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Individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

Heather De Vries, Individually and on behalf
of all others similarly situated,

Plaintiff,

v.

Wollborg-Mitchelson Personnel Service,
Inc.; Health Net of California, Inc. and Does
1 through 20, inclusive,

Defendants.

Case No.: 34-2021-0030122

Honorable David De Alba – Dept. 41

**[Filed as a matter of right pursuant to
Labor Code § 2699.3(a)(2)(C)]**

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

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Provide Accurate, Itemized Wage Statements;
6. Failure to Reimburse for Business Expenses;
7. Violation of Business and Professions Code §§ 17200, *et seq.*;
8. Failure to Make Proper Disclosure in Violation of the ICRAA;

9. Enforcement of Labor Code § 2698
Et. Seq. ("PAGA")

Jury Trial Demanded

Plaintiff Heather De Vries, individually and on behalf of others similarly situated,
alleges as follows:

NATURE OF ACTION AND INTRODUCTORY STATEMENT

1. Plaintiff Heather De Vries ("Plaintiff") brings this putative class action against Defendants Wollborg-Mitchelson Personnel Service, Inc. ("Defendant Wollborg-Mitchelson"), Defendant Health Net of California Inc. ("Defendant Health Net") and Does 1 through 20, inclusive (collectively, "Defendants"), on behalf of herself individually and a putative class of non-exempt employees employed by Defendants throughout California.

2. Defendant Wollborg-Mitchelson is a California corporation and a temporary services employer which provides temporary service workers to companies in California.

3. Defendant Health Net is a California corporation which provides insurance coverage.

4. Through this action, Plaintiff alleges that Defendants have engaged in a systematic pattern of wage and hour violations under the California Labor Code and Industrial Welfare Commission ("IWC") Wage Orders, all of which contribute to Defendants' deliberate unfair competition.

5. Plaintiff is informed and believes, and thereon alleges, that Defendants have increased their profits by violating state wage and hour laws by, among other things:

- (a) Failing to pay all wages for all hours worked, including minimum and overtime wages;
- (b) Failing to provide meal periods or compensation in lieu thereof;
- (c) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;
- (d) Failing to provide accurate, itemized wage statements; and
- (e) Failing to reimburse all reasonable and necessary business expenses.

1 6. Plaintiff brings this lawsuit seeking monetary relief against Defendants on
2 behalf of herself and all others similarly situated in California to recover, among other things,
3 unpaid wages and benefits, interest, attorneys' fees, costs and expenses and penalties pursuant
4 to Cal. Labor Code §§ 210, 226.7, 510, 511, 512, 1182.12 1194, 1194.2, 1197, 1198, 2800,
5 and 2802.

6 7. Plaintiff also brings this putative class action against Defendants on behalf of
7 herself and all other employees or prospective employees of Defendants in the state of
8 California for violations of California Civil Code § 1786 *et seq*, the Investigative Consumer
9 Credit Reporting Agencies Act ("ICRAA").

10 **JURISDICTION AND VENUE**

11 8. This is a class action, pursuant to California Code of Civil Procedure § 382.
12 The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional
13 limits of the Superior Court and will be established according to proof at trial.

14 9. This Court has jurisdiction over this action pursuant to the California
15 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all
16 causes except those given by statutes to other courts. The statutes under which this action is
17 brought do not specify any other basis for jurisdiction.

18 10. This Court has jurisdiction over all Defendants because, upon information and
19 belief, they are citizens of California, have sufficient minimum contacts in California or
20 otherwise intentionally avail themselves of the California market so as to render the exercise
21 of jurisdiction over them by the California courts consistent with traditional notions of fair
22 play and substantial justice.

23 11. Venue is proper in this Court because, upon information and belief, Defendants
24 reside, transact business or have offices in this county and the acts and omissions alleged
25 herein took place in this county.

26 **THE PARTIES**

27 12. Plaintiff is a citizen of California. Plaintiff was employed by Defendants
28 during the Class Period in California.

1 13. Plaintiff is informed and believes, and thereon alleges, that Defendants at all
2 times hereinafter mentioned, were and are employers as defined in and subject to the Labor
3 Code and IWC Wage Orders, whose employees were and are engaged throughout this county
4 and the State of California.

5 14. Plaintiff is unaware of the true names or capacities of the Defendants sued
6 herein under the fictitious names DOES 1 through 20 but will seek leave of this Court to
7 amend this Complaint and serve such fictitiously named Defendants once their names and
8 capacities become known.

9 15. Plaintiff is informed and believes, and thereon alleges, that each Defendants
10 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
11 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
12 Defendants are legally attributable to the other Defendants. Furthermore, defendants in all
13 respects acted as the employer and/or joint employer of Plaintiff and the class members.

14 16. Plaintiff is informed and believes, and thereon alleges, that each and all of the
15 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
16 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act
17 on the other's behalf. The acts of any and all Defendants were in accordance with, and
18 represent, the official policy of Defendants.

19 17. At all relevant times, Defendants, and each of them, acted within the scope of
20 such agency or employment, or ratified each and every act or omission complained of herein.
21 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions
22 of each and all the other Defendants in proximately causing the damages herein alleged.

23 18. Plaintiff is informed and believes, and thereon alleges, that each of said
24 Defendants are in some manner intentionally, negligently or otherwise responsible for the
25 acts, omissions, occurrences and transactions alleged herein.

26 **CLASS ACTION ALLEGATIONS**

27 19. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
28 herself and all others similarly situated who were affected by Defendants' Labor Code,

1 Business and Professions Code §§ 17200 and IWC Wage Order violations.

2 20. All claims alleged herein arise under California law for which Plaintiff seeks
3 relief authorized by California law.

4 21. Plaintiff's proposed classes consists of and is defined as follows:

5 California Labor Class

6 All current or former non-exempt California employees of Defendants from
7 four years and 179 days preceding the filing of this Complaint until judgment.¹

8 ICRAA Class

9 All of Defendants' current, former, and prospective applicants for employment
10 in California, at any time during the period beginning five years and 179 days
11 preceding the filing of this Complaint until judgment.

12 22. Members of the California Labor Class described above will be collectively
13 referred to as "Labor Class Members." Members of the ICRAA Class described above will
14 be collectively referred to as "ICRAA Class Members." Plaintiff reserves the right to
15 establish subclasses, or modify any Class or Subclass definition, as appropriate based on
16 investigation, discovery and specific theories of liability.

17 23. This action has been brought and may properly be maintained as a class action
18 under the California Code of Civil Procedure § 382 because there are common questions of
19 law and fact as to the Class that predominate over questions affecting only individual members
20 including, but not limited to:

21 (a) Whether Defendants failed to compensate Plaintiff and Labor Class Members
22 to work off-the-clock, resulting in a failure to pay all minimum wages and
23 overtime wages;

24 (b) Whether Defendants deprived Plaintiff and Labor Class Members of compliant
25 meal periods or required Plaintiff and Labor Class Members to work through
26 meal periods without compensation;

27
28 ¹ The statute of limitations for this matter were tolled for 179 days pursuant to Cal. Rules of
Court, Appendix I, Emergency Rule No. 9.

- 1 (c) Whether Defendants deprived Plaintiff and Labor Class Members of compliant
2 rest breaks;
- 3 (d) Whether Defendants deprived Plaintiff and Labor Class Members of accurate,
4 itemized wage statements;
- 5 (e) Whether Defendants required Plaintiff and Labor Class Members to use their
6 personal cellular phones and home-internet to perform work and then failed to
7 reimburse Plaintiff and Labor Class Members for a reasonable percentage of
8 these costs, resulting in failure to reimburse Plaintiff and Labor Class Members
9 for all business expenses necessarily incurred in their duties; and
- 10 (f) Whether Defendants engaged in unfair business practices in violation of
11 Business & Professions Code §§ 17200, *et seq.*
- 12 (g) Whether Defendants failed to provide ICRAA Class Members with stand-
13 alone written disclosures before obtaining a credit or background report in
14 compliance with the statutory mandates.
- 15 (h) Whether Defendants willfully failed to comply with the ICRAA.

16 24. There is a well-defined community of interest in this litigation and the
17 California Labor Class and the ICRAA Class are readily ascertainable:

- 18 (a) Numerosity: The members of the California Labor Class and ICRAA
19 Class are so numerous that joinder of all members is impractical.
20 Although the members of the California Labor Class and ICRAA Class
21 are unknown to Plaintiff at this time, on information and belief, the
22 total number of individuals who make up the California Labor Class
23 and the ICRAA Class are estimated to be greater than 100 individuals.
24 The identities of the California Labor Class and ICRAA Class are
25 readily ascertainable by inspection of Defendants' employment and
26 payroll records.
- 27 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of
28 the claims (or defenses, if any) of the California Labor Class and

1 ICRAA Class because Defendants' failure to comply with the
2 provisions of California wage and hour laws and the ICRAA entitled
3 each class member to similar pay, benefits and other relief. The
4 injuries sustained by Plaintiff are also typical of the injuries sustained
5 by the California Labor Class and ICRAA Class because they arise out
6 of and are caused by Defendants' common course of conduct as alleged
7 herein.

8 (c) Adequacy: Plaintiff is qualified to and will fairly and adequately
9 represent and protect the interests of all members of the California
10 Labor Class and the ICRAA Class because it is in her best interest to
11 prosecute the claims alleged herein to obtain full compensation and
12 penalties due to her and the California Labor Class and the ICRAA
13 Class. Plaintiff's attorneys, as proposed class counsel, are competent
14 and experienced in litigating large employment class actions and are
15 versed in the rules governing class action discovery, certification and
16 settlement. Plaintiff has incurred and, throughout the duration of this
17 action, will continue to incur attorneys' fees and costs that have been
18 and will be necessarily expended for the prosecution of this action for
19 the substantial benefit of each class member.

20 (d) Superiority: The nature of this action makes the use of class action
21 adjudication superior to other methods. A class action will achieve
22 economies of time, effort and expense as compared with separate
23 lawsuits, and will avoid inconsistent outcomes because the same issues
24 can be adjudicated in the same manner and at the same time for each
25 Class. If appropriate this Court can, and is empowered to, fashion
26 methods to efficiently manage this case as a class action.

27 (e) Public Policy Considerations: Employers in the State of California and
28 other states violate employment, labor, and consumer protection laws

1 every day. Current employees are often afraid to assert their rights out
2 of fear of direct or indirect retaliation. Former employees are fearful
3 of bringing actions because they believe their former employers might
4 damage their future endeavors through negative references and/or other
5 means. Class actions provide the class members who are not named in
6 the complaint with a type of anonymity that allows for the vindication
7 of their rights at the same time as affording them privacy protections.

8 **GENERAL ALLEGATIONS**

9 25. At all relevant times mentioned herein, Defendants employed Plaintiff and
10 other persons as non-exempt employees.

11 26. Plaintiff was employed in a non-exempt position by Defendants.

12 27. Defendants continues to employ non-exempt employees throughout
13 California.

14 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
15 mentioned, Defendants were advised by skilled lawyers, employees and other professionals
16 who were knowledgeable about California's wage and hour laws, employment and personnel
17 practices and the requirements of California law.

18 29. Plaintiff is informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiff and Labor Class Members were entitled to receive wages for
20 all hours worked and that they were not receiving all wages earned for work that was required
21 to be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Labor
22 Class Members were not paid wages (including minimum wages and overtime wages) when
23 Defendants required Plaintiff and Labor Class Members to work off-the-clock, for example,
24 during meal periods.

25 30. Plaintiff is informed and believes, and thereon alleges, Defendants failed to
26 provide Plaintiff and Labor Class Members timely, uninterrupted, off-duty meal periods of no
27 less than thirty minutes for each period of five hours worked. Plaintiff and Labor Class
28 Members would also often be required to work through meal periods or would be otherwise

1 interrupted during their meal period. Further, Defendants required Plaintiff and, on
2 information and belief, other Labor Class Members to sign purported meal period waivers at
3 the beginning of their employment. These waivers, however, are invalid because Defendants
4 did not sign said waivers, they were not signed voluntarily, and signing was a condition of
5 employment. See *Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal. App. 4th 220, 234.
6 These policies, among others, have resulted in a denial of these employees' rights to 30-
7 minute meal periods in violation of California law.

8 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
9 or should have known that Plaintiff and Labor Class Members were entitled to receive all
10 required meal periods or payment of one (1) additional hour of pay at Plaintiff and Labor
11 Class Members' regular rate of pay when they did not receive a timely meal period. In
12 violation of the Labor Code and IWC Wage Orders, Plaintiff and Labor Class Members did
13 not receive all timely meal periods or payment of one (1) additional hour of pay at Plaintiff
14 and Labor Class Members' regular rate of pay when they did not receive a timely,
15 uninterrupted meal periods.

16 32. Upon information and belief, Defendants failed to provide Plaintiff and Labor
17 Class Members timely, uninterrupted, on-the-clock rest period of no less than ten minutes for
18 every four hours worked, or every major fraction thereof. Defendants also routinely failed to
19 provide Plaintiff and Labor Class Members with a second rest period for shifts lasting longer
20 than six hours, or a third rest period for shifts lasting longer than ten hours. These policies,
21 among others, have resulted in a denial of these employees' rights to a ten-minute rest period
22 in violation of California law.

23 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
24 or should have known that Plaintiff and Labor Class Members were entitled to receive all rest
25 breaks or payment of one (1) additional hour of pay at Plaintiff and Labor Class Members'
26 regular rate of pay when a rest break was missed. In violation of the Labor Code and IWC
27 Wage Orders, Plaintiff and Labor Class Members did not receive all rest breaks or payment
28 of one (1) additional hour of pay at Plaintiff and Labor Class Members' regular rate of pay

1 when a rest break was missed.

2 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
3 or should have known that Plaintiff and Labor Class Members were entitled to receive
4 itemized wage statements that accurately showed their gross and net wages earned, inclusive
5 dates of pay periods, total hours worked, and all applicable hourly rates in effect and the
6 number of hours worked at each hourly rate in accordance with California law. In violation
7 of the Labor Code, Plaintiff and Labor Class Members were not provided with accurate
8 itemized wage statements.

9 35. Plaintiff is informed and believe, and thereon allege, that Defendants knew or
10 should have known that they had a duty to indemnify Plaintiff and Labor Class Members for
11 all necessary expenditures or losses incurred in the discharge of their duties, including, for
12 example, Plaintiff and Labor Class Members cellular phone and home-internet expenses as it
13 related to their employment. In violation of the Labor Code, Defendants did not indemnify
14 Plaintiff and Labor Class Members for the necessary expenses they incurred in the discharge
15 of their duties.

16 36. Plaintiff is informed and believe, and thereon alleges, that Defendants failed
17 to provide Plaintiff and other aggrieved employees with all required sick leave under the
18 Labor Code.

19 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
20 or should have known they had a duty to compensate Plaintiff and Labor Class Members, and
21 Defendants had the financial ability to pay such compensation but willfully, knowingly and
22 intentionally failed to do so all in order to increase Defendants' profits.

23 38. Plaintiff is informed and believes, and thereon alleges, that in violation of the
24 ICRAA, Defendants have unlawfully inserted extraneous information including, for example,
25 the policies of states in which Plaintiff and other ICRAA Class Members would not perform
26 work, into disclosure forms regarding the Fair Credit Reporting Act and the ICRAA, as well
27 as forms purporting to grant Defendants and its third-party background checking companies
28 the authority to obtain and use consumer report information for employment purposes.

1 However, the ICRAA prohibits this practice, and requires that the disclosure and authorization
2 forms granting the authority to access and use consumer report information for employment
3 purposes to be stand alone forms, and not include any additional extraneous information. As
4 a result, Defendants have obtained consumer reports without proper authorization because the
5 authorization forms signed by Plaintiff and other ICRAA Class Members as well as the
6 accompanying disclosure forms failed to comply with the requirements of the ICRAA.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PAY MINIMUM WAGES**

9 **(Violation of Cal. Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage**
10 **Order)**

11 **(By Plaintiff and the California Labor Class against Defendants)**

12 39. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above
13 as though fully set forth herein.

14 40. Cal. Labor Code Sections 1194 and 1197 provide that the minimum wage for
15 employees fixed by the IWC is the minimum wage to be paid to employees, and the payment
16 of a lesser wage than the minimum so fixed is unlawful.

17 41. During the relevant time period, Defendants paid Plaintiff and Labor Class
18 Members less than minimum wages when Defendants required Plaintiff and Labor Class
19 Members to work off-the-clock.

20 42. During the relevant time period, Defendants regularly failed to pay at least
21 minimum wages to Plaintiff and Labor Class Members for all hours worked pursuant to Cal.
22 Labor Code Sections 1194 and 1197.

23 43. Defendants' failure to pay Plaintiff and Labor Class Members the required
24 minimum wages violate Labor Code 1194 and 1197. Pursuant to these sections, Plaintiff and
25 Labor Class Members are entitled to recover the unpaid balance of their minimum wage
26 compensation as well as interest, costs and attorneys' fees.

1 44. Pursuant to Labor Code Section 1194.2, Plaintiff and Labor Class Members
2 are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid
3 and interest thereon.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME WAGES**

6 **(Violation of Cal. Labor Code §§ 510, 1194 and 1198; Violation of IWC Wage Order)**

7 **(By Plaintiff and the California Labor Class against Defendants)**

8 45. Cal. Labor Code Section 1198 and the applicable IWC Wage Order provide
9 that it is unlawful to employ persons without compensating them at a rate of pay either one
10 and one-half or two times the person's regular rate of pay, depending on the number of hours
11 worked by the person on a daily or weekly basis.

12 46. Pursuant to Cal. Labor Code Sections 510 and 1194, during the relevant time
13 period, Defendants were required to compensate Plaintiff and Labor Class Members for all
14 overtime hours worked, calculated at one and one-half (1½) times the regular rate of pay for
15 hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and for
16 the first eight (8) hours of the seventh consecutive work day, with double time after eight (8)
17 hours on the seventh day of any work week, or after twelve (12) hours in any work day.

18 47. Plaintiff and Labor Class Members were non-exempt employees entitled to the
19 protections of Cal. Labor Code Section 510 and 1194.

20 48. During the relevant time period, Defendants failed to pay Plaintiff and Labor
21 Class Members overtime and doubletime wages when Defendants required Plaintiff and
22 Labor Class Members to work off-the-clock, for example, during meal periods. As Plaintiff
23 and Labor Class Members worked shifts of eight hours or more, this unpaid time qualified for
24 overtime premium payment.

25 49. In violation of state law, Defendants have knowingly and willfully refused to
26 perform their obligations and compensate Plaintiff and Labor Class Members for all wages
27 earned as alleged above.

28 50. Defendants' failure to pay Plaintiff and Labor Class Members the unpaid

1 balance of overtime compensation, as required by California law, violates the provisions of
2 Cal. Labor Code Sections 510 and 1198, and is therefore unlawful.

3 51. Pursuant to Labor Code Section 1194, Plaintiff and Labor Class Members are
4 entitled to recover their unpaid overtime compensation as well as interest, costs and attorneys'
5 fees.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PROVIDE MEAL PERIODS**

8 **(Violation of Cal. Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)**

9 **(By Plaintiff and the California Labor Class against Defendants)**

10 52. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above
11 as though fully set forth herein.

12 53. Cal. Labor Code Section 226.7 provides that no employer shall require an
13 employee to work during any meal period mandated by the IWC Wage Orders.

14 54. Section 11 of the applicable IWC Wage Order states, “no employer shall
15 employ any person for a work period of more than five (5) hours without a meal period of not
16 less than 30 minutes, except that when a work period of not more than six (6) hours will
17 complete the day’s work the meal period may be waived by mutual consent of the employer
18 and the employee.”

19 55. Cal. Labor Code Section 512(a) provides that an employer may not require,
20 cause or permit an employee to work for a period of more than five (5) hours per day without
21 providing the employee with an uninterrupted meal period of not less than thirty (30) minutes,
22 except that if the total work period per day of the employee is not more than six (6) hours, the
23 meal period may be waived by mutual consent of both the employer and the employee.

24 56. Labor Code Section 512(a) also provides that an employer may not employ an
25 employee for a work period of more than ten (10) hours per day without providing the
26 employee with a second meal period of not less than thirty (30) minutes, except that if the
27 total hours worked is no more than twelve (12) hours, the second meal period may be waived
28 by mutual consent of the employer and the employee only if the first meal period was not

1 waived.

2 57. During the relevant time period, Plaintiff and Labor Class Members did not
3 receive compliant meal periods for each five hours worked per day.

4 58. Cal. Labor Code Section 226.7(b) and section 11 of the applicable IWC Wage
5 Order require an employer to pay an employee one additional hour of pay for each workday
6 that a meal period is not provided.

7 59. At all relevant times, Defendants often failed to pay Plaintiff and Labor Class
8 Members meal period premiums for meal period violations, at the regular rate of pay including
9 all non-discretionary bonuses, pursuant to Labor Code Section 226.7(b) and section 11 of the
10 applicable IWC Wage Order.

11 60. As a result of Defendants' failure to pay Plaintiff and Labor Class Members
12 an additional hour of pay for each day a meal period was not provided, Plaintiff and Labor
13 Class Members suffered and continue to suffer a loss of wages and compensation.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PERMIT REST BREAKS**

16 **(Violation of Cal. Labor Code §§ 226.7; Violation of IWC Wage Order)**

17 **(By Plaintiff and the California Labor Class against Defendants)**

18 61. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above
19 as though fully set forth herein.

20 62. Cal. Labor Code Section 226.7(a) provides that no employer shall require an
21 employee to work during any rest period mandated by the IWC Wage Orders.

22 63. Section 12 of the applicable IWC Wage Order states "every employer shall
23 authorize and permit all employees to take rest periods, which insofar as practicable shall be
24 in the middle of each work period" and the "authorized rest period time shall be based on the
25 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
26 fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

27 64. During the relevant time period, Plaintiff and Labor Class Members did not
28 receive a ten (10) minute rest period for every four (4) hours or major fraction thereof worked.

1 Defendants routinely failed to provide Plaintiff and Labor Class Members with a second rest
2 period for shifts lasting eight hours or longer, or a third rest period for shifts lasting twelve
3 hours or longer.

4 65. Labor Code Section 226.7(b) and section 12 of the applicable IWC Wage
5 Order requires an employer to pay an employee one additional hour of pay at the employee's
6 regular rate of compensation for each workday that the rest period is not provided.

7 66. At all relevant times, Defendants failed to pay Plaintiff and Labor Class
8 Members all rest period premiums at their regular rate of compensation, including all non-
9 discretionary bonuses, due for rest period violations pursuant to Labor Code Section 226.7(b)
10 and section 12 of the applicable IWC Wage Order.

11 67. As a result of Defendants' failure to pay Plaintiff and Labor Class Members
12 an additional hour of pay for each day a rest period was not provided, Plaintiff and Labor
13 Class Members suffered and continue to suffer a loss of wages and compensation.

14 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

16 **(Violation of Cal. Labor Code § 226; Violation of IWC Wage Order)**

17 **(By Plaintiff and the California Labor Class against Defendants)**

18 68. Plaintiff hereby re-alleges and incorporates by reference all paragraphs
19 above as though fully set forth herein.

20 69. Cal. Labor Code Section 226(a) requires Defendants to provide each
21 employee with an accurate wage statement in writing showing nine pieces of information,
22 including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number
23 of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
24 rate basis, (4) all deductions, provided that all deductions made on written orders of the
25 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
26 dates of the period for which the employee is paid, (7) the name of the employee and the
27 last four digits of his or her social security number or an employee identification number
28 other than a social security number, (8) the name and address of the legal entity that is the

1 employer, and (9) all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the employee.

3 70. During the relevant time period, Defendants have knowingly and
4 intentionally failed to comply with Cal. Labor Code Section 226(a) on wage statements that
5 were provided to Plaintiff and Labor Class Members. The deficiencies include, among
6 other things, the failure to correctly state the gross and net wages earned, accurate inclusive
7 dates of the pay period, and all applicable hourly rates in effect and the number of hours
8 worked at each hourly rate by Plaintiff and Labor Class Members.

9 71. As a result of Defendants' violation of Cal. Labor Code Section 226(a),
10 Plaintiff and Labor Class Members have suffered injury and damage to their statutorily
11 protected rights. Specifically, Plaintiff and Labor Class Members have been injured by
12 Defendants' intentional violation of California Labor Code Section 226(a) because they
13 were denied both their legal right to receive, and their protected interest in receiving,
14 accurate itemized wage statements under California Labor Code Section 226(a). Plaintiff
15 has had to file this lawsuit in order to determine the extent of the underpayment of wages,
16 thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have had to
17 engage in these efforts and incur these costs had Defendants provided the accurate wages
18 earned. This has also delayed Plaintiff's ability to demand and recover the underpayment
19 of wages from Defendants.

20 72. California Labor Code Section 226(a) requires an employer to pay the
21 greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a
22 violation occurred, and one hundred dollars (\$100.00) per employee for each violation in
23 subsequent pay periods, plus attorney's fees and costs, to each employee who was injured
24 by the employer's failure to comply with California Labor Code Section 226(a).

25 73. Defendants' violations of California Labor Code Section 226(a) prevented
26 Plaintiff and Labor Class Members from knowing, understanding and disputing the wages
27 paid to them, and resulted in an unjustified economic enrichment to Defendants. As a result
28 of Defendants' knowing and intentional failure to comply with California Labor Code

1 Section 226(a), Plaintiff and Labor Class Members have suffered an injury, and the exact
2 amount of damages and/or penalties is all in an amount to be shown according to proof at
3 trial.

4 74. Plaintiff and Labor Class Members are also entitled to injunctive relief under
5 California Labor Code Section 226(h), compelling Defendants to comply with California
6 Labor Code Section 226 and seek the recovery of attorneys' fees and costs incurred in
7 obtaining this injunctive relief.

8 **SIXTH CAUSE OF ACTION**

9 **FAILURE TO REIMBURSE ALL BUSINESS EXPENSES**

10 **(Violation of Cal. Labor Code §§ 2800, 2802)**

11 **(By Plaintiff and the California Labor Class against Defendants)**

12 75. Plaintiff hereby re-allege and incorporate by reference all paragraphs above as
13 though fully set forth herein.

14 76. Cal. Labor Code Section 2800 provides, in pertinent part, "[a]n employer shall
15 in all cases indemnify his employee for losses caused by the employer's want of ordinary
16 care."

17 77. Cal. Labor Code Section 2802 provides, in pertinent part, "[a]n employer shall
18 indemnify his or her employee for all necessary expenditures or losses incurred by the
19 employee in direct consequence of the discharge of his or her duties..."

20 78. Further, Labor Code Section 2802 additionally provides, in pertinent part:
21 "(c)...the term 'necessary expenditures or losses' shall include all reasonable costs, including
22 but not limited to, attorney's fees incurred by the employee enforcing the rights granted by
23 this section."

24 79. During the relevant time period, Defendants required Plaintiff and Labor Class
25 Members to use their own cellular phones and home-internet in the discharge of their duties
26 but were not reasonably compensated for these expenses.

27 80. During the relevant time period, Defendants were required to indemnify and
28 reimburse Plaintiff and Labor Class Members for all expenditures or losses caused by the

1 employer's want of ordinary care and/or incurred in direct consequent of the discharge of their
2 duties but failed to indemnify and reimburse Plaintiff and Labor Class Members in violation
3 of Labor Codes Sections 2800 and 2802.

4 81. As a direct and proximate result, Plaintiff and Labor Class Members have
5 suffered, and continue to suffer, substantial losses, related to the use and enjoyment of such
6 monies to be reimbursed, lost interest on such monies, and expenses and attorney's fees in
7 seeking to compel Defendants to fully perform their obligations under California law, all to
8 their damage in amounts according to proof at the time of trial.

9 **SEVENTH CAUSE OF ACTION**

10 **(VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200,**

11 **ET SEQ.)**

12 **(By Plaintiff and the California Labor Class against Defendants)**

13 82. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above
14 as though fully set forth herein.

15 83. Defendants' conduct, as alleged herein, has been and continues to be unfair,
16 unlawful and harmful to Plaintiff and Labor Class Members. Plaintiff seeks to enforce
17 important rights affecting the public interest within the meaning of Code of Civil Procedure
18 § 1021.5.

19 84. Defendants' activities, as alleged herein, violates California law and constitute
20 unlawful business acts or practices in violation of California Business and Professions Code
21 Sections 17200, *et seq.*

22 85. A violation of Cal. Business and Professions Code §§ 17200, *et seq.* may be
23 predicated on the violation of any state or federal law.

24 86. Defendants' policies and practices have violated state law in at least the
25 following respects:

26 (a) Failing to pay all minimum wages to Plaintiff and Labor Class Members in
27 violation of Labor Code §§ 1194, 1194.2, and 1197;

28 (b) Failing to pay all overtime wages to Plaintiff and Labor Class Members in

violation of Labor Code §§ 510, 1194 and 1198;

(c) Failing to provide timely meal periods without paying Plaintiff and Labor Class Members premium wages for every day said meal periods were not provided in violation of Labor Code §§ 226.7 and 512;

(d) Failing to authorize or permit rest breaks without paying Plaintiff and Labor Class Members premium wages for every day said rest breaks were not authorized or permitted in violation of Labor Code § 226.7;

(e) Failing to provide accurate, itemized wage statements in violation of Labor Code § 226;

(f) Failing to reimburse Plaintiff and Labor Class Members for all business expenses incurred in violation of Labor Code §§ 2800 and 2802.

87. Defendants intentionally avoided paying Plaintiff and Labor Class Members' wages and monies, thereby creating for Defendants an artificially lower cost of doing business in order to undercut their competitors and establish and gain a greater foothold in the marketplace.

88. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and Labor Class Members are entitled to restitution of the wages unlawfully withheld and retained by Defendants during a period that commences four years prior to the filing of the Complaint; an award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

EIGHTH CAUSE OF ACTION

FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF THE ICRAA

(Cal. Civ. Code § 1786 *et seq.*)

(By Plaintiff and the ICRAA Class against Defendants)

89. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

90. Defendants are each a "person" as defined by Section 1786.2(a) of the ICRAA.

91. Plaintiff and ICRAA Class Members are "consumers" within the meaning of

1 Section 1786.2(b) of the ICRAA because they are “individuals.”

2 92. Plaintiff alleges on information and belief, that in evaluating her and other
3 ICRAA class members for employment, Defendants procured or caused to be prepared
4 investigative consumer reports (e.g. background checks), as defined by Cal. Civ. Code Section
5 1786.2(c).

6 93. Under the ICRAA, it is unlawful to procure or caused to be procured, a
7 consumer report or investigative consumer report for employment purposes unless the
8 disclosure is made in a document that consists solely of the disclosure and the consumer has
9 authorized, in writing, the procurement of the report. Cal. Civ. Code. § 1786.16(a)(2)(B)-(C).

10 94. Defendants however violated Section 1786.16 of the ICRAA by unlawfully
11 inserting extraneous information into the disclosures required under the ICRAA, including
12 for example the policies of states in which Plaintiff and other ICRAA Class Members would
13 not perform work. Additionally, the inclusion of the extraneous provisions causes the
14 disclosures to fail to be “clear and conspicuous” and thus violate Section 1786.16 of the
15 ICRAA.

16 95. Based on information and belief, Plaintiff alleges that Defendants have a
17 policy and practice of failing to provide adequate written disclosures to applicants and
18 employees, before procuring background checks or causing background checks to be procured
19 as described above. Pursuant to that policy and practice, Defendants procured background
20 clicks or caused background clicks to be prepared for Plaintiff and class members without
21 first providing a sufficient written disclosure, in compliance with Section 1786.16 of the
22 ICRAA.

23 96. The violations of the ICRAA were willful. Defendants knew that its
24 background check disclosure and authorization forms should not include extraneous
25 information that is prohibited by the ICRAA and acted in deliberate disregard of its
26 obligations and the rights of Plaintiff and other ICRAA Class Members.

27 97. As a result of Defendants’ illegal procurement of credit and background
28 reports by way of their inadequate disclosures, as set forth above, Plaintiff and ICRAA Class

Members have been injured including, but not limited to, having their privacy and statutory rights invaded in violation of the ICRAA.

98. Plaintiff, on behalf of herself and all ICRAA Class Members, seeks all available remedies pursuant to Cal. Civ. Code Section 1786.50(a), including statutory damages and/or actual damages, punitive damages, and attorneys' fees and costs.

99. In the alternative to Plaintiff's allegations that these violations were willful or grossly negligent, Plaintiff alleges that the violations were negligent and seeks the appropriate remedy under Cal. Civ. Code Section 1786.50(a), including actual damages, and attorneys' fees and costs.

NINTH CAUSE OF ACTION

ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. ("PAGA")

100. Plaintiff hereby re-alleges and incorporate by reference all paragraphs above as though fully set forth herein.

101. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

102. Defendants' conduct violates numerous Labor Code sections including, but not limited to, the following:

(a) Violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 511, 558, 1182.12, 1194, 1197 and 1198 for failure to timely pay all earned wages (including minimum wages, regular, and overtime wages) owed to Plaintiff and other aggrieved employees during employment and upon separation of employment as herein alleged;

(b) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal periods as herein alleged;

1 (c) Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff
2 and other aggrieved employees and failure to pay premium wages for missed rest periods as
3 herein alleged;

4 (d) Violation of Labor Code §§ 2800 and 2802 for failure to reimburse reasonable
5 and necessary business expenses of Plaintiff and other aggrieved employees as herein
6 alleged;

7 (e) Violation of Labor Code § 226 for failure to provide accurate, itemized wage
8 statements; and

9 (f) Violation of Labor Code § 246 for willfully failing to provide all mandatory
10 paid sick leave.

11 103. Plaintiff is an “aggrieved employee” because he was employed by the alleged
12 violator and had one or more of the alleged violations committed against them, and therefore
13 is properly suited to represent the interests of all other aggrieved employees.

14 104. Plaintiff has exhausted the procedural requirements under Labor Code §
15 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of
16 himself and all other aggrieved employees under PAGA.

17 105. PAGA imposes a penalty of one hundred dollars (\$100.00) for each aggrieved
18 employee per pay period for the initial violation and two hundred dollars (\$200.00) for each
19 aggrieved employee per pay period for each subsequent violation.

20 106. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff are entitled
21 to recover civil penalties, in addition to other remedies, for violations of the Labor Code
22 sections cited above.

23 107. For bringing this action, Plaintiff is entitled to attorney’s fees and costs
24 incurred herein.

25 **PRAYER FOR RELIEF**

26 Plaintiff, on his own behalf and on behalf of all others similarly situated, pray for relief
27 and judgment against Defendants, jointly and severally, as follows:

28 1. For certification of this action as a class action, including certifying the

1 California Labor Class and the ICRAA Class alleged by Plaintiff;

2 2. For appointment of Heather De Vries as the class representative;

3 3. For appointment of Lebe Law, APLC as class counsel for all purposes;

4 4. For compensatory damages in an amount according to proof with interest

5 thereon;

6 5. For economic and/or special damages in an amount according to proof with

7 interest thereon;

8 6. For reasonable attorneys' fees, costs of suit and interest to the extent permitted

9 by law, including pursuant to California Code of Civil Procedure § 1021.5 and Labor Code §

10 1194;

11 7. For statutory penalties to the extent permitted by law, including those pursuant

12 to the Labor Code and the IWC Wage Orders;

13 8. For restitution as provided by Business and Professions Code §§ 17200, *et*

14 *seq.*;

15 9. For an order requiring Defendants to restore and disgorge all funds to each

16 employee acquired by means of any act or practice declared by this Court to be unlawful,

17 unfair or fraudulent and, therefore, constituting unfair competition under California Business

18 and Professions Code §§ 17200, *et seq.*;

19 10. For an award of damages in the amount of unpaid compensation including, but

20 not limited to, unpaid wages, benefits and penalties, including interest thereon;

21 11. For injunctive relief;

22 12. For pre-judgment interest; and

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13. For such other relief as the Court deems just and proper.

DATED: July 26, 2021

Lebe Law, APLC

By: 
Jonathan M. Lebe

Attorney for Plaintiff Heather De Vries,
Individually and on behalf of all others
similarly situated

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: July 26, 2021

Lebe Law, APLC

By: 
Jonathan M. Lebe

Attorney for Plaintiff Heather De Vries,
Individually and on behalf of all others
similarly situated

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I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and not a party to the within entitled action; my business address is 777 S. Alameda Street, Los Angeles, CA 90021.

On July 26, 2021 I served the foregoing First Amended Class and Representative Action Complaint on the interested parties, by the method of service indicated specific below:

Barbara Blackburn
BBlackburn@littler.com

Nate Jenkins
NJenkins@littler.com

LITTLER MENDELSON, P.C.
500 Capitol Mall, Suite 2000
Sacramento, CA 95814

☒ (VIA ELECTRONIC SERVICE) Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: July 26, 2021

Zachary Gershman
Zachary T. Gershman