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

CRAIG L. JOHNSON, individually, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

KDF FORESTRY INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case Number: 34-2021-00311528-CU-OE-GDS

CLASS AND PAGA REPRESENTATIVE
ACTION

**THIRD AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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.*)

Plaintiffs Craig L. Johnson (“Johnson”), Jeremy Nicholas Riggi (“Riggi”) and Edgar Villasenor (“Villasenor”) (collectively, “Plaintiffs”), on behalf of themselves, 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 10 (collectively, “Defendants”), and each of them, as follows:

1 **I. INTRODUCTION**

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

4 2. The “Class Period” as used herein, is defined as the period from November 29, 2017
5 through August 25, 2023. Defendants’ violations of California’s laws as described more fully below
6 have been ongoing throughout the Class Period and are still ongoing.

7 3. Plaintiffs brings this class action on behalf of themselves and the following class: All
8 non-exempt employees of Defendants who worked in California during the Class Period (the “Class
9 Members”). (Code Civ. Proc., § 382.)

10 4. Plaintiffs brings this action on behalf of themselves and the Class Members, as a class
11 action, against Defendants for:

12 A. Failure to pay all minimum wages,

13 B. Failure to pay all overtime wages,

14 C. Failure to pay accrued vacation wages,

15 D. Failure to provide rest periods and pay missed rest period premiums,

16 E. Failure to provide meal periods and pay missed meal period premiums,

17 F. Failure to maintain accurate employment records,

18 G. Failure to pay wages timely during employment,

19 H. Failure to pay all wages earned and unpaid at separation,

20 I. Failure to indemnify all necessary business expenditures,

21 J. Failure to furnish accurate itemized wage statements,

22 K. Violations of the Fair Credit Reporting Act, and

23 L. Violations of California’s Unfair Competition Law (“UCL”) (Bus. & Prof.
24 Code, §§ 17200–17210).

25 5. This action is also a representative action brought pursuant to the California Labor Code
26 Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor Code sections 2698
27 through 2699.6.
28

1 6. The “PAGA Period” as used herein, is defined as the period from November 16, 2020
2 through August 25, 2023.

3 7. This PAGA action is brought on behalf of Plaintiffs, the State of California as private
4 attorney general, and on behalf of the following aggrieved employees: *All non-exempt employees of*
5 *Defendants who worked in California during the PAGA Period* (the “Aggrieved Employees”).

6 8. Plaintiffs are informed and believe and thereon allege that the California Industrial
7 Welfare Commission (“IWC”) Wage Order applicable to the facts of this case is IWC Wage Order 5-
8 2001 (the “Applicable Wage Order”) and possibly others that may be applicable. (Cal. Code of Regs.,
9 tit. 8, § 11050.) Plaintiffs reserve the right to amend or modify the definition of “Applicable Wage
10 Order” with greater specificity or add additional IWC Wage Orders if additional applicable wage orders
11 are discovered in litigation.

12 **II. JURISDICTION & VENUE**

13 9. This Court has jurisdiction over all causes of action asserted herein pursuant to the
14 California Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in
15 all cases except those given to other trial courts. All claims alleged herein arise under California law
16 for which Plaintiffs seek relief authorized by California law. Further, the penalties and other relief
17 sought by Plaintiffs exceed the minimal jurisdictional limits of the Superior Court and will be
18 established according to proof at trial.

19 10. This Court has jurisdiction over all Defendants because each Defendant is a citizen of
20 California, a corporation or association organized under the laws of the State of California, an
21 association authorized to do business in California and registered with the California Secretary of State,
22 does sufficient business in California, has sufficient minimum contacts with California, and/or
23 intentionally avails itself of the laws and markets of California through the promotion, sale, marketing
24 and distribution of its products and/or services in California to render the exercise of jurisdiction by
25 the California courts permissible.

26 11. Venue in Sacramento County is proper under California Business & Professions Code
27 Section 17203 and California Code of Civil Procedure Section 395.5 because a substantial part of
28 Defendants’ unlawful conduct, acts, and omissions alleged herein occurred in this County, Defendants

1 had and have ongoing projects in this County, Defendants conduct substantial business in this County,
2 Defendants' liability arose in this County, and/or Defendants reside, transact business, maintain offices,
3 and/or have an agent or agents in this County. The relief requested is within the jurisdiction of this
4 Court.

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

11 **III. THE PARTIES**

12 **A. PLAINTIFFS**

13 13. Johnson is a California resident that worked for Defendants in the State of California,
14 as a consulting utility forester from approximately July 19, 2021 to October 10, 2021, primarily in El
15 Dorado County. During the statutory time period, Defendants classified Johnson as non-exempt from
16 overtime, and Johnson typically worked 5 days per week, and in excess of 8 hours each workday.

17 14. Riggi is a California resident that worked for Defendants in the State of California, as a
18 consulting utility forester from approximately July 19, 2021 to October 9, 2021 in different counties of
19 California, including Sacramento, Pacer, Shasta, Sonoma, Humboldt counties. During the statutory
20 time period, Defendants classified Riggi as non-exempt from overtime, and Riggi typically worked 5
21 days per week, and in excess of 8 hours each workday.

22 15. Villasenor is a California resident that worked for Defendants in the State of California,
23 as a Foreman primarily in Sonoma County. During the statutory time period, Defendants classified
24 Villasenor as non-exempt from overtime, and Villasenor typically worked 5 days per week, and in
25 excess of 8 hours each workday.

26 16. Plaintiffs brings this action on behalf of themselves and the following class pursuant to
27 section 382 of the Code of Civil Procedure as follows: *All non-exempt employees of Defendants who*
28 *worked in California during the Class Period* (the "Class Members").

1 17. The Class Members, at all times pertinent hereto, are or were employees of Defendants
2 during the relevant statutory period.

3 18. Plaintiffs reserve the right to seek leave to amend this Third Amended Complaint to add
4 new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
5 *American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

6 **B. DEFENDANTS**

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

16 20. Plaintiffs are informed and believe, and based thereon alleges, that during the Class
17 Period, Defendants did (and continue to do) business in the State of California, County of Sacramento.

18 21. Plaintiffs do not know the true names or capacities, whether individual, partner, or
19 corporate, of the defendants sued herein as Does 1 to 10, inclusive, and for that reason, said defendants
20 are sued under such fictitious names, and Plaintiffs will seek leave from this Court to amend this
21 complaint when such true names and capacities are discovered. Plaintiffs are informed, and believe,
22 and thereon allege, that each of said fictitious defendants, whether individual, partners, or corporate,
23 were responsible in some manner for the acts and omissions alleged herein, and proximately caused
24 Plaintiffs, the other Class Members, and the other Aggrieved Employees to be subject to the unlawful
25 employment practices, wrongs, injuries, and damages complained of herein.

26 22. Plaintiffs are informed, and believe, and thereon allege, that at all times mentioned
27 herein, Defendants were and/or are the employers of Plaintiffs, 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 23. 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, Plaintiffs are informed,
9 and believe, and thereon allege, that all Defendants were joint employers for all purposes of Plaintiffs,
10 the Class Members, and the Aggrieved Employees.

11 **IV. COMMON FACTS & ALLEGATIONS**

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

14 25. 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 26. Specifically, Plaintiffs were employed by Defendants within the statutory Class Period,
18 working as hourly, non-exempt employees for Defendants. Plaintiffs typically worked 5 days per week,
19 and in excess of 8 hours each workday.

20 **A. MINIMUM WAGE VIOLATIONS**

21 27. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed
22 by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code
23 section 1194 entitles “any employee receiving less than the legal minimum wage . . . to recover in a
24 civil action the unpaid balance of the full amount of this minimum wage.” Likewise, the Applicable
25 Wage Order also obligates employers to pay each employee minimum wages for all hours worked.
26 (Cal. Code of Regs., tit. 8, § 11050.) Labor Code section 1198 makes unlawful the employment of an
27 employee under conditions that the IWC Wage Orders prohibit.
28

1 28. These minimum wage standards apply to each hour that employees work. Therefore,
2 an employer's failure to pay for any particular time worked by an employee is unlawful, even if
3 averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage
4 above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

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

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

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

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

25 (1) “For any initial violation that is intentionally committed, one
26 hundred dollars (\$100) for each underpaid employee for each pay period
27 for which the employee is underpaid.”
28

(2) “For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.” (Lab. Code, § 1197.1, subd. (a).)

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

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

B. OVERTIME VIOLATIONS

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

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

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

38. These actions were and are in clear violation of California’s overtime laws as set forth in Labor Code sections 510, 1194, 1199, and the Applicable Wage Order. (Cal. Code of Regs., tit. 8,

1 § 11050.) As a result of Defendants’ faulty policies and practices, the Class Members were not
2 compensated for all hours worked or paid accurate overtime compensation.

3 **C. UNPAID ACCRUED VACATION TIME**

4 39. California Labor Code section 227.3 states that:

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

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

16 41. Here, Defendants had a vacation policy, and Plaintiffs, the Class Members, and the
17 Aggrieved Employees had completed all prerequisites and/or necessary limitations of service required
18 by Defendants’ vacation policy to accumulate vested vacation pay. Despite that fact, Plaintiffs, the
19 Class Members, and the Aggrieved Employees were denied all accrued but unused vacation time at
20 termination in violation of California law.

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

23 **D. REST BREAK VIOLATIONS**

24 43. Pursuant to Labor Code section 226.7 and the Applicable Wage Order, Defendants were
25 and are required to provide Plaintiffs, the Class Members, and the Aggrieved Employees with
26 compensated, duty-free rest periods of not less than ten minutes for every major fraction of four hours
27 worked. Under the Applicable Wage Order, an employer must authorize and permit all employees to
28

1 take ten minute duty free rest periods for every major fraction of four hours worked. (Cal. Code of
2 Regs., tit. 8, § 11050.)

3 44. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an
4 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
5 or applicable regulation, standard, or order of the Industrial Welfare Commission” (Lab. Code, §
6 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees
7 one additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or
8 recovery period is not provided.” (Lab. Code, § 226.7, subd. (c).) Thus, the Wage Orders set when
9 and for how long the rest period must take place and the Labor Code establishes that violations of the
10 IWC Wage Orders are unlawful and sets forth the premium pay employer must pay their employees
11 when employers fail to provide rest periods.

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

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

25 46. Here, Defendants periodically did not permit Plaintiffs, the Class Members, and the
26 Aggrieved Employees to take compliant duty-free rest breaks, free from Defendants’ control as
27 required by Labor Code section 226.7, the Applicable Wage Order, and applicable precedent. (See
28 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods

1 employers must relieve employees of all duties and relinquish control over how employees spend their
2 time.”].) At all relevant times, Plaintiffs, the Class Members, and the Aggrieved Employees were
3 periodically not provided with legally-compliant and timely rest periods of at least ten minutes for each
4 four hour work period, or major fraction thereof due to Defendants’ unlawful rest period
5 policies/practices. Plaintiffs, the Class Members, and the Aggrieved Employees were often expected
6 and required to continue working through rest periods to meet the expectations Defendants and finish
7 the workday. In some cases when Plaintiffs, the Class Members, and the Aggrieved Employees worked
8 more than ten hours in a shift, Defendants failed to authorize and/or permit a third mandated rest period.
9 As a result, Plaintiffs, the Class Members, and the Aggrieved Employees were periodically unable to
10 take compliant rest periods.

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

19 48. In addition to failing to authorize and permit compliant rest periods, Plaintiffs, the Class
20 Members, and the Aggrieved Employees were not compensated with one hour’s worth of pay at their
21 regular rate of compensation when they were not provided with a compliant rest period in accordance
22 with Labor Code section 226.7, subdivision (c). Thus, Defendants have violated Labor Code section
23 226.7 and the Applicable Wage Order.

24 49. Based on the foregoing, Plaintiffs seek to recover, on behalf of themselves and other
25 non-exempt employees, rest period premiums and penalties.

26 **E. MEAL BREAK VIOLATIONS**

27 50. Labor Code section 512 and the Applicable Wage Order require employers to provide
28 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of

1 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of
2 more than five hours per day without providing the employee with a meal period of not less than 30
3 minutes”]; Cal. Code of Regs., tit. 8, § 11050 [“No employer shall employ any person for a work
4 period of more than five (5) hours without a meal period of not less than 30 minutes”].)
5 Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-
6 minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“An employer shall not
7 employ an employee for a work period of more than 10 hours per day without providing the employee
8 with a second meal period of not less than 30 minutes”].)

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

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

27 53. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
28 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s

1 duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal
2 periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend
3 to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under
4 Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit
5 the amount of meal time called for under the law (as specified in the Labor Code and/or applicable
6 IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior*
7 *Court*, *supra*, 53 Cal.4th at p. 1033.)

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

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

27 56. Accordingly, for each day that Plaintiffs, the Class Members, and the Aggrieved
28 Employees did not receive compliant meal periods, they were and are entitled to receive meal period

1 premiums pursuant to Labor Code section 226.7 and the Applicable Wage Order. Defendants,
2 however, failed to pay Plaintiffs, the Class Members, and the Aggrieved Employees applicable meal
3 period premiums for many workdays that the employees did not receive a compliant meal period. Thus,
4 Defendants have violated Labor Code section 226.7 and the Applicable Wage Order.

5 57. Based on the foregoing, Plaintiffs seek to recover, on behalf of themselves, and other
6 non-exempt employees, meal period premiums and penalties.

7 **F. UNTIMELY WAGES DURING EMPLOYMENT**

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

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

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

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

21 60. Due to Defendants’ failure to pay Plaintiffs, the Class Members, and the Aggrieved
22 Employees the wages described above, along with rest and meal break premiums, Defendants failed to
23 timely pay Plaintiffs, the Class Members, and the Aggrieved Employees within seven calendar days
24 following the close of payroll in accordance with Labor Code section 204 on a regular and consistent
25 basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016
26 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure to pay rest period
27 premiums can support claims under Labor Code sections 203 and 204].)
28

1 **G. UNTIMELY WAGES AT SEPARATION**

2 61. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages
3 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”
4 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result
5 of Defendants’ failure to pay Plaintiffs, the Class Members, and the Aggrieved Employees for the
6 wages described above, along with rest and meal break premiums, Defendants violated and continue
7 to violate Labor Code section 203.

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

13 **H. FAILURE TO REIMBURSE BUSINESS EXPENSES**

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

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

24 65. Thus, Plaintiffs, the Class Members, and the Aggrieved Employees were and are entitled
25 to reimbursement for the expenses they incurred during the course of their duties. The duty to
26 reimburse even extends to the use of equipment the employee may already own and would be required
27 to pay for anyway. (*Cochran v. Schwan’s Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 [“The
28 threshold question in this case is this: Does an employer always have to reimburse an employee for the

1 reasonable expense of the mandatory use of a personal cell phone, or is the reimbursement obligation
2 limited to the situation in which the employee incurred an extra expense that he or she would not have
3 otherwise incurred absent the job? The answer is that reimbursement is always required. Otherwise,
4 the employer would receive a windfall because it would be passing its operating expenses on to the
5 employee.”].)

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

10 **I. WAGE STATEMENT VIOLATIONS**

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

- 15 (1) The gross wages earned;
 - 16 (2) The total hours worked by the employee;
 - 17 (3) The number of piece-rate units earned and any applicable piece
18 rate if the employee is paid on a piece rate basis;
 - 19 (4) All deductions, provided that all deductions made on written
20 orders of the employee may be aggregated and shown as one item;
 - 21 (5) The net wages earned;
 - 22 (6) The inclusive dates of the period for which the employee is paid;
 - 23 (7) The name of the employee and only the last four digits of his or
24 her social security number or an employee identification number other
25 than a social security number;
 - 26 (8) The name and address of the legal entity that is the employer; and
- 27
28

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

4 68. Due to Defendants' failure to pay Plaintiffs, the Class Members, and the Aggrieved
5 Employees properly as described above, the wage statements issued do not indicate the correct amount
6 of gross wages earned, total hours worked, or the net wages earned, or the applicable hourly rates in
7 effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus,
8 Defendants have violated Labor Code section 226, subdivisions (a)(1), (2), (5), and (9).

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

19 **J. RECORDKEEPING VIOLATIONS**

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

23 "Any employer who violates subdivision (a) of Section 226 shall be subject to a
24 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
25 violation in an initial citation and one thousand dollars (\$1,000) per employee
26 for each violation in a subsequent citation, for which the employer fails to
27 provide the employee a wage deduction statement or fails to keep the records
28 required in subdivision (a) of Section 226. The civil penalties provided for in

1 this section are in addition to any other penalty provided by law.” (Lab. Code,
2 § 226.3, emphasis added.)

3 71. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including
4 Defendants, to:

5 “Keep, at a central location in the state or at the plants or establishments at which
6 employees are employed, payroll records showing the hours worked daily by
7 and the wages paid to, and the number of piece-rate units earned by and any
8 applicable piece rate paid to, employees employed at the respective plants or
9 establishments. These records shall be kept in accordance with rules established
10 for this purpose by the commission, but in any case shall be kept on file for not
11 less than three years. An employer shall not prohibit an employee from
12 maintaining a personal record of hours worked, or, if paid on a piece-rate basis,
13 piece-rate units earned.” (Lab. Code, § 1174, subd. (d), emphasis added.)

14 72. As explained in detail above, Defendants failed to provide Plaintiffs, the Class
15 Members, and the Aggrieved Employees with accurate itemized wage statements. Defendants did so,
16 in part, because they failed to accurately track hours worked by Plaintiffs, the Class Members, and the
17 Aggrieved Employees. Defendants have thus failed to keep accurate records of the “total hours worked
18 by the employee[s]” in violation of Labor Code section 226, subdivision (a), and are therefore subject
19 to the penalties provided by Labor Code section 226.3. These penalties are “in addition to any other
20 penalty provided by law.” (Lab. Code, § 226.3.)

21 73. The failure to accurately track hours worked also resulted in a failure of Defendants to
22 keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees,
23 including Plaintiffs, the Class Members, and the Aggrieved Employees, in violation of Labor Code
24 section 1174, subdivision (d).

25 **K. FCRA VIOLATIONS**

26 74. When Plaintiffs applied for employment with Defendants, Defendants required them to
27 fill out a disclosure and authorization form to perform a background check as part of the hiring process.
28 Thereafter, Defendants procured, or caused to be procured, a background report (*i.e.*, a consumer report

1 and/or investigative consumer report, as defined by 15 U.S.C. § 1681a(d)(1)(B) and 15 U.S.C. §
2 1681a(e)), on Plaintiff.

3 75. The disclosure provided by Defendants contained extraneous and superfluous language
4 that does not consist solely of the disclosure as required by federal and state laws. Plaintiffs were
5 presented with a disclosure that was incorporated into an employment application, was not standalone,
6 and was further defective because it contained extraneous information, requested the applicant provide
7 additional information (*e.g.*, all names used and dates of use, driver's license number, date of birth, and
8 email) beyond the authorization itself, and did not indicate the permissible employment position for
9 which the consumer reports were sought.

10 76. With respect to Plaintiffs and the Class Members, Defendants violated the federal FCRA
11 and the state ICRAA by procuring, or causing to be procured, consumer reports on job applicants
12 without providing proper pre-authorization disclosures.

13 77. Under the FCRA, it is unlawful to procure or caused to be procured a consumer report¹
14 for employment purposes unless a disclosure is made to the applicant or employee in a document that
15 consists solely of the disclosure that a consumer report may be obtained for employment purposes and
16 the applicant or employee authorizes, in writing, the procurement of the report. 15 U.S.C. §
17 1681b(b)(2)(A)(i)-(ii). A similar requirement pertains under the ICRAA. *See*, Cal. Civ. Code §
18 1786.16(a)(2)(B) ("The person procuring or causing the report to be made provides a clear and
19 conspicuous disclosure in writing to the consumer at any time before the report is procured or caused
20 to be made in a document that consists solely of the disclosure[.]").

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

25
26 ¹ Section 1681a(d)(1) of the FCRA defines "consumer report" as any oral, or other communication of any
27 information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit
28 capacity, character, general reputation, personal characteristics, or mode of living which is used or 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 employment purposes.

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

6 79. The plain language of the statute also clearly indicates that the inclusion of extraneous
7 information in a disclosure form violates the disclosure and authorization requirements of the FCRA
8 because such a form would not consist “solely” of the disclosure. In fact, the FTC expressly warned
9 that the FCRA notice may not include extraneous information. In a report dated July 2011, the FTC
10 emphasized that “the notice [under 15 U.S.C. § 1681b(b)(2)(A)] may not include extraneous or
11 contradictory information[.]”

12 80. Many courts have also determined that the inclusion of extraneous information violates
13 § 1681b(b)(2)(A) of the FCRA. *See, e.g., Syed v. M-I, LLC*, 853 F.3d 492, 504-505 (9th Cir. 2017)
14 (finding that a willful violation of the FCRA as a matter of law that the disclosure document contains
15 a liability waiver); *Gilberg v. Cal. Check Cashing Stores LLC*, 2019 WL 347027 (Jan. 29, 2019); *Speer*
16 *v. Whole Food Market Group, Inc.*, No. 8:14-CV3035-T-26TBM, 2015 WL 1456981, *3 (M.D. Fla.
17 Mar. 30, 2015); *Milbourne v. JRK Residential Amer., LLC*, 2015 U.S. Dist. LEXIS 29905, *14-19
18 (E.D. Va. Mar. 11, 2015) (holding that the inclusion of a waiver within a document containing the
19 disclosure would violate 15 U.S.C. § 1681b(b)(2)(A)); *Reardon v. Closetmaid Corp.*, 2013 U.S. Dist.
20 LEXIS 169821, *14-27 (W.D. Pa. Dec. 2, 2013) (holding that a disclosure with a liability waiver was
21 contrary to the statute); and *EEOC v. Video Only, Inc.*, 2008 U.S. Dist. LEXIS 46094 (D. Or. June 11,
22 2008) (granting summary judgment against the defendant employer who made a disclosure as a part of
23 the job application, which is not a document consisting solely of the disclosure).

24 81. Here, the disclosure and authorization form provided to Plaintiffs and the Class
25 Members fails to comply with the FCRA. The document contains extraneous information, such as
26 requesting all names used and dates of use, driver’s license number, date of birth, and email.

27 ² Letter from Clarke W. Brinkerhoff, Fed. Trade Comm’n, to H. Roman Leathers, Manier & Herod (Sept. 9,
28 1998), available at <https://www.ftc.gov/policy/advisoryopinions/advisory-opinion-leathers-09-09-98> (last
accessed March 16, 2016).

1 82. In addition to the federal FCRA, the state ICRAA, *see*, Cal. Civ. Code § 1786 *et seq.*,
2 provides similar protections to employees who undergo a background check for employment purposes.
3 The ICRAA likewise requires that employers who order background checks (called an investigative
4 consumer report by the statute), provide applicants with a disclosure regarding the background check
5 in a standalone document. Cal. Civ. Code § 1786.16. Instead, Plaintiffs and the Class Members were
6 not provided with a standalone disclosure and authorization form, but rather a document filled with
7 extraneous information.

8 83. Furthermore, Plaintiffs and the Class Members were impermissibly required as part of
9 Defendants' hiring process to undergo consumer credit report checks because California Labor Code
10 § 1024.5 states that a consumer credit report can ***only*** be used for employment purposes when:

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

- 13 (1) a managerial position.
14 (2) a position in the state Department of Justice.
15 (3) that of a sworn peace officer or other law enforcement position.
16 (4) a position for which the information contained in the report is
required by law to be disclosed or obtained.
17 (5) a position that involves regular access, for any purpose other than
18 the routine solicitation and processing of credit card applications
19 in a retail establishment, to all of the following types of
information of any one person:

20 (A) Bank or credit card account information.

21 (B) Social security number.

22 (C) Date of birth.

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

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

25 (B) Authorized to transfer money on behalf of the
26 employer.

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

- 1 (7) a position that involves access to confidential or proprietary
2 information, including a formula, pattern, compilation, program,
3 device, method, technique, process or trade secret that (i) derives
4 independent economic value, actual or potential, from not being
5 generally known to, and not being readily ascertainable by proper
6 means by, other persons who may obtain economic value from
7 the disclosure or use of the information, and (ii) is the
8 subject of an effort that is reasonable under the circumstances to
9 maintain secrecy of the information.
- 10 (8) a position that involves regular access to cash totaling ten
11 thousand dollars (\$10,000) or more of the employer, a customer,
12 or client, during the workday.

13 84. Plaintiffs and the Class Members do not perform any of the tasks in which a consumer
14 credit report is required.

15 85. Defendants further failed to disclose to Plaintiffs and the Class Members which
16 provision of Labor Code § 1024.5(a) the report is being used, nor the source of the report.

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

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

29 **V. CLASS ACTION ALLEGATIONS**

30 87. As mentioned above, Plaintiffs bring this action on behalf of themselves and the Class
31 Members pursuant to section 382 of the Code of Civil Procedure.

32 88. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of all
33 members would be unfeasible and not practicable. The membership of the class is unknown to
34 Plaintiffs at this time; however, it is estimated that the number of Class Members is greater than 100

1 individuals. The identity of such membership is readily ascertainable via inspection of Defendants'
2 employment records.

3 **89. Common Questions of Law and Fact Predominate/Well Defined Community of**
4 **Interest:** There are common questions of law and fact as to Plaintiffs and all other similarly situated
5 non-exempt employees, which predominate over questions affecting only individual members
6 including, without limitation to:

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

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

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

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

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

17 F. Whether Defendants maintained accurate employment records;

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

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

20 I. Whether Defendants indemnified their employees for all necessary business
21 expenditures;

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

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

26 **90. Predominance of Common Questions:** Common questions of law and fact
27 predominate over questions that affect only individual Class Members. The common questions of law
28 set forth above are numerous and substantial and stem from Defendants' uniform policies and practices

1 applicable to each individual class member, such as Defendants' uniform policy and practice of failing
2 to pay for all hours worked, Defendants' uniform policies and practices which failed to provide
3 compliant rest periods, Defendants' uniform policies and practices which failed to provide compliant
4 meal periods, Defendants' failure to provide accurate itemized wage statements, and others. As such,
5 the common questions predominate over individual questions concerning each individual class
6 member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

7 **91. Typicality:** The claims of Plaintiffs are typical of the claims of the Class Members
8 because Plaintiffs were employed by Defendants as a non-exempt employee in California during the
9 statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged herein,
10 Plaintiffs, like the other Class Members, were deprived of minimum, regular, and overtime wages
11 because of Defendants' unlawful timekeeping policies and practices, were deprived of rest periods and
12 premium wages in lieu thereof, were deprived of meal periods and premium wages in lieu thereof, were
13 subject to Defendants' uniform rest period policies and practices, were subject to Defendants' uniform
14 meal period policies and practices, were not provided accurate itemized wage statements, were not paid
15 all wages in full and on time, and were subject to other similar policies and practices to which the Class
16 Members were subject.

17 **92. Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary steps
18 to represent fairly and adequately the interests of the Class Members. Moreover, Plaintiffs' attorneys
19 are ready, willing, and able to fully and adequately represent the Class Members and Plaintiffs.
20 Plaintiffs' attorneys have prosecuted numerous wage-and-hour class actions in state and federal court
21 in the past and are committed to vigorously prosecuting this action on behalf of the Class Members.

22 **93. Superiority:** The California Labor Code is broadly remedial in nature and serves an
23 important public interest in establishing minimum working conditions and standards in California.
24 These laws and labor standards protect the average working employee from exploitation by employers
25 who have the responsibility to follow the laws and who may seek to take advantage of superior
26 economic and bargaining power in setting onerous terms and conditions of employment. The nature
27 of this action and the format of laws available to Plaintiffs and the Class Members make the class action
28 format a particularly efficient and appropriate procedure to redress the violations alleged herein. If

1 each employee were required to file an individual lawsuit, Defendants would necessarily gain an
2 unconscionable advantage since they would be able to exploit and overwhelm the limited resources of
3 each individual plaintiff with their vastly superior financial and legal resources.

4 94. Moreover, requiring each Class Member to pursue an individual remedy would also
5 discourage the assertion of lawful claims by employees who would be disinclined to file an action
6 against their former or current employer for real and justifiable fear of retaliation and permanent
7 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
8 the individual Class Members, even if possible, would create a substantial risk of inconsistent or
9 varying verdicts or adjudications with respect to the individual Class Members against Defendants
10 herein, and which would establish potentially incompatible standards of conduct for Defendants or
11 legal determinations with respect to individual Class Members which would, as a practical matter, be
12 dispositive of the interest of the other Class Members not parties to adjudications or which would
13 substantially impair or impede the ability of the Class Members to protect their interests.

14 95. Further, the claims of the individual Class Members are not sufficiently large to warrant
15 vigorous individual prosecution considering the concomitant costs and expenses attending thereto. As
16 such, the Class Members identified above are maintainable as a class under section 382 of the Code of
17 Civil Procedure.

18 **VI. CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 *Failure to Pay All Minimum Wages*

21 *(Against All Defendants)*

22 96. Plaintiffs reallege and incorporate by reference all previous paragraphs.

23 97. Section 4 of the Applicable Wage Order and Labor Code section 1197 establish the right
24 of employees to be paid minimum wages for all hours worked, in amounts set by state law. (Lab. Code,
25 § 1197; Cal. Code of Regs., tit. 8, § 11050.) Labor Code sections 1194, subdivision (a), and 1194.2,
26 subdivision (a), provide that an employee who has not been paid the legal minimum wage as required
27 by Labor Code section 1197 may recover the unpaid balance, together with attorneys' fees and costs
28

1 of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued
2 thereon.

3 98. Here, Defendants failed to fully conform their pay practices to the requirements of the
4 law during the relevant statutory periods. Plaintiffs and the other Class Members were not compensated
5 for all hours worked including, but not limited to, all hours they were subject to the control of
6 Defendants and/or suffered or permitted to work under the Labor Code and the Applicable Wage Order.

7 99. Labor Code section 1198 makes unlawful the employment of an employee under
8 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and 1194.2,
9 subdivision (a), provide that an employer who has failed to pay its employees the legal minimum wage
10 is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages
11 in an amount equal to the wages due and interest thereon.

12 100. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
13 Plaintiffs and the other Class Members have sustained economic damages, including but not limited to
14 unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover
15 economic and statutory damages and penalties and other appropriate relief because of Defendants'
16 violations of the Labor Code and Applicable Wage Order.

17 101. Defendants' practices and policies regarding illegal employee compensation are
18 unlawful and create an entitlement to recovery by Plaintiffs and the other Class Members in a civil
19 action for the unpaid amount of minimum wages, liquidated damages, including interest thereon,
20 statutory penalties, attorney's fees, and costs of suit according to Labor Code sections 204, 218.5,
21 1194, 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

22 **SECOND CAUSE OF ACTION**

23 *Failure to Pay All Overtime Wages*

24 *(Against All Defendants)*

25 102. Plaintiffs reallege and incorporate by reference all previous paragraphs.

26 103. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194, and
27 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours
28 worked and provide a private right of action for the failure to pay all overtime compensation for

1 overtime work performed. At all times relevant herein, Defendants were required to properly pay
2 Plaintiffs and the other Class Members for all overtime wages earned pursuant to Labor Code section
3 1194 and the Applicable Wage Order. Defendants caused Plaintiffs and the other Class Members to
4 work overtime hours but did not compensate them at one and one-half times their regular rate of pay
5 for such hours in accordance with California law. Likewise, Defendants caused Plaintiffs and the other
6 Class Members to work double-time hours but did not compensate them at twice their regular rate of
7 pay for such hours in accordance with California law.

8 104. Defendants failed to fully conform their pay practices to the requirements of California
9 law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful pay
10 policies and practices of failing to accurately record all the time that non-exempt employees were under
11 the supervision and control of Defendants. The foregoing policies and practices are unlawful and allow
12 Plaintiffs and the other Class Members to recover in a civil action the unpaid amount of overtime
13 premiums owing, including interest thereon, statutory penalties, attorney's fees, and costs of suit
14 according to Labor Code section 204, 510, 1194, and 1198, the Applicable Wage Order, and Code of
15 Civil Procedure section 1021.5.

16 **THIRD CAUSE OF ACTION**

17 *Failure to Pay Accrued Vacation Wages*

18 *(Against All Defendants)*

19 105. Plaintiffs reallege and incorporate by reference all previous paragraphs.

20 106. Under California law, accrued vacation and/or paid time off are considered earned
21 wages and cannot be forfeited if unused. (Lab. Code, § 227.3.) A vacation policy and/or paid time off
22 policy that provides for forfeiture of vested vacation pay if not used within a designated time, such as
23 before termination, is impermissible. (*Boothby v. Atlas Mechanical, Inc.* (1992) 6 Cal.App.4th 1595,
24 1602.)

25 107. As explained above, Plaintiffs and other Class Members accrued vested vacation pay
26 under a "contract of employment," for purposes of Labor Code section 227.3. When they ended their
27 employment with Defendants, Defendants failed to pay their vested vacation pay in violation of Labor
28 Code sections 201, 202, and 227.3. Accordingly, pursuant to section 227.3 of the California Labor

1 Code, Plaintiffs and other Class Members are entitled to recover their accrued, vested, and unpaid
2 vacation time.

3 108. Pursuant to sections 218.5 and 227.3 of the Labor Code, Plaintiffs and the other Class
4 Members are also entitled to recover interest, costs, and attorneys' fees associated with this cause of
5 action.

6 **FOURTH CAUSE OF ACTION**

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

8 *(Against All Defendants)*

9 109. Plaintiffs reallege and incorporate by reference all previous paragraphs.

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

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

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

22 **FIFTH CAUSE OF ACTION**

23 *Failure to Provide Meal Periods and Pay Missed Meal Period Premiums*

24 *(Against All Defendants)*

25 113. Plaintiffs reallege and incorporate by reference all previous paragraphs.

26 114. Plaintiffs are informed and believes and thereon alleges, that Defendants failed in their
27 affirmative obligation to provide their hourly non-exempt employees, including Plaintiffs and the other
28 Class Members, with all required meal periods in accordance with the mandates of the Labor Code and

1 the Applicable Wage Order, for the reasons set forth herein above. Despite Defendants' violations,
2 Defendants have not paid an additional hour of pay to Plaintiffs and the other Class Members at their
3 respective regular rates of pay for each violation, in accordance with California Labor Code section
4 226.7.

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

9 **SIXTH CAUSE OF ACTION**

10 *Failure to Maintain Accurate Employment Records*

11 *(Against All Defendants)*

12 116. Plaintiffs reallege and incorporate by reference all previous paragraphs.

13 117. Pursuant to California Labor Code section 1174, subdivision (d), an employer shall keep
14 at a central location in the state or at the plants or establishments at which employees are employed,
15 payroll records showing the hours worked daily by and wages paid to employees employed at the
16 respective plants or establishments. These records must be kept in accordance with rules established
17 for this purpose by the commission, but in any case shall be kept on file for not less than two years.

18 118. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to
19 maintain accurate and complete records.

20 119. Defendant has intentionally and willfully failed to keep accurate and complete records
21 showing the hours worked daily and wages paid to Plaintiffs and the other Class Members. Thus,
22 Plaintiffs and the other Class Members have been denied their legal right and protected interest in
23 having available at a central location at the plant or establishment where they are employed, accurate
24 and complete payroll records showing the hours worked daily by, and the wages paid to, employees at
25 those respective locations pursuant to Labor Code 1174.

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1 compensation owed to them in a civil action and any applicable penalties, attorney fees, and interest
2 owed to them pursuant to Labor Code sections 210 and 218.5.

3 **EIGHTH CAUSE OF ACTION**

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

5 *(Against All Defendants)*

6 126. Plaintiffs reallege and incorporate by reference all previous paragraphs.

7 127. The actionable period for this cause of action is three years prior to the filing of this
8 complaint through the present, and ongoing until the violations are corrected or the class is certified.
9 (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth Cole Productions,*
10 *Inc.* (2007) 40 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a).) Labor Code sections 201 and
11 202 of the California Labor Code require Defendants to pay all compensation due and owing to its
12 former employees (including the formerly-employed Class Members) during the actionable period for
13 this cause of action at or around the time that their employment is or was terminated, or ended.

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

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

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

1 **NINTH CAUSE OF ACTION**

2 *Failure to Indemnify All Necessary Business Expenditures*

3 *(Against All Defendants)*

4 131. Plaintiffs reallege and incorporate by reference all previous paragraphs.

5 132. California Labor Code Section 2802 states that employers must “indemnify” an
6 employee for “all necessary expenditures or losses incurred by the employee in direct consequence of
7 the discharge of his or her duties, or of his or her obedience to the directions of the employer.”
8 Likewise, Labor Code section 2804 states that “any contract or agreement, express or implied, made
9 by any employee to waive the benefits of this article or any part thereof, is null and void, and this article
10 shall not deprive any employee or his personal representative of any right or remedy to which he is
11 entitled under the laws of this State.”

12 133. Here, Plaintiffs and the other Class Members paid out of pocket for necessary business
13 expenditures incurred as a direct consequence and requirement of performing their job duties, including
14 the costs associated with their personal cell phone they required to perform their work. Despite
15 knowing that Plaintiffs and the other Class Members incurred these necessary business expenses, and
16 requiring Plaintiffs and the other Class Members to use such items, Defendants did not reimburse them.

17 134. Thus, Plaintiffs and the other Class Members are entitled to recover the cost of such
18 necessary business expenses, plus interest from the date each incurred such business expenses, plus
19 fees and costs. (Lab. Code, § 2802, subds. (b), (c).)

20 **TENTH CAUSE OF ACTION**

21 *Failure to Furnish Accurate Itemized Wage Statements*

22 *(Against All Defendants)*

23 135. Plaintiffs reallege and incorporate by reference all previous paragraphs.

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

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

14 137. As set forth above, Defendants issued and continues to issue wage statements to its non-
15 exempt employees including Plaintiffs and the other Class Members that are inadequate under Labor
16 Code section 226, subdivision (a). By failing to pay Plaintiffs and the other Class Members properly
17 as described above, Defendants failed to include required information on their wage statements,
18 including, but not limited to, the gross wages earned, the net wages earned in violation of Labor Code
19 section 226, subdivision (a).

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

22 139. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiffs
23 and the other Class Members in violation of Labor Code section 226, subdivision (a), Plaintiffs and the
24 other Class Members are each entitled to recover an initial penalty of \$50, and subsequent penalties of
25 \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per each Class
26 Member from Defendants pursuant to Labor Code section 226, subdivision (e), along with costs and
27 reasonable attorneys' fees.
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1 146. Defendants, and each of them, are a “person” as defined by section 1681a(b) of the
2 FCRA.

3 147. Plaintiffs and the Class Members are “consumers” within the meaning of section
4 1681a(c) of the FCRA because they are “individuals.”

5 148. Section 1681b(b)(2)(A) of the FCRA provides, in relevant part:
6 (b) Conditions for furnishing and using consumer reports for employment purposes...

7 (2) Disclosure to consumer

8 (A) In general

9 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-

10 (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
11 be procured, *in a document that consists solely* of the disclosure,
that a consumer report may be obtained for employment purposes;
12 and

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

15 149. As alleged above, Defendants violated section 1681b(b)(2)(A)(i) of the FCRA by failing
16 to provide Plaintiffs and Class Members with a clear and conspicuous written disclosure before a
17 consumer report is procured, or caused to be procured, that a consumer report may be obtained for
18 employment purposes in a document that consists solely of the disclosure. As a result of Defendants’
19 noncompliant disclosure, Defendants also violated 1681b(b)(2)(A)(ii) because Defendants failed to
20 obtain valid authorizations from Plaintiffs and the Class Members for the procurement of consumer
21 reports.

22 150. Based upon the facts likely to have evidentiary support after a reasonable opportunity
23 for further investigation and discovery, Defendants have policies and practices of failing to provide
24 adequate written disclosures to applicants and employees before procuring consumer reports or causing
25 consumer reports to be procured. Pursuant to these policies and practices, Defendants procured
26 consumer reports or caused consumer reports to be procured for Plaintiffs and Class Members without
27 first providing a written disclosure in compliance with section 1681b(b)(2)(A)(i) of the FCRA or
28 obtaining a valid written authorization in compliance with 1681b(b)(2)(A)(ii) of the FCRA.

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

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

7 153. Plaintiffs, on behalf of themselves and all Class Members, seeks all available remedies
8 pursuant to 15 U.S.C. § 1681n, including statutory damages and/or actual damages, punitive damages,
9 injunctive and equitable relief, and attorneys' fees and costs.

10 154. In the alternative to Plaintiffs' allegation that these violations were willful, Plaintiffs
11 allege that the violations were negligent and seeks the appropriate remedy, if any, under 15 U.S.C. §
12 1681(b).

13 **THIRTEENTH CAUSE OF ACTION**

14 *Violations of the Investigative Consumer Reporting Act*

15 *(Against All Defendants)*

16 155. Plaintiffs reallege and incorporate by reference all previous paragraphs.

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

18 157. Section 1786.2(c) of the ICRAA defines "investigative consumer report" as "a
19 consumer report in which information on a consumer's character, general reputation, personal
20 characteristics, or mode of living is obtained through any means."

21 158. Section 1786.2(d) of the ICRAA defines "investigative consumer reporting agency" as
22 "any person who, for monetary fees or dues, engages in whole or in part in the practice of collecting,
23 assembling, evaluating, compiling, reporting, transmitting, transferring, or communicating information
24 concerning consumers for the purposes of furnishing investigative consumer reports to third parties,
25 but does not include any governmental agency whose records are maintained primarily for traffic
26 safety, law enforcement, or licensing purposes, or any licensed insurance agent, insurance broker, or
27 solicitor, insurer, or life insurance agent."

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

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

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

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

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

11 (iii) The disclosure may include information on the consumer's character,
12 general reputation, personal characteristics, and mode of living.

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

15 160. Because Defendants' purported disclosures are embedded with extraneous information
16 and are not clear and unambiguous disclosures in stand-alone documents, they do not meet the
17 requirements under the law.

18 161. Under the ICRAA, it is unlawful to procure or caused to be procured, a consumer report
19 or investigative consumer report for employment purposes unless the disclosure is made in a document
20 that consists solely of the disclosure and the consumer has authorized, in writing, the procurement of
21 the report. Cal. Civ. Code § 1786.16(a)(2)(B)-(C). The inclusion of the release language and other
22 extraneous information therefore violates section 1786.16(a)(2)(B) of the ICRAA.

23 162. The plain language of the statute clearly indicates that the inclusion of a liability release
24 in a disclosure form violates the disclosure and authorization requirements of the ICRAA because such
25 a form would not consist "solely" of the disclosure.

26 163. By including the release language and other extraneous information, Defendants
27 willfully violated section 1786.16(a)(2)(B) of the ICRAA. Additionally, the inclusion of the extraneous
28 provisions causes the disclosure to fail to be "clear and conspicuous" and thus violates section
1786.16(a)(2)(B).

164. The purported disclosures are further defective in neglecting to identify a permissible
purpose, *see, e.g.*, Labor Code § 1024.5, and failing to provide the name and contact information for

1 the consumer reporting agency procuring the investigative consumer report in violation of section
2 1786.16(a)(2)(B)(ii) and (iv).

3 165. Based upon facts that are likely to have evidentiary support after a reasonable
4 opportunity for investigation and discovery, Plaintiffs allege that Defendants have a policy and practice
5 of failing to provide adequate written disclosure to applicants and employees, before procuring
6 background checks or causing background checks to be procured, as described above. Pursuant to that
7 policy and practice, Defendants procured background checks, or caused background checks to be
8 procured, for Plaintiffs and the Class Members without first providing a written disclosure in
9 compliance with section 1786.16(a)(2)(B) of the ICRAA, as described above.

10 166. Defendants' conduct in violation of Section 1786.16(a)(2)(B) of the ICRAA was and is
11 willful and/or grossly negligent. Defendants acted in deliberate or reckless disregard of their obligations
12 and the rights of applicants and employees, including Plaintiffs and Class Members. Defendants'
13 willful conduct is reflected by, among other things, the following facts:

- 14 (a) Defendant(s) is and are large corporation(s) with access to legal advice;
- 15 (b) Defendants required a purported authorization to perform credit and background checks
16 in the process of employing the Class Members which, although defective, evidences
17 Defendants' awareness of and willful failure to follow the governing laws concerning
18 such authorizations; and
- 19 (c) The plain language of the statute unambiguously indicates that inclusion of a liability
20 release and other extraneous information in a disclosure form violates the disclosure and
21 authorization requirements, that the permissible purpose of the report must be identified,
22 and that the disclosure form must contain the name, address, and phone number of the
23 investigative consumer reporting agency conducting the investigation.

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

27 168. Plaintiffs, on behalf of themselves and all Class Members, seek all available remedies
28 pursuant to Civil Code section 1786.50, including statutory damages and/or actual damages, punitive

1 damages, and attorneys' fees and costs. In the alternative to Plaintiffs' allegation that these violations
2 were willful or grossly negligent, Plaintiffs allege that the violations were negligent and seeks the
3 appropriate remedy, if any, under Civil Code section 1786.50(a), including actual damages and
4 attorneys' fees and costs.

5 **FOURTEENTH CAUSE OF ACTION**

6 *Violations of the Consumer Credit Reporting Agencies Act*

7 *(Against All Defendants)*

8 169. Plaintiffs reallege and incorporates by reference all previous paragraphs.

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

11 171. Plaintiffs and the Class Members are "consumers" within the meaning of section
12 1785.3(b) of the CCRAA, because they are "natural individuals."

13 172. Section 1785.3(c) of the CCRAA defines "consumer credit report" as:
14 Any written, oral, or other communication of any information by a consumer credit
15 reporting agency bearing on a consumer's credit worthiness, credit standing, or credit
16 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...

17 Thus, the at-issue consumer reports procured by Defendants on Plaintiffs and Class Members qualifies
18 as a consumer credit report under the CCRAA.

19 173. Section 1785.20.5(a) of the CCRAA provides, in relevant part:
20 Prior to requesting a consumer credit report for employment purposes, the user of the
21 report shall provide written notice to the person involved. The notice shall inform the
22 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]

23 174. As described above, Plaintiffs allege that in evaluating her and other Class Members for
24 employment, Defendants procured or caused to be prepared consumer credit reports as defined by
25 section 1785.3(c).

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

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

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

- 15 (a) Defendant(s) is and are large corporation(s) with access to legal advice;
- 16 (b) Defendants required a purported authorization to perform credit and background checks
17 in the process of employing the Class Members which, although defective, evidences
18 Defendants' awareness of and willful failure to follow the governing laws concerning
19 such authorizations; and
- 20 (c) The plain language of the statute unambiguously indicates that failure to include the
21 provisions identified above violate the CCRAA's notice requirements, and that the
22 notice must identify the specific basis under subdivision (a) of section 1024.5 of the
23 Labor Code for use of the credit report and must identify the source of any credit report.

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

1 179. Plaintiffs, on behalf of themselves and all Class Members, seeks all available remedies
2 pursuant to Civil Code section 1785.31, including statutory damages and/or actual damages, punitive
3 damages, injunctive relief, and attorneys' fees and costs.

4 180. In the alternative to Plaintiffs' allegations that these violations were willful, Plaintiffs
5 allege that the violations were negligent and seeks the appropriate remedy, if any, under Civil Code
6 section 1785.31(a)(1), including but not limited to actual damages and attorneys' fees and costs.

7 **FIFTEENTH CAUSE OF ACTION**

8 *Penalties Pursuant to the California Private Attorneys General Act of 2004 ("PAGA") and Other*
9 *Provisions of the California Labor Code*
10 *(Plaintiffs and the Aggrieved Employees Against All Defendants)*

11 181. Plaintiffs reallege and incorporate by reference all previous paragraphs.

12 182. Based on the above allegations incorporated by reference, Defendants violated
13 California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 256, 510, 512, 1174, 1185,
14 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2084, and others that may be applicable;
15 California Business and Professions Code sections 17200 through 17210 ("UCL"); and the Applicable
16 Wage Orders (Cal. Code of Regs., tit. 8, §§ 11050). As a result of the acts alleged above, Plaintiffs seek
17 penalties under California Labor Code §§ 2698–2699.6 because of Defendants' violation of the
18 California Labor Code and applicable IWC Wage Orders.

19 183. Under California Labor Code §§ 2699(f)(2) and 2699.5, for each such violation,
20 Plaintiffs and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time
21 of trial subject to the following formula:

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

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

24 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce Development
25 Agency (LWDA) and twenty-five percent (25%) to the affected employees. These penalties may be
26 stacked separately for each of Defendants violations of the California Labor Code. *See e.g. Hernandez*
27 *v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S.Dist. LEXIS 86975, at *59, fn. 77
28 (C.D.Cal. June 22, 2012) (holding that although the plaintiff did not seek stacked PAGA penalties, that

1 “PAGA penalties can be ‘stacked,’ *i.e.*, multiple PAGA penalties can be assessed for the same pay
2 period for different Labor Code violations.”); *See Lopez v. Friant & Assocs., LLC*, No. A148849, 2017
3 Cal. App. LEXIS 839, at *1 (Ct. App. Sep. 26, 2017) (“hold[ing] a plaintiff seeking civil penalties
4 under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the ‘injury’ and
5 ‘knowing and intentional’ requirements of section 226(e)(1) and acknowledging that a Plaintiff could
6 recover separately under PAGA for violations of Labor Code §§ 226(a) and 226(e)).

7 184. In addition, to the extent permitted by law, Defendants failed to provide Plaintiffs and
8 all aggrieved employees with accurate itemized wage statements in compliance with Labor Code §
9 226(a). Plaintiffs seek separate PAGA penalties for Defendants’ violations of Labor Code §§ 226(a)
10 and 226(e).

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

20 186. Further, Plaintiffs, as Aggrieved Employees, need not demonstrate or prove that
21 Defendants’ conduct in refusing to provide accurate and itemized wage statements was knowing,
22 intentional, or willful.

23 187. Labor Code § 210 provides that “in addition to, and entirely independent and apart from,
24 any other penalty provided in this article, every person who fails to pay the wages of each employee as
25 provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation,
26 one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation,
27 or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
28 employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation

1 policies and practices described in detail above, Plaintiffs and the other Aggrieved Employees are
2 entitled to recover penalties under Labor Code § 210 through PAGA.

3 188. Plaintiffs have complied with the procedures for bringing suit specified in California
4 Labor Code § 2699.3. and will have fully exhausted their administrative remedies under PAGA prior
5 to proceeding with the PAGA claim.

6 189. On or about November 16, 2021, Johnson gave written notice by online filing to the
7 Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendant
8 setting forth the facts and theories of the violations alleged against Defendant, as prescribed by Labor
9 Code § 2698 *et seq.* Johnson also paid the filing fee. Johnson’s PAGA case number is LWDA-CM-
10 852078-21.

11 190. On or about November 29, 2021, Villasenor gave written notice by online filing to the
12 LWDA and sent a letter by certified mail to Defendant setting forth the facts and theories of the
13 violations alleged against Defendant, as prescribed by Labor Code § 2698 *et seq.* As required by PAGA,
14 Plaintiffs submitted the \$75.00 filing fee with the LWDA by regular mail.

15 191. On or about January 3, 2023, Riggi submitted an amended written notice by online filing
16 to the LWDA and sent a letter by certified mail to Defendant setting forth the facts and theories of the
17 violations alleged against Defendant, as prescribed by Labor Code § 2698 *et seq.*

18 192. More than 65 days has elapsed since Plaintiffs provided their notices, but the LWDA
19 has not indicated that it intends to investigate Defendants’ Labor Code violations discussed in the
20 notices. Accordingly, Plaintiffs may commence a civil action to recover penalties under Labor Code §
21 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Second Amended
22 Complaint. These penalties include, but are not limited to, penalties under California Labor Code §§
23 210, 226.3, 558, and 2699(f)(2).

24 **VII. PRAYER FOR RELIEF**

25 Plaintiffs pray for judgment for themselves and for all others on whose behalf this suit is brought
26 against Defendants, as follows:

- 27 1. For an order certifying the proposed class;
- 28 2. For an order appointing Plaintiffs as representatives 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 Plaintiffs 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);
13. For the violations of California's Unfair Competition Law, restitution to Plaintiffs and the other Class Members of all money and/or property unlawfully acquired by Defendants by means of

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

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1 Dated: December 20, 2023

Respectfully submitted,

2 MOON LAW GROUP PC

3 By: 
4 _____

5 Kane Moon
6 Allen Feghali
7 Lannie Pham
8 Attorneys for Plaintiffs Johnson and Riggi

9 Dated: December 20, 2023

10 **MELMED LAW GROUP P.C.**

11 
12 _____

13 **JONATHAN MELMED**
14 Attorney for Plaintiff Villasenor
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 1055 West Seventh Street, Suite
7 1880, Los Angeles, California 90017. On January 24, 2024, I served the foregoing document
8 described as:

9 **THIRD AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

10 X by E-mailing ____ the original X a true copy to the following:

11 Jennifer M. Holly
12 Jenna L. Halop
13 Cynthia Duffy
14 Veronica Whitake
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18 ***Attorneys for Defendant KDF Forestry,***
19 ***Inc.***

Attorneys for Plaintiff Edgar Villasenor

20 [✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
21 California, by e-mail delivery on the parties listed herein at their most recent known e-
22 mail address or e-mail of record in this action.

23 X (State) I declare under penalty of perjury under the laws of the State of California
24 that the above is true and correct.

25 Executed on January 24, 2024, at Los Angeles, California.

26 Janelle Jickain
27 Name

28 
Signature