

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KERN**

DAMMION MYLES, an individual, on behalf
of himself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

BUILDERS CONCRETE, INC., a California
Corporation;; VIKING READY MIX CO.,
INC., a Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. BCV-20-102375 (BCB)

**THIRD AMENDED CLASS AND
REPRESENTATIVE 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 REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. VIOLATION OF THE FAIR CREDIT REPORTING ACT FOR FAILURE TO MAKE PROPER DISCLOSURES [15 U.S.C. § 1681, *et seq.*];
10. VIOLATION OF THE FAIR CREDIT REPORTING ACT FOR FAILURE TO OBTAIN PROPER AUTHORIZATION [15 U.S.C. § 1681, *et seq.*];
11. CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699, *et seq.* FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 11040, SUBDIVISION 5(A)-(B)

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Builders Concrete, Inc. is a California Corporation that at all relevant times
7 mentioned herein conducted and continues to conduct substantial business in the state of California.

8 2. Defendant Viking Ready Mix Co., Inc. is a Corporation that at all relevant times
9 mentioned herein conducted and continues to conduct substantial business in the state of California.

10 3. PLAINTIFF alleges there has existed a unity of interest and ownership between these
11 Defendants such that any individuality and separateness between the entities has ceased. Defendants
12 Builders Concrete, Inc., and Viking Ready Mix Co., Inc., are therefore alter egos of each other.
13 Adherence to the fiction of the separate existence of would permit an abuse of the corporative privilege,
14 and would promote injustice by protecting Builders Concrete, Inc., and Viking Ready Mix Co., Inc.,
15 from liability for the wrongful acts committed by them. As evidenced by PLAINTIFF’s paychecks and
16 company documents, Builders Concrete, Inc., and Viking Ready Mix Co., Inc., were joint employers
17 of PLAINTIFF and are referred to herein as (“DEFENDANT”).

18 4. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers of
19 DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest and
20 ownership between DEFENDANT such that any individuality and separateness between the entities has
21 ceased. Builders Concrete, Inc., and Viking Ready Mix Co., Inc., and DOES 1-50 are therefore alter
22 egos of each other. Adherence to the fiction of the separate existence of DEFENDANT would permit
23 an abuse of the corporate privilege, and would promote injustice by protecting DEFENDANT from
24 liability for the wrongful acts committed by them.

25 5. PLAINTIFF further alleges that Defendant are the alter egos of each other for the
26 following reasons:

27 (A) PLAINTIFF’s Application for Employment listed three (3) potential Employers:
28 “Builders Concrete, Inc., Viking Ready Mix Co., Inc., and Golden Empire

Concrete, Co.”

(B) PLAINTIFF’s Driver Training Evaluations list both defendant Builders Concrete, Co., and defendant Viking Ready Mix, Co., Inc., on their letter head and both entities appear numerous times in PLAINTIFF’s Personnel file, and that they utilize the same standardized employment forms and issue the same employment policies, see e.g. evaluations on 11/15/2019, 11/22/2019 and 11/25/2019.

(C) The “Personal Cell Phone Use” policy/memorandum issued by DEFENDANT to PLAINTIFF and “All Builders Concrete, Viking Ready Mix, Golden Empire Concrete Hourly Employees” further demonstrates a unity of interests among DEFENDANT.

(D) DEFENDANT had the power to hire and fire employees as demonstrated by PLAINTIFF January 13, 2020 Termination Letter executed by David Lake, Safety Manager for Builders Concrete, Golden Empire Concrete, and Viking Ready Mix, Inc, who was the same individual that presented PLAINTIFF with critical employment policies such as DEFENDANT’s “Meal Period Policy and Acknowledgment.”

(E) PLAINTIFF’s Manager’s (Michael Hernandez) business card identified Viking Ready Mix, Co., Inc., Golden Empire Concrete, Co., and Builders Concrete, Inc. as his employer.

(F) On the California Secretary of State’s website (<https://bizfileonline.sos.ca.gov/search/business>), Builders Concrete, Inc., Viking Ready Mix Co., Inc., Concrete Holding Company of California, and National Ready Mixed Concrete Co., have the same principal address, and/or mailing address, and/or Agent for Service of Process.

(G) Common parent company and executives within DEFENDANT entities exemplifies common ownership and control among DEFENDANT such that any individuality and separateness between the entities has ceased.

1 (H) Golden Empire Concrete is a commonly used dba for DEFENDANT entities.

2 6. DEFENDANT is a ready mixed concrete supplier that serves the Southern
3 California market.

4 7. PLAINTIFF was employed by DEFENDANT in California from November of
5 2019 to January 10, 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
6 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
7 minimum and overtime wages due for all time worked. In connection with PLAINTIFF's employment
8 application, PLAINTIFF completed DEFENDANT's standard application materials. Among other
9 things, these application materials included a background investigation disclosure and authorization
10 form.

11 8. PLAINTIFF brings this Class Action on behalf of himself and a California class,
12 defined as all individuals who are or previously were employed by Defendants Builders Concrete, Inc.,
13 and Viking Ready Mix Co., Inc., in California and classified as non-exempt employees (the
14 "CALIFORNIA CLASS") at any time during the period beginning on April 1, 2018 through March 14,
15 2023 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of
16 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

17 9. During the employment application process PLAINTIFF executed the
18 background check disclosure and authorization form permitting DEFENDANT to have a third-party
19 obtain a consumer report, which form included, among other things, language pertaining to additional
20 state law notices.

21 10. PLAINTIFF also brings this Class Action on behalf of himself and a nationwide
22 class, defined as all individuals who applied for employment or were employed by DEFENDANTS
23 Builders Concrete, Inc., and Viking Ready Mix Co., Inc., for whom background check were run (the
24 "FCRA CLASS") during the period of October 9, 2015 through the earlier of the date for an order
25 approving plaintiff's motion for preliminary approval or March 14, 2023 (the "FCRA CLASS
26 PERIOD"). The amount in controversy for the aggregate claim of FCRA CLASS Members is under
27 five million dollars (\$5,000,000.00).

28 11. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA

1 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
2 CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and practice which failed to
3 lawfully compensate these employees. DEFENDANT's policy and practice alleged herein was an
4 unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to
5 retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and
6 the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
7 DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the
8 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and current
9 unlawful conduct, and all other appropriate legal and equitable relief.

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

18 13. The agents, servants and/or employees of the Defendants and each of them acting
19 on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent,
20 servant and/or employee of the Defendants, and personally participated in the conduct alleged herein
21 on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each
22 Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally
23 liable to PLAINTIFF and the other members of the CALIFORNIA CLASS, for the loss sustained as a
24 proximate result of the conduct of the Defendants' agents, servants and/or employees.

25 26 **THE CONDUCT**

27 14. The Fair Credit Reporting Act 15 U.S.C. § 1681, *et seq.* ("FCRA") provides
28 individuals with a number of rights. Specifically, pertaining to employment-related background

1 checks, the FCRA provides that a prospective employee must give valid consent to the background
2 check. The FCRA requires a signed authorization and disclosure from the applicant, sometimes
3 referred to as a “consent” form. The authorization and disclosure form must be executed and signed
4 by the applicant prior to an employer requesting or conducting a background check. Importantly, no
5 extraneous information can be attached or included on the consent form. *The authorization and*
6 *disclosure must stand alone.*

7 15. In violation of 15 U.S.C. § 1681b(b)(2)(A)(I), DEFENDANT has unlawfully
8 inserted extraneous language pertaining to additional state law notices that do not relate to the Fair
9 Credit Reporting Act, into forms purporting to grant DEFENDANT and its third-party background
10 checking company the authority to obtain and use consumer report information for employment
11 purposes. The FCRA prohibits this practice and requires that forms granting the authority to access and
12 use consumer report information for employment purposes be stand alone forms, and not include any
13 additional information or agreements. DEFENDANT’s form is contrary to the plain language of the
14 statute and unambiguous regulatory guidance from the Federal Trade Commission (“FTC”).

15 16. PLAINTIFF sought employment with DEFENDANT in October of 2019. In
16 connection with his employment application, PLAINTIFF completed DEFENDANT’s standard
17 application materials. These application materials included a background check disclosure and
18 authorization form and included on the form was extraneous information as described herein.
19 Following his submission of the employment application materials, DEFENDANT’s third party
20 conducted a background check on PLAINTIFF and PLAINTIFF was hired to work for DEFENDANT.

21 17. The background check disclosure and authorization form disclosed that
22 DEFENDANT intended to conduct a background investigation on the applicant that would involve
23 investigating the applicant’s work record, references and education.

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

- 26 (i) a clear and conspicuous disclosure has been made in writing to the consumer at
27 any time before the report is procured or caused to be procured, ***in a document***
that consists solely of the disclosure, that a consumer report may be obtained
28 (ii) the consumer has authorized in writing (which authorization may be made on the

document referred to in clause(I)) the procurement of the report.
15 U.S.C. §§ 1681b(b)(2)(A)(I)-(ii) (emphasis added).

19. After PLAINTIFF executed the background check disclosure and authorization form in October of 2019, DEFENDANT obtained a consumer report on PLAINTIFF notwithstanding the fact that the background check disclosure and authorization form was invalid under the requirements of the FCRA.

20. Although the disclosure required by clause (i) and the authorization required by clause (ii) may be combined in a single document, the FTC has warned that “the form should not include any extraneous information.”

21. By including the extraneous information described herein in its background check disclosure and authorization form, DEFENDANT willfully disregarded the FTC’s regulatory guidance and violated 15 U.S.C. §§ 1681b(b)(2)(A).

22. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT’s control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF’s off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF’s off-duty meal break. Defendant’s employees are provided radios. Defendant’s meal and rest period policies however, failed to indicate that radios should be turned off during rest breaks and meal periods. As a result, Defendant is liable for on-call/ on-duty meal periods and the failure to separately compensate for break time. Additionally, PLAINTIFF and CALIFORNIA CLASS Members would clock out of DEFENDANT’s timekeeping system, in order to perform additional work for DEFENDANT as required to meet DEFENDANT’s job requirements. DEFENDANT’s policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT’s business records.

1 23. As a result of their rigorous work schedules, PLAINTIFF and other
2 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off duty meal
3 breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA
4 CLASS Members were required from time to time to perform work as ordered by DEFENDANT for
5 more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT
6 from time to time failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second
7 off-duty meal period for some workdays in which these employees were required by DEFENDANT to
8 work ten (10) hours of work. PLAINTIFF and other members of the CALIFORNIA CLASS therefore
9 forfeited meal breaks without additional compensation and in accordance with DEFENDANT's
10 corporate policy and practice. Additionally, meeting time was unaccounted for and was not included
11 by DEFENDANT in PLAINTIFF and other members of the CALIFORNIA CLASS allocation towards
12 the total hours worked. Defendant failed to properly compensate PLAINTIFF and the other members
13 of the CALIFORNIA CLASS for all time worked, by the hour and/or piece or other incentive pay,
14 including but not limited to paying meal break premiums, overtime and paid sick leave at the regular
15 rate of pay. By way of example, "Washout"; "Showup Allowance"; "Incentive"; and "174 Bonus"
16 payments made by DEFENDANT to PLAINTIFF and other members of the CALIFORNIA Class were
17 not included in the regular rate of pay.

18 24. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
19 CALIFORNIA CLASS Members were also required from time to time to work in excess of four (4)
20 hours without being provided ten (10) minute rest periods. Further, these employees were denied their
21 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
22 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of
23 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least
24 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and
25 other CALIFORNIA CLASS Members were also not provided with one hour wages in lieu thereof.
26 Additionally, the applicable California Wage Order requires employers to provide employees with off-
27 duty rest periods, which the California Supreme Court defined as time during which an employee is
28 relieved from all work related duties and free from employer control. In so doing, the Court held that

1 the requirement under California law that employers authorize and permit all employees to take rest
2 period means that employers must relieve employees of all duties and relinquish control over how
3 employees spend their time which includes control over the locations where employees may take their
4 rest period. Employers cannot impose controls that prohibit an employee from taking a brief walk - five
5 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
6 CALIFORNIA CLASS Members from unconstrained walks and was unlawful based on Defendant's
7 rule which stated PLAINTIFF and other CALIFORNIA CLASS Members could not leave the work
8 premises during their rest period.

9 25. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
10 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of time
11 these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
12 is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, meaning
13 the time during which an employee was subject to the control of an employer, including all the time the
14 employee was permitted or suffered to permit this work. DEFENDANT required these employees to
15 work off the clock without paying them for all the time they were under DEFENDANT's control. As
16 such, DEFENDANT knew or should have known that PLAINTIFF and the other members of the
17 CALIFORNIA CLASS were under compensated for all time worked. Moreover, Defendant knew or
18 should have known that their employees were being called outside of their schedule work time, but
19 nonetheless stood idly by and failed to compensate plaintiff for this time. As a result, PLAINTIFF and
20 other CALIFORNIA CLASS Members forfeited time worked by working without their time being
21 accurately recorded and without compensation at the applicable minimum wage and overtime wage
22 rates. To the extent that the time worked off the clock did not qualify for overtime premium payment,
23 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab.
24 Code §§ 1194, 1197, and 1197.1.

25 26. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
26 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses incurred
27 by PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging their
28 duties on behalf of DEFENDANT. Despite having a policy for radios to remain on at all times,

1 DEFENDANT relied on employees like PLAINTIFF and the other CALIFORNIA CLASS Members
2 to use their personal cell phones to remain in contact with DEFENDANT. Nevertheless, no
3 reimbursement was provided by DEFENDANT to PLAINTIFF and the other CALIFORNIA CLASS
4 Members for cell phone expenses. Under California Labor Code Section 2802, employers are required
5 to indemnify employees for all expenses incurred in the course and scope of their employment. Cal.
6 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all
7 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his
8 or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless
9 the employee, at the time of obeying the directions, believed them to be unlawful."

10 27. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
11 Members as a business expense, were required by DEFENDANT to use their own personal cellular
12 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but were not
13 reimbursed or indemnified by DEFENDANT for the cost associated with the use of their personal
14 cellular phones for DEFENDANT's benefit. As a result, in the course of their employment with
15 DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed
16 business expenses which included, but were not limited to, costs related to the use of their personal
17 cellular phones all on behalf of and for the benefit of DEFENDANT.

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

1 29. In violation of the applicable sections of the California Labor Code and the
2 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT intentionally
3 and knowingly and failed to compensate PLAINTIFF and the other members of the CALIFORNIA
4 CLASS for missed meal and rest periods. This policy and practice of DEFENDANT is intended to
5 purposefully avoid the payment for all time worked as required by California law which allows
6 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied with the
7 law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
8 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

9 30. By reason of this conduct applicable to PLAINTIFF and all CALIFORNIA
10 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the California
11 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a
12 company-wide policy and procedure which failed to accurately calculate and record all missed meal and
13 rest periods by PLAINTIFF and other CALIFORNIA CLASS Members. The proper recording of these
14 employees' missed meal and rest breaks is the DEFENDANT's burden. As a result of DEFENDANT's
15 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly calculate
16 and/or pay all required compensation for work performed by the members of the CALIFORNIA CLASS
17 and violated the California Labor Code and regulations promulgated thereunder as herein alleged.

18 31. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
19 required off-duty meal and rest breaks to him as required by the applicable Wage Order and Labor Code
20 and failed to pay her all minimum and overtime wages due to her. DEFENDANT did not have a policy
21 or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and also failed to
22 compensate PLAINTIFF for his missed meal and rest breaks. Further, DEFENDANT failed to
23 separately compensate PLAINTIFF for break time and failed to separately compensate PLAINTIFF by
24 the hour. The nature of the work performed by the PLAINTIFF did not prevent him from being relieved
25 of all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT's failure
26 to provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business
27 records. To date, DEFENDANT has yet to pay PLAINTIFF all of his wages due to him and
28 DEFENDANT has failed to pay any penalties owed to him under California Labor Code Section 203.

1 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

2
3 **JURISDICTION AND VENUE**

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

9 33. Venue is proper in this Court pursuant to California Code of Civil Procedure,
10 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
11 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this
12 County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct
13 herein alleged in this County against members of the CALIFORNIA CLASS and CALIFORNIA
14 LABOR SUB-CLASS.

15
16 **THE CALIFORNIA CLASS**

17 34. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
18 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
19 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of himself and a California class, defined as all
20 individuals who are or previously were employed by Defendants Builders Concrete, Inc., and Viking
21 Ready Mix Co., Inc., in California and classified as non-exempt employees, (the "CALIFORNIA
22 CLASS") at any time during the period beginning on April 1, 2018 through the earlier of the date of
23 an order approving plaintiff's motion for preliminary approval, of March 14, 2023 (the "CALIFORNIA
24 CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
25 Members is under five million dollars (\$5,000,000.00).

26 35. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
27 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

28 36. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare

1 Commission ("IWC") Wage Order requirements, and the applicable provisions of California law,
2 intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to record
3 all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even
4 though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
5 permits or suffers to permit this work.

6 37. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
7 CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws.
8 The DEFENDANT, however, as a matter of policy and procedure failed to have in place during the
9 CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each
10 and every CALIFORNIA CLASS Member is paid as required by law. This common business practice
11 is applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide
12 basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*
13 (the "UCL") as causation, damages, and reliance are not elements of this claim.

14 38. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS
15 Members is impracticable.

16 39. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law
17 by:

- 18 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof. Code
19 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
20 in place company policies, practices and procedures that failed to record and pay
21 PLAINTIFF and the other members of the CALIFORNIA CLASS for all time
22 worked, including minimum wages owed and overtime wages owed for work
23 performed by these employees;
- 24 (b) Committing an act of unfair competition in violation of the UCL, by failing to
25 provide the PLAINTIFF and the other members of the CALIFORNIA CLASS
26 with the legally required meal and rest periods; and,
- 27 (c) Committing an act of unfair competition in violation of the California Unfair
28 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.

1 Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA
2 CLASS members with necessary expenses incurred in the discharge of their job
3 duties.

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

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

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

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

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

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

14 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on
15 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
16 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
17 DEFENDANT failed to pay all wages due to members of the CALIFORNIA
18 CLASS as required by law;

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

26 (c) Common questions of law and fact exist as to the members of the
27 CALIFORNIA CLASS, with respect to the practices and violations of California
28 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 avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA 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 CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

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

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

4) A class action is superior to other available methods for the fair and

1 efficient adjudication of this litigation because class treatment will
2 obviate the need for unduly and unnecessary duplicative litigation that
3 is likely to result in the absence of certification of this action pursuant
4 to Cal. Code of Civ. Proc. § 382.

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

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

- 1 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
2 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
3 respect to the CALIFORNIA CLASS as a whole;
- 4 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the
5 business records of DEFENDANT; and,
- 6 (i) Class treatment provides manageable judicial treatment calculated to bring a
7 efficient and rapid conclusion to all litigation of all wage and hour related claims
8 arising out of the conduct of DEFENDANT as to the members of the
9 CALIFORNIA CLASS.

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

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

17 44. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
18 of Action on behalf of a California sub-class, defined as all individuals who are or previously were
19 employed by Defendants Builders Concrete, Inc., and Viking Ready Mix Co., Inc., in California and
20 classified as non-exempt employees,(the "CALIFORNIA CLASS") at any time during the period
21 beginning on April 1, 2018 through March 14, 2023 (the "CALIFORNIA CLASS PERIOD") (the
22 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The
23 amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is
24 under five million dollars (\$5,000,000.00).

25 45. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
26 Commission ("IWC") Wage Order requirements, and the applicable provisions of California law,
27 intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to correctly
28 calculate compensation for the time worked by PLAINTIFF and the other members of the

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

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

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

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

- 17 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
18 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
19 missed meal and rest breaks in violation of the California Labor Code and
20 California regulations and the applicable California Wage Order;
- 21 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
22 members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized
23 wage statements;
- 24 (c) Whether DEFENDANT has engaged in unfair competition by the above-listed
25 conduct;
- 26 (d) The proper measure of damages and penalties owed to the members of the
27 CALIFORNIA LABOR SUB-CLASS; and,
- 28 (e) Whether DEFENDANT's conduct was willful.

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

- 3 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
4 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all
5 wages due for overtime worked, for which DEFENDANT is liable pursuant to
6 Cal. Lab. Code § 1194;
- 7 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
8 accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR
9 SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable
10 pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 11 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
12 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
13 statement in writing showing the corresponding correct amount of wages earned
14 by the employee;
- 15 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
16 and the other members of the CALIFORNIA LABOR SUB-CLASS with all
17 legally required off-duty, uninterrupted thirty (30) minute meal breaks and the
18 legally required off-duty rest breaks;
- 19 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
20 employee is discharged or quits from employment, the employer must pay the
21 employee all wages due without abatement, by failing to tender full payment
22 and/or restitution of wages owed or in the manner required by California law to
23 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
24 their employment; and,
- 25 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
26 CALIFORNIA LABOR SUB-CLASS members with necessary expenses
27 incurred in the discharge of their job duties.

28 50. 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 CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;
- (c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT; and,
- (d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-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 CALIFORNIA LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

51. 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, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA LABOR SUB-CLASS will create the risk of:

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

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

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

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

1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be

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

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

7 A. Inconsistent or varying adjudications with respect to individual
8 members of the CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS would as a practical
13 matter be dispositive of the interests of the other members not
14 parties 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 LABOR SUB-CLASS Members will avoid
18 asserting their legal rights out of fear of retaliation by DEFENDANT,
19 which may adversely affect an individual's job with DEFENDANT or
20 with a subsequent employer, the Class Action is the only means to assert
21 their claims through a representative; and,

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

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

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

LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time 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

53. 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 employees of DEFENDANT in the United States who executed DEFENDANT's standard FCRA disclosure form (the "FCRA CLASS") at any time during the period beginning on the date five (5) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "FCRA CLASS PERIOD"). The amount in controversy for the aggregate claim of FCRA CLASS Members is under five million dollars (\$5,000,000.00).

54. To the extent equitable tolling operates to toll claims by the FCRA CLASS against DEFENDANT, the FCRA CLASS PERIOD should be adjusted accordingly.

55. DEFENDANT, as a matter of corporate policy, practice and procedure, and in violation of The Fair Credit Reporting Act 15 U.S.C. § 1681, *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.

56. The FCRA CLASS is so numerous that joinder of all FCRA CLASS Members is impracticable.

57. DEFENDANT uniformly violated the rights of the FCRA CLASS by:

- (a) Violating The Fair Credit Reporting Act 15 U.S.C. § 1681, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that uniformly obtained credit reports on prospective

employees without first obtaining valid authorization consent forms.

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

- (a) Whether DEFENDANT required the FCRA CLASS Members to sign a background check disclosure and authorization form;
- (b) Whether DEFENDANT's background check disclosure and authorization form complies with the Fair Credit Reporting Act 15 U.S.C. § 1681, *et seq.* ("FCRA");
- (c) Whether DEFENDANT violated the FCRA by including extraneous information in its background check disclosure and authorization form; and,
- (d) Whether DEFENDANT violated the FCRA by procuring consumer report information based on invalid authorizations;
- (e) Whether DEFENDANT's violations of the FCRA were willful;
- (f) The proper measure of statutory damages and punitive damages; and,
- (g) The proper form of injunctive and declaratory relief.

59. 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 his 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

1 are similarly or identically harmed by the same unlawful, deceptive, unfair and
2 pervasive pattern of misconduct engaged in by DEFENDANT; and,

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

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

- 12 (a) Without class certification and determination of declaratory, statutory and other
13 legal questions within the class format, prosecution of separate actions by
14 individual members of the FCRA CLASS will create the risk of:
- 15 1) Inconsistent or varying adjudications with respect to individual members
16 of the FCRA CLASS which would establish incompatible standards of
17 conduct for the parties opposing the FCRA CLASS; and/or,
- 18 2) Adjudication with respect to individual members of the FCRA CLASS
19 which would as a practical matter be dispositive of interests of the other
20 members not party to the adjudication or substantially impair or impede
21 their ability to protect their interests.
- 22 (b) The parties opposing the FCRA CLASS have acted or refused to act on grounds
23 generally applicable to the FCRA CLASS, making appropriate class-wide relief
24 with respect to the FCRA CLASS as a whole;
- 25 (c) Common questions of law and fact exist as to the members of the FCRA
26 CLASS, with respect to the practices and violations of the FCRA as listed
27 above, and predominate over any question affecting only individual FCRA
28 CLASS Members, and a Class Action is superior to other available methods for

1 the fair and efficient adjudication of the controversy, including consideration of:

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

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

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

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

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

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

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

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

62. 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.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

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

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

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

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

1 Cal. Bus. & Prof. Code § 17203.

2 66. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in
3 a business practice which violates California law, including but not limited to, the applicable Industrial
4 Wage Order(s), the California Code of Regulations and the California Labor Code including Sections
5 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198 & 2802, for which this Court should issue
6 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary
7 to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages
8 wrongfully withheld.

9 67. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair in
10 that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or
11 substantially injurious to employees, and were without valid justification or utility for which this Court
12 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
13 Professions Code, including restitution of wages wrongfully withheld.

14 68. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent
15 in that DEFENDANT's policy and practice failed to provide the legally mandated meal and rest periods,
16 the required amount of compensation for missed meal and rest periods and overtime and minimum
17 wages owed, failed to timely pay wages, and failed to reimburse all necessary business expenses
18 incurred, due to a business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code,
19 and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and
20 for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
21 § 17203, including restitution of wages wrongfully withheld.

22 69. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
23 deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other members
24 of the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

25 70. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
26 deceptive in that DEFENDANT's policies, practices and procedures failed to provide all legally
27 required meal breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS as required
28 by Cal. Lab. Code §§ 226.7 and 512.

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

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

9 73. By and through the unlawful and unfair business practices described herein,
10 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the other
11 members of the CALIFORNIA CLASS, including earned wages for all time worked, and has deprived
12 them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these
13 employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete
14 against competitors who comply with the law.

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

20 75. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and
21 do, seek such relief as may be necessary to restore to them the money and property which
22 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
23 CLASS have been deprived, by means of the above described unlawful and unfair business practices,
24 including earned but unpaid wages for all time worked.

25 76. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled
26 to, and do, seek a declaration that the described business practices are unlawful, unfair and deceptive,
27 and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful
28 and unfair business practices in the future.

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

SECOND CAUSE OF ACTION

For Failure To Pay Minimum Wages

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

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

and Against All Defendants)

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

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

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

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

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

83. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other members

1 of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they work.
2 As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally deny
3 timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR
4 SUB-CLASS.

5 84. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
6 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy
7 and practice that denies accurate compensation to PLAINTIFF and the other members of the
8 CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay. Defendant failed to properly
9 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked by
10 the hour and/or piece or other incentive pay.

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

16 86. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
17 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive the
18 correct minimum wage compensation for their time worked for DEFENDANT.

19 87. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT required,
20 permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members to work without
21 paying them for all the time they were under DEFENDANT's control. During the CALIFORNIA
22 LABOR SUB-CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA LABOR
23 SUB-CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all
24 earned wages.

25 88. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation
26 to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for the true time
27 they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS have
28 suffered and will continue to suffer an economic injury in amounts which are presently unknown to

1 them and which will be ascertained according to proof at trial.

2 89. DEFENDANT knew or should have known that PLAINTIFF and the other
3 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time worked.
4 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
5 employees for their labor as a matter of company policy, practice and procedure, and DEFENDANT
6 perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA
7 LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

3 **[Cal. Lab. Code §§ 510, *et seq.*]**

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

5 92. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
6 reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs of this
7 Complaint.

8 93. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring
9 a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the
10 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees for
11 all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or
12 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

18 96. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
19 including minimum wage and overtime compensation and interest thereon, together with the costs of
20 suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than
21 those fixed by the Industrial Welfare Commission is unlawful.

22 97. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
23 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by DEFENDANT
24 to work for DEFENDANT and were not paid for all the time they worked, including overtime work.

25 98. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
26 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy
27 and practice that failed to accurately record overtime worked by PLAINTIFF and other CALIFORNIA
28 LABOR SUB-CLASS Members and denied accurate compensation to PLAINTIFF and the other

1 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, the overtime
2 work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday,
3 and/or forty (40) hours in any workweek.

4 99. In committing these violations of the California Labor Code, DEFENDANT inaccurately
5 recorded overtime worked and consequently underpaid the overtime worked by PLAINTIFF and other
6 CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in an illegal attempt to avoid
7 the payment of all earned wages, and other benefits in violation of the California Labor Code, the
8 Industrial Welfare Commission requirements and other applicable laws and regulations.

9 100. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, the
10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive full
11 compensation for overtime worked.

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

20 102. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime worked that
22 they are entitled to, constituting a failure to pay all earned wages. Defendant failed to properly
23 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, by
24 the hour and/or piece or other incentive pay, including but not limited to paying meal break premiums,
25 overtime and paid sick leave at the regular rate of pay. By way of example, "Washout"; "Showup
26 Allowance"; Incentive"; and "174 Bonus" payment made by DEFENDANT to PLAINTIFF and other
27 members of the CALIFORNIA CLASS were not included in the regular rate of pay.

28 103. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of the

1 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in excess
2 of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
3 though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were required
4 to work, and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay
5 as evidenced by DEFENDANT's business records and witnessed by employees.

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

11 105. DEFENDANT knew or should have known that PLAINTIFF and the other members of
12 the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime worked.
13 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
14 employees for their labor as a matter of company policy, practice and procedure, and DEFENDANT
15 perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA
16 LABOR SUB-CLASS for overtime worked.

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

25 107. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
26 therefore request recovery of all overtime wages, according to proof, interest, statutory costs, as well
27 as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
28 California Labor Code and/or other applicable statutes. To the extent minimum and/or overtime

1 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who
2 have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
3 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code
4 § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS
5 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith.
6 Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and
7 recover statutory costs.

8
9 **FOURTH CAUSE OF ACTION**

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

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

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

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

16 109. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed
17 to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA
18 LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
19 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not
20 prevent these employees from being relieved of all of their duties for the legally required off-duty meal
21 periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR
22 SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their
23 meal periods. Additionally, Defendant's employees are provided radios. Defendant's meal and rest
24 period policies however, failed to indicate that radios should be turned off during meal periods. As a
25 result, Defendant is liable for on-call meal periods. Additionally, DEFENDANT's failure to provide
26 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks
27 prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records from time to
28 time. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with

1 a second off-duty meal period in some workdays in which these employees were required by
2 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFF and other
3 members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without
4 additional compensation and in accordance with DEFENDANT's corporate policy and practice.

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

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

13
14 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

1 and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest
2 periods by DEFENDANT and DEFENDANT's managers. Additionally, Defendant's employees are
3 provided radios. Defendant's rest period policies however, failed to indicate that radios should be
4 turned off during rest breaks. As a result, Defendant is liable for on-call rest breaks.

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

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

13
14 **SIXTH CAUSE OF ACTION**

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

16 **[Cal. Lab. Code § 2802]**

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

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

20
21 117. Cal. Lab. Code § 2802 provides, in relevant part, that:

22 An employer shall indemnify his or her employee for all necessary expenditures or
23 losses incurred by the employee in direct consequence of the discharge of his or her
24 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.

25 118. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing
26 to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
27 required expenses incurred in the discharge of their job duties for DEFENDANT's benefit.

1 DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members
2 for expenses which included, but were not limited to, costs related to using their personal cellular
3 phones all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other
4 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell phones to
5 respond to work related issues. DEFENDANT's policy, practice and procedure was to not reimburse
6 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using
7 their personal cellular phones for DEFENDANT within the course and scope of their employment for
8 DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT
9 is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these
10 expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-
11 CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
12 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do
13 under the laws and regulations of California.

14 119. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred by
15 them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties for
16 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate
17 and costs under Cal. Lab. Code § 2802.

18 **SEVENTH CAUSE OF ACTION**

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

20 **[Cal. Lab. Code § 226]**

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

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

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

- 27 (1) gross wages earned,
28 (2) total hours worked by the employee, except for any employee whose compensation is

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

122. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned and failed to list the correct legal entity that employed PLAINTIFF. Moreover, DEFENDANT failed to list the total hours worked, forms of compensation and rates of pay on PLAINTIFF's and the other members of the CALIFORNIA LABOR SUB-CLASS wage statements. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code § 226.

123. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the

violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

EIGHTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

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

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

125. Cal. Lab. Code § 200 provides that:

As used in this article:

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

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

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

127. Cal. Lab. Code § 202 provides, 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 previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-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.

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

1 129. Cal. Lab. Code § 203 provides:

2 If an employer willfully fails to pay, without abatement or reduction, in accordance with
3 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or
4 who quits, the wages of the employee 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 continue for more than 30 days.

5 130. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
6 Members has terminated and DEFENDANT has not tendered payment of wages, to these employees
7 who missed meal and rest breaks, as required by law. Moreover, DEFENDANT failed to compensate
8 PLAINTIFF for piece or other incentive pay including paying overtime and paid sick leave at the
9 regular rate of pay.

10 131. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members
11 of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated, PLAINTIFF demands
12 up to thirty days of pay as penalty for not paying all wages due at time of termination for all employees
13 who terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD, and demands
14 an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

15 **NINTH CAUSE OF ACTION**

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

17 **[15 U.S.C. § 1681b(b)(2)(A)(I), *et seq.*]**

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

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

21 133. DEFENDANT violated 15 U.S.C. § 1681b(b)(2)(A)(I) of the FCRA by including
22 extraneous information, including language pertaining to additional state law notices in
23 DEFENDANT's background check disclosure and authorization form that PLAINTIFF and other
24 FCRA CLASS Members were required to execute as a condition of employment with DEFENDANT.

25 134. The violations of the FCRA were willful. DEFENDANT knew that its background
26 check disclosure and authorization form should not include extraneous information that is prohibited
27 by the FCRA, and acted in deliberate disregard of its obligations and the rights of PLAINTIFF and other
28

1 FCRA CLASS Members under 15 U.S.C. § 1681b(b)(2)(A)(I).

2 135. PLAINTIFF and the other FCRA CLASS Members are entitled to statutory damages of
3 not less than \$100 and not more than \$1,000 for every violation of the FCRA, pursuant to 15 U.S.C.
4 § 1681n(a)(1)(A).

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

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

9
10 **TENTH CAUSE OF ACTION**

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

12 **[15 U.S.C. § 1681b(b)(2)(A)(ii)]**

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

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

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

19 140. The violations of the FCRA were willful. DEFENDANT acted in deliberate disregard
20 of its obligations and the rights of PLAINTIFF and other FCRA CLASS Members under 15 U.S.C. §
21 1681b(b)(2)(A)(ii).

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

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

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

1 **ELEVENTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 2698, *et seq.*]**

4 **(By PLAINTIFF and Against All Defendants)**

5 144. PLAINTIFF incorporates by reference the allegations set forth in paragraphs 1-145,
6 supra, as though fully set forth at this point.

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

16 146. PLAINTIFF, and such persons that may be added from time to time who satisfy the
17 requirements and exhaust the administrative procedures under the Private Attorney General Act, brings
18 this Representative Action on behalf of the State of California with respect to himself and all
19 individuals who were employed by Defendants Builders Concrete, Inc., and/or Viking Ready Mix Co.,
20 Inc., in California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") at any
21 time during the time period of October 1, 2019 through the earlier of the date of an order approving
22 plaintiff's motion for preliminary approval, or March 14, 2023 (the "PAGA PERIOD").

23 147. On October 1, 2020, PLAINTIFF gave written notice by electronic mail to the Labor and
24 Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific
25 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. The statutory
26 waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,
27 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
28

pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

148. The policies, acts and practices heretofore described were and are an unlawful business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed to pay minimum wages, (e) failed to reimburse for required business expenses, and (f) failed to pay wages when due, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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,

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

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

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

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

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

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

17 D) The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS
18 as a penalty from the due date thereof at the same rate until paid or until an action
19 therefore is commenced, in accordance with Cal. Lab. Code § 203;

20 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the
21 applicable IWC Wage Order;

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

25 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.

26 3. On behalf of the FCRA CLASS:

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

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

14 4. On all claims:

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

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

- 20 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General
21 Act of 2004; and,
- 22 B) An award of attorneys' fees and cost of suit, as allowable under the law, including, but
23 not limited to, pursuant to Labor Code §2699.

24 Dated: July 9, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

26 By: /s/ Nicholas J. De Blouw

27 Nicholas J. De Blouw
28 Attorneys for Plaintiff

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

DEMAND FOR A JURY TRIAL

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

Dated: July 9, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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