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Superior Court of California

County of Sonoma

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SONOMA

EDGAR VILLASENOR, an individual, on
behalf of himself, , the State of California, as a
private attorney general, and all others similarly
situated,

Plaintiff,

v.

KDF FORESTRY INC., a California
corporation; and DOES 1 TO 50,

Defendants.

Case Number: SCV-269750

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

1. FAILURE TO PAY ALL MINIMUM WAGES;
2. FAILURE TO PAY ALL OVERTIME WAGES;
3. FAILURE TO PAY ACCRUED VACATION WAGES;
4. FAILURE TO PROVIDE REST PERIODS AND PAY MISSED REST PERIOD PREMIUMS;
5. FAILURE TO PROVIDE MEAL PERIODS AND PAY MISSED MEAL PERIOD PREMIUMS;
6. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS;
7. FAILURE TO PAY WAGES TIMELY DURING EMPLOYMENT;
8. FAILURE TO PAY ALL WAGES EARNED AND UNPAID AT SEPARATION;
9. FAILURE TO INDEMNIFY ALL NECESSARY BUSINESS EXPENDITURES;
10. FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS;

11. VIOLATIONS OF CALIFORNIA’S UNFAIR COMPETITION LAW (BUS. & PROF. CODE, §§ 17200–17210);
12. VIOLATION OF FAIR CREDIT REPORTING ACT (15 U.S.C. § 1681B(B)(2)(A));
13. VIOLATION OF INVESTIGATIVE CONSUMER REPORTING AGENCIES ACT (CIVIL CODE § 1786 *ET SEQ.*); AND
14. VIOLATION OF CONSUMER CREDIT REPORTING AGENCIES ACT (CIVIL CODE § 1785 *ET SEQ.*); and
15. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT (LABOR CODE § 2699 *et seq.*)

Demand for Jury Trial

Plaintiff Edgar Villasenor (“Plaintiff”), on behalf of himself, the State of California, as a private attorney general, and all other similarly situated employees within the State of California, complains and alleges of defendants KDF Forestry Inc. and Does 1 to 50 (collectively, “Defendants”), and each of them, as follows:

I. INTRODUCTION

1. This is a class action complaint brought pursuant to California Code of Civil Procedure section 382.

2. The “Class Period” as used herein, is defined as the period from November 29, 2017 and continuing into the present and ongoing. Defendants’ violations of California’s laws as described more fully below have been ongoing throughout the Class Period and are still ongoing.

3. Plaintiff brings this class action on behalf of himself and the following class: *All individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period* (the “Class Members”). (Code Civ. Proc., § 382.)

4. Plaintiff brings this action on behalf of himself and the Class Members, as a class action, against Defendants for:

- A. Failure to pay all minimum wages,
- B. Failure to pay all overtime wages,

- C. Failure to pay accrued vacation wages,
- D. Failure to provide rest periods and pay missed rest period premiums,
- E. Failure to provide meal periods and pay missed meal period premiums,
- F. Failure to maintain accurate employment records,
- G. Failure to pay wages timely during employment,
- H. Failure to pay all wages earned and unpaid at separation,
- I. Failure to indemnify all necessary business expenditures,
- J. Failure to furnish accurate itemized wage statements,
- K. Violations of the Fair Credit Reporting Act, and
- L. Violations of California's Unfair Competition Law ("UCL") (Bus. & Prof. Code, §§ 17200–17210).

5. This action is also a representative action brought pursuant to the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), codified at California Labor Code sections 2698 through 2699.6.

6. The "PAGA Period" as used herein, is defined as the period from November 29, 2020, and continuing into the present and ongoing.

7. This PAGA action is brought on behalf of Plaintiff, the State of California as private attorney general, and on behalf of the following aggrieved employees: *All individuals who are or were employed by Defendants as non-exempt employees in California during the PAGA Period* (the "Aggrieved Employees").

8. Plaintiff is informed and believes and thereon alleges that the California Industrial Welfare Commission ("IWC") Wage Order applicable to the facts of this case is IWC Wage Order 5-2001 (the "Applicable Wage Order") and possibly others that may be applicable. (Cal. Code of Regs., tit. 8, § 11050.) Plaintiff reserves the right to amend or modify the definition of "Applicable Wage Order" with greater specificity or add additional IWC Wage Orders if additional applicable wage orders are discovered in litigation.

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1 **II. JURISDICTION & VENUE**

2 9. This Court has subject matter jurisdiction over all causes of action asserted herein
3 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section
4 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
5 \$25,000, and because each cause of action asserted arises under the laws of the State of California or
6 is subject to adjudication in the courts of the State of California.

7 10. This Court has personal jurisdiction over Defendants because Defendants have caused
8 injuries in the County of Sonoma and the State of California through their acts, and by their violation
9 of the California Labor Code and California state common law. Defendants transact millions of dollars
10 of business within the State of California. Defendants own, maintain offices, transact business, have
11 an agent or agents within the County of Sonoma, and/or otherwise are found within the County of
12 Sonoma, and Defendants are within the jurisdiction of this Court for purposes of service of process.

13 11. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the
14 Code of Civil Procedure. Defendants operate within California and do business within Sonoma
15 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of
16 Defendants' employees identified above within Sonoma County and surrounding counties where
17 Defendants may remotely operate.

18 12. This matter is not appropriate for removal under the Class Action Fairness Act (28
19 U.S.C. § 1332) as the amount in controversy for Plaintiff's and the Class Members' claims, in
20 aggregate, is less than \$5 million. Additionally, all the allegations herein occurred in the State of
21 California. As such, even if the amount in controversy did exceed \$5 million this matter would still
22 not be appropriate for removal under the "local controversy" exception to the Class Action Fairness
23 Act. (28 U.S.C. § 1332, subd. (d)(4)(A).)

24 **III. THE PARTIES**

25 **A. PLAINTIFF**

26 13. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen
27 of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly
28 employee in the County of Sonoma.

1 14. Plaintiff brings this action on behalf of himself and the following class pursuant to
2 section 382 of the Code of Civil Procedure as follows: *All individuals who are or were employed by*
3 *Defendants as non-exempt employees in California during the Class Period* (the “Class Members”).

4 15. The Class Members, at all times pertinent hereto, are or were employees of Defendants
5 during the relevant statutory period.

6 **B. DEFENDANTS**

7 16. Plaintiff is informed and believes and thereon alleges that Defendants were authorized
8 to and doing business in Sonoma County and is and/or was the legal employer of Plaintiff and the other
9 Class Members during the applicable statutory periods. Plaintiff and the other Class Members, and the
10 other Aggrieved Employees were, and are, subject to Defendants’ policies and/or practices complained
11 of herein and have been deprived of the rights guaranteed to them by: California Labor Code sections
12 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197,
13 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; California Business and
14 Professions Code sections 17200 through 17210 (“UCL”); and the Applicable Wage Order (Cal. Code
15 of Regs., tit. 8, § 11050).

16 17. Plaintiff is informed and believes, and based thereon alleges, that during the Class
17 Period, Defendants did (and continue to do) business in the State of California, County of Sonoma.

18 18. Plaintiff does not know the true names or capacities, whether individual, partner, or
19 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants
20 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this
21 complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and
22 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were
23 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff
24 the other Class Members, and the other Aggrieved Employees to be subject to the unlawful employment
25 practices, wrongs, injuries, and damages complained of herein.

26 19. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
27 herein, Defendants were and/or are the employers of Plaintiff, the Class Members, and the Aggrieved
28 Employees. At all times herein mentioned, each of said Defendants participated in the doing of the

1 acts hereinafter alleged to have been done by the named Defendants. Furthermore, the Defendants,
2 and each of them, were the agents, servants, and employees of each and every one of the other
3 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting
4 within the course and scope of said agency and employment. Defendants, and each of them, approved
5 of, condoned, or otherwise ratified every one of the acts or omissions complained of herein.

6 20. At all relevant times, Defendants, and each of them, were members of and engaged in a
7 joint venture, partnership, and common enterprise, and acting within the course and scope of and in
8 pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff is informed,
9 and believes, and thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff,
10 the Class Members, and the Aggrieved Employees.

11 **IV. COMMON FACTS & ALLEGATIONS**

12 21. Plaintiff, the Class Members, and the Aggrieved Employees are, and were at all relevant
13 times, employed by the Defendants within the State of California.

14 22. The Class Members are, and were, at all relevant times, non-exempt employees for the
15 purposes of minimum wages, overtime, rest breaks, meal periods, and the other claims alleged in this
16 complaint.

17 23. Specifically, Plaintiff was employed by Defendants within the statutory Class Period,
18 working as an hourly, non-exempt Foreman for Defendants. Plaintiff's duties included trimming trees.

19 **A. MINIMUM WAGE VIOLATIONS**

20 24. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed
21 by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code
22 section 1194 entitles "any employee receiving less than the legal minimum wage . . . to recover in a
23 civil action the unpaid balance of the full amount of this minimum wage." Likewise, the Applicable
24 Wage Order also obligates employers to pay each employee minimum wages for all hours worked.
25 (Cal. Code of Regs., tit. 8, § 11050.) Labor Code section 1198 makes unlawful the employment of an
26 employee under conditions that the IWC Wage Orders prohibit.

27 25. These minimum wage standards apply to each hour that employees work. Therefore,
28 an employer's failure to pay for any particular time worked by an employee is unlawful, even if

1 averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage
2 above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

3 26. Here, Defendants failed to fully conform their pay practices to the requirements of the
4 law during the relevant statutory periods. Plaintiff, the Class Members, and the Aggrieved Employees
5 were not compensated for all hours worked including, but not limited to, all hours they were subject to
6 the control of Defendants and/or suffered or permitted to work under the California Labor Code and
7 the Applicable Wage Order. Among other violations, Plaintiff, the Class Members, and the Aggrieved
8 Employees were subject to the control of Defendants while off-the-clock and did not receive minimum
9 wage for each hour worked.

10 27. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an
11 employer who has failed to pay its employees the legal minimum wage is liable to pay those employees
12 the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
13 due and interest thereon.

14 28. When employees, such as Plaintiff, the Class Members, and the Aggrieved Employees,
15 are not paid for all hours worked under Labor Code section 1194, they are entitled to recover minimum
16 wages for the time which they received no compensation. (See *Sillah v. Command International*
17 *Security Services* (N.D. Cal. 2015) 154 F.Supp.3d 891 [employees suing for failure to pay overtime
18 could recover liquidated damages under Labor Code section 1194.2 if they also showed they were paid
19 less than minimum wage].)

20 29. Labor Code section 1197.1 authorizes employees who are paid less than the minimum
21 wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other
22 damages, as follows:

23 (1) "For any initial violation that is intentionally committed, one
24 hundred dollars (\$100) for each underpaid employee for each pay period
25 for which the employee is underpaid."

26 (2) "For each subsequent violation for the same specific offense, two
27 hundred fifty dollars (\$250) for each underpaid employee for each pay
28 period for which the employee is underpaid regardless of whether the

1 initial violation is intentionally committed.” (Lab. Code, § 1197.1, subd.

2 (a).)

3 30. As set forth above, Defendants failed to fully compensate Plaintiff, the Class Members,
4 and the Aggrieved Employees for all minimum wages. Accordingly, the Class Members are entitled
5 to recover liquidated damages for violations of Labor Code section 1197.1.

6 31. Based upon these same factual allegations, Plaintiff, the Class Members, and the
7 Aggrieved Employees are likewise entitled to penalties under Labor Code sections 1199.

8 **B. OVERTIME VIOLATIONS**

9 32. Labor Code section 510 requires employers to compensate employees who work more
10 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on
11 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.
12 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate
13 employees at no less than twice the regular rate of pay when an employee works more than twelve
14 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,
15 subd. (a).) These rules are also reflected in the Applicable Wage Order.

16 33. In accordance with Labor Code section 1194 and the Applicable Wage Order, Plaintiff,
17 the Class Members, and the Aggrieved Employees could not then agree and cannot now agree to work
18 for a lesser wage than the amount provided by Labor Code sections 510 or the Applicable Wage Order.

19 34. Here, Defendants violated their duty to accurately and completely compensate Plaintiff,
20 the Class Members, and the Aggrieved Employees for all overtime worked. Plaintiff, the Class
21 Members, and the Aggrieved Employees periodically worked hours that entitled them to overtime
22 compensation under the law but were not fully compensated for those hours.

23 35. These actions were and are in clear violation of California’s overtime laws as set forth
24 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Order. (Cal. Code of Regs., tit. 8,
25 § 11050.) As a result of Defendants’ faulty policies and practices, the Class Members were not
26 compensated for all hours worked or paid accurate overtime compensation.

27 **C. UNPAID ACCRUED VACATION TIME**

28 36. California Labor Code section 227.3 states that:

1 “[W]henever a contract of employment or employer policy provides for paid
2 vacations, and an employee is terminated without having taken off his vested
3 vacation time, all vested vacation shall be paid to him as wages at his final rate
4 in accordance with such contract of employment or employer policy respecting
5 eligibility or time served; provided, however, that an employment contract or
6 employer policy shall not provide for forfeiture of vested vacation time upon
7 termination.”

8 37. Thus, when an employer has a vacation policy, it must pay out all accrued but unused
9 vacation time upon termination. An employer may not adopt policies that require forfeiture of vested
10 vacation time without compensation. (*Rhea v. General Atomics* (2014) 227 Cal.App.4th 1560, 1571
11 [“California law prohibits an employer from requiring the forfeiture of vacation time”].)

12 38. Here, Defendants had a vacation policy, and Plaintiff, the Class Members, and the
13 Aggrieved Employees had completed all prerequisites and/or necessary limitations of service required
14 by Defendants’ vacation policy to accumulate vested vacation pay. Despite that fact, Plaintiff, the
15 Class Members, and the Aggrieved Employees were denied all accrued but unused vacation time at
16 termination in violation of California law.

17 39. By failing to pay accrued vacation time at termination of employment, Defendants have
18 violated California Labor Code provisions including, but not limited to, sections 201, 202, and 227.3.

19 **D. REST BREAK VIOLATIONS**

20 40. Pursuant to Labor Code section 226.7 and the Applicable Wage Order, Defendants were
21 and are required to provide Plaintiff, the Class Members, and the Aggrieved Employees with
22 compensated, duty-free rest periods of not less than ten minutes for every major fraction of four hours
23 worked. Under the Applicable Wage Order, an employer must authorize and permit all employees to
24 take ten minute duty free rest periods for every major fraction of four hours worked. (Cal. Code of
25 Regs., tit. 8, § 11050.)

26 41. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an
27 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
28 or applicable regulation, standard, or order of the Industrial Welfare Commission” (Lab. Code, §

1 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees
2 one additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or
3 recovery period is not provided.” (Lab. Code, § 226.7, subd. (c).) Thus, the Wage Orders set when
4 and for how long the rest period must take place and the Labor Code establishes that violations of the
5 IWC Wage Orders are unlawful and sets forth the premium pay employer must pay their employees
6 when employers fail to provide rest periods.

7 42. The California Supreme Court has held that, during required rest periods, “employers
8 must relieve their employees of all duties and relinquish any control over how employees spend their
9 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing
10 control over employees during rest periods requires that employees be “free to leave the employer’s
11 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court
12 explained in the context of rest breaks that employer liability attaches from adopting an unlawful
13 policy:

14 “An employer is required to authorize and permit the amount of rest break time
15 called for under the wage order for its industry. If it does not—if, for example,
16 it adopts a uniform policy authorizing and permitting only one rest break for
17 employees working a seven-hour shift when two are required—it has violated
18 the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53
19 Cal.4th 1004, 1033.)

20 43. Here, Defendants periodically did not permit Plaintiff, the Class Members, and the
21 Aggrieved Employees to take compliant duty-free rest breaks, free from Defendants’ control as
22 required by Labor Code section 226.7, the Applicable Wage Order, and applicable precedent. (See
23 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods
24 employers must relieve employees of all duties and relinquish control over how employees spend their
25 time.”].) At all relevant times, Plaintiff, the Class Members, and the Aggrieved Employees were
26 periodically not provided with legally-compliant and timely rest periods of at least ten minutes for each
27 four hour work period, or major fraction thereof due to Defendants’ unlawful rest period
28 policies/practices. Plaintiff, the Class Members, and the Aggrieved Employees were often expected

1 and required to continue working through rest periods to meet the expectations Defendants and finish
2 the workday. In some cases when Plaintiff, the Class Members, and the Aggrieved Employees worked
3 more than ten hours in a shift, Defendants failed to authorize and/or permit a third mandated rest period.
4 As a result, Plaintiff, the Class Members, and the Aggrieved Employees were periodically unable to
5 take compliant rest periods.

6 44. In such cases where Defendants did not offer Plaintiff, the Class Members, and the
7 Aggrieved Employees the opportunity to receive a compliant off-duty rest period, “the court may not
8 conclude employees voluntarily chose to skip those breaks.” (*Alberts v. Aurora Behavioral Health*
9 *Care* (2015) 241 Cal.App.4th 388, 410 (2015) [“If an employer fails to provide legally compliant meal
10 or rest breaks, the court may not conclude employees voluntarily chose to skip those breaks.”]; *Brinker*
11 *Rest. Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest
12 break that was required by law but never authorized; if a break is not authorized, an employee has no
13 opportunity to decline to take it.”].)

14 45. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the Class
15 Members, and the Aggrieved Employees were not compensated with one hour’s worth of pay at their
16 regular rate of compensation when they were not provided with a compliant rest period in accordance
17 with Labor Code section 226.7, subdivision (c). Thus, Defendants have violated Labor Code section
18 226.7 and the Applicable Wage Order.

19 46. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other non-
20 exempt employees, rest period premiums and penalties.

21 **E. MEAL BREAK VIOLATIONS**

22 47. Labor Code section 512 and the Applicable Wage Order require employers to provide
23 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of
24 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of
25 more than five hours per day without providing the employee with a meal period of not less than 30
26 minutes”]; Cal. Code of Regs., tit. 8, § 11050 [“No employer shall employ any person for a work
27 period of more than five (5) hours without a meal period of not less than 30 minutes”].)
28 Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-

1 minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“An employer shall not
2 employ an employee for a work period of more than 10 hours per day without providing the employee
3 with a second meal period of not less than 30 minutes”].)

4 48. “An on-duty meal period is permitted only when the nature of the work prevents an
5 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
6 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must
7 include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California
8 Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts
9 have “found that the nature of the work exception applies: (1) where the work has some particular
10 external force that requires the employee to be on duty at all times, and (2) where the employee is the
11 sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v.*
12 *U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation
13 to determine whether the nature of the work prevents an employee from being relieved before requiring
14 an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp., supra*, 5 Cal.App.5th
15 at p. 946.)

16 49. Here, Plaintiff, the Class Members, and the Aggrieved Employees were never asked to
17 sign any enforceable document agreeing to an on-duty meal period. Moreover, nothing in the nature
18 of their work involved the kind of “external force” that might justify on-duty meal breaks. (*Lubin v.*
19 *The Wackenhut Corp., supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not
20 provide compliant off-duty meal periods within the first five hours of work for Plaintiff, the Class
21 Members, and the Aggrieved Employees.

22 50. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
23 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s
24 duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal
25 periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend
26 to personal business.” (*Augustus v. ABM Security Services, Inc., supra*, 2 Cal.5th at p. 275.) Under
27 Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit
28 the amount of meal time called for under the law (as specified in the Labor Code and/or applicable

1 IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior*
2 *Court, supra*, 53 Cal.4th at p. 1033.)

3 51. During the applicable statutory periods here, Plaintiff, the Class Members, and the
4 Aggrieved Employees were periodically denied legally-compliant and timely off-duty meal periods of
5 at least thirty minutes due to Defendants’ unlawful meal period policy and practices. As a result of
6 Defendants’ uniform meal period policies and practices, Plaintiff, the Class Members, and the
7 Aggrieved Employees were often not permitted to take compliant first meal periods before the end of
8 the fifth hour of work. Plaintiff, the Class Members, and the Aggrieved Employees were also
9 periodically not permitted to take second meal periods for shifts in excess of ten hours. Defendants
10 thus violated Labor Code section 512 and the Applicable Wage Order by failing to advise, authorize,
11 or permit Plaintiff, the Class Members, and the Aggrieved Employees to receive thirty-minute, off-
12 duty meal periods within the first five hours of their shifts.

13 52. Labor Code section 226.7 provides that “[a]n employer shall not require an employee
14 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
15 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,
16 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Order further obligate
17 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation
18 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of
19 Regs., tit. 8, § 11050 [“If an employer fails to provide an employee a meal period in accordance with
20 the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
21 employee’s regular rate of compensation for each workday that the meal period is not provided.”].)

22 53. Accordingly, for each day that Plaintiff, the Class Members, and the Aggrieved
23 Employees did not receive compliant meal periods, they were and are entitled to receive meal period
24 premiums pursuant to Labor Code section 226.7 and the Applicable Wage Order. Defendants,
25 however, failed to pay Plaintiff, the Class Members, and the Aggrieved Employees applicable meal
26 period premiums for many workdays that the employees did not receive a compliant meal period. Thus,
27 Defendants have violated Labor Code section 226.7 and the Applicable Wage Order.

28 ///

1 54. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other non-
2 exempt employees, meal period premiums and penalties.

3 **F. UNTIMELY WAGES DURING EMPLOYMENT**

4 55. Labor Code section 204 expressly requires employers who pay employees on a weekly,
5 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
6 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate
7 Labor Code section 204 subject to a penalty of:

8 “(1) For any initial violation, one hundred dollars (\$100) for each
9 failure to pay each employee.

10 “(2) For each subsequent violation, or any willful or intentional
11 violation, two hundred dollars (\$200) for each failure to pay each
12 employee, plus 25 percent of the amount unlawfully withheld.” (Lab.
13 Code, § 210, subd. (a).)

14 56. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
15 entirely independent and apart from, any other penalty provided in this article” (Lab. Code, § 210,
16 subd. (a).)

17 57. Due to Defendants’ failure to pay Plaintiff, the Class Members, and the Aggrieved
18 Employees the wages described above, along with rest and meal break premiums, Defendants failed to
19 timely pay Plaintiff, the Class Members, and the Aggrieved Employees within seven calendar days
20 following the close of payroll in accordance with Labor Code section 204 on a regular and consistent
21 basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016
22 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure to pay rest period
23 premiums can support claims under Labor Code sections 203 and 204].)

24 **G. UNTIMELY WAGES AT SEPARATION**

25 58. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages
26 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”
27 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result
28 of Defendants’ failure to pay Plaintiff, the Class Members, and the Aggrieved Employees for the wages

described above, along with rest and meal break premiums, Defendants violated and continue to violate Labor Code section 203.

59. Due to Defendants' faulty pay policies, those Class Members whose employment with Defendants concluded were not compensated for each and every hour worked at the appropriate rate. Defendants have failed to pay formerly-employed Class Members whose sums were certain at the time of termination within at least seventy-two hours of their resignation and have failed to pay those sums for thirty days thereafter.

H. FAILURE TO REIMBURSE BUSINESS EXPENSES

60. At all relevant times herein, Defendants were subject to Labor Code section 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." The purpose of this section is to "prevent employers from passing along their operating expenses onto their employees." (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.)

61. At all relevant times herein, Defendants were subject to Labor Code section 2804, which states that "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

62. Thus, Plaintiff, the Class Members, and the Aggrieved Employees were and are entitled to reimbursement for the expenses they incurred during the course of their duties. The duty to reimburse even extends to the use of equipment the employee may already own and would be required to pay for anyway. (*Cochran v. Schwan's Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 ["The threshold question in this case is this: Does an employer always have to reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in which the employee incurred an extra expense that he or she would not have otherwise incurred absent the job? The answer is that reimbursement is always required. Otherwise, the employer would receive a windfall because it would be passing its operating expenses on to the employee."].)

63. Here, Defendants failed to fully reimburse Plaintiff, the Class Members, and the Aggrieved Employees for necessary expenditures incurred as a direct consequence and requirement of performing their job duties, including the costs associated with their personal cell phone they required to perform their work. Consequently, Defendants failed to comply with Labor Code section 2802.

I. WAGE STATEMENT VIOLATIONS

64. Defendants also failed to provide accurate itemized wage statements in accordance with Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) The gross wages earned;
- (2) The total hours worked by the employee;
- (3) The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate basis;
- (4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) The net wages earned;
- (6) The inclusive dates of the period for which the employee is paid;
- (7) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) The name and address of the legal entity that is the employer; and
- (9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

65. Due to Defendants' failure to pay Plaintiff, the Class Members, and the Aggrieved Employees properly as described above, the wage statements issued do not indicate the correct amount of gross wages earned, total hours worked, or the net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus,

1 Defendants have violated Labor Code section 226, subdivisions (a)(1), (2), (5), and (9).

2 66. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and
3 intentionally failed to provide Plaintiff, the Class Members, and the Aggrieved Employees with
4 accurate itemized wage statements in violation of Labor Code section 226, subdivision (e). Defendants
5 knew that they were not providing Plaintiff, the Class Members, and the Aggrieved Employees with
6 wage statements required by California law but nevertheless failed to correct their unlawful practices
7 and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the
8 defendant knowingly and intentionally violated Labor Code section 226 because the “[d]efendant knew
9 that it was not providing total hours worked to plaintiff or other employees paid on commission” even
10 though it believed that employees paid solely on commission or commission and salary “are exempt
11 and therefore we do not record hours on a wage statement.”].)

12 **J. RECORDKEEPING VIOLATIONS**

13 67. Labor Code section 226, subdivision (a), requires employers to keep an accurate record
14 of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in
15 pertinent part, as follows:

16 “Any employer who violates subdivision (a) of Section 226 shall be subject to a
17 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
18 violation in an initial citation and one thousand dollars (\$1,000) per employee
19 for each violation in a subsequent citation, for which the employer fails to
20 provide the employee a wage deduction statement or fails to keep the records
21 required in subdivision (a) of Section 226. The civil penalties provided for in
22 this section are in addition to any other penalty provided by law.” (Lab. Code,
23 § 226.3, emphasis added.)

24 68. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including
25 Defendants, to:

26 “Keep, at a central location in the state or at the plants or establishments at which
27 employees are employed, payroll records showing the hours worked daily by
28 and the wages paid to, and the number of piece-rate units earned by and any

1 applicable piece rate paid to, employees employed at the respective plants or
2 establishments. These records shall be kept in accordance with rules established
3 for this purpose by the commission, but in any case shall be kept on file for not
4 less than three years. An employer shall not prohibit an employee from
5 maintaining a personal record of hours worked, or, if paid on a piece-rate basis,
6 piece-rate units earned.” (Lab. Code, § 1174, subd. (d), emphasis added.)

7 69. As explained in detail above, Defendants failed to provide Plaintiff, the Class Members,
8 and the Aggrieved Employees with accurate itemized wage statements. Defendants did so, in part,
9 because they failed to accurately track hours worked by Plaintiff, the Class Members, and the
10 Aggrieved Employees. Defendants have thus failed to keep accurate records of the “total hours worked
11 by the employee[s]” in violation of Labor Code section 226, subdivision (a), and are therefore subject
12 to the penalties provided by Labor Code section 226.3. These penalties are “in addition to any other
13 penalty provided by law.” (Lab. Code, § 226.3.)

14 70. The failure to accurately track hours worked also resulted in a failure of Defendants to
15 keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees,
16 including Plaintiff, the Class Members, and the Aggrieved Employees, in violation of Labor Code
17 section 1174, subdivision (d).

18 **K. FCRA VIOLATIONS**

19 71. When Plaintiff applied for employment with Defendants, Defendants required him to
20 fill out a disclosure and authorization form to perform a background check as part of the hiring process.
21 Thereafter, Defendants procured, or caused to be procured, a background report (*i.e.*, a consumer report
22 and/or investigative consumer report, as defined by 15 U.S.C. § 1681a(d)(1)(B) and 15 U.S.C. §
23 1681a(e)), on Plaintiff.

24 72. The disclosure provided by Defendants contained extraneous and superfluous language
25 that does not consist solely of the disclosure as required by federal and state laws. Plaintiff was
26 presented with a disclosure that was incorporated into an employment application, was not standalone,
27 and was further defective because it contained extraneous information, requested the applicant provide
28 additional information (*e.g.*, all names used and dates of use, driver’s license number, date of birth, and

1 email) beyond the authorization itself, and did not indicate the permissible employment position for
2 which the consumer reports were sought.

3 73. With respect to Plaintiff and the Class Members, Defendants violated the federal FCRA
4 and the state ICRAA by procuring, or causing to be procured, consumer reports on job applicants
5 without providing proper pre-authorization disclosures.

6 74. Under the FCRA, it is unlawful to procure or caused to be procured a consumer report¹
7 for employment purposes unless a disclosure is made to the applicant or employee in a document that
8 consists solely of the disclosure that a consumer report may be obtained for employment purposes and
9 the applicant or employee authorizes, in writing, the procurement of the report. 15 U.S.C. §
10 1681b(b)(2)(A)(i)-(ii). A similar requirement pertains under the ICRAA. *See*, Cal. Civ. Code §
11 1786.16(a)(2)(B) (“The person procuring or causing the report to be made provides a clear and
12 conspicuous disclosure in writing to the consumer at any time before the report is procured or caused
13 to be made in a document that consists solely of the disclosure[.]”).

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

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

23 76. The plain language of the statute also clearly indicates that the inclusion of extraneous
24 information in a disclosure form violates the disclosure and authorization requirements of the FCRA

25 ¹ Section 1681a(d)(1) of the FCRA defines “consumer report” as any oral, or other communication of any
26 information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit
27 capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to
28 be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s
eligibility for employment purposes.

² Letter from Clarke W. Brinckerhoff, Fed. Trade Comm’n, to H. Roman Leathers, Manier & Herod (Sept. 9,
1998), available at <https://www.ftc.gov/policy/advisoryopinions/advisory-opinion-leathers-09-09-98> (last
accessed March 16, 2016).

1 because such a form would not consist “solely” of the disclosure. In fact, the FTC expressly warned
2 that the FCRA notice may not include extraneous information. In a report dated July 2011, the FTC
3 emphasized that “the notice [under 15 U.S.C. § 1681b(b)(2)(A)] may not include extraneous or
4 contradictory information[.]”

5 77. Many courts have also determined that the inclusion of extraneous information violates
6 § 1681b(b)(2)(A) of the FCRA. *See, e.g., Syed v. M-I, LLC*, 853 F.3d 492, 504-505 (9th Cir. 2017)
7 (finding that a willful violation of the FCRA as a matter of law that the disclosure document contains
8 a liability waiver); *Gilberg v. Cal. Check Cashing Stores LLC*, 2019 WL 347027 (Jan. 29, 2019); *Speer*
9 *v. Whole Food Market Group, Inc.*, No. 8:14-CV3035-T-26TBM, 2015 WL 1456981, *3 (M.D. Fla.
10 Mar. 30, 2015); *Milbourne v. JRK Residential Amer., LLC*, 2015 U.S. Dist. LEXIS 29905, *14-19
11 (E.D. Va. Mar. 11, 2015) (holding that the inclusion of a waiver within a document containing the
12 disclosure would violate 15 U.S.C. § 1681b(b)(2)(A)); *Reardon v. Closetmaid Corp.*, 2013 U.S. Dist.
13 LEXIS 169821, *14-27 (W.D. Pa. Dec. 2, 2013) (holding that a disclosure with a liability waiver was
14 contrary to the statute); and *EEOC v. Video Only, Inc.*, 2008 U.S. Dist. LEXIS 46094 (D. Or. June 11,
15 2008) (granting summary judgment against the defendant employer who made a disclosure as a part of
16 the job application, which is not a document consisting solely of the disclosure).

17 78. Here, the disclosure and authorization form provided to Plaintiff and the Class Members
18 fails to comply with the FCRA. The document contains extraneous information, such as requesting all
19 names used and dates of use, driver’s license number, date of birth, and email.

20 79. In addition to the federal FCRA, the state ICRAA, *see*, Cal. Civ. Code § 1786 *et seq.*,
21 provides similar protections to employees who undergo a background check for employment purposes.
22 The ICRAA likewise requires that employers who order background checks (called an investigative
23 consumer report by the statute), provide applicants with a disclosure regarding the background check
24 in a standalone document. Cal. Civ. Code § 1786.16. Instead, Plaintiff and the Class Members were
25 not provided with a standalone disclosure and authorization form, but rather a document filled with
26 extraneous information.

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28 ///

1 80. Furthermore, Plaintiff and the Class Members were impermissibly required as part of
2 Defendants' hiring process to undergo consumer credit report checks because California Labor Code
3 § 1024.5 states that a consumer credit report can **only** be used for employment purposes when:

4 (a) An employer or prospective employer shall not use a consumer credit report
5 for employment purposes unless the position of the person for whom the report
is sought is any of the following:

6 (1) a managerial position.

7 (2) a position in the state Department of Justice.

8 (3) that of a sworn peace officer or other law enforcement position.

9 (4) a position for which the information contained in the report is
required by law to be disclosed or obtained.

10 (5) a position that involves regular access, for any purpose other than
11 the routine solicitation and processing of credit card applications
12 in a retail establishment, to all of the following types of
information of any one person:

13 (A) Bank or credit card account information.

14 (B) Social security number.

15 (C) Date of birth.

16 (6) a position in which the person is, or would be, any of the
following:

17 (A) A named signatory on the bank or credit card
account of the employer.

18 (B) Authorized to transfer money on behalf of the
19 employer.

20 (C) Authorized to enter into financial contracts on
behalf of the employer.

21 (7) a position that involves access to confidential or proprietary
22 information, including a formula, pattern, compilation, program,
23 device, method, technique, process or trade secret that (i) derives
independent economic value, actual or potential, from not being
24 generally known to, and not being readily ascertainable by proper
means by, other persons who may obtain economic value from
25 the disclosure or use of the information, and (ii) is the
subject of an effort that is reasonable under the circumstances to
26 maintain secrecy of the information.

27 (8) a position that involves regular access to cash totaling ten
28 thousand dollars (\$10,000) or more of the employer, a customer,
or client, during the workday.

1 81. Plaintiff and the Class Members do not perform any of the tasks in which a consumer
2 credit report is required.

3 82. Defendants further failed to disclose to Plaintiff and the Class Members which provision
4 of Labor Code § 1024.5(a) the report is being used, nor the source of the report.

5 83. Further, section 1785.20.5(a) of the CCRAA provides, in relevant part:
6 Prior to requesting a consumer credit report for employment purposes, the user of the
7 report shall provide written notice to the person involved. The notice shall inform the
8 person that a report will be used, ***and shall identify the specific basis under subdivision***
(a) of Section 1024.5 of the Labor Code for use of the report. The notice shall also
inform the person of ***the source*** of the report... [emphasis added]

9 The disclosures provided by Defendants do not identify the specific basis under subdivision (a)
10 of section 1024.5 of the Labor Code for use of the credit reports. As such, this omission results
11 in Defendants having illegally procured consumer reports on Plaintiff and the Class Members
12 in violation of section 1785.20.5 of the CCRAA. Plaintiff and the Class Members are entitled
13 to statutory damages and/or actual damages, punitive damages, injunctive relief, and attorneys'
14 fees and costs

15 **V. CLASS ACTION ALLEGATIONS**

16 84. As mentioned above, Plaintiff brings this action on behalf of himself and the Class
17 Members pursuant to section 382 of the Code of Civil Procedure.

18 85. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of all
19 members would be unfeasible and not practicable. The membership of the class is unknown to Plaintiff
20 at this time; however, it is estimated that the number of Class Members is greater than 100 individuals.
21 The identity of such membership is readily ascertainable via inspection of Defendants' employment
22 records.

23 86. **Common Questions of Law and Fact Predominate/Well Defined Community of**
24 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated
25 non-exempt employees, which predominate over questions affecting only individual members
26 including, without limitation to:

27 A. Whether Defendants' pay policies/practices resulted in a failure to pay the Class
28 Members for all hours worked, including all minimum wages;

1 B. Whether Defendants' pay policies/practices resulted in a failure to pay the Class
2 Members for all required overtime wages at the Class Members' regular rate of pay;

3 C. Whether Defendants' pay policies/practices resulted in a failure to pay out all
4 accrued vacation time to the Class Members at termination of employment;

5 D. Whether Defendants' rest period policies and practices afforded legally
6 compliant rest periods or compensation in lieu thereof;

7 E. Whether Defendants' meal period policies and practices afforded legally
8 compliant meal periods or compensation in lieu thereof;

9 F. Whether Defendants maintained accurate employment records;

10 G. Whether Defendants timely paid all wages during employment;

11 H. Whether Defendants timely paid all wages earned and unpaid at separation;

12 I. Whether Defendants indemnified their employees for all necessary business
13 expenditures;

14 J. Whether Defendants furnished legally-compliant wage statements to the Class
15 Members pursuant to Labor Code section 226; and

16 K. Whether Defendants' violations of the Labor Code and the Applicable Wage
17 Order amounted to a violation of California's UCL.

18 87. **Predominance of Common Questions:** Common questions of law and fact
19 predominate over questions that affect only individual Class Members. The common questions of law
20 set forth above are numerous and substantial and stem from Defendants' uniform policies and practices
21 applicable to each individual class member, such as Defendants' uniform policy and practice of failing
22 to pay for all hours worked, Defendants' uniform policies and practices which failed to provide
23 compliant rest periods, Defendants' uniform policies and practices which failed to provide compliant
24 meal periods, Defendants' failure to provide accurate itemized wage statements, and others. As such,
25 the common questions predominate over individual questions concerning each individual class
26 member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

27 88. **Typicality:** The claims of Plaintiff are typical of the claims of the Class Members
28 because Plaintiff was employed by Defendants as a non-exempt employee in California during the

1 statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged herein,
2 Plaintiff, like the other Class Members, was deprived of minimum, regular, and overtime wages
3 because of Defendants' unlawful timekeeping policies and practices, was deprived of rest periods and
4 premium wages in lieu thereof, was deprived of meal periods and premium wages in lieu thereof, was
5 subject to Defendants' uniform rest period policies and practices, was subject to Defendants' uniform
6 meal period policies and practices, was not provided accurate itemized wage statements, was not paid
7 all wages in full and on time, and was subject to other similar policies and practices to which the Class
8 Members were subject.

9 89. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
10 represent fairly and adequately the interests of the Class Members. Moreover, Plaintiff's attorneys are
11 ready, willing, and able to fully and adequately represent the Class Members and Plaintiff. Plaintiff's
12 attorneys have prosecuted numerous wage-and-hour class actions in state and federal court in the past
13 and are committed to vigorously prosecuting this action on behalf of the Class Members.

14 90. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
15 important public interest in establishing minimum working conditions and standards in California.
16 These laws and labor standards protect the average working employee from exploitation by employers
17 who have the responsibility to follow the laws and who may seek to take advantage of superior
18 economic and bargaining power in setting onerous terms and conditions of employment. The nature
19 of this action and the format of laws available to Plaintiff and the Class Members make the class action
20 format a particularly efficient and appropriate procedure to redress the violations alleged herein. If
21 each employee were required to file an individual lawsuit, Defendants would necessarily gain an
22 unconscionable advantage since they would be able to exploit and overwhelm the limited resources of
23 each individual plaintiff with their vastly superior financial and legal resources.

24 91. Moreover, requiring each Class Member to pursue an individual remedy would also
25 discourage the assertion of lawful claims by employees who would be disinclined to file an action
26 against their former or current employer for real and justifiable fear of retaliation and permanent
27 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
28 the individual Class Members, even if possible, would create a substantial risk of inconsistent or

1 varying verdicts or adjudications with respect to the individual Class Members against Defendants
2 herein, and which would establish potentially incompatible standards of conduct for Defendants or
3 legal determinations with respect to individual Class Members which would, as a practical matter, be
4 dispositive of the interest of the other Class Members not parties to adjudications or which would
5 substantially impair or impede the ability of the Class Members to protect their interests.

6 92. Further, the claims of the individual Class Members are not sufficiently large to warrant
7 vigorous individual prosecution considering the concomitant costs and expenses attending thereto. As
8 such, the Class Members identified above are maintainable as a class under section 382 of the Code of
9 Civil Procedure.

10 **VI. CAUSES OF ACTION**

11 **FIRST CAUSE OF ACTION**

12 *Failure to Pay All Minimum Wages*

13 *(Against All Defendants)*

14 93. Plaintiff realleges and incorporates by reference all previous paragraphs.

15 94. Section 4 of the Applicable Wage Order and Labor Code section 1197 establish the right
16 of employees to be paid minimum wages for all hours worked, in amounts set by state law. (Lab. Code,
17 § 1197; Cal. Code of Regs., tit. 8, § 11050.) Labor Code sections 1194, subdivision (a), and 1194.2,
18 subdivision (a), provide that an employee who has not been paid the legal minimum wage as required
19 by Labor Code section 1197 may recover the unpaid balance, together with attorneys' fees and costs
20 of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued
21 thereon.

22 95. Here, Defendants failed to fully conform their pay practices to the requirements of the
23 law during the relevant statutory periods. Plaintiff and the other Class Members were not compensated
24 for all hours worked including, but not limited to, all hours they were subject to the control of
25 Defendants and/or suffered or permitted to work under the Labor Code and the Applicable Wage Order.

26 96. Labor Code section 1198 makes unlawful the employment of an employee under
27 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and 1194.2,
28 subdivision (a), provide that an employer who has failed to pay its employees the legal minimum wage

1 is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages
2 in an amount equal to the wages due and interest thereon.

3 97. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
4 Plaintiff and the other Class Members have sustained economic damages, including but not limited to
5 unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover
6 economic and statutory damages and penalties and other appropriate relief because of Defendants'
7 violations of the Labor Code and Applicable Wage Order.

8 98. Defendants' practices and policies regarding illegal employee compensation are
9 unlawful and create an entitlement to recovery by Plaintiff and the other Class Members in a civil
10 action for the unpaid amount of minimum wages, liquidated damages, including interest thereon,
11 statutory penalties, attorney's fees, and costs of suit according to Labor Code sections 204, 218.5,
12 1194, 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

13 **SECOND CAUSE OF ACTION**

14 *Failure to Pay All Overtime Wages*

15 *(Against All Defendants)*

16 99. Plaintiff realleges and incorporates by reference all previous paragraphs.

17 100. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194, and
18 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours
19 worked and provide a private right of action for the failure to pay all overtime compensation for
20 overtime work performed. At all times relevant herein, Defendants were required to properly pay
21 Plaintiff and the other Class Members for all overtime wages earned pursuant to Labor Code section
22 1194 and the Applicable Wage Order. Defendants caused Plaintiff and the other Class Members to
23 work overtime hours but did not compensate them at one and one-half times their regular rate of pay
24 for such hours in accordance with California law. Likewise, Defendants caused Plaintiff and the other
25 Class Members to work double-time hours but did not compensate them at twice their regular rate of
26 pay for such hours in accordance with California law.

27 101. Defendants failed to fully conform their pay practices to the requirements of California
28 law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful pay

1 policies and practices of failing to accurately record all the time that non-exempt employees were under
2 the supervision and control of Defendants. The foregoing policies and practices are unlawful and allow
3 Plaintiff and the other Class Members to recover in a civil action the unpaid amount of overtime
4 premiums owing, including interest thereon, statutory penalties, attorney's fees, and costs of suit
5 according to Labor Code section 204, 510, 1194, and 1198, the Applicable Wage Order, and Code of
6 Civil Procedure section 1021.5.

7 **THIRD CAUSE OF ACTION**

8 *Failure to Pay Accrued Vacation Wages*

9 *(Against All Defendants)*

10 102. Plaintiff realleges and incorporates by reference all previous paragraphs.

11 103. Under California law, accrued vacation and/or paid time off are considered earned
12 wages and cannot be forfeited if unused. (Lab. Code, § 227.3.) A vacation policy and/or paid time off
13 policy that provides for forfeiture of vested vacation pay if not used within a designated time, such as
14 before termination, is impermissible. (*Boothby v. Atlas Mechanical, Inc.* (1992) 6 Cal.App.4th 1595,
15 1602.)

16 104. As explained above, Plaintiff and other Class Members accrued vested vacation pay
17 under a "contract of employment," for purposes of Labor Code section 227.3. When they ended their
18 employment with Defendants, Defendants failed to pay their vested vacation pay in violation of Labor
19 Code sections 201, 202, and 227.3. Accordingly, pursuant to section 227.3 of the California Labor
20 Code, Plaintiff and other Class Members are entitled to recover their accrued, vested, and unpaid
21 vacation time.

22 105. Pursuant to sections 218.5 and 227.3 of the Labor Code, Plaintiff and the other Class
23 Members are also entitled to recover interest, costs, and attorneys' fees associated with this cause of
24 action.

25 **FOURTH CAUSE OF ACTION**

26 *Failure to Provide Rest Periods and Pay Missed Rest Period Premiums*

27 *(Against All Defendants)*

28 106. Plaintiff realleges and incorporates by reference all previous paragraphs.

107. Section 12 of the Applicable Wage Order, and Labor Code section 226.7 establish the right of employees to be provided with a rest period of at least ten minutes for each four hour period worked, or major fraction thereof. (See Cal. Code of Regs., tit. 8, § 11050.)

108. Due to Defendants' unlawful rest period policies and practices described in detail above, Defendants did not authorize and permit Plaintiff and the other Class Members to take all rest periods to which they were legally entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiff and the other Class Members at their respective regular rates of pay for each violation, in accordance with California Labor Code section 226.7.

109. The foregoing violations create an entitlement to recovery by Plaintiff and the other Class Members in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Order, and California Labor Code section 226.7.

FIFTH CAUSE OF ACTION

Failure to Provide Meal Periods and Pay Missed Meal Period Premiums

(Against All Defendants)

110. Plaintiff realleges and incorporates by reference all previous paragraphs.

111. Plaintiff is informed and believes and thereon alleges, that Defendants failed in their affirmative obligation to provide their hourly non-exempt employees, including Plaintiff and the other Class Members, with all required meal periods in accordance with the mandates of the Labor Code and the Applicable Wage Order, for the reasons set forth herein above. Despite Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiff and the other Class Members at their respective regular rates of pay for each violation, in accordance with California Labor Code section 226.7.

112. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Order and Labor Code sections 226.7 and 512, and Civil Code sections 3287, subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, § 11050.)

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1 subsequent violation, plus 25% of the amount unlawfully withheld.

2 119. Labor Code section 216 establishes that it is a misdemeanor for any person, with regards
3 to wages due, to “falsely deny the amount or validity thereof, or that the same is due, with intent to
4 secure himself, his employer or other person, any discount upon such indebtedness, or with intent to
5 annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.”

6 120. Defendants as a matter of established company policy and procedure in the State of
7 California, scheduled, required, suffered, and/or permitted Plaintiff and the other Class Members, to
8 work without full compensation, to work without legally-compliant off-duty meal periods, to work
9 without legally-compliant off-duty rest periods, and thereby failed to fully pay Plaintiff and the other
10 Class Members within seven days of the close of payroll, as required by law.

11 121. Defendants, as a matter of established company policy and procedure in the State of
12 California, falsely deny they owe Plaintiff and the other Class Members these wages, with the intent of
13 securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay,
14 and/or defraud Plaintiff and the other Class Members.

15 122. Defendants’ pattern, practice, and uniform administration of its corporate policy of
16 illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff and
17 the other Class Members to recover, pursuant to Labor Code section 218, the unpaid balance of the
18 compensation owed to them in a civil action and any applicable penalties, attorney fees, and interest
19 owed to them pursuant to Labor Code sections 210 and 218.5.

20 **EIGHTH CAUSE OF ACTION**

21 *Failure to Pay All Wages Earned and Unpaid at Separation*

22 *(Against All Defendants)*

23 123. Plaintiff realleges and incorporates by reference all previous paragraphs.

24 124. The actionable period for this cause of action is three years prior to the filing of this
25 complaint through the present, and ongoing until the violations are corrected or the class is certified.
26 (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth Cole Productions,*
27 *Inc.* (2007) 40 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a).) Labor Code sections 201 and
28 202 of the California Labor Code require Defendants to pay all compensation due and owing to its

1 former employees (including the formerly-employed Class Members) during the actionable period for
2 this cause of action at or around the time that their employment is or was terminated, or ended.

3 125. Section 203 of the Labor Code provides that if an employer willfully fails to pay
4 compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the
5 employer is liable for penalties in the form of continued compensation up to thirty workdays.

6 126. Due to Defendants' faulty pay policies, those Class Members whose employment with
7 Defendants has concluded were not compensated for each and every hour worked at the appropriate
8 rate. Defendants have willfully failed to pay those formerly-employed Class Members whose sums
9 were certain at the time of termination within seventy-two hours of their resignation and have failed to
10 pay those sums for thirty days thereafter as required by Labor Code sections 201 through 203.

11 127. As a result, Defendants are liable to the formerly-employed Class Members for waiting
12 time penalties amounting to thirty days wages for the formerly-employed Class Members pursuant to
13 Labor Code section 203. (See, e.g., DLSE Manual, § 4.3.4 [failure to pay any sort of wages due upon
14 termination entitles an employee to recover waiting time penalties].)

15 **NINTH CAUSE OF ACTION**

16 *Failure to Indemnify All Necessary Business Expenditures*

17 *(Against All Defendants)*

18 128. Plaintiff realleges and incorporates by reference all previous paragraphs.

19 129. California Labor Code Section 2802 states that employers must "indemnify" an
20 employee for "all necessary expenditures or losses incurred by the employee in direct consequence of
21 the discharge of his or her duties, or of his or her obedience to the directions of the employer."
22 Likewise, Labor Code section 2804 states that "any contract or agreement, express or implied, made
23 by any employee to waive the benefits of this article or any part thereof, is null and void, and this article
24 shall not deprive any employee or his personal representative of any right or remedy to which he is
25 entitled under the laws of this State."

26 130. Here, Plaintiff and the other Class Members paid out of pocket for necessary business
27 expenditures incurred as a direct consequence and requirement of performing their job duties, including
28 the costs associated with their personal cell phone they required to perform their work. Despite

1 knowing that Plaintiff and the other Class Members incurred these necessary business expenses, and
2 requiring Plaintiff and the other Class Members to use such items, Defendants did not reimburse them.

3 131. Thus, Plaintiff and the other Class Members are entitled to recover the cost of such
4 necessary business expenses, plus interest from the date each incurred such business expenses, plus
5 fees and costs. (Lab. Code, § 2802, subds. (b), (c).)

6 **TENTH CAUSE OF ACTION**

7 *Failure to Furnish Accurate Itemized Wage Statements*

8 *(Against All Defendants)*

9 132. Plaintiff realleges and incorporates by reference all previous paragraphs.

10 133. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the
11 time of each payment to furnish an itemized wage statement in writing showing:

- 12 (1) The gross wages earned;
- 13 (2) The total hours worked by the employee;
- 14 (3) The number of piece-rate units earned and any applicable piece
15 rate if the employee is paid on a piece rate basis;
- 16 (4) All deductions, provided that all deductions made on written
17 orders of the employee may be aggregated and shown as one item;
- 18 (5) The net wages earned;
- 19 (6) The inclusive dates of the period for which the employee is paid;
- 20 (7) The name of the employee and only the last four digits of his or
21 her social security number or an employee identification number other
22 than a social security number;
- 23 (8) The name and address of the legal entity that is the employer; and
- 24 (9) All applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each hourly rate by the
26 employee.

27 134. As set forth above, Defendants issued and continues to issue wage statements to its non-
28 exempt employees including Plaintiff and the other Class Members that are inadequate under Labor

1 Code section 226, subdivision (a). By failing to pay Plaintiff and the other Class Members properly as
2 described above, Defendants failed to include required information on their wage statements, including,
3 but not limited to, the gross wages earned, the net wages earned in violation of Labor Code section
4 226, subdivision (a).

5 135. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the
6 Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

7 136. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff
8 and the other Class Members in violation of Labor Code section 226, subdivision (a), Plaintiff and the
9 other Class Members are each entitled to recover an initial penalty of \$50, and subsequent penalties of
10 \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per each Class
11 Member from Defendants pursuant to Labor Code section 226, subdivision (e), along with costs and
12 reasonable attorneys' fees.

13 **ELEVENTH CAUSE OF ACTION**

14 *Violations of California's Unfair Competition Law*

15 *(Against All Defendants)*

16 137. Plaintiff realleges and incorporates by reference all previous paragraphs.

17 138. Defendants have engaged and continue to engage in unfair and/or unlawful business
18 practices in California in violation of California Business and Professions Code section 17200 through
19 17210, by committing the unlawful acts described above. Defendants' utilization of these unfair and
20 unlawful business practices deprived and continue to deprive Plaintiff and the other Class Members of
21 compensation to which they are legally entitled. These practices constitute unfair and unlawful
22 competition and provide an unfair advantage over Defendants' competitors who have been and/or are
23 currently employing workers and attempting to do so in honest compliance with applicable wage and
24 hour laws.

25 139. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct alleged herein,
26 Plaintiff for himself and on behalf of the Class Members, seeks full restitution of monies, as necessary
27 and according to proof, to restore any and all monies withheld, acquired and/or converted by
28 Defendants pursuant to Business and Professions Code sections 17203 and 17208.

1 140. The acts complained of herein occurred within the four years prior to the initiation of
2 this action and are continuing into the present and ongoing.

3 141. Plaintiff was compelled to retain the services of counsel to file this Court action to
4 protect his interests and those of the Class Members, to obtain restitution and injunctive relief on behalf
5 of Defendants' current non-exempt employees and to enforce important rights affecting the public
6 interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which Plaintiff
7 is entitled to recover under Code of Civil Procedure section 1021.5.

8 **TWELFTH CAUSE OF ACTION**

9 *Violations of the Fair Credit Reporting Act*

10 *(Against All Defendants)*

11 142. Plaintiff realleges and incorporates by reference all previous paragraphs.

12 143. Defendants, and each of them, are a "person" as defined by section 1681a(b) of the
13 FCRA.

14 144. Plaintiff and the Class Members are "consumers" within the meaning of section
15 1681a(c) of the FCRA because they are "individuals."

16 145. Section 1681b(b)(2)(A) of the FCRA provides, in relevant part:

17 (b) Conditions for furnishing and using consumer reports for employment purposes...

18 (2) Disclosure to consumer

19 (A) In general

20 Except as provided in subparagraph (B), a person may not procure a consumer
report, or cause a consumer report to be procured, for employment purposes with
respect to any consumer, unless-

21 (i) ***a clear and conspicuous disclosure*** has been made in writing to
the consumer at any time before the report is procured or caused to
22 be procured, ***in a document that consists solely*** of the disclosure,
that a consumer report may be obtained for employment purposes;
23 and

24 (ii) the consumer has authorized in writing (which authorization may
be made on the document referred to in clause (i)) the procurement
25 of the report by that person. [emphasis added]

26 146. As alleged above, Defendants violated section 1681b(b)(2)(A)(i) of the FCRA by failing
27 to provide Plaintiff and Class Members with a clear and conspicuous written disclosure before a
28 consumer report is procured, or caused to be procured, that a consumer report may be obtained for

1 employment purposes in a document that consists solely of the disclosure. As a result of Defendants'
2 noncompliant disclosure, Defendants also violated 1681b(b)(2)(A)(ii) because Defendants failed to
3 obtain valid authorizations from Plaintiff and the Class Members for the procurement of consumer
4 reports.

5 147. Based upon the facts likely to have evidentiary support after a reasonable opportunity
6 for further investigation and discovery, Defendants have policies and practices of failing to provide
7 adequate written disclosures to applicants and employees before procuring consumer reports or causing
8 consumer reports to be procured. Pursuant to these policies and practices, Defendants procured
9 consumer reports or caused consumer reports to be procured for Plaintiff and Class Members without
10 first providing a written disclosure in compliance with section 1681b(b)(2)(A)(i) of the FCRA or
11 obtaining a valid written authorization in compliance with 1681b(b)(2)(A)(ii) of the FCRA.

12 148. As alleged above, Defendants' conduct in violation of section 1681b(b)(2)(A) of the
13 FCRA was and is willful in that Defendants acted in deliberate or reckless disregard of the obligations
14 and the rights of applicants and employees, including Plaintiff and Class Members.

15 149. As a result of Defendants' illegal procurement of background reports by way of its
16 inadequate disclosures, as set forth above, Plaintiff and Class Members have been injured, including,
17 but not limited to, having their privacy and statutory rights invaded in violation of the FCRA.

18 150. Plaintiff, on behalf of himself and all Class Members, seeks all available remedies
19 pursuant to 15 U.S.C. § 1681n, including statutory damages and/or actual damages, punitive damages,
20 injunctive and equitable relief, and attorneys' fees and costs.

21 151. In the alternative to Plaintiff's allegation that these violations were willful, Plaintiff
22 alleges that the violations were negligent and seeks the appropriate remedy, if any, under 15 U.S.C. §
23 1681(b).

24 **THIRTEENTH CAUSE OF ACTION**

25 *Violations of the Investigative Consumer Reporting Act*

26 *(Against All Defendants)*

27 152. Plaintiff realleges and incorporates by reference all previous paragraphs.

28 153. Defendant(s) is and are "person(s)" as defined by Cal. Civ. Code § 1786.2(a).

1 154. Section 1786.2(c) of the ICRAA defines “investigative consumer report” as “a
2 consumer report in which information on a consumer’s character, general reputation, personal
3 characteristics, or mode of living is obtained through any means.”

4 155. Section 1786.2(d) of the ICRAA defines “investigative consumer reporting agency” as
5 “any person who, for monetary fees or dues, engages in whole or in part in the practice of collecting,
6 assembling, evaluating, compiling, reporting, transmitting, transferring, or communicating information
7 concerning consumers for the purposes of furnishing investigative consumer reports to third parties,
8 but does not include any governmental agency whose records are maintained primarily for traffic
9 safety, law enforcement, or licensing purposes, or any licensed insurance agent, insurance broker, or
10 solicitor, insurer, or life insurance agent.”

11 156. Section 1786.16(a)(2)(B)(i)-(iv) of the ICRAA provides in relevant part as follows:

12 (2) If, at any time, an investigative consumer report is sought for employment purposes
13 other than suspicion of wrongdoing or misconduct by the subject of the investigation,
14 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:..

15 (B) The person procuring or causing the report to be made provides a **clear**
16 **and conspicuous disclosure** in writing to the consumer at any time before the
report is procured or caused to be made in a document that consists
solely of the disclosure, that: ...

17 (i) An investigative consumer report may be obtained.

18 (ii) **The permissible purpose of the report** is identified.

19 (iii) The disclosure may include information on the consumer’s character,
20 general reputation, personal characteristics, and mode of living.

21 (iv) Identifies the **name, address, and telephone number of the investigative**
consumer reporting agency conducting the investigation. [emphasis added]

22 157. Because Defendants’ purported disclosures are embedded with extraneous information
23 and are not clear and unambiguous disclosures in stand-alone documents, they do not meet the
24 requirements under the law.

25 158. Under the ICRAA, it is unlawful to procure or caused to be procured, a consumer report
26 or investigative consumer report for employment purposes unless the disclosure is made in a document
27 that consists solely of the disclosure and the consumer has authorized, in writing, the procurement of
28 the report. Cal. Civ. Code § 1786.16(a)(2)(B)-(C). The inclusion of the release language and other

1 extraneous information therefore violates section 1786.16(a)(2)(B) of the ICRAA.

2 159. The plain language of the statute clearly indicates that the inclusion of a liability release
3 in a disclosure form violates the disclosure and authorization requirements of the ICRAA because such
4 a form would not consist “solely” of the disclosure.

5 160. By including the release language and other extraneous information, Defendants
6 willfully violated section 1786.16(a)(2)(B) of the ICRAA. Additionally, the inclusion of the extraneous
7 provisions causes the disclosure to fail to be “clear and conspicuous” and thus violates section
8 1786.16(a)(2)(B).

9 161. The purported disclosures are further defective in neglecting to identify a permissible
10 purpose, *see, e.g.*, Labor Code § 1024.5, and failing to provide the name and contact information for
11 the consumer reporting agency procuring the investigative consumer report in violation of section
12 1786.16(a)(2)(B)(ii) and (iv).

13 162. Based upon facts that are likely to have evidentiary support after a reasonable
14 opportunity for investigation and discovery, Plaintiff alleges that Defendants have a policy and practice
15 of failing to provide adequate written disclosure to applicants and employees, before procuring
16 background checks or causing background checks to be procured, as described above. Pursuant to that
17 policy and practice, Defendants procured background checks, or caused background checks to be
18 procured, for Plaintiff and the Class Members without first providing a written disclosure in compliance
19 with section 1786.16(a)(2)(B) of the ICRAA, as described above.

20 163. Defendants’ conduct in violation of Section 1786.16(a)(2)(B) of the ICRAA was and is
21 willful and/or grossly negligent. Defendants acted in deliberate or reckless disregard of their obligations
22 and the rights of applicants and employees, including Plaintiff and Class Members. Defendants’ willful
23 conduct is reflected by, among other things, the following facts:

- 24 (a) Defendant(s) is and are large corporation(s) with access to legal advice;
- 25 (b) Defendants required a purported authorization to perform credit and background checks
26 in the process of employing the Class Members which, although defective, evidences
27 Defendants’ awareness of and willful failure to follow the governing laws concerning
28 such authorizations; and

1 (c) The plain language of the statute unambiguously indicates that inclusion of a liability
2 release and other extraneous information in a disclosure form violates the disclosure and
3 authorization requirements, that the permissible purpose of the report must be identified,
4 and that the disclosure form must contain the name, address, and phone number of the
5 investigative consumer reporting agency conducting the investigation.

6 164. As a result of Defendants' illegal procurement of background reports by way of their
7 inadequate disclosures, as set forth above, Plaintiff and class members have been injured including, but
8 not limited to, having their privacy and statutory rights invaded in violation of the ICRAA.

9 165. Plaintiff, on behalf of himself and all Class Members, seeks all available remedies
10 pursuant to Civil Code section 1786.50, including statutory damages and/or actual damages, punitive
11 damages, and attorneys' fees and costs. In the alternative to Plaintiffs allegation that these violations
12 were willful or grossly negligent, Plaintiff alleges that the violations were negligent and seeks the
13 appropriate remedy, if any, under Civil Code section 1786.50(a), including actual damages and
14 attorneys' fees and costs.

15 **FOURTEENTH CAUSE OF ACTION**

16 *Violations of the Consumer Credit Reporting Agencies Act*

17 *(Against All Defendants)*

18 166. Plaintiff realleges and incorporates by reference all previous paragraphs.

19 167. Defendant(s) is and are "person(s)" as defined by section 1785.3(j) of the Consumer
20 Credit Reporting Agencies Act ("CCRAA").

21 168. Plaintiff and the Class Members are "consumers" within the meaning of section
22 1785.3(b) of the CCRAA, because they are "natural individuals."

23 169. Section 1785.3(c) of the CCRAA defines "consumer credit report" as:
24 Any written, oral, or other communication of any information by a consumer credit
25 reporting agency bearing on a consumer's credit worthiness, credit standing, or credit
26 capacity, which is used or is expected to be used, or collected in whole or in part, for
the purpose of serving as a factor in establishing the consumer's eligibility for:...(2)
employment purposes...

27 Thus, the at-issue consumer reports procured by Defendants on Plaintiff and Class Members qualifies
28 as a consumer credit report under the CCRAA.

170. Section 1785.20.5(a) of the CCRAA provides, in relevant part:

Prior to requesting a consumer credit report for employment purposes, the user of the report shall provide written notice to the person involved. The notice shall inform the person that a report will be used, and ***shall identify the specific basis under subdivision (a) of Section 1024.5 of the Labor Code for use of the report*** The notice shall also ***inform the person of the source of the report...***[emphasis added]

171. As described above, Plaintiff alleges that in evaluating her and other Class Members for employment, Defendants procured or caused to be prepared consumer credit reports as defined by section 1785.3(c).

172. The disclosure provided by Defendants does not identify the specific basis under subdivision (a) of the section 1024.5 of the Labor Code for use of the credit report. Plaintiff alleges that, in fact, there is no permissible purpose under section 1024.5 of the Labor Code which allows Defendants to procure, or cause to be prepared, a consumer credit report on Plaintiff and Class Members. This omission clearly violates section 1785.20.5(a) of the CCRAA, as delineated above.

173. Based upon facts that are likely to have evidentiary support after a reasonable opportunity for investigation and discovery, Plaintiff alleges that Defendants have a policy and practice of failing to provide adequate written disclosures to applicants and employees, before procuring credit reports or causing credit reports to be procured, as described above. Pursuant to that policy and practice. Defendants procured credit reports or caused credit reports to be procured for Plaintiff and the Class Members without first providing a written notice in compliance with Section 1785.20.5(a) of the CCRAA, as described above.

174. Defendants' conduct in violation of Section 1785.20.5(a) of the CCRAA was and is willful and/or grossly negligent. Defendants acted in deliberate or reckless disregard of their obligations and the rights of applicants and employees, including Plaintiff and the Class Members. Defendants' willful conduct is reflected by, among other things, the following facts:

- (a) Defendant(s) is and are large corporation(s) with access to legal advice;
- (b) Defendants required a purported authorization to perform credit and background checks in the process of employing the Class Members which, although defective, evidences Defendants' awareness of and willful failure to follow the governing laws concerning

1 such authorizations; and

2 (c) The plain language of the statute unambiguously indicates that failure to include the
3 provisions identified above violate the CCRAA's notice requirements, and that the
4 notice must identify the specific basis under subdivision (a) of section 1024.5 of the
5 Labor Code for use of the credit report and must identify the source of any credit report.

6 175. As a result of Defendants' illegal procurement of credit reports by way of their
7 inadequate notice, as set forth above, Plaintiff and the Class Members have been injured including, but
8 not limited to, having their privacy and statutory rights invaded in violation of the CCRAA.

9 176. Plaintiff, on behalf of herself and all Class Members, seeks all available remedies
10 pursuant to Civil Code section 1785.31, including statutory damages and/or actual damages, punitive
11 damages, injunctive relief, and attorneys' fees and costs.

12 177. In the alternative to Plaintiff's allegations that these violations were willful, Plaintiff
13 alleges that the violations were negligent and seeks the appropriate remedy, if any, under Civil Code
14 section 1785.31(a)(1), including but not limited to actual damages and attorneys' fees and costs.

15 **FIFTEENTH CAUSE OF ACTION**

16 *Penalties Pursuant to the California Private Attorneys General Act of 2004 ("PAGA") and Other*
17 *Provisions of the California Labor Code*

18 *(Plaintiff and the Aggrieved Employees Against All Defendants)*

19 178. Plaintiff realleges and incorporates by reference all previous paragraphs.

20 179. Based on the above allegations incorporated by reference, Defendants violated
21 California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 256, 510, 512, 1174, 1185,
22 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2084, and others that may be applicable;
23 California Business and Professions Code sections 17200 through 17210 ("UCL"); and the Applicable
24 Wage Orders (Cal. Code of Regs., tit. 8, §§ 11050). As a result of the acts alleged above, Plaintiff seeks
25 penalties under California Labor Code §§ 2698–2699.6 because of Defendants' violation of the
26 California Labor Code and applicable IWC Wage Orders.

27 180. Under California Labor Code §§ 2699(f)(2) and 2699.5, for each such violation,
28 Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time

1 of trial subject to the following formula:

2 A. \$100 for the initial violation per employee per pay period; and

3 B. \$200 for each subsequent violation per employee per pay period.

4 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce Development
5 Agency (LWDA) and twenty-five percent (25%) to the affected employees. These penalties may be
6 stacked separately for each of Defendants violations of the California Labor Code. *See e.g. Hernandez*
7 *v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S.Dist. LEXIS 86975, at *59, fn. 77
8 (C.D.Cal. June 22, 2012) (holding that although the plaintiff did not seek stacked PAGA penalties, that
9 “PAGA penalties can be ‘stacked,’ *i.e.*, multiple PAGA penalties can be assessed for the same pay
10 period for different Labor Code violations.”); *See Lopez v. Friant & Assocs., LLC*, No. A148849, 2017
11 Cal. App. LEXIS 839, at *1 (Ct. App. Sep. 26, 2017) (“hold[ing] a plaintiff seeking civil penalties
12 under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the ‘injury’ and
13 ‘knowing and intentional’ requirements of section 226(e)(1) and acknowledging that a Plaintiff could
14 recover separately under PAGA for violations of Labor Code §§ 226(a) and 226(e)).

15 181. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and all
16 aggrieved employees with accurate itemized wage statements in compliance with Labor Code § 226(a).
17 Plaintiffs seek separate PAGA penalties for Defendants’ violations of Labor Code §§ 226(a) and
18 226(e).

19 182. For violations of Labor Code § 226(a), Plaintiffs seek the default penalty provided by
20 Labor Code § 226.3. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a)
21 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
22 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each
23 violation in a subsequent citation, for which the employer fails to provide the employee a wage
24 deduction statement or fails to keep the required in subdivision (a) of Section 226.” Accordingly,
25 through PAGA and to the extent permitted by law Plaintiff and the Aggrieved Employees are entitled
26 to recover penalties for violations of Labor Code § 226.3 and seeks default PAGA penalties for each
27 of Defendants’ numerous violations of Labor Code § 226(e).

28 ///

1 183. Further, Plaintiff, as an Aggrieved Employee, need not demonstrate or prove that
2 Defendants' conduct in refusing to provide accurate and itemized wage statements was knowing,
3 intentional, or willful.

4 184. Labor Code § 210 provides that "in addition to, and entirely independent and apart from,
5 any other penalty provided in this article, every person who fails to pay the wages of each employee as
6 provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation,
7 one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation,
8 or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
9 employee, plus 25% of the amount unlawfully withheld." As a result of the faulty compensation
10 policies and practices described in detail above, Plaintiff and the other Aggrieved Employees are
11 entitled to recover penalties under Labor Code § 210 through PAGA.

12 185. Plaintiff has complied with the procedures for bringing suit specified in California Labor
13 Code § 2699.3. and will have fully exhausted his administrative remedies under PAGA prior to
14 proceeding with the PAGA claim. On or about November 29, 2021, Plaintiff filed his PAGA Notice
15 online with the Labor Workforce Development Agency ("LWDA") and sent a letter by certified mail
16 to Defendant setting forth the facts and theories of the violations alleged against Defendant, as
17 prescribed by Labor Code § 2698 *et seq.* As required by PAGA, Plaintiff submitted the \$75.00 filing
18 fee with the LWDA by regular mail. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was and/or
19 will have been received by Plaintiff from the LWDA evidencing its intention to investigate within
20 sixty-five (65) calendar days of the postmark date of the PAGA notice. Plaintiff is therefore entitled to
21 commence and proceed with a civil action pursuant to Labor Code § 2699.

22 **VII. DEMAND FOR JURY TRIAL**

23 186. Plaintiff hereby demands trial by jury of Plaintiff's and the Class Members' claims
24 against Defendants.

25 **VIII. PRAYER FOR RELIEF**

26 Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought
27 against Defendants, as follows:

- 28 1. For an order certifying the proposed class;

2. For an order appointing Plaintiff as representative of the class;
3. For an order appointing Plaintiff's counsel as counsel for the class;
4. For the failure to pay all minimum wages, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code sections 1194, 1194.2, 1197, and others as may be applicable;
5. For the failure to pay all overtime wages, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code sections 204, 510, 1194, 1198, and others as may be applicable;
6. For the failure to pay all accrued vacation, compensatory damages in the amount of the unpaid vacation accrued and owed, as may be proven;
7. For the failure to provide rest periods and pay missed rest period premiums, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code section 226.7;
8. For the failure to provide meal periods and pay missed meal period premiums, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code sections 226.7 and 512;
9. For the failure to maintain accurate employment records, penalties pursuant to Labor Code sections 226.3, 1174.5, and others that may be applicable;
10. For the failure to pay wages timely during employment, the unpaid balance of the compensation owed to Plaintiff and the other Class Members and any applicable penalties owed to them pursuant to Labor Code section 210;
11. For the failure to pay all wages earned and unpaid at separation, statutory waiting time penalties pursuant to Labor Code sections 201 through 203, for the Class Members who quit or were fired in an amount equal to their daily wage multiplied by thirty days, as may be proven;
12. For the failure to indemnify all necessary business expenditures, all unreimbursed business expenses, and interest thereon, that are owed, pursuant to Labor Code section 2802, and attorney fees, pursuant to Labor Code section 2802, subdivision (c);

- 1 13. For the violations of California's Unfair Competition Law, restitution to Plaintiff and the other
2 Class Members of all money and/or property unlawfully acquired by Defendants by means of
3 any acts or practices declared by this Court to be in violation of Business and Professions Code
4 sections 17200 through 17210;
- 5 14. For the violations of 15 U.S.C. § 1681b(b)(2)(A), all statutory damages, including reasonable
6 attorneys' fees and costs of suit;
- 7 15. For the violations of Cal. Civ. Code §§ 1786.2 and 1786.16, all statutory damages, including
8 reasonable attorneys' fees and costs of suit;
- 9 16. For the violations of Cal. Civ. Code §§ 1785 *et seq.*, all statutory damages, including reasonable
10 attorneys' fees and costs of suit;
- 11 17. For the claim of penalties pursuant to PAGA and other provisions of the California Labor Code,
12 a civil penalty in the amount of \$100 for the initial violation and \$200 for each subsequent
13 violation as specified in Labor Code section 2699, subdivision (f)(2), in the representative
14 action brought on behalf of Plaintiff and the Aggrieved Employees pursuant the Labor Code
15 Private Attorneys General Act of 2004, and for civil penalties available under Labor Code
16 section 210;
- 17 18. Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6 and
18 Civil Code sections 3287 and 3289;
- 19 19. On all causes of action for which attorneys' fees may be available, for attorneys' fees and costs
20 as provided by Labor Code sections 218.5, 226, Code of Civil Procedure section 1021.5, and
21 others as may be applicable;
- 22 20. For an order enjoining Defendants, and each of them, and their agents, servants, and
23 employees, and all persons acting under, in concert with, or for them, from acting in derogation
24 of any rights or duties adumbrated in this complaint; and

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1 21. For such other and further relief, this Court may deem just and proper.

2
3 Dated: November 17, 2022

MELMED LAW GROUP P.C.

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5 

JONATHAN MELMED

6 Attorney for Plaintiff and the Putative Class
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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF SONOMA

I am over the age of 18 years and am employed in the county of Los Angeles, State of California. I am not a party to this action. My business address is 1801 Century Park East, Suite 850, Los Angeles, CA 90067.

I declare that on the date hereof, November 17, 2022, I served the foregoing document(s) described as:

- **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

By causing a true copy thereof to be served on the following parties and/or individuals:

Jennifer M. Holly
jholly@grsm.com
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[XX] BY ELECTRONIC TRANSMISSION. Pursuant to CCP section 1010.6(e), I caused such document to be served on this date by electronic transmission in accordance with standard procedures and to the email address listed. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 17, 2022, in Los Angeles, California.


Alma Hernandez