of \$100
27 for 12 sales in a week and \$200 for 24 sales in a week. These goals were extremely difficult to
28 attain and even on the exceedingly rare occasions that Plaintiff and the aggrieved employees were

1 able to attain them, Defendants refused to properly compensate them.

2 50. During the applicable limitations period, Defendants violated the rights of Plaintiff
3 and the aggrieved employees under the above-referenced Labor Code sections by failing to pay
4 them overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194, and
5 1198 as a result of not correctly calculating their regular rate of pay to include all applicable
6 remuneration, including, but not limited to, non-discretionary bonuses and/or shift differential pay.

7 **Expense Reimbursement**

8 51. Plaintiff and the aggrieved employees were required to utilize their own personal
9 tools to perform their job duties. Specifically, Plaintiff and the aggrieved employees were required
10 to use their own personal vehicles to travel to and from job sites and were not properly compensated
11 for gasoline, mileage, and wear and tear on their vehicles.

12 52. Plaintiff and the aggrieved employees were provided with supposed reimbursement
13 checks by Defendant INSPERITY that totaled \$80, but were taxed \$30, leaving Plaintiff and the
14 aggrieved employees with only \$50 for reimbursements. \$50 per week is far from the actual
15 reimbursement that should have been provided considering all of the traveling that Plaintiff and the
16 aggrieved employees were required to do.

17 53. Plaintiff voiced her opinions regarding the inadequacy of the reimbursement checks
18 from INSPERITY and Defendants began writing her checks under their own letterhead for amounts
19 that were far more reflective of the actual reimbursements she was owed. These checks all
20 bounced, however, thus causing Plaintiff's bank account to be labeled as overdrawn and as a result
21 Plaintiff incurred massive fees from her bank. Defendants at no point reimbursed Plaintiff for the
22 checks that bounced nor for the expenses incurred associated with overdrawing her account due to
23 the bad checks they were writing her.

24 54. Furthermore, Plaintiff and the aggrieved employees were provided a uniform by
25 Defendants but were required to maintain their uniforms at their own costs and expense.

26 55. Plaintiff and the aggrieved employees additionally were provided with materials for
27 their respective sales booths that they were to take with them to their job sites. These materials,
28 specifically the tablemats used by employees, would get dirty to the point that they had to be

1 washed on an almost daily basis. Plaintiff and the aggrieved employees were made to clean and
2 maintain these materials at their own cost and expense.

3 56. Defendants failed to reimburse Plaintiff and the aggrieved employees for such
4 necessary business expenses incurred by them.

5 **Wage Statements**

6 57. Plaintiff and the aggrieved employees were not provided with accurate wage
7 statements as mandated by law pursuant to Labor Code section 226.

8 58. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages
9 earned” were not accurately reflected in that: all hours worked, including overtime, meal period
10 premiums, rest period premiums, and all earned commissions were not included.

11 59. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours
12 worked by the employee” were not accurately reflected in that: all hours worked, including
13 overtime, meal period premiums, rest period premiums, and all earned commissions were not
14 included.

15 60. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages
16 earned” were not accurately reflected in that: all hours worked, including overtime, meal period
17 premiums, rest period premiums, and all earned commissions were not included.

18 61. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
19 hourly rates in effect during the pay period and the corresponding number of hours worked at each
20 hourly rate by the employee” were not accurately reflected in that: all hours worked, including
21 overtime, meal period premiums, rest period premiums, and all earned commissions were not
22 included.

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PROVIDE PROPER DISCLOSURE IN VIOLATION OF THE FCRA**

25 **(15 U.S.C. §§ 1681b(b)(2)(A))**

26 **(Plaintiff and FCRA Class Against All Defendants)**

27 62. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully alleged
28 herein.

63. Defendants are “persons” as defined by Section 1681a(b) of the FCRA.

64. Plaintiff and class members are “consumers” within the meaning of Section 1681a(c) of the FCRA because they are “individuals.”

65. Section 1681a(d)(1) of the FCRA defines “consumer report” as:

“The term “consumer report” means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or 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 for—

(A) credit or insurance to be used primarily for personal, family, or household purposes;

(B) employment purposes; or

(C) any other purpose authorized under section 1681b of this title.”

Accordingly, a credit and background report qualifies as a consumer report.

66. Section 1681a(e) of the FCRA defines “investigative consumer report” as:

“The term ‘investigative consumer report’ means a consumer report or portion thereof in which information on a consumer’s character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items off information. However, such information shall not include specific factual information on a consumer’s credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.”

Accordingly, a credit and background report qualifies as an investigative consumer report.

67. Section 1681b(b)(2)(A) of the FCRA provides:

Conditions for furnishing and using consumer reports for employment purposes
Except as provided in subparagraph (B), a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless—

(i) A **clear and conspicuous** disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that **consists solely 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 by that person. (Emphasis added.)

68. Section 1681b(b)(2)(A)(i) requires that a clear and conspicuous disclosure be made

1 in writing.

2 69. Because Defendants' disclosures do not meet the requirement of 15 U.S.C. section
3 7001(c), the disclosures do not satisfy the written requirement.

4 70. Plaintiff alleges, upon information and belief, that in evaluating her and other class
5 members for employment, Defendants procured or caused to be procured credit and background
6 reports (i.e. a consumer report and/or investigative consumer report as defined by 15 U.S.C. section
7 1681a(d)(1)(B) and 15 U.S.C. section 1681a(e)).

8 71. The purported disclosures do not meet the requirements under the law because they
9 are embedded with extraneous information, and are not clear and unambiguous disclosures in stand-
10 alone documents.

11 72. Under the FCRA, it is unlawful to procure or caused to be procured, a consumer
12 report or investigative consumer report for employment purposes unless the disclosure is made in a
13 document that consists solely of the disclosure and the consumer has authorized, in writing, the
14 procurement of the report. (15 U.S.C. § 1681b(b)(i)-(ii).) The inclusion of a release and
15 other extraneous information therefore violates section 1681b(b)(2)(A) of the FCRA.

16 73. Although the disclosure and authorization may be combined in a single document,
17 the Federal Trade Commission ("FTC") has warned that the form should not include any extraneous
18 information or be part of another document. For example, in response to an inquiry as to whether
19 the disclosure may be set forth within an application for employment or whether it must be included
20 in a separate document, the FTC stated:

21 "The disclosure may not be part of an employment application because the language
22 [of 15 U.S.C. section 1681b(b)(2)(A) is] intended to ensure that it appears
23 conspicuously in a document not encumbered by any other information. The reason
24 for requiring that the disclosure be in a stand-alone document is to prevent
consumers from being distracted by other information side-by-side within the
disclosure."

25 74. The plain language of the statute also clearly indicates that the inclusion of a liability
26 release in a disclosure form violates the disclosure and authorization requirements of the FCRA,
27 because such a form would not consist "solely" of the disclosure. In fact, the FTC expressly warned
28 that the FCRA notice may not include extraneous information such as a release. In a 1998 opinion

1 letter, the FTC stated:

2 “[W]e note that your draft disclosure includes a waiver by the consumer of his or her
3 rights under the FCRA. The inclusion of such a waiver in a disclosure form will
4 violate section 604(b)(2)(A) of the FCRA, which requires that a disclosure consist
‘solely’ of the disclosure that a consumer report may be obtained for employment
purposes.”

5 75. In a report dated July 2011, the FTC reiterated that “the notice [under 15 U.S.C.
6 section 1681b(b)(2)(A)] may not include extraneous or contradictory information, such as a request
7 for a consumer’s waiver of his or her rights under the FCRA.”

8 76. By including a release and other extraneous information, Defendants willfully
9 disregarded the FTC’s regulatory guidance and violated section 1681b(b)(2)(A) of the FCRA.
10 Additionally, the inclusion of the extraneous provisions causes the disclosure to fail to be “clear and
11 conspicuous” and “clear and accurate” and therefore violates sections 1681b(b)(2)(A) and
12 1681d(a).

13 77. Defendants’ conduct in violation of section 1681b(b)(2)(A) of the FCRA was and is
14 willful. Defendants acts in deliberate or reckless disregard of their obligations and the rights of
15 applicants and employees, including Plaintiff and class members. Defendants’ willful conduct is
16 reflected by, among other things, the following facts:

- 17 A. Defendants are a large corporation with access to legal advice;
- 18 B. Defendants required a purported authorization to perform credit and
19 background checks in the process of employing the class members which,
20 although defective, evidences Defendants’ awareness of and willful failure to
21 follow the governing laws concerning such authorizations;
- 22 C. The plain language of the statute unambiguously indicates that inclusion of a
23 liability release and other extraneous information in a disclosure form
24 violates the disclosure and authorization requirements; and
- 25 D. The FTC’s express statements, pre-dating Defendants’ conduct, which state
26 that it is a violation of section 1681b(b)(2)(A) of the FCRA to include a
27 liability waiver in the disclosure form.

28 78. Defendants required a liability release in the disclosure form, along with other

1 extraneous information, that releases all parties involved from any liability and responsibility for
2 releasing information they have about the Plaintiff to Defendants.

3 79. Based upon the facts likely to have evidentiary support after a reasonable
4 opportunity to further investigation and discovery, Plaintiff alleges that Defendants have a policy
5 and practice of procuring investigative consumer reports or causing investigative consumer reports
6 to be procured for applicants and employees without informing them of their right to request a
7 summary of their rights under the FCRA at the same time as the disclosure explaining that an
8 investigative consumer report may be made. Pursuant to that policy and practice, Defendants
9 procured investigative consumer reports or caused investigative consumer reports to be procured for
10 Plaintiff and class members, as described above, without informing class members of their rights to
11 request a written summary of their rights under the FCRA.

12 80. Accordingly, Defendants willfully violated and continue to violate the FCRA,
13 including but not limited to, sections 1681b(b)(2)(A) and 1681d(a). Defendants' willful conduct is
14 reflected by, among other things, the facts set forth above.

15 81. As a result of Defendants' unlawful procurement of credit and background reports by
16 way of their inadequate disclosures, as set forth above, Plaintiff and class members have been
17 injured, including but not limited to, having their privacy and statutory rights invaded in violation of
18 the FCRA.

19 82. Plaintiff, on behalf of herself and all class members, seek all available remedies
20 pursuant to 15 U.S.C. section 1681n, including statutory damages and/or actual damages, punitive
21 damages, injunctive and equitable relief and attorneys' fees and costs.

22 83. In the alternative to Plaintiff's allegation that these violations were willful, Plaintiff
23 alleges that the violations were negligent and seeks the appropriate remedy, if any, under 15 U.S.C.
24 section 1681o, including statutory damages and attorneys' fees and costs.

25 //

26 //

27 //

28 //

SECOND CAUSE OF ACTION
FAILURE TO GIVE PROPER SUMMARY OF RIGHTS IN VIOLATION OF THE FCRA
(15 U.S.C. § 1681d(a)(1) and 1681g(c))
(Plaintiff and FCRA Class Against All Defendants)

84. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully alleged herein.

85. Section 1681d(a) states:

(a) Disclosure of fact of preparation
A person may not procure or cause to be prepared an investigative consumer report on any consumer unless—

(1) it is ***clearly and accurately disclosed to the consumer*** that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, which are applicable, may be made, and such disclosure

(A) is ***made in a writing mailed, or otherwise delivered, to the consumer***, not later than three days after the date on which the report was first requested, and

(B) ***includes a statement informing the consumer of his right to request the additional disclosures*** provided for under subsection (b) of this section and ***the written summary of the rights of the consumer prepared pursuant to section 1681g(c)*** of this title; and

(Emphasis added.)

86. Section 1681d(b) states:

(b) Disclosure on request of nature and scope of investigation
Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (a)(1), make a ***complete and accurate disclosure of the nature and scope of the investigation requested***. This disclosure shall be made in a writing mailed, or after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.
(Emphasis added.)

87. As previously alleged, because Defendants' disclosures do not meet the requirement of Section 101(c)(1) of 15 U.S.C. section 7001, the disclosures do not satisfy the written requirement.

88. Moreover, even if Defendants' disclosures are deemed to satisfy Section 101(c)(1), Defendants did not comply with Section 1681d(a)(1)(b) because the disclosures fail to inform the

1 consumer of the right to have the person who procured the report provide a complete and accurate
2 disclosure of the nature and scope of the investigation requested.

3 89. Section 1681g(c) further provides for summary of rights to obtain and dispute
4 information in consumer reports and to obtain credit scores:

5 (c) Summary of rights to obtain and dispute information in consumer reports and to
6 obtain credit scores

7 (1) Commission
Summary of rights required

8 (A) In general

9 The Commission shall prepare a model summary of the rights of consumers
under this subchapter.

10 (B) Content of summary

11 The summary of rights prepared under subparagraph (A) shall include a
description of—

- 12 (i) the right of a consumer to obtain a copy of a consumer report under
13 subsection (a) from each consumer reporting agency;
- 14 (ii) the frequency and circumstances under which a consumer is entitled to
15 receive a consumer report without charge under section 1681j of this
16 title;
- 17 (iii) the right of a consumer to dispute information in the file of the
18 consumer under section 1681i of this title;
- 19 (iv) the right of a consumer to obtain a credit score from a consumer
20 reporting agency, and a description of how to obtain a credit score;
- 21 (v) the method by which a consumer can contact, and obtain a consumer
22 report from, a consumer reporting agency without charge, as provided
23 in the regulations of the Bureau prescribed under section 211(c) of the
Fair and Accurate Credit Transactions Act of 2003; and
- 24 (vi) the method by which a consumer can contact, and obtain a consumer
25 report from, a consumer reporting agency described in section
26 1681a(w) of this title, as provided in the regulations of the Bureau
27 prescribed under section 1681j(a)(1)(C) of this title.

28 90. Defendants did not comply with 1681g(c)(B)(1) because the disclosures did not state
the right of a consumer to obtain a copy of a consumer report from each consumer reporting agency.

91. Defendants did not comply with 1681g(c)(B)(2) because the disclosure did not state
the frequency and circumstances under which a consumer is entitled to receive a consumer report
without charge.

92. Defendants did not comply with 1681g(c)(B)(3) because the disclosure did not state the right of a consumer to dispute information in the file of the consumer.

93. Defendants did not comply with 1681g(c)(B)(4) because the disclosure did not state the right of a consumer to obtain a credit score from a consumer reporting agency and a description of how to obtain a credit score.

94. Defendants did not comply with 1681g(c)(B)(5) because the disclosure did not state the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency without charge.

95. Defendants did not comply with 1681g(c)(B)(6) because the disclosure did not state the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency described in section 1681a(w) of this title, as provided in the regulations of the Bureau prescribed under section 1681j(a)(1)(C) of this title.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 004, 223, 226.7, 512 and 1198)

(Plaintiff and Meal Period Sub-Class)

96. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if fully alleged herein.

97. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been non-exempt employees of Defendant entitled to the full meal period protections of both the Labor Code and the applicable Industrial Welfare Commission Wage Order.

98. Labor Code section 512 and Section 11 of the applicable Industrial Welfare Commission Wage Order impose an affirmative obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

99. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare Commission Wage Order (“Wage Order”) both prohibit employers from requiring employees to

1 work during required meal periods and require employers to pay non-exempt employees an hour of
2 premium wages on each workday that the employee is not provided with the required meal period.

3 100. Compensation for missed meal periods constitutes wages within the meaning of
4 Labor Code section 200.

5 101. Labor Code section 1198 makes it unlawful to employ a person under conditions that
6 violate the applicable Wage Order.

7 102. Section 11 of the applicable Wage Order states:

8 “No employer shall employ any person for a work period of more than five (5) hours
9 without a meal period of not less than 30 minutes, except that when a work period of
10 not more than six (6) hours will complete the day’s work the meal period may be
11 waived by mutual consent of the employer and employee. Unless the employee is
12 relieved of all duty during a 30 minute meal period, the meal period shall be
13 considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal
14 period shall be permitted only when the nature of the work prevents an employee
15 from being relieved of all duty and when by written agreement between the parties
16 an on-the-job paid meal period is agreed to. The written agreement shall state that
17 the employee may, in writing, revoke the agreement at any time.”

18 103. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
19 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**
20 members were not subject to valid on-duty meal period agreements with Defendants.

21 104. Plaintiff alleges that, at all relevant times during the applicable limitations period,
22 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal**
23 **Period Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for
24 each five (5) hour work period, as required by Labor Code section 512 ad the applicable Wage
25 Order.

26 105. Plaintiff alleges that, at all relevant times during the applicable limitations period,
27 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
28 **Class** members when they worked five (5) hours without clocking out for any meal period.

106. Plaintiff alleges that, at all relevant times during the applicable limitations period,
Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal**
Period Sub-Class with a second meal period when they worked shifts of ten or more hours and
failed to pay them premium wages as required by Labor Code 512 and the applicable Wage Order.

107. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-Class** members additional premium wages, and/or were not paid premium wages at the employees' regular rates of pay when required meal periods were not provided.

108. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiff, on behalf of himself and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and costs of suit.

109. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and the **Meal Period Sub-Class** members, seek to recover reasonable attorneys' fees.

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS
(Lab. Code §§ 204, 223, 226.7 and 1198)
(Plaintiff and Rest Period Sub-Class)

110. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

111. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been non-exempt employees of Defendants entitled to the full rest period protections of both the Labor Code and the applicable Wage Order.

112. Section 12 of the applicable Wage Order imposes an affirmative obligation on employers to permit and authorize employees to take required rest periods at a rate of no less than ten minutes of net rest time for each four hour work period, or major fraction thereof, that must be in the middle of each work period insofar as practicable.

113. Labor Code section 226.7 and Section 12 of the applicable Wage Order both prohibit employers from requiring employees to work during required rest periods and require employers to pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on each workday that the employee is not provided with the required rest period(s).

114. Compensation for missed rest periods constitutes wages within the meaning of Labor Code section 200.

115. Labor Code section 1198 makes it unlawful to employ a person under conditions that violate the Wage Order.

116. Plaintiff alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class** with net rest period of at least ten minutes for each four hour work period, or major fraction thereof, as required by the applicable Wage Order.

117. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-Class** members additional premium wages when required rest periods were not provided.

118. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiff, on behalf of herself and **Rest Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and costs of suit.

119. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Rest Period Sub-Class** members, seek to recover reasonable attorneys' fees.

FIFTH CAUSE OF ACTION

FAILURE TO PAY HOURLY AND OVERTIME WAGES

(Lab. Code §§ 223, 510, 1194, 1197 and 1198)

(Plaintiff and Hourly Employee Class)

120. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

121. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have been non-exempt employees of Defendants entitled to the full protections of the Labor Code and the applicable Wage Order.

122. Section 2 of the applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of the employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

123. Section 4 of the applicable Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all

1 hours that an employer has actual or constructive knowledge that employees are working.

2 124. Labor Code section 1194 invalidates any agreement between an employer and an
3 employee to work for less than the minimum or overtime wage required under the applicable Wage
4 Order.

5 125. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated
6 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in
7 addition to the underlying unpaid minimum wages and interest thereon.

8 126. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
9 than the minimum wage required under the applicable Wage Order for all hours worked during a
10 payroll period.

11 127. Labor Code section 1197.1 provides that it is unlawful for any employer or any other
12 person acting either individually or as an officer, agent or employee of another person, to pay an
13 employee, or cause an employee to be paid, less than the applicable minimum wage.

14 128. Labor Code section 1198 makes it unlawful for employers to employ employees
15 under conditions that violate the applicable Wage Order.

16 129. Labor Code section 204 requires employers to pay non-exempt employees their
17 earned wages for the normal work period at least twice during each calendar month on days the
18 employer designates in advance and to pay non-exempt employees their earned wages for labor
19 performed in excess of the normal work period by no later than the next regular payday.

20 130. Labor Code section 223 makes it unlawful for employers to pay their employees
21 lower wages than required by contract or statute while purporting to pay them legal wages.

22 131. Labor Code section 510 and Section 3 of the applicable Wage Order require
23 employees to pay non-exempt employees overtime wages of no less than one and one-half times
24 their respective regular rates of pay for all hours worked in excess of eight hours in one workday, all
25 hours worked in excess of forty hours in one workweek, and/or for the first eight hours worked on
26 the seventh consecutive day of one workweek.

27 132. Labor Code section 510 and Section 3 of the applicable Wage Order also require
28 employers to pay non-exempt employees overtime wages of no less than two times their respective

1 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
2 worked in excess of eight hours on a seventh consecutive workday during the workweek.

3 133. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
4 centrally devised policies and practices to her and **Hourly Employee Class** members with respect
5 to working conditions and compensation arrangements.

6 134. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
7 **Employee Class** members for all time worked, including but not limited to, overtime hours at
8 statutory and/or agreed rates.

9 135. Section 9 of the applicable Wage Order states:

10 "When uniforms are required by the employer to be worn by the employee as a
11 condition of employment, such uniforms shall be provided and maintained by the
12 employer. The term 'uniform' includes wearing apparel and accessories of
13 distinctive design or color."

14 136. If the employer does not choose to maintain employees' uniforms itself where it is
15 required to do so, the Division of Labor Standards Enforcement ("DLSE") takes the position that
16 the employer may pay each affected employee a weekly maintenance allowance of an hour's pay at
17 the state minimum wage rate in lieu of maintaining the uniforms, assuming that an hour is a realistic
18 estimate of the time involved in maintaining the uniform.

19 137. At all relevant times during the applicable limitations period, and in violation of the
20 above-referenced sections of the Labor Code and the applicable Wage Order, Defendants failed to
21 compensate Plaintiff with minimum and/or overtime wages for all hours she worked as a result of
22 its failure to maintain employee uniforms and/or pay her a weekly maintenance allowance.

23 138. Plaintiff is informed and believes that, at all relevant times, and in violation of the
24 above-referenced sections of the Labor Code and the applicable Wage Order, Defendants failed to
25 compensate **Hourly Employee Class** members with minimum and/or overtime wages for all hours
26 they worked as a result of its failures to maintain employee uniforms and/or pay them a weekly
27 maintenance allowance.

28 139. During the relevant time period, Defendants failed to pay Plaintiff and **Hourly**
Employee Class members all earned wages every pay period at the correct rates, including

1 overtime rates, because Defendants directed, permitted or otherwise encouraged Plaintiff and
2 **Hourly Employee Class** members to perform off-the-clock work.

3 140. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**
4 members have suffered damages in an amount, subject to proof, to the extent they were not paid the
5 full amount of wages earned during each pay period during the applicable limitations period,
6 including overtime wages.

7 141. Pursuant to Labor Code sections 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
8 behalf of herself and **Hourly Employee Class** members, seek to recover unpaid straight time and
9 overtime wages, interest thereon and costs of suit.

10 142. The regular rate of pay under California law includes all remuneration for
11 employment paid to, on behalf of, the employee. This requirement includes but is not limited to,
12 commissions, premium wages, and non-discretionary bonuses.

13 143. During the applicable limitations period, Defendants violated the rights of Plaintiff
14 and **Hourly Employee Class** members under the above-referenced Labor Code sections by failing
15 to pay them overtime wages for all overtime hours worked in violation of Labor Code sections 510,
16 1194 and 1198 by not correctly calculating their regular rate of pay to include all applicable
17 remuneration, including but not limited to, commissions, premium wages, and non-discretionary
18 bonuses.

19 144. California law uses the terms "compensation" and "pay" interchangeably and
20 requires that all applicable remuneration, including but not limited to, commissions, premium
21 wages, and non-discretionary bonuses, be included when calculating an employee's regular rate of
22 pay.

23 145. At all relevant times, Defendants paid Plaintiff premium wages based on a rate of
24 compensation that did not reflect, among other things commissions, premium wages, and non-
25 discretionary bonuses, as required by Labor Code section 226.7(b) and Sections 11 and 12 of the
26 applicable Wage Order on the occasions when Defendants paid her premium wages in lieu of meal
27 and/or rest periods.

28 146. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times

1 during the applicable limitations period, Defendants maintained a policy or practice of paying
2 **Hourly Employee Class** members premium wages based on rates of compensation that have not
3 reflected commissions, premium wages, and non-discretionary bonuses as required by Labor Code
4 section 226.7(b) and Sections 11 and 12 of the applicable Wage Order on the occasions when
5 Defendants paid them premium wages in lieu of meal and/or rest periods.

6 147. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
7 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and
8 **Hourly Employee Class** members, seek to recover reasonable attorneys' fees.

9 **SIXTH CAUSE OF ACTION**

10 **FAILURE TO INDEMNIFY**

11 **(Lab. Code § 2802)**

12 **(Plaintiff and Expense Reimbursement Class)**

13 148. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
14 herein.

15 149. Labor Code section 2802(a) states:

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."

19 150. At all relevant times during the applicable limitations period, Plaintiff and the
20 **Expense Reimbursement Class** members incurred necessary business related expenses and costs,
21 including but not limited to, costs associated with gasoline and mileage that Plaintiff and the
22 putative class incurred as a result of their having to utilize their personal vehicles to travel to and
23 from job sites as well as costs associated with the maintenance of uniforms and materials for their
24 booths.

25 151. Plaintiff is informed and believes, and thereupon alleges that the reimbursement paid
26 by Defendants was insufficient to indemnify Plaintiff and **Expense Reimbursement Class**
27 members for all necessary expenses incurred in the discharge of their duties.

28 152. Plaintiff is informed and believes and thereupon alleges that the reimbursement paid

1 by Defendants was insufficient to indemnify **Expense Reimbursement Class** members for all
2 necessary business expenses incurred in the discharge of their duties.

3 153. Pursuant to Labor Code section 452, an employer is authorized to prescribe the
4 weight, color, quality, texture, style, form and make of uniforms required to be worn by their
5 employees.

6 154. Section 9 of the applicable Wage Order states:

7 "When uniforms are required by the employer to be worn by the employee as a
8 condition of employment, such uniforms shall be provided and maintained by the
9 employer. The term 'uniform' includes wearing apparel and accessories of
distinctive design or color."

10 155. At all relevant times during the applicable limitations period, Defendants required
11 Plaintiff and the **Expense Reimbursement Class** members to pay for expenses and/or losses caused
12 by Defendants' want of ordinary care. Defendants failed to indemnify Plaintiff and **Expense**
13 **Reimbursement Class** members for all such expenditures.

14 156. At all relevant times during the applicable limitations period, Defendants required
15 Plaintiff and **Expense Reimbursement Class** members to purchase and maintain uniforms and
16 apparel unique to Defendants at their expense. Defendants failed to indemnify Plaintiff and
17 **Expense Reimbursement Class** members for all such expenditures.

18 157. Plaintiff is informed and believes that, during the applicable limitations period,
19 Defendants maintained a policy or practice of not reimbursing Plaintiff and **Expense**
20 **Reimbursement Class** members for all necessary business expenses.

21 158. Accordingly, Plaintiff and **Expense Reimbursement Class** members are entitled to
22 restitution for all unpaid amounts due and owing to within four years of the date of the filing of the
23 Complaint and until the date of entry of judgment.

24 159. Plaintiff, on behalf of himself, and **Expense Reimbursement Class** members, seek
25 interest thereon and costs pursuant to Labor Code section 218.6, and reasonable attorneys' fees
26 pursuant to Code of Civil Procedure section 1021.5.

27 //

28 //

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

3 **(Lab. Code § 226)**

4 **(Plaintiff and Wage Statement Penalties Sub-Class)**

5 160. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
6 herein.

7 161. Labor Code section 226(a) states:

8 “An employer, semimonthly or at the time of each payment of wages, shall furnish to
9 his or her employee, either as a detachable part of the check, draft, or voucher paying
10 the employee’s wages, or separately if wages are paid by personal check or cash, an
11 accurate itemized statement in writing showing (1) gross wages earned, (2) total
12 hours worked by the employee, except as provided in subdivision (j), (3) the number
13 of piece-rate units earned and any applicable piece rate if the employee is paid on a
14 piece-rate basis, (4) all deductions, provided that all deductions made on written
15 orders of the employee may be aggregated and shown as one item, (5) net wages
16 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
17 name of the employee and only the last four digits of his or her social security
18 number or an employee identification number other than a social security number,
19 (8) the name and address of the legal entity that is the employer and, if the employer
20 is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
21 and address of the legal entity that secured the services of the employer, and (9) all
22 applicable hourly rates in effect during the pay period and the corresponding number
23 of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if
24 the employer is a temporary services employer as defined in Section 201.3, the rate
25 of pay and the total hours worked for each temporary services assignment. The
26 deductions made from payment of wages shall be recorded in ink or other indelible
27 form, properly dated, showing the month, day, and year, and a copy of the statement
28 and the record of the deductions shall be kept on file by the employer for at least
three years at the place of employment or at a central location within the State of
California. For purposes of this subdivision, ‘copy’ includes a duplicate of the
itemized statement provided to an employee or a computer-generated record that
accurately shows all of the information required by this subdivision.”

21 162. The Division of Labor Standards Enforcement (“DLSE”) has sought to harmonize
22 the “detachable part of the check” provision and the “accurate itemized statement in writing”
23 provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each
24 employee retains the right to elect to receive a written paper stub or record and that those who are
25 provided with electronic wage statements retain the ability to easily access the information and
26 convert the electronic statements into hard copies at no expense to the employee. (DLSE Opinion
27 Letter July 6, 2006).

28 163. Plaintiff is informed and believes that, at all relevant times during the applicable

1 limitations period, Defendants have failed to provide **Wage Statement Penalties Sub-Class**
2 members with written wage statements as described above.

3 164. Plaintiff is informed and believes that Defendants' failure to provide her and **Wage**
4 **Statement Penalties Sub-Class** members with accurate written wage statements were intentional in
5 that Defendants have the ability to provide them with accurate wage statements but have
6 intentionally provided them with written wage statements that Defendants have known do not
7 comply with Labor Code section 226(a).

8 165. Plaintiff and **Wage Statement Penalties Sub-Class** members have suffered injuries,
9 in that Defendants have violated their legal rights to receive accurate wage statements and have
10 misled them about their actual rates of pay and wages earned. In addition, inaccurate information
11 on their wage statements have prevented immediate challenges to Defendants' unlawful pay
12 practices, has required discovery and mathematical computations to determine the amount of wages
13 owed, has caused difficulty and expense in attempting to reconstruct time and pay records, and/or
14 has led to the submission of inaccurate information about wages and deductions to federal and state
15 government agencies.

16 166. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of herself and **Wage**
17 **Statement Penalties Sub-Class** members, seek the greater of actual damages or \$50.00 for the
18 initial pay period in which a violation of Labor Code section 226(a) occurred, and \$100.00 for each
19 subsequent pay period in which a violation of Labor Code section 226(a) occurred, not to exceed an
20 aggregate penalty of \$4000.00 per class member, as well as awards of reasonable attorneys' fees
21 and costs.

22 //

23 //

24 //

25 //

26 //

27 //

28 //

EIGHTH CAUSE OF ACTION
FAILURE TO TIMELY PAY ALL FINAL WAGES
(Lab. Code §§ 201-203)
(Plaintiff and Waiting Time Penalties Sub-Class)

167. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

168. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members have been entitled, upon the end of their employment with Defendants, to timely payment of all wages earned and unpaid before termination or resignation.

169. At all relevant times, pursuant to Labor Code section 201, employees who have been discharged have been entitled to payment of all final wages immediately upon termination.

170. At all relevant times, pursuant to Labor Code section 202, employees who have resigned after giving at least seventy-two (72) hours notice of resignation have been entitled to payment of all final wages at the time of resignation.

171. At all relevant times, pursuant to Labor Code section 202, employees who have resigned after giving less than seventy-two (72) hours notice of resignation have been entitled to payment of all final wages within seventy-two (72) hours of giving notice of resignation.

172. During the applicable limitations period, Defendants failed to pay Plaintiff all of her final wages in accordance with the Labor Code by failing to timely pay her all of her final wages.

173. Plaintiff is informed and believes that, at all relevant time during the applicable limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class** members all of their final wages in accordance with the Labor Code.

174. Plaintiff is informed and believes that, at all relevant times during the applicable limitations period, Defendants have maintained a policy or practice of paying **Waiting Time Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code sections 201 or 202 by failing to timely pay them all final wages.

175. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been

1 willful in that Defendants have the ability to pay final wages in accordance with Labor Code
2 sections 201 and/or 202 but have intentionally adopted policies or practices that are incompatible
3 with those requirements.

4 176. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of herself and
5 **Waiting Time Penalties Sub-Class** members, seek waiting time penalties from the dates that their
6 final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

7 177. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
8 and/or the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time Penalties Sub-**
9 **Class** members, seek awards of reasonable attorneys' fees and costs.

10 **NINETH CAUSE OF ACTION**

11 **UNFAIR COMPETITION**

12 **(Bus. & Prof. Code §§ 17200 *et seq.*)**

13 **(Plaintiff and UCL Class)**

14 178. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
15 herein.

16 179. Business and Professions Code section 17200 defines "unfair competition" to
17 include any unlawful business practice.

18 180. Business and Professions Code section 17203-17204 allow a person who has lost
19 money or property as a result of unfair competition to bring a class action in accordance with Code
20 of Civil Procedure section 382 to recover money or property that may have been acquired from
21 similarly situated persons by means of unfair competition.

22 181. Federal and California laws require certain disclosures and proper authorization
23 before conducting background checks and obtaining information from credit and background
24 reports in connection with a hiring process.

25 182. Plaintiff and the **FCRA Class** re-allege and incorporates by reference the FIRST
26 and SECOND causes of action herein.

27 183. California law requires employers to pay hourly, non-exempt employees for all hours
28 they are permitted or suffered to work, including hours that the employer knows or reasonable

1 should know that employees have worked.

2 184. Plaintiff and the **UCL Class** members re-alleges and incorporates the THIRD,
3 FOURTH, FIFTH, and SEVENTH causes of action herein.

4 185. Plaintiff lost money or property as a result of the aforementioned unfair competition.

5 186. Defendants have or may have acquired money by means of unfair competition.

6 187. Defendants have violated Federal and California laws through their policies and
7 practices of, *inter alia*, routinely acquiring consumer, investigative consumer and/or consumer
8 credit reports (referred to collectively as “credit and background reports”) to conduct background
9 checks on Plaintiff and other prospective, current and former employees and use information from
10 credit and background reports in connection with their hiring process without providing proper
11 disclosures and obtaining proper authorization in compliance with the law.

12 188. Plaintiff is informed and believes and thereupon alleges that by committing the
13 Labor Code violations described in this Complaint, Defendants violated Labor Code sections 215,
14 216, 225, 226.6, 354, 408, 553, 1175, 1199 and 2802, which make it a misdemeanor to commit the
15 Labor Code violations alleged herein.

16 189. Defendants have committed criminal conduct through their policies and practices of,
17 *inter alia*, failing to comport with their affirmative obligations as an employer to: properly classify
18 employees, provide non-exempt employees with uninterrupted, duty-free meal periods of at least
19 thirty minutes for each work period of five or more hours as well as providing a second meal period
20 between the eighth and twelfth hours worked, provide legally compliant rest periods, pay employees
21 for all hours worked, and by failing to reimburse them for all expenses.

22 190. At all relevant times, Plaintiff and **UCL Class** members have been non-exempt
23 employees and entitled to the full protections of both the Labor Code and the applicable Wage
24 Order.

25 191. Defendants’ unlawful conduct as alleged in this Complaint amounts to and
26 constitutes unfair competition within the meaning of Business and Professions Code section 17200
27 *et seq.* Business and Professions Code sections 17200 *et seq.* protects against unfair competition
28 and allows a person who has suffered an injury-in-fact and has lost money or property as a result of

1 an unfair, unlawful or fraudulent business practice to seek restitution on her own behalf and on
2 behalf of similarly situated persons in a class action proceeding.

3 192. As a result of Defendants' violations of the Labor Code during the applicable
4 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
5 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants'
6 conduct.

7 193. Plaintiff is informed and believes that other similarly situated persons have been
8 subject to the same unlawful policies or practices of Defendants.

9 194. Due to the unfair and unlawful business practices in violation of the Labor Code,
10 Defendants have gained a competitive advantage over other comparable companies doing business
11 in the State of California that comply with their legal obligations.

12 195. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
13 for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act
14 violates or is considered unlawful under any other state or federal law.

15 196. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
16 Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining
17 Defendants, and each of them, and their agents and employees, from further violations of the
18 FCRA; and upon a final hearing seek an order permanently enjoining Defendants, and each of
19 them, and their respective agents and employees, from further violations of the FCRA.

20 197. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiffs
21 request the issuance of temporary, preliminary and permanent injunctive relief enjoining
22 Defendants, and each of them, and their agents and employees, from further violations of the Labor
23 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek
24 an order permanently enjoining Defendants, and each of them, and their respective agents and
25 employees, from further violations of the Labor Code and applicable Industrial Welfare
26 Commission Wage Orders.

27 198. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
28 himself and **FCRA Class and UCL Class** members, seek declaratory relief and restitution of all

1 monies rightfully belonging to them that Defendants did not pay them or otherwise retained by
2 means of its unlawful and unfair business practices.

3 199. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
4 and/or the common fund doctrine, Plaintiff and **FCRA Class and UCL Class** members are entitled
5 to recover reasonable attorneys' fees in connection with their unfair competition claims.

6 200. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
7 herself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
8 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
9 and unfair business practices.

10 201. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
11 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
12 reasonable attorneys' fees in connection with their unfair competition claims.

13 **TENTH CAUSE OF ACTION**

14 **CIVIL PENALTIES**

15 **(Lab. Code §§ 2698 *et seq.*)**

16 202. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
17 herein.

18 203. During the applicable limitations period, Defendants have violated Labor Code
19 sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1194, 1197, 1198 and 2802.

20 204. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on behalf of
21 herself and other current and former employees, to bring a representative civil action to recover
22 civil penalties pursuant to the procedures set forth in Labor Code section 2699.3 that may, but need
23 not, be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

24 205. Plaintiff, a former employee against who Defendants committed one or more of the
25 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
26 within the meaning of Labor Code section 2699(c).

27 206. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
28 section 2699.3.

1 207. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
2 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7,
3 510, 512, 1194, 1197, 1198 and 2802:

- 4 A. For violations of Labor Code sections 201, 202, 203, 212, 226.7, 1194, 1198
5 and 2802, \$100 for each employee per pay period for each initial violation
6 and \$200 for each employee per pay period for each subsequent violation
7 (penalties set by Labor Code section 2699(f)(2));
- 8 B. For violations of Labor Code section 203, a penalty in an amount not
9 exceeding thirty days pay as waiting time (penalties set by Labor Code
10 section 256);
- 11 C. For violations of Labor Code section 204, \$100 for each employee for each
12 initial violation that was neither willful nor intentional, \$200 for each
13 employee, plus 25% of the amount unlawfully withheld from each employee,
14 for each initial violation that was either willful or intentional, and \$200 for
15 each employee, plus 25% of the amount unlawfully withheld from each
16 employee, for each subsequent violation, regardless of whether the
17 subsequent violation was either willful or intentional (penalties set by Labor
18 Code section 210);
- 19 D. For violations of Labor Code section 223, \$100 for each employee for each
20 initial violation that was neither willful nor intentional, \$200 for each
21 employee, plus 25% of the amount unlawfully withheld from each employee,
22 for each initial violation that was either willful or intentional, and \$200 for
23 each employee, plus 25% of the amount unlawfully withheld from each
24 employee, for each subsequent violation, regardless of whether the
25 subsequent violation was either willful or intentional (penalties set by Labor
26 Code section 225.5);
- 27 E. For violations of Labor Code section 226(a), if this action is deemed to be an
28 initial citation, \$250 for each employee for each violation. Alternatively, if

1 an initial citation or its equivalent occurred before the filing of this action,
2 \$1,000 for each employee for each violation (penalties set by Labor Code
3 section 226.3);

4 F. For violation of Labor Code sections 510 and 512, \$50 for each employee for
5 each initial pay period for which the employee was underpaid, and \$100 for
6 each employee for each subsequent pay period for which the employee was
7 underpaid (penalties set by Labor Code section 558);

8 G. For violations of Labor Code section 1197, \$100 for each aggrieved
9 employee for each initial violation of Labor Code section 1197 that was
10 intentional, and \$250 for each aggrieved employee per pay period for each
11 subsequent violation of Labor Code section 1197, regardless of whether the
12 initial violation was intentional (penalties set by Labor Code section 1197.1);

13 H. Pursuant to Labor Code section 2699(g), Plaintiff seeks award of reasonable
14 attorneys' fees and costs in connection with her claims for civil penalties.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the general
17 public, prays for relief and judgment against Defendants as follows:

- 18 (1) An order that the action be certified as a class action;
- 19 (2) An order that Plaintiff be appointed class representative;
- 20 (3) An order that counsel for Plaintiff be appointed class counsel;
- 21 (4) Unpaid wages;
- 22 (5) Actual damages;
- 23 (6) Liquidated damages;
- 24 (7) Restitution;
- 25 (8) Declaratory relief;
- 26 (9) Pre-judgment interest;
- 27 (10) Statutory penalties;
- 28 (11) Civil penalties;

- (12) Costs of suit;
- (13) Reasonable attorneys' fees; and
- (14) Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself, all other similarly situated, and the general public, hereby demands a jury trial on all issues so triable.

Dated: March 18, 2020

SETAREH LAW GROUP



SHAUN SETAREH
WILLIAM PAO
Attorneys for Plaintiff
JENNIFER GEIERMAN

1 **PROOF OF SERVICE**

2 I am a citizen of the United States and am employed in the County of Los Angeles, State
3 of California. I am over the age of 18 and not a party to the within action. My business address
4 is 315 S. Beverly Drive, Suite 315 Beverly Hills, CA 90212.

5 On March 18, 2020, I served the foregoing documents described as:

6 **FIRST AMENDED COMPLAINT**

7 in this action by transmitting a true copy thereof enclosed in a sealed envelope addressed as
8 follows:

9 Derek S. Sachs
Derek.Sachs@lewisbrisbois.com
10 Nolan W. Kessler
Nolan.Kessler@lewisbrisbois.com
11 LEWIS BRISBOIS BISGAARD & SMITH
12 LLP
2020 West El Camino Ave., Suite 700
13 Sacramento, CA 95833
14 Counsel for Defendant GROCERY
DELIVERY E-SERVICES USA, INC.

Joseph R. Lordan
LEWIS BRISBOIS BISGAARD & SMITH
LLP
333 Bush Street, Suite 1100
San Francisco, CA 94104
Counsel for Defendant GROCERY
DELIVERY E-SERVICES USA, INC.

15
16 **[X] BY MAIL**

17 I am readily familiar with the practice of Setareh Law Group for the collection and
18 processing of correspondence for mailing with the United States Postal Service. It is the
19 practice that correspondence is deposited with United States Postal Service the same day it is
20 submitted for mailing with postage thereon fully prepaid at Beverly Hills, California. I am
aware that on motion of the party served, service is presumed invalid if postal cancellation date
or postage meter date is more than one day after date of deposit for mailing in affidavit.

21 **[X] STATE** I declare under penalty of perjury under the laws of the State of California that
22 the above is true and correct.

23 Executed on March 18, 2020, at Beverly Hills, California.

24
25 
26 Lauren Farrington
27
28