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County of San Diego
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Attorneys for the Plaintiffs (Continued Next Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

ALEKSANDR POVARNITSON and
BRADLEY BRIGHT, individually on
behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

ELECTRONIC CONTROL SYSTEMS,
LLC, a Delaware limited liability
company dba ALBIREO ENERGY,
LLC; ALBIREO ENERGY, LLC, a
Michigan limited liability company; and
DOES 1-50,

Defendants.

Case No.: 37-2021-00043575-CU-OE-
CTL

Judge: Hon. Katherine Bacal
Dept.: 69

**FIRST AMENDED COMPLAINT
FOR:**

1. Class Violations of Fair Credit Reporting Act, 15 U.S.C. §§ 1681b(b)(2)(A), 1681o(a) (Obtaining Consumer Reports Without Proper Disclosure);
2. Violations of the California Investigative Consumer Reporting Agencies Act, Civ. Code § 1786, *et seq.*;
3. Failure to pay minimum/prevaling/regular wages;
4. Failure to Pay State and Prevailing Wage Overtime;
5. Failure to Comply with Meal Break Laws;
6. Failure to Comply with Rest Break Laws;
7. Failure to Reimburse Expenses;
8. Failure to Provide Accurate Wage Statements;
9. Failure to Pay Wages Timely;
10. Failure to Maintain Records; and
11. Violation of B.&P. Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

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9 Plaintiffs ALEKSANDR POVARNITSON and BRADLEY BRIGHT
10 (hereafter, "Plaintiffs" or "the Named Plaintiffs"), on behalf themselves and acting for
11 the interest of other current and former employees and all other similarly situated
12 individuals, and the State of California as its proxies (collectively, "Plaintiffs"), allege
13 that Defendants are liable as follows:

14 NATURE OF THE ACTION

15 1. This class action is on behalf of all individuals in the U. S. who, in
16 connection with their employment or employment application, were the subject of a
17 consumer report procured by Defendants.

18 2. Specifically, Plaintiffs complain that Defendants have a uniform policy
19 or practice of procuring and using consumer reports (as defined under Federal law)
20 regarding applicants and employees in violation of the Fair Credit Reporting Act
21 ("FCRA").

22 3. Plaintiff POVARNITSON alternatively files this action because
23 Defendants procured an investigative consumer report (as defined under California
24 law) on Plaintiff POVARNITSON, a job-applicant at the time, without making the
25 disclosures required by Cal. Civ. Code § 1786.16, and otherwise in violation of the
26 Investigative Consumer Reporting Agencies Act (the "ICRAA") under Cal. Civ. Code
27 § 1786, *et seq.* for the reasons alleged in this Complaint.

28 4. This is also a wage and hour individual, class, and representative action.

5. Pursuant to Code of Civil Procedure § 382 and the Private Attorney

1 General Act (“PAGA”), §§ 2698, 2699 of the California Labor Code, Plaintiffs bring
2 this proposed class and representative action against Defendants for wage and hour
3 abuses in violation of the California Labor Code and the Industrial Welfare
4 Commission Wage Orders (the “IWC Wage Orders”), all of which contribute to
5 Defendants’ deliberate unfair competition in California.

6 6. Plaintiffs, on behalf of himself and all putative Class Members, seek
7 reimbursements, penalties, restitution, injunctive and other equitable relief, reasonable
8 attorneys’ fees, and costs.

9 **JURISDICTION AND VENUE**

10 7. Pursuant to Article VI, § 10 of the California Constitution, subject matter
11 jurisdiction is proper in the Superior Court of California, County of San Diego, State
12 of California because Plaintiff alleges claims arising under California law.

13 8. Jurisdiction over Plaintiffs’ FCRA claims is proper under 15 U.S.C. §
14 1681p, which provides that “[a]n action to enforce any liability created under this
15 subchapter may be brought in any appropriate United States district court, without
16 regard to the amount in controversy, or in any other court of competent
17 jurisdiction[.]”

18 9. This Court has jurisdiction over the Defendants because each is an
19 association, corporation, business entity, or individual that conducts substantial
20 business in the State of California, County of San Diego.

21 10. Pursuant to § 395 of the California Code of Civil Procedure, venue is
22 proper in the Superior Court of California for the County of San Diego because this is
23 where the misconduct alleged in this Complaint occurred.

24 11. For Plaintiffs’ FCRA claims, Plaintiff and the putative Class lack Article
25 III standing, such that the federal courts lack jurisdiction over this case, and removal
26 of this case to federal court is improper.

27 **THE PARTIES**

28 12. Plaintiff ALEKSANDR POVARNITSON is an individual who resides in

1 San Diego County, California.

2 13. Plaintiff BRADLEY BRIGHT is an individual who resides in San Diego
3 County, California.

4 14. Defendant ELECTRONIC CONTROL SYSTEMS, LLC is a Delaware
5 limited liability company dba ALBIREO ENERGY, LLC doing business in
6 California.

7 15. Defendant ALBIREO ENERGY, LLC is a Michigan limited liability
8 company doing business in California.

9 16. The true names and capacities, whether individual, corporate, associate,
10 or otherwise of the Defendants named herein as DOES 1 through 50, are unknown to
11 Plaintiffs at this time. Plaintiffs therefore sue said Defendants by such fictitious
12 names pursuant to § 474 of the California Code of Civil Procedure. Plaintiffs will
13 seek leave to amend this Complaint to allege the true names and capacities of DOES
14 1 through 50 when the correct identities are ascertained. Plaintiffs are informed and
15 believe, and based thereon allege, that each of the DOE Defendants is in some manner
16 liable to Plaintiffs for the events and actions alleged herein. All named Defendants
17 and DOES 1 through 50 are collectively referred to as “Defendants.”

18 17. Plaintiffs are informed and believe, and based thereon allege, that at all
19 times relevant herein each Defendant was acting as an agent, joint venture, or as an
20 integrated enterprise and/or alter ego for each of the other Defendants, and each was a
21 co-conspirator with respect to the acts and the wrongful conduct alleged herein, so
22 that each is responsible for the acts of the other in connection with the conspiracy and
23 in proximate connection with the other Defendants.

24 18. Plaintiffs are informed and believe, and based thereon allege, that each
25 Defendant was acting partly within and partly without the scope and course of their
26 employment, and was acting with the knowledge, permission, consent, and
27 ratification of every other Defendant.

28 19. Plaintiffs are informed and believe, and based thereon allege, that each of

1 the Defendants was an agent, managing general partner, managing member, owner,
2 co-owner, partner, employee, and/or representative of each of the Defendants, and
3 were at all times material hereto, acting within the purpose and scope of such agency,
4 employment, contract and/or representation, and that each of them are jointly and
5 severally liable to Plaintiffs for the acts alleged herein

6 20. Plaintiffs are informed and believe, and based thereon allege, that each of
7 the Defendants are liable to Plaintiff under legal theories and doctrines including but
8 not limited to (1) joint employer; (2) integrated enterprise; (3) agency; and/or (4) alter
9 ego, based in part, on the facts set forth below.

10 21. Plaintiffs are informed and believe, and based thereon allege, that each of
11 the named Defendants are part of an integrated enterprise and have acted or currently
12 act as the employer and/or joint employer of Plaintiffs.

13 **STATUTORY BACKGROUND OF THE FCRA**

14 22. Enacted in 1970, the FCRA's passage was driven in part by two related
15 concerns: first, that consumer reports were playing a central role in people's lives at
16 crucial moments, such as when they applied for a job or credit, and when they applied
17 for housing; second, despite their importance, consumer reports were unregulated and
18 had widespread errors and inaccuracies.

19 23. Recognizing that consumer reports play an important role in the economy,
20 Congress wanted consumer reports to be "fair and equitable to the consumer" and to
21 ensure their "confidentiality, accuracy, relevancy, and proper utilization." 15 U.S.C. §
22 1681.

23 24. Congress was particularly concerned about the use of consumer reports by
24 employers. Accordingly, Congress required employers to make a clear and
25 conspicuous written disclosure to employees and job applicants in a document that
26 consists solely of the disclosure that a consumer report may be procured only for
27 employment purposes. 15 U.S.C. § 1681b(b)(2). This is commonly referred to as the
28 "standalone document" requirement. Congress further required that employers obtain

1 written authorization from the employee or job applicant before procuring consumer
2 reports for employment purposes. *Id.*

3 25. The FCRA's standalone document requirement and the clear and
4 conspicuous requirement are two of the elements of the FCRA that combine to ensure
5 consumers know when consumer reports may be generated about them, that consumers
6 know their rights, and providing consumers the opportunity to dispute errors in their
7 reports. *See* 15 U.S.C. § 1681b(b)(3)(A) (pre-adverse employment action notice
8 requirement); § 1681b(4)(B) (notification of national security investigation); §
9 1681c(h) (notification of address discrepancy); § 1681d(a) (disclosure of investigative
10 report); § 1681g (full file disclosure to consumers); § 1681k(a)(1) (disclosure regarding
11 the use of public record information); § 1681h (form and conditions of disclosure); §
12 1681m(a) (post-adverse employment action notice requirement).

13 26. Although the disclosure and the authorization may be combined in a
14 single document, the FTC has warned that the form should not include any extraneous
15 information or be part of another document. For example, in response to an inquiry as
16 to whether the disclosure may be set forth within an application for employment or
17 whether it must be included in a separate document, the FTC stated:

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

22
23 *FTC Advisory Opinion to Leathers* (09-09-98) [https://www.ftc.gov/policy/advisory-](https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-leathers-09-09-98)
24 [opinions/advisory-opinion-leathers-09-09-98](https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-leathers-09-09-98).

25 27. Consistent with the FTC's construction of the FCRA, courts have
26 repeatedly held that extraneous information renders a purported FCRA disclosure non-
27 compliant.

28 28. The U.S. Court of Appeals for the Ninth Circuit held that “a prospective

1 employer violates Section 1681b(b)(2)(A) when it procures a job applicant's consumer
2 report after including a liability waiver in the same document as the statutorily
3 mandated disclosure." *Syed v. M-I, LLC*, 853 F.3d 492, 496 (9th Cir. 2017).

4 29. Subsequently, the Ninth Circuit, citing *Syed*, held that where a disclosure
5 form "refers not only to rights under FCRA and under ICRAA applicable to [the
6 applicant or employee] but also to rights under state laws inapplicable to [the applicant
7 or employee] and to extraneous documents that are not part of the FCRA-mandated
8 disclosure ... [t]he disclosure therefore violates the FCRA's standalone document
9 requirement." *Gilberg v. Cal. Check Cashing Stores, LLC*, 913 F.3d 1169, 1175 (9th
10 Cir. 2019).

11 **STATUTORY BACKGROUND OF THE ICRAA**

12 30. In 1975, the California legislature enacted the ICRAA, which is modeled
13 after the FCRA. *See Connor v. First Student, Inc.*, 239 Cal. App. 4th 526, 536 (2015).

14 31. The ICRAA "imposes its own FCRA-like disclosure requirements."
15 *Gilberg*, 13 F.3d 1169, 1174; *see* Cal. Civ. Code §§ 1785.20(5)(a), 1786.16(a)(2)(B).

16 32. The ICRAA contains many of the same requirements as the FCRA, such
17 as that employers before procuring an investigative consumer report, must make a clear
18 and conspicuous written disclosure to employees and job applicants, in a document that
19 consists solely of the disclosure, but there are many other different and more stringent
20 requirements, such as requiring the disclosure paperwork to have a separate box to
21 check on the form(s) allowing a job applicant/employee to obtain a copy of their
22 consumer investigative report, among other separate requirements. Civ. Code §
23 1786.16, *et seq.*

24 33. As discussed below, Defendants routinely violated state and Federal law.

25 **FCRA GENERAL ALLEGATIONS**

26 **A. The Relevant Form.**

27 34. On or about February 7, 2020, as part of Defendants' routine practice,
28 policy, and procedure, Defendants required Plaintiff POVARNITSON, a job applicant

1 at that time, to sign a form that purported to allow Defendants to obtain an
2 investigative consumer report on the Plaintiff via a third party (in the case of Plaintiff
3 POVARNITSON, Gettier Security).

4 35. On or about February 7, 2020, Defendants procured and used a report (the
5 “Report”) constituting a consumer report under federal law and an investigative
6 consumer report under California law regarding Plaintiff POVARNITSON, as they
7 presumably had with hundreds of other job applicants and employees under similar
8 circumstances, from an investigative consumer reporting agency.

9 36. By law, before an employer may procure a consumer report on a
10 consumer (i.e., a job applicant), it must provide a written disclosure to the consumer.

11 37. Under the FCRA,

12 [A] person may not procure a consumer report, or cause a consumer report
13 to be procured, for employment purposes with respect to any consumer,
14 unless—

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

19 See 15 U.S.C. § 1681b(b)(2)(A), Civ. Code § 1786.16(a)(2)(B) (Emphasis added.)

20 38. Attached hereto and marked as **Exhibit 1** is a true and correct copy of a
21 form provided to Plaintiff POVARNITSON on or about February 7, 2020 in
22 connection with Defendants’ procurement of the Report regarding Plaintiff.

23 39. The contents of **Exhibit 1** are incorporated herein by reference as
24 though alleged herein.

25 40. **Exhibit 1** is the only document Defendants provided to Plaintiff
26 POVARNITSON bearing any resemblance to a disclosure form required under the
27 FCRA or the ICRAA.

28 41. On information and belief, Defendants relied on **Exhibit 1** as the

1 disclosure form in connection with their procurement of the Report regarding Plaintiff
2 POVARNITSON and hundreds of other employees and/or job applicants.

3 42. The form in **Exhibit 1**, or any other similarly defective form Defendants
4 employed, is the heart of this dispute.

5 43. Despite some resemblance to a disclosure form, **Exhibit 1** does not satisfy
6 the requirements that the FCRA or the ICRAA place on disclosure forms.

7 **B. Violation of the Standalone Document Requirement.**

8 44. In particular, but not by way of limitation, **Exhibit 1** does not satisfy the
9 standalone document requirements set forth in the FCRA and the ICRAA,
10 respectively

11 45. The so-called “standalone document requirement” refers to the
12 requirement that the disclosures given to a consumer before procuring a consumer
13 report (as defined under federal law) or an investigative consumer report (as defined
14 under California law) must be contained in a document that consists solely of the
15 disclosure, with nothing extraneous to the disclosure included in the document. 15
16 U.S.C. § 1681b(b)(2).

17 46. **Exhibit 1** does not satisfy the standalone document requirement as it
18 contains extraneous language. 15 U.S.C. § 1681b(b)(2)(A)(i); Cal. Civ. Code §
19 1786.16(a)(2)(B).

20 47. The extraneous language violative of the standalone document
21 requirement includes, *inter alia*:

22 I understand that I have the right to request in writing, within a reasonable
23 period of time, a complete and accurate disclosure of the nature and scope
24 of any investigative consumer report requested on me, and if denied
25 employment wholly or partly because of information contained in a
26 consumer report from a consumer reporting agency, I have the right to be
so advised and supplied with the name and address of the consumer
reporting agency making the report.

27 I understand that if I am permitted to begin my employment before the
28 results of a medical examination, reference check, consumer report or
investigative consumer report are complete my continued employment is

contingent upon those results, as well as my ability to perform the duties of my position with or without reasonable accommodation.

Ex. 1.

48. **Exhibit 1**'s use of the title, "Background Investigation Authorization and Release of Liability" is also improper inasmuch as Plaintiffs maintain the words "Release of Liability" are extraneous and violate the standalone document provisions of the FCRA and ICRAA.

C. Failure to Certify.

49. By law, before an employer can procure a report on an employee or job applicant, the employer must certify to the furnishing agency that it (the employer) complied, and will continue to comply, with various requirements of the ICRAA and the FCRA. Civ. Code §1786.16(a)(4); 15 U.S.C. §1681b(b).

50. On July 22, 2021, Plaintiff POVARNITSON sent the consumer reporting agency (Gettier Security) that procured Plaintiff POVARNITSON's report a letter that said, "Please also provide all certifications and similar records you received from Albireo Energy, LLC concerning Mr. Povarnitson within the meaning of the CCPA, the Fair Credit Reporting Act (FCRA), including but not limited to § 604 - 15 U.S.C. § 1681b, and the ICRAA, Civ. Code §§ 1786, *et seq.*"

51. In reply to the foregoing letter, the consumer reporting agency wrote back providing some documents but no evidence of certifications whatsoever from the Defendants as required under the FCRA and ICRAA.

52. Accordingly, Plaintiffs are informed and believe, and based thereon allege, that Defendants violated the FCRA and the ICRAA by procuring a Report without complying with the certification requirements set forth in the FCRA and the ICRAA.

D. Allegations Specific to Defendants' Violations of the ICRAA Only.

53. The ICRAA requires the disclosure form that an employer uses to contain a "summary of the provisions of Section 1786.22," yet **Exhibit 1** does not summarize,

1 or include any reference, to Section 1786.22; based thereon, Defendants violated the
2 ICRAA. Civ. Code § 1786.16(a)(2)(B)(v).

3 54. Section 1786.20 of the Civ. Code governs what privacy policies a
4 consumer reporting agency must maintain, where they must be published, and what
5 specifically its “privacy statement” must provide when doing business in California
6 (i.e., furnishing reports on California job applicants),

7 55. Section 1786.16(a)(2)(B)(vi) of the Civ. Code governs an employer’s
8 obligation to provide information to consumers concerning the privacy policies of any
9 consumer reporting agency furnishing a report.

10 56. Defendants violated Section 1786.16(a)(2)(B)(vi) of the Civ. Code in that
11 they failed to provide information to Plaintiff POVARNITSON concerning the
12 agency’s privacy policy, as Defendants unlawfully employed a consumer reporting
13 agency whose website (<http://www.gettier.com>) does not publish or otherwise contain
14 any privacy policy or statement applicable to the reports it procures, in violation of the
15 ICRAA.

16 57. Furthermore, Plaintiff POVARNITSON maintains **Exhibit 1** unlawfully
17 fails to include a box for job applicants to check to allow them to get a copy of their
18 report as required under Cal. Civ. Code § 1786.16(b)(1). (See **Ex. 1**.)

19 58. Moreover, **Exhibit 1** fails to identify the employer that is procuring the
20 report.

21 **LABOR CODE GENERAL ALLEGATIONS**

22 59. From February 18, 2020 to February 12, 2021, Defendants employed
23 Plaintiff POVARNITSON as a nonexempt worker in San Diego County until
24 Defendants involuntarily terminated him on February 12, 2021 without paying him all
25 wages to which he had a right to receive on the day of his termination in an amount to
26 be proven at trial.

27 60. From September 24, 2018 to July 7, 2020, Defendants employed
28 Plaintiff BRIGHT as a nonexempt worker in San Diego County until he quit on July

1 7, 2020 without paying him all wages to which he had a right to receive on the day of
2 his termination in an amount to be proven at trial.

3 61. Plaintiffs and putative Class Members were employees paid on an hourly
4 basis and sometimes paid a bonus when eligible.

5 **Minimum Wage/Prevailing Wage/Regular Wage claims.**

6 62. From at least four years before the filing of this action and continuing to
7 the present, and pursuant to company policy and/or practice and/or direction,
8 DEFENDANT EMPLOYER paid Plaintiffs and the putative Class minimum wages,
9 prevailing wages, or both at less than the rate required under state, federal, and local
10 law.

11 63. DEFENDANT EMPLOYER paid one employee, for example, \$52.50 per
12 hour, yet when DEFENDANT EMPLOYER required this same employee to work
13 weekends within the city limits of the City of San Diego, DEFENDANT EMPLOYER
14 did not pay him either his regular rate of pay or the City's mandate under the
15 applicable city Minimum Wage Ordinance because this employee's manager instructed
16 him not to put down his worktime since it would result in unwanted overtime
17 compensation and, thus, this employee worked "off the clock," all in an amount to be
18 proven at trial.

19 64. Plaintiffs are informed and believe, and therefore allege, that
20 DEFENDANT EMPLOYER required other workers to perform work "off the clock,"
21 for which time DEFENDANT EMPLOYER failed to compensate.

22 65. This claim is also premised, in part, on Plaintiffs' right to pursue all Labor
23 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
24 *USA, Inc.* (2018) 23 Cal.App.5th 745.

25 **Failure to Pay State and Prevailing Wage Overtime.**

26 66. From at least four years before the filing of this action and continuing to
27 the present, and pursuant to company policy and/or practice and/or direction,
28 DEFENDANT EMPLOYER failed to pay Plaintiffs and the putative Class state and

1 prevailing wage overtime compensation and/or the correct amount of overtime
2 compensation.

3 67. In particular, DEFENDANT EMPLOYER failed to accurately calculate
4 the regular rate of pay and, thus, paid Plaintiffs and the putative Class overtime
5 compensation at less than the rate required by law not only because Defendants paid
6 Plaintiffs at a wage rate less than what DEFENDANT EMPLOYER was required to
7 pay under local law as alleged above but also because Defendants failed to include
8 earned nondiscretionary bonuses into putative Class Members' regular rate of pay for
9 overtime pay purposes in violation of California law. (See § 49.1.1 of the California
10 Division of Labor Standards and Enforcement Policies and Interpretations Manual.)

11 68. For example, on January 5, 2017, DEFENDANT EMPLOYER paid its
12 Aggrieved Employee (employee identification number unknown because it is missing,
13 but last four digits of their SSN is 7061) a \$74.99 "Fringe" benefit, yet in the
14 corresponding pay period this Aggrieved Employee worked four hours of overtime and
15 DEFENDANT EMPLOYER paid only \$44.58 per hour to this Aggrieved Employee
16 based on the employee's regular rate of pay of \$29.72 erroneously not including the
17 fringe benefit proceeds into the regular rate of pay for overtime pay purposes, resulting
18 in an underpayment of overtime in an amount to be proven at trial.

19 69. By further example, on March 27, 2020, DEFENDANT EMPLOYER
20 paid DEFENDANT EMPLOYER's Aggrieved Employee (last four of SSN-7640) a
21 \$1,500 nondiscretionary bonus (presumably a COVID bonus), yet in the corresponding
22 pay period of March 16, 2020 to March 22, 2020 this Aggrieved Employee worked
23 eight hours of overtime and DEFENDANT EMPLOYER paid only \$37.50 per hour to
24 this Aggrieved Employee based on the employee's regular rate of pay of \$25
25 erroneously not including the bonus proceeds into the regular rate of pay for overtime
26 pay purposes, resulting in an underpayment of overtime in an amount to be proven at
27 trial.

28 70. By way of further example, DEFENDANT EMPLOYER created,

1 enforced, and implemented a “Company Allowance Vehicle Policy” whereby
2 Defendants paid its employees a stipend, in the case of Plaintiff BRIGHT sometimes
3 \$125 per pay period, but when Defendants’ employees worked overtime when the
4 fringe benefit was paid, DEFENDANT EMPLOYER did not add the fringe benefit into
5 putative Class Members’ regular rate of pay for overtime pay purposes in violation of
6 California law.

7 71. Likewise, when DEFENDANT EMPLOYER reimbursed its employees
8 for things, such as business gas mileage, DEFENDANT EMPLOYER placed the
9 reimbursed amount as earned income on its employees’ paystubs, but when
10 Defendants’ employees worked overtime when the Defendants paid the affected
11 employee gas mileage, DEFENDANT EMPLOYER did not add gas mileage into
12 putative Class Members’ regular rate of pay for overtime pay purposes in violation of
13 California law.

14 72. Alternatively or in addition thereto, Defendants underpaid overtime
15 compensation to Class Members because Defendants failed to apply the weighted
16 average method blended rate of pay for overtime as required by California law.

17 73. By way of example, during the workweek of May 15, 2017 to May 21,
18 2017, DEFENDANT EMPLOYER’s Aggrieved Employee (employee identification
19 number unknown because it is missing, but last four digits of their SSN is 7061)
20 worked at two regular rates of pay at \$27.25 and \$29.72 per hour, but was only paid at
21 \$40.875 per hour for eight hours of overtime, not the properly calculated weighted
22 average overtime rate in an amount which would have been higher, thus underpaying
23 him for labor performed as overtime.

24 74. Defendants also regularly and systematically, as a policy and practice,
25 miscalculated the overtime and minimum rates of rate of pay it paid to Aggrieved
26 Employees.

27 75. In addition to the foregoing, within the relevant period on various dates
28 during his employment, Defendants, for example, required Plaintiff BRIGHT and

1 Class Members to work on a variety of construction projects believed to be public
2 works projects, such as University of California San Diego, and various elementary
3 schools in the City of San Diego, among other government projects evidenced in
4 Plaintiff BRIGHT's timesheets Defendants produced in response to Plaintiff's request
5 for his personnel file.

6 76. During the foregoing projects, Defendants directed Plaintiff BRIGHT to
7 provide construction work on the foregoing public works job sites.

8 77. Defendants did not pay Plaintiff BRIGHT and, upon information and
9 belief, other Class Members prevailing wages for their work on public works projects
10 despite Defendants' requirements under California law.

11 78. Plaintiffs are informed and believe and based thereupon allege that at
12 various times Defendants did not fully compensate Class Members for their labor
13 pursuant to the prevailing wage laws of California by, for example, making any fringe
14 benefit contributions that could offset the prevailing wage rate of pay for the
15 classification of their labor or paying the higher rate of pay as required under the
16 prevailing wage laws of California, among other reasons.

17 79. Plaintiffs are informed and believe and based thereupon allege that at
18 various times Defendants also did not comply with Labor Code § 1776 because
19 Defendants did not maintain or retain records required to be maintained per § 1776.

20 80. California's "prevailing wage is a minimum wage, and therefore the
21 workers may assert their express rights to recover their unpaid prevailing wages under
22 the minimum wage provisions of section 1194." (*Kirby v. Immoos Fire Prot., Inc.*
23 (2012) 53 Cal.4th 1244, 1252; *Road Sprinkler Fitters Local Union No. 669 v. G&G*
24 *Fire Sprinklers, Inc.* (2002) 102 Cal.App.4th 765, 770.)

25 81. This claim is also premised, in part, on Plaintiffs' right to pursue all Labor
26 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
27 *USA, Inc.* (2018) 23 Cal.App.5th 745.

28 **Meal and Rest Break Claims.**

1 82. From at least four years before the filing of this action and continuing to
2 the present, and pursuant to company policy and/or practice and/or direction,
3 DEFENDANT EMPLOYER failed to authorize and/or permit Plaintiffs from taking all
4 their compliant off-duty meal and rest breaks during the required timeframe as required
5 by law and failed to pay them premium pay, in an amount to be proven at trial.

6 83. Pursuant to DEFENDANT EMPLOYER'S policy, Plaintiffs often worked
7 more than five hours without getting a lawfully required meal break, i.e.,
8 DEFENDANT EMPLOYER prevented Plaintiffs from taking their meal breaks and/or
9 DEFENDANT EMPLOYER failed to provide Plaintiffs compliant meal breaks.

10 84. For example, on July 10, 2019, one employee reported to work at 0500
11 and worked until 1200 and took an untimely meal break from 1200 to 1300 (should
12 have been no later than 1000) and returned to work to finish at 1600.

13 85. Likewise, on July 11, 2019, the same foregoing employee reported to
14 work at 0430 and worked until 1200 and took an untimely meal break from 1200 to
15 1300 (should have been no later than 0930) and returned to work to finish at 1630.

16 86. Similarly, on July 12, 2019, the same foregoing employee reported to
17 work at 0500 and worked until 1200 and took an untimely meal break from 1200 to
18 1300 (should have been no later than 1000) and returned to work to finish at 1600.

19 87. Other putative Class Members' meal breaks were late, missed, or
20 noncompliant because of work demands imposed on them by management and/or the
21 demands of their customers, among other reasons.

22 88. Defendants never paid putative Class Members premium pay for missed
23 and noncompliant meal breaks.

24 89. With respect to rest break violations, DEFENDANT EMPLOYER
25 required Plaintiffs to be available by phone for calls or texts or have email access and
26 to keep such devices on--even during rest periods--and to remain vigilant and
27 responsive to calls or emails when needs arose during working hours and/or during off
28 work times, among other instances during which DEFENDANT EMPLOYER had an

1 obligation to pay premium pay for Plaintiffs' missed rest breaks.

2 90. Pursuant to this policy, Plaintiffs maintained a cell phone or similar
3 electronic device they kept with them in operating condition at all times making any
4 breaks available to them not a rest break in compliance with California law and
5 DEFENDANT EMPLOYER, upon information and belief, failed to pay these
6 employees for rest breaks.

7 91. Because of the foregoing policies, Defendants prevented Plaintiffs from
8 taking all their uninterrupted rest breaks to which they had the right under California
9 law, in an amount to be proven at trial. (*See Augustus v. ABM Security Services* (2016)
10 2 Cal.5th 257; *Ferra v. Loews* (2021) 11 Cal.5th 858.)

11 92. This claim is also premised, in part, on Plaintiffs' right to pursue all Labor
12 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
13 *USA, Inc.* (2018) 23 Cal.App.5th 745.

14 **Failure to Reimburse.**

15 93. During all times relevant, and pursuant to company policy and/or practice
16 and/or direction, Defendants required Plaintiffs and, upon information and belief,
17 Aggrieved Employees to use their cell phones and incur various other expenses
18 associated with their work for Defendants, such as mileage and tool purchases, among
19 other things.

20 94. Defendants also required Plaintiffs and Class Members to incur
21 unreimbursed necessary business expenses including use of their personal cell phones.

22 95. During all times relevant, and pursuant to company policy and/or practice
23 and/or direction, DEFENDANT EMPLOYER required many putative Class Members
24 to travel in their personal vehicles to more than one retail establishment in the same
25 workday without mileage or parking reimbursement in violation of California law.
26 (Labor Code § 2802.)

27 96. For example, one employee purchased infrared sensors, a refrigeration
28 leak detector, a gas leak detector, multimeters, power snake, telescope scope, hand drill

1 snake, shop vac, grinder, and other tools to perform his job for the DEFENDANT
2 EMPLOYER.

3 97. Defendants failed to reimburse Plaintiffs/Class Members for such
4 necessary business expenses.

5 98. This claim is also premised, in part, on Plaintiffs' right to pursue all Labor
6 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
7 *USA, Inc.* (2018) 23 Cal.App.5th 745.

8 **Erroneous Wage Statements in Violation of Labor Code § 226.**

9 99. During all times relevant, and pursuant to company policy and/or practice
10 and/or direction and continuing to the present, and pursuant to company policy and/or
11 practice and/or direction, Defendants issued confusing and inaccurate wage and
12 earning statements to Plaintiffs, which wage and earning statements failed to comply
13 with Labor Code § 226 in as much as they failed to, among other things, identify their
14 correct rates of pay and/or correct gross and net earnings during the applicable pay
15 period.

16 100. As alleged above, for example, during the March 16, 2020 to March 22,
17 2020 pay period (pay date of August 15, 2019) Defendants issued an Aggrieved
18 Employee a wage and earning statement that erroneously indicated this Aggrieved
19 Employee's overtime rate of pay was \$37.50 per hour yet this rate of pay was
20 erroneous because it failed to include proceeds from the \$1,500 nondiscretionary bonus
21 this Aggrieved Employee earned.

22 101. Similarly, as alleged above, and based on a policy and practice
23 Defendants implemented and enforced, Defendants required putative Class Members
24 to work "off the clock" and whose time and pay Defendants unlawfully omitted from
25 their paystubs.

26 102. As a standalone claim, Defendants also issued confusing and inaccurate
27 wage and earning statements to Plaintiffs that omitted any reference to the words "net
28 wages earned," "gross wages earned," "total hours worked," employee identification

1 numbers or last four digits of their SSN's, among other required entries, as part of the
2 "detachable part of the check" within the requirements of Labor Code § 226(a).

3 103. Further, Defendants issued confusing and inaccurate wage and earning
4 statements to Plaintiffs indicating that "Albireo Energy," not to be confused with
5 "Albireo Energy LLC," was the legal entity that was Plaintiffs' employer during the
6 Class Period, yet there is no known entity with that exact name registered with the
7 California Secretary of State (Albireo Energy LLC is registered, but not Albireo
8 Energy).

9 104. Adding to the confusion is that Defendants issued Plaintiffs W-2's
10 indicating that Electronic Control Systems, LLC was their employer, not "Albireo
11 Energy" or "Albireo Energy LLC," during the putative Class Period.

12 105. While Defendant ELECTRONIC CONTROL SYSTEMS, LLC had a
13 fictitious name statement on file with the County from May 20, 2015 to May 20, 2020
14 indicating that it was doing business under the fictitious name "Albireo Energy,"
15 Defendant ELECTRONIC CONTROL SYSTEMS, LLC let the foregoing fictitious
16 name statement expire on May 20, 2020 and neglected to file a new one until February
17 3, 2021.

18 106. Plaintiffs allege that from at least May 20, 2020 to February 3, 2021, the
19 wage and earning statements Defendants issued to putative Class Members failed to
20 comply with Labor Code § 226(a)(8) because the name of the legal entity identified on
21 the wage and earning statements (i.e., Albireo Energy) was erroneous.

22 107. In addition to the foregoing claims under Labor Code § 226, Plaintiffs'
23 paystubs and those of similarly situated employees of Defendants were inaccurate
24 because Defendants failed to pay them all wages, as alleged above, supporting a
25 derivative claim under Labor Code § 226.

26 108. This claim is also premised, in part, on Plaintiffs' right to pursue all Labor
27 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
28 *USA, Inc.* (2018) 23 Cal.App.5th 745.

109. This claim is also premised, in part, on Plaintiffs' right to pursue all Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.

Facts Relating to Derivative Claims, such as Labor Code §§ 203, 204, 204b, etc.

110. Pursuant to the above-mentioned policies, DEFENDANT EMPLOYER failed to pay all wages to which Plaintiffs had the right to receive under the law.

111. When Plaintiffs and putative Class Members' employment ended, DEFENDANT EMPLOYER failed to provide Plaintiffs all unpaid wages in their final paycheck or in a timely manner.

112. Further, during Plaintiffs' employment, their pay was untimely in violation of the Labor Code.

113. Plaintiffs are informed and believe and based thereon allege that, to date, DEFENDANT EMPLOYER has not paid Plaintiffs all of Plaintiffs' wages due and payable, in an amount to be proven at trial.

114. Derivative claims also premised, in part, on Plaintiffs' right to pursue all Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.

REPRESENTATIVE ACTION (PAGA) CLAIMS

115. The duties and business activities of the Aggrieved Employees were essentially the same as the duties and activities of the Plaintiffs described above.

116. This is a wage and hour representative action filed pursuant to PAGA, §§ 2698, 2699 generally consists of the following group:

**All persons Defendants employed in the State of California
from December 7, 2019¹ to the present.**

¹ The statute of limitations for this matter was tolled from April 6, 2020 to October 1, 2020 pursuant to Cal. Rules of Court, App. 1, Emergency Rule No. 9.

1 117. All members of the Aggrieved groups will be referred to as the
2 “Aggrieved Employees.”

3 118. The “Representative Period” means from **December 7, 2019** to the
4 present, the timeframe where the scope of statute allows Plaintiffs to recover wages
5 and penalties.

6 119. At all times during the Class Period, all the Aggrieved Employees were
7 employed in the same or similar job as Plaintiffs and were paid in the same manner and
8 under the same standard employment procedures and practices as the Plaintiffs.

9 120. Plaintiffs further allege the named Plaintiffs, and on information and
10 belief, Aggrieved Employees, did not receive all wages due at the time their
11 employment ended with DEFENDANT EMPLOYER.

12 121. On information and belief, current and former employees of
13 DEFENDANT EMPLOYER were subject to wage and hour violations by
14 DEFENDANT EMPLOYER, including failing to be paid for all wages due.

15 122. California law provides that an employee may file an action against an
16 employer to recover penalties for violations of the Labor Code and Wage Orders
17 provided the aggrieved employee files an action on behalf of him or himself and
18 similarly-situated current and former employees.

19 123. At all material times, DEFENDANT EMPLOYER and DOES 1 through
20 50 were and/or are Aggrieved Employees’ employers or persons acting on behalf of
21 Aggrieved Employees’ employer, within the meaning of California Labor Code § 558,
22 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
23 Labor Code or any provision regulating hours and days of work in any Order of the
24 Industrial Welfare Commission and, as such, are subject to penalties for each
25 underpaid employee as set for in Labor Code § 558.

26 124. As set forth in further detail below, because of the analysis and
27
28

1 investigation of the Plaintiffs' claims, Plaintiffs' attorneys sent letters to the California
2 Labor and Workforce Development Agency (hereinafter referred to as "LWDA") and
3 to DEFENDANT EMPLOYER informing DEFENDANT EMPLOYER of their claims
4 and their intent to pursue litigation.

5 EXHAUSTION OF ADMINISTRATIVE REMEDIES

6 125. As to penalty claims under the Labor Code Private Attorney General
7 Act, on or about **February 1, 2021** and **March 22, 2022**, Plaintiffs exhausted their
8 administrative remedies by sending correspondence to the LWDA and via certified
9 mail to DEFENDANT EMPLOYER indicating Plaintiffs are pursuing the claims
10 alleged in this Complaint.

11 126. The statutory period for Plaintiffs has expired on the foregoing letters
12 alleged above and the LWDA did not serve Plaintiffs with notice of intent to assume
13 jurisdiction over the applicable penalty claims and did not provide notice as set forth
14 in Labor Code § 2699.3 (a)(2)(A) within the statutory period.

15 127. Therefore, Plaintiffs have exhausted all applicable administrative
16 remedies thus permitting Plaintiffs the ability to seek the penalty claims sought in this
17 Complaint.

18 128. The Causes of Action alleged herein are appropriately suited for a
19 Representative Action under PAGA (Labor Code § 2698, *et seq.*) because:

- 20 a. This action involves allegations of violations of
21 provisions of the California Labor Code that provide for
22 a civil penalty to be assessed and collected by the LWDA
23 or any departments, divisions, commissions, boards,
24 agencies or employees;
- 25 b. Plaintiffs are "aggrieved employees" because
26 Plaintiffs were employed by the alleged violator
27 and had one or more of the alleged violations
28 committed against them; and

c. Plaintiffs have satisfied the procedural requirements of Labor Code § 2699.3, as set forth above.

CLASS ACTION ALLEGATIONS

129. Plaintiffs bring this action on behalf of himself and all others similarly situated as a class action pursuant to § 382 of the Code of Civil Procedure.

130. Plaintiffs' class claims arise under the FCRA and the Labor Code.

131. Plaintiffs seek to represent the classes composed of and defined as follows:

FCRA Class

All persons in the U.S. whose consumer and/or investigative consumer report Defendants procured, or caused to be procured, for employment purposes in violation of 15 U.S.C. § 1681b, *et seq.* during the five-year period before the filing of the present action to the date of final judgment.

Labor Code Class

All of Defendants' current or former employees who worked in the state of California from August 7, 2016² to the present.

132. Plaintiffs also seek to represent the following subclasses composed of and defined as follows:

Minimum/ Prevailing Wage/Regular Wage Subclass: All Members of the Class who during the relevant period, failed to receive minimum/prevailing/regular wages for all hours worked.

State Overtime and Prevailing Wage Overtime Subclass: All Members of the Class who, during the relevant period, worked more than eight hours per day and/or in 40 hours per

² The statute of limitations for this matter was tolled from April 6, 2020 to October 1, 2020 pursuant to Cal. Rules of Court, App. 1, Emergency Rule No. 9.

1 week and who did not receive overtime pay at the requisite
2 overtime rate of pay.

3 **Meal Break Subclass:** All Members of Plaintiff Class who,
4 during the applicable statute of limitations period (1) worked
5 for any of the Defendants and were not provided compliant
6 meal breaks;; and (2) were not provided one hour of pay at their
7 regular rate of compensation in lieu thereof.

8 **Rest Break Subclass:** All Members of Plaintiff Class who,
9 during the applicable statute of limitations period (1) worked
10 for any of the Defendants and were not provided compliant rest
11 breaks or paid for time spent during rest breaks; and (2) were
12 not provided one hour of pay at their regular rate of
13 compensation in lieu thereof.

14 **Unreimbursed Expense Subclass:** All Members of the Class
15 who, during the relevant period, Defendants did not reimburse
16 for reasonable and necessary expenses.

17 **Wage Statement Subclass:** All Members of the Class who,
18 during the applicable statute of limitations period, did not
19 receive accurate itemized wage statements as required by Labor
20 Code § 226.

21 **Waiting Time Subclass:** All Members of the Class who,
22 during the applicable limitations period, did not receive all
23 wages due in a timely manner as required by Labor Code §§
24 201-204.

25 **UCL Subclass:** All Members of the Class, who, during the
26 relevant period, are owed restitution in the form of (1)
27 unreimbursed expenses and/or (2) wages earned and unpaid
28 because of Defendants' uniform pay policies and procedures.

133. The abovementioned class-members will collectively be referred to as
"Class Members."

134. Plaintiff reserves the right under the California Rules of Court, to amend
or modify the class description with greater specificity or further division into
subclasses or limitation to particular issues.

1 135. This action is brought and may properly be maintained as a Class Action
2 under the provisions of § 382 of the Code of Civil Procedure because there is a well-
3 defined community of interest in the litigation and the proposed Class is easily
4 ascertainable.

5 **A. Numerosity**

6 136. The potential members of the Class as defined are so numerous or many,
7 that joinder of all the members of the Class is impracticable.

8 137. While the precise number of Class Members has not been determined at
9 this time, Plaintiffs are informed and believe, and on that basis allege, Defendants
10 currently employ, and during the relevant time periods employed, thousands of Class
11 Members.

12 **B. Commonality**

13 138. There are questions of law and fact common to the Class that predominate
14 over any questions affecting only individual Class Members.

15 139. Common questions of law and fact include, without limitation and
16 subject to possible further amendment, whether Defendants violated the FCRA by
17 procuring consumer reports: (a) without making the disclosures in a standalone
18 document, and (b) without providing the required certifications beforehand.

19 **C. Typicality**

20 140. Plaintiffs' claims are typical of the claims of the Class because Plaintiffs
21 and all members of the Class sustained injuries and damages arising out of and caused
22 by Defendants' common course of conduct and policies relating to consumer reports.

23 **D. Adequacy of Representation**

24 141. Plaintiffs are members of the Class, do not have any conflicts of interest
25 with other Class Members, and will prosecute the case vigorously on behalf of the
26 Class.

27 142. Counsel representing Plaintiffs and the putative Class are competent and
28 experienced in litigating employment class actions, including FCRA and wage and

hour class actions.

143. Plaintiffs will fairly and adequately represent and protect the interests of the Class Members.

E. Superiority of Class Action

144. A class action is superior to other available means for the fair and efficient adjudication of this controversy because individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class.

145. Defendants violated each Class Member's rights, and each class member may recover by reasons of Defendants' illegal policies and/or practices.

146. Class Action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

147. Plaintiff is unaware of any difficulties that are likely to arise in the management of this action that would preclude maintenance as a Class Action.

148. For the reasons alleged in this Complaint, this action should be certified as a Class Action.

FIRST CAUSE OF ACTION

Class Claim for Violations of the Fair Credit Reporting Act

(Against All Defendants)

149. Plaintiffs allege and incorporate by reference the allegations in the preceding and subsequent paragraphs as though fully set forth herein.

150. The FCRA requires that, before procuring a consumer report on an individual for employment purposes, the employer must provide a disclosure to each applicant "in a document that consists solely of the disclosure" (the standalone document requirement). 15 U.S.C. § 1681b(b)(2)(A)(i).

151. Specifically, Section 1681b(b)(2)(A) provides, in relevant part:

1 ... a person may not procure a consumer report, or cause a consumer
2 report to be procured, for employment purposes with respect to any
3 consumer, unless--
4 a clear and conspicuous disclosure has been made in writing to the
5 consumer at any time before the report is procured or cause to be
6 procured, in a document that consists solely of the disclosure, that a
7 consumer report may be obtained for employment purposes; and (ii) the
8 consumer has authorized in writing (which authorization may be made on
9 the document referred to in clause (i)) the procurement of the report by
10 that person.

11 15 U.S.C. § 1681b(2)(A).

12 152. The procurement of the consumer reports without first making the
13 required disclosures in a standalone document facially violates the FCRA as to
14 Plaintiff and the putative Class in numerous respects.

15 153. Included in Defendants' form is an abundance of extraneous information
16 that is not part of the FCRA-mandated disclosure, including the following:

17 I understand that I have the right to request in writing, within a reasonable
18 period of time, a complete and accurate disclosure of the nature and scope
19 of any investigative consumer report requested on me, and if denied
20 employment wholly or partly because of information contained in a
21 consumer report from a consumer reporting agency, I have the right to be
22 so advised and supplied with the name and address of the consumer
23 reporting agency making the report.

24 I understand that if I am permitted to begin my employment before the
25 results of a medical examination, reference check, consumer report or
26 investigative consumer report are complete my continued employment is
27 contingent upon those results, as well as my ability to perform the duties
28 of my position with or without reasonable accommodation.

Ex. 1.

154. Defendants' procurement of a report in reliance on a disclosure form that
included the aforementioned, among other extraneous information, facially
contravenes the requirements of 15 U.S.C. § 1681b(2)(A) that the no consumer
report be procured unless the disclosure appears "in a document that consists solely of
the disclosure" (the standalone document requirement).

155. As a matter of law, the procurement of consumer reports regarding

1 Plaintiff and the putative Class was unlawful under the FCRA due to the inclusion of
2 extraneous information in what Defendants may argue is a substitute for a disclosure
3 form. *See Gilberg v. Cal. Check Cashing Stores, LLC*, 13 F.3d 1169, 1174 (9th Cir.
4 2019); *Feist v. Petco Animal Supplies, Inc.*, 218 F. Supp. 3d 1112 (S.D. Cal. 2016)
5 (holding an employer violates § 1681b(b)(2)(A) when its disclosure form contains a
6 summary of out-of-state consumer rights); *Lagos v. The Leland Stanford Junior*
7 *University*, 2015 U.S. Dist. LEXIS 163119 (N.D. Cal. Dec. 4, 2015) (inclusion of out-
8 of-state disclosures and sentence stating, “I also understand that nothing herein shall be
9 construed as an offer of employment or contract for services” plausibly violated stand-
10 alone disclosure requirement).

11 156. Based on the misconduct alleged in this Complaint, Defendants also
12 violated the FCRA because Defendants failed to make the required certifications to the
13 consumer reporting agency before procuring reports.

14 157. Defendants acted willfully by procuring a consumer report without first
15 making the required disclosures in a standalone document and otherwise failing to
16 comply with all aspects of the FCRA. 15 U.S.C. § 1681b(b)(2)(A).

17 158. Defendants knowingly and recklessly acted in disregard of their statutory
18 duties and the rights of applicants and employees, including Plaintiff and the Class
19 Members.

20 159. Defendants’ conduct was willful because, among other reasons:

21 a. Defendants procured consumer reports without first
22 providing lawful disclosure forms to the Plaintiff and the Class;

23 b. Defendants procured consumer reports after requiring
24 Plaintiff and the Class to execute forms knowing they were
25 facially invalid in violation of the FCRA and Defendants’
26 statutory duties;

27 c. Defendants acted with reckless disregard of the FCRA
28 requirements and Defendants’ statutory duties when they

1 procured consumer reports after requiring Plaintiff and the
2 Class to execute the forms that were facially invalid and in
3 violation of the standalone document requirement and other
4 requirements of the FCRA;

5 d. Upon information and belief, Defendants were advised
6 by skilled lawyers and other professional employees, and
7 advisors knowledgeable about the FCRA requirements;

8 e. The statute and case law are clear that procuring a
9 report in conjunction with including the precise kinds of
10 statements at issue here in a disclosure form violates the FCRA;

11 f. Case law predating Defendants' conduct makes it clear
12 that it was a violation of 15 U.S.C. § 1681b(b)(2)(A) to procure
13 a report after including the precise kinds of extraneous
14 disclosures that were present in Defendant's disclosure form;
15 and

16 g. By adopting such a policy, Defendant voluntarily ran
17 the risk of violating the law substantially greater than the risk
18 associated with a reading that was merely careless.

19 160. Pursuant to 15 U.S.C. § 1681n(a)(1)(A), Plaintiff and the Class seek to
20 recover statutory damages due to Defendant's willful failure to comply with the
21 requirements imposed by the FCRA in an amount not less than \$100 and not more than
22 \$1,000 per Class Member. 15 U.S.C. §§ 1681b(b)(2)(A), 1681b, *et seq.*

23 161. Plaintiff and the Class seek the recovery of punitive damages for
24 Defendants' willful violations, in an amount as the Court may allow.

25 162. Pursuant to 15 U.S.C. § 1681n(a)(3) and § 1681o(a)(2), Plaintiff and the
26 Class seek the recovery costs of suit with reasonable attorneys' fees, as determined by
27 the Court.

28 **SECOND CAUSE OF ACTION**

**Individual Claims for
Violation of the California Investigative Consumer
Reporting Agencies Act (Civ. Code, § 1786, *et seq.*)**

(Against all Defendants)

163. Plaintiff POVARNITSON re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

164. Plaintiff POVARNITSON re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

165. Pursuant to California Civ. Code § 1786, *et seq.*, it is presumptively unlawful for a consumer reporting agency to furnish an investigative consumer report for employment purposes.

166. The ICRAA requires that, before procuring a consumer report on an individual for employment purposes, the employer must comply with all the following:

- (A) The person procuring or causing the report to be made has a permissible purpose, as defined in Civ. Code § 1786.12.
- (B) The person procuring or causing the report to be made provides a clear and conspicuous disclosure in writing to the consumer at any time before the report is procured or caused to be made in a document that consists solely of the disclosure, that:
 - (i) An investigative consumer report may be obtained.
 - (ii) The permissible purpose of the report is identified.
 - (iii) The disclosure may include information on the consumer's character, general reputation, personal characteristics, and mode of living.
 - (iv) Identifies the name, address, and telephone number of the investigative consumer reporting agency conducting the investigation.
 - (v) Notifies the consumer in writing of the nature and scope of the investigation requested, including a summary of the provisions of Civ. Code § 1786.22.
 - (vi) Notifies the consumer of the Internet Web site address of the investigative consumer reporting agency identified in clause (v), or, if the agency has no Internet Web site address, the telephone number of the agency, where the consumer may find information about the investigative reporting agency's privacy practices, including whether the consumer's personal information will be sent outside the United States or its territories and information that complies with subdivision (d) of Civ. Code § 1786.20. This clause shall become operative on January 1, 2012.

1 Civ. Code § 1786.16, subd. (a)(2)(B).

2 167. Plaintiff POVARNITSON alleges Defendants violated Civ. Code §
3 1786.16 because the disclosure form Defendant required Plaintiff to sign failed to
4 comply with Civ. Code § 1786.16, *et seq.* for the reasons specified in this Complaint
5 and according to proof at trial. (See **Ex. 1.**)

6 168. Plaintiff POVARNITSON also alleges Defendants violated the other
7 aspects of the ICRAA as alleged above.

8 169. With respect to each of the aforementioned violations of the ICRAA
9 provisions and pursuant to Civ. Code § 1786.50(a)(1), Plaintiff seeks to recover
10 statutory damages in the amount not less than \$10,000 for each violation due to
11 Defendants' failure to comply with the requirements imposed by Civ. Code §
12 1786.16, all in an amount to be proven at trial.

13 170. Plaintiff POVARNITSON seeks recovery costs of suit with reasonable
14 attorneys' fees in an amount as the Court may allow, but not to exceed \$75,000 in the
15 aggregate for all violations, remedies, claims, costs, and attorneys' fees recovered
16 included.

17 **THIRD CAUSE OF ACTION**

18 **Individual, Class, and Representative Claim under the PAGA for** 19 **Failure to Pay State and Local Minimum/Regular Wages in Violation of** 20 **California Labor Code §§ 216, 218, 218.5, 223, 1771, 1774, 1776, 1182.12, 1194,** 21 **1194.2, 1197, 1198, and the applicable Industrial Welfare Commission ("IWC")** 22 **Wage Order**

23 (Against all Defendants)

24 171. Plaintiffs allege and incorporate by reference the allegations in the
25 preceding and subsequent paragraphs as though fully set forth herein.

26 172. Pursuant to Labor Code §§ 216, 223, 218, 218.5, 1771, 1774, 1776,
27 1182.12, 1194, 1194.2, and 1197 it is unlawful for a California employer to suffer or
28 permit an employee to work without paying wages for all hours worked, as required by

1 the applicable IWC Wage Order.

2 173. During all times relevant, the applicable IWC Wage Order, including but
3 not limited to Wage Order 4 and/or 5, applied to Plaintiffs' and the Class members'
4 employment with Defendants.

5 174. Pursuant to the applicable IWC Wage Order, "hours worked" include the
6 time during which an employee is "suffered or permitted to work, whether or not
7 required to do so."

8 175. Every employer must pay each employee minimum wage as required
9 under state law and, where applicable and if higher, local law and/or prevailing wage
10 law.

11 176. During all times relevant, Plaintiffs and putative Class Members are
12 informed and believe, and based thereupon allege, that Class Members including
13 Plaintiffs, were not paid minimum/regular wages/and/or prevailing wages for all hours
14 suffered or permitted to work in violation of state and, where applicable, local law
15 and/or their agreement with DEFENDANT EMPLOYER.

16 177. Labor Code § 1194.2, subdivision (a) provides that, in an action to recover
17 wages because of the payment of a wage less than the minimum wage fixed by IWC
18 Wage Orders, an employee may recover liquidated damages in an amount equal to the
19 wages unlawfully unpaid and interest thereon.

20 178. At all material times, DEFENDANT EMPLOYER and DOES 1 through
21 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
22 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
23 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
24 Labor Code or any provision regulating hours and days of work in any Order of the
25 Industrial Welfare Commission and, as such, are subject to penalties for each
26 underpaid employee as set for in Labor Code § 558.

27 179. In committing the violations of state law as herein alleged, Plaintiffs are
28 informed and believe based there upon allege that Defendants have knowingly and

1 willfully refused to perform their obligations to compensate Aggrieved Employees for
2 all wages earned and all hours worked.

3 180. As a direct result, Aggrieved Employees have suffered and continue to
4 suffer, substantial losses related to the use and enjoyment of such compensation,
5 wages, lost interest on such monies and expenses and attorneys' fees in seeking to
6 compel Defendants to fully perform their obligations under state law, all to their
7 respective damage in amounts according to proof at trial and within the jurisdictional
8 limitations of this Court.

9 181. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, a
10 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
11 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
12 pay period for each subsequent violation in which DEFENDANT EMPLOYER
13 violated the minimum wage and/or regular wage provisions of the Labor Code,
14 including but not limited to §§ 216, 218, 218.5, 223, 1771, 1774, 1776, 1182.12, 1194,
15 1194.2, and 1197, the exact amount of the applicable penalty is all in an amount to be
16 shown according to proof at trial.

17 182. Additionally, pursuant to Labor Code § 2699, Plaintiffs and Class
18 Members seek to recover from Defendants, and each of them, penalties, attorneys'
19 fees, and costs incurred herein.

20 183. Upon information and belief, Class Members including Plaintiffs should
21 have received minimum wages in a sum according to proof during all times relevant to
22 this action.

23 184. Upon information and belief, Defendants have intentionally failed and
24 refused, and continue to fail and refuse, to pay Class Members including Plaintiffs
25 minimum wages for all time suffered or permitted to work.

26 185. Plaintiffs and the Class request the recovery of the unpaid minimum,
27 waiting time penalties, liquidated damages, interest, attorneys' fees, and costs in an
28 amount to be determined at trial.

1 **FOURTH CAUSE OF ACTION**

2 **Individual, Class, and Representative Claim under the PAGA for**
3 **Failure to Pay State and/or Prevailing Wage Overtime and/or Double-Time**
4 **Compensation in Violation of California Labor Code §§ 510, 1194, 1198, 1771,**
5 **1774, and the Applicable Wage Order**
6 **(Against all Defendants)**

7 186. Plaintiffs allege and incorporate by reference the allegations in the
8 preceding and subsequent paragraphs as though fully set forth herein.

9 187. During all times relevant, the applicable Wage Order, including but not
10 limited to Wage Order 4 and/or 5, applied to Plaintiffs' employment with Defendants.

11 188. Pursuant to the applicable Wage Order, "hours worked" include the
12 time during which an employee is "suffered or permitted to work, whether or not
13 required to do so."

14 189. For each hour (or fraction thereof) an employee works over forty (40)
15 hours in a week or more than eight (8) hours in a workday the employer must pay the
16 rate of one and a half times the employee's regular hourly wage.

17 190. For each hour (or fraction thereof) an employee works more than twelve
18 (12) hours in one day or more than eight (8) hours a day on the seventh consecutive
19 day of work, the employee must be compensated at the rate of no less than twice the
20 regular rate of pay for that employee.

21 191. According to § 49.1.1 of the California Division of Labor Standards and
22 Enforcement Policies and Interpretations Manual, "In California, as with the federal
23 FLSA, overtime is computed based on the regular rate of pay. The regular rate of pay
24 includes many different kinds of remuneration, for example: hourly earnings, salary,
25 piecework earnings, *commissions*, *certain bonuses*, and the value of meals and
26 lodging." (Emphasis added.)

27 192. As alleged in this Complaint, DEFENDANT EMPLOYER failed to pay
28 all overtime compensation to the Plaintiffs and the Class because DEFENDANT

1 EMPLOYER, among other things, failed to include bonuses and/or fringe benefits
2 earned towards the overtime hourly rate in violation of California law, among other
3 reasons alleged in this Complaint (see § 49.1.1 of the California Division of Labor
4 Standards and Enforcement Policies and Interpretations Manual) and failed to pay
5 prevailing wages, and consider the requirements under the weighted average of pay.

6 193. Additionally, from at least four years before the filing of this action and
7 continuing to the present, and pursuant to company policy and/or practice and/or
8 direction, Plaintiffs are informed and believe, and therefore allege, that Defendants
9 failed to pay its employees the correct rate of minimum/regular wages and, as a result,
10 the amount of overtime paid was too low.

11 194. Further, during all times relevant, and pursuant to company policy and/or
12 practice and/or direction, Defendants required Plaintiffs and the Aggrieved Employees
13 to work more than 40 hours per week and/or eight hours in a workday on public works
14 projects to which they had the right to receive prevailing wages and Defendants did not
15 pay Plaintiff BRIGHT and the Aggrieved Employees all overtime compensation to
16 which they should have received at the prevailing wage rate.

17 195. At all material times, DEFENDANT EMPLOYER and DOES 1 through
18 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
19 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
20 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
21 Labor Code or any provision regulating hours and days of work in any Order of the
22 Industrial Welfare Commission and, as such, are subject to penalties for each
23 underpaid employee as set for in Labor Code § 558.

24 196. In committing the violations of state law as herein alleged, Defendants
25 have knowingly and willfully refused to perform their obligations to compensate
26 Aggrieved Employees for all wages earned and all hours worked.

27 197. As a direct result, Aggrieved Employees have suffered and continue to
28 suffer, substantial losses related to the use and enjoyment of such compensation,

1 wages, lost interest on such monies and expenses and attorney's fees in seeking to
2 compel Defendants to full perform their obligation under state law, all to their
3 respective damage in amounts according to proof at trial and within the jurisdictional
4 limitations of this Court.

5 198. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
6 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
7 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
8 pay period for each subsequent violation in which DEFENDANT EMPLOYER
9 violated the overtime provisions of the Labor Code, including but not limited to §§ 510
10 at 1194, the exact amount of the penalties sought is in an amount to be shown
11 according to proof at trial.

12 199. Additionally, pursuant to Labor Code § 2699, Plaintiffs seek to recover
13 from Defendants, and each of them, penalties, attorneys' fees, and costs incurred
14 herein.

15 200. Based on the misconduct alleged in this Complaint, Plaintiffs and
16 similarly situated members of the Class have suffered damages in an amount to be
17 proven at trial.

18 201. Plaintiffs on behalf of herself and Class requests the unpaid wages,
19 waiting time penalties, interest, attorneys' fees, costs, liquidated damages, and any
20 other remedies allowed by law in an amount to be proven at trial.

21 **FIFTH CAUSE OF ACTION**

22 **Individual, Class, and Representative Claim under the PAGA for** 23 **Failure to Comply with the Meal Break Requirements of Labor Code §§ 226.7,** 24 **512, 1198, and the applicable IWC Wage Order**

25 (Against all Defendants)

26 202. Plaintiffs re-allege and incorporate by reference the foregoing allegations
27 as though set forth herein.

28 203. By failing to provide duty-free meal periods of at least thirty (30) minutes

1 for shifts of five hours or more, which began before the end of the fifth hour of work,
2 and failing to pay such employees premium wages of one (1) hour of pay at their
3 regular rate of compensation for each workday the meal period was not provided,
4 Defendants willfully violated the provisions of Labor Code § 226.7, and the applicable
5 IWC Wage Order.

6 204. Based on the misconduct alleged in this Complaint, Defendants failed to
7 pay all premium wages owed or to compensate putative Class Members within the
8 meaning of *Ferra v. Loews* (2021) 11 Cal.5th 858, or both.

9 205. At all material times, DEFENDANT EMPLOYER and DOES 1 through
10 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
11 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
12 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
13 Labor Code or any provision regulating hours and days of work in any Order of the
14 Industrial Welfare Commission and, as such, are subject to penalties for each
15 underpaid employee as set for in Labor Code § 558.

16 206. In committing the violations of state law as herein alleged, Plaintiffs are
17 informed and believe and based thereon allege that Defendants have knowingly and
18 willfully refused to perform their obligations to compensate Aggrieved Employees for
19 all wages earned and all hours worked.

20 207. As a direct result, Aggrieved Employees have suffered and continue to
21 suffer, substantial losses related to the use and enjoyment of such compensation,
22 wages, lost interest on such monies and expenses and attorneys' fees in seeking to
23 compel Defendants to fully perform their obligations under state law, all to their
24 respective damage in amounts according to proof at trial and within the jurisdictional
25 limitations of this Court.

26 208. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
27 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
28 for the initial violation and two hundred (\$200.00) for each aggrieved employee per

1 pay period for each subsequent violation in which all culpable Defendants violated Cal.
2 Labor Code § 226.7, the exact amount of the applicable penalty is all in an amount to
3 be shown according to proof at trial.

4 209. Wherefore, Plaintiffs request all remedies available to them and to the
5 putative Classes.

6 **SIXTH CAUSE OF ACTION**

7 **Individual, Class, and Representative Claim under the PAGA for** 8 **Failure to Comply with the Rest Break Requirements of Labor Code §§ 226.7,** 9 **512, 1198, and the applicable IWC Wage Order**

10 210. Plaintiffs allege and incorporate by reference the allegations in the
11 preceding and subsequent paragraphs as though fully set forth herein.

12 211. Based on the misconduct alleged in this Complaint, Defendants failed to
13 authorize and permit Plaintiffs to receive a rest period of at least 10 minutes on a
14 separate hourly basis when paid commissions or otherwise to provide paid ten-minute
15 rest periods for every four (4) hours or major fraction thereof worked per day, and by
16 failing to provide premium wages at the regular rate of pay when these periods were
17 not permitted or authorized, Defendants willfully violated the provisions of Labor
18 Code § 226.7, and the applicable IWC Wage Order.

19 212. Based on the misconduct alleged in this Complaint, Defendants failed to
20 pay premium pay for Plaintiffs' missed meal breaks DEFENDANT EMPLOYER
21 failed to provide or authorize, to compensate putative Class Members within the
22 meaning of *Ferra v. Loews* (2021) 11 Cal.5th 858, or both.

23 213. At all material times, DEFENDANT EMPLOYER and DOES 1 through
24 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
25 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
26 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
27 Labor Code or any provision regulating hours and days of work in any Order of the
28 Industrial Welfare Commission and, as such, are subject to penalties for each

1 underpaid employee as set for in Labor Code § 558.

2 214. In committing the violations of state law as herein alleged, Plaintiffs are
3 informed and believe and based thereon allege that Defendants have knowingly and
4 willfully refused to perform their obligations to compensate Aggrieved Employees for
5 all wages earned and all hours worked.

6 215. As a direct result, Aggrieved Employees have suffered and continue to
7 suffer, substantial losses related to the use and enjoyment of such compensation,
8 wages, lost interest on such monies and expenses and attorneys' fees in seeking to
9 compel Defendants to fully perform their obligations under state law, all to their
10 respective damage in amounts according to proof at trial and within the jurisdictional
11 limitations of this Court.

12 216. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
13 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
14 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
15 pay period for each subsequent violation in which all culpable Defendants violated Cal.
16 Labor Code § 226.7, the exact amount of the applicable penalty is all in an amount to
17 be shown according to proof at trial.

18 217. Wherefore, Plaintiffs request all remedies available to them and to the
19 putative Classes.

20 **SEVENTH CAUSE OF ACTION**

21 **Individual, Class, and Representative Claim under the PAGA for**
22 **Failure to Indemnify/Reimburse Business Expenses in Violation of**
23 **California Labor Code § 1198, 2802, and the applicable Wage Order**
24 **(Against all Defendants)**

25 218. Plaintiffs allege and incorporate by reference the allegations in the
26 preceding and subsequent paragraphs as though fully set forth herein.

27 219. California Labor Code § 2802 requires employers to indemnify their
28 employees for expenses and losses incurred while discharging their duties or

1 obedience to the directions of their employer.

2 220. California Labor Code § 2804 mandates that this statutory right cannot be
3 waived.

4 221. The Plaintiffs incurred losses in obedience to the directions of
5 Defendants.

6 222. The costs included mileage reimbursement and other similar expenses,
7 such as parking costs.

8 223. As a direct result of Defendants' violation of California Labor Code §
9 2802, the Plaintiffs and Class Members suffered and continue to suffer substantial
10 losses related to unpaid expenses, the use and enjoyment of monies owed, lost interest
11 on monies owed, and attorneys' fees in an amount to be proven at the time of trial.

12 224. Defendants derive an unjust and inequitable economic benefit in failing
13 to comply with the law regarding indemnification and reimbursement of employees.

14 225. For Defendants' violations of California Labor Code § 2802, the
15 Plaintiffs seek back-owed reimbursement for work-related expenses, interest, statutory
16 and equitable attorneys' fees, costs, and applicable penalties in an amount to be
17 proven at trial.

18 **EIGHTH CAUSE OF ACTION**

19 **Individual, Class, and Representative Claim under the PAGA for**

20 **Violations of California Labor Code §§ 226 and 1198**

21 (Against all Defendants)

22 226. Plaintiffs allege and incorporate by reference the allegations in the
23 preceding and subsequent paragraphs as though fully set forth herein.

24 227. Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in
25 pertinent part, that every employer shall, "semimonthly or at the time of each
26 payment of wages, shall furnish to his or her employees, either as a detachable part of
27 the check, draft, or voucher paying the employee's wages, or separately if wages are
28 paid by personal check or cash, an accurate itemized statement in writing showing (1)

1 gross wages earned, (2) total hours worked by the employee. . . (3) the number of
2 piece-rate units earned and any applicable piece rate if the employee is paid on a
3 piece-rate basis, (4) all deductions, provided that all deductions made on written
4 orders of the employee may be aggregated and shown as one item, (5) net wages
5 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
6 name of the employee and only the last four digits of his or her social security
7 number..., (8) the name and address of the legal entity that is the employer. . . , and
8 (9) all applicable hourly rates in effect during the pay period and the corresponding
9 number of hours worked at each hourly rate by the employee and, beginning July 1,
10 2013, if the employer is a temporary services employer as defined in Section 201.3,
11 the rate of pay and the total hours worked for each temporary services assignment. . .”
12 (Labor Code § 226 subdivision (a).)

13 228. Likewise, California Labor Code § 226, subdivisions (b) and (c), require
14 employers doing business in the State of California to provide current and former
15 employees access to their payroll records.

16 229. Upon information and belief, during all times relevant to this action,
17 Defendants did not provide accurate wage statements throughout the Class Period.

18 230. Plaintiffs allege that on numerous occasions, an exact amount by which
19 will be proven at trial, Defendants violated various provisions of § 226, including but
20 not limited to subdivisions (a)(1), (a)(2), (a)(4), (a)(5), (a)(6), (a)(8), and (a)(9) by
21 failing to provide Plaintiffs accurate itemized statement in writing accurately showing
22 gross wages earned, total hours worked by the employee, net wages earned, among
23 other things.

24 231. At all material times DEFENDANT EMPLOYER and DOES 1 through
25 50 were and/or are Aggrieved Employees’ employers or persons acting on behalf of
26 Aggrieved Employees’ employer, within the meaning of California Labor Code § 558,
27 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
28 Labor Code or any provision regulating business hours and days of work in any Order

1 of the Industrial Welfare Commission and, as such, are subject to penalties for each
2 underpaid employee as set forth in Labor Code § 558.

3 232. In committing the violations of state law as herein alleged, Defendants
4 have knowingly and willfully refused to perform their obligations to compensate
5 Aggrieved Employees for all wages earned and all hours worked.

6 233. As a direct result, Aggrieved Employees have suffered and continue to
7 suffer, substantial losses related to the use and enjoyment of such compensation,
8 wages, lost interest on such monies and expenses and attorney's fees in seeking to
9 compel Defendants to fully perform their obligations under state law, all to their
10 respective damage in amounts according to proof at trial and within the jurisdictional
11 limitations of this Court.

12 234. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, a
13 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
14 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
15 pay period for each subsequent violation in which DEFENDANT EMPLOYER
16 violated Labor Code § 226, the exact amount of the applicable penalty is all in an
17 amount to be shown according to proof at trial.

18 235. For Defendants' misconduct as alleged in this Complaint, Plaintiffs seek
19 damages, penalties, costs, and attorneys' fees pursuant to Labor Code §§ 226, 226.3,
20 and 226.6 in an amount to be proven at trial.
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27 **NINTH CAUSE OF ACTION**

28 **Individual, Class, and Representative Claim under the PAGA for**

**Failure to Pay Timely Earned Wages during Employment and
Upon Separation of Employment in Violation of
California Labor Code §§ 201, 202, 203, 204 and/or 204b, 218.5, and 218.6**

(Against all Defendants)

236. Plaintiffs allege and incorporate by reference the allegations in the preceding and subsequent paragraphs as though fully set forth herein.

237. Pursuant to Labor Code § 201, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

238. Pursuant to Labor Code § 202, “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.”

239. Labor Code § 203 provides, in pertinent part: “If an employer willfully fails to pay, without abatement or reduction, ... any wages of an employee who is discharged or 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 therefore is commenced; but the wages shall not continue for more than 30 days. ...”

240. Pursuant to Labor Code § 204, “all wages ... earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”

241. Alternatively, pursuant to Labor Code § 204b, employers must pay its employees on a weekly basis on a regular day determined by the employer as the regular payday.

242. Pursuant to Labor Code §§ 218.5 and 218.6, an action may be brought for the nonpayment of wages and fringe benefits.

243. Plaintiffs were not properly paid pursuant to the requirements of Labor

1 Code §§ 201, 202, and 204/204b and thereby seek all remedies available to them.

2 244. To date, for example, Defendants have not paid Plaintiffs all earned wages
3 as required by law.

4 245. Plaintiffs are informed and believe and based thereon allege that
5 Defendants willfully failed to pay Plaintiffs' wages pursuant to the requirements of
6 Labor Code §§ 201, 202, and 204/204b, after Plaintiffs' demand and, therefore,
7 Plaintiffs may recover the associated unpaid wages and waiting time penalties.

8 246. Plaintiffs are informed and believe and based thereon allege that
9 Defendants did this with the intent to secure for himself, herself, and itself a discount
10 on its indebtedness and/or with intent to annoy harass, oppress, hinder, delay and/or
11 defraud Plaintiffs.

12 247. At all material times, DEFENDANT EMPLOYER and DOES 1 through
13 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
14 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
15 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
16 Labor Code or any provision regulating hours and days of work in any Order of the
17 Industrial Welfare Commission and, as such, are subject to penalties for each
18 underpaid employee as set for in Labor Code § 558.

19 248. In committing the violations of state law as herein alleged, Defendants
20 have knowingly and willfully refused to perform their obligations to compensate
21 Aggrieved Employees for all wages earned and all hours worked.

22 249. As a direct result, Aggrieved Employees have suffered and continue to
23 suffer, substantial losses related to the use and enjoyment of such compensation,
24 wages, lost interest on such monies and expenses and attorney's fees in seeking to
25 compel Defendants to full perform their obligation under state law, all to their
26 respective damage in amounts according to proof at trial and within the jurisdictional
27 limitations of this Court.

28 250. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, a

1 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
2 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
3 pay period for each subsequent violation in which DEFENDANT EMPLOYER
4 violated Labor Code §§ 201, 202, 203, and 204/204b. The exact amount of the
5 applicable penalty is all in an amount to be shown according to proof at trial.

6 251. Plaintiffs were deprived of their rightfully earned wages as a direct and
7 proximate result of Defendants' failure and refusal to pay said compensation and for
8 the reasons alleged in this Complaint.

9 252. Plaintiffs and Class Members request the unpaid wages, waiting time
10 penalties, interest, attorneys' fees, costs, damages, and other remedies in an amount to
11 be proven at trial.

12 **TENTH CAUSE OF ACTION**

13 **Representative Claim for PAGA Penalties**

14 **For Failure to Maintain and Provide Required Records in Violation of** 15 **California Labor Code §§ 226, 432, 1174, 1198.5, 1776,** 16 **and the Applicable Wage Order and/or § 1198**

17 (Against Entity Defendants and DOES 1-100)

18 253. Plaintiffs allege and incorporate by reference the allegations in the
19 preceding and subsequent paragraphs as though fully set forth herein.

20 254. Section 7 of the typical Wage Order requires every employer to maintain
21 time and payroll records.

22 255. Plaintiffs are informed and believe and based thereupon allege that at
23 various times Defendants also did not comply with Labor Code § 1776 because
24 Defendants did not maintain or retain records required to be maintained per § 1776.

25 256. Plaintiffs are informed and believe and based thereon alleges that during
26 all times relevant, Defendants failed to comply with § 7 of the applicable IWC Orders
27 and with Labor Code § 1174 by failing to maintain certain records which employers
28 are required to maintain, including but not limited to, an accurate record indicating

1 the number hours worked by the Plaintiffs.

2 257. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
3 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
4 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
5 pay period for each subsequent violation in which all culpable Defendants violated
6 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
7 of the applicable penalty is in an amount to be shown according to proof at trial.

8 258. For the reasons alleged herein, Plaintiffs seek all available remedies
9 pursuant to the PAGA in an amount to be proven at trial including but not limited to
10 penalties, attorneys' fees, costs, and interest pursuant to law.

11 **ELEVENTH CAUSE OF ACTION**

12 **Individual and Class Claim for Remedies for Violations**

13 **of the California Unfair Business**

14 **Practices Code §§ 17200, *et seq.***

15 (Against all Defendants)

16 259. Plaintiffs allege and incorporate by reference the allegations in the
17 preceding and subsequent paragraphs as though fully set forth herein.

18 260. Defendants, and each of them, are "persons" as defined under Business
19 and Professions Code § 17021.

20 261. Plaintiffs are informed and believe and based thereon allege that
21 Defendants committed the unfair business practices, as defined by Cal. Bus. & Prof.
22 Code § 17200, *et seq.*, by violating the laws alleged to have been violated in this
23 Complaint and which allegations are incorporated herein by reference and which
24 allegations include, but are not limited to:

25 a. Failing to provide the Class and Plaintiffs an
26 accurate itemized wage statement in violation of § 226 of the
27 Labor Code;

28 b. Failing to pay the Class and Plaintiffs all wages

1 due and owing including minimum/regular wages and overtime
2 compensation, minimum wages and overtime, and meal and
3 rest break premiums;

4 c. Failure to reimburse employees for all employer
5 incurred expenses; and

6 d. Failure to pay Class Members, including Plaintiffs,
7 wages in a timely manner upon their termination or resignation.

8 262. Defendants' conduct, as alleged above, constitutes unlawful, unfair, and
9 fraudulent activity prohibited by Business and Professions Code §§ 17200, *et seq.*

10 263. The unlawful and unfair business practices conducted by Defendants,
11 and each of them, are ongoing and present a threat and likelihood of continuing
12 against Plaintiffs and, accordingly, Plaintiffs seek injunctive relief where appropriate.

13 264. Plaintiffs have suffered injury in fact and lost money or property because
14 of the aforementioned unfair competition.

15 265. Because of their improper acts, Defendants, and each of them, have
16 reaped and continue to reap unfair benefits and illegal profits at the expense of
17 Plaintiffs and other employees and former employees of Defendants, and each of
18 them.

19 266. Defendants, and each of them, should be enjoined from this activity and
20 made to disgorge these ill-gotten gains and restore to Plaintiffs and the Class the
21 wrongfully withheld wages and/or penalties, pursuant to Business and Professions
22 Code §§ 17202 and/or 17203.

23 267. Plaintiffs and the Class have also incurred and continue to incur
24 attorneys' fees and legal expenses in an amount according to proof at the time of trial
25 and for which they seek compensation pursuant to law including but not limited to
26 Code of Civil Procedure § 1021.5.

27 **PRAYER FOR RELIEF**

1 Plaintiffs, on behalf of all putative Class Members, as applicable, pray for a
2 judgment against Defendants as follows:

3 On the First Cause of Action:

- 4 a. For an order that this action may proceed and be maintained as a class
5 action;
- 6 b. For an order appointing Plaintiff as the representative of the class;
- 7 c. For an order finding Defendants liable to Plaintiff and the class;
- 8 d. For an order declaring that Defendants violated the rights of Plaintiff and
9 the class under the FCRA;
- 10 e. For an award of statutory penalties and damages to Plaintiff and the class
11 in an amount equal to \$1,000 for Plaintiff and for each member of the class for
12 Defendants' willful violations of the FCRA pursuant to 15 U.S.C. § 1681n(a)(1)(A);
- 13 f. For prejudgment and post judgment interest;
- 14 g. For attorneys' fees and costs; and
- 15 h. For such other and further relief as the Court deems proper.

16 On the Second Cause of Action:

- 17 a. In the event this case does not proceed on a FCRA class action basis,
18 pursuant to Civ. Code § 1786.50, an award of statutory damages to Plaintiff in the
19 amount of \$10,000 for each violation;
- 20 b. For an order declaring that Defendants violated the rights of Plaintiff, in
21 his individual capacity, under the ICRAA;
- 22 c. For an award of costs of suit incurred, including expenses and reasonable
23 attorneys' fees and costs allowed under all applicable provisions of law;
- 24 d. For prejudgment and post judgment interest on all due amounts under the
25 ICRAA and Civil Code sections 3287, 3288, 3289 and any other applicable statutes;
26 and
- 27 e. For such other and further relief as the Court deems proper.

28 On the Third through the 11th Causes of Action:

- a. An order that this action may proceed and be maintained as a class action;
- b. For appointment of the named Plaintiffs as the representatives of the Class;
- c. For appointment of counsel for Plaintiffs as Class Counsel;
- d. That the Court find that Defendants' violations as described above were willful;
- e. That the Court award to Plaintiffs and/or the Class and/or Aggrieved Employees damages for the amount of unpaid wages subject to proof at trial;
- f. For payment of all unpaid wages, including but not limited to state minimum wages and overtime compensation to Plaintiffs and/or the Class and/or Aggrieved Employees in an amount subject to proof at trial;
- g. That Defendants, and each of them, be ordered and enjoined to pay restitution to Plaintiffs and/or the Class and/or Aggrieved Employees pursuant to Business and Professions Code §§ 17200-05;
- h. That Defendants, and each of them, be required to issue to Plaintiffs and/or the Class and/or Aggrieved Employees accurate wage and earning statements;
- i. For disgorgement through restitution of all ill-gotten and/or ill-gained profits, including unpaid wages and/or penalties to Plaintiffs and/or the Class and/or Aggrieved Employees, resulting from Defendants' unfair business practices pursuant to Business and Professions Code §§ 17200-05;
- j. For an order by the Court requiring Defendants, and each of them, to show cause, if any they have, as to why to Plaintiffs and/or the Class and/or Aggrieved Employees should not have been be issued itemized wage statements as required by § 226 of the Labor Code and why

- 1 Defendants should not be required to pay Plaintiffs minimum wages and
2 overtime compensation under applicable state law;
- 3 k. For damages in an amount to be proven at trial;
- 4 l. For all remedies available to Plaintiffs under the applicable Industrial
5 Welfare Commission Order and Labor Code §§ 90.5, 200, 201, 202, 203,
6 204 and/or 204b, 204.1, 216, 218, 218.5, 221, 222, 223, 224, 225.5, 226,
7 226.3, 226.6, 227.6, 245, 245.5, 246, 246.5, 247, 247.5, 248.5, 249, 432,
8 510, 512, 558, 1771, 1774, 1776, 1174, 1174.5, 1182.12, 1194, 1194.2,
9 1197, 1197.1, 1198, 1198.5, and 2802 via PAGA Labor Code § 2698, *et*
10 *seq.* including an award of unpaid wages, attorneys' fees, costs, interest,
11 liquidated damages, damages, penalties and waiting time penalties
12 according to proof to the extent permitted by law;
- 13 m. For maximum civil penalties available under the Labor Code and
14 applicable Wage Order as described more particularly in this Complaint,
15 representative PAGA claims including the payment of wages as set forth
16 in Labor Code § 558;
- 17 n. For Labor Code § 226(e) penalties in the amount of \$4,000.00;
- 18 o. For Labor Code § 203 penalties in an amount to be proven at trial;
- 19 p. For special and general damages;
- 20 q. That Plaintiffs and/or the Class and/or Aggrieved Employees be awarded
21 reasonable attorneys' fees where available by law, including but not
22 limited to pursuant to Labor Code §§ 2698, *et seq.*, Code of Civil
23 Procedure § 1021.5, and/or other applicable laws; and
- 24 r. For such other and further relief as the Court deems proper.
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DEMAND FOR JURY TRIAL

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Plaintiffs demand a jury trial on all issues that may be tried before a jury.

Dated: March 20, 2023

The Law Office of
Thomas D. Rutledge

Thomas D. Rutledge
/s/Thomas D. Rutledge
Attorneys for the Plaintiffs

Exhibit 1

**BACKGROUND INVESTIGATION
AUTHORIZATION AND RELEASE OF LIABILITY**

In connection with my application for employment and/or as a condition of my continued employment with

(Name of company) _____

I understand that *Gettier Security* may investigate my background by obtaining consumer, criminal, driving, personal reference, job reference and credit along with other reports pertaining to me. This may include conversations with persons who have knowledge or information about such matters. This investigation will be conducted, and reports obtained, to provide *Gettier Security* with information regarding my character, general reputation, personal characteristics, work record, skills and abilities, education and training, employment experience, past job performance, reasons for termination of previous employment, and any other information deemed appropriate.

I understand that *Gettier Security* may request information from federal, state and local governmental agencies, schools, current and previous employers, personal acquaintances, and other appropriate sources of information that maintain records or have knowledge of my education, employment, consumer, credit, criminal, driving and other relevant activities, experiences and records, including, but not limited to, my character, general reputation and personal characteristics. I authorize, without reservation, any person or entity contacted by *Gettier Security* to furnish the above-stated information.

I understand that I have the right to request in writing, within a reasonable period of time, a complete and accurate disclosure of the nature and scope of any investigative consumer report requested on me, and if denied employment wholly or partly because of information contained in a consumer report from a consumer reporting agency, I have the right to be so advised and supplied with the name and address of the consumer reporting agency making the report.

I understand that if I am permitted to begin my employment before the results of a medical examination, reference check, consumer report or investigative consumer report are complete my continued employment is contingent upon those results, as well as my ability to perform the duties of my position with or without reasonable accommodation.

PLEASE ~~NEATLY~~ PRINT THE FOLLOWING INFORMATION

NAME Aleksandr Povarnitson MAIDEN _____

FORMER NAMES and ALIASES _____

BIRTHDATE 1-18-1984 AGE 36 SOCIAL SECURITY NO. 620-13-7640

DRIVERS LICENSE NO. B9941354 STATE OF ISSUE CA

ADDRESS 451 Whitby Glen Escondido CA 92027
Street City State Zip

PREVIOUS ADDRESSES (Within past 7 years, and IF you are over 18 years of age)

APPLICANTS SIGNATURE _____

DATE 2-7-2020