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9

10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
11 **COUNTY OF SAN MATEO**

12 **MARTINIQUE MARIE JENKINS**, an  
13 individual, on behalf of herself, all others  
14 similarly situated, and the State of California,

15 Plaintiffs,

16 vs.

17 **TRUEBLUE, INC.; TRUEBLUE SERVICE,**  
**INC.; TRUEBLUE OUTSOURCING**  
18 **SOLUTIONS, INC.; STAFF**  
**MANAGEMENT SOLUTIONS, LLC; SMX,**  
19 **LLC. and DOES 1-50,**

20 Defendants.  
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Electronically  
**FILED**  
by Superior Court of California, County of San Mateo  
ON 11/19/2021  
By /s/ Una Finau  
Deputy Clerk

Case No. 21-CIV-06256

**COMPLAINT FOR CIVIL PENALTIES  
PURSUANT TO PRIVATE ATTORNEYS  
GENERAL ACT OF 2004 (LABOR CODE  
§§ 2698 ET SEQ.)**

1 Plaintiff MARTINIQUE MARIE JENKINS (“PLAINTIFF”), on behalf of herself, all  
2 current and former hourly employees of Defendants TRUEBLUE, INC.; TRUEBLUE  
3 SERVICE, INC.; TRUEBLUE OUTSOURCING SOLUTIONS, INC.; STAFF  
4 MANAGEMENT SOLUTIONS, LLC; SMX, LLC, and on behalf of the State of California,  
5 hereby complains and alleges as follows:

### 6 **INTRODUCTION**

7 1. This is a representative action by PLAINTIFF on behalf of herself, other similarly  
8 situated California employees of Trueblue, Inc., Trueblue Service, Inc., Trueblue Outsourcing  
9 Solutions, Inc., Staff Management Solutions, LLC, SMX, LLC and Doe Defendants 1-50  
10 (collectively, “DEFENDANTS”), pursuant to the California Private Attorneys General Act,  
11 Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties (75% payable to the Labor  
12 & Workforce Development Agency (“LWDA”) and 25% payable to aggrieved employees) for  
13 DEFENDANTS’ violations of Labor Code section 432.5 in California.

### 14 **JURISDICTION AND VENUE**

15 2. This Court has jurisdiction over PLAINTIFF’s claims for penalties pursuant to  
16 PAGA.

17 3. Venue is proper in this Judicial district and the County of San Mateo pursuant to  
18 California Code of Civil Procedure § 395.5 because DEFENDANTS employed PLAINTIFF in  
19 Redwood City, California, located in the County of San Mateo, and the acts, omissions, and  
20 conduct alleged by PLAINTIFF herein occurred in this county, among others in California.

### 21 **PARTIES**

22 4. Defendant TrueBlue, Inc., a California Corporation, is a staffing, recruiting and  
23 workforce management company. Defendants TrueBlue Service, Inc., TrueBlue Outsourcing  
24 Solutions, Inc., Staff Management Solutions, LLC, an Illinois Limited Liability Company, and  
25 Defendant SMX, LLC, an Illinois Limited Liability Company, are subsidiaries of TrueBlue, Inc.  
26 DEFENDANTS are staffing, recruitment and workforce management companies that provide  
27 workers to companies in multiple industries globally, including throughout California. According  
28

1 to TrueBlue’s website, in 2020, it staffed 490,000 workers and helped 99,000 companies find  
2 workers worldwide.

3 5. PLAINTIFF was employed by DEFENDANTS in March and April 2021 in  
4 Redwood City, California.

5 6. PLAINTIFF is informed and believes that DOES 1 through 50 are corporations,  
6 individuals, limited liability partnerships, limited liability companies, general partnerships, sole  
7 proprietorships or are other business entities or organizations of a nature not currently known to  
8 PLAINTIFF.

9 7. PLAINTIFF is unaware of the true names of Defendant DOES 1 through 50.  
10 PLAINTIFF sues said Defendants by said fictitious name, and will amend this complaint when  
11 the true names and capacities are ascertained or when such facts pertaining to liability are  
12 ascertained, or as permitted by law or by the Court. PLAINTIFF is informed and believes that  
13 each of the fictitiously named Defendants is in some manner responsible for the events and  
14 allegations set forth in this complaint.

15 8. PLAINTIFF is informed and believes, and thereon alleges, that at all times herein  
16 mentioned each Defendant, including all Defendants sued under fictitious names, was the  
17 employee, or representative of each of the remaining Defendants, and in doing the things  
18 hereinafter alleged, was at times acting within the course and scope of this employment, and at  
19 other times, acting in his or her own individual capacity. In the alternative, each of the  
20 individually named Defendants, acted in concert and in furtherance of a fraudulent plan and  
21 scheme and each actively participated in the wrongful acts alleged in this complaint.

22 **FACTUAL BACKGROUND**

23 9. After DEFENDANTS hired Plaintiff in March 2021, DEFENDANTS required  
24 PLAINTIFF to sign a mandatory “At-Will Employment Dispute and Resolution Agreement”  
25 (“Arbitration Agreement”). PLAINTIFF signed the agreement on April 2, 2021. DEFENDANTS  
26 required other aggrieved employees to sign the same or similar Arbitration Agreements.

1           10.     The Arbitration Agreement DEFENDANTS required PLAINTIFF and other  
2 aggrieved employees to sign contained a purported waiver of the employee’s right to bring any  
3 claim related to employment on a representative basis, which necessarily includes any claim  
4 brought under the Private Attorneys General Act of 2004, Labor Code §§ 2698 et. seq. Such a  
5 provision is unenforceable as a matter of settled California law.

6           11.     DEFENDANTS’ Arbitration Agreement provides, in relevant part:

7           I understand that my prospective employer is the TrueBlue legal entity  
8 that will be indicated on my paycheck or pay stub. I further understand  
9 that this is an employment Application and At-Will Employment and  
10 Dispute Resolution Agreement (“Agreement”) for TrueBlue, Inc., and its  
11 subsidiaries, which include but are not limited to TrueBlue Service, Inc.,  
12 Staff Management Solutions, LLC, SMX, LLC and any other TrueBlue,  
13 Inc., subsidiary which may be formed or acquired in the future, and for  
14 each of those entities, their respective employees, agents, officers,  
15 directors, shareholders, successors, and assigns (Collectively the  
16 “Company”).

17           ...

18           **AGREEMENT TO ARBITRATE.** The Company and I agree that the  
19 Company operates in interstate commerce and any claim between me and  
20 the Company, or any of its customers, agents, parents, affiliates, or  
21 assigns, shall be submitted to and resolved by binding individual  
22 arbitration under the Federal Arbitration Act (“FAA”), including but not  
23 limited to legal claims arising out of or relating to my employment,  
24 application for employment, and/or termination of employment, this  
25 Agreement, or the breach of this Agreement.

26           ...

27           **SCOPE OF ARBITRATION.** The Company and I agree that arbitration  
28 in no way limits the relief that any party may seek regardless of the  
jurisdiction in which arbitration has been filed. **THE COMPANY AND I  
AGREE THAT EACH MAY BRING CLAIMS AGAINST THE  
OTHER ONLY IN MY OR ITS INDIVIDUAL CAPACITY, AND  
NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY  
PURPORTED CLASS ACTION, COLLECTIVE ACTION, OR  
REPRESENTATIVE PROCEEDING.** (Emphasis in original).

See Exhibit 1 to Exhibit A hereto.

12.     It is well settled that agreements purporting to waive an employee’s right to a trial  
of PAGA claims is contrary to California law and unenforceable. *See Iskanian v. CLS  
Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 384 (“We conclude that where, as here,

an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”); *Juarez v. Wash Depot Holdings, Inc.* (2018) 24 Cal. App. 5th 1197, 1202–03 (“court properly concluded that the PAGA waiver set forth in the handbook is unenforceable as against public policy”); *Lawson v. ZB, N.A.* (2017) 18 Cal. App. 5th 705, 725, as modified (Dec. 21, 2017) (same).

13. The California Supreme Court has ruled that a court cannot compel arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an individual PAGA claim. *Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 86-87 (“There is no individual component to a PAGA action because ‘every PAGA action ... is a representative action on behalf of the state.’”).

14. Labor Code section 432.5 provides: “No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

15. DEFENDANTS know or should know that the Arbitration Agreement contains an unlawful PAGA waiver as *Iskanian* has been the law since 2014.

16. By requiring PLAINTIFF and other aggrieved employees to sign a mandatory Arbitration Agreement which DEFENDANTS knew contained an unlawful PAGA waiver, DEFENDANTS required PLAINTIFF and other aggrieved employees to agree in writing to an unlawful condition of employment, which is in violation of Labor Code § 432.5.

17. By requiring PLAINTIFF and continuing to require other employees to sign mandatory arbitration agreements that DEFENDANTS know contain an unlawful PAGA waiver, DEFENDANTS have violated and continue to violate Labor Code § 432.5. In doing so, DEFENDANTS deter their employees from pursuing PAGA claims that they otherwise are entitled to pursue in court.

18. DEFENDANTS also required PLAINTIFF and other aggrieved employees to sign a form that granted DEFENDANTS ongoing consent to procure investigative consumer reports

1 at any time during the application process and during the employment relationship. PLAINTIFF  
2 signed the form's "Acknowledgment and Authorization" on April 2, 2021. The authorization is  
3 located at the bottom of a form titled "Candidate Information" with a subtitle indicating that the  
4 form is "For Employment with TrueBlue Outsourcing Solutions." See Exhibit 2 to Exhibit A  
5 hereto.

6 19. The authorization that DEFENDANTS required PLAINTIFF to sign after  
7 beginning employment reads as follows:

8 I have read and understand the Disclosure Regarding Consumer Reports<sup>1</sup>  
9 and the Summary of Rights under the Fair Credit Reporting Act. By  
10 signing below, I hereby authorize the Company<sup>2</sup> to procure consumer  
11 reports, including investigative consumer reports, concerning me for  
12 employment purposes at all times during the pendency of my employment  
13 application and, if I am hired, ***throughout the duration of my employment***  
14 ***period***. If I am hired, this authorization shall remain on file and shall serve  
15 as ***ongoing authorization*** for the Company to procure consumer reports,  
16 including investigative consumer reports, for lawful purposes at any time  
17 during my employment period. (Emphasis added).

18 See Exhibit 2 to Exhibit A hereto.

19 20. DEFENDANTS required other aggrieved employees to sign the same or a similar  
20 authorization purporting to provide DEFENDANTS with ongoing consent to procure an  
21 investigative consumer report, which as explained by DEFENDANTS, includes a background  
22 check under California law.

23 21. Requiring an individual to agree to ongoing consent to the procurement of an  
24 investigative consumer report for employment purposes is in violation of California's  
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26 <sup>1</sup> DEFENDANTS provided PLAINTIFF with a form titled "Disclosure Regarding Consumer  
27 Report" which provides: "An 'investigative consumer report' is a consumer report that includes  
28 information from personal interviews, the most common form of which is checking personal or  
professional references. ***In California***, the term includes background reports with or without  
information obtained from personal interviews." See Exhibit 2 to Exhibit A hereto (emphasis  
added).

<sup>2</sup> Page one of the Candidate Information form defines "Company" as "Staff management |  
SMX." See Exhibit 2 to Exhibit A hereto

Investigative Consumer Reporting Agencies Act (“ICRAA”), Cal. Civ. Code § 1786 *et. seq.*

22. Under California’s ICRAA, Cal. Civ. Code § 1786 *et. seq.*, an “investigative consumer report” is defined as follows:

....consumer report in which information on a consumer’s character, general reputation, personal characteristics, or mode of living is obtained through any means. The term does not include a consumer report or other compilation of information that is limited to specific factual information relating to a consumer’s credit record or manner of obtaining credit obtained directly from a creditor of the consumer or from a consumer reporting agency when that information was obtained directly from a potential or existing creditor of the consumer or from the consumer...

Cal. Civ. Code § 1786.2(c).

23. An investigative consumer report may be procured only after disclosure is provided to the individual and such individual provides consent. Disclosure must be provided and consent must be obtained each time an investigative consumer report will be procured. California Civil Code § 1786.16(a) provides in relevant part (emphasis added):

...(2) If, at **any time**, a investigative consumer report is sought for employment purposes other than suspicion of wrongdoing or misconduct by the subject of the investigation, the person seeking the investigative consumer report may procure the report, or cause the report to be made, only if all of the following apply...

(B) The person procuring or causing the report to be made provides a clear and conspicuous disclosure in writing to the consumer...

(C) The consumer has authorized in writing the procurement of the report.

24. California’s ICRAA requirements apply “at any time” an investigative consumer report will be procured, which means an ongoing authorization will not suffice. Despite this, DEFENDANTS required PLAINTIFF and other aggrieved employees to agree to the procurement of investigative consumer report(s) at “**all times**” during the “pendency of my employment application,” or “duration of employment.” By requiring applicants and employees to agree to an “ongoing authorization” in violation of Cal. Civ. Code § 1786.16(a)(2), DEFENDANTS also violated Labor Code § 432.5 by requiring employees, either during the application process or upon hiring, to agree to a an unlawful condition.

1           25.     DEFENDANTS knew that the procurement of an investigative consumer report  
2 requires the individual's consent, otherwise an authorization would not have been requested from  
3 PLAINTIFF in the first place. DEFENDANTS were aware of the provisions under the ICRAA,  
4 Cal. Civ. Code § 1786 et. seq., as demonstrated by the fact that DEFENDANTS provided  
5 PLAINTIFF and other aggrieved employees with a document titled "A Summary of Your Rights  
6 Under the Provisions of California Civil Code Section 1786.22." See Exhibit 2 to Exhibit A  
7 hereto. As such, DEFENDANTS were aware of the ICRAA's provisions and requirements,  
8 including its requirement that disclosure and consent be obtained each time a background check  
9 or investigative consumer report is procured. Despite this, DEFENDANTS required PLAINTIFF  
10 and other aggrieved employees to provide a blanket authorization for the procurement of such  
11 investigative consumer reports, thereby requiring agreement to an unlawful condition of  
12 employment in violation of Labor Code § 432.5.

13                   **COMPLIANCE WITH NOTIFICATION REQUIREMENTS**

14           26.     On September 14, 2021, PLAINTIFF, through her counsel, submitted online a  
15 letter to the California Labor and Workforce Development Agency ("LWDA") informing it  
16 that DEFENDANTS violated Labor Code section 432.5 and the facts alleged herein (the  
17 "PAGA Letter"). Attached hereto as **Exhibit A** is a true and correct copy of the September 14,  
18 2021 PAGA Letter which was also sent via certified mail to DEFENDANTS at the offices of  
19 their Agents for Service of Process. Because the PAGA Letter alleged violations of Labor  
20 Code sections listed in Labor Code § 2699.5, PLAINTIFF was required to give 65 days' notice  
21 before filing her Complaint. Lab. Code § 2699.3(a)(2)(A).

22           27.     To date, more than 65 days after the September 14, 2021 PAGA Letter was  
23 submitted, the LWDA has not responded.

24           28.     The PAGA Letter outlined PLAINTIFF's claims for violations of the California  
25 Labor Code and the facts giving rise to those claims on behalf of herself, the State of  
26 California and other aggrieved employees.

29. Accordingly, PLAINTIFF exhausted administrative remedies as required by Labor Code § 2699.3.

### **FIRST CAUSE OF ACTION**

#### **CIVIL PENALTIES UNDER PAGA**

**(By PLAINTIFF, on behalf of herself, all Aggrieved Employees and the State of California against DEFENDANTS)**

30. PLAINTIFF incorporates all of the foregoing paragraphs of this complaint as if fully alleged herein.

31. Under the Private Attorneys General Act, Labor Code §§ 2698 et seq. ("PAGA"), private parties may recover civil penalties for violations of the California Labor Code, including section 432.5. PAGA penalties are in addition to any other relief available under the Labor Code.

32. As set forth above, DEFENDANTS violated the California Labor Code by consistently failing to employ PLAINTIFF and similarly employed individuals in compliance with California law, including by requiring them to agree, in writing, to terms or conditions which are known by DEFENDANTS to be prohibited by law, including arbitration agreements containing an unlawful PAGA waiver, and an unlawful ongoing authorization to procure an investigative consumer report in violation of Cal. Civ. Code § 1786.16.

### **PRAYER FOR RELIEF**

WHEREFORE, PLAINTIFF, on behalf of herself and all other current and former employees of DEFENDANTS in California, and the State of California, prays for relief and judgment against DEFENDANTS as follows:

1. Civil penalties under Labor Code section 2699 (75% payable to the LWDA and 25% payable to aggrieved employees);
2. Costs;

- 1        3.        Reasonable attorney's fees; and  
2        4.        Such other and further relief as this Court may deem just and proper.  
3

4 Dated: November 19, 2021

MOSS BOLLINGER LLP

5  
6 By: \_\_\_\_\_

Jeremy F. Bollinger

Attorneys for Plaintiff Martinique Marie Jenkins  
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# **Exhibit A**

**to**

**Complaint**



Moss Bollinger  
LLP

**DENNIS F. MOSS**

310.982.2984/fax: 310.861.0389

dennis@mossbollinger.com

September 14, 2021

**VIA PAGA ONLINE FILING**

Secretary Natalie Palugyai  
Labor & Workforce Development Agency  
PAGA ADMINISTRATOR  
1515 Clay Street,  
Oakland, California 94612

**VIA U.S. CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

TrueBlue, Inc.  
Attn: Legal Department  
PO BOX 2910,  
Tacoma, WA, 98401-2910

TrueBlue, Inc.  
Agent for Service of Process  
Corporation Service Company  
300 Deschutes Way SW Ste. 208 MC-CSC1  
Tumwater, WA, 98501

TrueBlue Services, Inc.  
Agent for Service of Process  
Corporation Service Company  
251 Little Falls Drive,  
Wilmington, DE 19808

TrueBlue Outsourcing Solutions, Inc.  
c/o TrueBlue, Inc.  
Agent for Service of Process  
Corporation Service Company  
300 Deschutes Way SW Ste. 208 MC-CSC1  
Tumwater, WA, 98501

Staff Management Solutions, LLC  
Agent for Service of Process  
CSC – Lawyers Incorporating Service  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

SMX, LLC  
Agent for Service of Process  
CSC – Lawyers Incorporating Service  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

**Re:** Notice pursuant to Labor Code Section 2699.3(a)(1)  
Labor Code Private Attorney General Act ("PAGA")

**Employer:** TrueBlue, Inc., and its subsidiaries, including but not limited to TrueBlue Service, Inc.; TrueBlue Outsourcing Solutions, Inc.; Staff Management Solutions, LLC; and SMX, LLC

**Employee:** Martinique Marie Jenkins, on behalf of herself and on behalf of all individuals that currently work or formerly worked for TrueBlue, Inc., and its subsidiaries, including but not limited to TrueBlue Service, Inc.; TrueBlue Outsourcing Solutions, Inc.; Staff Management Solutions, LLC; and SMX, LLC during the one-year period prior to the filing of this letter.

Dear Secretary Palugyai:

Pursuant to the Private Attorney General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA"), representative employee, Martinique Marie Jenkins, on behalf of herself and all other similarly situated California individuals who currently work or formerly worked for TrueBlue, Inc., and its subsidiaries, including but not limited to TrueBlue Service, Inc.; TrueBlue Outsourcing Solutions, Inc.; Staff Management Solutions, LLC; and SMX, LLC, (collectively "TrueBlue Companies"), gives notice that TrueBlue Companies violated the California Labor Code throughout Jenkins' employment and within the one year prior to the mailing of this letter.

**General Facts:**

The TrueBlue Companies are staffing, recruitment and workforce management companies that provide workers to companies in multiple industries. According to TrueBlue's website, in 2020 it staffed 490,000 workers and helped 99,000 companies find workers worldwide. Jenkins was employed by the TrueBlue Companies in March and April 2021 in Redwood City, California.

While working for the TrueBlue Companies, Jenkins and other individuals that currently work or formerly worked for the TrueBlue Companies in California ("aggrieved employees") were subjected to the following violations of California labor law for which they are entitled to PAGA penalties.

**Unlawful PAGA Waiver in Arbitration Agreement**

After Jenkins began employment in late March 2021, TrueBlue Companies required her to sign a mandatory “At-Will Employment Dispute and Resolution Agreement” (“Arbitration Agreement”). Jenkins signed the agreement on April 2, 2021. TrueBlue Companies required other aggrieved employees to sign the same or similar Arbitration Agreements.

The Arbitration Agreement TrueBlue Companies required Jenkins and other aggrieved employees to sign as a condition of employment, contained a purported waiver of an employee’s right to bring any claim related to employment on a representative basis, which necessarily includes any claim brought under the Private Attorneys General Act of 2004, Labor Code §§ 2698 *et. seq.* Such a provision is unenforceable as a matter of settled California law.

TrueBlue Companies’ Arbitration Agreement provides:

I understand that my prospective employer is the TrueBlue legal entity that will be indicated on my paycheck or pay stub. I further understand that this is an employment Application and At-Will Employment and Dispute Resolution Agreement (“Agreement”) for TrueBlue, Inc., and its subsidiaries, which include but are not limited to TrueBlue Service, Inc., Staff management Solutions, LLC, SMX, LLC and any other TrueBlue, Inc., subsidiary which may be formed or acquired in the future, and for each of those entities, their respective employees, agents, officers, directors, shareholders, successors, and assigns (Collectively the “Company”).

...

**AGREEMENT TO ARBITRATE.** The Company and I agree that the Company operates in interstate commerce and any claim between me and **the Company, or any of its customers, agents, parents, affiliates, or assigns, shall be submitted** to and resolved by binding individual arbitration under the Federal Arbitration Act (“FAA”), including but not limited to legal claims arising out of or relating to my employment, application for employment, and/or termination of employment, this Agreement, or the breach of this Agreement.

...

**SCOPE OF ARBITRATION.** The Company and I agree that arbitration in no way limits the relief that any party may seek regardless of the jurisdiction in which arbitration has been filed.  
**THE COMPANY AND I AGREE THAT EACH MAY BRING**

**CLAIMS AGAINST THE OTHER ONLY IN MY OR ITS  
INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR  
CLASS MEMBER IN ANY PURPORTED CLASS ACTION,  
COLLECTIVE ACTION, OR REPRESENTATIVE  
PROCEEDING.** (Emphasis in original).

Attached hereto as **Exhibit 1** is a true and correct copy of the Arbitration Agreement Jenkins was required to sign as a condition of employment with TrueBlue Companies.

It is well settled that agreements purporting to waive an employee's right to a trial of PAGA claims is contrary to California law and unenforceable. *See Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 384 ("We conclude that where, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law."); *Juarez v. Wash Depot Holdings, Inc.* (2018) 24 Cal. App. 5th 1197, 1202–03 ("court properly concluded that the PAGA waiver set forth in the handbook is unenforceable as against public policy"); *Lawson v. ZB, N.A.* (2017) 18 Cal. App. 5th 705, 725, as modified (Dec. 21, 2017) (same).

Moreover, the California Supreme Court has ruled that a court cannot compel arbitration of an aggrieved employee's individual PAGA claim because there is no such thing as an individual PAGA claim. *Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 86-87 ("There is no individual component to a PAGA action because 'every PAGA action ... is a representative action on behalf of the state.'").

By requiring Jenkins and other aggrieved employees to sign a mandatory Arbitration Agreement which TrueBlue Companies knew contained an unlawful PAGA waiver, the TrueBlue Companies required Jenkins and other aggrieved employees to agree in writing to an unlawful condition of employment, which is in violation of Labor Code § 432.5.

Labor Code § 432.5 provides: "No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law."

TrueBlue Companies knows that its Arbitration Agreement contains an unlawful PAGA waiver as *Iskanian* has been the law since 2014. By requiring aggrieved employees to agree to the unlawful PAGA waiver, TrueBlue Companies violated Labor Code § 432.5. In doing so, TrueBlue Companies deterred their employees from pursuing PAGA claims that they otherwise are entitled to pursue in court.

California Labor Code § 2699(f)(2) provides for civil penalties of one hundred dollars (\$100) per pay period for Jenkins and each aggrieved employee of TrueBlue Companies in California who was required to sign a mandatory arbitration agreement containing the same illegal term in violation of California Labor Code § 432.5—that is, the term requiring the employee to waive his or her right to bring a representative action under PAGA.

As a result, TrueBlue Companies are liable for civil penalties as provided for by California law. Consequently, Jenkins and all other aggrieved employees of TrueBlue Companies who signed the same or similar arbitration agreements are entitled to recover all penalties permitted under California law, including Labor Code § 2698 *et seq.*

**Unlawful Ongoing Authorization for Procurement of Investigative Consumer Report**

Jenkins and other aggrieved employees, were required to sign a form that granted TrueBlue Companies ongoing consent to procure investigative consumer reports at any time during the application process and during the employment relationship. Requiring an individual to agree to ongoing consent to the procurement of an investigative consumer report for employment purposes is in violation of California’s Investigative Consumer Reporting Agencies Act (“ICRAA”), Cal. Civ. Code § 1786 *et. seq.*

Attached hereto as **Exhibit 2** is a true and correct copy of the “Acknowledgment and Authorization” that Jenkins was required to sign on April 2, 2021. The authorization is located at the bottom of a form titled “Candidate Information” with a subtitle indicating that the form is “For Employment with TrueBlue Outsourcing Solutions.” *See Exhibit 2.*

The authorization that Jenkins was required to sign after beginning employment reads as follows:

I have read and understand the Disclosure Regarding Consumer Reports<sup>1</sup> and the Summary of Rights under the Fair Credit Reporting Act. By signing below, I hereby authorize the Company<sup>2</sup> to procure consumer reports, including investigative consumer reports, concerning me for employment purposes at all times during the pendency of my employment application and, if I am hired, *throughout the duration of my employment period.* If I am hired, this

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<sup>1</sup> TrueBlue Companies provided Jenkins with a form titled “Disclosure Regarding Consumer Report” which provides: “An ‘investigative consumer report’ is a consumer report that includes information from personal interviews, the most common form of which is checking personal or professional references. **In California**, the term includes background reports with or without information obtained from personal interviews. (Emphasis added). *See Exhibit 2.*

<sup>2</sup> Page one of the Candidate Information form defines “Company” as “Staff management | SMX.” *See Exhibit 2.*

authorization shall remain on file and shall serve as *ongoing authorization* for the Company to procure consumer reports, including investigative consumer reports, for lawful purposes at any time during my employment period. (Emphasis added).

See Exhibit 2.

TrueBlue Companies required their aggrieved employees to sign the same or a similar authorization purporting to provide TrueBlue Companies with ongoing consent to procure an investigative consumer report, which as explained by TrueBlue Companies, includes a background check under California law.

Under California's ICRAA, Cal. Civ. Code § 1786 *et. seq.*, an "investigative consumer report" is defined as follows:

....consumer report in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through any means. The term does not include a consumer report or other compilation of information that is limited to specific factual information relating to a consumer's credit record or manner of obtaining credit obtained directly from a creditor of the consumer or from a consumer reporting agency when that information was obtained directly from a potential or existing creditor of the consumer or from the consumer...

Cal. Civ. Code § 1786.2(c).

An investigative consumer report may be procured only after disclosure is provided to the individual and such individual provides consent. Disclosure must be provided and consent must be obtained each time an investigative consumer report will be procured. California Civil Code § 1786.16(a) provides in relevant part (emphasis added):

...(2) If, at *any time*, a investigative consumer report is sought for employment purposes other than suspicion of wrongdoing or misconduct by the subject of the investigation, the person seeking the investigative consumer report may procure the report, or cause the report to be made, only if all of the following apply...

(B) The person procuring or causing the report to be made provides a clear and conspicuous disclosure in writing to the consumer...

(C) The consumer has authorized in writing the procurement of the report.

As shown above, California's ICRAA requirements apply "at any time" an investigative consumer report will be procured, which means an ongoing authorization will not suffice. Despite this, TrueBlue Companies required Jenkins and other aggrieved employees to agree to the procurement of investigative consumer report(s) at "**all times**" during the "pendency of my employment application," or "duration of employment." By requiring applicants and employees to agree to an "ongoing authorization" in violation of Cal. Civ. Code § 1786.16(a)(2), TrueBlue Companies also violated Labor Code § 432.5 by requiring employees, either during the application process or upon hiring, to agree to a an unlawful condition.

Labor Code § 432.5 provides: "No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law."

TrueBlue Companies knew that the procurement of an investigative consumer report requires the individual's consent, otherwise an authorization would not have been requested from Jenkins in the first place. TrueBlue Companies were aware of the provisions under the ICRAA, Cal. Civ. Code § 1786 *et. seq.*, as demonstrated by the fact that TrueBlue Companies provided Jenkins and other aggrieved employees with a document titled "A Summary of Your Rights Under the Provisions of California Civil Code Section 1786.22." *See Exhibit 2* hereto. As such, TrueBlue Companies were aware of the ICRAA's provisions and requirements, including its requirement that disclosure and consent be obtained each time a background check or investigative consumer report is procured. Despite this, TrueBlue Companies required Jenkins and other aggrieved employees to provide a blanket authorization for the procurement of such investigative consumer reports, thereby requiring agreement to an unlawful condition of employment in violation of Labor Code § 432.5.

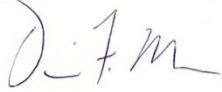
California Labor Code § 2699(f)(2) provides for civil penalties of one hundred dollars (\$100) per pay period for Jenkins and each aggrieved employee of TrueBlue Companies in California who was required to sign an unlawful ongoing authorization to procure an investigative consumer report in violation of Cal. Civ. Code § 1786.16 and consequently, in violation of California Labor Code § 432.5.

As a result, TrueBlue Companies are liable for civil penalties as provided for by California law. Consequently, Jenkins and all other aggrieved employees of TrueBlue Companies who signed the same or similar authorizations are entitled to recover all penalties permitted under California law, including Labor Code § 2698 *et seq.*

**Conclusion**

TrueBlue Companies violated and continues to violate Labor Code § 432.5 in multiple ways as identified above. Jenkins requests the agency to investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. Alternatively, Jenkins requests that the agency inform her if it does not intend to investigate these violations so that she may file a lawsuit with respect to the allegations discussed in this letter. Thank you for your immediate attention to this matter. If you have any questions, please do not hesitate to contact me at (310) 982-2984.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. F. Moss", is written over a horizontal line.

Dennis F. Moss

MOSS BOLLINGER, LLP

Encls.

# EXHIBIT 1

# At-Will Employment Dispute and Resolution Agreement

FOR EMPLOYMENT WITH TRUEBLUE OUTSOURCING SOLUTIONS

Legal First Name

Legal Last Name

Employee#

Martinique

Jenkins

3013249

CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS OF YOUR APPLICATION AND POTENTIAL EMPLOYMENT WITH THE COMPANY. IF YOU AGREE WITH THESE TERMS, INDICATE YOUR AGREEMENT BY PLACING YOUR SIGNATURE BELOW THESE TERMS AND CONDITIONS.

I understand that my prospective employer is the TrueBlue legal entity that will be indicated on my paycheck or pay stub. I further understand that this is an employment Application and At-Will Employment and Dispute Resolution Agreement ("Agreement") for TrueBlue, Inc. and its subsidiaries, which include but are not limited to TrueBlue Service Inc., Staff Management Solutions, LLC, SMX, LLC and any other TrueBlue, Inc. subsidiary which may be formed or acquired in the future, and for each of those entities, their respective employees, agents, officers, directors, shareholders, successors, and assigns, and any affiliates, subsidiaries, and parents of these entities and their respective employees, agents, officers, directors, shareholders, successors, and assigns (collectively the "Company"). I further expressly agree that the entities listed above as part of the Company may reorganize, rebrand, or combine themselves and this Agreement applies to any future entity, successor, or assigned entity in the full scope and effect as the terms herein. If any provision of this Paragraph or of the Terms and Conditions as set forth in sections 1 and 2 below is determined to be unenforceable, such determination will not affect the validity of any other provision, and the provision shall be deemed severed. I understand that nothing in this Paragraph, or in this Agreement is intended to create an employment relationship between myself and any other legal entity that does not appear on my paycheck or paystub.

**1. AT-WILL EMPLOYMENT.** I understand that my employment by the Company may be terminated at any time by me or the Company with or without notice, for any reason. I understand that no manager, or any other employee or representative of the Company other than the President, has any authority to alter the terms of my employment or to make any agreement that changes the nature of my at will employment. I understand that I will not be entitled to receive any fringe benefits of any type from the Company or Company's customers, including, but not limited to, such things as pension plans, 401(K) plans, profit sharing plans, sick leave, and vacation, unless expressly provided for by the Company. I understand the significance of my exclusion from these programs and irrevocably agree to my exclusion.

## 2. DISPUTE RESOLUTION.

**AGREEMENT TO ARBITRATE.** The Company and I agree that the Company operates in interstate commerce and any claim between me and the Company, or any of its customers, agents, parents, affiliates, or assigns shall be submitted to and resolved by binding individual arbitration under the Federal Arbitration Act ("FAA"), including but not limited to legal claims arising out of or relating to my employment, application for employment, and/or termination of employment, this Agreement, or the breach of this Agreement. The Company and I agree that all legal claims shall be submitted to arbitration including, but not limited to: claims based on any alleged violation of any constitution, federal, state, or local law; any claims of discrimination, harassment, retaliation, wrongful termination, consumer protection, or violation of civil rights; claims for wages or compensation owing; or, any claim based in tort, contract, or equity. In no way does this agreement limit my ability to bring claims before the NLRB, EEOC, or any local, state or federal governmental or administrative agency, or to utilize the procedures of those agencies.

**SCOPE OF ARBITRATION.** The Company and I agree that arbitration in no way limits the relief that any party may seek regardless of the jurisdiction in which arbitration has been filed. **THE COMPANY AND I AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN MY OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION, COLLECTIVE ACTION, OR REPRESENTATIVE PROCEEDING.** Further, unless both the Company and I agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of the Dispute Resolution provision in this Agreement shall be null and void. Notwithstanding the Dispute Resolution provision, either party may bring an individual action in small claims court.

**ARBITRATION PROCEDURE.** Any arbitration between the Company and I will be administered by the American Arbitration Association ("AAA") under its Employment Arbitration rules then in effect, which can be accessed via <http://www.adr.org>. Unless the Company and I agree otherwise, any arbitration hearings will take place in the county (or parish) where I last worked for the Company. Consistent with applicable law, the arbitrator shall have the authority to award any remedy or relief after a violation is found that the applicable United States District Court could award. The decision of the arbitrator is final and binding, subject to review only under circumstances described in the FAA or, if appropriate, your state law.

The Company will pay all AAA administration, and arbitrator fees for any arbitration as well as any filing fees where required by law. If, however, the arbitrator finds that either the substance of my claim or the relief sought in the demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the arbitrator may award all fees and costs as per Rule 11 to the Company – with the award of such filing fees up to the amount required in the respective state or federal court in which my claim could otherwise have been brought in the absence of this Agreement.

**CLAIMS UNDER \$10,000.** If my demand for arbitration is for \$10,000 or less, the Company will promptly reimburse me for my payment of any filing fee for arbitration, and we agree that I may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Employment Arbitration Rules. Also, if after a finding in my favor on the merits of my claim, the arbitrator issues me an award that is greater than the value of the Company's last written settlement offer to me, then the Company will: (1) pay me the amount of the award or \$10,000, whichever is greater; and (2) pay my attorney, and reimburse any expenses (including expert witness fees and costs) that my attorney reasonably accrues for investigating, preparing, and pursuing my claim in arbitration.

**3. STATUTE OF LIMITATIONS.** Where permitted by state law, the Company and I agree that any claim arising out of or relating to this Agreement, or the breach of this Agreement, or my application, employment, or termination of employment, shall be submitted to arbitration, or filed with a court of competent jurisdiction where arbitration is not permitted by law, within one-year (365 days) of the date of the incident or occurrence giving rise to the claim including, but not limited to, claims based on: any alleged violation of any constitution, federal, state, or local law; claims of discrimination, harassment, retaliation, wrongful termination or violation of civil rights; claims for wages or compensation due; or, any claim based in tort, contract, or equity. This time limitation in no way eliminates the effect of the continuing acts doctrine or any tolling or other equitable doctrines that would otherwise apply, nor does it modify in any way the time in which an employee may bring a claim before any state or federal administrative agency, including the EEOC and NLRB. In the event this provision is found unenforceable the parties agree it is a standalone provision and may be severed from the remainder of this Agreement.

**COMPLETE AGREEMENT.** This Agreement is the full and complete agreement relating to the formal resolution of claims.

**SEVERABILITY.** Except as stated above, in the event any portion of this agreement is deemed invalid, void or unenforceable for any reason, the remainder of this agreement will remain valid and enforceable.

**SURVIVAL.** This agreement survives beyond the termination of the employment relationship between the parties. The Company and I remain bound by the terms of the agreement beyond the termination of my application for employment or employment relationship.

**MODIFICATION.** The terms of this Agreement cannot be orally modified and only can be modified, in writing, signed by a member of the senior management team of the Company and me.

**COMPANY'S SIGNATURE.** The typewritten name in the "Authorized Signature" line below will serve to bind the Company to uphold its obligations under this agreement.

**SIGNATURE**

Martinique Jenkins

**Legal First Name and Last Name**

04-02-2021

**Today's Date**

# EXHIBIT 2

# Candidate Information

Office Number

7696

FOR EMPLOYMENT WITH TRUEBLUE OUTSOURCING SOLUTIONS

## DISCLOSURE REGARDING CONSUMER REPORT

Staff management | SMX (the “Company”) may procure one or more consumer reports and/or investigative consumer reports about you from a consumer reporting agency for employment purposes, including decisions regarding hiring, promotion, reassignment or retention as an employee (including independent contractor assignments, as applicable).

The consumer report may contain information concerning your character, general reputation, personal characteristics, and mode of living. The types of information that may be obtained include, but are not limited to: employment history (e.g., dates of employment, final salary information, performance-related information, reasons for departure, etc.); personal and professional reference checks; and other information bearing on your character, general reputation, personal characteristics, and mode of living.

An “investigative consumer report” is a consumer report that includes information from personal interviews, the most common form of which is checking personal or professional references. In California, the term includes background reports with or without information obtained from personal interviews.

This information may be obtained from private and public record sources, including, as appropriate: government agencies and courthouses; educational institutions; former employers; and, for investigative consumer reports, personal interviews with sources such as neighbors, friends, former employers and associates; and other information sources provided as references. The Company is not intending to collect, and will not be requesting, any information bearing on your credit worthiness, credit standing, or credit capacity, unless it otherwise notifies you prior thereto in writing.

You may request more information about the nature and scope of an investigative consumer report, if any, by contacting the Company.

# Candidate Information<sub>page 2</sub>

FOR EMPLOYMENT WITH TRUEBLUE OUTSOURCING SOLUTIONS

## PERSONAL INFORMATION

Legal First Name

Martinique

Legal Middle Name

Marie

Legal Last Name

Jenkins

Suffix (if applicable) ie. Sr, Jr, I (1st), II (2nd), III (3rd)

Date of Birth (mm/dd/yyyy)

[REDACTED]

Social Security Number

[REDACTED]

Maiden Name or Other Used Name

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Year Last Used

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Please provide list of cities, including state and zip, where you have lived or have been working in the last seven years.

## ADDRESS INFORMATION

Current Address

City

State

Zip Code

County

Dates From

To

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Previous Address

City

State

Zip Code

County

Dates From

To

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Previous Address

City

State

Zip Code

County

Dates From

To

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Previous Address

City

State

Zip Code

County

Dates From

To

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Previous Address

City

State

Zip Code

County

Dates From

To

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## ACKNOWLEDGMENT AND AUTHORIZATION

I have carefully read and understand the Disclosure Regarding Consumer Reports and the Summary of Rights under the Fair Credit Reporting Act. By signing below, I hereby authorize the Company to procure consumer reports, including investigative consumer reports, concerning me for employment purposes at all times during the pendency of my employment application and, if I am hired, throughout the duration of my employment period. If I am hired, this authorization shall remain on file and shall serve as ongoing authorization for the Company to procure consumer reports, including investigative consumer reports, for lawful purposes at any time during my employment period.

I also understand that nothing herein shall be construed as an offer of employment

By signing below, I certify the information I provided on this form is true, accurate, and complete. I agree that this form in original, faxed, photocopied or electronic (including electronically signed) form, will be valid for any background reports that may be requested by or on behalf of the Company.

## SIGNATURE

Legal First Name and Last Name

Martinique Jenkins

Today's Date

04-02-2021

**A SUMMARY OF YOUR RIGHTS**  
**UNDER THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1786.22**

The Investigative Consumer Reporting Agencies Act (ICRA) is designed to promote accuracy, fairness, and privacy of information in the files of every "consumer reporting agency" (CRA). You can find the complete text of the ICRA, at the California Privacy Protection web site (<http://www.privacy.ca.gov/icraa.htm>). The ICRA gives you specific rights, as outlined below. You may have additional rights under federal law. You may contact a state or local consumer protection agency or a state attorney general to learn those rights.

(a) An investigative consumer reporting agency shall supply files and information required under Section 1786.10 during normal business hours and on reasonable notice.

(b) Files maintained on a consumer shall be made available for the consumer's visual inspection, as follows:

- In person, if he appears in person and furnishes proper identification. A copy of his file shall also be available to the consumer for a fee not to exceed the actual costs of duplication services provided.
- By certified mail, if he makes a written request, with proper identification, for copies to be sent to a specified addressee. Investigative consumer reporting agencies complying with requests for certified mailings under this section shall not be liable for disclosures to third parties caused by mishandling of mail after such mailings leave the investigative consumer reporting agencies.
- A summary of all information contained in files on a consumer and required to be provided by Section 1786.10 shall be provided by telephone, if the consumer has made a written request, with proper identification for telephone disclosure, and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(c) The term "proper identification" as used in subdivision (b) shall mean that information generally deemed sufficient to identify a person. Such information includes documents such as a valid driver's license, social security account number, military identification card, and credit cards. Only if the consumer is unable to reasonably identify himself with the information described above, may an investigative consumer reporting agency require additional information concerning the consumer's employment and personal or family history in order to verify his identity.

(d) The investigative consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished him pursuant to Section 1786.10.

(e) The investigative consumer reporting agency shall provide a written explanation of any coded information contained in files maintained on a consumer. This written explanation shall be distributed whenever a file is provided to a consumer for visual inspection as required under Section 1786.22.

(f) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. An investigative consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

I hereby acknowledge that I have read and have been given a copy of my Summary of Rights under the FCRA.

**SIGNATURE**

**Martinique Jenkins**

**Legal First Name and Last Name**

**04-02-2021**

**Today's Date**