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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SACRAMENTO**

15 NORMAN RESPASS, an individual, on behalf
16 of himself, and on behalf of all persons similarly
17 situated,

18 Plaintiff,

19 vs.

20 THE SCION GROUP LLC, a Limited Liability
21 Company; and DOES 1 through 50, inclusive,

22 Defendants.

Case No. _____

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 PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
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.*]; and,
13. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

FILED

Superior Court Of California,
Sacramento

08/18/2020

Stewart

By _____, Deputy

Case Number:

34-2020-00285285

BY FAX

1 Plaintiff Norman Respass (“PLAINTIFF”), an individual, on behalf of himself and all
2 other similarly situated current and former employees, alleges on information and belief, except
3 for his own acts and knowledge which are based on personal knowledge, the following:

4
5 **THE PARTIES**

6 1. Defendant The Scion Group LLC (“DEFENDANT”) is a limited liability
7 company corporation that at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business throughout the State of California.

9 2. DEFENDANT provides real estate services, such as facility and strategic
10 planning, operations assessments, development consulting and property management to higher
11 education institutions, foundations and private-sector providers of student housing.
12 DEFENDANT specializes in high-end student communities, mixed-use facilities, and urban
13 environments.

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

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

1 5. During the employment application process PLAINTIFF executed the background
2 check disclosure and authorization form permitting DEFENDANT to have a third-party obtain
3 a consumer report, which form included extraneous information, including but not limited to,
4 additional state law notices.

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

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

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

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

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

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

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

11 12 **THE CONDUCT**

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

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

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

22 16. State and federal law provides that employees must be paid overtime at one-and-
23 one-half times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS
24 Members were compensated at an hourly rate plus incentive pay that was tied to specific
25 elements of an employee's performance.

26 17. The second component of PLAINTIFF's and other CALIFORNIA CLASS
27 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
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1 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
2 performance for DEFENDANT, including but not limited to, stipend wages for being on-call
3 for DEFENDANT. The non-discretionary incentive program provided all employees paid on
4 an hourly basis with incentive compensation when the employees met the various performance
5 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
6 overtime to PLAINTIFF and other CALIFORNIA CLASS Members, DEFENDANT failed to
7 include the incentive compensation as part of the employees' "regular rate of pay" for purposes
8 of calculating overtime pay. Management and supervisors described the incentive program to
9 potential and new employees as part of the compensation package. As a matter of law, the
10 incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS Members
11 must be included in the "regular rate of pay." The failure to do so has resulted in an
12 underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA CLASS
13 Members by DEFENDANT.

14 18. In addition, when DEFENDANT required PLAINTIFF and other CALIFORNIA
15 CLASS Members to report to the work site to perform on-call tasks and engage in additional
16 work this resulted in a second reporting for work in a single workday. In such a circumstance
17 of a second reporting for work in a single workday, DEFENDANT failed to pay these
18 employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040. Subdivision 5(B)
19 states: "If an employee is required to report for work a second time in any one workday and is
20 furnished less than two (2) hours of work on the second reporting, said employee shall be paid
21 for two (2) hours at the employee's regular rate of pay, which shall not be less than the
22 minimum wage." Cal. Code Regs., tit. 8, § 11040, subd. 5(B).

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

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

17 21. As a result of their rigorous work schedules, PLAINTIFF and other
18 CALIFORNIA CLASS Members were also from time to time unable to take rest breaks. During
19 the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members
20 were also required to work in excess of four (4) hours without being provided ten (10) minute
21 rest periods. Further, these employees were denied their first rest periods of at least ten (10)
22 minutes for every shift worked of at least two (2) to four (4) hours, a first and second rest period
23 of at least ten (10) minutes for every shift worked of between six (6) and eight (8) hours, and
24 a first, second and third rest period of at least ten (10) minutes for every shift worked of ten (10)
25 hours or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were
26 also not provided with one hour wages in lieu thereof. As a result of their rigorous work
27 schedules, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time
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1 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.
2 Additionally, the applicable California Wage Order requires employers to provide employees
3 with off-duty rest periods, which the California Supreme Court defined as time during which
4 an employee is relieved from all work related duties and free from employer control. In so
5 doing, the Court held that the requirement under California law that employers authorize and
6 permit all employees to take rest period means that employers must relieve employees of all
7 duties and relinquish control over how employees spend their time which includes control over
8 the locations where employees may take their rest period. Employers cannot impose controls
9 that prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
10 DEFENDANT's uniform policy restricted PLAINTIFF and other CALIFORNIA CLASS
11 Members from unconstrained walks and was unlawful based on Defendant's rule which stated
12 PLAINTIFF and other CALIFORNIA CLASS Members could not leave the work premises
13 during their rest period.

14 22. DEFENDANT intentionally and knowingly failed to reimburse and indemnify the
15 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
16 incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence
17 of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
18 2802, employers are required to indemnify employees for all expenses incurred in the course
19 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
20 indemnify his or her employee for all necessary expenditures or losses incurred by the
21 employee in direct consequence of the discharge of his or her duties, or of his or her obedience
22 to the directions of the employer, even though unlawful, unless the employee, at the time of
23 obeying the directions, believed them to be unlawful."

24 23. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
25 Members as a business expense, were required by DEFENDANT to use their own personal
26 cellular phones as a result of and in furtherance of their job duties as employees for
27 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
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1 associated with the use of their personal cellular phones for DEFENDANT's benefit.
2 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
3 DEFENDANT to use their personal cell phones for work related issues. As a result, in the
4 course of their employment with DEFENDANT, PLAINTIFF and other members of the
5 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
6 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
7 benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members
8 were required to use their personal cellular phones in order to communicate with
9 DEFENDANT.

10 24. PLAINTIFF sought employment with DEFENDANT in February of 2019. In
11 connection with his employment application, PLAINTIFF completed DEFENDANT's standard
12 application materials. These application materials included a background check disclosure and
13 authorization form and included on the form was extraneous information as described herein.
14 Following his submission of the employment application materials, DEFENDANT's third party
15 conducted a background check on PLAINTIFF and PLAINTIFF was hired to work for
16 DEFENDANT. PLAINTIFF only discovered DEFENDANT's violations when he obtained and
17 reviewed his personnel file from DEFENDANT and discovered that DEFENDANT had
18 procured and/or caused to be procured a consumer report regarding him for employment
19 purposes based on the illegal disclosure and authorization form. PLAINTIFF was not aware
20 and was confused that the form he was signing authorized the credit check as it contained the
21 additional state law notices amongst other language. PLAINTIFF would not have signed
22 DEFENDANT's disclosure and authorization form had it contained a sufficiently clear
23 disclosure, as required in the statute.

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

27 26. The inclusion of the extraneous information in the background check disclosure
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1 and authorization form violates the FCRA, 15 U.S.C. § 1681, *et seq.*, ICRAA, Cal. Civ. Code
2 § 1786, *et seq.*, and CCRAA, Cal. Civ. Code § 1785, *et seq.*.

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

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

11 15 U.S.C. §§ 1681b(b)(2)(A)(I)-(ii) (emphasis added).

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

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

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

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

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

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

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

26 (vi) ***Notifies the consumer of the Internet Web site address of the***
27 ***investigative consumer reporting agency*** identifies in clause (iv), or, ***if***
28 ***the agency has no Internet Web site address, the telephone number of***
the agency, where the consumer may find information about the
investigative reporting agency's privacy practices, including whether the
consumer's personal information will be sent 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.

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

30 29. Under the CCRAA, it is unlawful to procure a consumer report or cause a

1 consumer report to be procured for employment purposes, unless:

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

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

6 30. After PLAINTIFF executed the background check disclosure and authorization
7 form in February 2019, DEFENDANT obtained a consumer report on PLAINTIFF
8 notwithstanding the fact that the background check disclosure and authorization form was
9 invalid under the requirements of the FCRA, ICRAA, and CCRAA.

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

18 32. By including additional state law notices extraneous information in its background
19 check disclosure and authorization form, DEFENDANT willfully disregarded the FTC's
20 regulatory guidance and violated 15 U.S.C. §§ 1681b(b)(2)(A), as well Cal. Civ. Code §
21 1786.16(a)(2) and Cal. Civ. Code § 1785.20.5(a).

22 33. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or
23 her employees with an accurate itemized wage statement in writing showing, among other
24 things, gross wages earned and all applicable hourly rates in effect during the pay period and
25 the corresponding amount of time worked at each hourly rate. From time to time,
26 DEFENDANT violated Cal. Lab. Code § 226 by failing to provide wage statements that
27 identified the correct net and gross wages earned. Aside from the violations listed above,
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1 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
2 requirements under California Labor Code 226 *et seq.* As a result, from time to time
3 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
4 wage statements which violated Cal. Lab. Code § 226.

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

20 **JURISDICTION AND VENUE**

21 35. This Court has jurisdiction over this Action pursuant to California Code of Civil
22 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
23 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees
24 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382. The Court has Jurisdiction under
25 the FCRA. (15 U.S.C. §§ 1681n, 1681p.)

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

4
5 **THE CALIFORNIA CLASS**

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

15 38. To the extent equitable tolling operates to toll claims by the CALIFORNIA
16 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
17 accordingly.

18 39. The California Legislature has commanded that "all wages... ..earned by any
19 person in any employment are due and payable twice during each calendar month, on days
20 designated in advance by the employer as the regular paydays", and further that "[a]ny work
21 in excess of eight hours in one workday and any work in excess of 40 hours in any one
22 workweek . . . shall be compensated at the rate of no less than one and one-half times the
23 regular rate of pay for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare
24 Commission (IWC), however, is statutorily authorized to "establish exemptions from the
25 requirement that an overtime rate of compensation be paid... ..for executive, administrative,
26 and professional employees, provided [inter alia] that the employee is primarily engaged in
27 duties that meet the test of the exemption, [and] customarily and regularly exercises discretion
28 and independent judgment in performing those duties..." (Lab. Code § 510(a).) Neither

1 PLAINTIFF nor the other members of the CALIFORNIA CLASS and/or the CALIFORNIA
2 LABOR SUB-CLASS qualify for exemption from the above requirements.

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

12 41. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
13 CLASS Members is impracticable.

14 42. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
15 California law by:

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

3 (d) Committing an act of unfair competition in violation of the California
4 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
5 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
6 the CALIFORNIA CLASS members with necessary expenses incurred in
7 the discharge of their job duties; and,

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

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

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

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

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

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

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

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

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

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

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

8 1) With respect to the First Cause of Action, the final relief on behalf
9 of the CALIFORNIA CLASS sought does not relate exclusively to
10 restitution because through this claim PLAINTIFF seeks
11 declaratory relief holding that the DEFENDANT's policy and
12 practices constitute unfair competition, along with declaratory
13 relief, injunctive relief, and incidental equitable relief as may be
14 necessary to prevent and remedy the conduct declared to constitute
15 unfair competition;

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

22 1) The interests of the members of the CALIFORNIA CLASS in
23 individually controlling the prosecution or defense of separate
24 actions in that the substantial expense of individual actions will be
25 avoided to recover the relatively small amount of economic losses
26 sustained by the individual CALIFORNIA CLASS Members when
27 compared to the substantial expense and burden of individual
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1 prosecution of this litigation;

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

4 A. Inconsistent or varying adjudications with respect to
5 individual members of the CALIFORNIA CLASS, which
6 would establish incompatible standards of conduct for the
7 DEFENDANT; and/or,

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

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

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

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

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

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

9 (c) The members of the CALIFORNIA CLASS are so numerous that it is
10 impractical to bring all members of the CALIFORNIA CLASS before the
11 Court;

12 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
13 able to obtain effective and economic legal redress unless the action is
14 maintained as a Class Action;

15 (e) There is a community of interest in obtaining appropriate legal and
16 equitable relief for the acts of unfair competition, statutory violations and
17 other improprieties, and in obtaining adequate compensation for the
18 damages and injuries which DEFENDANT's actions have inflicted upon
19 the CALIFORNIA 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
22 the CALIFORNIA CLASS for the injuries sustained;

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

26 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
27 the business records of DEFENDANT; and,
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1 (i) Class treatment provides manageable judicial treatment calculated to bring
2 a efficient and rapid conclusion to all litigation of all wage and hour
3 related claims arising out of the conduct of DEFENDANT as to the
4 members of the CALIFORNIA CLASS.

5 46. DEFENDANT maintains records from which the Court can ascertain and identify
6 by job title each of DEFENDANT's employees who have been intentionally subjected to
7 DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF will
8 seek leave to amend the Complaint to include any additional job titles of similarly situated
9 employees when they have been identified.

10
11 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

5 49. DEFENDANT maintains records from which the Court can ascertain and identify
6 by name and job title, each of DEFENDANT's employees who have been intentionally
7 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
8 PLAINTIFF will seek leave to amend the complaint to include any additional job titles of
9 similarly situated employees when they have been identified.

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

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

- 14 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
15 overtime compensation to members of the CALIFORNIA LABOR SUB-
16 CLASS in violation of the California Labor Code and California
17 regulations and the applicable California Wage Order;
- 18 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS were
19 entitled to overtime compensation for overtime worked under the overtime
20 pay requirements of California law;
- 21 (c) Whether DEFENDANT failed to accurately record the applicable
22 overtime rates for all overtime worked by PLAINTIFF and the other
23 members of the CALIFORNIA LABOR SUB-CLASS;
- 24 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS with accurate
26 itemized wage statements;
- 27 (e) Whether DEFENDANT has engaged in unfair competition by the
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1 above-listed conduct;

2 (f) The proper measure of damages and penalties owed to the members of the
3 CALIFORNIA LABOR SUB-CLASS; and,

4 (g) Whether DEFENDANT's conduct was willful.

5 52. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
6 under California law by:

7 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
8 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
9 CLASS the correct overtime pay for which DEFENDANT is liable
10 pursuant to Cal. Lab. Code § 1194;

11 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
12 accurately pay PLAINTIFF and the members of the CALIFORNIA
13 LABOR SUB-CLASS the correct minimum wage pay for which
14 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

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

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

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

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

- 4 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
5 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
6 Members is impracticable and the disposition of their claims as a class
7 will benefit the parties and the Court;
- 8 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
9 that are raised in this Complaint are common to the CALIFORNIA
10 LABOR SUB-CLASS and will apply uniformly to every member of the
11 CALIFORNIA LABOR SUB-CLASS;
- 12 (c) The claims of the representative PLAINTIFF are typical of the claims of
13 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
14 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
15 was a non-exempt employee who was subjected to DEFENDANT's
16 practice and policy which failed to pay the correct rate of overtime wages
17 due to the CALIFORNIA LABOR SUB-CLASS for all overtime worked.
18 PLAINTIFF sustained economic injury as a result of DEFENDANT's
19 employment practices. PLAINTIFF and the members of the
20 CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
21 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
22 misconduct engaged in by DEFENDANT; and,
- 23 (d) The representative PLAINTIFF will fairly and adequately represent and
24 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
25 retained counsel who are competent and experienced in Class Action
26 litigation. There are no material conflicts between the claims of the
27 representative PLAINTIFF and the members of the CALIFORNIA
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1 LABOR SUB-CLASS that would make class certification inappropriate.
2 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
3 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

6 (a) Without class certification and determination of declaratory, injunctive,
7 statutory and other legal questions within the class format, prosecution of
8 separate actions by individual members of the CALIFORNIA LABOR
9 SUB-CLASS will create the risk of:

10 1) Inconsistent or varying adjudications with respect to individual
11 members of the CALIFORNIA LABOR SUB-CLASS which would
12 establish incompatible standards of conduct for the parties
13 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

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

26 (c) Common questions of law and fact predominate as to the members of the
27 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
28

1 violations of California Law as listed above, and predominate over any
2 question affecting only individual CALIFORNIA LABOR SUB-CLASS
3 Members, and a Class Action is superior to other available methods for
4 the fair and efficient adjudication of the controversy, including
5 consideration of:

- 6 1) The interests of the members of the CALIFORNIA LABOR SUB-
7 CLASS in individually controlling the prosecution or defense of
8 separate actions in that the substantial expense of individual
9 actions will be avoided to recover the relatively small amount of
10 economic losses sustained by the individual CALIFORNIA
11 LABOR SUB-CLASS Members when compared to the substantial
12 expense and burden of individual prosecution of this litigation;
- 13 2) Class certification will obviate the need for unduly duplicative
14 litigation that would create the risk of:
 - 15 A. Inconsistent or varying adjudications with respect to
16 individual members of the CALIFORNIA LABOR SUB-
17 CLASS, which would establish incompatible standards of
18 conduct for the DEFENDANT; and/or,
 - 19 B. Adjudications with respect to individual members of the
20 CALIFORNIA LABOR SUB-CLASS would as a practical
21 matter be dispositive of the interests of the other members
22 not parties to the adjudication or substantially impair or
23 impede their ability to protect their interests;
- 24 3) In the context of wage litigation because a substantial number of
25 individual CALIFORNIA LABOR SUB-CLASS Members will
26 avoid asserting their legal rights out of fear of retaliation by
27 DEFENDANT, which may adversely affect an individual's job
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1 with DEFENDANT or with a subsequent employer, the Class
2 Action is the only means to assert their claims through a
3 representative; and,

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

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

- 11 (a) The questions of law and fact common to the CALIFORNIA LABOR
12 SUB-CLASS predominate over any question affecting only individual
13 CALIFORNIA LABOR SUB-CLASS Members;
- 14 (b) A Class Action is superior to any other available method for the fair and
15 efficient adjudication of the claims of the members of the CALIFORNIA
16 LABOR SUB-CLASS because in the context of employment litigation a
17 substantial number of individual CALIFORNIA LABOR SUB-CLASS
18 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 CALIFORNIA LABOR SUB-CLASS are so
21 numerous that it is impractical to bring all members of the CALIFORNIA
22 LABOR SUB-CLASS before the Court;
- 23 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
24 Members, will not be able to obtain effective and economic legal redress
25 unless the action is maintained as a Class Action;
- 26 (e) There is a community of interest in obtaining appropriate legal and
27 equitable relief for the acts of unfair competition, statutory violations and
28

1 other improprieties, and in obtaining adequate compensation for the
2 damages and injuries which DEFENDANT's actions have inflicted upon
3 the CALIFORNIA LABOR SUB-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
6 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

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

11 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
12 ascertainable from the business records of DEFENDANT. The
13 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
14 CLASS Members classified as non-exempt employees during the
15 CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

21 **THE FCRA CLASS ALLEGATIONS**

22 56. PLAINTIFF brings the Ninth and Tenth Causes of Action pursuant to Cal. Code
23 of Civ. Proc. § 382, on behalf of a nationwide Class, defined as all employees or prospective
24 employees of DEFENDANT in the United States who executed DEFENDANT's standard
25 background check disclosure and authorization form (the "FCRA CLASS") at any time during
26 the period beginning on the date five (5) years prior to the filing of this Complaint and ending
27 on the date as determined by the Court (the "FCRA CLASS PERIOD"). The amount in
28

1 controversy for the aggregate claim of FCRA CLASS Members is under five million dollars
2 (\$5,000,000.00). To the extent equitable tolling operates to toll claims by the FCRA CLASS
3 against DEFENDANT, the FCRA CLASS PERIOD should be adjusted accordingly.

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

9 58. The FCRA CLASS is so numerous that joinder of all FCRA CLASS Members is
10 impracticable.

11 59. DEFENDANT uniformly violated the rights of the FCRA CLASS by:

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

17 60. Common questions of law and fact exist as to members of the FCRA CLASS,
18 including, but not limited, to the following:

- 19 (a) Whether DEFENDANT required the FCRA CLASS Members to sign a
20 background check disclosure and authorization form;
- 21 (b) Whether DEFENDANT's background check disclosure and authorization
22 form complies with the Fair Credit Reporting Act 15 U.S.C. § 1681, *et*
23 *seq.* ("FCRA");
- 24 (c) Whether DEFENDANT violated the FCRA by including extraneous
25 information in its background check disclosure and authorization form;
26 and,
- 27 (d) Whether DEFENDANT violated the FCRA by procuring consumer report
28

1 information based on invalid authorizations;

2 (e) Whether DEFENDANT's violations of the FCRA were willful;

3 (f) The proper measure of statutory damages and punitive damages; and,

4 (g) The proper form of injunctive and declaratory relief.

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

7 (a) The persons who comprise the FCRA CLASS are so numerous that the
8 joinder of all such persons is impracticable and the disposition of their
9 claims as a class will benefit the parties and the Court;

10 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are
11 raised in this Complaint are common to the FCRA CLASS will apply
12 uniformly to every member of the FCRA CLASS;

13 (c) The claims of the representative PLAINTIFF are typical of the claims of
14 each member of the FCRA CLASS. PLAINTIFF, like all the other
15 members of the FCRA CLASS, had a credit report obtained on his behalf
16 by DEFENDANT prior to obtaining valid authorization to do so in
17 violation of the FCRA as described herein. PLAINTIFF and the members
18 of the FCRA CLASS were and are similarly or identically harmed by the
19 same unlawful, deceptive, unfair and pervasive pattern of misconduct
20 engaged in by DEFENDANT; and,

21 (d) The representative PLAINTIFF will fairly and adequately represent and
22 protect the interest of the FCRA CLASS, and has retained counsel who
23 are competent and experienced in Class Action litigation. There are no
24 material conflicts between the claims of the representative PLAINTIFF
25 and the members of the FCRA CLASS that would make class certification
26 inappropriate. Counsel for the FCRA CLASS will vigorously assert the
27 claims of all employees in the FCRA CLASS.
28

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

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

7 1) Inconsistent or varying adjudications with respect to individual
8 members of the FCRA CLASS which would establish incompatible
9 standards of conduct for the parties opposing the FCRA CLASS;
10 and/or,

11 2) Adjudication with respect to individual members of the FCRA
12 CLASS which would as a practical matter be dispositive of
13 interests of the other members not party to the adjudication or
14 substantially impair or impede their ability to protect their
15 interests.

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

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

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

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

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

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

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

23 4) A Class Action is superior to other available methods for the fair
24 and efficient adjudication of this litigation because class treatment
25 will obviate the need for unduly and unnecessary duplicative
26 litigation that is likely to result in the absence of certification of
27 this Action pursuant to Cal. Code of Civ. Proc. § 382.
28

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

- 3 (a) The questions of law and fact common to the FCRA CLASS predominate
4 over any question affecting only individual FCRA CLASS Members
5 because DEFENDANT's employment practices were uniform and
6 systematically applied with respect to the FCRA CLASS;
- 7 (b) A Class Action is superior to any other available method for the fair and
8 efficient adjudication of the claims of the members of the FCRA CLASS
9 because in the context of employment litigation a substantial number of
10 individual FCRA CLASS Members will avoid asserting their rights
11 individually out of fear of retaliation or adverse impact on their
12 employment;
- 13 (c) The members of the FCRA CLASS are so numerous that it is impractical
14 to bring all members of the FCRA CLASS before the Court;
- 15 (d) PLAINTIFF, and the other FCRA CLASS Members, will not be able to
16 obtain effective and economic legal redress unless the action is maintained
17 as a Class Action;
- 18 (e) There is a community of interest in obtaining appropriate legal and
19 equitable relief for the acts of statutory violations and other improprieties,
20 and in obtaining adequate compensation for the injuries which
21 DEFENDANT's actions have inflicted upon the FCRA CLASS;
- 22 (f) There is a community of interest in ensuring that the combined assets of
23 DEFENDANT are sufficient to adequately compensate the members of
24 the FCRA CLASS for the injuries sustained;
- 25 (g) DEFENDANT has acted or refused to act on grounds generally applicable
26 to the FCRA CLASS, thereby making final class-wide relief appropriate
27 with respect to the FCRA CLASS as a whole;
- 28

- 1 (h) The members of the FCRA CLASS are readily ascertainable from the
2 business records of DEFENDANT. The FCRA CLASS consists of all
3 employees or prospective employees of DEFENDANT in the United
4 States who executed DEFENDANT's standard FCRA disclosure
5 formallowing DEFENDANT to obtain a consumer report during the
6 FCRA CLASS PERIOD; and,
- 7 (i) Class treatment provides manageable judicial treatment calculated to bring
8 an efficient and rapid conclusion to all litigation of all FCRA claims
9 arising out of the conduct of DEFENDANT as to the members of the
10 FCRA CLASS.

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

16 **THE ICRAA CLASS**

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

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

4 67. The ICRAA CLASS is so numerous that joinder of all ICRAA CLASS Members
5 is impracticable.

6 68. DEFENDANT uniformly violated the rights of the ICRAA CLASS by:

- 7 (a) Violating Investigative Consumer Reporting Agencies Act Cal. Civ. Code
8 § 1786, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
9 company policies, practices and procedures that uniformly obtained credit
10 reports on without first obtaining valid authorization consent form.

11 69. Common questions of law and fact exist as to members of the ICRAA CLASS,
12 including, but not limited, to the following:

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

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

- 27 (a) The persons who comprise the ICRAA CLASS are so numerous that the
28

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 ICRAA CLASS will apply uniformly to every member of the ICRAA CLASS;

(c) The claims of the representative PLAINTIFF are typical of the claims of each member of the ICRAA CLASS. PLAINTIFF, like all the other members of the ICRAA CLASS, had a credit report and background check obtained on PLAINTIFF's behalf by DEFENDANT prior to obtaining valid authorization to do so in violation of the ICRAA as described herein. PLAINTIFF and the members of the ICRAA 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 PLAINTIFF will fairly and adequately represent and protect the interest of the ICRAA CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the ICRAA CLASS that would make class certification inappropriate. Counsel for the ICRAA CLASS will vigorously assert the claims of all ICRAA CLASS members.

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

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

1) Inconsistent or varying adjudications with respect to individual

members of the ICRAA CLASS which would establish incompatible standards of conduct for the parties opposing the CLASS; and/or,

2) Adjudication with respect to individual members of the ICRAA 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 ICRAA CLASS have acted or refused to act on grounds generally applicable to the ICRAA CLASS, making appropriate class-wide relief with respect to the ICRAA CLASS as a whole; and

(c) Common questions of law and fact exist as to the members of the ICRAA CLASS, with respect to the practices and violations of the ICRAA as listed above, and predominate over any question affecting only individual ICRAA 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 ICRAA 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 ICRAA 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:

A. Inconsistent or varying adjudications with respect to

1 individual members of the ICRAA CLASS, which would
2 establish incompatible standards of conduct for
3 DEFENDANT; and/or,

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

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

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

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

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

27 (b) A Class Action is superior to any other available method for the fair and
28

1 efficient adjudication of the claims of the members of the ICRAA CLASS
2 because in the context of employment litigation a substantial number of
3 individual ICRAA CLASS Members will avoid asserting their rights
4 individually out of fear of retaliation or adverse impact on their
5 employment;

6 (c) The members of the ICRAA CLASS are so numerous that it is impractical
7 to bring all members of the ICRAA CLASS before the Court;

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

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

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

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

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

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

THE CCRAA CLASS

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

74. DEFENDANT, as a matter of corporate policy, practice and procedure, and in violation of the Consumer Credit Reporting Agencies Act Cal. Civ. Code § 1785, *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.

75. The CCRAA CLASS is so numerous that joinder of all CCRAA CLASS Members is impracticable.

76. DEFENDANT uniformly violated the rights of the CCRAA CLASS by:

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

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

- (a) Whether DEFENDANT required the CCRAA CLASS Members to sign a background check disclosure and authorization form;

- (b) Whether DEFENDANT's background check disclosure and authorization form complies with the Consumer Credit Reporting Agencies Act Cal. Civ. Code § 1785, *et seq.*;
- (c) Whether DEFENDANT violated the CCRAA by including additional state law notices in its background check disclosure and authorization form;
- (d) Whether DEFENDANT violated the CCRAA by procuring consumer report information based on invalid authorizations;
- (e) Whether DEFENDANT's violations of the CCRAA were willful;
- (f) The proper measure of statutory damages and punitive damages; and,
- (g) The proper form of injunctive and declaratory relief.

78. 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 CCRAA 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 CCRAA CLASS will apply uniformly to every member of the CCRAA CLASS;
- (c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CCRAA CLASS. PLAINTIFF, like all the other members of the CCRAA CLASS, had a credit report and background check obtained on PLAINTIFF's behalf by DEFENDANT prior to obtaining valid authorization to do so in violation of the CCRAA as described herein. PLAINTIFF and the members of the 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 PLAINTIFF will fairly and adequately represent and

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

7 79. In addition to meeting the statutory prerequisites to a Class Action, this Action
8 is 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
10 other legal questions within the class format, prosecution of separate
11 actions by individual members of the CCRAA CLASS will create the risk
12 of:

13 1) Inconsistent or varying adjudications with respect to individual
14 members of the CCRAA CLASS which would establish
15 incompatible standards of conduct for the parties opposing the
16 CCRAA CLASS; and/or,

17 2) Adjudication with respect to individual members of the CCRAA
18 CLASS which would as a practical matter be dispositive of
19 interests of the other members not party to the adjudication or
20 substantially impair or impede their ability to protect their
21 interests.

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

25 (c) Common questions of law and fact exist as to the members of the CCRAA
26 CLASS, with respect to the practices and violations of the CCRAA as
27 listed above, and predominate over any question affecting only individual
28

1 CCRAA CLASS Members, and a Class Action is superior to other
2 available methods for the fair and efficient adjudication of the
3 controversy, including consideration of:

4 1) The interests of the members of the CCRAA CLASS in
5 individually controlling the prosecution or defense of separate
6 actions in that the substantial expense of individual actions will be
7 avoided to recover the relatively small amount of economic losses
8 sustained by the individual CCRAA CLASS Members when
9 compared to the substantial expense and burden of individual
10 prosecution of this litigation;

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

13 A. Inconsistent or varying adjudications with respect to
14 individual members of the CCRAA CLASS, which would
15 establish incompatible standards of conduct for
16 DEFENDANT; and/or,

17 B. Adjudications with respect to individual members of the
18 CCRAA CLASS would as a practical matter be dispositive
19 of the interests of the other members not parties to the
20 adjudication or substantially impair or impede their ability
21 to protect their interests;

22 3) In the context of employment litigation because as a practical
23 matter a substantial number of individual CCRAA CLASS
24 Members will avoid asserting their legal rights out of fear of
25 retaliation by DEFENDANT, which may adversely affect an
26 individual's job with DEFENDANT or with a subsequent
27 employer, the Class Action is the only means to assert their claims
28

1 through a representative; and,

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

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

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

- 1 (f) There is a community of interest in ensuring that the combined assets of
2 DEFENDANT are sufficient to adequately compensate the members of
3 the CCRAA CLASS for the injuries sustained;
- 4 (g) DEFENDANT has acted or refused to act on grounds generally applicable
5 to the CCRAA CLASS, thereby making final class-wide relief appropriate
6 with respect to the CCRAA CLASS as a whole;
- 7 (h) The members of the CCRAA CLASS are readily ascertainable from the
8 business records of DEFENDANT; and,
- 9 (i) Class treatment provides manageable judicial treatment calculated to bring
10 an efficient and rapid conclusion to all litigation of all CCRAA claims
11 arising out of the conduct of DEFENDANT as to the members of the
12 CCRAA CLASS.

13 **FIRST CAUSE OF ACTION**

14 **For Unlawful Business Practices**

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

16 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

17 81. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
19 Complaint.

20 82. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
21 Code § 17021.

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

26 Any person who engages, has engaged, or proposes to engage in unfair
27 competition may be enjoined in any court of competent jurisdiction. The court
28 may make such orders or judgments, including the appointment of a receiver, as

1 may be necessary to prevent the use or employment by any person of any
2 practice which constitutes unfair competition, as defined in this chapter, or as
3 may be necessary to restore to any person in interest any money or property, real
4 or personal, which may have been acquired by means of such unfair competition.

5 Cal. Bus. & Prof. Code § 17203.

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

16 85. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
17 unfair in that these practices violated public policy, were immoral, unethical, oppressive,
18 unscrupulous or substantially injurious to employees, and were without valid justification or
19 utility for which this Court should issue equitable and injunctive relief pursuant to Section
20 17203 of the California Business & Professions Code, including restitution of wages wrongfully
21 withheld.

22 86. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
23 fraudulent in that DEFENDANT’s uniform policy and practice failed to pay PLAINTIFF, and
24 other members of the CALIFORNIA CLASS, minimum wages due, overtime wages for
25 overtime worked and premiums for missed meal and rest breaks, pursuant to the applicable Cal.
26 Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
27 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
28 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

87. By the conduct alleged herein, DEFENDANT’s practices were also unlawful,

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

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

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

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

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

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

27 93. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
28

1 and do, seek such relief as may be necessary to restore to them the money and property which
2 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
3 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
4 unfair business practices, including earned but unpaid wages for all overtime worked.

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

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

16
17 **SECOND CAUSE OF ACTION**

18 **For Failure To Pay Minimum Wages**

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

20 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

21 **and Against All Defendants)**

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

25 97. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
26 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
27 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
28

1 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA LABOR SUB-
2 CLASS Members.

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

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

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

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

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

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

26 104. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
27 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
28

1 the correct minimum wage compensation for their time worked for DEFENDANT.

2 105. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
3 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members
4 to work without paying them for all the time they were under DEFENDANT's control. As such,
5 during the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other members
6 of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were
7 entitled to, constituting a failure to pay all earned wages.

8 106. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
9 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
10 CLASS for the true time they worked, PLAINTIFF and the other members of the
11 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
12 injury in amounts which are presently unknown to them and which will be ascertained
13 according to proof at trial.

14 107. DEFENDANT knew or should have known that PLAINTIFF and the other
15 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
16 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
17 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
18 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
19 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
20 minimum wages for their time worked.

21 108. In performing the acts and practices herein alleged in violation of California labor
22 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
23 all time worked and provide them with the requisite compensation, DEFENDANT acted and
24 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for
26 their legal rights, or the consequences to them, and with the despicable intent of depriving them
27 of their property and legal rights, and otherwise causing them injury in order to increase
28

1 company profits at the expense of these employees.

2 109. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
3 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
4 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
5 by the California Labor Code and/or other applicable statutes. DEFENDANT's conduct as
6 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
7 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

8
9 **THIRD CAUSE OF ACTION**

10 **For Failure To Pay Overtime Compensation**

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

12 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
13 **Defendants)**

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

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

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

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

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

8 115. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
9 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
10 amount of overtime they worked. As set forth herein, DEFENDANT's uniform policy and
11 practice was to unlawfully and intentionally deny timely payment of wages due for the overtime
12 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
13 and DEFENDANT in fact failed to pay these employees the correct applicable overtime wages
14 for all overtime worked.

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

21 117. In committing these violations of the California Labor Code, DEFENDANT
22 inaccurately calculated the applicable overtime rates and consequently underpaid the actual
23 time worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
24 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
25 benefits in violation of the California Labor Code, the Industrial Welfare Commission
26 requirements and other applicable laws and regulations.

27 118. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
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1 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
2 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked
3 including overtime work.

4 119. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
5 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
6 full compensation for all overtime worked.

7 120. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
8 from the overtime requirements of the law. None of these exemptions are applicable to
9 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
11 to a valid collective bargaining agreement that would preclude the causes of action contained
12 herein this Complaint. Rather, PLAINTIFF bring this Action on behalf of himself and the
13 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
14 non-waiveable rights provided by the State of California.

15 121. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
16 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
17 they were entitled to, constituting a failure to pay all earned wages.

18 122. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
19 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
20 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
21 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
22 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
23 to accurately record and pay using the applicable overtime rate as evidenced by
24 DEFENDANT's business records and witnessed by employees.

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

4 124. DEFENDANT knew or should have known that PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
6 overtime worked. DEFENDANT systematically elected, either through intentional malfeasance
7 or gross nonfeasance, to not pay employees for their labor as a matter of uniform company
8 policy, practice and procedure, and DEFENDANT perpetrated this systematic scheme by
9 refusing to pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
10 the applicable overtime rate.

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

19 126. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
21 interest, statutory costs, as well as the assessment of any statutory penalties against
22 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable
23 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
24 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's
25 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also
26 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
27 herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
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1 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF
2 and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
3 statutory costs.

4
5 **FOURTH CAUSE OF ACTION**

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

7 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

13 128. During the CALIFORNIA LABOR SUB-CLASS PERIOD, from time to time
14 DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF
15 and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable
16 Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and
17 CALIFORNIA LABOR SUB-CLASS MEMBERS does not prevent these employees from
18 being relieved of all of their duties for the legally required off-duty meal periods. As a result
19 of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
20 Members were from time to time not fully relieved of duty by DEFENDANT for their meal
21 periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
22 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour
23 of work is evidenced by DEFENDANT's business records. Further, DEFENDANT failed to
24 provide PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members with a second off-
25 duty meal period in some workdays in which these employees were required by DEFENDANT
26 to work ten (10) hours of work from time to time. As a result, PLAINTIFF and other members
27 of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
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1 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

2 129. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable
3 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
4 CLASS Members who were not provided a meal period, in accordance with the applicable
5 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
6 each workday that a meal period was not provided.

7 130. As a proximate result of the aforementioned violations, PLAINTIFF and
8 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
9 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
10 suit.

11
12 **FIFTH CAUSE OF ACTION**

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

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

15 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
16 **Defendants)**

17 131. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
18 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
19 of this Complaint.

20 132. From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
21 Members were required to work in excess of four (4) hours without being provided ten (10)
22 minute rest periods. Further, from time to time these employees were denied their first rest
23 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours,
24 a first and second rest period of at least ten (10) minutes for some shifts worked of between six
25 (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
26 some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR
27 SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result
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1 of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
2 Members were periodically denied their proper rest periods by DEFENDANT and
3 DEFENDANT's managers.

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

9 134. As a proximate result of the aforementioned violations, PLAINTIFF and
10 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
11 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
12 suit.

13 14 **SIXTH CAUSE OF ACTION**

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

16 **[Cal. Lab. Code § 226]**

17 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
18 **Defendants)**

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

22 136. Cal. Labor Code § 226 provides that an employer must furnish employees with
23 an "accurate itemized" statement in writing showing:

24 (1) gross wages earned,

25 (2) total hours worked by the employee, except for any employee whose compensation
26 is solely based on a salary and who is exempt from payment of overtime under
27 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
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1 Commission,

2 (3) the number of piecerate units earned and any applicable piece rate if the employee
3 is paid on a piece-rate basis,

4 (4) all deductions, provided that all deductions made on written orders of the employee
5 may be aggregated and shown as one item,

6 (5) net wages earned,

7 (6) the inclusive dates of the period for which the employee is paid,

8 (7) the name of the employee and his or her social security number, except that by
9 January 1, 2008, only the last four digits of his or her social security number or an
10 employee identification number other than a social security number may be shown on
11 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
14 number of hours worked at each hourly rate by the employee.

15 137. From time to time, DEFENDANT violated Cal. Lab. Code § 226 in that
16 DEFENDANT failed to provide an accurate wage statement in writing that properly and
17 accurately itemized gross and net wages earned, the effective rates of overtime, and premiums
18 paid for missed meal and rest breaks, and gross wages earned and total hours worked by
19 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and thereby
20 also failed to set forth the correct overtime wages earned by the employees. Aside, from the
21 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
22 itemized wage statement that accurately lists all the requirements under California Labor Code
23 226 *et seq.*

24 138. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
25 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
26 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended
27 calculating the correct rates for the overtime worked and the amount of employment taxes
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1 which were not properly paid to state and federal tax authorities. These damages are difficult
2 to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR
3 SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial
4 pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
5 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
6 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
7 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

8
9 **SEVENTH CAUSE OF ACTION**

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

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

12 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
13 **Defendants)**

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

17 140. Cal. Lab. Code § 200 states that:

18 As used in this article:

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

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

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

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

If an employee not having a written contract for a definite period quits his
or her employment, his or her wages shall become due and payable not
later than 72 hours thereafter, unless the employee has given 72 hours

1 previous notice of his or her intention to quit, in which case the employee
2 is entitled to his or her wages at the time of quitting. Notwithstanding any
3 other provision of law, an employee who quits without providing a 72-
4 hour notice shall be entitled to receive payment by mail if he or she so
requests and designates a mailing address. The date of the mailing shall
constitute the date of payment for purposes of the requirement to provide
payment within 72 hours of the notice of quitting.

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

7 144. 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 who is discharged or who quits, the wages of the employee
10 shall continue as a penalty from the due date thereof at the same rate until
paid or until an action therefor is commenced; but the wages shall not
11 continue for more than 30 days.

12 145. When PLAINTIFF left employment with DEFENDANT, DEFENDANT
13 still owed PLAINTIFF wages for work performed because PLAINTIFF was not
14 compensated correctly for his overtime worked and meal and rest breaks missed. To
15 date, DEFENDANT has not paid PLAINTIFF these wages still owed to him. As such,
16 DEFENDANT has not fully paid PLAINTIFF all wages still owed to him or any penalty
wages that are now owed to him under California Labor Code § 203.

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

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

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

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

149. Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her 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.

150. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT’s benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell phones to respond to work related issues. DEFENDANT’s policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT’s conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed

1 to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
2 members for these expenses as an employer is required to do under the laws and regulations
3 of California.

4 151. PLAINTIFF therefore demands reimbursement for expenditures or losses
5 incurred by him and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
6 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
7 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

8
9 **NINTH CAUSE OF ACTION**

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

11 **[15 U.S.C. § 1681b(b)(2)(A)(I), *et seq.*]**

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

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

16 153. DEFENDANT violated 15 U.S.C. § 1681b(b)(2)(A)(I) of the FCRA by including
17 extraneous information in DEFENDANT's background check disclosure and authorization form
18 that PLAINTIFF and other FCRA CLASS Members were required to execute as a condition of
19 employment with DEFENDANT.

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

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

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

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

3
4 **TENTH CAUSE OF ACTION**

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

6 **[15 U.S.C. § 1681b(b)(2)(A)(ii)]**

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

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

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

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

17 161. PLAINTIFF and the FCRA CLASS Members are entitled to statutory damages
18 of not less than \$100 and not more than \$1,000 for every violation of the FCRA, pursuant to
19 15 U.S.C. § 1681n(a)(1)(A).

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

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

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1 ELEVENTH CAUSE OF ACTION

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

3 [Cal. Civ. Code § 1786 *et seq.*]

4 **(By PLAINTIFF and the ICRAA CLASS and Against All Defendants)**

5 164. PLAINTIFF, and the other members of the ICRAA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 165. DEFENDANT is a “person” as defined by Section 1786.2(a) of the Investigative
9 Consumer Reporting Agencies Act (“ICRAA”).

10 166. PLAINTIFF and ICRAA CLASS members are “consumers” within the meaning
11 of Section 1786.2(b) of the ICRAA because they are “individuals.”

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

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

15 168. Thus, a background check qualifies as an investigative consumer report under the
16 ICRAA.

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

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

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

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

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

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

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

28 (v) Notifies the consumer in writing of the nature and scope of the

1 investigation requested, including the provisions of Section 1786.22.

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

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

12 170. As alleged above, because DEFENDANT's disclosures do not meet the
13 requirements of Section 101(c)(1) of 15 U.S.C. 7001, the disclosures do not satisfy Section
14 1786.16(a)(2) of the ICRAA requirement that the disclosures be made in writing.

15 171. As described above, PLAINTIFF alleges that in evaluating him and other class
16 members for employment, DEFENDANT procure or caused to be prepared investigative
17 consumer report (e.g. background checks), as defined by Cal. Civ. Code § 1786.2(c).

18 172. Because the purported disclosures are embedded with extraneous information,
19 and are not clear and unambiguous disclosures in stand-alone documents, they do not meet the
20 requirements under the law.

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

26 174. By including the extraneous information, DEFENDANTS willfully violated §
27 1786.16(a)(2)(B) of the ICRAA. Additionally, the inclusion of the extraneous provisions causes
28 the disclosure to fail to be "clear and conspicuous" and thus violates § 1786.16(a)(2)(B).

175. Based upon facts that are likely to have evidentiary support after a reasonable
opportunity for investigation and discovery, PLAINTIFF alleges that DEFENDANT has a
policy and practice of failing to provide adequate written disclosures to applicants and

1 employees, before procuring background checks or causing background checks to be procured,
2 as described above. Pursuant to that policy and practice, DEFENDANT procured background
3 checks or caused background checks to be procured for PLAINTIFF and class members without
4 first providing a written disclosure in compliance with § 1786.16(a)(2)(B) of the ICRAA, as
5 described above.

6 176. DEFENDANT's conduct in violation of § 1786.16(a)(2)(B) of the ICRAA was
7 and is willful and/or grossly negligent. DEFENDANT acted in deliberate or reckless disregard
8 of their obligations and the rights of applicants and employees, including PLAINTIFF and class
9 members. DEFENDANT's willful conduct is reflected by, among other things, the following
10 facts:

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

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

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

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

5
6 **TWELFTH CAUSE OF ACTION**

7 **For Failure to Make Proper Disclosures in Violation of the CCRAA**

8 **[Cal. Civ. Code § 1785 *et seq.*]**

9 **(By PLAINTIFF and the CCRAA CLASS and Against All Defendants)**

10 180. PLAINTIFF, and the other members of the CCRAA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

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

15 182. PLAINTIFF and CCRAA Class members are "consumers" within the meaning
16 Section 1785.3(b) of the CCRAA, because they are "natural individuals."

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

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

24 184. Section 1785.20.5(a) of the CCRAA provides, in relevant part:

25 Prior to requesting a consumer credit report for employment purposes, the user
26 of the report shall provide written notice to the person involved. The notice
27 shall inform the person that a report will be used, and ***shall identify the***
28 ***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).

 185. As described above, PLAINTIFF alleges that in evaluating him and other class
members for employment, DEFENDANT procured or caused to be prepared consumer

1 credit reports (e.g. credit reports), as defined by Cal. Civ. Code § 1785.3(c).

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

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

13 188. DEFENDANT'S conduct in violation of § 1785.20.5(a) of the CCRAA was
14 and is willful and/or grossly negligent. DEFENDANT acted in deliberate and reckless
15 disregard of their obligations and the rights of applicants and employees, including
16 PLAINTIFF and class members. DEFENDANT's willful conduct is reflected by, among
17 other things, the following facts:

- 18 (A) DEFENDANT is a large corporation with access to legal advice;
- 19 (B) DEFENDANT required a purported authorization to perform credit
20 checks in the process of employing class members which, although
21 defective, evidences DEFENDANT's awareness of and willful failure
22 to follow the governing laws concerning such authorizations; and,
- 23 (C) The plain language of the statute unambiguously indicate that failure to
24 include the provisions identified above violates the CCRAA's notice
25 requirements, and that the notice must identify the specific basis under
26 subdivision (a) of Section 1024.5 of the Labor Code for use of the
27 credit report and must identify the source of any credit report.

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

190. PLAINTIFF, on behalf of himself and all class members, seeks all available remedies pursuant to Cal. Civ. Code § 1785.31, including statutory damages and/or actual damages, punitive damages, injunctive relief, and attorneys' fees and costs.

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

THIRTEENTH CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFF and Against All Defendants)

192. PLAINTIFF incorporates by reference the allegations set forth in the prior paragraphs as though fully set forth at this point.

193. 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.

1 194. PLAINTIFF, and such persons that may be added from time to time who
2 satisfy the requirements and exhaust the administrative procedures under the Private
3 Attorney General Act, brings this Representative Action on behalf of the State of California
4 with respect to himself and all individuals who worked for DEFENDANT in California and
5 classified as non-exempt employees (the "AGGRIEVED EMPLOYEES") during the time
6 period of February 17, 2019 until a date as determined by the Court (the "PAGA PERIOD").

7 195. On February 17, 2020, PLAINTIFF gave written notice by electronic mail to
8 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
9 employer of the specific provisions of this code alleged to have been violated as required by
10 Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference
11 herein. The statutory waiting period for PLAINTIFF to add these allegations to the
12 Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
13 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
14 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

15 196. The policies, acts and practices heretofore described were and are an unlawful
16 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
17 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
18 properly record and provide legally required meal and rest periods, (c) failed to pay
19 overtime wages, (d) failed to pay minimum wages, (e) failed to pay wages when due and (f)
20 failed to reimburse employees for required expenses, all in violation of the applicable Labor
21 Code sections listed in Labor Code Sections §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510,
22 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, and the applicable Industrial Wage
23 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF
24 hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney
25 General Act of 2004 as the representative of the State of California for the illegal conduct

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

perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,
- D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory damages for minimum wage overtime compensation due PLAINTIFF and the

1 other members of the CALIFORNIA LABOR SUB-CLASS, during the
2 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest
3 thereon at the statutory rate;

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

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

11 E) For liquidated damages pursuant to California Labor Code Sections 1194.2
12 and 1197;

13 F) The wages of all terminated individuals in the CALIFORNIA LABOR
14 SUB-CLASS as a penalty from the due date thereof at the same rate until paid
15 or until an action therefore is commenced, in accordance with Cal. Lab. Code
16 § 203; and,

17 G) The amount of the expenses PLAINTIFF and each member of the
18 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
19 plus interest, and costs of suit; and,

20 3. On behalf of the FCRA CLASS:

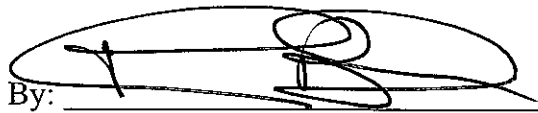
21 A) That the Court certify the Ninth and Tenth Causes of Action asserted by the
22 FCRA CLASS as a Class Action pursuant to Cal. Code of Civ. Proc. § 382;

23 B) A determination and judgment that DEFENDANT willfully violated the 15
24 U.S.C. § 1681(b)(2)(A)(I) and(ii) of the FCRA by improperly including
25 extraneous information in its background check disclosure and authorization
26 form and by obtaining consumer reports on PLAINTIFF and FCRA CLASS
27 Members without having proper authorization to do so;
28

- 1 C) Pursuant to 15 U.S.C. § 1681n(a)(1)(A), an award of statutory damages to
2 PLAINTIFF and the members of the FCRA CLASS in an amount equal to
3 \$1,000 for PLAINTIFF and each FCRA CLASS Member for DEFENDANT's
4 willful violation of the FCRA:
- 5 D) Pursuant to 15 U.S.C. § 1681n(a)(2), an award of punitive damages to
6 PLAINTIFF and other FCRA CLASS Members;
- 7 E) An award for costs of suit and reasonable attorneys' fees pursuant to 15
8 U.S.C. § 1681n(a)(3); and,
- 9 F) Such other and further relief as the Court deems just and equitable.
- 10 4. On behalf of the ICRAA CLASS and CCRAA CLASS:
- 11 A) That the Court certify the Eleventh and Twelfth Causes of Action asserted by
12 the ICRAA CLASS and CCRAA CLASS as a Class Action pursuant to Cal.
13 Code. Of Civ. Proc. § 382;
- 14 B) Statutory penalties;
- 15 C) Civil penalties;
- 16 D) Punitive damages;
- 17 E) Injunctive relief;
- 18 F) Costs of suit;
- 19 G) Interest;
- 20 H) Restitution;
- 21 I) Reasonable attorneys' fees; and,
- 22 J) Such other relief as the Court deems just and proper.
- 23 5. On behalf of the State of California and with respect to all AGGRIEVED
24 EMPLOYEES:
- 25 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
26 General Act of 2004.
- 27 6. On all claims:
- 28

- 1 A) An award of interest, including prejudgment interest at the legal rate;
2 B) Such other and further relief as the Court deems just and equitable; and,
3 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
4 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
5 §2802.
6

7 Dated: September 16, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
8

9
10 By: 

11 Norman B. Blumenthal
12 Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: September 16, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: 

Norman B. Blumenthal
Attorneys for Plaintiff

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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**WRITERS E-MAIL:
Nick@bamlawca.com**

**WRITERS EXT:
1004**

February 17, 2020
CA2007

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

The Scion Group LLC
Certified Mail # 70192280000189178458
Ann Volz
19800 MacArthur Blvd., Suite 300
Irvine, CA 92612

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, and 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 The Scion Group LLC in California and classified as non-exempt employees during the time period of February 17, 2019 until a date as determined by the Court. Our offices represent Plaintiff Norman Respass (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant The Scion Group LLC (“Defendant”). Plaintiff was employed by Defendant in California from February 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 him, 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.

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

NORMAN RESPASS, an individual, on behalf
of himself, and on behalf of all persons
similarly situated,

Plaintiff,

vs.

THE SCION GROUP LLC., a Limited Liability
Company; and DOES 1 through 50, inclusive,

Defendants.

Case No. _____

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 PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
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.*];
- and,
12. VIOLATION OF THE CONSUMER CREDIT REPORTING AGENCIES ACT FOR FAILURE TO OBTAIN PROPER DISCLOSURES [California Civil Code § 1785, *et seq.*].

DEMAND FOR A JURY TRIAL

1 Plaintiff Norman Respass (“PLAINTIFF”), an individual, on behalf of himself and all
2 other similarly situated current and former employees, alleges on information and belief, except
3 for her own acts and knowledge which are based on personal knowledge, the following:

4
5 **THE PARTIES**

6 1. Defendant The Scion Group LLC (“DEFENDANT”) is a limited liability
7 company corporation that at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business throughout the State of California.

9 2. DEFENDANT provides real estate services, such as facility and strategic
10 planning, operations assessments, development consulting and property management to higher
11 education institutions, foundations and private-sector providers of student housing.
12 DEFENDANT specializes in high-end student communities, mixed-use facilities, and urban
13 environments.

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

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

1 5. During the employment application process PLAINTIFF executed the background
2 check disclosure and authorization form permitting DEFENDANT to have a third-party obtain
3 a consumer report, which form included extraneous information, including but not limited to,
4 additional state law notices.

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

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

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

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

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

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

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

11 12 **THE CONDUCT**

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

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

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

22 16. State and federal law provides that employees must be paid overtime at one-and-
23 one-half times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS
24 Members were compensated at an hourly rate plus incentive pay that was tied to specific
25 elements of an employee's performance.

26 17. The second component of PLAINTIFF's and other CALIFORNIA CLASS
27 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
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1 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
2 performance for DEFENDANT, including but not limited to, stipend wages for being on-call
3 for DEFENDANT. The non-discretionary incentive program provided all employees paid on
4 an hourly basis with incentive compensation when the employees met the various performance
5 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
6 overtime to PLAINTIFF and other CALIFORNIA CLASS Members, DEFENDANT failed to
7 include the incentive compensation as part of the employees' "regular rate of pay" for purposes
8 of calculating overtime pay. Management and supervisors described the incentive program to
9 potential and new employees as part of the compensation package. As a matter of law, the
10 incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS Members
11 must be included in the "regular rate of pay." The failure to do so has resulted in an
12 underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA CLASS
13 Members by DEFENDANT.

14 18. In addition, when DEFENDANT required PLAINTIFF and other CALIFORNIA
15 CLASS Members to report to the work site to perform on-call tasks and engage in additional
16 work this resulted in a second reporting for work in a single workday. In such a circumstance
17 of a second reporting for work in a single workday, DEFENDANT failed to pay these
18 employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040. Subdivision 5(B)
19 states: "If an employee is required to report for work a second time in any one workday and is
20 furnished less than two (2) hours of work on the second reporting, said employee shall be paid
21 for two (2) hours at the employee's regular rate of pay, which shall not be less than the minimum
22 wage." Cal. Code Regs., tit. 8, § 11040, subd. 5(B).

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

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

17 21. As a result of their rigorous work schedules, PLAINTIFF and other
18 CALIFORNIA CLASS Members were also from time to time unable to take rest breaks.
19 During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS
20 Members were also required to work in excess of four (4) hours without being provided ten (10)
21 minute rest periods. Further, these employees were denied their first rest periods of at least ten
22 (10) minutes for every shift worked of at least two (2) to four (4) hours, a first and second rest
23 period of at least ten (10) minutes for every shift worked of between six (6) and eight (8) hours,
24 and a first, second and third rest period of at least ten (10) minutes for every shift worked of ten
25 (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members
26 were also not provided with one hour wages in lieu thereof. As a result of their rigorous work
27 schedules, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time
28

1 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.
2 Additionally, the applicable California Wage Order requires employers to provide employees
3 with off-duty rest periods, which the California Supreme Court defined as time during which
4 an employee is relieved from all work related duties and free from employer control. In so
5 doing, the Court held that the requirement under California law that employers authorize and
6 permit all employees to take rest period means that employers must relieve employees of all
7 duties and relinquish control over how employees spend their time which includes control over
8 the locations where employees may take their rest period. Employers cannot impose controls
9 that prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
10 DEFENDANT's uniform policy restricted PLAINTIFF and other CALIFORNIA CLASS
11 Members from unconstrained walks and was unlawful based on Defendant's rule which stated
12 PLAINTIFF and other CALIFORNIA CLASS Members could not leave the work premises
13 during their rest period.

14 22. DEFENDANT intentionally and knowingly failed to reimburse and indemnify the
15 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
16 incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence
17 of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
18 2802, employers are required to indemnify employees for all expenses incurred in the course
19 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
20 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
21 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
22 directions of the employer, even though unlawful, unless the employee, at the time of obeying
23 the directions, believed them to be unlawful."

24 23. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
25 Members as a business expense, were required by DEFENDANT to use their own personal
26 cellular phones as a result of and in furtherance of their job duties as employees for
27 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
28

1 associated with the use of their personal cellular phones for DEFENDANT's benefit.
2 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
3 DEFENDANT to use their personal cell phones for work related issues. As a result, in the
4 course of their employment with DEFENDANT, PLAINTIFF and other members of the
5 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
6 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
7 benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members
8 were required to use their personal cellular phones in order to communicate with
9 DEFENDANT.

10 24. PLAINTIFF sought employment with DEFENDANT in February of 2019. In
11 connection with his employment application, PLAINTIFF completed DEFENDANT's standard
12 application materials. These application materials included a background check disclosure and
13 authorization form and included on the form was extraneous information as described herein.
14 Following his submission of the employment application materials, DEFENDANT's third party
15 conducted a background check on PLAINTIFF and PLAINTIFF was hired to work for
16 DEFENDANT. PLAINTIFF only discovered DEFENDANT's violations when he obtained and
17 reviewed his personnel file from DEFENDANT and discovered that DEFENDANT had
18 procured and/or caused to be procured a consumer report regarding him for employment
19 purposes based on the illegal disclosure and authorization form. PLAINTIFF was not aware
20 and was confused that the form he was signing authorized the credit check as it contained the
21 additional state law notices amongst other language. PLAINTIFF would not have signed
22 DEFENDANT's disclosure and authorization form had it contained a sufficiently clear
23 disclosure, as required in the statute.

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

27 26. The inclusion of the extraneous information in the background check disclosure
28

1 and authorization form violates the FCRA, 15 U.S.C. § 1681, *et seq.*, ICRAA, Cal. Civ. Code
2 § 1786, *et seq.*, and CCRAA, Cal. Civ. Code § 1785, *et seq.*

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

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

11 15 U.S.C. §§ 1681b(b)(2)(A)(I)-(ii) (emphasis added).

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

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

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

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

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

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

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

26 (vi) ***Notifies the consumer of the Internet Web site address of the***
27 ***investigative consumer reporting agency*** identifies in clause (iv), or, ***if***
28 ***the agency has no Internet Web site address, the telephone number of***
the agency, where the consumer may find information about the
investigative reporting agency's privacy practices, including whether the
consumer's personal information will be sent 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.

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

30 29. Under the CCRAA, it is unlawful to procure a consumer report or cause a

1 consumer report to be procured for employment purposes, unless:

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

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

6 30. After PLAINTIFF executed the background check disclosure and authorization
7 form in February 2019, DEFENDANT obtained a consumer report on PLAINTIFF
8 notwithstanding the fact that the background check disclosure and authorization form was
9 invalid under the requirements of the FCRA, ICRAA, and CCRAA.

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

18 32. By including additional state law notices extraneous information in its background
19 check disclosure and authorization form, DEFENDANT willfully disregarded the FTC's
20 regulatory guidance and violated 15 U.S.C. §§ 1681b(b)(2)(A), as well Cal. Civ. Code §
21 1786.16(a)(2) and Cal. Civ. Code § 1785.20.5(a).

22 33. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
23 employees with an accurate itemized wage statement in writing showing, among other things,
24 gross wages earned and all applicable hourly rates in effect during the pay period and the
25 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT
26 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct
27 net and gross wages earned. Aside from the violations listed above, DEFENDANT failed to
28

1 issue to PLAINTIFF an itemized wage statement that lists all the requirements under California
2 Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and
3 the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
4 Code § 226.

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

20 **JURISDICTION AND VENUE**

21 35. This Court has jurisdiction over this Action pursuant to California Code of Civil
22 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
23 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees
24 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382. The Court has Jurisdiction under
25 the FCRA. (15 U.S.C. §§ 1681n, 1681p.)

26 36. Venue is proper in this Court pursuant to California Code of Civil Procedure,
27 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
28

1 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
2 in this County and/or conducts substantial business in this County, and (ii) committed the
3 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

4
5 **THE CALIFORNIA CLASS**

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

15 38. To the extent equitable tolling operates to toll claims by the CALIFORNIA
16 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
17 accordingly.

18 39. The California Legislature has commanded that "all wages... ..earned by any
19 person in any employment are due and payable twice during each calendar month, on days
20 designated in advance by the employer as the regular paydays", and further that "[a]ny work
21 in excess of eight hours in one workday and any work in excess of 40 hours in any one
22 workweek . . . shall be compensated at the rate of no less than one and one-half times the
23 regular rate of pay for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare
24 Commission (IWC), however, is statutorily authorized to "establish exemptions from the
25 requirement that an overtime rate of compensation be paid... ..for executive, administrative, and
26 professional employees, provided [inter alia] that the employee is primarily engaged in duties
27 that meet the test of the exemption, [and] customarily and regularly exercises discretion and
28 independent judgment in performing those duties..." (Lab. Code § 510(a).) Neither

1 PLAINTIFF nor the other members of the CALIFORNIA CLASS and/or the CALIFORNIA
2 LABOR SUB-CLASS qualify for exemption from the above requirements.

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

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

15 42. 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
19 place company policies, practices and procedures that failed to pay all
20 minimum and overtime wages due the CALIFORNIA CLASS for all time
21 worked;
- 22 (b) Committing an act of unfair competition in violation of the California
23 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
24 unlawfully, unfairly, and/or deceptively having in place a company policy,
25 practice and procedure that failed to correctly compensation due to
26 PLAINTIFF and the members of the CALIFORNIA CLASS;
- 27 (c) Committing an act of unfair competition in violation of the California
28

1 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
2 failing to provide mandatory meal and rest breaks to PLAINTIFF and the
3 CALIFORNIA CLASS members;

4 (d) Committing an act of unfair competition in violation of the California
5 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
6 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
7 the CALIFORNIA CLASS members with necessary expenses incurred in
8 the discharge of their job duties; and,

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

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

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

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

23 (c) The claims of the representative PLAINTIFF are typical of the claims of
24 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
25 other members of the CALIFORNIA CLASS, was a non-exempt
26 employee paid on an hourly basis who was subjected to the
27 DEFENDANT's practice and policy which failed to pay the correct rate
28

1 of overtime wages due to the CALIFORNIA CLASS for all overtime
2 worked by the CALIFORNIA CLASS and thereby systematically
3 underpaid overtime compensation to the CALIFORNIA CLASS.
4 PLAINTIFF sustained economic injury as a result of DEFENDANT's
5 employment practices. PLAINTIFF and the members of the
6 CALIFORNIA 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 PLAINTIFF will fairly and adequately represent and
10 protect the interest of the CALIFORNIA CLASS, and has retained
11 counsel who are competent and experienced in Class Action litigation.
12 There are no material conflicts between the claims of the representative
13 PLAINTIFF and the members of the CALIFORNIA CLASS that would
14 make class certification inappropriate. Counsel for the CALIFORNIA
15 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
16 Members.

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

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

- 23 1) Inconsistent or varying adjudications with respect to individual
24 members of the CALIFORNIA CLASS which would establish
25 incompatible standards of conduct for the parties opposing the
26 CALIFORNIA CLASS; and/or,
27 2) Adjudication with respect to individual members of the
28

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

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

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA 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 CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be

1 avoided to recover the relatively small amount of economic losses
2 sustained by the individual CALIFORNIA CLASS Members when
3 compared to the substantial expense and burden of individual
4 prosecution of this litigation;

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

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

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

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

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

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

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

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

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

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

14
15 **THE CALIFORNIA LABOR SUB-CLASS**

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

24 48. DEFENDANT, as a matter of company policy, practice and procedure, and in
25 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
26 requirements, and the applicable provisions of California law, intentionally, knowingly, and
27 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate overtime
28

1 compensation for the overtime worked by PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this
3 work, required employees to perform this work and permitted or suffered to permit this
4 overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
5 CLASS Members overtime wages at the correct amount to which these employees are entitled
6 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
7 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
8 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

- 18 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
19 overtime compensation to members of the CALIFORNIA LABOR SUB-
20 CLASS in violation of the California Labor Code and California
21 regulations and the applicable California Wage Order;
 - 22 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS were
23 entitled to overtime compensation for overtime worked under the overtime
24 pay requirements of California law;
 - 25 (c) Whether DEFENDANT failed to accurately record the applicable
26 overtime rates for all overtime worked by PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS;
- 28

- (d) Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- (e) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- (f) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- (g) Whether DEFENDANT's conduct was willful.

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

- (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate and applicable overtime rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee;
- (d) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner

1 required by California law to the members of the CALIFORNIA LABOR
2 SUB-CLASS who have terminated their employment; and,

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

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

- 8 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
9 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
10 Members is impracticable and the disposition of their claims as a class
11 will benefit the parties and the Court;
- 12 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
13 that are raised in this Complaint are common to the CALIFORNIA
14 LABOR SUB-CLASS and will apply uniformly to every member of the
15 CALIFORNIA LABOR SUB-CLASS;
- 16 (c) The claims of the representative PLAINTIFF are typical of the claims of
17 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
18 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
19 was a non-exempt employee who was subjected to DEFENDANT's
20 practice and policy which failed to pay the correct rate of overtime wages
21 due to the CALIFORNIA LABOR SUB-CLASS for all overtime worked.
22 PLAINTIFF sustained economic injury as a result of DEFENDANT's
23 employment practices. PLAINTIFF and the members of the
24 CALIFORNIA LABOR SUB-CLASS were and are similarly or
25 identically harmed by the same unlawful, deceptive, unfair and pervasive
26 pattern of misconduct engaged in by DEFENDANT; and,
- 27 (d) The representative PLAINTIFF will fairly and adequately represent and
28

1 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
2 retained counsel who are competent and experienced in Class Action
3 litigation. There are no material conflicts between the claims of the
4 representative PLAINTIFF and the members of the CALIFORNIA
5 LABOR SUB-CLASS that would make class certification inappropriate.
6 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
7 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

10 (a) Without class certification and determination of declaratory, injunctive,
11 statutory and other legal questions within the class format, prosecution of
12 separate actions by individual members of the CALIFORNIA LABOR
13 SUB-CLASS will create the risk of:

14 1) Inconsistent or varying adjudications with respect to individual
15 members of the CALIFORNIA LABOR SUB-CLASS which
16 would establish incompatible standards of conduct for the parties
17 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

23 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
24 or refused to act on grounds generally applicable to the CALIFORNIA
25 LABOR SUB-CLASS, making appropriate class-wide relief with respect
26 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
27 DEFENDANT uniformly failed to pay all wages due. Including the
28

1 correct overtime rate, for all overtime worked by the members of the
2 CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

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

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

23 B. Adjudications with respect to individual members of the
24 CALIFORNIA LABOR SUB-CLASS would as a practical
25 matter be dispositive of the interests of the other members
26 not parties to the adjudication or substantially impair or
27 impede their ability to protect their interests;
28

- 1 3) In the context of wage litigation because a substantial number of
2 individual CALIFORNIA LABOR SUB-CLASS Members will
3 avoid asserting their legal rights out of fear of retaliation by
4 DEFENDANT, which may adversely affect an individual's job
5 with DEFENDANT or with a subsequent employer, the Class
6 Action is the only means to assert their claims through a
7 representative; and,
- 8 4) A class action is superior to other available methods for the fair
9 and efficient adjudication of this litigation because class treatment
10 will obviate the need for unduly and unnecessary duplicative
11 litigation that is likely to result in the absence of certification of
12 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- 15 (a) The questions of law and fact common to the CALIFORNIA LABOR
16 SUB-CLASS predominate over any question affecting only individual
17 CALIFORNIA LABOR SUB-CLASS Members;
- 18 (b) A Class Action is superior to any other available method for the fair and
19 efficient adjudication of the claims of the members of the CALIFORNIA
20 LABOR SUB-CLASS because in the context of employment litigation a
21 substantial number of individual CALIFORNIA LABOR SUB-CLASS
22 Members will avoid asserting their rights individually out of fear of
23 retaliation or adverse impact on their employment;
- 24 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
25 numerous that it is impractical to bring all members of the CALIFORNIA
26 LABOR SUB-CLASS before the Court;
- 27 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
28

Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;

- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

THE FCRA CLASS ALLEGATIONS

56. PLAINTIFF brings the Ninth and Tenth Causes of Action pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a nationwide Class, defined as all employees or prospective

1 employees of DEFENDANT in the United States who executed DEFENDANT's standard
2 background check disclosure and authorization form (the "FCRA CLASS") at any time during
3 the period beginning on the date five (5) years prior to the filing of this Complaint and ending
4 on the date as determined by the Court (the "FCRA CLASS PERIOD"). The amount in
5 controversy for the aggregate claim of FCRA CLASS Members is under five million dollars
6 (\$5,000,000.00). To the extent equitable tolling operates to toll claims by the FCRA CLASS
7 against DEFENDANT, the FCRA CLASS PERIOD should be adjusted accordingly.

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

13 58. The FCRA CLASS is so numerous that joinder of all FCRA CLASS Members
14 is impracticable.

15 59. DEFENDANT uniformly violated the rights of the FCRA CLASS by:

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

21 60. Common questions of law and fact exist as to members of the FCRA CLASS,
22 including, but not limited, to the following:

- 23 (a) Whether DEFENDANT required the FCRA CLASS Members to sign a
24 background check disclosure and authorization form;
25 (b) Whether DEFENDANT's background check disclosure and authorization
26 form complies with the Fair Credit Reporting Act 15 U.S.C. § 1681, *et*
27 *seq.* ("FCRA");
28

- (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.

61. 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 PLAINTIFF are typical of the claims of each member of the FCRA CLASS. PLAINTIFF, like all the other members of the FCRA CLASS, had a credit report obtained on her behalf by DEFENDANT prior to obtaining valid authorization to do so in violation of the FCRA as described herein. PLAINTIFF 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 PLAINTIFF will fairly and adequately represent and protect the interest of the FCRA CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no

1 material conflicts between the claims of the representative PLAINTIFF
2 and the members of the FCRA CLASS that would make class certification
3 inappropriate. Counsel for the FCRA CLASS will vigorously assert the
4 claims of all employees in the FCRA CLASS.

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

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

11 1) Inconsistent or varying adjudications with respect to individual
12 members of the FCRA CLASS which would establish
13 incompatible standards of conduct for the parties opposing the
14 FCRA CLASS; and/or,

15 2) Adjudication with respect to individual members of the FCRA
16 CLASS which would as a practical matter be dispositive of
17 interests of the other members not party to the adjudication or
18 substantially impair or impede their ability to protect their interests.

19 (b) The parties opposing the FCRA CLASS have acted or refused to act on
20 grounds generally applicable to the FCRA CLASS, making appropriate
21 class-wide relief 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
23 CLASS, with respect to the practices and violations of the FCRA as listed
24 above, and predominate over any question affecting only individual FCRA
25 CLASS Members, and a Class Action is superior to other available
26 methods for the fair and efficient adjudication of the controversy,
27 including consideration of:
28

- 1) The interests of the members of the FCRA 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 FCRA 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:
 - A. Inconsistent or varying adjudications with respect to individual members of the FCRA CLASS, which would establish incompatible standards of conduct for DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the FCRA 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 employment litigation because as a practical matter a substantial number of individual FCRA 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

1 will obviate the need for unduly and unnecessary duplicative
2 litigation that is likely to result in the absence of certification of
3 this Action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the FCRA CLASS, thereby making final class-wide relief appropriate with respect to the FCRA CLASS as a whole;
- (h) The members of the FCRA CLASS are readily ascertainable from the business records of DEFENDANT. The FCRA CLASS consists of all employees or 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.

64. 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. PLAINTIFF 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

65. PLAINTIFF brings 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 and authorization 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

1 million dollars (\$5,000,000.00).

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

7 67. The ICRAA CLASS is so numerous that joinder of all ICRAA CLASS Members
8 is impracticable.

9 68. DEFENDANT uniformly violated the rights of the ICRAA CLASS by:

10 (a) Violating Investigative Consumer Reporting Agencies Act Cal. Civ. Code
11 § 1786, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
12 company policies, practices and procedures that uniformly obtained credit
13 reports on without first obtaining valid authorization consent form.

14 69. Common questions of law and fact exist as to members of the ICRAA CLASS,
15 including, but not limited, to the following:

- 16 (a) Whether DEFENDANT required the ICRAA CLASS Members to sign a
17 background check disclosure and authorization form;
18 (b) Whether DEFENDANT's background check disclosure and authorization
19 form complies with the Investigative Consumer Reporting Agencies Act
20 Cal. Civ. Code § 1786, *et seq.*;
21 (c) Whether DEFENDANT violated the ICRAA by including extraneous
22 information in its background check disclosure and authorization form;
23 (d) Whether DEFENDANT violated the ICRAA by procuring consumer
24 report information based on invalid authorizations;
25 (e) Whether DEFENDANT's violations of the ICRAA were willful;
26 (f) The proper measure of statutory damages and punitive damages; and,
27 (g) The proper form of injunctive and declaratory relief.
- 28

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

- 3 (a) The persons who comprise the ICRAA CLASS are so numerous that the
4 joinder of all such persons is impracticable and the disposition of their
5 claims as a class will benefit the parties and the Court;
- 6 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are
7 raised in this Complaint are common to the ICRAA CLASS will apply
8 uniformly to every member of the ICRAA CLASS;
- 9 (c) The claims of the representative PLAINTIFF are typical of the claims of
10 each member of the ICRAA CLASS. PLAINTIFF, like all the other
11 members of the ICRAA CLASS, had a credit report and background
12 check obtained on PLAINTIFF's behalf by DEFENDANT prior to
13 obtaining valid authorization to do so in violation of the ICRAA as
14 described herein. PLAINTIFF and the members of the ICRAA CLASS
15 were and are similarly or identically harmed by the same unlawful,
16 deceptive, unfair and pervasive pattern of misconduct engaged in by
17 DEFENDANT; and,
- 18 (d) The representative PLAINTIFF will fairly and adequately represent and
19 protect the interest of the ICRAA CLASS, and has retained counsel who
20 are competent and experienced in Class Action litigation. There are no
21 material conflicts between the claims of the representative PLAINTIFF
22 and the members of the ICRAA CLASS that would make class
23 certification inappropriate. Counsel for the ICRAA CLASS will
24 vigorously assert the claims of all ICRAA CLASS members.

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

- 27 (a) Without class certification and determination of declaratory, statutory and
28

1 other legal questions within the class format, prosecution of separate
2 actions by individual members of the ICRAA CLASS will create the risk
3 of:

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

8 2) Adjudication with respect to individual members of the ICRAA
9 CLASS which would as a practical matter be dispositive of
10 interests of the other members not party to the adjudication or
11 substantially impair or impede their ability to protect their interests.

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

15 (c) Common questions of law and fact exist as to the members of the ICRAA
16 CLASS, with respect to the practices and violations of the ICRAA as
17 listed above, and predominate over any question affecting only individual
18 ICRAA CLASS Members, and a Class Action is superior to other
19 available methods for the fair and efficient adjudication of the
20 controversy, including consideration of:

21 1) The interests of the members of the ICRAA CLASS in individually
22 controlling the prosecution or defense of separate actions in that
23 the substantial expense of individual actions will be avoided to
24 recover the relatively small amount of economic losses sustained
25 by the individual ICRAA CLASS Members when compared to the
26 substantial expense and burden of individual prosecution of this
27 litigation;

- 1 2) Class certification will obviate the need for unduly duplicative
2 litigation that would create the risk of:
- 3 A. Inconsistent or varying adjudications with respect to
4 individual members of the ICRAA CLASS, which would
5 establish incompatible standards of conduct for
6 DEFENDANT; and/or,
- 7 B. Adjudications with respect to individual members of the
8 ICRAA CLASS would as a practical matter be dispositive
9 of the interests of the other members not parties to the
10 adjudication or substantially impair or impede their ability
11 to protect their interests;
- 12 3) In the context of employment litigation because as a practical
13 matter a substantial number of individual ICRAA CLASS
14 Members will avoid asserting their legal rights out of fear of
15 retaliation by DEFENDANT, which may adversely affect an
16 individual's job with DEFENDANT or with a subsequent
17 employer, the Class Action is the only means to assert their claims
18 through a representative; and,
- 19 4) A Class Action is superior to other available methods for the fair
20 and efficient adjudication of this litigation because class treatment
21 will obviate the need for unduly and unnecessary duplicative
22 litigation that is likely to result in the absence of certification of
23 this Action pursuant to Cal. Code of Civ. Proc. § 382.

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

- 26 (a) The questions of law and fact common to the ICRAA CLASS
27 predominate over any question affecting only individual ICRAA CLASS
28

Members because DEFENDANT's employment practices were uniform and systematically applied with respect to the ICRAA 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 ICRAA CLASS because in the context of employment litigation a substantial number of individual ICRAA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

(c) The members of the ICRAA CLASS are so numerous that it is impractical to bring all members of the ICRAA CLASS before the Court;

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

(e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of statutory violations and other improprieties, and in obtaining adequate compensation for the injuries which DEFENDANT's actions have inflicted upon the ICRAA CLASS;

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

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

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

(i) Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all ICRAA claims

1 arising out of the conduct of DEFENDANT as to the members of the
2 ICRAA CLASS.

3
4 **THE CCRAA CLASS**

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

15 74. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
16 violation of the Consumer Credit Reporting Agencies Act Cal. Civ. Code § 1785, *et seq.*,
17 intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT uniformly,
18 unfairly, unlawfully, and deceptively instituted a practice of obtaining consumer reports without
19 valid authorization to do so.

20 75. The CCRAA CLASS is so numerous that joinder of all CCRAA CLASS
21 Members is impracticable.

22 76. DEFENDANT uniformly violated the rights of the CCRAA CLASS by:

- 23 (a) Violating the Consumer Credit Reporting Agencies Act Cal. Civ. Code §
24 1785, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
25 company policies, practices and procedures that uniformly obtained credit
26 reports on without first obtaining valid authorization consent form.

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

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

78. 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 CCRAA 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 CCRAA CLASS will apply uniformly to every member of the CCRAA CLASS;
- (c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CCRAA CLASS. PLAINTIFF, like all the other members of the CCRAA CLASS, had a credit report and background check obtained on PLAINTIFF's behalf by DEFENDANT prior to obtaining valid authorization to do so in violation of the CCRAA as described herein. PLAINTIFF and the members of the CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair

1 and pervasive pattern of misconduct engaged in by DEFENDANT; and,
2 (d) The representative PLAINTIFF will fairly and adequately represent and
3 protect the interest of the CCRAA CLASS, and has retained counsel who
4 are competent and experienced in Class Action litigation. There are no
5 material conflicts between the claims of the representative PLAINTIFF
6 and the members of the CCRAA CLASS that would make class
7 certification inappropriate. Counsel for the CCRAA CLASS will
8 vigorously assert the claims of all CCRAA CLASS members.

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

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

15 1) Inconsistent or varying adjudications with respect to individual
16 members of the CCRAA CLASS which would establish
17 incompatible standards of conduct for the parties opposing the
18 CCRAA CLASS; and/or,

19 2) Adjudication with respect to individual members of the CCRAA
20 CLASS which would as a practical matter be dispositive of
21 interests of the other members not party to the adjudication or
22 substantially impair or impede their ability to protect their interests.

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

26 (c) Common questions of law and fact exist as to the members of the CCRAA
27 CLASS, with respect to the practices and violations of the CCRAA as
28

1 listed above, and predominate over any question affecting only individual
2 CCRAA CLASS Members, and a Class Action is superior to other
3 available methods for the fair and efficient adjudication of the
4 controversy, including consideration of:

5 1) The interests of the members of the CCRAA CLASS in
6 individually controlling the prosecution or defense of separate
7 actions in that the substantial expense of individual actions will be
8 avoided to recover the relatively small amount of economic losses
9 sustained by the individual CCRAA CLASS Members when
10 compared to the substantial expense and burden of individual
11 prosecution of this litigation;

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

14 A. Inconsistent or varying adjudications with respect to
15 individual members of the CCRAA CLASS, which would
16 establish incompatible standards of conduct for
17 DEFENDANT; and/or,

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

23 3) In the context of employment litigation because as a practical
24 matter a substantial number of individual CCRAA CLASS
25 Members will avoid asserting their legal rights out of fear of
26 retaliation by DEFENDANT, which may adversely affect an
27 individual's job with DEFENDANT or with a subsequent
28

1 employer, the Class Action is the only means to assert their claims
2 through a representative; and,

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

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

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

1 DEFENDANT's actions have inflicted upon the CCRAA 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
4 the CCRAA CLASS for the injuries sustained;
- 5 (g) DEFENDANT has acted or refused to act on grounds generally applicable
6 to the CCRAA CLASS, thereby making final class-wide relief appropriate
7 with respect to the CCRAA CLASS as a whole;
- 8 (h) The members of the CCRAA CLASS are readily ascertainable from the
9 business records of DEFENDANT; and,
- 10 (i) Class treatment provides manageable judicial treatment calculated to bring
11 an efficient and rapid conclusion to all litigation of all CCRAA claims
12 arising out of the conduct of DEFENDANT as to the members of the
13 CCRAA CLASS.

14 **FIRST CAUSE OF ACTION**

15 **For Unlawful Business Practices**

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

17 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

18 81. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
19 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
20 Complaint.

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

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

27 Any person who engages, has engaged, or proposes to engage in unfair
28

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

7 Cal. Bus. & Prof. Code § 17203.

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

18 85. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
19 unfair in that these practices violated public policy, were immoral, unethical, oppressive,
20 unscrupulous or substantially injurious to employees, and were without valid justification or
21 utility for which this Court should issue equitable and injunctive relief pursuant to Section
22 17203 of the California Business & Professions Code, including restitution of wages wrongfully
23 withheld.

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

1 87. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
2 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
3 other members of the CALIFORNIA CLASS to be underpaid during their employment with
4 DEFENDANT.

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

9 89. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
10 CALIFORNIA CLASS Member, overtime wages and one (1) hour of pay for each workday in
11 which an off-duty meal period was not timely provided for each five (5) hours of work, and/or
12 one (1) hour of pay for each workday in which a second off-duty meal period was not timely
13 provided for each ten (10) hours of work.

14 90. PLAINTIFF further demands on behalf of herself and each member of the
15 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
16 duty paid rest period was not timely provided as required by law.

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

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

1 93. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
2 and do, seek such relief as may be necessary to restore to them the money and property which
3 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
4 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
5 unfair business practices, including earned but unpaid wages for all overtime worked.

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

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

17
18 **SECOND CAUSE OF ACTION**

19 **For Failure To Pay Minimum Wages**

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

21 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

22 **and Against All Defendants)**

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

26 97. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
27 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
28

1 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
2 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA LABOR SUB-
3 CLASS Members.

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

6 99. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
7 commission is the minimum wage to be paid to employees, and the payment of a less wage than
8 the minimum so fixed is unlawful.

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

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

16 102. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
17 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
18 result of implementing a uniform policy and practice that denies accurate compensation to
19 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
20 minimum wage pay.

21 103. In committing these violations of the California Labor Code, DEFENDANT
22 inaccurately calculated the correct time worked and consequently underpaid the actual time
23 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
24 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
25 benefits in violation of the California Labor Code, the Industrial Welfare Commission
26 requirements and other applicable laws and regulations.

27 104. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
28

1 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
2 receive the correct minimum wage compensation for their time worked for DEFENDANT.

3 105. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
4 required, permitted or suffered PLAINTIFF and LABOR SUB-CLASS members to work
5 without paying them for all the time they were under DEFENDANT'S control. PLAINTIFF
6 and the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time
7 worked that they were entitled to, constituting a failure to pay all earned wages.

8 106. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
9 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
10 CLASS for the true time they worked, PLAINTIFF and the other members of the
11 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
12 injury in amounts which are presently unknown to them and which will be ascertained
13 according to proof at trial.

14 107. DEFENDANT knew or should have known that PLAINTIFF and the other
15 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
16 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
17 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
18 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
19 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
20 correct minimum wages for their time worked.

21 108. In performing the acts and practices herein alleged in violation of California labor
22 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
23 all time worked and provide them with the requisite compensation, DEFENDANT acted and
24 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for
26 their legal rights, or the consequences to them, and with the despicable intent of depriving them
27 of their property and legal rights, and otherwise causing them injury in order to increase
28

1 company profits at the expense of these employees.

2 109. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
3 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
4 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
5 by the California Labor Code and/or other applicable statutes. DEFENDANT's conduct as
6 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
7 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

8
9 **THIRD CAUSE OF ACTION**

10 **For Failure To Pay Overtime Compensation**

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

12 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
13 **Defendants)**

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

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

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

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

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

8 115. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
9 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
10 amount of overtime they worked. As set forth herein, DEFENDANT's uniform policy and
11 practice was to unlawfully and intentionally deny timely payment of wages due for the overtime
12 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
13 and DEFENDANT in fact failed to pay these employees the correct applicable overtime wages
14 for all overtime worked.

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

21 117. In committing these violations of the California Labor Code, DEFENDANT
22 inaccurately calculated the applicable overtime rates and consequently underpaid the actual time
23 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
24 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
25 benefits in violation of the California Labor Code, the Industrial Welfare Commission
26 requirements and other applicable laws and regulations.

27 118. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
28

1 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
2 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked
3 including overtime work.

4 119. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
5 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
6 receive full compensation for all overtime worked.

7 120. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
8 from the overtime requirements of the law. None of these exemptions are applicable to
9 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
11 to a valid collective bargaining agreement that would preclude the causes of action contained
12 herein this Complaint. Rather, PLAINTIFF bring this Action on behalf of herself and the
13 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
14 non-waiveable rights provided by the State of California.

15 121. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
16 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
17 they were entitled to, constituting a failure to pay all earned wages.

18 122. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
19 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
20 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
21 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
22 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
23 to accurately record and pay using the applicable overtime rate as evidenced by
24 DEFENDANT's business records and witnessed by employees.

25 123. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
26 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
27 CLASS for the true time they worked, PLAINTIFF and the other members of the
28

1 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
2 injury in amounts which are presently unknown to them and which will be ascertained
3 according to proof at trial.

4 124. DEFENDANT knew or should have known that PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
6 overtime worked. DEFENDANT systematically elected, either through intentional malfeasance
7 or gross nonfeasance, to not pay employees for their labor as a matter of uniform company
8 policy, practice and procedure, and DEFENDANT perpetrated this systematic scheme by
9 refusing to pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
10 CLASS the applicable overtime rate.

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

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

1 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF
2 and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
3 statutory costs.

4
5 **FOURTH CAUSE OF ACTION**

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

7 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

13 128. During the CALIFORNIA LABOR SUB-CLASS PERIOD, from time to time
14 DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF
15 and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable
16 Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and
17 CALIFORNIA LABOR SUB-CLASS MEMBERS does not prevent these employees from
18 being relieved of all of their duties for the legally required off-duty meal periods. As a result
19 of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
20 Members were from time to time not fully relieved of duty by DEFENDANT for their meal
21 periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
22 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour
23 of work is evidenced by DEFENDANT's business records. Further, DEFENDANT failed to
24 provide PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members with a second off-
25 duty meal period in some workdays in which these employees were required by DEFENDANT
26 to work ten (10) hours of work from time to time. As a result, PLAINTIFF and other members
27 of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
28

1 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

2 129. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable
3 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
4 CLASS Members who were not provided a meal period, in accordance with the applicable
5 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
6 each workday that a meal period was not provided.

7 130. As a proximate result of the aforementioned violations, PLAINTIFF and
8 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
9 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
10 suit.

11
12 **FIFTH CAUSE OF ACTION**

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

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

15 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
16 **Defendants)**

17 131. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
18 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
19 of this Complaint.

20 132. From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
21 Members were required to work in excess of four (4) hours without being provided ten (10)
22 minute rest periods. Further, from time to time these employees were denied their first rest
23 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours,
24 a first and second rest period of at least ten (10) minutes for some shifts worked of between six
25 (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
26 some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR
27 SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result
28

1 of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
2 Members were periodically denied their proper rest periods by DEFENDANT and
3 DEFENDANT's managers.

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

9 134. As a proximate result of the aforementioned violations, PLAINTIFF and
10 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
11 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
12 suit.

13 14 **SIXTH CAUSE OF ACTION**

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

16 **[Cal. Lab. Code § 226]**

17 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
18 **Defendants)**

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

22 136. Cal. Labor Code § 226 provides that an employer must furnish employees with
23 an "accurate itemized" statement in writing showing:

24 (1) gross wages earned,

25 (2) total hours worked by the employee, except for any employee whose compensation
26 is solely based on a salary and who is exempt from payment of overtime under
27 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
28

1 Commission,

2 (3) the number of piecerate units earned and any applicable piece rate if the employee
3 is paid on a piece-rate basis,

4 (4) all deductions, provided that all deductions made on written orders of the employee
5 may be aggregated and shown as one item,

6 (5) net wages earned,

7 (6) the inclusive dates of the period for which the employee is paid,

8 (7) the name of the employee and his or her social security number, except that by
9 January 1, 2008, only the last four digits of his or her social security number or an
10 employee identification number other than a social security number may be shown on
11 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
14 number of hours worked at each hourly rate by the employee.

15 137. From time to time, DEFENDANT violated Cal. Lab. Code § 226 in that
16 DEFENDANT failed to provide an accurate wage statement in writing that properly and
17 accurately itemized gross and net wages earned, the effective rates of overtime, and premiums
18 paid for missed meal and rest breaks, and gross wages earned and total hours worked by
19 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and thereby
20 also failed to set forth the correct overtime wages earned by the employees. Aside, from the
21 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
22 itemized wage statement that accurately lists all the requirements under California Labor Code
23 226 *et seq.*

24 138. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
25 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
26 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended
27 calculating the correct rates for the overtime worked and the amount of employment taxes
28

1 which were not properly paid to state and federal tax authorities. These damages are difficult
2 to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR
3 SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial
4 pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation
5 in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof
6 at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF
7 and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

8
9 **SEVENTH CAUSE OF ACTION**

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

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

12 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
13 **Defendants)**

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

17 140. Cal. Lab. Code § 200 states that:

18 As used in this article:

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

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

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

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

If an employee not having a written contract for a definite period quits his
or her employment, his or her wages shall become due and payable not
later than 72 hours thereafter, unless the employee has given 72 hours

1 previous notice of his or her intention to quit, in which case the employee
2 is entitled to his or her wages at the time of quitting. Notwithstanding any
3 other provision of law, an employee who quits without providing a 72-
4 hour notice shall be entitled to receive payment by mail if he or she so
requests and designates a mailing address. The date of the mailing shall
constitute the date of payment for purposes of the requirement to provide
payment within 72 hours of the notice of quitting.

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

7 144. 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 who is discharged or who quits, the wages of the employee shall
10 continue as a penalty from the due date thereof at the same rate until paid
or until an action therefor is commenced; but the wages shall not continue
for more than 30 days.

11 145. When PLAINTIFF left employment with DEFENDANT, DEFENDANT
12 still owed PLAINTIFF wages for work performed because PLAINTIFF was not
13 compensated correctly for her overtime worked and meal and rest breaks missed. To
14 date, DEFENDANT has not paid PLAINTIFF these wages still owed to her. As such,
15 DEFENDANT has not fully paid PLAINTIFF all wages still owed to her or any penalty
16 wages that are now owed to her under California Labor Code § 203.

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

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

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

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

149. Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her 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.

150. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT’s benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell phones to respond to work related issues. DEFENDANT’s policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT’s conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed

1 to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
2 members for these expenses as an employer is required to do under the laws and regulations
3 of California.

4 151. PLAINTIFF therefore demands reimbursement for expenditures or losses
5 incurred by him and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
6 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
7 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

8
9 **NINTH CAUSE OF ACTION**

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

11 **[15 U.S.C. § 1681b(b)(2)(A)(I), *et seq.*]**

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

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

16 153. DEFENDANT violated 15 U.S.C. § 1681b(b)(2)(A)(I) of the FCRA by including
17 extraneous information in DEFENDANT's background check disclosure and authorization form
18 that PLAINTIFF and other FCRA CLASS Members were required to execute as a condition
19 of employment with DEFENDANT.

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

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

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

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

3
4 **TENTH CAUSE OF ACTION**

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

6 **[15 U.S.C. § 1681b(b)(2)(A)(ii)]**

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

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

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

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

17 161. PLAINTIFF and the FCRA CLASS Members are entitled to statutory damages
18 of not less than \$100 and not more than \$1,000 for every violation of the FCRA, pursuant to
19 15 U.S.C. § 1681n(a)(1)(A).

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

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

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1 ELEVENTH CAUSE OF ACTION

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

3 [Cal. Civ. Code § 1786 *et seq.*]

4 **(By PLAINTIFF and the ICRAA CLASS and Against All Defendants)**

5 164. PLAINTIFF, and the other members of the ICRAA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 165. DEFENDANT is a “person” as defined by Section 1786.2(a) of the Investigative
9 Consumer Reporting Agencies Act (“ICRAA”).

10 166. PLAINTIFF and ICRAA CLASS members are “consumers” within the meaning
11 of Section 1786.2(b) of the ICRAA because they are “individuals.”

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

15 168. Thus, a background check qualifies as an investigative consumer report under the
16 ICRAA.

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

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

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

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

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

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

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

28 (v) Notifies the consumer in writing of the nature and scope of the

1 investigation requested, including the provisions of Section 1786.22.

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

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

12 170. As alleged above, because DEFENDANT's disclosures do not meet the
13 requirements of Section 101(c)(1) of 15 U.S.C. 7001, the disclosures do not satisfy Section
14 1786.16(a)(2) of the ICRAA requirement that the disclosures be made in writing.

15 171. As described above, PLAINTIFF alleges that in evaluating her and other class
16 members for employment, DEFENDANT procure or caused to be prepared investigative
17 consumer report (e.g. background checks), as defined by Cal. Civ. Code § 1786.2(c).

18 172. Because the purported disclosures are embedded with extraneous information, and
19 are not clear and unambiguous disclosures in stand-alone documents, they do not meet the
20 requirements under the law.

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

26 174. By including the extraneous information, DEFENDANTS willfully violated §
27 1786.16(a)(2)(B) of the ICRAA. Additionally, the inclusion of the extraneous provisions causes
28 the disclosure to fail to be "clear and conspicuous" and thus violates § 1786.16(a)(2)(B).

175. Based upon facts that are likely to have evidentiary support after a reasonable
opportunity for investigation and discovery, PLAINTIFF alleges that DEFENDANT has a
policy and practice of failing to provide adequate written disclosures to applicants and

1 employees, before procuring background checks or causing background checks to be procured,
2 as described above. Pursuant to that policy and practice, DEFENDANT procured background
3 checks or caused background checks to be procured for PLAINTIFF and class members without
4 first providing a written disclosure in compliance with § 1786.16(a)(2)(B) of the ICRAA, as
5 described above.

6 176. DEFENDANT's conduct in violation of § 1786.16(a)(2)(B) of the ICRAA was
7 and is willful and/or grossly negligent. DEFENDANT acted in deliberate or reckless disregard
8 of their obligations and the rights of applicants and employees, including PLAINTIFF and class
9 members. DEFENDANT's willful conduct is reflected by, among other things, the following
10 facts:

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

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

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

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

5
6 **TWELFTH CAUSE OF ACTION**

7 **For Failure to Make Proper Disclosures in Violation of the CCRAA**

8 **[Cal. Civ. Code § 1785 *et seq.*]**

9 **(By PLAINTIFF and the CCRAA CLASS and Against All Defendants)**

10 180. PLAINTIFF, and the other members of the CCRAA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

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

15 182. PLAINTIFF and CCRAA Class members are "consumers" within the meaning
16 Section 1785.3(b) of the CCRAA, because they are "natural individuals."

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

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

24 184. Section 1785.20.5(a) of the CCRAA provides, in relevant part:
25 Prior to requesting a consumer credit report for employment purposes, the user
26 of the report shall provide written notice to the person involved. The notice
27 shall inform the person that a report will be used, and ***shall identify the***
28 ***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).

 185. As described above, PLAINTIFF alleges that in evaluating her and other class
members for employment, DEFENDANT procured or caused to be prepared consumer

1 credit reports (e.g. credit reports), as defined by Cal. Civ. Code § 1785.3(c).

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

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

13 188. DEFENDANT'S conduct in violation of § 1785.20.5(a) of the CCRAA was
14 and is willful and/or grossly negligent. DEFENDANT acted in deliberate and reckless
15 disregard of their obligations and the rights of applicants and employees, including
16 PLAINTIFF and class members. DEFENDANT's willful conduct is reflected by, among
17 other things, the following facts:

- 18 (A) DEFENDANT is a large corporation with access to legal advice;
- 19 (B) DEFENDANT required a purported authorization to perform credit
20 checks in the process of employing class members which, although
21 defective, evidences DEFENDANT's awareness of and willful failure
22 to follow the governing laws concerning such authorizations; and,
- 23 (C) The plain language of the statute unambiguously indicate that failure to
24 include the provisions identified above violates the CCRAA's notice
25 requirements, and that the notice must identify the specific basis under
26 subdivision (a) of Section 1024.5 of the Labor Code for use of the
27 credit report and must identify the source of any credit report.

1 189. As a result of DEFENDANT's illegal procurement of credit reports by way of
2 their inadequate notice, as set forth above, PLAINTIFF and class members have been
3 injured including, but not limited to, having their privacy and statutory rights invaded in
4 violation of the CCRAA.

5 190. PLAINTIFF, on behalf of himself and all class members, seeks all available
6 remedies pursuant to Cal. Civ. Code § 1785.31, including statutory damages and/or actual
7 damages, punitive damages, injunctive relief, and attorneys' fees and costs.

8 191. In the alternative to PLAINTIFF's allegation that these violations were willful,
9 PLAINTIFF alleges that the violations were negligent and seeks the appropriate remedy, if
10 any, under Cal. Civ. Code § 1785.31(a)(1), including but not limited to actual damages and
11 attorneys' fees and costs.

12
13 **PRAYER FOR RELIEF**

14 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
15 severally, as follows:

16 1. On behalf of the CALIFORNIA CLASS:

- 17 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
18 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
19 B) An order temporarily, preliminarily and permanently enjoining and restraining
20 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
21 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
22 withheld from compensation due to PLAINTIFF and the other members of the
23 CALIFORNIA CLASS; and,
24 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid
25 fund for restitution of the sums incidental to DEFENDANT's violations due to
26 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

27 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
28

- 1 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and
2 Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS
3 as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 4 B) Compensatory damages, according to proof at trial, including compensatory
5 damages for minimum wage overtime compensation due PLAINTIFF and the
6 other members of the CALIFORNIA LABOR SUB-CLASS, during the
7 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest
8 thereon at the statutory rate;
- 9 C) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512
10 and the applicable IWC Wage Order;
- 11 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay
12 period in which a violation occurs and one hundred dollars (\$100) per each
13 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a
14 subsequent pay period, not exceeding an aggregate penalty of four thousand
15 dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- 16 E) For liquidated damages pursuant to California Labor Code Sections 1194.2
17 and 1197;
- 18 F) The wages of all terminated individuals in the CALIFORNIA LABOR
19 SUB-CLASS as a penalty from the due date thereof at the same rate until paid
20 or until an action therefore is commenced, in accordance with Cal. Lab. Code
21 § 203; and,
- 22 G) The amount of the expenses PLAINTIFF and each member of the
23 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
24 plus interest, and costs of suit; and,
- 25 3. On behalf of the FCRA CLASS:
- 26 A) That the Court certify the Ninth and Tenth Causes of Action asserted by the
27 FCRA CLASS as a Class Action pursuant to Cal. Code of Civ. Proc. § 382;
- 28

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

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

- 16 A) That the Court certify the Eleventh and Twelfth Causes of Action asserted by
17 the ICRAA CLASS and CCRAA CLASS as a Class Action pursuant to Cal.
18 Code. Of Civ. Proc. § 382;
- 19 B) Statutory penalties;
- 20 C) Civil penalties;
- 21 D) Punitive damages;
- 22 E) Injunctive relief;
- 23 F) Costs of suit;
- 24 G) Interest;
- 25 H) Restitution;
- 26 I) Reasonable attorneys' fees; and,
- 27 J) Such other relief as the Court deems just and proper.
- 28

- 1 5. On all claims:
- 2 A) An award of interest, including prejudgment interest at the legal rate;
- 3 B) Such other and further relief as the Court deems just and equitable; and,
- 4 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
- 5 including, but not limited to, pursuant to Labor Code §226, §1194 and/or §2802.
- 6

7 Dated: February 17, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

8

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10 By: _____

11 Norman B. Blumenthal

12 Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: February 17, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____

Norman B. Blumenthal

Attorneys for Plaintiff