

CIV-200813-CIV-DS2016789-CASEEN-155602



Scanned Document Coversheet

System Code: CIV
Case Number: DS2016789
Case Type: CIV
Action Code: CASEEN
Action Date: 08/13/20
Action Time: 3:56
Action Seq: 0002
Printed by: GMARI

THIS COVERSHEET IS FOR COURT
PURPOSES ONLY, AND THIS IS NOT
A PART OF THE OFFICIAL RECORD.
YOU WILL NOT BE CHARGED FOR
THIS PAGE

Complaint and Party information entered



NEW FILE

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

AUG 13 2020

BY 
 GLORIA MARIN, DEPUTY

SETAREH LAW GROUP
 Shaun Setareh (SBN 204514)
 315 South Beverly Drive, Suite 315
 Beverly Hills, California 90212
 Telephone (310) 888-7771
 Facsimile (310) 888-0109
 shaun@setarehlaw.com

MICHAEL MALK, ESQ., APC
 Michael Malk (SBN 222366)
 1180 South Beverly Drive, Suite 610
 Los Angeles, California 90035
 Telephone: (310) 203-0016
 Facsimile: (310) 499-5210
 mm@malklawfirm.com

Attorneys for Plaintiff Lindsay Lambert

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

(UNLIMITED JURISDICTION)

LINDSAY LAMBERT, individually and on
 behalf of all others similarly situated,

PLAINTIFF,

VS.

CALPORTLAND COMPANY, a California
 Corporation, and DOES 1-100,

DEFENDANTS.

CASE NO. **CIV DS 2016789 -**
 CLASS ACTION COMPLAINT FOR:

- (1) FAILURE TO PAY VESTED VACATION
 WAGES [Cal. Labor Code § 227.3];
- (2) FAILURE TO ISSUE ACCURATE
 ITEMIZED WAGE STATEMENTS [Cal.
 Labor Code §§ 226, 226.3]
- (3) FAILURE TO PAY ALL WAGES DUE
 UPON SEPARATION OF EMPLOYMENT
 (Cal. Labor Code §§ 201-203);
- (4) UNFAIR/UNLAWFUL BUSINESS
 PRACTICES (Cal. Bus. And Prof. Code §§
 17200 ET SEQ); AND
- (5) VIOLATION OF 15 U.S.C. §§ 1681(B)(2)(A)
 (Fair Credit Reporting Act)
- (6) PENALTIES PURSUANT TO THE
 LABOR CODE PRIVATE ATTORNEYS
 GENERAL ACT OF 2004 [CAL. LABOR
 CODE §§ 2699, ET SEQ.] AND

JURY DEMAND

\$435.00
 20520-0413

1 Plaintiff Lindsay Lambert (hereinafter referred to as "Plaintiff") by and through her
2 undersigned attorneys, for her Class Action Complaint against Defendant CalPortland Company
3 ("CALPORTLAND") and Does 1 through 100 (CALPORTLAND and Does 1 through 100 shall
4 collectively be referred to as "Defendants"), respectfully alleges the following:

5 6 **I. NATURE OF ACTION**

7 1. Plaintiff brings this action on behalf of herself, as a class action and on behalf of
8 the California general public, against Defendants for Defendants' failure to pay vacation time,
9 for Defendants' failure to issue accurate itemized wage statements, for their failure to pay all
10 wages due upon separation of employment, and for their failure to comply with the Fair Credit
11 Reporting Act. Plaintiff also brings this action on behalf of herself, as a class action and on
12 behalf of the California general public, against Defendants for unfair business practices based
13 upon the foregoing. As a result of these acts or omissions, Defendants have violated California
14 statutory laws as described below.
15

16 17 **II. JURISDICTION AND VENUE**

18 2. Venue is proper in this county under California Business and Professions Code §
19 17203 and California Code of Civil Procedure §§ 395(a) and 395.5. Defendants operate out
20 through California. Many of the acts, as well as the course of conduct charged herein, occurred
21 in Merced County.

22 3. Defendants are within the jurisdiction of this Court, and maintain their principal
23 place of business in California at 2025 E. Financial Way; Glendora CA 91741, although
24 Defendants operate throughout California. As such, Defendants have obtained the benefits of the
25 laws of the State of California.

26 4. Plaintiff is ignorant of the true names and capacities, whether individual,
27 corporate, or associate, of those defendants fictitiously sued as DOES 1 through 100 inclusive
28

RECEIVED

AUG 13 2020

SUPERIOR COURT
SAN BERNARDINO COUNTY

1 and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each
2 of the DOE Defendants resides in the State of California and are in some manner responsible for
3 the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously
4 named defendants, the Plaintiff will amend this complaint to show the true names and capacities
5 of these fictitiously named defendants.

6 5. The claims of the class are also individual claims for violations of California and
7 Federal law described herein. These claims arise from Defendants' common and systemic
8 violations of the California Labor Code.

10 **III. THE PARTIES**

11 6. Plaintiff Lindsay Lambert is a California resident who was employed by
12 Defendants from approximately October 2015 to February 2018 as a dispatcher, and from
13 approximately February 2018 to July 2019 as an equipment operator.

14 7. Upon information and belief, Defendant CALPORTLAND is a California Limited
15 Partnership. The company's headquarters is located in California.

16 8. Because both Plaintiff and Defendant CALPORTLAND are citizens of California,
17 no diversity of citizenship exists.

18 9. Defendants transact millions of dollars of business in the State of California. Plaintiff
19 is ignorant of the true names and capacities, whether individual, corporate, or associate, of those
20 defendants fictitiously sued as DOES 1 through 100 inclusive and so the Plaintiff sues them by
21 these fictitious names. The Plaintiff is informed and believes that each of the DOE Defendants
22 resides in the State of California and is in some manner responsible for the conduct alleged
23 herein. Upon discovering the true names and capacities of these fictitiously named defendants,
24 the Plaintiff will amend this complaint to show the true names and capacities of these fictitiously
25 named defendants.

IV. CLASS ACTION ALLEGATIONS

10. Plaintiff brings this case as a class action pursuant to California Code of Civil Procedure § 382 on behalf of the following classes:

11. The **“Unpaid Vacation Class”** is defined as follows: All persons who accrued at least one hour of vacation in California for CalPortland Company at any time from June 23, 2016 through the conclusion of this action (the “Class Period”).

12. The **“Wage Statement Penalties Sub-Class”** is defined as: All hourly-paid Unpaid Vacation Class Members employed by Defendants in California during the period beginning one year before the filing of this action and ending when final judgment is entered.

13. The **“Waiting Time Penalties Sub-Class”** is defined as: Unpaid Vacation Class Members who separated from their employment with Defendants during the period beginning four years before the filing of this action and ending when final judgment is entered.

14. The **“FCRA Class”** is defined as: All of Defendants’ current, former and prospective applicants for employment in the United States who applied for a job with Defendants at any time during the period for whom a background check was performed beginning five years prior to the filing of this action and ending on the date that final judgment is entered in this action.

15. Plaintiff believes that there are at least 100 current and former employees in the Class. Given Defendants’ systemic failure to comply with California laws regarding payment of vacation pay, as well as the FCRA, the members of the Class are so numerous that joinder of all members of the Class is impractical.

16. Plaintiff’s claims are typical of the claims of the members of the Class, because all Class Members are or were California employees of Defendants who suffered similar harm as alleged herein. Plaintiff will fairly and adequately represent the interests of the Class. Plaintiff has no conflict of interest with any member of the Class. Moreover, Plaintiff retained counsel

1 competent and experienced in complex, class action litigation.

2 17. Common questions of law and fact exist as to all members of the Class, and
3 predominate over any questions solely affecting individual members of the Class. Among the
4 questions of law and fact common to Plaintiff and the Class are:

- 5 a. Whether Defendants paid-out all accrued vacation pay to Plaintiff and
6 members of the Unpaid Vacation Class;
- 7 b. Whether Defendants issued accurate itemized wage statements to members
8 of the Wage Statement Penalties Sub-Class;
- 9 c. Whether Defendants paid all compensation owed at the separation of
10 employment to members of the Waiting Time Penalties Sub-Class;
- 11 d. Whether Defendant's FCRA authorization forms executed by Plaintiff and the
12 Class were facially invalid by virtue of their inclusion of language constituting
13 a release of claims such that the authorization forms no longer constituted a
14 "document that consists solely of the disclosure", as required by Section
15 1681b (b)(2)(A) of the FCRA;
- 16 e. Whether Defendants willfully failed to provide the class with clear and
17 conspicuous, stand-alone written disclosures before obtaining a background
18 report in compliance with the statutory mandates;
- 19 f. Whether Defendants violated Section 1681b (b)(2)(A) of the FCRA by
20 including language constituting a release of claims as part of its FCRA
21 authorization forms;
- 22 g. Whether Defendant willfully violated the FCRA thereby triggering statutory
23 damages to Plaintiff and the members of the Class as set forth in Section
24 1681n(a) of the FCRA;
- 25 h. Whether Plaintiff and the members of the Class are entitled to statutory
26 damages under Section 1681n(a) of the FCRA and, if so, the amount and
27
28

1 calculation of such statutory damages; and

- 2 i. Whether Plaintiff and other class members are entitled to recover punitive
3 damages under Section 1681n(a)(2) of the FCRA and, if so, the amount and
4 calculation of such punitive damages.

5 13. Class action treatment is superior to any alternative to ensure the fair and efficient
6 adjudication of the controversy alleged herein. Such treatment will permit a large number of
7 similarly situated persons to prosecute their common claims in a single forum simultaneously,
8 efficiently, and without duplication of effort and expense that numerous individuals would entail.
9 No difficulties are likely to be encountered in the management of this class action that would
10 preclude its maintenance as a class action, and no superior alternative exists for the fair and
11 efficient adjudication of this controversy. The Class Members are readily identifiable from
12 Defendants' employee rosters and/or payroll records.¹

13
14 14. Defendants' actions are generally applicable to the entire Class. Prosecution of
15 separate actions by individual members of the Class creates the risk of inconsistent or varying
16 adjudications of the issues presented herein, which, in turn, would establish incompatible standards
17 of conduct for Defendants.

18 15. Because joinder of all members is impractical, a class action is superior to other
19 available methods for the fair and efficient adjudication of this controversy. Furthermore, the
20 amounts at stake for many members of the Class, while substantial, may not be sufficient to
21 enable them to maintain separate suits against Defendants.

22
23 **V. FACTUAL ALLEGATIONS**
24
25
26

27 ¹ Under California law, Defendants must keep payroll records for all employees for at least three
28 years. See, Cal. Labor Code §1174(d).

1 16. Plaintiff and the members of the Classes were employed by Defendants at various
2 times in California during the Class Period.

3 A. **Facts Relevant to Defendants' Failure to Pay Vested Vacation Wages,**
4 **Issue Itemized Statements and Pay**

5 17. Plaintiff and members of the Unpaid Vacation Class regularly accrued vacation
6 pay.

7 18. Defendants did not pay Plaintiff and members of the Unpaid Vacation Class all of
8 their accrued vacation pay. Instead, Defendants caused them to forfeit this accrued pay, in
9 blatant disregarding of the law.

10 B. **Facts Relevant to Defendants' Failure to Comply with the Fair Credit**
11 **Reporting Act**

12 19. When Plaintiff applied for employment with Defendant, Defendants provided a
13 disclosure and authorization form to perform a background investigation.

14 20. The disclosures provided by Defendants contained extraneous and superfluous
15 language that does not consist solely of the disclosure as required by the FCRA and/or is not clear
16 and conspicuous.

17 21. In violation of Section 1681b(b)(2)(A) of the FCRA, the following provisions of
18 Defendant's disclosure documents contain extraneous information that violates the "solely"
19 requirement of the FCRA:

- 20
- 21 1. Defendants disclosure includes a section stating, "I am aware that this testing will
22 be done by means of urine and breath sampling, unless otherwise stated."
 - 23 a. The inclusion of this language causes the disclosure to be extraneous and
24 noncompliant with FCRA disclosure requirements
 - 25 2. Defendants disclosure includes a section stating, "As an applicant, I understand
26 that if I test positive for Alcohol or any Drug, I will not be hired to work at the
27 company. I will have no opportunity for a retest unless the retest is requested by
28

1 me and it is mandated by the state in which I am applying for the position.

- 2 a. The inclusion of this language causes the disclosure to be extraneous and
3 noncompliant with FCRA disclosure requirements.

- 4 3. Defendants disclosure includes a section stating, "As an employee, I understand
5 that if I test positive for Alcohol or any Drug, I will be subject to disciplinary
6 action up to and including immediate discharge. I will have no opportunity for a
7 retest unless the retest is requested by me and it is mandated by the state in which
8 I am applying for the position."

- 9 a. The inclusion of this language causes the disclosure to be extraneous and
10 noncompliant with FCRA disclosure requirements.

- 11 4. Defendants disclosure includes a section stating, "I hereby attest that I do not use
12 illegal drugs or prescription drugs for which I do not have a current prescription.
13 If a drug test has a positive result, I understand that I will be given the opportunity
14 to demonstrate that the drug(s) present are due to current prescriptions."

- 15 a. The inclusion of this language causes the disclosure to be extraneous and
16 noncompliant with FCRA disclosure requirements.

- 17 5. Defendants disclosure includes a section stating, "I also understand that if any
18 specimen I provide indicates evidence that it was altered or that it was not my
19 specimen provided under the controlled conditions, I may be denied employment
20 or my employment will be terminated."

- 21 a. The inclusion of this language causes the disclosure to be extraneous and
22 noncompliant with FCRA disclosure requirements.

- 23 6. Defendants disclosure includes a section stating, "I AGREE TO HOLD
24 HARMLESS THE FOLLOWING COMPANIES, CONTRACTORS, AND
25 INDIVIDUALS AND THEIR RESPECTIVE EMPLOYEES, VENDORS, AND
26 CONTRACTORS: THE COMPANY TO WHICH I AM APPLYING FOR A
27
28

1 POSITION; ITS DRUG PROGRAM MANAGER AND ANY AND ALL
2 OTHER COMPANY PERSONNEL; MOBILE OCCUPATIONAL SERVICES;
3 THE MEDICAL REVIEW OFFICER; THE COLLECTION SITE; AND THE
4 CLINICAL LABORATORY; FROM ANY AND ALL CLAIMS OR
5 LIABILITIES ARISING OUT OF THIS AND/OR OTHER DRUG AND/OR
6 ALCOHOL TESTS THEY MAY CONDUCT INCLUDING, BUT NOT
7 LIMITED TO, THE TESTING PROCEDURES, THE PROVIDING OF THE
8 SAMPLES, THE ANALYSIS, THE DISCLOSURE OF THE TEST RESULTS,
9 AND ANY ACTIONS TAKEN BY THE COMPANY OR THE TESTING
10 FIRM, AT ANY TIME, IN RELIANCE ON THE TEST RESULTS.”

- 11 a. The inclusion of this language causes the disclosure to be extraneous and
12 noncompliant with FCRA disclosure requirements. Furthermore, the
13 inclusion of a liability release in the disclosure is unlawful, ineffective,
14 and inapplicable as to any present and future claims. Additionally, such a
15 blanket release that purports to allow for the company to test employees
16 at any time throughout the duration of their employment based off of a
17 pre-employment disclosure is noncompliant with the FCRA.

18
19 22. The inclusion of the extraneous provisions causes the disclosure to fail to be “clear
20 and conspicuous” and “clear and accurate,” and thus violates Sections 1681b(b)(2)(A) and 1681d(a).
21 More specifically, the disclosure does not comply with the “clear and conspicuous” requirement
22 because (1) the disclosure is not in all capital letters; (2) the disclosure provisions are set out in a
23 dense, small font that reduces clarity; and (3) the disclosure is embedded with extraneous provisions
24 that serve to confuse applicants and causes the disclosure to be unclear. The FCRA disclosure should
25 be a standalone document and, if desired, a bare authorization to obtain information, without being
26 weighed down by extraneous provisions and unlawful liability releases.

27 **VI. CAUSES OF ACTION**
28

FIRST CAUSE OF ACTION

FAILURE TO PAY VESTED VACATION WAGES

[Cal. Labor Code § 227.3]

[Against All Defendants]

23. Plaintiff re-alleges and incorporate by reference each and every allegation set forth in the preceding paragraphs.

24. California Labor Code § 227.3 provides, whenever an “Employer policy provides for paid vacation, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate.”

25. As alleged herein, Plaintiff and the members of the Unpaid Vacation Class regularly earned vacation time, but were not paid all of their vested vacation wages at the time of termination. By their actions, Defendants violated California Labor Code § 227.3 and are thus liable to Plaintiff and the members of the Unpaid Vacation Class.

26. As a result of the unlawful acts of Defendants, Plaintiff and the members of the Unpaid Vacation Class have been deprived of vested vacation, and are entitled to recovery.

SECOND CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE ITEMIZED WAGE STATEMENTS

[Cal. Labor Code §§ 226, 226.3]

(On behalf of Plaintiff and the Wage Statement Penalties Sub-Class)

27. Plaintiff re-alleges the information set forth in all preceding paragraphs, as though fully set forth and alleged herein.

28. California Labor Code § 226(a) requires that employers, when paying their non-

1 exempt employees' wages, include an "itemized statement in writing showing" the "total hours
2 worked by the employee," and "all applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate."

4
5 29. Cal. Labor Code § 226(2)(B) states in relevant part:

6 An employee is deemed to suffer injury for purposes of this subdivision
7 if the employer fails to provide accurate and complete information as
8 required by any one or more of items (1) to (9), inclusive, of subdivision
9 (a) and the employee cannot promptly and easily determine from the wage
10 statement alone one or more of the following:

11
12 (i) The amount of the gross wages or net wages paid to the
13 employee during the pay period or any of the other
14 information required to be provided on the itemized wage
15 statement.

16
17 30. Labor Code § 226(e) provides that an employee suffering injury as a result of
18 a knowing and intentional failure to comply with 226(a) is entitled to recover \$50 for initial
19 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not
20 to exceed \$4,000, as well as an award of costs and reasonable attorney's fees.

21
22 31. During the Class Period, Defendants failed to comply with § 226(a) of the California
23 Labor Code by failing to include information on the itemized wage statements, including, but not
24 limited to failing to pay all overtime owed by virtue of Defendants excluding non-discretionary
25 bonuses from the regular rate of pay.

26 32. Defendants' failure to comply with § 226(a)(1) was knowing and intentional.

27 33. Defendants' failure to provide Plaintiff and the Wage Statement Penalties Sub-
28

1 Class Members with accurate itemized wage statements during the Class Period has caused
2 them to incur economic damages in that overtime rates listed on their itemized wage statements
3 are in correct, as are amounts listed as wages earned.
4

5 34. As a result of Defendants' issuance of inaccurate itemized wage statements to
6 Plaintiff and members of the California Overtime Class in violation of Labor Code §
7 226(a), Plaintiff and the California Overtime Class Members, are each entitled to recover an
8 initial penalty of \$50, and subsequent penalties of \$100 for each violation commencing on
9 January 30, 2016 and afterwards, up to an amount not exceeding an aggregate penalty of \$4000
10 per Plaintiff and per every member of the California Overtime Class from Defendants pursuant to §
11 226(e) of the Labor Code, costs and reasonable attorney's fees.
12
13

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PAY COMPENSATION DUE UPON**

16 **SEPARATION OF EMPLOYMENT**

17 **[Cal. Labor Code §§ 201-203]**

18 **(On Behalf of Plaintiff and the Waiting Time Penalties Sub-Class)**

19 35. Plaintiff re-alleges and incorporates the information set forth in all preceding
20 paragraphs, as though fully set forth and alleged herein.
21

22 36. Sections 201 and 202 of the California Labor Code require Defendants to pay all
23 compensation due and owing to former employees in California at or around the time each
24 employee's employment is terminated or ends. Section 203 of the California Labor Code
25 provides that if an employer willfully fails to pay compensation promptly upon discharge or
26
27
28

1 resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the
2 form of continued compensation up to thirty (30) work days.

3 37. Defendants willfully failed to pay and have still failed to pay Plaintiff and the
4 Class Members, who are former employees, their overtime wages and rest break premium
5 payments with the full knowledge of Defendants as required by California Labor Code §§ 201
6 and 202.

7
8 38. As a result, Defendants are liable to Plaintiff and Class Members who are former
9 employees for penalties pursuant to California Labor Code §203.
10

11
12 **FOURTH CAUSE OF ACTION**

13 **UNFAIR/UNLAWFUL BUSINESS PRACTICES**

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

15 **[On Behalf of Plaintiff and the Unpaid Vacation Class and Unpaid Waiting-Time Penalty**
16 **Sub-Class]**

17 39. Plaintiff re-alleges and incorporates the information set forth in all preceding
18 paragraphs, as though fully set forth and alleged herein.

19 40. California Business & Professions Code Section 17200 prohibits any unlawful,
20 unfair, or fraudulent business practices.

21 41. Labor Code section 90.5(a) states that it is the public policy of California to
22 enforce vigorously minimum labor standards in order to ensure employees are not required to
23 work under substandard and unlawful conditions, and to protect employers who comply with the
24 law from those who attempt to gain competitive advantage at the expense of their workers by
25 failing to comply with minimum labor standards.

26 42. Through its actions alleged herein, Defendants have engaged in unfair
27 competition within the meaning of Cal. Bus. & Prof. Code, §17200, because Defendants'
28

1 conduct has violated state wage and hour laws as herein described. Indeed, Defendants' conduct
2 as herein alleged has damaged Plaintiff and the Class Members by failing to pay overtime wages.

3 43. Beginning at a date unknown to Plaintiff, but at least as early as August 1, 2015,
4 Defendants committed, and continue to commit, acts of unfair competition, as defined in §17200,
5 et seq. of the California Business and Professions Code by, among other things, engaging in the
6 acts and practices described above.

7 44. Defendants engaged in unfair competition in violation of Cal. Bus & Prof. Code,
8 §17200 et seq. by violating, inter alia, Cause of Action One, Two and Three as stated above.

9 45. Defendants' course of conduct, act and practice in violation of the California laws
10 mentioned in each paragraph above constitute separate and independent violations of 17200, et
11 seq. of the California Business and Professions Code.

12 46. The harm to Plaintiff and members of the Class by failing to pay overtime wages
13 and rest break premiums for each day Defendants failed to authorize and permit off-duty rest
14 breaks outweighs the utility, if any, of Defendants' policies/practices and, therefore, Defendants'
15 actions described herein constitute an unfair business practice or act within the meaning of
16 California Business and Professions Code §17200.

17 47. The unlawful, unfair and fraudulent business practices and acts of Defendants, as
18 described above, have injured Plaintiff and the Class, in that they have not been paid all their
19 overtime and have not been paid rest break premiums.
20

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF THE FCRA**

23 **(15 U.S.C. §§ 1681b(b)(2)(A))**

24 **[On behalf of Plaintiff and the FCRA Class]**

25 48. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

26 49. Defendants are "persons" as defined by Section 1681a(b) of the FCRA.

27 50. Plaintiff and **FCRA Class** members are "consumers" within the meaning Section
28

1 1681a(c) of the FCRA, because they are “individuals.”

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

3 any oral, or other communication of any information by a consumer reporting agency bearing
4 on a consumer’s credit worthiness, credit standing, credit capacity, character, general
5 reputation, personal characteristics, or mode of living which is used or expected to be used or
6 collected in whole or in part for the purpose of serving as a factor in establishing the
7 consumer’s eligibility” for employment purposes.

8 As Defined, a pre-employment drug and alcohol screening qualifies as a consumer report.

9 52. Section 1681b(b) of the FCRA provides, in relevant part:

10 Conditions for furnishing and using consumer reports for employment purposes

11 (2) Disclosure to consumer

12 (A) In general

13 Except as provided in subparagraph (B), a person may not procure a consumer report,
14 or cause a consumer report to be procured, for employment purposes with respect to
15 any consumer, unless—

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

20 (ii) the consumer has authorized in writing (which authorization may be made
21 on the document referred to in clause (i)) the procurement of the report by
22 that person. (Emphasis Added).

23 53. Section 1681b(b)(2)(A)(i) requires that a clear and conspicuous disclosure be made in
24 writing.

25 54. As described above, Plaintiff alleges, on information and belief, that in evaluating her
26 and other class members for employment, Defendants procured or caused to be prepared credit and
27 background reports (i.e., a consumer report and/or investigative consumer report, as defined by 15
28 U.S.C. § 1681a(d)(1)(B) and 15 U.S.C. § 1681a(e)).

55. The purported disclosures do not meet the requirements under the law because they
are embedded with extraneous information, and are not clear and conspicuous disclosures in a stand-
alone document.

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

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

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

15 58. Defendants' conduct in violation of Section 1681b(b)(2)(A) of the FCRA was and is
16 willful. Defendants acted in deliberate or reckless disregard of their obligations and the rights of
17 applicants and employees, including Plaintiff and class members. Defendants' willful conduct is
18 reflected by, among other things, the following facts:

- 19 (a) DEFENDANT is a large entity with access to legal advice;
- 20 (b) DEFENDANT required a purported authorization to perform credit and background
21 checks in the process of employing the class members which, although defective,
22 evidences DEFENDANT's awareness of and willful failure to follow the governing
23 laws concerning such authorizations;
- 24 (c) The plain language of the statute unambiguously indicates that inclusion of a liability
25 release and other extraneous information in a disclosure form violates the disclosure
26 and authorization requirements; and
- 27 (d) The FTC's express statements, pre-dating DEFENDANT's conduct, which state that
28

1 it is a violation of Section 1681b(b)(2)(A) of the FCRA to include a liability waiver in
2 the FCRA disclosure form.

3 59. Defendants required a liability release, in the portion of the disclosure form appended
4 to the application, along with other extraneous information, that releases all parties involved from
5 any liability and responsibility for releasing information they have about the Plaintiff to Defendants.

6 60. Accordingly, Defendants willfully violated and continue to violate the FCRA
7 including, but not limited to, §§ 1681b(b)(2)(A) and 1681d(a). Defendants' willful conduct is
8 reflected by, among other things, the facts set forth above.

9 61. Plaintiff, on behalf of herself and all **FCRA Class** members, seeks remedies pursuant
10 to 15 U.S.C. § 1681n, including statutory damages, and attorneys' fees and costs.

11 **SIXTH CAUSE OF ACTION**

12 **PENALTIES PURSUANT TO THE**

13 **LABOR CODE PRIVATE ATTORNEY GENERALS ACT OF 2004**

14 **(Cal. Labor Code §§ 2699, et seq.)**

15 **On Behalf of Plaintiff and Similarly Aggrieved Employees**

16 62. Plaintiff re-alleges the information set forth in all preceding paragraphs, as though
17 fully set forth and alleged herein.

18 63. Under the Labor Code Private Attorney General Act of 2004 ("PAGA"), Labor
19 Code §§ 2699, et seq., private parties may recover civil penalties for violations of the California
20 Labor Code and applicable IWC Wage Orders. These penalties are in addition to any other relief
21 available under the Labor Code and the applicable IWC Wage Order.

22 64. Plaintiff seeks PAGA penalties on behalf of all "Similarly Aggrieved Employees,"
23 which shall refer to all employees who accrued at least one hour of vacation in California for
24

1 Defendants at any time beginning on March 10, 2019, and ending with the final judgment in this
2 case.

3 65. As set forth above, Defendants have committed violations of the California Labor
4 Code and applicable IWC Wage Orders, and are entitled to civil penalties. Plaintiff and all
5 Similarly Aggrieved Employees are entitled to civil penalties for Defendants' failure to pay all
6 vacation pay per Cal. Labor Code § 227.3; failure to issue accurate itemized wage statements per
7 Cal. Labor Code §§ 226, 226.3; failure to pay wages upon separation of employment per Cal.
8 Labor Code §§ 201-203; and failure to reimburse necessary business expenses in violation of Cal.
9 Labor Code §2802.
10
11

12 66. Pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th
13 745, Plaintiff also asserts a claim for PAGA penalties for meal break and rest break claims on
14 behalf of all "Concrete Truck Drivers," which refers to all non-exempt employees in California
15 who worked at least one shift driving a concrete truck for Defendants at any time beginning on
16 March 10, 2019, and ending with the final judgment in this case. The nature of the job duties of
17 Defendant's concrete truck drivers is such that they must constantly supervise and maintain
18 responsibility for their trucks – even during purported meal and rest breaks – since the drum of the
19 trucks constantly rotate the concrete. As a result, no concrete truck drivers who worked at least
20 one shift for Defendants since March 10, 2019 has ever been able to take an off-duty meal break
21 or an off-duty rest break, in violation of Cal. Labor Code §§ 226.7 and 512. Defendants' failure
22 to provide meal breaks and authorize and permit rest breaks to its concrete truck drivers also caused
23 Defendants to issue inaccurate itemized wage statements to Concrete Truck Drivers in violation
24 of Cal. Labor Code Sec. 226 because the meal and rest break premiums which Defendants owed
25 to the Concrete Truck Drivers did not appear on the itemized wage statements. Moreover, because
26
27
28

1 Defendants did not pay meal and rest premiums to Concrete Truck Drivers, the Company failed to
2 pay all wages owed to those drivers whose employment has separated from the Company at any
3 time beginning on March 10, 2019, and ending with the final judgment in this case.

4
5 67. Section 2699.3(a)(1) of the Labor Code provides that, prior to bringing suit, an
6 aggrieved employee "shall give written notice by certified mail to the Labor and Workforce
7 Development Agency ("LWDA") and the employer of the specific provisions of this code alleged
8 to have been violated, including the facts and theories to support the alleged violation." Pursuant
9 to Labor Code § 2699.3, on March 13, 2020, Plaintiff Lindsay Lambert gave notice to the Labor
10 and Workforce Development Agency and Defendant of the specific Labor Code provisions alleged
11 to have been violated herein. Labor Code § 2699.3 (2) (a) requires the LWDA to notify the
12 employee or representative within 65 calendar days of the date of the PAGA notice that it does not
13 intend to investigate. Therefore, as of May 17, 2020, the administrative prerequisites under
14 California Labor Code section 2699.3(a) were satisfied, and Plaintiff has authorization to recover
15 PAGA penalties against Defendant, in addition to other remedies, for violation of California Labor
16 Code sections 201-203, 226, 226.3, 226.7, 227.3, and 512. Under PAGA, Plaintiff and other
17 Similarly Aggrieved Employees, as well as Concrete Truck Drivers, are entitled to recover the
18 maximum civil penalties permitted by law from Defendants for their violations of the California
19 Labor Code and the applicable California IWC Wage Order, as alleged in this Complaint. Plaintiff
20 and other Similarly Aggrieved Employees, as well as Concrete Truck Drivers, are also entitled to
21 recover their attorneys' fees and costs under Labor Code Section §2699.

22
23
24
25
26
27
28
VII. JURY DEMAND

1 68. Plaintiff hereby demands trial by jury of her and the proposed Class's claims
2 against Defendants.

3
4 **VIII. PRAYER FOR RELIEF**

5 Wherefore, Plaintiff, on behalf of himself and members of the Class prays for judgment
6 against Defendants as follows:

7 An Order that this action may proceed and be maintained as a class action on behalf of
8 the Class;

9 69. On the First Cause of Action:

- 10 (a) A declaratory judgment that Defendants violated California Code § 227.3
11 and the IWC Wage Order 9-2001;
12 (b) An award to Plaintiff and the Class Members for all vacation pay which
13 Defendants withheld from Plaintiff and the members of the Unpaid
14 Vacation Class during the Class Period, plus liquidated damages;
15 (c) An award of all accrued interest from the date that the vacation pay were
16 due and payable at the legal interest rate; and
17 (d) An award to Plaintiff and the Class of reasonable attorneys' fees and costs
18 pursuant to all sources of law providing for same.

19 70. On the Second Cause of Action:

- 20 (a) A declaratory judgment that Defendants violated Labor Code §§ 226 and
21 226.3 by regularly willfully issuing inaccurate wage statements to Plaintiff and
22 members of the Wage Statement Penalties Sub-Class;
23 (b) An award of \$50 for each initial pay period and \$100 for each subsequent
24 pay period in which a violation of § 226 occurred, not to exceed \$4,000 for
25 Plaintiff and each member of the Wage Statement Penalties Sub-Class, as well
26 as an award of costs and reasonable attorneys' fees.
27
28

On the Third Cause of Action:

- (a) A declaratory judgment that Defendants have violated California Labor Code §§ 201-203;
- (b) Pursuant to Cal. Labor Code §§ 201-203, an award to Plaintiff and members of the Waiting Time Penalties Sub-Class for waiting time penalties in the amount of 30 days of wages; and
- (c) An award to Plaintiff of reasonable attorneys' fees and costs.

71. On the Fourth Cause of Action:

- (a) An Order requiring Defendants, its agents, servants, and employees, and all persons acting, directly or indirectly, in concert with them, to restore and disgorge all funds to each member of the Class acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and therefore constituting unfair competition under § 17200, et seq. of the Cal. Business and Professions Code;
- (b) Restitution, including, but not limited to, the relief permitted pursuant to Labor Code §§ 227.3 and 203; and
- (c) An award to Plaintiff and the Class Members of their attorneys' fees and costs of suit to the extent permitted by law, including, but not limited to, Cal. Code of Civil Procedure §§ 1021.5, and Labor Code §§ 218 and/or 1194.

72. On the Fifth Cause of Action:

- (a) An order that the action be certified as a class action;
- (b) An order that Plaintiff be appointed class representative;
- (c) An order that counsel for Plaintiff be appointed class counsel;
- (d) Statutory penalties;
- (e) Civil penalties;
- (f) Punitive damages;

- (g) Injunctive relief;
- (h) Costs of suit;
- (i) Interest;
- (j) Restitution;
- (k) Reasonable attorneys' fees; and
- (l) Such other relief as the Court deems just and proper.

73. On the Sixth Cause of Action:

- a) A civil penalty against Defendants in the amount of \$100 for the initial violation and \$200 for each subsequent violation as specified in Labor Code § 2699(f)(2) based on Defendants' violation of Cal. Labor Code §§ 201-23, 226, 226.7, 227.3, and 512;
- b) All penalties available under the Labor Code Private Attorneys General Act of 2004;
- c) An award of reasonable attorneys' fees and costs against Defendants as specified in Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with the PAGA claims; and
- d) An award of all costs incurred by the undersigned counsel for Plaintiffs in connection with Plaintiffs' and aggrieved employees' PAGA claim against Defendants, as provided for in Labor Code § 2699(g)(1).

74. Penalties pursuant to Cal. Labor Code § 558 for each violation described in Causes of Action One through Four.

75. All other relief as this Court deems proper.

Dated: June 23, 2020

Respectfully submitted,

SETAREH LAW GROUP
MICHAEL MALK, ESQ. APC

DocuSigned by:
Shaun Setareh
535A1260947F415...

By: _____

Shaun Setareh
Michael Malk
Counsel for Plaintiff and the Class

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28