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County of Monterey
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF MONTEREY

11 UNLIMITED JURISDICTION

12 MARIA ADAN on behalf of herself and all
13 others similarly situated,

14 *Plaintiff,*

15 vs.

16 LPF RE MANAGER, LLC, a California
17 corporation; and DOES 1 through 50,
18 inclusive,

19 *Defendants.*

Case No.: 20CV002905

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
5. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
7. Penalties Pursuant to Labor Code § 2699, *et seq.*
8. Violation of 15 U.S.C. §§ 1681b(b)(2)(A) (Fair Credit Reporting Act); and
9. Violation of 15 U.S.C. §§ 1681d(a)(1) and 1681g(c) (Fair Credit Reporting Act).

JURY TRIAL DEMANDED

1 Plaintiffs MARIA ADAN (“Plaintiffs”), on behalf of herself, all others similarly situated, the
2 State of California, and the general public, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendants LPF RE
5 MANAGER, LLC, a California corporation; and DOES 1 through 50, inclusive (collectively referred
6 to as “Defendants”) for alleged violations of the California Labor Code and California Business and
7 Professions Code. As set forth below, Plaintiff alleges that Defendants have

- 8 (1) failed to pay overtime wages at the correct rate;
- 9 (2) failed to pay overtime wages by failing to include all applicable remuneration
10 in calculating the regular rate of pay;
- 11 (3) failed to provide meal periods;
- 12 (4) failed to provide with rest periods;
- 13 (5) failed to pay at least minimum wage for all hours worked;
- 14 (6) failed to pay premium wages for missed meal and/or rest periods;
- 15 (7) failed to provide accurate written wage statements; and
- 16 (8) failed to pay all final wages following separation of employment.

* 17 Based on these alleged Labor Code violations, Plaintiff now bring this class action to recover
18 unpaid wages, liquidated damages, penalties, restitution and related relief on behalf of themselves, all
19 others similarly situated, and the general public.

20 2. Plaintiff also brings this class action against Defendants for alleged violations of the
21 Fair Credit Reporting Act (“FCRA”) and similar California laws.

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

27 4. Plaintiff, individually and on behalf of all others similarly situated current, former and
* 28 prospective employees, seeks compensatory and punitive damages due to Defendants’ systematic and

1 willful violations of the FCRA (15 U.S.C. §§ 1681 *et seq.*).

2 **JURISDICTION AND VENUE**

3 5. This Court has subject matter jurisdiction to hear this case because the monetary
4 damages and restitution sought by Plaintiff from Defendants conduct exceeds the minimal jurisdiction
5 of the Superior Court of the State of California.

6 6. Venue is proper in the County of Monterey pursuant to Code of Civil Procedure
7 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions
8 that are the subject matter of this Complaint occurred therein and/or each defendant is found,
9 maintains offices, transacts business and/or has an agent therein.

10 7. Venue is proper in Monterey County because Defendants' have at all times alleged
11 herein, conducted business in Monterey County, and throughout California. As such, venue is proper
12 in any county in California.

13 8. Plaintiff is informed and believes, and thereupon alleges that the individual claims of
14 the classes defined below are under the \$75,000 threshold for federal diversity jurisdiction and the
15 aggregate claim is under the \$5,000,000 threshold for federal jurisdiction under the Class Action
16 Fairness Act of 2005.

17 **PARTIES**

18 9. Plaintiff MARIA ADAN is, and at all relevant times mentioned herein, an individual
19 residing in the State of California.

20 10. Plaintiffs is informed and believes, and thereupon alleges that Defendant LPF RE
21 MANAGER, LLC is, and at all relevant times mentioned herein, an Ohio corporation doing business
22 in the State of California.

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

1 them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE
2 defendants when ascertained.

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

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

12 CLASS ALLEGATIONS

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

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

19 **Hourly Employee Class:** All persons employed by Defendants, collectively or separately,
20 and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions
21 in California four years prior to the filing of this action and ending on the date that final
judgment is entered in this action (“Hourly Employee Class”).

22 **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked in a
23 shift in excess of five hours during the four years prior to the filing of this action and
ending on the date that final judgment is entered in this action.

24 **Rest Period Sub-Class:** All **Hourly Employee Class** members who worked a shift
25 of at least three and one-half (3.5) hours the four years prior to the filing of this action
and ending on the date that final judgment is entered in this action.

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

28 **Wage Statement Sub-Class:** All persons employed by Defendants, collectively or
separately, and/or any staffing agencies and/or any other third parties in California one year

before the filing of this action and ending when final judgment is entered.

UCL Class: All **Hourly Employee Class** members employed by Defendants in California during the four years prior to the filing of this action and ending on the date that final judgment is entered in this action.

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

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

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

18. **Commonality and Predominance:** Common questions of law and fact exist as to all class members and predominate over any questions which affect only individual class members. These common questions include, but are not limited to:

- A. Whether Defendants maintained a policy or practice of failing to provide employees with their meal periods;
- B. Whether Defendants maintained a policy or practice of failing to provide employees with their rest periods;
- C. Whether Defendants failed to pay premium wages to class members when they have not been provided with required meal and/or rest periods;
- D. Whether Defendants failed to pay minimum and/or overtime wages to class members as a result of policies that fail to provide meal periods in accordance with California law;
- E. Whether Defendants failed to pay minimum and/or overtime wages to class members for all time worked;
- F. Whether Defendants failed to pay overtime wages to class members at the

correct rate of pay;

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

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

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

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

K. Whether Defendants failed to comply with the requirements of 15 U.S.C. § 7001 §§ 1681b(b)(2)(A);

L. Whether Defendants willfully failed to provide the class with stand-alone written disclosures before obtaining a credit or background report in compliance with the statutory mandates; and

M. Whether Defendants willfully failed to comply with the FCRA;

19. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff is informed and believes and thereupon alleges that Defendants have a policy or practice of failing to comply with the California Labor Code, applicable Wage Orders, and Business and Professions Code as alleged in this Complaint.

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

21. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent class members, are experienced in wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf

1 of Plaintiff and absent class members.

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

12 **GENERAL ALLEGATIONS**

13 23. Plaintiff worked for Defendants as a non-exempt, hourly employee during the relevant
14 time period.

15 24. Plaintiff worked for Defendants as a non-exempt, hourly employee during the relevant
16 time period. When Plaintiff applied for employment with Defendant, Defendant provided her with a
17 disclosure and authorization form to perform background investigations.

18 25. Defendant did not provide legally compliant disclosure and authorization forms to
19 Plaintiff and the putative class as they contained extraneous and superfluous language, nor did the
20 disclosure and authorization forms properly and accurately provide a summary of rights and the law
21 under the FCRA.

22 **Security Check and Off-the-Clock**

23 26. Plaintiff and the putative class were required to utilize the general entrance to the
24 venues and required to go through a security check at the time of entering and leaving the venues
25 where they worked. The security check required Plaintiff and the putative class to first wait in a
26 general purpose line where anyone who wanted to enter the venues were required to go through a
27 security screening, which included a pat down, metal detecting wand, and a bag check.

28 27. Plaintiff and the putative class were required to spend at least five to fifteen minutes

1 each time they went through the security check – time that was not paid by Defendants.

2 28. Plaintiff and the putative class were required to go through the security check prior
3 to clocking in at the beginning of each work shift and were required to clock out first at the end of
4 each work shift prior to going through the security check.

5 29. Based on the above, Defendants' security check practices has resulted in substantial
6 amounts of time not recorded as hours worked therefore resulting in substantial amount of wages
7 not paid to Plaintiff and the putative class.

8 **Meal/Rest Periods and Security Check**

9 30. Plaintiff and the putative class members were not provided with meal periods of at
10 least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not
11 scheduling each meal period as part of each work shift; (2) no formal written meal and rest period
12 policy that encouraged employees to take their meal and rest periods; and (3) practice of requiring
13 Plaintiff and the putative class to undergo a security check during a portion of their meal periods.

14 31. Plaintiff and the putative class members were not provided with rest periods of at
15 least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
16 Defendants' policy of not scheduling each rest period as part of each work shift; (2) no formal
17 written meal and rest period policy that encouraged employees to take their meal and rest periods;
18 and (3) practice of requiring Plaintiff and the putative class to undergo a security check during a
19 portion of their rest periods.

20 32. Plaintiff and the putative class were required to undergo the same security check
21 each time they left the building for both meal periods and rest breaks.

22 33. As Plaintiff and the putative were only allotted thirty (30) minutes for each meal
23 period, and were required to go through Defendants' security check in order to re-enter the facility,
24 the practical effect of Defendants' policy resulted in Plaintiff and the putative class staying on the
25 premises and otherwise not exercising their right to leave the facility as it would intrude into their
26 meal and rest periods.

27 34. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
28 provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours

1 worked due to complying with Defendants' requirements that required Plaintiff and the putative
2 class to utilize a portion of their meal periods to comply with Defendants' security check
3 requirements.

4 **Shortened Meal/Rest Periods**

5 35. Plaintiff alleges that, at all relevant times during the applicable limitations period,
6 Defendants maintained a policy or practice of requiring Plaintiff and the putative class to wait in a
7 long line and go through a security check at the time of entering and leaving the venues where they
8 worked, this included every time Plaintiff and putative class members left the premises for both
9 meal and rest periods. The security check required Plaintiff and the putative class to first wait in a
10 general purpose line where anyone who wanted to enter the venues were required to go through a
11 security screening, as well as a pat down, metal detecting wand, and a bag check.

12 36. Accordingly, Plaintiff and the putative class were provided with shortened meal and
13 rest periods due to the time spent entering and leaving the venues, undergoing security checks, and
14 the necessary to return to work.

15 37. Plaintiff alleges that, at relevant times during the applicable limitations period, due
16 to Defendants above-mentioned policy or practice, Plaintiff and the putative class did not receive
17 their full thirty (30) minutes uninterrupted meal periods that they were entitled under California
18 law.

19 38. Plaintiff alleges that, at relevant times during the applicable limitations period, due
20 to Defendants above-mentioned policy or practice, Plaintiff and the putative class did not receive
21 their full ten (10) minutes uninterrupted rest periods that they were entitled under California law.
22

23 **Overtime**

24 39. The regular rate of pay under California law includes all remuneration for
25 employment paid to, on behalf of, the employee. During the applicable limitations period,
26 Defendants violated the rights of Plaintiff and the putative class under the above-referenced Labor
27 Code sections by failing to pay them overtime wages for all overtime hours worked in violation of
28 Labor Code §§ 510, 1194, and 1198 as a result of not correctly calculating their regular rate of pay

1 to include all applicable remunerations. Specifically, Defendants had a common policy and practice
2 of failing to pay class members for all hours worked, which included uncompensated time spent
3 undergoing security checks, discussed above. These uncompensated hours were worked in excess of
4 eight (8) hours a day and/or forty (40) hours a week, entitling Plaintiff and putative class members
5 to overtime wages which they were systemically denied.

6 Wage Statements

7 40. Plaintiff and the putative class were not provided with accurate wage statements as
8 mandated by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage
9 statements as “a detachable part of the check, draft, or voucher paying the employee’s wages, or
10 separately if wages are paid by personal check or cash, an accurate itemized statement in writing.”
11 Additionally, the wage statements issued to Plaintiff and class members were not recorded in “ink or
12 other indelible form.”

13 41. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages
14 earned” were not accurately reflected in that: all hours worked, including overtime, were not included.

15 42. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours worked
16 by the employee” were not accurately reflected in that: all hours worked, including overtime, were
17 not included.

18 43. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned”
19 were not accurately reflected in that: all hours worked, including overtime, were not included.

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

24 45. Plaintiff alleges that Defendants were aware of the inaccuracy of the wage statements
25 issued throughout the entire applicable period and that both they and class members have suffered
26 injury as a result.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

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

4 **(Plaintiff and Meal Period Sub-Class)**

5 46. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if
6 fully alleged herein.

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

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

15 49. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare
16 Commission Wage Order (“Wage Order”) both prohibit employers from requiring employees to work
17 during required meal periods and require employers to pay non-exempt employees an hour of
18 premium wages on each workday that the employee is not provided with the required meal period.

19 50. Compensation for missed meal periods constitutes wages within the meaning of Labor
20 Code section 200.

21 51. Labor Code section 1198 makes it unlawful to employ a person under conditions that
22 violate the applicable Wage Order.

23 52. Section 11 of the applicable Wage Order states:

24 “No employer shall employ any person for a work period of more than five (5) hours
25 without a meal period of not less than 30 minutes, except that when a work period of
26 not more than six (6) hours will complete the day’s work the meal period may be
27 waived by mutual consent of the employer and employee. Unless the employee is
28 relieved of all duty during a 30 minute meal period, the meal period shall be considered
an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall
be permitted only when the nature of the work prevents an employee from being
relieved of all duty and when by written agreement between the parties an on-the-job
paid meal period is agreed to. The written agreement shall state that the employee

1 may, in writing, revoke the agreement at any time.”

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

5 54. Plaintiff alleges that, at all relevant times during the applicable limitations period,
6 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**
7 **Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5)
8 hour work period, which allowed Plaintiff and **Meal Period Sub-Class** to leave the premises as
9 required by Labor Code section 512 and the applicable Wage Order.

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

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

17 57. Moreover, Defendants written policies fail to inform **Meal Period Sub-Class**
18 Members of their meal period rights under the Labor Code and applicable Wage Orders.

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

22 59. Pursuant to Labor Code section 204, 218.6, 226.7 and 512, Plaintiff, on behalf of
23 herself and the **Meal Period Sub-Class** members, seeks to recover unpaid premium wages, interest
24 thereon, and costs of suit.

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

28 ///

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

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

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

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

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

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

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

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

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

1 69. Specifically, Defendants written policies do not provide that employees may take a
2 rest period for each four hours worked, or major fraction thereof, that rest periods should be taken in
3 the middle of each work period insofar as practicable, and that employees are free to leave the
4 premises.

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

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

11 **THIRD CAUSE OF ACTION**

12 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

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

14 **(Plaintiff and Hourly Employee Class)**

15 72. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
16 herein.

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

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

23 75. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
24 employees at least the minimum wage set forth therein for all hours worked, which consist of all hours
25 that an employer has actual or constructive knowledge that employees are working.

26 76. Labor Code section 1194 invalidates any agreement between an employer and an
27 employee to work for less than the minimum or overtime wage required under the applicable Wage
28 Order.

1 77. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated
* 2 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition
3 to the underlying unpaid minimum wages and interest thereon.

4 78. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
5 than the minimum wage required under the applicable Wage Order for all hours worked during a
6 payroll period.

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

10 80. Labor Code section 1198 makes it unlawful for employers to employ employees under
11 conditions that violate the applicable Wage Order.

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

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

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

23 84. Labor Code section 510 and Section 3 of the applicable Wage Order also require
* 24 employers to pay non-exempt employees overtime wages of no less than two times their respective
25 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
26 worked in excess of eight hours on a seventh consecutive workday during the workweek.

27 85. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
28 centrally devised policies and practices to her and **Hourly Employee Class** members with respect to

1 working conditions and compensation arrangements.

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

5 87. Defendants had a common policy and practice of denying Plaintiff and **Hourly**
6 **Employee Class** members minimum wages for all hours worked. Specifically, Plaintiff and **Hourly**
7 **Employee Class** were required to undergo lengthy security checks, off the clock, for which they were
8 not paid wages. Additionally, Plaintiff and **Hourly Employee Class** had to arrive to work early and
9 wait in line to use the time clock machine before clocking in to work.

10 88. Also, and as discussed above, Defendants had a common policy and practice of
11 denying Plaintiff and **Hourly Employee Class** uninterrupted meal periods in compliance with
12 California law. Plaintiff and **Hourly Employee Class** were required to perform work duties during
13 their meal period for which they were not paid wages.

14 89. As a result of performing off-the-clock work that was directed, permitted or otherwise
15 encouraged by Defendants, Plaintiff and the **Hourly Employee Class** should have been paid for this
16 time. Instead, Defendants only paid Plaintiff and the **Hourly Employee Class** based on the time they
17 were clocked in for their shifts and did not pay Plaintiffs and the **Hourly Employee Class** for any of
18 the time spent working off-the-clock.

19 90. The uncompensated time discussed herein caused Plaintiff and **Hourly Employee**
20 **Class** to work in excess of eight hours a day and/or forty hours a week, entitled them to overtime
21 wages which they were systemically denied.

22 91. Defendants knew or should have known that Plaintiffs and the **Hourly Employee**
23 **Class** were performing work before and after their scheduled work shifts and failed to pay Plaintiff
24 and the **Hourly Employee Class** for these hours.

25 92. Defendants were aware of this practice and directed, permitted or otherwise
26 encouraged Plaintiffs and the **Hourly Employee Class** to perform off-the-clock work.

27 93. As a result of Defendants' policies and practices, Plaintiff and the **Hourly Employee**
28 **Class** were not paid for all hours worked.

94. The regular rate of pay under California law includes all remuneration for employment paid to, on behalf of, the employee. During the applicable limitations period, Defendants violated the rights of Plaintiffs and the **Hourly Employee Class** under the above-referenced Labor Code sections by failing to pay them overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194, and 1198 as a result of not correctly calculating their regular rate of pay to include all applicable remunerations. Specifically, Defendants had a common policy and practice of paying Plaintiff and **Hourly Employee Class** shift differentials and other vested non-discretionary wages and income. However, this compensation was not factored into the Plaintiff's and **Hourly Employee Class**' regular rates of pay when they worked overtime hours. As a result, Plaintiff and **Hourly Employee Class** members were denied overtime wage at the proper rate of pay.

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

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

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(Plaintiff and Wage Statement Penalties Sub-Class)

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

99. Labor Code section 226(a) states:

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

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

101. Plaintiff is informed and believes that, at all relevant times during the applicable
limitations period, Defendants have failed to provide **Wage Statement Class** members with written
wage statements as described above.

102. Additionally, the wage statements issued to class members failed to account for the
unpaid minimum wages, overtime, and premium pay wages described above.

103. Plaintiff is informed and believes that Defendants’ failure to provide her and **Wage
Statement Class** members with accurate written wage statements were intentional in that Defendants
have the ability to provide them with accurate wage statements but have intentionally provided them
with written wage statements that Defendants have known do not comply with Labor Code section

1 226(a).

2 104. Plaintiff and **Wage Statement Class** members have suffered injuries, in that
3 Defendant has violated their legal rights to receive accurate wage statements and have misled them
4 about their actual rates of pay and wages earned. In addition, inaccurate information on their wage
5 statements have prevented immediate challenges to Defendants' unlawful pay practices, has required
6 discovery and mathematical computations to determine the amount of wages owed, has caused
7 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the
8 submission of inaccurate information about wages and deductions to federal and state government
9 agencies.

10 105. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of herself and **Wage**
11 **Statement Class** members, seek the greater of actual damages or \$50.00 for the initial pay period in
12 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period
13 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
14 \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

17 **(Lab. Code §§ 201-203)**

18 **(Plaintiff and Waiting Time Penalties Sub-Class)**

19 106. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
20 herein.

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

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

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

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

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

112. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been willful in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201 and/or 202 but have intentionally adopted policies or practices that are incompatible with those requirements.

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

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

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

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

(Plaintiff and UCL Class)

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

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

117. Business and Professions Code section 17203-17204 allow a person who has lost money or property as a result of unfair competition to bring a class action in accordance with Code

1 of Civil Procedure section 382 to recover money or property that may have been acquired from
2 similarly situated persons by means of unfair competition.

3 118. California law requires employers to pay hourly, non-exempt employees for all hours
4 they are permitted or suffered to work, including hours that the employer knows or reasonable should
5 know that employees have worked.

6 119. Plaintiff and the **UCL Class** members re-allege and incorporate the FIRST, SECOND,
7 and THIRD causes of action herein.

8 120. Plaintiff lost money or property as a result of the aforementioned unfair competition.

9 121. Defendants have or may have acquired money by means of unfair competition.

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

16 123. Plaintiff is informed and believes and thereupon alleges that by committing the Labor
17 Code violations described in this Complaint, Defendants violated Labor Code sections 215, 216, 221,
18 225, 226.6, 226.7, 354, 408, 512, 510, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 1199,
19 which make it a misdemeanor to commit the Labor Code violations alleged herein.

20 124. Defendants have committed criminal conduct through their policies and practices of,
21 *inter alia*, failing to comport with their affirmative obligations as an employer to: provide non-exempt
22 employees with compliant meal and rest periods; pay non-exempt employees for all hours worked;
23 and reimburse them for all expenses.

24 125. Defendants’ unlawful conduct as alleged in this Complaint amounts to and constitutes
25 unfair competition within the meaning of Business and Professions Code section 17200 *et seq.*
26 Business and Professions Code sections 17200 *et seq.* protects against unfair competition and allows
27 a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair,
28 unlawful or fraudulent business practice to seek restitution on her own behalf and on behalf of

1 similarly situated persons in a class action proceeding.

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

5 127. Plaintiff is informed and believes that other similarly situated persons have been
6 subject to the same unlawful policies or practices of Defendants.

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

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

13 130. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiff
* 14 requests the issuance of temporary, preliminary, and permanent injunctive relief enjoining
15 Defendants, and each of them, and their agents and employees, from further violations of the Labor
16 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek an
17 order permanently enjoining Defendants, and each of them, and their respective agents and
18 employees, from further violations of the Labor Code and applicable Industrial Welfare Commission
19 Wage Orders.

20 131. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
21 herself and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully
22 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
23 and unfair business practices.

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

27 133. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
28 herself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully

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

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

6 **SEVENTH CAUSE OF ACTION**

7 **PENALTIES PURSUANT TO LABOR CODE § 2699, *ET SEQ.***

8 **(Against All Defendants)**

9 135. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
10 herein.

11 136. During the applicable limitations period, Defendants have violated Labor Code
12 sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 558, 1174, 1194, 1197, and 1198.

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

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

20 139. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
21 section 2699.3.

22 140. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
23 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7,
24 510, 512, 558, 1174, 1194, 1197, 1198 and 2802:

- 25 A. For violations of Labor Code sections 201, 202, 203, 212, 226.7, 1174, 1194,
26 1198 and 2802, \$100 for each employee per pay period for each initial
27 violation and \$200 for each employee per pay period for each subsequent
28 violation (penalties set by Labor Code section 2699(f)(2));

- 1 B. For violations of Labor Code section 203, a penalty in an amount not
2 exceeding thirty days pay as waiting time (penalties set by Labor Code
3 section 256);
- 4 C. For violations of Labor Code section 204, \$100 for each employee for each
5 initial violation that was neither willful nor intentional, \$200 for each
6 employee, plus 25% of the amount unlawfully withheld from each employee,
7 for each initial violation that was either willful or intentional, and \$200 for
8 each employee, plus 25% of the amount unlawfully withheld from each
9 employee, for each subsequent violation, regardless of whether the
10 subsequent violation was either willful or intentional (penalties set by Labor
11 Code section 210);
- 12 D. For violations of Labor Code section 223, \$100 for each employee for each
13 initial violation that was neither willful nor intentional, \$200 for each
14 employee, plus 25% of the amount unlawfully withheld from each employee,
15 for each initial violation that was either willful or intentional, and \$200 for
16 each employee, plus 25% of the amount unlawfully withheld from each
17 employee, for each subsequent violation, regardless of whether the
18 subsequent violation was either willful or intentional (penalties set by Labor
19 Code section 225.5);
- 20 E. For violations of Labor Code section 226(a), if this action is deemed to be an
21 initial citation, \$250 for each employee for each violation. Alternatively, if
22 an initial citation or its equivalent occurred before the filing of this action,
23 \$1,000 for each employee for each violation (penalties set by Labor Code
24 section 226.3);
- 25 F. For violation of Labor Code sections 510 and 512, \$50 for each employee for
26 each initial pay period for which the employee was underpaid, and \$100 for
27 each employee for each subsequent pay period for which the employee was
28 underpaid (penalties set by Labor Code section 558);

- 1 G. For violations of Labor Code section 1197, \$100 for each aggrieved
2 employee for each initial violation of Labor Code section 1197 that was
3 intentional, and \$250 for each aggrieved employee per pay period for each
4 subsequent violation of Labor Code section 1197, regardless of whether the
5 initial violation was intentional (penalties set by Labor Code section 1197.1);
6 H. Pursuant to Labor Code section 2699(g), Plaintiff seeks award of reasonable
7 attorneys' fees and costs in connection with her claims for civil penalties.

8 **EIGHTH CAUSE OF ACTION**

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

10 **(15 U.S.C. §§ 1681b(b)(2)(A))**

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

12 141. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully alleged
13 herein.

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

15 143. Plaintiff and class members are "consumers" within the meaning of Section 1681a(c)
16 of the FCRA because they are "individuals."

17 144. Section 1681a(d)(1) of the FCRA defines "consumer report" as:

18 "The term "consumer report" means any written, oral, or other communication of any
19 information by a consumer reporting agency bearing on a consumer's credit
20 worthiness, credit standing, credit capacity, character, general reputation, personal
21 characteristics, or mode of living which is used or expected to be used or collected in
22 whole or in part for the purpose of serving as a factor in establishing the consumer's
23 eligibility for—

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

26 (B) employment purposes; or

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

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

145. Section 1681a(e) of the FCRA defines "investigative consumer report" as:

"The term 'investigative consumer report' means a consumer report or portion thereof
in which information on a consumer's character, general reputation, personal
characteristics, or mode of living is obtained through personal interviews with

1 neighbors, friends, or associates of the consumer reported on or with others with whom
2 he is acquainted or who may have knowledge concerning any such items off
3 information. However, such information shall not include specific factual information
4 on a consumer's credit record obtained directly from a creditor of the consumer or
5 from a consumer reporting agency when such information was obtained directly from
6 a creditor of the consumer or from the consumer."

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

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

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

- (i) A ***clear and conspicuous*** disclosure has been made in writing to the consumer
at any time before the report is procured or caused to be procured, in a
document that ***consists solely of the disclosure***, that a consumer report may be
obtained for employment purposes; and
- (ii) The consumer has authorized in writing (which authorization may be made on
the document referred to in clause (i)) the procurement of the report by that
person. (Emphasis added.)

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

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

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

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

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

1 information therefore violates section 1681b(b)(2)(A) of the FCRA.

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

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

12 153. The plain language of the statute also clearly indicates that the inclusion of a liability
13 release in a disclosure form violates the disclosure and authorization requirements of the FCRA,
14 because such a form would not consist “solely” of the disclosure. In fact, the FTC expressly warned
15 that the FCRA notice may not include extraneous information such as a release. In a 1998 opinion
16 letter, the FTC stated:

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

21 154. In a report dated July 2011, the FTC reiterated that “the notice [under 15 U.S.C. section
22 1681b(b)(2)(A))] may not include extraneous or contradictory information, such as a request for a
23 consumer’s waiver of his or her rights under the FCRA.”

24 155. By including extraneous and unlawful information, Defendants willfully disregarded
25 the FTC’s regulatory guidance and violated section 1681b(b)(2)(A) of the FCRA. Additionally, the
26 inclusion of the extraneous provisions causes the disclosure to fail to be “clear and conspicuous” and
27 “clear and accurate” and therefore violates sections 1681b(b)(2)(A) and 1681d(a).

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

- 1 A. Defendants are a large corporation with access to legal advice;
- 2 B. Defendants required a purported authorization to perform credit and
- 3 background checks in the process of employing the class members which,
- 4 although defective, evidences Defendants' awareness of and willful failure to
- 5 follow the governing laws concerning such authorizations;
- 6 C. The plain language of the statute unambiguously indicates that inclusion of
- 7 unlawful and extraneous information in a disclosure form violates the
- 8 disclosure and authorization requirements; and
- 9 D. The FTC's express statements, pre-dating Defendants' conduct, which state
- 10 that it is a violation of section 1681b(b)(2)(A) of the FCRA to include a liability
- 11 waiver in the disclosure form.

12 157. Based upon the facts likely to have evidentiary support after a reasonable opportunity
13 to further investigation and discovery, Plaintiff alleges that Defendants have a policy and practice of
14 procuring investigative consumer reports or causing investigative consumer reports to be procured
15 for applicants and employees without informing them of their right to request a summary of their
16 rights under the FCRA at the same time as the disclosure explaining that an investigative consumer
17 report may be made. Pursuant to that policy and practice, Defendants procured investigative
18 consumer reports or caused investigative consumer reports to be procured for Plaintiff and class
19 members, as described above, without informing class members of their rights to request a written
20 summary of their rights under the FCRA.

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

24 159. As a result of Defendants' unlawful procurement of credit and background reports by
25 way of their inadequate disclosures and misinformation as set forth above, Plaintiff and class members
26 have been injured, including but not limited to, having their privacy and statutory rights invaded in
27 violation of the FCRA.

28 160. Plaintiff, on behalf of herself and all class members, seeks all available remedies

1 pursuant to 15 U.S.C. section 1681n, including statutory damages and/or actual damages, punitive
2 damages, injunctive and equitable relief and attorneys' fees and costs.

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

6 NINTH CAUSE OF ACTION

7 **FAILURE TO GIVE PROPER SUMMARY OF RIGHTS IN VIOLATION OF THE FCRA**

8 **(15 U.S.C. § 1681d(a)(1) and 1681g(c))**

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

10 162. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully alleged
11 herein.

12 163. Section 1681d(a) states:

13 (a) Disclosure of fact of preparation

14 A person may not procure or cause to be prepared an investigative consumer report on
any consumer unless—

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

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

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

22 (Emphasis added.)

23 164. Section 1681d(b) states:

24 (b) Disclosure on request of nature and scope of investigation

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

28 (Emphasis added.)

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

3 166. Moreover, even if Defendants' disclosures are deemed to satisfy Section 101(c)(1),
4 Defendants did not comply with Section 1681d(a)(1)(b) because the disclosures fail to inform the
5 consumer of the right to have the person who procured the report provide a complete and accurate
6 disclosure of the nature and scope of the investigation requested.

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

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

11 (1) Commission
12 Summary of rights required

13 (A) In general

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

16 (B) Content of summary

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

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

1 168. Defendants did not comply with 1681g(c) because the disclosure included information
2 contrary to the FCRA. Defendants did not comply with 1681g(c)(B)(1) because the disclosures did
3 not state the right of a consumer to obtain a copy of a consumer report from each consumer reporting
4 agency.

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

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

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

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

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

22 174. Plaintiff, on behalf of herself and all class members, seeks all available remedies
23 pursuant to 15 U.S.C. section 1681n, including statutory damages and/or actual damages, punitive
24 damages, injunctive and equitable relief and attorneys' fees and costs.

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

28 ///

1 **PRAYER FOR RELIEF**

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

- 4 (1) An order that the action be certified as a class action;
5 (2) An order that Plaintiff be appointed class representative;
6 (3) An order that counsel for Plaintiff be appointed class counsel;
7 (4) Unpaid wages;
8 (5) Actual damages;
9 (6) Liquidated damages;
10 (7) Punitive damages;
11 (8) Restitution;
12 (9) Declaratory relief;
13 (10) Pre-judgment interest;
14 (11) Statutory penalties;
15 (12) Civil penalties;
16 (13) Costs of suit;
17 (14) Reasonable attorneys' fees; and
18 (15) Such other relief as the Court deems just and proper.

19 **DEMAND FOR JURY TRIAL**

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

22
23 Dated: February 22, 2021

SETAREH LAW GROUP

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27 David Keledjian
Attorneys for Plaintiff
28 MARIA ADAN

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On February 22, 2021, I served the foregoing documents described as:

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

[X] ONLY BY ELECTRONIC TRANSMISSION

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

Executed on February 22, 2021, at Beverly Hills, California.

Handwritten signature: *Handwritten signature*

Lauren Farrington