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

JUL 23 2020

BY ANGELINE GARCIA
ANGELINE GARCIA, DEPUTY

7 JARRELL ELLSWORTH, on behalf of himself and others
8 similarly situated

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN BERNARDINO

11
12 JARRELL ELLSWORTH, on behalf of
13 himself and others similarly situated,

14 Plaintiff,

15 v.

16 SCHNEIDER NATIONAL CARRIERS,
17 INC., a Nevada corporation; and DOES 1
through 50, inclusive,

18 Defendants.

Case No. CIVDS2012486

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Meal-Period Liability under Labor Code § 226.7;
2. Failure to Pay Wages and Minimum Wage, Labor Code §§ 204, 1182.12, 1194, 1194.2, 1197;
3. Rest-Break Liability under Labor Code § 226.7;
4. Violation of Labor Code § 226(a);
5. Violation of Labor Code §§ 201, *et seq.*;
6. Violation of Labor Code § 221;
7. Penalties Pursuant to Labor Code § 2699;
8. Violation of 15 U.S.C. § 1681b(b)(2)(B);
9. Violation of California Civil Code § 1786.16(a)(2);
10. Violation of California Civil Code § 1786.16(b)(1);
11. Violation of Business & Professions Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff JARRELL ELLSWORTH (hereinafter "Plaintiff"), on behalf of himself and all
2 others similarly situated, complains of Defendant SCHNEIDER NATIONAL CARRIERS, INC.
3 ("Schneider") and DOES 1 through 50 (collectively with Schneider, "Defendants") as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action pursuant to California Code of Civil Procedure § 382 on
6 behalf of himself and all other California-based truck drivers who, at any time four years prior to
7 the filing of this complaint and continuing to the present, were employed by Defendants. Plaintiff
8 alleges, on behalf of himself and members of the proposed classes (collectively herein,
9 "Employees"), that Defendants, and each of them, violated various provisions of the California
10 Labor Code, Industrial Welfare Commission (IWC) Wage Orders, and the California Business &
11 Professions Code, and seeks redress therefor.

12 2. Plaintiff also alleges claims on behalf of a nationwide class of consumers who
13 were the subject of consumer reports obtained by the Defendants as a precondition of
14 employment during the five-year period preceding the filing of this action, as established by 15
15 U.S.C. § 1681p, seeking remedies under the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §
16 1681, *et seq.*, and California's Investigative Consumer Reporting Agencies Act ("ICRAA"), Cal.
17 Civ. Code § 1681, *et seq.*

18 3. Venue as to Schneider is proper in this judicial district pursuant to Code of Civil
19 Procedure § 395.5 because the obligations giving rise to liability occurred in the County of San
20 Bernardino, State of California.

21 4. The true names and capacities, whether individual, corporate, associate, or
22 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
23 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code
24 of Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that each of the
25 Defendants designated herein as Does 1 through 50, inclusive, is legally responsible in some
26 manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this
27 Complaint to reflect the true names and capacities of the Defendants designated herein as Does 1
28 through 50 when their identities become known.

5. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all respects as the employers or joint employers of Employees.

FACTUAL BACKGROUND

Defendants Violate the California Labor Code.

6. From at least (4) years prior to the filing of this lawsuit and continuing to the present, Defendants have regularly required Employees, including Plaintiff, to work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes and shifts in excess of ten (10) hours without providing them with second meal periods of not less than thirty (30) minutes.

7. Defendants required Employees to remain with their trucks throughout their shifts, effectively making all meal periods on-duty. Employees did not enter into a written agreement to take on-duty meal periods, nor did the nature of the work prevent Employees from being relieved of all duties. Moreover, Defendants required Employees to clock out during these meal periods; thus Employees did not receive compensation for such on-duty meal periods.

8. Furthermore, Employees were regularly required to work through their meal periods, missing them entirely or taking them late. Moreover, Employees were regularly interrupted during their meal periods by Employees' managers or Defendants' clients.

9. Upon information and belief, Defendants had no policy of providing second meal periods during shifts in excess of ten (10) hours. Plaintiff never received a second meal period, even when his shifts exceeded twelve (12) hours of work and thus could not be waived under IWC Wage Order 9.

10. As alleged above, Defendants' policy of requiring Employees to clock out for on-duty meal periods deprived Employees of wages, including the minimum wage, as Employees were required to and did work off the clock. From at least four (4) years prior to the filing of this lawsuit and continuing to the present, Defendants had a consistent policy or practice of failing to

1 pay Employees for this off-the-clock work.

2 11. From at least (4) years prior to the filing of this lawsuit and continuing to the
3 present, Defendants have consistently failed to provide Employees with paid rest breaks of not
4 less than ten (10) minutes for every work period of four (4) or more consecutive hours.

5 12. Defendants ultimately fired Plaintiff for requesting to take meal periods and rest
6 breaks as required by law.

7 13. From at least (4) years prior to the filing of this lawsuit and continuing to the
8 present, Defendants have consistently failed to provide Employees with timely, accurate, and
9 itemized wage statements in writing, as required by California wage-and-hour laws.

10 14. From at least (4) years prior to the filing of this lawsuit and continuing to the
11 present, Defendants have had a consistent policy of failing to pay all wages due and owing to
12 Employees at the time of their termination or within seventy-two (72) hours of their resignation,
13 as required by California wage-and-hour laws.

14 15. From at least four (4) years prior to the filing of this lawsuit and continuing to the
15 present, Defendants have had a consistent policy of deducting sums from Employees' wages,
16 including deductions for advance fees and safety shoes required to be worn by Employees.

17 16. In light of the foregoing, Employees bring this action pursuant to Labor Code §§
18 201, 202, 203, 204, 221, 226, 510, 512, 558, 558.1, 1182.12, 1194, 1194.2, 1197, 1197.1, and
19 1199.

20 17. Furthermore, pursuant to Business & Professions Code §§ 17200-17208,
21 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
22 enjoyed from their violations of the Labor Code.

23 ***Defendants Violate Consumer-Reporting Laws.***

24 18. Ballard applied online for a commercial truck driving position with Schneider in or
25 around June 2019.

26 19. As part of its applicant-screening process Defendants purchase consumer reports
27 from consumer reporting agencies to investigate an applicant's criminal background and driving
28 history.

1 20. However, Schneider fails to provide the mandatory disclosures required under the
2 FCRA prior to obtaining consumer reports on remote trucking applicants. *See* 15 U.S.C. §
3 1681b(b)(2)(B).

4 21. As a remote applicant for a position over which the Department of Transportation
5 has authority to establish maximum hours, Defendants were legally obligated to tell Plaintiffs in
6 writing, verbally, or electronically not only that the company intended to obtain his consumer
7 report, but also that he specifically had the right to request a free copy of the report within 60
8 days directly from the consumer reporting agency and could dispute any inaccurate or misleading
9 information directly with the consumer reporting agency. 15 U.S.C. § 1681b(b)(2)(B) and (C).

10 22. However, Schneider regularly procures consumer reports on job applicants,
11 including Plaintiff, before providing them with any disclosure of its intent to procure consumer
12 reports on them.

13 23. Moreover, the disclosure that Schneider eventually provided Plaintiff and upon
14 information and belief other job applicants – *after it had already procured consumer reports on*
15 *them* – did not comply with the FCRA.

16 24. Schneider's form titled "Fair Credit Reporting Act Disclosure and Authorization
17 Form for Employment/Lease Purposes" did not inform Plaintiff of his rights under 15 U.S.C. §
18 1681b(b)(2)(B).

19 25. Specifically, the form does not notify applicants that they have the right to request
20 a free copy of their reports within 60 days and may dispute any inaccurate or misleading
21 information directly with the consumer reporting agency, as required under 15 U.S.C. §
22 1681b(b)(2)(B) and (C).

23 26. The form provides misleading information because it suggests a prescribed
24 procedure in the event that Defendants take adverse action as a result of information contained in
25 their consumer reports that envisages applicants actively requesting additional information in
26 writing from Defendants themselves rather than the consumer reporting agency which prepared
27 the report and to whom applicants would be legally required submit their disputes relating to
28 inaccurate or incomplete information ("You may request in writing a complete disclosure of the

1 nature and scope of the investigation to be performed.”), when in fact, as described above,
2 applicants need not request or await action from Defendants but may obtain their reports directly
3 from the consumer reporting agency that prepared the reports and submit disputes, not necessarily
4 in writing, directly to the agency. *See* 15 U.S.C. § 1681i(a). This misrepresentation is material
5 because under the FCRA a user of a consumer report is not legally required to take any action in
6 response to a dispute by a consumer, who must instead submit his or her dispute directly to the
7 consumer reporting agency for reinvestigation; if the reinvestigation validates the consumer’s
8 dispute, the agency itself must at the request of the consumer notify the user to whom it furnished
9 the report of the results of the reinvestigation. *See* 15 U.S.C. § 1681i(d).

10 27. The confusion inherent in Defendants’ form arises in part because the form
11 inappropriately attempts to combine the disclosures relating to “consumer reports” and
12 “investigative consumer reports,” which are treated differently under the FCRA and have
13 different disclosure and notice requirements. *Cf.* 15 U.S.C. § 1681b(b)(2)(B) *with* 15 U.S.C. §
14 1681d(a)(2), (b).

15 28. Because Defendants did not provide Plaintiff and other job applicants with the
16 required disclosure before procuring their consumer reports for employment purposes, Plaintiff
17 and other job applicants could not provide lawful consent to the procurement of their consumer
18 reports pursuant to 15 U.S.C. § 1681b(b)(2)(B)(ii).

19 29. Defendants’ actions also constitute a violation of California’s Investigative
20 Consumer Reporting Agencies Act (“ICRAA”).

21 30. Under the ICRAA an “investigative consumer report” is “a consumer report in
22 which information on a consumer’s character, general reputation, personal characteristics, or
23 mode of living is obtained through any means.” Cal. Civ. Code § 1786.2(c).

24 31. The ICRAA requires anyone procuring an investigative consumer report for
25 employment purposes to provide the consumer with *a clear and conspicuous disclosure* in
26 writing before procuring the report *in a document that consists solely of the disclosure* that (i)
27 states that an investigative consumer report may be obtained, (ii) identifies the permissible
28 purpose for the report, (iii) states that the report may include information on the consumer’s

1 character, general reputation, personal characteristics, and mode of living, (iv) identifies the
2 name, address, and telephone number of the investigative consumer reporting agency conducting
3 the investigation, (v) notifies the consumer of the nature and scope of the investigation requested,
4 including a summary of the provisions of Cal. Civ. Code § 1786.22, and (vi) notifies the
5 consumer of the internet website address of the investigative consumer reporting agency that
6 prepared the report or, if the agency has no internet website address, the telephone number of the
7 agency, where the consumer may find information about the investigative reporting agency's
8 privacy practices, including whether the consumer's personal information will be sent outside the
9 United States or its territories and information that complies with subdivision (d) of Cal. Civ.
10 Code § 1786.20. *See* Cal. Civ. Code § 1786.16(a)(2)(B).

11 32. Defendants' online application materials include a dizzying array of forms that
12 include conflicting and misleading statements regarding Schneider's use of consumer reports for
13 employment purposes and an applicant's rights regarding these reports.

14 33. Even with its myriad forms, however, Schneider failed to provide Plaintiff and
15 other California applicants with required disclosures.

16 34. Defendants' "State Specific Information" form does not state that an investigative
17 consumer report will be obtained on applicants; does not identify the permissible purpose for the
18 report; erroneously calls the reports "Consumer Report(s)" rather than "investigative consumer
19 reports"; confusingly refers to "consumer credit reports"; does not identify the name, address, and
20 telephone number of the investigative consumer reporting agency conducting the investigation;
21 does not notify the applicant of the nature and scope of the investigation requested; and does not
22 identify the applicant of the website or phone number of the investigative consumer reporting
23 agency that prepared the report.

24 35. Moreover, Defendants' "State Specific Information" form contains consumer-
25 reporting disclosures for a host of jurisdictions outside of California, including Minnesota,
26 Oklahoma, Massachusetts, New Jersey, New York State, New York City, and Washington State.

27 36. The inclusion of disclosures for these unrelated jurisdictions prevents the "State
28 Specific Information" form from constituting a clear and conspicuous standalone disclosure under

1 the ICRAA.

2 37. Moreover, Schneider's form titled "California Disclosure Regarding Background
3 Checks Document" is similarly noncompliant. Like the "State Specific Information" form,
4 Schneider identifies a laundry list of investigative consumer reporting agencies that may or may
5 not be used by Schneider and fails to provide the websites of some of them.

6 38. By failing to identify the actual investigative consumer reporting agencies that
7 Schneider uses, Schneider's application materials discourage applicants from understanding and
8 exercising their rights under the ICRAA.

9 39. Because Defendants fail to provide the ICRAA-specific notices in a clear and
10 conspicuous standalone disclosure, Defendants have violated the ICRAA and had no lawful right
11 to obtain applicants' investigative consumer reports and thus obtained applicants' investigative
12 consumer reports without authorization, in violation of Cal. Civ. Code § 1786.16(a)(2)(C).

13 40. Defendants also violate the ICRAA by failing to provide applicants, including
14 Plaintiff, a means by which the applicant may indicate on a written form, by means of a box to
15 check, that the applicant wishes to receive a copy of any report that is prepared, in violation of
16 Cal. Civ. Code § 1786.16(b)(1).

17 41. At all relevant times, and despite being made aware of their obligations under the
18 FCRA and ICRAA by the consumer reporting agencies ("CRAs") and investigative consumer
19 reporting agencies ("ICRAs") with which Defendants contract, Defendants' conduct was
20 intentional, willful, and in reckless disregard of federal and state laws and the rights of Plaintiff
21 and the other putative class members.

22 CLASS ACTION ALLEGATIONS

23 42. Plaintiff brings this action on behalf of himself and all others similarly situated
24 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent the following classes:

25 **California Labor Code Class:** All of Defendants' California-based drivers who
26 are employed or have been employed by Defendants in the State of California
during the relevant time period who have performed work within California.

27 **FCRA Class:** All persons residing in the United States who applied for a position
28 with Defendant described by 15 U.S.C. § 1681b(b)(2)(C) within the five years
immediately preceding the filing of this lawsuit and continuing through the date

1 of class certification and on whom Defendants procured one or more consumer
2 reports.

3 **ICRAA Class:** All persons residing in California who applied for employment
4 with Defendants within the longest possible applicable limitations period and on
5 whom Defendants procured one or more investigative consumer reports.

6 43. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
7 modify the class descriptions with greater particularity or further division into subclasses or
8 limitation to particular issues.

9 44. This action has been brought and may properly be maintained as a class action
10 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
11 of interest in the litigation and the proposed classes are easily ascertainable.

12 **A. Numerosity**

13 45. The potential members of the classes as defined are so numerous that joinder of all
14 the members of the classes is impracticable. While the precise number of class members has not
15 been determined at this time, Plaintiff is informed and believes that Defendants employ or, during
16 the time period relevant to this lawsuit, employed more than 100 class members.

17 46. Accounting for employee turnover during the relevant period increases this
18 number substantially. Plaintiff alleges that Defendants' employment records will provide
19 information as to the number and location of all class members.

20 **B. Commonality**

21 47. There are questions of law and fact common to the classes that predominate over
22 any questions affecting only individual class members. These common questions of law and fact
23 include:

- 24 a. Whether Defendants failed to pay Employees wages for all hours worked;
- 25 b. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC
26 Wage Orders, by failing to provide Employees with requisite meal periods;
- 27 c. Whether Defendants violated Labor Code § 226.7 and the applicable IWC Wage
28 Orders, by failing to provide Employees with requisite rest breaks;
- d. Whether Defendants violated Labor Code § 226(a);

- 1 e. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
2 wages and compensation due and owing at the time of termination of employment;
3 f. Whether Defendants' online application materials violated the FCRA by failing to
4 provide the consumer with all requisite disclosures under 15 U.S.C. § 1681b(b)(2)(B);
5 g. Whether Defendants violated 15 U.S.C. § 1681b(b)(2)(B)(ii) by failing to obtain valid
6 consent from the consumer before procuring a consumer report for employment
7 purposes;
8 h. Whether Defendants' failure to comply with the FCRA was willful as to Plaintiff and
9 the class members;
10 i. Whether Defendants violated the ICRAA by failing to provide applicants with a clear
11 and conspicuous standalone disclosure in writing containing the information required
12 under Cal. Civ. Code § 1786.16(a)(2)(B) before procuring investigative consumer
13 reports for employment purposes;
14 j. Whether Defendants violated Cal. Civ. Code § 1786.16(a)(2)(C) by failing to obtain
15 valid authorizations from consumers before procuring investigative consumer reports
16 for employment purposes;
17 k. Whether Defendants violate Cal. Civ. Code § 1786.16(b)(1) by failing to provide
18 applicants, including Plaintiff, a means by which the applicant may indicate on a
19 written form, by means of a box to check, that the applicant wishes to receive a copy
20 of any report that is prepared;
21 l. Whether Defendants violated Business & Professions Code §§ 17200, *et seq.*; and
22 m. Whether Employees are entitled to equitable relief pursuant to Business & Professions
23 Code §§17200, *et seq.*

24 **C. Typicality**

25 48. The claims of the named Plaintiff are typical of those of the other Employees.
26 Employees all sustained injuries and damages arising out of and caused by Defendants' common
27 course of conduct in violation of statutes, as well as regulations that have the force and effect of
28 law, as alleged herein.

1 **D. Adequacy of Representation**

2 49. Plaintiff will fairly and adequately represent and protect the interests of
3 Employees. Counsel who represent Employees are experienced and competent in litigating
4 employment class actions.

5 **E. Superiority of Class Action**

6 50. A class action is superior to other available means for the fair and efficient
7 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
8 questions of law and fact common to all Employees predominate over any questions affecting
9 only individual Employees. Each Employee has been damaged and is entitled to recovery by
10 reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

11 51. Class-action treatment will allow those persons similarly situated to litigate their
12 claims in the manner that is most efficient and economical for the parties and the judicial system.
13 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

14 **FIRST CAUSE OF ACTION**

15 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

16 *(Brought on behalf of the California Labor Code Class)*

17 52. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

18 53. Employees regularly worked shifts greater than five (5) hours and greater than ten
19 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of
20 more than five (5) hours without providing him or her with a meal period of not less than thirty
21 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
22 meal period of not less than thirty (30) minutes.

23 54. Defendants failed to provide Employees with meal periods as required under the
24 Labor Code. As alleged above, Defendants required Employees to work through meal periods for
25 which they were clocked out. Defendants also failed to provide Employees with timely,
26 uninterrupted meal periods, as required by law.

27 55. Moreover, Defendants failed to compensate Employees with an additional hour of
28 pay at their regular rate of compensation for each day on which meal periods were not provided

1 or were inadequately provided, as required under Labor Code § 226.7.

2 56. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in an
3 amount equal to one (1) hour of pay at their regular rate of compensation for each day on which
4 meal periods were not provided or deficiently provided, in an amount to be proven at trial.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY WAGES**

7 **LABOR CODE §§ 204, 1182.12, 1194, 1194.2, 1197**

8 ***(Brought on behalf of the California Labor Code Class)***

9 57. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

10 58. As alleged above, Employees, including Plaintiff, regularly worked through their
11 meal periods, or took on-duty meal periods for which they were required to clock out, or took
12 short or interrupted meal periods, but were not compensated for such off-the-clock work.
13 Therefore Employees did not receive at least the minimum wage for all hours worked, in
14 violation of California Labor Code §§ 1182.12, 1194, 1194.2, and 1197.

15 59. Defendants' failure to pay compensation in a timely fashion also constituted a
16 violation of California Labor Code § 204, which requires that all wages shall be paid
17 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
18 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
19 earned by Employees. Each such failure to make a timely payment of compensation to
20 Employees constitutes a separate violation of California Labor Code § 204.

21 60. Employees have been damaged by these violations of California Labor Code §§
22 204, 1182.12, and 1194, and the relevant orders of the Industrial Welfare Commission.

23 61. Consequently, pursuant to California Labor Code §§ 204, 1182.12, 1194, and 1197
24 (and the relevant orders of the Industrial Welfare Commission), Defendants are liable to
25 Employees for the full amount of all their unpaid wages, with interest, plus their reasonable
26 attorneys' fees and costs.

27 62. Pursuant to California Labor Code § 1194.2, Employees are also entitled to
28 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

1 **THIRD CAUSE OF ACTION**

2 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

3 *(Brought on behalf of the California Labor Code Class)*

4 63. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

5 64. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
6 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
7 not less than ten (10) minutes for each work period of four (4) hours or major fraction thereof.

8 65. Defendants failed to provide Employees with timely rest breaks of not less than ten
9 (10) minutes per work period of four (4) hours or major fraction thereof.

10 66. Moreover, Defendants did not compensate Employees with an additional hour of pay
11 at each Employee's regular rate of compensation for each day on which Defendants failed to
12 provide them with adequate rest breaks, as required under Labor Code § 226.7.

13 67. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in an
14 amount equal to one (1) hour of pay at their regular rate of compensation for each day worked
15 without the required rest breaks, in an amount to be proven at trial.

16 **FOURTH CAUSE OF ACTION**

17 **VIOLATION OF LABOR CODE § 226(a)**

18 *(Brought on behalf of the California Labor Code Class)*

19 68. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

20 69. California Labor Code § 226(a) requires an employer to furnish each of his or her
21 employees with an accurate, itemized statement in writing showing the gross and net earnings,
22 total hours worked, and the corresponding number of hours worked at each hourly rate; these
23 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
24 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
25 statements may be given to the employee separately from the payment of wages; in either case the
26 employer must give the employee these statements twice a month or each time wages are paid.

27 70. Defendants failed to provide Employees with accurate itemized wage statements in
28 writing, as required by the Labor Code. Specifically, the wage statements given to Employees by

1 Defendants failed to accurately account for wages, including the minimum wage and premium
2 pay for deficient meal periods and rest breaks, all of which Defendants knew or reasonably
3 should have known were owed to Employees, as alleged hereinabove.

4 71. Defendants' wage statements also failed to include the total hours worked by the
5 employee, as well as all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee, in violation of Labor
7 Code § 226(a)(2) and (9).

8 72. Defendants' failure to comply with Labor Code § 226(a) was knowing and
9 intentional in that Defendants knew or should have known that such information was required to
10 be included on Employees' wage statements but nevertheless failed to include it.

11 73. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
12 Employees suffered injury in that Employees could not promptly and easily determine from the
13 wage statements alone the information required to be provided on the itemized wage statement
14 pursuant to Section 226(a)(2)-(4), (6), and (9).

15 74. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover the
16 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
17 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
18 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
19 award of costs and reasonable attorneys' fees.

20 **FIFTH CAUSE OF ACTION**

21 **VIOLATION OF LABOR CODE §§ 201, *et seq.***

22 ***(Brought on behalf of the California Labor Code Class)***

23 75. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

24 76. Numerous Employees, including Plaintiff, are no longer employed by Defendants;
25 they either quit Defendants' employ or were fired therefrom.

26 77. Defendants failed to pay these Employees all wages due and certain at the time of
27 termination or within seventy-two (72) hours of resignation.

28 ///

78. The wages withheld from these Employees by Defendants remained due and owing for more than thirty (30) days from the date of separation of employment.

79. Defendants' failure to pay wages, as alleged above, was willful in that Defendants knew wages to be due but failed to pay them; this violation entitles these Employees to penalties under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

SIXTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 221

(Brought on behalf of the California Labor Code Class)

80. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

81. Labor Code § 221 states, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."

82. As alleged hereinabove, Defendants violated Labor Code § 221 by deducting sums from Plaintiff's and Employees' wages, including deductions for advance fees and safety shoes required to be worn by Employees. These deductions reduced the amount of wages Plaintiff and Employees actually received.

83. As a direct and proximate cause of Defendants' violations of Labor Code § 221, Plaintiff and Employees suffered injury in that Defendants failed to pay all wages due to Employees.

84. Plaintiff, on behalf of himself and Employees, seeks to recover the amounts unlawfully deducted, in a sum to be proven at trial.

SEVENTH CAUSE OF ACTION

CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699

(Brought on behalf of the California Labor Code Class)

85. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

86. Plaintiff brings this claim as a representative action on behalf of all current and former aggrieved employees of Defendants.

///

87. Plaintiff is an aggrieved employee as defined under Labor Code § 2699(c) in that he suffered the violations alleged in this Complaint and was employed by the alleged violators, Defendants.

88. Plaintiff seeks wages and penalties under Labor Code § 2699 for Defendants' violation of all Labor Code provisions identified in this Complaint. These penalties shall be allocated as follows: 75 percent to the Labor and Workforce Development Agency (LWDA) and 25 percent to the affected employees.

89. On or around April 7, 2020, Plaintiff gave written notice by online filing with the LWDA and by certified mail to Defendant Schneider of the specific Labor Code provisions alleged to have been violated and paid the required filing fee. The LWDA has not provided notice of its intent to investigate the alleged violations of the Labor Code provisions listed in Labor Code § 2699.5 that are identified in this Complaint within 65 calendar days of the postmark date of the aforesaid notice, nor has Defendant Schneider cured the violations of all Labor Code provisions other than those listed in Labor Code § 2699.5 that are identified in this Complaint within 33 calendar days of the postmark date of the aforesaid notice.

EIGHTH CAUSE OF ACTION

VIOLATION OF 15 U.S.C. § 1681b(b)(2)(B)

(Brought on behalf of the FCRA Class)

90. Plaintiff restates each of the allegations in the preceding paragraphs as if set forth at length herein.

91. Section 1681b(b)(2)(B) of the Fair Credit Reporting Act (FCRA) states that if a person applies to work for a motor carrier by mail, telephone, computer, or other similar means, then “at any time before a consumer report is procured or caused to be procured in connection with that application – (i) the person who procures the consumer report on the consumer for employment purposes shall provide to the consumer, by oral, written, or electronic means, notice that a consumer report may be obtained for employment purposes, and a summary of the consumer’s rights under section [15 U.S.C. § 1681m(a)(4)]; and (ii) the consumer shall have consented, orally, in writing, or electronically to the procurement of the report by that person.”

1 92. Section 1681m(a)(4) provides that if a person takes an adverse action based in
2 whole or in part on a consumer report, he or she must provide the consumer with a notice of the
3 consumer's right "(A) to obtain, under [section 1681j], a free copy of a consumer report on the
4 consumer from the consumer reporting agency ..., which notice shall include an indication of the
5 60-day period under that section for obtaining such a copy; and (B) to dispute, under [section
6 1681i], with a consumer reporting agency the accuracy or completeness of any information in a
7 consumer report furnished by the agency."

8 93. As alleged above, Defendants willfully violated 15 U.S.C. § 1681b(b)(2)(B) by
9 failing to provide Plaintiff and the other FCRA class members with a notice that Defendants
10 intended to procure consumer reports on them for employment purposes before procuring such
11 consumer reports and by failing to obtain applicants' consent.

12 94. Moreover, the disclosure Defendants provided Plaintiff and FCRA class members
13 after procuring consumer reports failed to notify them of their rights under section 1681m(a)(4)
14 that they had the right to request a free copy of the report within 60 days and that they could
15 dispute any inaccurate or misleading information in their reports directly with the consumer
16 reporting agency; rather, Defendants' tardy disclosure form contained inaccurate, contradictory,
17 and misleading information that deprived applicants of their statutorily protected notice rights, as
18 alleged above.

19 95. Consequently, Defendants did not obtain Plaintiff's or FCRA class members'
20 authorization to procure their consumer reports, in violation of 15 U.S.C. § 1681b(b)(2)(B)

21 96. As a result of Defendants' illegal procurement of consumer reports by way of its
22 inadequate disclosures, as set forth above, Plaintiff and FCRA class members have been injured,
23 including, but not limited to, having their privacy and statutory rights invaded in violation of the
24 FCRA.

25 97. Defendants' conduct in violation of Section 1681b(b)(2)(B) of the FCRA was
26 willful in that Defendants acted in deliberate or reckless disregard of its obligations and the rights
27 of Plaintiff and FCRA class members.

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98. Plaintiff, on behalf of himself and all FCRA class members, seeks all available remedies pursuant to 15 U.S.C. § 1681n, including statutory damages and/or actual damages, punitive damages, and attorneys' fees and costs.

99. 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 15 U.S.C. Section 1681o.

NINTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA CIVIL CODE § 1786.16(a)(2)

(Brought on behalf of the ICRAA Class)

100. Plaintiff restates each of the allegations in the preceding paragraphs as if set forth at length herein.

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

102. Section 1786.2(d) of the ICRAA defines “investigative consumer reporting agency” as “any person who, for monetary fees or dues, engages in whole or in part in the practice of collecting, assembling, evaluating, compiling, reporting, transmitting, transferring, or communicating information concerning consumers for the purposes of furnishing investigative consumer reports to third parties, but does not include any governmental agency whose records are maintained primarily for traffic safety, law enforcement, or licensing purposes, or any licensed insurance agent, insurance broker, or solicitor, insurer, or life insurance agent.”

103. As alleged above, Defendants violated Cal. Civ. Code § 1786.16(a)(2)(B) by failing to provide Plaintiff and other ICRAA class members with a “***clear and conspicuous disclosure*** in writing before procuring an investigative consumer report in a document that consists ***solely of the disclosure***” that “(i) states that an investigative consumer report may be obtained, (ii) identifies the permissible purpose for the report, (iii) states that the report may include information on the consumer’s character, general reputation, personal characteristics, and mode of living, (iv) identifies the name, address, and telephone number of the investigative

1 consumer reporting agency conducting the investigation, (v) notifies the consumer of the nature
2 and scope of the investigation requested, including a summary of the provisions of Cal. Civ. Code
3 § 1786.22, and (vi) and notifies the consumer of the internet website address of the investigative
4 consumer reporting agency that prepared the report or, if the agency has no internet website
5 address, the telephone number of the agency, where the consumer may find information about the
6 investigative reporting agency's privacy practices, including whether the consumer's personal
7 information will be sent outside the United States or its territories and information that complies
8 with subdivision (d) of Cal. Civ. Code § 1786.20." (Emphasis added.)

9 104. Defendants also violated Cal. Civ. Code § 1786.16(a)(2)(C) by failing to obtain
10 proper authorization in writing from Plaintiff and the other ICRAA class members prior to
11 procuring investigative consumer reports on them, as alleged above.

12 105. As a result of Defendants' willful, reckless, or grossly negligent failure to provide
13 the required form and/or report(s) as set forth above, Plaintiff and ICRAA class members have
14 been injured by, among other things, having their privacy and statutory rights invaded in violation
15 of the ICRAA.

16 106. Plaintiff, on behalf of himself and all putative class members, seeks all available
17 remedies pursuant to Cal. Civ. Code § 1786.50 including actual damages, statutory damages,
18 punitive damages, injunctive and equitable relief, and attorneys' fees and costs.

19 TENTH CAUSE OF ACTION

20 VIOLATION OF CALIFORNIA CIVIL CODE § 1786.16(b)(1)

21 *(Brought on behalf of the ICRAA Class)*

22 107. Plaintiff restates each of the allegations in the preceding paragraphs as if set forth
23 at length herein.

24 108. Cal. Civ. Code § 1786.16(b)(1) provides that any person who requests an
25 investigative consumer report must "[p]rovide the consumer a means by which the consumer may
26 indicate on a written form, by means of a box to check, that the consumer wishes to receive a
27 copy of any report that is prepared. If the consumer wishes to receive a copy of the report, the
28 recipient of the report shall send a copy of the report to the consumer within three business days

1 of the date that the report is provided to the recipient, who may contract with any other entity to
2 send a copy to the consumer.”

3 109. As alleged above, Defendants violate ICRAA by failing to provide applicants,
4 including Plaintiff, a means by which the applicant may indicate on a written form, by means of a
5 box to check, that the applicant wishes to receive a copy of any report that is prepared, in
6 violation of Cal. Civ. Code § 1786.16(b)(1). This omission prevented Plaintiff and ICRAA class
7 members from obtaining copies of the investigative consumer reports, which Defendants used in
8 making employment decisions, and from exercising their statutory rights.

9 110. As a result of Defendants’ willful, reckless, or grossly negligent failure to provide
10 the required form as set forth above, Plaintiff and ICRAA class members have been injured by,
11 among other things, having their privacy and statutory rights invaded in violation of the ICRAA.

12 111. Plaintiff, on behalf of himself and all putative ICRAA class members, seeks all
13 available remedies pursuant to Cal. Civ. Code § 1786.50, including actual damages, statutory
14 damages, punitive damages, injunctive and equitable relief, and attorneys’ fees and costs.

15 **ELEVENTH CAUSE OF ACTION**

16 **VIOLATION OF BUSINESS & PROFESSIONS CODE §§ 17200, *et seq.***

17 ***(Brought on behalf of the California Labor Code and ICRAA Classes)***

18 112. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

19 113. Plaintiff, on behalf of himself, Employees, and the general public, brings this claim
20 pursuant to Business & Professions Code §§ 17200, *et seq.* The conduct of Defendants as alleged
21 in this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and
22 the general public. Plaintiff seeks to enforce important rights affecting the public interest within
23 the meaning of Code of Civil Procedure § 1021.5.

24 114. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
25 has suffered injury in fact and has lost money or property as a result of Defendants’ conduct as
26 described herein, and therefore has standing to bring this cause of action for injunctive relief,
27 restitution, and other appropriate equitable relief.

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1 115. Business & Professions Code §§ 17200, *et seq.*, prohibits unlawful and unfair
2 business practices.

3 116. Wage-and-hour laws express fundamental public policies. Paying employees their
4 wages, providing them with meal periods and rest breaks, etc., are fundamental public policies of
5 California. Labor Code § 90.5(a) articulates the public policies of this State vigorously to enforce
6 minimum labor standards, to ensure that employees are not required or permitted to work under
7 substandard and unlawful conditions, and to protect law-abiding employers and their employees
8 from competitors who lower costs to themselves by failing to comply with minimum labor
9 standards. Moreover, FCRA and ICRAA express important public policies of protecting
10 individuals' privacy and ensuring applicants understand their rights before consenting to the
11 disclosure of their personal information to prospective employers for use in employment
12 decisions.

13 117. Defendants have violated statutes and public policies. Through the conduct alleged
14 in this Complaint, Defendants have acted contrary to these public policies, have violated specific
15 provisions of the Labor Code, FCRA, and ICRAA, and have engaged in other unlawful and unfair
16 business practices in violation of Business & Professions Code §§ 17200, *et seq.*; which conduct
17 has deprived Plaintiff, and all persons similarly situated, and all interested persons, of the rights,
18 benefits, and privileges guaranteed to all employees under the law.

19 118. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
20 violation of the Business & Professions Code §§ 17200, *et seq.*

21 119. Defendants, by engaging in the conduct herein alleged, by failing to pay wages,
22 failing to provide meal periods and rest breaks, failing to provide the required consumer-reporting
23 disclosures, and so forth, either knew or in the exercise of reasonable care should have known
24 that their conduct was unlawful; thus Defendants' conduct violates the Business & Professions
25 Code §§ 17200, *et seq.*

26 120. As a proximate result of the above-mentioned acts of Defendants, Employees have
27 been damaged and lost money or property, in a sum to be proven at trial.

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1 121. Unless restrained by this Court, Defendants will continue to engage in such unlawful
2 conduct as alleged above. Pursuant to the Business & Professions Code this Court should make
3 such orders or judgments as may be necessary to prevent the use by Defendants or their agents or
4 employees of any unlawful or deceptive practice prohibited by the Business & Professions Code,
5 including but not limited to the disgorgement of such profits as may be necessary to restore to
6 Employees the money Defendants have unlawfully failed to pay.

7 **RELIEF REQUESTED**

8 WHEREFORE, Plaintiff prays for the following relief:

- 9 1. For an order certifying this action as a class action.
- 10 2. For compensatory damages in the amount of all unpaid wages owed to Employees
11 from four (4) years prior to the filing of this action and continuing to the present, as may be
12 proven.
- 13 3. For liquidated damages in an amount equal to the unpaid minimum wage owed to
14 Employees from four (4) years prior to the filing of this action and continuing to the present, as
15 may be proven.
- 16 4. For compensatory damages in the amount of one hour of pay at Employees' regular
17 rate of compensation for each day on which Defendants failed to provide Employees with
18 compliant meal periods from four (4) years prior to the filing of this action and continuing to the
19 present, as may be proven.
- 20 5. For compensatory damages in the amount of one hour of pay at Employees' regular
21 rate of compensation for each day Defendants failed to provide compliant rest breaks from at least
22 four (4) years prior to the filing of this action and continuing to the present, as may be proven.
- 23 6. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven.
- 24 7. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired
25 in an amount equal to their daily wage times thirty (30) days, as may be proven.
- 26 8. For penalties pursuant to Labor Code § 2699, as may be proven.
- 27 9. For restitution for unfair competition pursuant to Business & Professions Code §§
28 17200, *et seq.*, including disgorgement of profits, as may be proven.

1 10. For statutory damages in an amount of not less than \$100.00 and not more than
2 \$1,000.00 per violation per FCRA class member, pursuant to 15 U.S.C. § 1681n(a).

3 11. For actual damages according to proof.

4 12. For an order declaring that Defendants' actions as described above violate the
5 California Labor Code, FCRA, ICRAA, and UCL.

6 13. For punitive damages pursuant to 15 U.S.C. § 1681n(a)(2) and Cal. Civ. Code §
7 1786.50(b).

8 14. For an order enjoining Defendants and their agents, servants, and employees, and all
9 persons acting under, in concert with, or for them, from acting in derogation of any rights or
10 duties adumbrated in this Complaint.

11 15. For an award of pre-judgment and post-judgment interest.

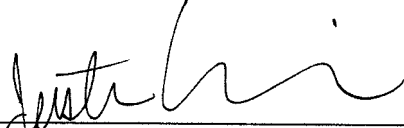
12 16. For an award providing for the payment of the costs of this suit.

13 17. For an award of attorneys' fees, to the extent provided by law.

14 18. For such other and further relief as this Court may deem proper and just.

15
16 DATED: July 22, 2020

COUNSELONE, PC

17
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19 By 

20 Anthony J. Orshansky
Alexandria R. Kachadoorian
Justin Kachadoorian

21 Attorneys for Plaintiff JARRELL
22 ELLSWORTH and the Putative Class
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DATED: July 22, 2020

By

Attorneys for Plaintiff JARRELL
ELLSWORTH and the Putative Class