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ggalaviz
By _____, Deputy
Case Number:
34-2022-00319236

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Class, and the aggrieved employees

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

JORGE GONZALEZ AVALOS, an
individual, on behalf of himself and others
similarly situated, and as a private attorney
general on behalf of the State of California,

PLAINTIFF,

v.

XL LANDSCAPE DEVELOPMENT, a
California Corporation, XL LANDSCAPE
DEVELOPMENT, LLC, a Nevada Limited
Liability Company, XL CONCRETE
MASONRY, LLC, a Nevada Limited
Liability Company, BLACK IRON
REINFORCING, LLC, a Nevada Limited
Liability Company, PREMIER ONE
ELECTRIC, LLC, a Nevada Limited Liability
Company, XL COMPANIES LLC, a Nevada
Limited Liability Company and DOES 1 thru
50, inclusive,

DEFENDANTS.

CASE NO.:

**CLASS ACTION AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Violations of Labor Code § 226(e)
2. Penalties Pursuant to Labor Code § 2699,
et seq. for violations of Labor Code §§
201, 202, 203, 204, 210, 226, 226.3, 226.7,
512, 558, 1198, 2802, as well as IWC
Wage Order Nos. 5-2001 and 16-2001
3. Violations of the Fair Credit Reporting Act

BY FAX

1 Plaintiff JORGE GONZALEZ AVALOS, an individual, on behalf of himself and others
2 similarly situated, and on behalf of the State of California as a private attorney general pursuant to
3 Labor Code section 2698 *et seq.* (“PAGA”) complains of Defendants XL LANDSCAPE
4 DEVELOPMENT LLC, XL LANDSCAPE DEVELOPMENT, BLACK IRON REINFORCING,
5 LLC, XL CONCRETE MASONRY, LLC, XL COMPANIES LLC, and PREMIER ONE
6 ELECTRIC, LLC and/or other companies dba XL LANDSCAPE DEVELOPMENT LLC, XL
7 LANDSCAPE DEVELOPMENT, BLACK IRON REINFORCING, LLC, XL CONCRETE
8 MASONRY, LLC, XL COMPANIES LLC, and PREMIER ONE ELECTRIC, LLC.
9 (“Defendants” or “XL”) and the other Doe Defendants (collectively hereafter the “Defendants”)
10 and each of them, as follows:

11 **I.**

12 **INTRODUCTION AND FACTUAL BACKGROUND**

13 1. Plaintiff and the Class members were employed by Defendants, who are alter egos
14 of each other and constitute a single integrated enterprise and any subsidiaries or affiliated
15 companies and Does 1 through 50.

16 2. Plaintiff has not pled any claims that would establish Article III standing. Plaintiff
17 does not allege that he suffered injuries within the meaning of Article III.¹ PAGA penalties
18 cannot be used to invoke diversity jurisdiction under CAFA or be included when calculating the
19 amount in controversy for the purposes of removal. *See e.g. Yocupicio v. PAE Group, LLC* 795
20 F.3d 1057, 1062 (9th Cir. 2015) (holding that “the amount involved in the non-class claims
21 cannot be used to satisfy the CAFA jurisdictional amount, and the CAFA diversity provisions
22 cannot be invoked to give the district court jurisdiction over the non-class claims.”).

23 3. Since Plaintiff has not alleged claims within the meaning of Article III under the
24 Fair Credit Reporting Act, any attempt to remove such claims must result in a remand and cannot
25 be considered when establishing the amount in controversy. *See Moore v. UPS*, No. 18-cv-07600-
26 VC, 2019 U.S. Dist. LEXIS 88360, at *4 (N.D.Cal. May 13, 2019) (remanding the FCRA claims

27 _____
28 ¹ No representations are made that Plaintiff could not plead Article III standing if he desired, he
merely as the master of his complaint in state Court has elected not to.

1 to state court and explaining that “Incidentally, it may initially seem counterintuitive for a federal
2 court, after having concluded that the plaintiff lacks standing, to send a federal lawsuit to state
3 court for potential adjudication rather than to dismiss it. However, Congress authorized citizens to
4 vindicate their rights under the FCRA in either federal or state court. See 15 U.S.C. § 1681p.
5 Even when a plaintiff lacks standing to assert a FCRA right in federal court, this does not
6 preclude her from asserting that same right in state court, assuming she can satisfy the state
7 court's potentially more lenient justiciability requirements, and assuming the state courts are
8 authorized under their own state's laws to adjudicate such claims.”); *Arzaga v. MemorialCare*
9 *Med. Grp.*, No. 2:19-cv-00889-SVW-AGR, 2019 U.S. Dist. LEXIS 61925 (C.D.Cal. Apr. 10,
10 2019) (“Plaintiff’s case is REMANDED to state court for lack of Article III standing.”); *Mansapit*
11 *v. Deluxe Corp.* No. 19-cv-00790-HSG, 2019 U.S. Dist. LEXIS 97090, at *3 (N.D. Cal. June 10,
12 2019) (remanding Plaintiff’s FCRA claim for lack of Article III standing); *Arroyo v. J.R. Simplot*
13 *Co.*, No. 18-CV-07187-LHK, 2019 U.S. Dist. LEXIS 92663, at *11 (N.D.Cal. June 3, 2019)
14 (remanding the FRCA case to state court due to lack of Article III standing); *Rotor v. Signature*
15 *Consultants, LLC*, No. 18-cv-07526-JST, 2019 U.S. Dist. LEXIS 120986, at *13 (N.D. Cal. July
16 19, 2019) (remanding Plaintiff’s FCRA claim to state court due to lack of Article III standing
17 post-*Spokeo*).

18 4. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of
19 Plaintiff and the following classes and subclasses:

- 20 (1) all non-exempt, hourly employees who were employed by XL LANDSCAPE
21 DEVELOPMENT LLC, XL LANDSCAPE DEVELOPMENT, BLACK IRON
22 REINFORCING, LLC, XL CONCRETE MASONRY, LLC, XL COMPANIES
23 LLC, and PREMIER ONE ELECTRIC, LLC and/or other companies dba XL
24 LANDSCAPE DEVELOPMENT LLC, XL LANDSCAPE DEVELOPMENT,
25 BLACK IRON REINFORCING, LLC, XL CONCRETE MASONRY, LLC, XL
26 COMPANIES LLC, and PREMIER ONE ELECTRIC, LLC or its predecessor,
merged or related entities in California as an employee at any point from
February 9, 2021 and continuing into the present. (the “Wage Statement
Class”);²

27 ² The statute of limitations on the wage statement claim in this action are governed by the relation back doctrine
28 established in an earlier filed action. See *Hildebrandt v. Staples the Off. Superstore, LLC*, 58 Cal. App. 5th 128
(2020).

(2) All individuals who executed authorization forms permitting XL LANDSCAPE DEVELOPMENT LLC, XL LANDSCAPE DEVELOPMENT, BLACK IRON REINFORCING, LLC, XL CONCRETE MASONRY, LLC, XL COMPANIES LLC, and PREMIER ONE ELECTRIC, LLC and/or other companies dba XL LANDSCAPE DEVELOPMENT LLC, XL LANDSCAPE DEVELOPMENT, BLACK IRON REINFORCING, LLC, XL CONCRETE MASONRY, LLC, XL COMPANIES LLC, and PREMIER ONE ELECTRIC, LLC or its predecessor, merged or related entities or the DOES 1-50 to obtain a consumer report as part of an employment application for a job in California and who had a background check run by Defendants during the “FCRA Class Period” from two (2) years prior to the filing date of this action through the date of entry of an order certifying the Classes and/or Subclasses; (the “FCRA Class”).

5. This is also a representative action brought pursuant to Labor Code § 2698, *et seq.*, on behalf of the State of California and several groups of aggrieved employees defined as follows:

(1) all individuals who were employed by XL LANDSCAPE DEVELOPMENT LLC, XL LANDSCAPE DEVELOPMENT, BLACK IRON REINFORCING, LLC, XL CONCRETE MASONRY, LLC, XL COMPANIES LLC, and PREMIER ONE ELECTRIC, LLC or its predecessor or merged entities in California as a non-exempt, hourly employee for one or more pay periods from February 2, 2021 and continuing into the present (“Non-Exempt Aggrieved Employees”);

(2) all individuals who were employed XL LANDSCAPE DEVELOPMENT LLC, XL LANDSCAPE DEVELOPMENT, BLACK IRON REINFORCING, LLC, XL CONCRETE MASONRY, LLC, XL COMPANIES LLC, and PREMIER ONE ELECTRIC, LLC or its predecessor, merged or related entities in California who worked one or more shifts of more than six (6) hours as a non-exempt, hourly employee or other similar position from February 2, 2021 and continuing into the present. (“First Meal Period Aggrieved Employees”);

(3) all individuals who were employed by XL LANDSCAPE DEVELOPMENT LLC, XL LANDSCAPE DEVELOPMENT, BLACK IRON REINFORCING, LLC, XL CONCRETE MASONRY, LLC, XL COMPANIES LLC, and PREMIER ONE ELECTRIC, LLC or its predecessor, merged or related entities in California who worked one or more shifts of more than ten (10) hours as a non-exempt hourly employee or other similar position from February 2, 2021 and continuing into the present. (“Second Meal Period Aggrieved Employees”);

Collectively, aggrieved employee groups two (2) and three (3) may be referred to as the “Meal Period Aggrieved Employees.”

(4) all individuals who were employed by XL LANDSCAPE DEVELOPMENT LLC,

1 XL LANDSCAPE DEVELOPMENT, BLACK IRON REINFORCING, LLC, XL
2 CONCRETE MASONRY, LLC, XL COMPANIES LLC, and PREMIER ONE
3 ELECTRIC, LLC or its predecessor, merged or related entities for one or more pay
4 periods in California and whose employment concluded at any time between on
February 2, 2021 and continuing into the present; (“Late Payment Aggrieved
Employee”);

5 These groups may all collectively be referred to herein as aggrieved employees and/or all
6 aggrieved employees where appropriate.

7 6. Plaintiff, the Class members, and the aggrieved employees were employed by
8 Defendants and any subsidiaries or affiliated and Does 1 through 50 (who include individuals
9 acting on behalf an employer within the meaning of Labor Code § 558.1) within the State of
10 California as a non-exempt, hourly employees between February 9, 2021 and the present (for the
11 Wage Statement Class) or applied for a job with Defendants any time between April 29, 2020 and
12 continuing into the present (the FCRA Class).

13 7. At all times relevant hereto, Defendants operated as a single integrated enterprise,
14 including but not limited to using the same officers or business locations, procuring labor for each
15 other, sharing a common corporate headquarters, common policies and practices, common
16 advertisements, and held themselves out as a single integrated enterprise to the public and its
17 employees.

18 8. Labor Code § 558.1 provides that “[a]ny employer or other person acting on behalf
19 of an employer, who violates, or causes to be violated, any provision regulating minimum wages
20 or hours and days of work in any order of the Industrial Welfare Commission, or violates, or
21 causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
22 employer for such violation.” Plaintiff alleges, based upon information and belief, that and any
23 Doe Defendants who are individuals were/are persons acting on behalf of an employer within the
24 meaning of Labor Code § 558.1 as it relates to Labor Code § 226.

25 9. At all times relevant hereto, Defendants, except for the individual Doe Defendants
26 who are humans, served as alter egos of each other.
27
28

1 10. Plaintiff is a former employee of Defendants who worked for Defendants and/or
2 experienced Labor Code violations that were caused by Defendants during the statutory period.
3 Plaintiff worked for Defendants until in or around late January 2022.

4 11. At all times relevant hereto within the past two (2) years, Defendants failed to
5 provide Plaintiff and the other members of the FCRA Class with a disclosure form that contains
6 nothing more than the disclosure itself. *See Walker v. Fred Meyer, Inc.*, 953 F.3d 1082, 1087 (9th
7 Cir. 2020).

8 12. Based upon information and belief, Defendants did not provide a standalone
9 disclosure and instead included the only information that it provided as part of the job application
10 on the same page as portions of the application related to prior jobs, references, emergency
11 contact information, as well as an authorization to release information after the employee's ended
12 for any reason provided as long as Defendants believe the Party requesting the information has a
13 reasonable basis for doing so. As a matter of law, the inclusion of extraneous information
14 invalidates the authorization form for purposes of the FCRA. *See Gilberg v. Cal. Check Cashing*
15 *Stores, LLC*, 913 F.3d 1169, 1174 (9th Cir. 2019). This violated the requirement to provide a
16 disclosure form that contains nothing more than the disclosure itself. *Walker v. Fred Meyer, Inc.*,
17 953 F.3d 1082, 1087 (9th Cir. 2020).

18 13. Based upon information and belief, Defendants obtained a background check
19 report on Plaintiff without providing a standalone disclosure without extraneous information. The
20 basis for Plaintiff's belief that Defendants obtained a background check on him includes
21 Defendants orally representing that they would obtain his background report.

22 14. Defendants hire employees to work within the state of California who are covered
23 by California Industrial Welfare Commission Occupational Wage Order Nos. 5-2001 and 16-
24 2001. Based upon information and belief, Defendants classified Plaintiff and the aggrieved
25 employees as non-exempt for the purposes of overtime, meal periods, and rest periods.

26 15. Plaintiff and the Wage Statement Class received at least one wage statement
27 between February 9, 2021 and continuing into the present. These wage statements did not include
28 the inclusive dates of the period for which the employee is paid in violation of Labor Code § 226.

1 16. Labor Code § 512 requires employers to provide employees with thirty (30)
2 minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover,
3 an employee who works more than ten (10) hours per day is entitled to receive a second thirty
4 (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer
5 may not employ an employee for a work period of more than ten (10) hours, without providing
6 the employee with a second meal period of not less than thirty (30) minutes. Moreover, the
7 second meal period may not be waived if the total hours worked is more than twelve (12) hours.

8 17. Similarly, IWC Wage Order Nos. 5-2001 and 16-2001 prohibit an employer from
9 “employ[ing] any person for a work period of more than five (5) hours without a meal period of
10 not less than 30 minutes. IWC Wage Order Nos. 5-2001 and 16-2001 further obligate employers
11 to provide an employee to “pay the employee one (1) hour of pay at the employee’s regular rate
12 of compensation for each workday that the meal period is not provided. Labor Code section 1198
13 prohibits an employer from requiring an employee to work beyond the “standard conditions of
14 labor fixed by the commission...or under conditions of labor prohibited by the order.”

15 18. At times between August 15, 2017 and the present and within the past year and
16 including the pay periods in January 2022, Defendants failed to authorize and permit Plaintiff and
17 the aggrieved employees to receive lawful meal periods, failed to advise them of their right to
18 such meal periods, failed to authorize and permit them to take timely first meal periods within the
19 first five (5) hours of their shift, failed to authorize and permit them to take a meal period when
20 working a shift in excess of five (5) hours, but less than six (6) hours, and failed to authorize and
21 permit them to take a second meal period when working a shift in excess of ten (10) hours. This
22 includes, but is not limited to, failing to have a lawful meal period policy authorizing second meal
23 periods and/or permitting Plaintiff and the aggrieved employees to take a second meal period.

24 19. At times between August 15, 2017 and the present including the pay periods in
25 January 2022, Defendants’ meal period policies and practices also disincentivized and
26 discouraged Plaintiff and the other aggrieved employees from taking timely first meal periods
27 within the first five (5) hours of their shift. Defendants’ understaffing policies and practices also
28

1 pressured, coerced, and forced employees to forgo second meal periods due to a lack of sufficient
2 staffing and the time sensitive nature of projects on some instances.

3 20. During the statutory periods applicable to this action and within the past year,
4 Defendants also failed to provide shade recovery periods as required by California Law, IWC
5 Wage Order Nos. 5-2001 and 16-2001

6 21. Labor Code § 226.7 provides “an employer shall not require an employee to work
7 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
8 regulation, standard, or order of the Industrial Welfare Commission (“IWC”).

9 22. Similarly, IWC Wage Order Nos. 5-2001 and 16-2001 obligate employers to
10 provide an employee to “pay the employee one (1) hour of pay at the employee’s regular rate of
11 compensation for each workday that the meal period is not provided.

12 23. At times between August 15, 2017 and the present and within the past year,
13 Defendants also failed to pay Plaintiff and the aggrieved employees meal period premiums for
14 each workday that the employees did not receive a compliant meal period and/or at the proper
15 rate. Accordingly, for each day that Plaintiff and all aggrieved employees did not receive
16 compliant meal periods, they are entitled to receive meal period premiums pursuant to Labor
17 Code § 226.7 and IWC Wage Order Nos. 5-2001 and 16-2001. Unfortunately, Plaintiff and the
18 aggrieved employees were not compensated with one (1) hours’ worth of pay at their regular rate
19 of compensation when they were not provided with a compliant meal period in violation of Labor
20 Code § 226.7 and IWC Wage Order Nos. 5-2001 and 16-2001.

21 24. Further, on the rare occasions, that Defendants paid meal period premiums since
22 August 15, 2017 and within the past year, Defendants had a common policy and practice of
23 failing to include compensation associated with incentive payments, shift differentials,
24 compensation associated with prevailing wages, non-discretionary bonuses, production bonuses,
25 efficiency bonuses, attendance bonuses, and other non-discretionary income aside from Plaintiff
26 and aggrieved employees’ hourly base rates when calculating and paying meal period premiums.
27 Instead of paying meal/rest period premiums at employees’ regular rates, on the rare occasions
28 that Plaintiff and the aggrieved employees received a meal period premium, Defendants

1 improperly paid the premium at their hourly base rate instead of at their regular rate. Plaintiff
2 contends that Defendants’ policies and practices as alleged above violated Labor Code § 226.7
3 and seeks penalties pursuant to PAGA related thereto consistent with the California Supreme
4 Court’s decision in *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 878 (2021) (“we hold
5 that the term ‘regular rate of compensation’ in section 226.7(c) has the same meaning of regular
6 rate of pay’ in section 510(a) and encompasses not only hourly wages, but all nondiscretionary
7 payments for work performed by the employee.”).

8 25. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to
9 be violated...any provision regulating hours and days of work in any order of the Industrial
10 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,
11 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was
12 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each
13 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
14 period for which the employee was underpaid in addition to an amount sufficient to recover
15 underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected
16 employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only
17 the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and
18 not any underpaid wages.

19 26. Labor Code § 226.7 provides “an employer shall not require an employee to work
20 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
21 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
22 Order Nos. 5-2001 and 16-2001, an employer must authorize and permit all employees to take ten
23 (10) minute duty free rest periods for every major fraction of four hours worked.

24 27. At times between August 15, 2017 and the present and within the past year
25 including the pay periods in January 2022, Defendants failed to provide Plaintiff and the
26 aggrieved employees with rest periods of not less than ten (10) minutes for every major fraction
27 of four (4) hours worked. Instead, Defendants at times required Plaintiff and the aggrieved
28 employees to forgo a second rest period when they worked shifts in excess of six (6) hours—

1 including, but not limited to when Plaintiff and the aggrieved employees worked shifts in excess
2 of six (6) hours, but less than eight (8) hours—and failed to authorize and permit employees who
3 worked more than ten (10) hours to receive/take a third rest period.

4 28. In addition to failing to authorize and permit compliant rest periods, Plaintiff and
5 the aggrieved employees were not compensated with one (1) hours' worth of pay at their regular
6 rate of compensation when they were not provided with a compliant rest period and/or their rest
7 period was interrupted in accordance with Labor Code § 226.7(b).

8 29. Further, on the rare occasions, that Defendants paid rest period premiums since
9 August 15, 2017 and within the past year, Defendants had a common policy and practice of
10 failing to include compensation associated with incentive payments, shift differentials,
11 compensation associated with prevailing wages, non-discretionary bonuses, production bonuses,
12 efficiency bonuses, attendance bonuses, and other non-discretionary income aside from the
13 aggrieved employees' hourly base rates when calculating and paying rest period premiums.
14 Instead of paying meal/rest period premiums at employees' regular rates, on the rare occasions
15 that Plaintiff and the aggrieved employees received a rest period premium, Defendants
16 improperly paid the premium at their hourly base rate instead of at their regular rate. Plaintiff
17 contends that Defendants' policies and practices as alleged above violated Labor Code § 226.7
18 and seeks penalties pursuant to PAGA related thereto consistent with the California Supreme
19 Court's decision in *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 878 (2021) ("we hold
20 that the term 'regular rate of compensation' in section 226.7(c) has the same meaning of regular
21 rate of pay' in section 510(a) and encompasses not only hourly wages, but all nondiscretionary
22 payments for work performed by the employee.").

23 30. As to Plaintiff, the Wage Statement Class, and the aggrieved employees,
24 Defendants also failed to provide accurate itemized wage statements in accordance with Labor
25 Code § 226(a)(1, 2, 5, 6, and 9). Labor Code § 226 obligates employers, semi-monthly or at the
26 time of each payment to furnish an itemized wage statement in writing showing:

- 27 (1) gross wages earned;
28 (2) total hours worked by the employee;
(3) the number of piece-rate units earned and any applicable piece rate if the

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

11 Similarly, Labor Code § 226(e) provides:

12 (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an
13 employer to comply with subdivision (a) is entitled to recover the greater of all actual
14 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
15 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
16 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
17 award of costs and reasonable attorney's fees.

18 (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
19 employer fails to provide a wage statement.

20 (B) An employee is deemed to suffer injury for purposes of this subdivision if the
21 employer fails to provide accurate and complete information as required by any one or
22 more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly
23 and easily determine from the wage statement alone one or more of the following:

24 (i) The amount of the gross wages or net wages paid to the employee during the
25 pay period or any of the other information required to be provided on the itemized
26 wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
27 (a).

28 (ii) Which deductions the employer made from gross wages to determine the net
wages paid to the employee during the pay period. Nothing in this subdivision
alters the ability of the employer to aggregate deductions consistent with the
requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor
contractor, as defined in subdivision (b) of Section 1682, the name and address of
the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his or her social
security number or an employee identification number other than a social security
number.

31. Due to Defendants' failure to pay Plaintiff, the Wage Statement Class and the
aggrieved employees all meal period premiums and rest period premiums, the wage statements
issued by Defendants do not indicate the correct amount of gross wages earned, the total hours
worked, the net wages earned, all applicable hourly rates in effect during the pay period and the
corresponding number of hours worked at each hourly rate. Defendants also issued itemized wage
statements to Plaintiff, the Wage Statement Class, and the aggrieved employees that did not
include the start date of the pay period. As such, the wage statements issued to Plaintiff and the

1 other aggrieved employees did not contain “the inclusive dates of the period for which the
2 employee is paid.” Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and
3 Defendant has violated Labor Code §226(a)(1), (2), (5), (6), and (9) with respect to Plaintiff, the
4 Wage Statement Class, and all aggrieved employees.

5 32. Plaintiff, the Wage Statement Class, and the aggrieved employees also suffered
6 legal “injury” for purposes of Labor Code section 226(e) insofar as they were unable to readily
7 and easily determine from the wage statements themselves the information required to be set forth
8 by Section 226(a), the information provided by Defendants was inaccurate and made it difficult to
9 determine and ascertain the information required by Labor Code section 226(a). However,
10 Plaintiff does not allege any injury aside from the statutory violation and therefore there would be
11 no Article III standing, which is not required in state courts.

12 33. In addition, Plaintiff, the Wage Statement Class, and the aggrieved employees
13 were unable to determine at all the total hours worked by the employee, the gross wages earned,
14 the net wages earned, and all applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the employee for the reasons
16 discussed above.

17 34. As described in detail above, Defendants failed to pay the Late Payment
18 Aggrieved Employees whose employment concluded between August 15, 2018 and continuing
19 into the present all wages owed, including but not limited to meal period premiums and rest
20 period premiums within the time constraints proscribed in Labor Code §§ 201-202 at the time of
21 their termination/separation. Separate and independent of the foregoing Defendants also failed to
22 Plaintiff, the Late Payment aggrieved employees any wages whatsoever within the time
23 constraints of Labor Code section 201-202. For instance, Plaintiff did not receive his final wages
24 on the day of his termination in January 2022. This may be as a result of Defendants’ policy and
25 practice of processing final pay checks at the same time as all employees pay checks, but is not
26 limited to such instances. Thus, as result of Defendant’s faulty policies described above, the Late
27 Payment Aggrieved Employees left their employment with Defendants all wages owed and
28 within the proper time constraints in violation of Labor Code §§ 201, 202, and 203.

1 35. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in
2 any employment are due and payable twice during each calendar month, on days designated in
3 advance by the employer as the regular paydays.” Defendant pays Plaintiff and all aggrieved
4 employees on a basis other than semi-monthly such that it is covered by Labor Code § 204(d).

5 36. Due to Defendants’ failure to pay Plaintiff and all aggrieved employees all meal
6 period premiums and rest period premiums for the reasons discussed above, Defendants failed to
7 timely pay Plaintiff and all aggrieved employees all wages owed within seven (7) days of the
8 close of the payroll period in accordance with Labor Code § 204(d) on a regular and consistent
9 basis.

10 37. Labor Code § 210 provides that “in addition to, an entirely independent and apart
11 from, any other penalty provided in this article, every person who fails to pay the wages of each
12 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
13 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
14 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
15 each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of
16 the faulty compensation policies and practices described in detail above, Plaintiff and the other
17 aggrieved employees are entitled to recover penalties under Labor Code § 210 through PAGA.
18 *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (affirming an award of
19 Labor Code section 210 penalties under PAGA due to the employer’s failure to timely pay wages
20 at the proper rate in accordance with a local wage ordinance).

21 38. Labor Code §2802 provides that “[a]n employer shall indemnify his or her
22 employee for all necessary expenditures or losses incurred by the employee in direct consequence
23 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
24 even though unlawful, unless the employee, at the time of obeying the directions, believed them
25 to be unlawful.”

26 39. Since the onset of the COVID-19 pandemic, Defendants failed to provide Plaintiff
27 and the aggrieved employees with masks and instead expected Plaintiff and the aggrieved
28 employees to provide their own masks at their expense. By requiring Plaintiff and the aggrieved

1 employees to provide masks at their own expense, Defendants caused Plaintiff and the aggrieved
2 employees to incur expense in order to perform their job and comply with State, Local, and/or
3 other applicable laws and health orders and regulations. Accordingly, Defendant has violated
4 Labor Code § 2802.

5 40. In addition, Labor Code § 1198 provides that “the standard of conditions of labor
6 fixed by the commission shall be the maximum hours of work and the standard conditions of
7 labor for employees. The employment of any employee...under conditions of labor prohibited by
8 the order is unlawful.” By failing to follow 8 Cal. C. Regs. § 3395(c) and 3395(d)(1), Defendants
9 violated California Labor Code § 1198. *Bright vs. 99 Cents Only Stores*, 189 Cal.App.4th 1472
10 (2010).

11 41. Moreover, although 8 Cal. C. Regs. § 3395(d)(1) requires employers to
12 “encourage” employees to take a preventative cool down rest in the shade when they feel the need
13 to do so to protect themselves from overheating and that “access to shade shall be permitted at all
14 times” Defendants failed to advise Plaintiff and all aggrieved employees of their right to recovery
15 periods and did not encourage employee to take preventative cool-down rests. Instead,
16 Defendants omitted and concealed the fact that employees were entitled to such recovery periods
17 and made employees stay on-the-premises and on-duty at all times including during any meal and
18 rest periods. Accordingly, Defendants violated Labor Code §§ 226.7 and 1198.

19 42. Due to Defendants’ unlawful practices detailed above, Defendant failed to afford
20 recovery periods to prevent heat illness in violation of Labor Code § 226.7. Labor Code 226.7
21 specifies that “if an employer fails to provide an employee a meal or rest or recovery period in
22 accordance with a state law, including, but not limited to, an applicable statute or applicable
23 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
24 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
25 pay the employee one additional hour of pay at the employee’s regular rate of compensation for
26 each workday that the meal or rest or recovery period is not provided. In express violation of
27 Labor Code § 226.7, Defendants at times failed to pay Plaintiff and the aggrieved employees
28

1 recovery period premiums within the meaning of Labor Code § 226.7 when it failed to advise
2 and/or provide each with a lawful recovery period.

3 **II.**

4 **JURISDICTION AND VENUE**

5 43. This Court has subject matter jurisdiction over all causes of action asserted herein
6 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
7 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy,
8 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the
9 laws of the State of California or is subject to adjudication in the courts of the State of California.

10 44. This Court has personal jurisdiction over Defendants XL LANDSCAPE
11 DEVELOPMENT LLC, XL LANDSCAPE DEVELOPMENT, BLACK IRON REINFORCING,
12 LLC, XL CONCRETE MASONRY, LLC, XL COMPANIES LLC, and PREMIER ONE
13 ELECTRIC, LLC because Defendants have caused injuries in the County of Sacramento and
14 State of California through their acts, and by their violation of the California Labor Code and
15 California law in Sacramento County.

16 45. Defendants also engaged and suffered and/or permitted the Class Members, and
17 aggrieved employees to perform work in Sacramento County during the statutory period
18 applicable to their claims resulting in injuries within Sacramento County. *Battaglia Enterprises,*
19 *Inc. v. Sup. Ct.*, 215 Cal.App.4th 309, 313 (2013) (holding that if “venue is proper in more than
20 one county, a plaintiff may choose among the available options.”); *accord Crestwood Behavioral*
21 *Health, Inc. v. Superior Court*, 60 Cal. App. 5th 1069 (2021) (affirming that the Plaintiff’s choice
22 of venue in a PAGA case was proper in Alameda County even though the employee only worked
23 for the defendant in Solano County and the defendant’s principal office was in Sacramento
24 County). Defendants’ principal office and/or principal office in California is located in Rancho
25 Cordova in Sacramento County.

26 46. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
27 Civil Procedure §395. Defendants operates within California and do business within Sacramento
28

County. The unlawful acts alleged herein have a direct effect on the Class, the State of California, and the aggrieved employees within the State of California and Sacramento County.

47. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

III.

PARTIES

A. PLAINTIFF

48. Plaintiff JORGE GONZALEZ AVALOS is a former employee of Defendants who worked for Defendants and/or experienced Labor Code violations that were caused by Defendants during the statutory period until in or around late January 2022.

49. Plaintiff and the Class were regularly required to:

a. Work without being provided an accurate itemized wage statement that accurately indicate the gross wages earned, total hours worked by the employee, the inclusive dates of the pay period, the net wages earned, as well as all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee;

b. Whether Defendants violated the FCRA with respect to the FCRA Class members by failing to provide a standalone disclosure and/or proper disclosure that did not contain extraneous information;

B. DEFENDANTS

50. Defendant XL LANDSCAPE DEVELOPMENT, is a California corporation, with a current principal place of business of 3666 Omec Park Dr., Rancho Cordova, CA 95742 Defendant employed Class Members in Sacramento County and within California. Defendant has done and does business throughout the State of California and in Sacramento County.

1 51. Defendant XL LANDSCAPE DEVELOPMENT, LLC, claims it is a Nevada
2 Limited Liability Company, but Plaintiff alleges that it is an alter ego and/or dba for California
3 Corporation XL LANDSCAPE DEVELOPMENT and that its current principal place of business
4 is 3666 Omec Park Dr., Rancho Cordova, CA 95742 Defendant employed Class Members in
5 Sacramento County and within California. Defendant has done and does business throughout the
6 State of California and in Sacramento County.

7 52. Defendant XL CONCRETE MASONRY, LLC, claims it is a Nevada limited
8 liability company with a principal place of business of 38245 MURRIETA HOT SPRINGS
9 ROAD, G106, MURRIETA, CA 92563, but Plaintiff claims that it is an alter ego of all of the
10 Defendants and part of a single integrated enterprise. Defendant employed Class Members in
11 Sacramento County and within California. Defendant has done and does business throughout the
12 State of California and in Sacramento County.

13 53. Defendant BLACK IRON REINFORCING, LLC, claims it is a Nevada Limited
14 Liability Company, but Plaintiff claims that it is an alter ego of all of the Defendants and part of a
15 single integrated enterprise. Defendant BLACK IRON REINFORCING, LLC employed Class
16 Members in Sacramento County and within California. Defendant has done and does business
17 throughout the State of California and in Sacramento County.

18 54. Defendant XL COMPANIES LLC, claims it is a Nevada Limited Liability
19 Company, but Plaintiff claims that it is an alter ego of all of the Defendants and part of a single
20 integrated enterprise. Defendant XL COMPANIES LLC employed Class Members in Sacramento
21 County and within California. Defendant has done and does business throughout the State of
22 California and in Sacramento County.

23 55. Defendant PREMIER ONE ELECTRIC, LLC, claims it is a Nevada Limited
24 Liability Company, but Plaintiff claims that it is an alter ego of all of the Defendants and part of a
25 single integrated enterprise. Defendant PREMIER ONE ELECTRIC, LLC employed Class
26 Members in Sacramento County and within California. Defendant has done and does business
27 throughout the State of California and in Sacramento County.
28

56. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

57. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Class and/or as alter egos of each other.

IV.

CLASS ACTION ALLEGATIONS

58. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent several Classes and Subclasses composed of and defined as follows:

- (1) all non-exempt, hourly employees who were employed by XL LANDSCAPE DEVELOPMENT LLC, XL LANDSCAPE DEVELOPMENT, BLACK IRON REINFORCING, LLC, XL CONCRETE MASONRY, LLC, XL COMPANIES LLC, and PREMIER ONE ELECTRIC, LLC and/or other companies dba XL LANDSCAPE DEVELOPMENT LLC, XL LANDSCAPE DEVELOPMENT, BLACK IRON REINFORCING, LLC, XL CONCRETE MASONRY, LLC, XL COMPANIES LLC, and PREMIER ONE ELECTRIC, LLC or its predecessor, merged or related entities in California as an employee at any point from February 9, 2021 and continuing into the present. (the “Wage Statement Class”);³

³ The statute of limitations on the wage statement claim in this action are governed by the relation back doctrine established in an earlier filed action. *See Hildebrandt v. Staples the Off. Superstore, LLC*, 58 Cal. App. 5th 128 (2020).

1 (2) All individuals who executed authorization forms permitting XL LANDSCAPE
2 DEVELOPMENT LLC, XL LANDSCAPE DEVELOPMENT, BLACK IRON
3 REINFORCING, LLC, XL CONCRETE MASONRY, LLC, XL COMPANIES LLC,
4 and PREMIER ONE ELECTRIC, LLC and/or other companies dba XL
5 LANDSCAPE DEVELOPMENT LLC, XL LANDSCAPE DEVELOPMENT,
6 BLACK IRON REINFORCING, LLC, XL CONCRETE MASONRY, LLC, XL
7 COMPANIES LLC, and PREMIER ONE ELECTRIC, LLC or its predecessor,
8 merged or related entities or the DOES 1-50 to obtain a consumer report as part of an
9 employment application for a job in California and who had a background check run
10 by Defendants during the “FCRA Class Period” from two (2) years prior to the filing
11 date of this action through the date of entry of an order certifying the Classes and/or
12 Subclasses; (the “FCRA Class”).

13 59. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
14 amend or modify the class description with greater specificity, by division into subclasses, or by
15 limitation to particular issues.

16 60. This action has been brought and may properly be maintained as a class action
17 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
18 community of interest in the litigation and the Proposed Classes are easily ascertainable.

19 **A. Numerosity**

20 61. The potential members of the Proposed Classes as defined are each so numerous
21 that joinder of all the members of the Proposed Classes is impracticable. While the precise
22 number of proposed Class Members in each Class has not been determined at this time, Plaintiff
23 is informed and believes that Defendants currently employ, and during the relevant time periods
24 employed to be more than 100 members or more of the Proposed Class and Subclasses at any
25 given time.

26 62. Plaintiff alleges that Defendants’ employment records would provide information
27 as to the number and location of all Proposed Class members. Joinder of all members of the
28 Proposed Class and Subclasses is not practicable.

B. Commonality

63. There are questions of law and fact common to the Proposed Classes⁴ that
predominate over any questions affecting only individual Proposed Class Members. These

⁴ Plaintiff reserves his right to designate subclasses within the Classes including designating an Unfair Competition subclass for each class.

1 common questions of law and fact include, without limitation:

2 a. Whether Defendants violated Labor Code § 226(a) and (e) by failing to
3 provide the Wage Statement Class with accurate itemized wage statements that accurately
4 indicate, the gross wages earned, all deductions from wages, the net wages earned, as well as all
5 applicable hourly rates in effect during the pay period and the corresponding number of hours
6 worked at each hourly rate by the employee, and failed to include the inclusive dates of the pay
7 period;

8 b. Whether Defendants violated the FCRA with respect to the FCRA Class
9 members;

10 **C. Typicality**

11 64. The claims of Plaintiff are typical of the claims of the Proposed Class and
12 Subclasses. Plaintiff and all members of the Proposed Class and Subclasses sustained injuries and
13 damages arising out of and caused by Defendants' common course of conduct in violation of
14 laws, regulations that have the force and effect of law, and statutes as alleged herein.

15 **D. Adequacy of Representation**

16 65. Plaintiff will fairly and adequately represent and protect the interests of the
17 members of the proposed Classes. Counsel who represents Plaintiff and the Proposed Classes is
18 competent and experienced in litigating large employment class actions, and have the financial
19 resources to litigate the claims at issue.

20 **E. Superiority of Class Action**

21 66. A class action is superior to other available means for the fair and efficient
22 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
23 practicable, and questions of law and fact common to the Proposed Class predominate over any
24 questions affecting only individual members of the Proposed Class. Each member of the
25 Proposed Class has been damaged and is entitled to recovery by reason of Defendants' illegal
26 policy and/or practice of failing to pay all wages due, failing to provide meal periods, failing to
27 provide rest periods, failing to provide accurate itemized wage statements, and failing to pay all
28 wages upon resignation or termination.

67. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

V.

FIRST CAUSE OF ACTION
VIOLATIONS OF LABOR CODE § 226(e)

[Against all Defendants on behalf of Plaintiff and the Wage Statement Class]

68. Plaintiff, on behalf of himself and the Wage Class, realleges and incorporates by reference all previous paragraphs and all subsequent paragraphs.

69. From one (1) year prior to the filing of this action and continuing into the present, Defendants knowing and intentionally failed to provide accurate itemized wage statements to Plaintiff and the Wage Statement Class in accordance with Labor Code § 226(a)(1, 2, 5, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

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

Similarly, Labor Code § 226(e) provides:

- (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.
- (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.
- (B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

- (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).
- (ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).
- (iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.
- (iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

70. Due to Defendants' failure to pay Plaintiff and the Wage Statement Class members all rest period premiums, and meal period premiums, the wage statements issued by Defendants do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. The wage statements issued by Defendants to Plaintiff and the Wage Statement Class members also did not include the start date of the pay period, including those issued in January 2022, such that they did not contain the inclusive dates of the period for which the employee is paid in violation of Labor Code section 226(a)(6). Thus, Defendant has violated Labor Code §226(a)(1), (2), (5), (6), and (9) with respect to Plaintiff and the Wage Statement Class. Defendants engaged in such conduct during the pay period ending January 22, 2022 among others.

71. Defendants also knowingly and intentionally failed to pay Plaintiff and the Class meal period premiums and rest periods premiums. Moreover, Plaintiff and the Wage Statement Class also suffered legal "injury" for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily determine from the wage statements themselves the information required to be set forth by Section 226(a), the information provided by Defendants was inaccurate, Plaintiff and the Wage Statement Class were unable to determine at all the total hours worked by the employee, the gross wages earned, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each

1 hourly rate by the employee, and the inclusive dates of the pay period, for the reasons discussed
2 above.

3 72. Defendants also failed to both comply with and create a policy that complied with
4 Labor Code § 226 prior to the filing of this lawsuit. Labor Code § 226(e)(3) provides that when
5 determining whether or not an employer's violation of Labor Code § 226(a) was knowing and
6 intentional, "the relevant factor [is] whether the employer, prior to an alleged violation, has
7 adopted and is in compliance with a set of policies, procedures, and practices that fully comply
8 with this section." Accordingly, Defendants' conduct was knowing and intentional within the
9 meaning of Labor Code § 226(e).

10 73. An employee suffering injury as a result of a knowing and intentional failure by an
11 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
12 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
13 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
14 an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
15 reasonable attorneys' fees. *See* Lab. Code § 226(e). Plaintiff and the Wage Statement Class seek
16 penalties under Labor Code § 226(e) in amounts to be determined at trial, and are entitled to
17 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

18 VI.

19 SECOND CAUSE OF ACTION

20 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
21 FOR PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS
22 OF LABOR CODE §§ 1, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 512, 558, 1198, 2802,
23 as well as IWC Wage Order Nos. 5-2001 and 16-2001**

24 74. Plaintiff, on behalf of the State of California, realleges and incorporates by
25 reference all previous paragraphs.

26 75. Plaintiff filed his PAGA Notice online with the Labor Workforce Development
27 Agency ("LWDA") and sent a letter by certified mail to Defendants setting forth the facts and
28 theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.*
As required by PAGA, Plaintiff submitted the \$75.00 filing fee to the LWDA. Pursuant to Labor
Code § 2699.3(a)(2)(A), no notice was received and/or will have been received by Plaintiff from
the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the

1 postmark date of the PAGA notice. Plaintiff is therefore, entitled to commence and proceed with
2 a civil action pursuant to Labor Code § 2699.

3 76. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
4 § 2698, et seq. because of Defendants' violations of Labor Code §§ 201, 202, 203, 204, 210, 226,
5 226.3, 226.7, 512, 558, 1198, 2802, as well as IWC Wage Order Nos. 5-2001 and 16-2001

6 77. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and
7 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of
8 trial subject to the following formula unless a civil penalty is already proscribed under the Labor
9 Code:

10 \$100 for the initial violation per employee per pay period; and

11 \$200 for each subsequent violation per employee per pay period.

12 78. These penalties will be allocated 75% to the Labor Workforce Development
13 Agency and 25% to the affected employees.

14 79. There is currently a split of authority regarding which PAGA penalties apply to
15 violations of Labor Code § 226(a). *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355
16 (2021) (holding that such violations give rise to a 2699.3 penalty) *cf.*; *Raines v. Coastal Pacific*
17 *Food Distributors, Inc.*, 23 Cal.App.5th 667, 675 (2018) (holding that such violations give rise to
18 a Labor Code § 226.3 penalty). Labor Code § 226.3 provides that “[a]ny employer who violates
19 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred
20 fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars
21 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to
22 provide the employee a wage deduction statement or fails to keep the required in subdivision (a)
23 of Section 226.” As explained in detail above, Defendant failed to provide Plaintiff and the other
24 aggrieved employees with accurate itemized wage statements. Accordingly, to the extent it
25 applies, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 or
26 2699 penalties for Defendant’s violations of Labor Code § 226(a).

27 80. Labor Code § 210 provides that “in addition to, an entirely independent and apart
28 from, any other penalty provided in this article, every person who fails to pay the wages of each

1 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
2 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
3 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
4 each failure to pay each employee, plus 25% of the amount unlawfully withheld.”

5 81. As a result of the faulty compensation policies and practices described in detail
6 above, the State of California is entitled to recover penalties under Labor Code § 210 through
7 PAGA.

8 82. Further, Labor Code § 558 imposes a penalty upon employers “who violates, or
9 causes to be violated...any provision regulating hours and days of work in any order of the
10 Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial
11 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
12 employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For
13 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
14 period for which the employee was underpaid...” Based upon the above factual allegations
15 related to overtime, meal period, and rest period violations, Plaintiff and the aggrieved employees
16 are entitled to recover civil penalties under Labor Code § 558 and not any underpaid wages under
17 PAGA. *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019).

18 **VII.**
19 **THIRD CAUSE OF ACTION**
20 **VIOLATIONS OF THE FAIR CREDIT REPORTING ACT**
21 **& INVESTIGATIVE CONSUMER REPORTING AGENCIES ACT**
22 **[15 U.S.C. § 1681 et seq. & Cal. Civil Code § 1786, et seq.]**

23 83. Plaintiff, on behalf of himself and the FCRA Class, realleges and incorporates by
24 reference all previous paragraphs and all subsequent paragraphs.

25 84. Plaintiff re-alleges and incorporates by reference each and every allegation set
26 forth in the preceding paragraphs.

27 85. The Fair Credit Reporting Act, 15, U.S.C. § 1681, *et seq.* (“FCRA”) outlines the
28 Federal Rules for Background Checks. The FCRA requires, in relevant part that, prior to
procuring a consumer report on an applicant for employment from a third party, an employer
must: (1) provide a clear and conspicuous disclosure to each application in writing that a

1 consumer report may be obtained for employment purposes; and (2) obtain the applicant's
2 authorization in writing to obtain the report. 15 U.S.C. § 1681b(b)(2)(A). Section 1681b(b)(2)(A)
3 further specifies that the disclosure must be in writing "in a document that consists solely of the
4 disclosure."

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

6 "... a person may not procure a consumer report, or cause a consumer report to be
7 procured, for employment purposes with respect to any consumer, unless—

8 (i) a clear and conspicuous disclosure has been made to the consumer at the
9 time before the report is procured or caused to be procured, in a document
10 that consists solely of the disclosure, that a consumer report may be
obtained for employment purposes.; and

11 (ii) the consumer has authorized in writing ... the procurement of the report to
12 that person." 15 U.S.C. § 1681b (b)(2)(A) (emphasis added).

13 87. The Ninth Circuit Court of Appeals recently held in *Gilberg v. Cal. Check Cashing*
14 *Stores, LLC* that employers are required to use two separate, standalone forms when conducting
15 background checks on applicants, rather than combining both disclosures into a single document:
16 (1) disclosure and consent under Fair Credit Reporting Act; and (2) disclosure and consent under
17 California's Investigative Consumer Reporting Agencies Act (or other applicable state law). The
18 9th Circuit also rejected the idea that extra information might be permissible as long as it is
19 "closely related" to the FCRA-mandated disclosure, stating that there are no "implicit exceptions"
to the standalone requirement.

20 88. During the FCRA Class Period, Defendants failed to provide Plaintiff and the
21 other members of the FCRA Class with a disclosure form that contains nothing more than the
22 disclosure itself prior to obtaining a consumer/background report in violation of the Fair Credit
23 Reporting Act. *See Walker v. Fred Meyer, Inc.*, 953 F.3d 1082, 1087 (9th Cir. 2020).

24 89. Based upon information and belief, during the FCRA Class Period Defendants did
25 not provide a standalone disclosure before obtaining a background check/consumer report and
26 instead included the only information that it provided as part of the job application on the same
27 page as portions of the application related to prior jobs, references, emergency contact
28

1 information, as well as an authorization to release information after the employee's ended for any
2 reason provided as long as Defendants believe the Party requesting the information has a
3 reasonable basis for doing so. As a matter of law, the inclusion of extraneous information
4 invalidates the authorization form for purposes of the FCRA. See *Gilberg v. Cal. Check Cashing*
5 *Stores, LLC*, 913 F.3d 1169, 1174 (9th Cir. 2019). This violated the requirement to provide a
6 disclosure form that contains nothing more than the disclosure itself. *Walker v. Fred Meyer, Inc.*,
7 953 F.3d 1082, 1087 (9th Cir. 2020).

8 90. Defendants violated FCRA by failing provide forms that contain a clear and
9 conspicuous disclosure to the consumer at the time before the report is procured or caused to be
10 procured, in a document that consists solely of the disclosure.

11 91. For the reasons discussed above, the "disclosures provided by Defendants were
12 not clear and conspicuous as required by the Fair Credit Reporting Act.

13 92. During the relevant time period here, Defendants' disclosures and authorizations
14 have not and do not meet the requirements of FCRA because, without limitation, they are
15 embedded with extraneous information, are not clear and unambiguous disclosures in stand-alone
16 documents, and do not break out the specific requirements and authorizations on a state by state
17 basis. They improperly include, inter alia, drug testing and other improper authorizations.

18 93. Based upon information and belief, Defendants did not provide a standalone
19 disclosure and instead included the only information that it provided as part of the job application.
20 On the very same page, Defendants provided a plethora of extraneous information, including but
21 not limited to asking about Plaintiff's prior job history, emergency contacts, and for permission to
22 provide information about the applicant to those who had a reasonable basis for inquiring about
23 their employment after their employment with Defendants ceased. As a matter of law, the
24 inclusion of extraneous information invalidates the authorization form for purposes of the FCRA.
25 See *Gilberg v. Cal. Check Cashing Stores, LLC*, 913 F.3d 1169, 1174 (9th Cir. 2019).

26 94. Defendants' uniform authorization forms further violate FCRA by: (1) failing to
27 specify that an investigate consumer report may be obtained; (2) identifying the permissible
28 purpose of the report; (3) indicating that the disclosure may include information on the

1 consumer's character, general reputation, personal characteristics, and mode of living; failing to
2 identify the name, address, and telephone number of the investigative consumer reporting agency
3 conducting the investigation; (4) failing to notify the consumer in writing of the nature and scope
4 of the investigation requested, including a summary of the provisions of Section 1786.22; and (5)
5 failing to notify the consumer of the Internet Web site address of the investigative consumer
6 reporting agency and/or its telephone number.

7 95. The FCRA permits a plaintiff to recover actual, statutory and/or punitive damages,
8 along with attorneys' fees, in cases of willful noncompliance. See 15 U.S.C. § 1681n(a)(1)-(3). A
9 defendant acts willfully under the FCRA by either knowingly or recklessly disregarding its
10 statutory duty. *Safeco Ins. Co. v. Burr*, 551 U.S. 47, 57-60 (2007).

11 96. Here, because the FCRA itself and the FTC's applicable guidance are all clear and
12 unambiguous that extraneous language cannot be included in FCRA authorization forms,
13 Defendant's inclusion of extraneous language in its authorization forms constitutes a willful
14 violation of the FCRA's disclosure requirement, as a matter of law, triggering statutory damages.
15 Defendants' authorization forms executed by applicants facially contravene the FCRA's
16 requirement that a "clear and conspicuous" disclosure appear "***in a document that consists solely***
17 ***of the disclosure.***" 15 U.S.C. §1681(b)(2)(A)(i) (emphasis added).

18 97. As a result of Defendant's above-described violations Plaintiff and other the
19 members of the FCRA Class are each entitled to recover statutory damages of "not less than \$100
20 and not more than \$1,000."

21 98. Pursuant to 15 U.S.C. §1681n(a)(2), Plaintiff and other the members of the FCRA
22 Class are also entitled to recover punitive damages as the court may allow.

23 99. Pursuant to 15 U.S.C. §1681n(a)(3) and Cal. Civil Code § 1786.50(a), if Plaintiff
24 and the other members of the FCRA Class prevail, they are also entitled to recover costs of suit
25 with reasonable attorneys' fees, as determined by the court.

26 **RELIEF REQUESTED**

27 **WHEREFORE**, Plaintiff prays for the following relief:
28

1 1. An Order that this action may proceed and be maintained as a Class Action on
2 behalf of the Classes;

3 2. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code
4 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
5 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
6 exceeding an aggregate penalty of four thousand dollars (\$4,000) for the inaccurate itemized
7 wage statements issued to Plaintiff and the Wage Statement Class from March 29, 2020 and
8 continuing into the present;

9 3. For penalties under Labor Code § 2698, et seq. for Plaintiff and all aggrieved
10 employees because of Defendants' violation of Labor Code §§ 201, 202, 203, 204, 210, 226,
11 226.3, 226.7, 512, 558, 1198, 2802, as well as IWC Wage Order Nos. 5-2001 and 16-2001;

12 4. A determination and judgment that Defendants willfully violated 15 U.S.C. §
13 1681(b)(2)(A)(i) and the FCRA and California Civil Code § 1786 et seq. and the ICRAA by
14 obtaining consumer reports on Plaintiff and the Class without having facially valid authorization
15 forms;

16 5. Pursuant to 15 U.S.C. §1681n(a)(1)(A), an award of statutory damages to Plaintiff
17 and the Class in an amount equal to up to \$1,000 for Plaintiff and each member of the Class for
18 Defendants' willful violation of the FCRA;

19 a. Pursuant to 15 U.S.C. §1681n(a)(2), an award of punitive damages to Plaintiff and
20 the members of the Class in an amount to be determined by the Court;

21 6. An award of prejudgment and post judgment interest;

22 7. An award providing for payment of costs of suit;

23 8. An award of attorneys' fees; and

24 9. Such other and further relief as this Court may deem proper and just.

25 **DEMAND FOR JURY TRIAL**

26 Plaintiff hereby demands trial of his claims by jury to the extent authorized by law, which does
27 not include causes of action two (2).

28 ///

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2 DATED: April 29, 2022

WINSTON LAW GROUP, P.C.

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4 By: David S. Winston
5 DAVID S. WINSTON
6 Attorneys for Plaintiff, the Proposed
7 Class, and the aggrieved employees
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