

Thomas D. Rutledge (SBN 200497)
Attorney-at-Law
16956 Via de Santa Fe, Suite 1847
Rancho Santa Fe, California 92091-4606
Telephone: (619) 886-7224
thomasrutledgelaw@gmail.com

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

VERNON BARNETT, individually and
as an aggrieved employee pursuant to the
Private Attorneys General Act ("PAGA")
on behalf of the State of California and
other aggrieved
employees,

Plaintiffs,

vs.

QW INSURANCE SOLUTIONS, LLC,
a Washington limited liability company;
LENDINGTREE INC., a Delaware
corporation; LENDINGTREE LLC, a
Delaware limited liability company; and
DOES 3 through 50,

Defendants.

Case No. 37-2022-00019924-CU-OE-CTL
(Consolidated with Case No. 37-2022-
00039614-CU-OE-CTL)

Judge: Hon. Katherine Bacal
Dept. C-69

**SECOND AMENDED CLASS
ACTION AND PAGA
COMPLAINT FOR:**

1. Failure to pay minimum/regular wages;
2. Failure to Pay State Overtime;
3. Failure to Comply with Meal Break Laws;
4. Failure to Comply with Rest Break Laws;
5. Failure to Reimburse Expenses;
6. Failure to Provide Accurate Wage Statements;
7. Failure to Pay Wages Timely;
8. Failure to Provide and Maintain Records;
9. Individual Claim for Violations of the California Investigative Consumer Reporting Agencies Act (Civ. Code, § 1786, *et seq.*);
10. Violation of B.&P. Code §§ 17200, *et seq.*;
11. Violations of Fair Credit Reporting Act, 15 U.S.C. §§ 1681b(b)(2)(A) § 1681o(a) (Obtaining Consumer Reports Without Proper Disclosure);
12. Violations of Fair Credit Reporting Act, 15 U.S.C. §§ 1681b(b)(2)(A) § 1681o(a) (Obtaining Consumer Reports Without Proper Authorization); and
13. Common Law Violation of Right to Privacy.

Complaint Filed: May 25, 2022
Trial Date: NA
Discovery Cutoff: NA

1
2 Plaintiff VERNON BARNETT, on behalf of himself, the State of California, and
3 acting for the interests of other current and former employees (Aggrieved Employees),
4 the putative class, and all others similarly situated individuals (cumulatively
5 “Plaintiffs”), allege the following:

6 **NATURE OF THE ACTION**

7 1. This is a consumer and wage and hour individual, class, and
8 representative action.

9 2. Pursuant to Code of Civil Procedure § 382 and the Private Attorney
10 General Act (“PAGA”), §§ 2698, 2699 of the California Labor Code, Plaintiffs bring
11 this proposed class and representative action against Defendants for wage and hour
12 abuses in violation of the California Labor Code and the Industrial Welfare
13 Commission Wage Orders (the “IWC Wage Orders”), all of which contribute to
14 Defendants’ deliberate unfair competition in California.

15 3. Plaintiffs also bring this nationwide class action on behalf of all
16 individuals with respect to whom Defendants unlawfully procured or caused to be
17 procured a consumer report for employment purposes in connection with the job
18 application process on the basis of invalid consumer report disclosures.

19 4. Specifically, Plaintiffs complain that Defendants have a uniform policy or
20 practice of unlawfully procuring or causing to be procured an applicant’s consumer
21 report and have violated the Fair Credit Reporting Act (the “FCRA”) through use of
22 legally invalid consumer report disclosures that: (1) fail to provide a clear and
23 conspicuous disclosure; and (2) fail to provide a disclosure that appears in a document
24 that consists solely of the disclosure. Plaintiffs seek all remedies available to them
25 including but not limited to reimbursements, penalties, restitution, injunctive and other
26 equitable relief, reasonable attorneys’ fees, and costs.

27 5. Plaintiffs also seek statutory, special, and general damages, injunctive and
28 other equitable relief, reasonable attorneys’ fees, and costs.

JURISDICTION AND VENUE

6. Pursuant to Article VI, § 10 of the California Constitution, subject matter jurisdiction is proper in the Superior Court of California, County of San Diego, State of California because Plaintiffs allege claims arising under California law.

7. Jurisdiction over Plaintiffs' FCRA claims is proper under 15 U.S.C. §1681p, which provides that "[a]n action to enforce any liability created under this subchapter may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction[.]"

8. This Court has jurisdiction over the Defendants because each is an association, corporation, business entity, or individual that conducts substantial business in the State of California.

9. Pursuant to § 395 of the California Code of Civil Procedure, venue is proper in the Superior Court of California for the County of San Diego because Defendant QW INSURANCE SOLUTIONS, LLC is a Washington limited liability company doing business in California and which entity's current records with the California Secretary of State does not indicate where it maintains its headquarters in California.

THE PARTIES

10. Plaintiff VERNON BARNETT is an individual residing in California.

11. Defendant QW INSURANCE SOLUTIONS, LLC is a Washington limited liability company doing business in the State of California.

12. Defendant LENDINGTREE INC. is a Delaware corporation doing business in the State of California.

13. Defendant LENDINGTREE LLC is a Delaware limited liability company doing business in the State of California.

14. The true names and capacities, whether individual, corporate, associate or

1 otherwise of the Defendants named herein as DOES 3 through 50, are unknown to
2 Plaintiffs at this time. Plaintiffs therefore sues said Defendants by such fictitious names
3 pursuant to § 474 of the California Code of Civil Procedure. Plaintiffs will seek leave
4 to amend this Complaint to allege the true names and capacities of DOES 3 through 50
5 when their names are ascertained. Plaintiffs are informed and believe, and based
6 thereon allege, that each of the DOE Defendants is in some manner liable to Plaintiffs
7 for the events and actions alleged herein.

8 15. Unless otherwise specified by name, the named Defendants and DOES 3
9 through 50 will be collectively referred to as "DEFENDANT EMPLOYER" and/or
10 "Defendants."

11 16. Plaintiffs are informed and believe, and based thereon allege, that each
12 Defendant was acting as an agent, joint venturer, an integrated enterprise and/or alter
13 ego for each of the other Defendants and each were co-conspirators with respect to the
14 acts and the wrongful conduct alleged herein so that each is responsible for the acts of
15 the other pursuant to the conspiracy and in proximate connection with the other
16 Defendant(s).

17 17. Plaintiffs are informed and believe, and based thereon allege, that each
18 Defendant was acting partly within and partly without the scope and course of their
19 employment, and was acting with the knowledge, permission, consent, and ratification
20 of every other Defendant.

21 18. Plaintiffs are informed and believe, and based thereon allege that each of
22 the Defendants was an agent, managing general partner, managing member, owner, co-
23 owner, partner, employee, and/or representative of each of the Defendants and was at
24 all times material hereto, acting within the purpose and scope of such agency,
25 employment, contract and/or representation, and that each of them is jointly and
26 severally liable to Plaintiffs.

27 19. Plaintiffs are informed and believe, and based thereon allege that each of
28 the Defendants is liable to Plaintiffs under legal theories and doctrines including but

1 not limited to (1) joint employer; (2) integrated enterprise; (3) agency; and/or (4) alter
2 ego, based in part, on the facts set forth below.

3 20. Plaintiffs are informed and believe, and based thereon allege, that each of
4 the named Defendants are part of an integrated enterprise and have acted or currently
5 act as the employer and/or joint employer of the Plaintiffs/Class Members making each
6 of them liable for the wage and hour violations alleged herein.

7 21. Plaintiffs are informed and believe, and therefore allege, that one, more
8 than one, or each of the named Defendants are liable to the Plaintiffs under legal
9 theories and doctrines including but not limited to (1) the common law joint employer
10 doctrine and/or (2) Labor Code § 2810.3 because at least one of these named
11 Defendants worked as the central hub to an overall business operation by which the
12 interrelationship between these Defendants makes each of the Defendants liable for
13 the wage and hour violations alleged herein.

14 **GENERAL ALLEGATIONS**

15 22. Defendants are in the lending and insurance business.

16 23. From about June 22, 2020, Defendants employed Plaintiff BARNETT as
17 a nonexempt worker in San Diego County until Defendants involuntarily terminated
18 him on April 8, 2022 without paying him all wages to which he had a right to receive
19 on the day of his termination in an amount to be proven at trial.

20 24. Defendants paid Plaintiffs and putative Class Members on an hourly
21 basis and sometimes paid them commissions and bonuses when eligible.

22 **Failure to Provide Payroll Records and Plaintiff's Personnel File.**

23 25. On April 8, 2022, Plaintiff, via counsel, sent a letter to DEFENDANT
24 EMPLOYER requesting access to Plaintiff's payroll records and employee personnel
25 file.

26 26. On April 29, 2022, DEFENDANT EMPLOYER, via counsel, responded
27 to the foregoing letter via email providing only Plaintiff's paystubs.

28 27. On May 9, 2022, DEFENDANT EMPLOYER, via counsel, sent another

1 written response via email to the foregoing letter providing portions of Plaintiff's
2 employee personnel file.

3 28. On May 10, 2022, Plaintiff, via counsel, sent an email to DEFENDANT
4 EMPLOYER's counsel indicating the employee personnel file production was
5 incomplete and instructing DEFENDANT EMPLOYER to provide the "background
6 report you procured, the consent form he signed to permit his employer to procure the
7 report, the disclosure form he likewise presumably signed vis-a-vis the background
8 check, all commission plans applicable to his pay, and a copy of his W-2."

9 29. On May 12, 2022, DEFENDANT EMPLOYER's counsel wrote via
10 email, "Thank you for your email - I received your 5/10 email yesterday, since it was
11 sent at 9:40pm EST, and I am tied up in depositions through EOD tomorrow. I'll
12 have a response to you ASAP, no later than EOD Monday."

13 30. On May 16, 2022, DEFENDANT EMPLOYER's counsel wrote via
14 email, "Following up on my last email, I am in the process of gathering some
15 additional items to provide to you, and will send them over to you with a written
16 response in the next couple of days."

17 31. As of this filing, DEFENDANT EMPLOYER has purported to produce
18 the remaining portions of Plaintiff's personnel file, but discovery is still ongoing.

19 **Minimum Wage/Regular Wage claims.**

20 32. Plaintiffs are informed and believe, and therefore allege, that from at
21 least four years before the filing of this action and continuing to the present, and
22 pursuant to company policy and/or practice and/or direction, DEFENDANT
23 EMPLOYER paid Plaintiffs and the putative Class minimum wages at less than the
24 rate required under state, federal, and local law.

25 33. This claim is premised on Plaintiffs' right to pursue all Labor Code claims
26 on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.*
27 (2018) 23 Cal.App.5th 745.

28 **Failure to Pay State Overtime.**

1 34. From at least four years before the filing of this action and continuing to
2 the present, and pursuant to company policy and/or practice and/or direction,
3 DEFENDANT EMPLOYER failed to pay Plaintiffs and the putative Class state
4 overtime compensation and/or the correct amount of overtime compensation.

5 35. In particular, DEFENDANT EMPLOYER failed to accurately calculate
6 the regular rate of pay and, thus, paid Plaintiffs and the putative Class overtime
7 compensation at less than the rate required by law not only because Defendants paid
8 Plaintiffs at a wage rate less than what DEFENDANT EMPLOYER was required to
9 pay under local law as alleged above but also because Defendants failed to include
10 earned nondiscretionary bonuses and/or earned commissions into putative Class
11 Members' regular rate of pay for overtime pay purposes in violation of California law.
12 (See § 49.1.1 of the California Division of Labor Standards and Enforcement Policies
13 and Interpretations Manual.)

14 36. For example, on October 23, 2020, DEFENDANT EMPLOYER paid
15 Plaintiff BARNETT \$1,500 in commissions, yet in the corresponding pay period this
16 Aggrieved Employee worked 29.75 hours of overtime and DEFENDANT
17 EMPLOYER paid only \$28.875 per hour to this Aggrieved Employee based on the
18 employee's regular rate of pay of \$19.25 erroneously excluding the earned
19 commissions proceeds into the regular rate of pay for overtime pay purposes, resulting
20 in an underpayment of overtime in an amount to be proven at trial.

21 37. By further example, on November 20, 2020, DEFENDANT EMPLOYER
22 paid Plaintiff BARNETT \$1,925 in commissions, yet in the corresponding pay period
23 of November 8, 2020 to November 21, 2020 this Aggrieved Employee worked 13
24 hours of overtime and DEFENDANT EMPLOYER paid only \$28.875 per hour to this
25 Aggrieved Employee based on the employee's regular rate of pay of \$19.25
26 erroneously not including the commissions proceeds into the regular rate of pay for
27 overtime pay purposes, resulting in an underpayment of overtime in an amount to be
28 proven at trial.

1 38. Similarly, on December 24, 2020, DEFENDANT EMPLOYER paid
2 Plaintiff BARNETT \$2,055 in commissions, yet in the corresponding pay period of
3 December 6, 2020 to December 19, 2020 this Aggrieved Employee worked four hours
4 of overtime and DEFENDANT EMPLOYER paid only \$28.875 per hour to this
5 Aggrieved Employee based on the employee's regular rate of pay of \$19.25
6 erroneously not including the commissions proceeds into the regular rate of pay for
7 overtime pay purposes, resulting in an underpayment of overtime in an amount to be
8 proven at trial.

9 39. Likewise, on January 22, 2021, DEFENDANT EMPLOYER paid
10 Plaintiff BARNETT \$1,300 in commissions, yet in the corresponding pay period of
11 January 3, 2021 to January 16, 2021 this Aggrieved Employee worked four hours of
12 overtime and DEFENDANT EMPLOYER paid only \$28.875 per hour to this
13 Aggrieved Employee based on the employee's regular rate of pay of \$19.25
14 erroneously not including the commissions proceeds into the regular rate of pay for
15 overtime pay purposes, resulting in an underpayment of overtime in an amount to be
16 proven at trial.

17 40. Again, on February 19, 2021, DEFENDANT EMPLOYER paid Plaintiff
18 BARNETT \$1,450 in commissions, yet in the corresponding pay period of January 31,
19 2021 to February 13, 2021 this Aggrieved Employee worked ten hours of overtime and
20 DEFENDANT EMPLOYER paid only \$28.875 per hour to this Aggrieved Employee
21 based on the employee's regular rate of pay of \$19.25 erroneously not including the
22 commissions proceeds into the regular rate of pay for overtime pay purposes, resulting
23 in an underpayment of overtime in an amount to be proven at trial.

24 41. Similarly, on March 19, 2021, DEFENDANT EMPLOYER paid Plaintiff
25 BARNETT \$1,180 in commissions, yet in the corresponding pay period of February
26 28, 2021 to March 13, 2021 this Aggrieved Employee worked nine hours of overtime
27 and DEFENDANT EMPLOYER paid only \$29.16 per hour to this Aggrieved
28 Employee based on the employee's regular rate of pay of \$19.44 erroneously not

1 including the commissions proceeds into the regular rate of pay for overtime pay
2 purposes, resulting in an underpayment of overtime in an amount to be proven at trial.

3 42. Likewise, on April 23, 2021, DEFENDANT EMPLOYER paid Plaintiff
4 BARNETT \$1,835 in commissions, yet in the corresponding pay period of April 11,
5 2021 to April 24, 2021 this Aggrieved Employee earned \$85.87 in overtime and
6 DEFENDANT EMPLOYER paid this overtime at only \$29.16 per hour based on the
7 employee's regular rate of pay of \$19.44 erroneously not including the commissions
8 proceeds into the regular rate of pay for overtime pay purposes, resulting in an
9 underpayment of overtime in an amount to be proven at trial.

10 43. Again, on August 20, 2021, DEFENDANT EMPLOYER paid Plaintiff
11 BARNETT \$1,135 in commissions, yet in the corresponding pay period of August 1,
12 2021 to August 14, 2021 this Aggrieved Employee earned \$16.40 in overtime and
13 DEFENDANT EMPLOYER paid this overtime at only \$29.16 per hour based on the
14 employee's regular rate of pay of \$19.44 erroneously not including the commissions
15 proceeds into the regular rate of pay for overtime pay purposes, resulting in an
16 underpayment of overtime in an amount to be proven at trial.

17 44. Similarly, on November 19, 2021, DEFENDANT EMPLOYER paid
18 Plaintiff BARNETT \$4,530 in commissions, yet in the corresponding pay period of
19 November 7, 2021 to November 20, 2021 this Aggrieved Employee earned \$308.60 in
20 overtime and DEFENDANT EMPLOYER paid this overtime at only \$29.16 per hour
21 based on the employee's regular rate of pay of \$19.44 erroneously not including the
22 commissions proceeds into the regular rate of pay for overtime pay purposes, resulting
23 in an underpayment of overtime in an amount to be proven at trial.

24 45. On November 26, 2021, DEFENDANT EMPLOYER paid Plaintiff
25 BARNETT \$500 in a referral bonus, yet in the corresponding pay period of November
26 7, 2021 to November 20, 2021 this Aggrieved Employee worked 24 hours of overtime
27 and DEFENDANT EMPLOYER paid only \$29.16 per hour to this Aggrieved
28 Employee based on the employee's regular rate of pay of \$19.44 erroneously not

1 including the referral bonus into the regular rate of pay for overtime pay purposes,
2 resulting in an underpayment of overtime in an amount to be proven at trial.

3 46. On December 23, 2021, DEFENDANT EMPLOYER paid Plaintiff
4 BARNETT \$5,740 in commissions, yet in the corresponding pay period of December
5 5, 2021 to December 18, 2021 this Aggrieved Employee worked 3.5 hours of overtime
6 and DEFENDANT EMPLOYER paid only \$29.16 per hour to this Aggrieved
7 Employee based on the employee's regular rate of pay of \$19.44 erroneously not
8 including the earned commissions into the regular rate of pay for overtime pay
9 purposes, resulting in an underpayment of overtime in an amount to be proven at trial.

10 47. On January 21, 2022, DEFENDANT EMPLOYER paid Plaintiff
11 BARNETT \$1,685 in commissions, yet in the corresponding pay period of January 1,
12 2022 to January 15, 2022 this Aggrieved Employee earned \$69.45 in overtime and
13 DEFENDANT EMPLOYER paid this overtime at only \$29.16 per hour based on the
14 employee's regular rate of pay of \$19.44 erroneously not including the commissions
15 proceeds into the regular rate of pay for overtime pay purposes, resulting in an
16 underpayment of overtime in an amount to be proven at trial.

17 48. This claim is also premised, in part, on Plaintiffs' right to pursue all Labor
18 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
19 *USA, Inc.* (2018) 23 Cal.App.5th 745.

20 **Meal and Rest Break Claims.**

21 49. Plaintiffs are informed and believe, and therefore allege, that from at least
22 four years before the filing of this action and continuing to the present, and pursuant to
23 company policy and/or practice and/or direction, DEFENDANT EMPLOYER failed to
24 authorize and/or permit Plaintiffs from taking all their compliant off-duty meal and rest
25 breaks during the required timeframe as required by law and failed to pay them
26 premium pay, in an amount to be proven at trial.

27 50. Plaintiffs are informed and believe, and therefore allege, that Plaintiff
28 BARNETT and, upon information and belief, other putative Class Members' meal

1 breaks were late, missed, or noncompliant because of work demands imposed on them
2 by management and/or the demands of their customers, among other reasons.

3 51. Defendants never paid Plaintiff BARNETT and, upon information and
4 belief, other putative Class Members premium pay for missed and noncompliant meal
5 breaks.

6 52. With respect to rest break violations, DEFENDANT EMPLOYER
7 required Plaintiffs to be available by phone for calls or texts or have email access and
8 to keep such devices on--even during rest periods--and to remain vigilant and
9 responsive to calls or emails when needs arose during working hours and/or during off
10 work times, among other instances during which DEFENDANT EMPLOYER had an
11 obligation to pay premium pay for Plaintiffs' missed rest breaks.

12 53. Pursuant to this policy, Plaintiffs maintained a cell phone or similar
13 electronic device they kept with them in operating condition at all times making any
14 breaks available to them not a rest break in compliance with California law and
15 DEFENDANT EMPLOYER, upon information and belief, failed to pay these
16 employees for rest breaks.

17 54. Because of the foregoing policies, Defendants prevented Plaintiffs from
18 taking all their uninterrupted rest breaks to which they had the right under California
19 law, in an amount to be proven at trial. (*See Augustus v. ABM Security Services* (2016)
20 2 Cal.5th 257.)

21 55. This claim is also premised, in part, on Plaintiffs' right to pursue all Labor
22 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
23 *USA, Inc.* (2018) 23 Cal.App.5th 745.

24 **Failure to Reimburse.**

25 56. During all times relevant, and pursuant to company policy and/or practice
26 and/or direction, Defendants required Plaintiff BARNETT and, upon information and
27 belief, other employees, to work from home as a condition of his/her employment and
28 required Plaintiffs and the Class to use their home internet, and incur various other

1 expenses associated with their work for Defendants.

2 57. The unreimbursed purchases Plaintiffs and proposed Class Members
3 were required to make to perform their work include, but are not limited to internet
4 connections, office space in their homes devoted to work, and work-related office
5 supplies/equipment.

6 58. Plaintiffs are informed and believe, and thereupon allege, that Defendants'
7 requirement for employees to use their supplies and equipment to perform their work
8 duties without reimbursement was an attempt to defray the costs onto its employees.

9 59. Defendants passed the cost of doing business onto its employees by
10 requiring, without reimbursement, their employees to purchase equipment, tools, and
11 services necessary to perform work for Defendants.

12 60. This claim is also premised, in part, on Plaintiffs' right to pursue all Labor
13 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
14 *USA, Inc.* (2018) 23 Cal.App.5th 745.

15 **Erroneous Wage Statements in Violation of Labor Code § 226.**

16 61. During all times relevant, and pursuant to company policy and/or practice
17 and/or direction and continuing to the present, and pursuant to company policy and/or
18 practice and/or direction, Defendants issued confusing and inaccurate wage and
19 earning statements to Plaintiffs, which wage and earning statements failed to comply
20 with Labor Code § 226 because they failed to, among other things, identify their
21 correct rates of pay and/or correct gross and net earnings during the applicable pay
22 period.

23 62. As a standalone claim, Defendants also issued confusing and inaccurate
24 wage and earning statements to Plaintiffs that in some cases omitted any reference to
25 the number of overtime hours worked, among other required entries, as part of the
26 "detachable part of the check" within the requirements of Labor Code § 226(a).

27 63. As alleged above, for example, on November 20, 2020, Defendants issued
28 Plaintiff BARNETT a wage and earning statement that said Defendants paid him

1 \$246.98 in overtime, but the number of overtime hours worked was missing where
2 instead it erroneously reported that Plaintiff worked “0” overtime hours.

3 64. Similarly, on December 24, 2020, Defendants issued Plaintiff BARNETT
4 a wage and earning statement that said Defendants paid him \$154.99 in overtime, but
5 the number of overtime hours worked was missing where instead it erroneously
6 reported that Plaintiff worked “0” overtime hours.

7 65. Likewise, on January 22, 2021, Defendants issued Plaintiff BARNETT a
8 wage and earning statement that said Defendants paid him \$61.32 in overtime, but the
9 number of overtime hours worked was missing where instead it erroneously reported
10 that Plaintiff worked “0” overtime hours.

11 66. Again, on February 19, 2021, Defendants issued Plaintiff BARNETT a
12 wage and earning statement that said Defendants paid him \$36.25 in overtime, but the
13 number of overtime hours worked was missing where instead it erroneously reported
14 that Plaintiff worked “0” overtime hours.

15 67. On March 19, 2021, Defendants issued Plaintiff BARNETT a wage and
16 earning statement that said Defendants paid him \$44.85 in overtime, but the number of
17 overtime hours worked was missing where instead it erroneously reported that Plaintiff
18 worked “0” overtime hours.

19 68. On April 23, 2021, Defendants issued Plaintiff BARNETT a wage and
20 earning statement that said Defendants paid him \$85.87 in overtime, but the number of
21 overtime hours worked was missing where instead it erroneously reported that Plaintiff
22 worked “0” overtime hours.

23 69. On August 20, 2021, Defendants issued Plaintiff BARNETT a wage and
24 earning statement that said Defendants paid him \$16.40 in overtime, but the number of
25 overtime hours worked was missing where instead it erroneously reported that Plaintiff
26 worked “0” overtime hours.

27 70. On November 19, 2021, Defendants issued Plaintiff BARNETT a wage
28 and earning statement that said Defendants paid him \$308.60 in overtime, but the

1 number of overtime hours worked was missing where instead it erroneously reported
2 that Plaintiff worked “0” overtime hours.

3 71. On December 23, 2021, Defendants issued Plaintiff BARNETT a wage
4 and earning statement that said Defendants paid him \$640.07 in overtime, but the
5 number of overtime hours worked was missing where instead it erroneously reported
6 that Plaintiff worked “0” overtime hours.

7 72. On January 21, 2021, Defendants issued Plaintiff BARNETT a wage and
8 earning statement that said Defendants paid him \$69.45 in overtime, but the number of
9 overtime hours worked was missing where instead it erroneously reported that Plaintiff
10 worked “0” overtime hours.

11 73. The above problems made interpretation of the foregoing wage and
12 earning statements hopelessly confusing.

13 74. In addition to the foregoing claims under Labor Code § 226, Plaintiffs’
14 paystubs and those of similarly situated employees of Defendants were inaccurate
15 because Defendants failed to pay them all wages, as alleged above, supporting a
16 derivative claim under Labor Code § 226.

17 75. This claim is also premised, in part, on Plaintiffs’ right to pursue all Labor
18 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
19 *USA, Inc.* (2018) 23 Cal.App.5th 745.

20 **Facts Relating to Derivative Claims, such as Labor Code §§ 203, 204, 204b, etc.**

21 76. Pursuant to the above-mentioned policies, DEFENDANT EMPLOYER
22 failed to pay all wages to which Plaintiffs had the right to receive under the law.

23 77. When Plaintiff BARNETT and putative Class Members’ employment
24 ended, DEFENDANT EMPLOYER failed to provide Plaintiffs all unpaid wages in
25 their final paycheck or in a timely manner.

26 78. Further, during Plaintiffs’ employment, their pay was untimely in
27 violation of the Labor Code.

28 79. Plaintiffs are informed and believe and based thereon allege that, to date,

1 DEFENDANT EMPLOYER has not paid Plaintiffs all of Plaintiffs' wages due and
2 payable, in an amount to be proven at trial.

3 80. Derivative claims also premised, in part, on Plaintiffs' right to pursue all
4 Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security*
5 *Services USA, Inc.* (2018) 23 Cal.App.5th 745.

6 **ICRAA Claims.**

7 81. Upon Plaintiff BARNETT's hiring, as part of Defendants' routine
8 practice, policy, and procedure, Defendants required Plaintiff, a job applicant at that
9 time, to sign various forms that purported to allow Defendants to obtain a consumer
10 investigative report on the Plaintiff via a third party.

11 82. Plaintiff alleges that Defendants' purported permission to conduct the
12 foregoing investigative consumer report was based, in part, on an unlawful form, a true
13 and correct copy of which is attached hereto as **Exhibit 1** the contents of which are
14 incorporated herein by reference as though alleged herein upon receipt of the form via
15 the discovery process.

16 83. Plaintiff alleges the foregoing form Defendants used violates Civ. Code §
17 1786.16 because (1) there is no block to check to allow the Plaintiff to obtain a copy of
18 the report (Civ. Code § 1786.16(b)(1)), (2) the report was procured by "Lendingtree,"
19 an unknown entity and if not the admitted employer, then an entity without statutory
20 authorization to procure the report (Civ. Code §§ 1786.2(f)) ((indeed, Plaintiff's
21 employer issued him a W-2 that said QR Insurance was his employer, not
22 Lendingtree); 1786.12(d)(1); 1786.16(a)), (3) the disclosure form was presented not as
23 a single document as required under the statute, but as part of a multipage document
24 (Civ. Code § 1786.16(a)(2)(B)), (4) the disclosure included a number of extraneous
25 references prohibited by law, such as reference to the states of Washington, New York,
26 Minnesota, among many other unlawful extraneous references (Civ. Code §
27 1786.16(a)(2)(B)), (5) the form contains an unlawful evergreen provision purporting to
28 allow Defendants to procure Plaintiff's report anytime during his employment (Civ.

1 Code § 1786.16(a)(2)), and (6) the consumer reporting agency Defendant employed
2 did not have a complaint privacy policy in effect ((Civ. Code § 1786.20), among other
3 reasons.

4 84. Similarly, by law before an employer can procure a report on an employee
5 or job applicant, the employer must certify to the furnishing agency that it (the
6 employer) complied, and will continue to comply, with various requirements of the
7 ICRAA. Civ. Code §1786.16(a)(4).

8 85. Plaintiff is informed and believes and based thereon alleges there is no
9 evidence of lawful certifications whatsoever from the Defendants as required under the
10 ICRAA.

11 86. Accordingly, Plaintiff is informed and believes and based thereon alleges
12 that Defendants violated the ICRAA by procuring a consumer report on the Plaintiff
13 without complying with the certification requirements set forth in the FCRA and the
14 ICRAA.

15 **FCRA Claims.**

16 87. Upon Plaintiff BARNETT's hiring, as part of Defendants' routine
17 practice, policy, and procedure, Defendants required Plaintiff, a job applicant at that
18 time, to sign various forms that purported to allow Defendants to obtain a consumer
19 investigative report on the Plaintiff via a third party (Checkr, Inc.).

20 88. Plaintiff alleges that Defendants' purported permission to conduct the
21 foregoing investigative consumer report was based, in part, on an unlawful form, a true
22 and correct copy of which is attached hereto as **Exhibit 1** the contents of which are
23 incorporated herein by reference as though alleged herein.

24 89. Plaintiff alleges the foregoing form Defendants used violates FCRA
25 because the (1) the report was procured by "Lending Tree," an unknown entity and if
26 not the employer then it is an entity without statutory authorization to procure the
27 report (indeed, the named Plaintiff's employer issued him a W-2 that said "QR
28 Insurance LLC" was his employer, not "Lending Tree" much less "Lendingtree Inc."

1 or “Lendingtree LLC”); (2) the disclosure form was presented not as a single document
2 as required under the statute, but as part of a multipage document (15 U.S.C. §
3 1681b(b)(2)(A)), (3) the disclosure included a number of extraneous references
4 prohibited by law, such as reference to the states of Washington, New York,
5 Minnesota, among many other unlawful extraneous references (*Ibid.*), the (3) reports
6 Defendants procured on the putative Class are believed to be procured without the
7 required certifications (15 U.S.C. § 1681b(b)(1)), (4) **Exhibit 1** fails to comply with
8 the FCRA disclosure requirements because it does not even reference the FCRA on
9 Page 5 and instead it confusingly employs terms such as “consumer report” and
10 “investigative consumer report,” “as defined in California,” terms defined substantially
11 different under federal law, and (5) **Exhibit 1** unlawfully includes the extraneous
12 clause, “Credit history will only be requested where such information is substantially
13 related to the duties and responsibilities of the position for which you are applying,”
14 among other reasons.

15 90. Defendants indeed thereafter procured a consumer report from a consumer
16 reporting agency (i.e., Checkr Inc.) on the named Plaintiff and presumably many others
17 using **Exhibit 1** or a form substantially resembling the same.

18 91. Plaintiff discovered Defendants’ violation(s) within the last two years
19 when he obtained and reviewed his personnel file from Defendants and discovered that
20 Defendants had procured and/or caused to be procured a “consumer report” regarding
21 him for employment purposes based on the illegal disclosure and authorization form.

22 **REPRESENTATIVE ACTION (PAGA) CLAIMS**

23 92. This is a wage and hour representative action filed pursuant to the
24 PAGA, Labor Code §§ 2698, 2699 generally consists of the following group:

25 **All nonexempt persons Defendants employed in California**
26 **from May 21, 2021, to the present.**

27 93. All members of the Aggrieved groups will be referred to as the
28 “Aggrieved Employees.”

1 94. The “PAGA Period” means from **May 25, 2021** to the present, the
2 timeframe where the scope of statute allows Plaintiff to recover wages and penalties.

3 95. California law provides that an employee may file an action against an
4 employer to recover penalties for violations of the Labor Code and Wage Orders
5 provided the aggrieved employee files an action on behalf of him or himself and
6 similarly-situated current and former employees.

7 96. At all material times, DEFENDANT EMPLOYER and DOES 1 through
8 50 were and/or are Aggrieved Employees’ employers or persons acting on behalf of
9 Aggrieved Employees’ employer, within the meaning of California Labor Code § 558,
10 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
11 Labor Code or any provision regulating hours and days of work in any Order of the
12 Industrial Welfare Commission and, as such, are subject to penalties for each
13 underpaid employee as set for in Labor Code § 558.

14 97. As set forth in further detail below, because of the analysis and
15 investigation of the Plaintiffs’ claims, Plaintiff’s attorneys sent correspondence to the
16 California Labor and Workforce Development Agency (“LWDA”) and to
17 DEFENDANT EMPLOYER informing DEFENDANT EMPLOYER of their claims
18 and their intent to pursue litigation.

19 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

20 98. As to penalty claims under the Labor Code Private Attorney General
21 Act, on or about **May 25, 2021**, Plaintiffs began to exhaust their administrative
22 remedies by sending correspondence to the LWDA and via certified mail to QW
23 INSURANCE SOLUTIONS, LLC indicating Plaintiff are pursuing the claims alleged
24 in this Complaint.

25 99. On **August 16, 2022**, Plaintiff sent amended correspondence to the
26 LWDA and via certified mail to DEFENDANT EMPLOYER indicating Plaintiff is
27 pursuing the claims alleged in this Complaint.

28 100. The statutory period from these letters alleged above expired and the

1 LWDA did not serve Plaintiffs with notice of intent to assume jurisdiction over the
2 applicable penalty claims and did not provide notice as set forth in Labor Code §
3 2699.3(a)(2)(A) within the statutory period.

4 101. Therefore, the statutory waiting period expired based on the presumed
5 facts above, and Plaintiffs have exhausted all applicable administrative remedies thus
6 permitting Plaintiffs the ability to seek the penalty claims sought in this Complaint.

7 **CLASS ACTION ALLEGATIONS**

8 102. Plaintiffs bring this action on behalf of himself and all others similarly
9 situated as a Class Action pursuant to § 382 of the Code of Civil Procedure.

10 103. Plaintiffs seek to represent the classes and/or subclasses composed of
11 and defined as follows:

12 **Class I (Labor Class).**

13 **All persons who are employed or were previously employed**
14 **by Defendants and who worked in California as non-exempt**
15 **employees at any time from May 25, 2018, to the date of**
16 **certification.**

17 **Class II (the FCRA Class).**

18 **All persons who are or were applicants and/or employees of**
19 **Defendants anywhere in the United States who completed**
20 **background check disclosures at any time from May 25,**
21 **2017, to the date of certification.**

22 104. As to Class I (Labor Class), Plaintiffs also seek to represent the
23 following subclasses composed of and defined as follows:

24 **Minimum/Regular Wage Subclass:** All Members of the Class who
25 during the relevant period, failed to receive minimum/regular wages
26 for all hours worked.

27 **State Overtime Subclass:** All Members of the Class who, during the
28 relevant period, worked more than eight hours per day and/or in 40

hours per week and who did not receive overtime pay at the requisite overtime rate of pay.

Meal Break Subclass: All Members of Plaintiff Class who, during the applicable statute of limitations period (1) worked for any of the Defendants and were not provided compliant meal breaks and (2) were not provided one hour of pay at their regular rate of compensation in lieu thereof.

Rest Break Subclass: All Members of Plaintiff Class who, during the applicable statute of limitations period (1) worked for any of the Defendants and were not provided compliant rest breaks or paid for time spent during rest breaks and (2) were not provided one hour of pay at their regular rate of compensation in lieu thereof.

Unreimbursed Expense Subclass: All Members of the Class who, during the relevant period, Defendants did not reimburse for reasonable and necessary expenses.

Wage Statement Subclass: All Members of the Class who, during the applicable statute of limitations period, did not receive accurate itemized wage statements as required by Labor Code § 226.

Waiting Time Subclass: All Members of the Class who, during the applicable limitations period, did not receive all wages due in a timely manner as required by Labor Code §§ 201-204.

UCL Subclass: All Members of the Class, who, during the relevant period, are owed restitution in the form of (1) unreimbursed expenses and/or (2) wages earned and unpaid because of Defendants' uniform pay policies and procedures.

105. The above-mentioned Class I and Class II class-members are collectively be referred to as "Class Members."

106. Plaintiffs reserve the right under the California Rules of Court, to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

107. This action is brought and may properly be maintained as a Class Action under the provisions of § 382 of the Code of Civil Procedure because there is a

1 well-defined community of interest in the litigation and the proposed Class is easily
2 ascertainable.

3 **A. Numerosity.**

4 108. The potential members of Class I and Class II as defined are so numerous
5 or many, that joinder of all the members of the Class is impracticable.

6 109. While the precise number of Class Members has not been determined at
7 this time, Plaintiffs are informed and believe, and based thereon allege, that
8 DEFENDANT EMPLOYER currently employs, and during the relevant time periods
9 employed, a sufficient number of employees to warrant class certification if all other
10 elements are met.

11 110. Accounting for employee turnover during the relevant periods necessarily
12 increases the number of potential members of the Class.

13 **B. Commonality.**

14 111. There are questions of law and fact common to Class I and Class II that
15 predominate over any questions affecting only individual Class Members.

16 112. Common questions of law and fact include, without limitation and subject
17 to possible further amendment, the following for Class I:

- 18 a. Whether Defendants violated the Labor Code and the
19 applicable Wage Order by not fully compensating
20 Plaintiffs and the Class by failing to pay minimum wage
21 and/or regular wages as required by law;
- 22 b. Whether Defendants' policy or practice of not
23 paying Plaintiffs and putative class members
24 overtime compensation for the hours they worked
25 over 40 in a workweek or eight hours in a day is
26 illegal under Labor Code §§ 510, 1771, 1774, 1776,
27 1194, and the applicable Wage Order;
- 28 c. Whether Defendants violated the meal and rest break

provisions of California law by failing to provide Plaintiffs with duty-free 30-minute meal breaks for shifts of five hours or more and/or duty free 10-minute rest breaks as required by law and Defendants' failure to pay premium pay as a result thereof;

- d. Whether Defendants violated Labor Code §§ 2802 by failing to reimburse Plaintiffs for business expenses;
- e. Whether Defendants violated Labor Code §§ 226 by not providing accurate paystubs;
- f. Whether Defendants' policy or practice of not paying hourly employees all their wages due in their final paychecks immediately upon involuntary termination or when 72 hours' notice was provided before voluntary resignation, is unlawful under Labor Code §§ 201, 202 and/or 203;
- g. Whether Defendants violated the PAGA under California Labor Code §§ 2698, 2699, *et seq.*, by committing the wrongful conduct as alleged in this Amended Complaint; and
- h. Whether Plaintiffs and the members of the Class May recover remedies pursuant to Business & Professions Code §§ 17200, *et seq.*

113. Common questions of law and fact include, without limitation and subject to possible further amendment, the following for Class II:

- a. Whether the Defendants violated the FCRA by procuring consumer reports based on invalid disclosure/ authorization forms;
- b. Whether the Defendants violated the FCRA by procuring

consumer reports under the false identity, “Lending Tree,” an unknown entity; and

c. Whether the Defendants violated § 1681b(b)(1) of the FCRA by failing to provide the required certifications under the FCRA.

C. Typicality.

114. Plaintiffs’ claims are typical of the claims of Class I and Class II because Plaintiffs and all members of the Class sustained injuries and damages arising out of and caused by Defendants’ common course of conduct and policies in violation of laws, regulations that have the force and effect of law and statutes as alleged herein.

D. Adequacy of Representation.

115. Plaintiffs are members of either Class I, Class II, or both, do not have any conflicts of interest with other Class Members, and will prosecute the case vigorously on behalf of the Class Members.

116. Counsel representing Plaintiffs and the putative Class Members are competent and experienced in litigating employment class actions, including wage and overtime class actions.

117. Plaintiffs will fairly and adequately represent and protect the interests of the Class Members.

E. Superiority of Class Action.

118. A class action is superior to other available means for the fair and efficient adjudication of this controversy because individual joinder of all Class Members is not practicable, and questions of law and fact common to Class I and Class II predominate over any questions affecting only individual members of each Class.

119. Each Class Member was damaged or suffered injury and may recover by reasons of Defendants’ illegal policies and/or practices.

120. Class Action treatment will allow those similarly situated persons to

1 litigate their claims in the manner that is most efficient and economical for the parties
2 and the judicial system.

3 121. Plaintiffs are unaware of any difficulties that are likely to be encountered
4 in the management of this action that would preclude maintenance as a Class Action.

5 122. For the reasons alleged in this Complaint, this action should be certified
6 as a Class Action.

7 **FIRST CAUSE OF ACTION**

8 **Individual, Class, and Representative Claim under the PAGA for**
9 **Failure to Pay State and Local Minimum/Regular Wages in Violation of**
10 **California Labor Code §§ 216, 218, 218.5, 223, 1182.12, 1194,**
11 **1194.2, 1197, 1198, and the applicable Industrial Welfare Commission (“IWC”)**
12 **Wage Order**

13 (Against all Defendants)

14 123. Plaintiffs re-allege and incorporate by reference the foregoing
15 allegations as though set forth herein.

16 124. Pursuant to Labor Code §§ 216, 223, 218, 218.5, 1182.12, 1194, 1194.2,
17 and 1197 it is unlawful for a California employer to suffer or permit an employee to
18 work without paying wages for all hours worked, as required by the applicable IWC
19 Wage Order.

20 125. During all times relevant, the applicable IWC Wage Order, including but
21 not limited to Wage Order 4 and/or 5, applied to Plaintiffs’ and the Class members’
22 employment with Defendants.

23 126. Pursuant to the applicable IWC Wage Order, “hours worked” include the
24 time during which an employee is “suffered or permitted to work, whether or not
25 required to do so.”

26 127. Every employer must pay each employee minimum wage as required
27 under state law and, where applicable and if higher, local law.

28 128. During all times relevant, Plaintiffs and putative Class Members are

1 informed and believe, and based thereupon allege, that Class Members including
2 Plaintiffs, were not paid minimum/regular wages for all hours suffered or permitted to
3 work in violation of state and, where applicable, local law and/or their agreement with
4 DEFENDANT EMPLOYER.

5 129. Labor Code § 1194.2, subdivision (a) provides that, in an action to recover
6 wages because of the payment of a wage less than the minimum wage fixed by IWC
7 Wage Orders, an employee may recover liquidated damages in an amount equal to the
8 wages unlawfully unpaid and interest thereon.

9 130. At all material times, DEFENDANT EMPLOYER and DOES 1 through
10 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
11 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
12 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
13 Labor Code or any provision regulating hours and days of work in any Order of the
14 Industrial Welfare Commission and, as such, are subject to penalties for each
15 underpaid employee as set for in Labor Code § 558.

16 131. In committing the violations of state law as herein alleged, Plaintiffs are
17 informed and believe based there upon allege that Defendants have knowingly and
18 willfully refused to perform their obligations to compensate Aggrieved Employees for
19 all wages earned and all hours worked.

20 132. As a direct result, Aggrieved Employees have suffered and continue to
21 suffer, substantial losses related to the use and enjoyment of such compensation,
22 wages, lost interest on such monies and expenses and attorneys' fees in seeking to
23 compel Defendants to fully perform their obligations under state law, all to their
24 respective damage in amounts according to proof at trial and within the jurisdictional
25 limitations of this Court.

26 133. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, a
27 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
28 for the initial violation and two hundred (\$200.00) for each aggrieved employee per

1 pay period for each subsequent violation in which DEFENDANT EMPLOYER
2 violated the minimum wage and/or regular wage provisions of the Labor Code,
3 including but not limited to §§ 216, 218, 218.5, 223, 1182.12, 1194, 1194.2, and 1197,
4 the exact amount of the applicable penalty is all in an amount to be shown according to
5 proof at trial.

6 134. Additionally, pursuant to Labor Code § 2699, Plaintiffs and Class
7 Members seek to recover from Defendants, and each of them, penalties, attorneys'
8 fees, and costs incurred herein.

9 135. Upon information and belief, Class Members including Plaintiffs should
10 have received minimum wages in a sum according to proof during all times relevant to
11 this action.

12 136. Upon information and belief, Defendants have intentionally failed and
13 refused, and continue to fail and refuse, to pay Class Members including Plaintiffs
14 minimum wages for all time suffered or permitted to work.

15 137. Plaintiffs and the Class request the recovery of the unpaid minimum,
16 waiting time penalties, liquidated damages, interest, attorneys' fees, and costs in an
17 amount to be determined at trial.

18 **SECOND CAUSE OF ACTION**

19 **Individual, Class, and Representative Claim under the PAGA for** 20 **Failure to Pay State Overtime and/or Double-Time** 21 **Compensation in Violation of California Labor Code §§ 510, 1194, 1198,** 22 **and the Applicable Wage Order**

23 (Against all Defendants)

24 138. Plaintiffs re-allege and incorporate by reference the foregoing
25 allegations as though set forth herein.

26 139. During all times relevant, the applicable Wage Order, including but not
27 limited to Wage Order 4 and/or 5, applied to Plaintiffs' employment with Defendants.

28 140. Pursuant to the applicable Wage Order, "hours worked" include the

1 time during which an employee is “suffered or permitted to work, whether or not
2 required to do so.”

3 141. For each hour (or fraction thereof) an employee works over forty (40)
4 hours in a week or more than eight (8) hours in a workday the employer must pay the
5 rate of one and a half times the employee’s regular hourly wage.

6 142. For each hour (or fraction thereof) an employee works more than twelve
7 (12) hours in one day or more than eight (8) hours a day on the seventh consecutive
8 day of work, the employee must be compensated at the rate of no less than twice the
9 regular rate of pay for that employee.

10 143. According to § 49.1.1 of the California Division of Labor Standards and
11 Enforcement Policies and Interpretations Manual, “In California, as with the federal
12 FLSA, overtime is computed based on the regular rate of pay. The regular rate of pay
13 includes many different kinds of remuneration, for example: hourly earnings, salary,
14 piecework earnings, *commissions*, *certain bonuses*, and the value of meals and
15 lodging.” (Emphasis added.)

16 144. As alleged in this Complaint, DEFENDANT EMPLOYER failed to pay
17 all overtime compensation to the Plaintiffs and the Class because DEFENDANT
18 EMPLOYER, among other things, failed to include bonuses and/or fringe benefits
19 earned towards the overtime hourly rate in violation of California law, among other
20 reasons alleged in this Complaint (see § 49.1.1 of the California Division of Labor
21 Standards and Enforcement Policies and Interpretations Manual).

22 145. Additionally, from at least four years before the filing of this action and
23 continuing to the present, and pursuant to company policy and/or practice and/or
24 direction, Plaintiffs are informed and believe, and therefore allege, that Defendants
25 failed to pay its employees the correct rate of minimum/regular wages and, as a result,
26 the amount of overtime paid was too low.

27 146. At all material times, DEFENDANT EMPLOYER and DOES 1 through
28 50 were and/or are Aggrieved Employees’ employers or persons acting on behalf of

1 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
2 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
3 Labor Code or any provision regulating hours and days of work in any Order of the
4 Industrial Welfare Commission and, as such, are subject to penalties for each
5 underpaid employee as set for in Labor Code § 558.

6 147. In committing the violations of state law as herein alleged, Defendants
7 have knowingly and willfully refused to perform their obligations to compensate
8 Aggrieved Employees for all wages earned and all hours worked.

9 148. As a direct result, Aggrieved Employees have suffered and continue to
10 suffer, substantial losses related to the use and enjoyment of such compensation,
11 wages, lost interest on such monies and expenses and attorney's fees in seeking to
12 compel Defendants to full perform their obligation under state law, all to their
13 respective damage in amounts according to proof at trial and within the jurisdictional
14 limitations of this Court.

15 149. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
16 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
17 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
18 pay period for each subsequent violation in which DEFENDANT EMPLOYER
19 violated the overtime provisions of the Labor Code, including but not limited to §§ 510
20 at 1194, the exact amount of the penalties sought is in an amount to be shown
21 according to proof at trial.

22 150. Additionally, pursuant to Labor Code § 2699, Plaintiffs seek to recover
23 from Defendants, and each of them, penalties, attorneys' fees, and costs incurred
24 herein.

25 151. Based on the misconduct alleged in this Complaint, Plaintiffs and
26 similarly situated members of the Class have suffered damages in an amount to be
27 proven at trial.

28 152. Plaintiffs on behalf of herself and Class requests the unpaid wages,

1 waiting time penalties, interest, attorneys' fees, costs, liquidated damages, and any
2 other remedies allowed by law in an amount to be proven at trial.

3 **THIRD CAUSE OF ACTION**

4 **Individual, Class, and Representative Claim under the PAGA for**
5 **Failure to Comply with the Meal Break Requirements of Labor Code §§ 226.7,**
6 **512, 1198, and the applicable IWC Wage Order**

7 (Against all Defendants)

8 153. Plaintiffs re-allege and incorporate by reference the foregoing allegations
9 as though set forth herein.

10 154. Plaintiffs are informed and believe, and based thereon allege, that by
11 failing to provide duty-free meal periods of at least thirty (30) minutes for shifts of five
12 hours or more, which began before the end of the fifth hour of work, and failing to pay
13 such employees premium wages of one (1) hour of pay at their regular rate of
14 compensation for each workday the meal period was not provided, Defendants
15 willfully violated the provisions of Labor Code § 226.7, and the applicable IWC Wage
16 Order.

17 155. Based on the misconduct alleged in this Complaint, Plaintiffs are
18 informed and believe, and based thereon allege, that Defendants failed to pay all
19 premium wages owed.

20 156. At all material times, DEFENDANT EMPLOYER and DOES 1 through
21 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
22 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
23 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
24 Labor Code or any provision regulating hours and days of work in any Order of the
25 Industrial Welfare Commission and, as such, are subject to penalties for each
26 underpaid employee as set for in Labor Code § 558.

27 157. In committing the violations of state law as herein alleged, Plaintiffs are
28 informed and believe and based thereon allege that Defendants have knowingly and

1 willfully refused to perform their obligations to compensate Aggrieved Employees for
2 all wages earned and all hours worked.

3 158. As a direct result, Aggrieved Employees have suffered and continue to
4 suffer, substantial losses related to the use and enjoyment of such compensation,
5 wages, lost interest on such monies and expenses and attorneys' fees in seeking to
6 compel Defendants to fully perform their obligations under state law, all to their
7 respective damage in amounts according to proof at trial and within the jurisdictional
8 limitations of this Court.

9 159. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
10 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
11 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
12 pay period for each subsequent violation in which all culpable Defendants violated Cal.
13 Labor Code § 226.7, the exact amount of the applicable penalty is all in an amount to
14 be shown according to proof at trial.

15 160. Wherefore, Plaintiffs request all remedies available to them and to the
16 putative Class.

17 **FOURTH CAUSE OF ACTION**

18 **Individual, Class, and Representative Claim under the PAGA for** 19 **Failure to Comply with the Rest Break Requirements of Labor Code §§ 226.7,** 20 **512, 1198, and the applicable IWC Wage Order** 21 **(Against all Defendants)**

22 161. Plaintiffs re-allege and incorporate by reference the foregoing allegations
23 as though set forth herein.

24 162. Plaintiffs are informed and believe, and based thereon allege, that based
25 on the misconduct alleged in this Complaint, Defendants failed to authorize and permit
26 Plaintiffs to receive a rest period of at least 10 minutes on a separate hourly basis when
27 paid commissions or otherwise to provide paid ten-minute rest periods for every four
28 (4) hours or major fraction thereof worked per day, and by failing to provide premium

1 wages at the regular rate of pay when these periods were not permitted or authorized,
2 Defendants willfully violated the provisions of Labor Code § 226.7, and the applicable
3 IWC Wage Order.

4 163. Plaintiffs are informed and believe, and based thereon allege, that based
5 on the misconduct alleged in this Complaint, Defendants failed to pay premium pay for
6 Plaintiffs' missed meal breaks DEFENDANT EMPLOYER failed to provide or
7 authorize.

8 164. At all material times, DEFENDANT EMPLOYER and DOES 1 through
9 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
10 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
11 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
12 Labor Code or any provision regulating hours and days of work in any Order of the
13 Industrial Welfare Commission and, as such, are subject to penalties for each
14 underpaid employee as set for in Labor Code § 558.

15 165. In committing the violations of state law as herein alleged, Plaintiffs are
16 informed and believe and based thereon allege that Defendants have knowingly and
17 willfully refused to perform their obligations to compensate Aggrieved Employees for
18 all wages earned and all hours worked.

19 166. As a direct result, Aggrieved Employees have suffered and continue to
20 suffer, substantial losses related to the use and enjoyment of such compensation,
21 wages, lost interest on such monies and expenses and attorneys' fees in seeking to
22 compel Defendants to fully perform their obligations under state law, all to their
23 respective damage in amounts according to proof at trial and within the jurisdictional
24 limitations of this Court.

25 167. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
26 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
27 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
28 pay period for each subsequent violation in which all culpable Defendants violated Cal.

1 Labor Code § 226.7, the exact amount of the applicable penalty is all in an amount to
2 be shown according to proof at trial.

3 168. Wherefore, Plaintiffs request all remedies available to them and to the
4 putative Class.

5 **FIFTH CAUSE OF ACTION**

6 **Individual, Class, and Representative Claim under the PAGA for**
7 **Failure to Indemnify/Reimburse Business Expenses in Violation of**
8 **California Labor Code § 1198, 2802, and the applicable Wage Order**
9 **(Against all Defendants)**

10 169. Plaintiffs re-allege and incorporate by reference the foregoing allegations
11 as though set forth herein.

12 170. California Labor Code § 2802 requires employers to indemnify their
13 employees for expenses and losses incurred while discharging their duties or
14 obedience to the directions of their employer.

15 171. California Labor Code § 2804 mandates that this statutory right cannot be
16 waived.

17 172. The Plaintiffs incurred losses in obedience to the directions of
18 Defendants in the form of purchase of work-related expenses described in this
19 Complaint.

20 173. As a direct result of Defendants' violation of California Labor Code §
21 2802, the Plaintiffs and Class Members suffered and continue to suffer substantial
22 losses related to unpaid expenses, the use and enjoyment of monies owed, lost interest
23 on monies owed, and attorneys' fees in an amount to be proven at the time of trial.

24 174. Defendants derive an unjust and inequitable economic benefit in failing
25 to comply with the law regarding indemnification and reimbursement of employees.

26 175. Plaintiffs request all remedies available to them and to the putative Class
27 for Defendants' violations of California Labor Code § 2802, including but not limited
28 to back-owed reimbursement for work-related expenses, interest, statutory and

1 equitable attorneys' fees, costs, and applicable penalties in an amount to be proven at
2 trial.

3 **SIXTH CAUSE OF ACTION**

4 **Individual, Class, and Representative Claim under the PAGA for**

5 **Violations of California Labor Code §§ 226 and 1198**

6 (Against all Defendants)

7 176. Plaintiffs re-allege and incorporate by reference the foregoing allegations
8 as though set forth herein.

9 177. Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in
10 pertinent part, that every employer shall, "semimonthly or at the time of each
11 payment of wages, shall furnish to his or her employees, either as a detachable part of
12 the check, draft, or voucher paying the employee's wages, or separately if wages are
13 paid by personal check or cash, an accurate itemized statement in writing showing (1)
14 gross wages earned, (2) total hours worked by the employee. . . (3) the number of
15 piece-rate units earned and any applicable piece rate if the employee is paid on a
16 piece-rate basis, (4) all deductions, provided that all deductions made on written
17 orders of the employee may be aggregated and shown as one item, (5) net wages
18 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
19 name of the employee and only the last four digits of his or her social security
20 number..., (8) the name and address of the legal entity that is the employer. . . , and
21 (9) all applicable hourly rates in effect during the pay period and the corresponding
22 number of hours worked at each hourly rate by the employee and, beginning July 1,
23 2013, if the employer is a temporary services employer as defined in Section 201.3,
24 the rate of pay and the total hours worked for each temporary services assignment. . ."
25 (Labor Code § 226 subdivision (a).)

26 178. Likewise, California Labor Code § 226, subdivisions (b) and (c), require
27 employers doing business in the State of California to provide current and former
28 employees access to their payroll records.

1 179. Upon information and belief, during all times relevant to this action,
2 Defendants did not provide accurate wage statements throughout the Class Period.

3 180. Plaintiffs allege that on numerous occasions, an exact amount by which
4 will be proven at trial, Defendants violated various provisions of § 226, including but
5 not limited to subdivisions (a)(1), (a)(2), (a)(4), (a)(5), (a)(6), (a)(8), and (a)(9) by
6 failing to provide Plaintiffs accurate itemized statement in writing accurately showing
7 gross wages earned, total hours worked by the employee, net wages earned, among
8 other things.

9 181. At all material times DEFENDANT EMPLOYER and DOES 1 through
10 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
11 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
12 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
13 Labor Code or any provision regulating business hours and days of work in any Order
14 of the Industrial Welfare Commission and, as such, are subject to penalties for each
15 underpaid employee as set forth in Labor Code § 558.

16 182. In committing the violations of state law as herein alleged, Defendants
17 have knowingly and willfully refused to perform their obligations to compensate
18 Aggrieved Employees for all wages earned and all hours worked.

19 183. As a direct result, Aggrieved Employees have suffered and continue to
20 suffer, substantial losses related to the use and enjoyment of such compensation,
21 wages, lost interest on such monies and expenses and attorney's fees in seeking to
22 compel Defendants to fully perform their obligations under state law, all to their
23 respective damage in amounts according to proof at trial and within the jurisdictional
24 limitations of this Court.

25 184. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, a
26 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
27 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
28 pay period for each subsequent violation in which DEFENDANT EMPLOYER

1 violated Labor Code § 226, the exact amount of the applicable penalty is all in an
2 amount to be shown according to proof at trial.

3 185. For Defendants' misconduct as alleged in this Complaint, Plaintiffs seek
4 damages, penalties, costs, and attorneys' fees pursuant to Labor Code §§ 226, 226.3,
5 and 226.6 in an amount to be proven at trial.

6 **SEVENTH CAUSE OF ACTION**

7 **Individual, Class, and Representative Claim under the PAGA for**
8 **Failure to Pay Timely Earned Wages during Employment and**

9 **Upon Separation of Employment in Violation of**

10 **California Labor Code §§ 201, 202, 203,**

11 **204 and/or 204b, 218.5, and 218.6**

12 (Against all Defendants)

13 186. Plaintiffs re-allege and incorporate by reference the foregoing allegations
14 as though set forth herein.

15 187. Pursuant to Labor Code § 201, "If an employer discharges an employee,
16 the wages earned and unpaid at the time of discharge are due and payable
17 immediately."

18 188. Pursuant to Labor Code § 202, "If an employee not having a written
19 contract for a definite period quits his or her employment, his or her wages shall
20 become due and payable not later than 72 hours thereafter, unless the employee has
21 given 72 hours previous notice of his or her intention to quit, in which case the
22 employee is entitled to his or her wages at the time of quitting."

23 189. Labor Code § 203 provides, in pertinent part: "If an employer willfully
24 fails to pay, without abatement or reduction, ... any wages of an employee who is
25 discharged or who quits, the wages of the employee shall continue as a penalty from
26 the due date thereof at the same rate until paid or until an action therefore is
27 commenced; but the wages shall not continue for more than 30 days. ..."

28 190. Pursuant to Labor Code § 204, "all wages ... earned by any person in any

1 employment are due and payable twice during each calendar month, on days
2 designated in advance by the employer as the regular paydays.”

3 191. Alternatively, pursuant to Labor Code § 204b, employers must pay its
4 employees on a weekly basis on a regular day determined by the employer as the
5 regular payday.

6 192. Pursuant to Labor Code §§ 218.5 and 218.6, an action may be brought for
7 the nonpayment of wages and fringe benefits.

8 193. Plaintiffs were not properly paid pursuant to the requirements of Labor
9 Code §§ 201, 202, and 204/204b and thereby seek all remedies available to them.

10 194. To date, for example, Defendants have not paid Plaintiffs all earned wages
11 as required by law.

12 195. Plaintiffs are informed and believe and based thereon allege that
13 Defendants willfully failed to pay Plaintiffs’ wages pursuant to the requirements of
14 Labor Code §§ 201, 202, and 204/204b, after Plaintiffs’ demand and, therefore,
15 Plaintiffs may recover the associated unpaid wages and waiting time penalties.

16 196. Plaintiffs are informed and believe and based thereon allege that
17 Defendants did this with the intent to secure for himself, herself, and itself a discount
18 on its indebtedness and/or with intent to annoy harass, oppress, hinder, delay and/or
19 defraud Plaintiffs.

20 197. At all material times, DEFENDANT EMPLOYER and DOES 1 through
21 50 were and/or are Aggrieved Employees’ employers or persons acting on behalf of
22 Aggrieved Employees’ employer, within the meaning of California Labor Code § 558,
23 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
24 Labor Code or any provision regulating hours and days of work in any Order of the
25 Industrial Welfare Commission and, as such, are subject to penalties for each
26 underpaid employee as set for in Labor Code § 558.

27 198. In committing the violations of state law as herein alleged, Defendants
28 have knowingly and willfully refused to perform their obligations to compensate

1 Aggrieved Employees for all wages earned and all hours worked.

2 199. As a direct result, Aggrieved Employees have suffered and continue to
3 suffer, substantial losses related to the use and enjoyment of such compensation,
4 wages, lost interest on such monies and expenses and attorney's fees in seeking to
5 compel Defendants to full perform their obligation under state law, all to their
6 respective damage in amounts according to proof at trial and within the jurisdictional
7 limitations of this Court.

8 200. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, a
9 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
10 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
11 pay period for each subsequent violation in which DEFENDANT EMPLOYER
12 violated Labor Code §§ 201, 202, 203, and 204/204b. The exact amount of the
13 applicable penalty is all in an amount to be shown according to proof at trial.

14 201. Plaintiffs were deprived of their rightfully earned wages as a direct and
15 proximate result of Defendants' failure and refusal to pay said compensation and for
16 the reasons alleged in this Complaint.

17 202. Plaintiffs and Class Members request the unpaid wages, waiting time
18 penalties, interest, attorneys' fees, costs, damages, and other remedies in an amount to
19 be proven at trial.

20 **EIGHTH CAUSE OF ACTION**

21 **Representative Claim for PAGA Penalties**

22 **For Failure to Maintain and Provide Required Records in Violation of** 23 **California Labor Code §§ 226, 432, 1174, 1198.5, 2751, 2810.5,** 24 **and the Applicable Wage Order and/or § 1198**

25 (Against all Defendants)

26 203. Plaintiffs re-allege and incorporate by reference the foregoing allegations
27 as though set forth herein.

28 204. California Labor Code § 226, subdivision (b), requires employers doing

1 business in the State of California to “afford current and former employees the right
2 to inspect or copy records pertaining to their employment, upon a reasonable request
3 to the employer...” and subdivision (c), requires employers to produce such records
4 within “21 calendar days from the date of the request.”

5 205. Plaintiff maintains the records requested fall within the meaning of
6 Labor Code § 226 because, among other reasons, the requested documents are
7 “records pertaining to [his] employment.”

8 206. California Labor Code § 432, subdivision (b), requires employers doing
9 business in the State of California to provide current, former employees, and
10 applicants copies of all written instruments they sign upon request.

11 207. Plaintiff maintains the records requested fall within the meaning of
12 Labor Code § 432 because some of the records requested constitute written
13 instruments the Plaintiff signed.

14 208. California Labor Code § 1198.5, *et seq.*, similarly provides current and
15 former employees the right to inspect their employee personnel records and requires
16 the employer to provide the employee access to such records no later than 30 calendar
17 days from the date the employer receives a written request.

18 209. Plaintiff maintains the records requested fall within the meaning of
19 Labor Code § 1198.5, *et seq.* because they were part of and/or related to Plaintiff’s
20 personnel file within the meaning of Labor Code § 1198.5.

21 210. California Labor Code § 2751 requires employers who pay its
22 employees commissions (i.e., the named Plaintiff here and others) to have a written
23 agreement that describes how commissions are “computed and paid,” which
24 agreement must be signed by all applicable employees.

25 211. California Labor Code § 2810.5 requires employers to furnish
26 employees with written notice provided at the time of hire that complies with all
27 aspects of the statute, namely, providing the employee with written notice of their rate
28 of pay, the name of their employer, etc.

1 212. Section 7 of the typical Wage Order requires every employer to
2 maintain time and payroll records.

3 213. As alleged above, Defendants did not provide Plaintiff access to
4 Plaintiff's employee personnel file and/or the records to which Plaintiff has the right
5 to obtain within the meaning of the foregoing statutes in violation of the
6 abovementioned statutes and/or Defendants did not comply with the abovementioned
7 statutes.

8 214. Further, Plaintiffs are informed and believe and based thereon alleges
9 that during all times relevant, Defendants failed to comply with § 7 of the applicable
10 IWC Orders and with Labor Code § 1174 by failing to maintain certain records which
11 employers are required to maintain, including but not limited to, an accurate record
12 indicating the number hours worked by the Plaintiffs, evidenced in part by
13 Defendants failure to provide the named Plaintiff's time records despite his request.

14 215. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
15 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
16 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
17 pay period for each subsequent violation in which all culpable Defendants violated
18 the applicable Cal. Labor Code provisions alleged in this Amended Complaint, the
19 exact amount of the applicable penalty is in an amount to be shown according to
20 proof at trial.

21 216. For the reasons alleged herein, Plaintiffs seek all remedies available to
22 them including but not limited to attorneys' fees, costs, interest, and penalties
23 pursuant to the PAGA, the Labor Code, and permissible by law in an amount to be
24 proven at trial.

25
26
27
28

NINTH CAUSE OF ACTION

Individual Claims for

**Violations of the California Investigative Consumer
Reporting Agencies Act (Civ. Code, § 1786, *et seq.*)**

(Against all Defendants)

217. Plaintiff BARNETT re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

218. Pursuant to California Civ. Code § 1786, *et seq.*, it is presumptively unlawful for a consumer reporting agency to furnish an investigative consumer report for employment purposes unless the procurer of the report complies with all aspects of California Civ. Code § 1786, *et seq.*

219. The ICRAA requires that, before procuring a consumer report on an individual for employment purposes, the employer must comply with all the following:

- (A) The person procuring or causing the report to be made has a permissible purpose, as defined in Civ. Code § 1786.12.
- (B) The person procuring or causing the report to be made provides a clear and conspicuous disclosure in writing to the consumer at any time before the report is procured or caused to be made in a document that consists solely of the disclosure, that:
 - (i) An investigative consumer report may be obtained.
 - (ii) The permissible purpose of the report is identified.
 - (iii) The disclosure may include information on the consumer's character, general reputation, personal characteristics, and mode of living.
 - (iv) Identifies the name, address, and telephone number of the investigative consumer reporting agency conducting the investigation.
 - (v) Notifies the consumer in writing of the nature and scope of the investigation requested, including a summary of the provisions of Civ. Code § 1786.22.
 - (vi) Notifies the consumer of the Internet Web site address of the investigative consumer reporting agency identified in clause (v), or, if the agency has no Internet Web site address, the telephone number of the agency, where the consumer may find information about the investigative reporting agency's privacy practices, including whether the consumer's personal information will be sent outside the United States or its territories and information that complies with subdivision (d) of Civ. Code § 1786.20. This clause shall become operative on January 1, 2012.

(Civ. Code § 1786.16, subd. (a)(2)(B).)

220. As described in detail above, Plaintiff alleges that Defendants violated various provisions of the ICRAA.

221. With respect to each violation of the ICRAA provisions and pursuant to Civ. Code § 1786.50(a)(1), Plaintiff seeks to recover statutory damages in the amount of no less than \$10,000 due to Defendants' failure to comply with the requirements imposed by Civ. Code § 1786, *et seq.*, all in an amount to be proven at trial.

222. Plaintiff seeks recovery costs of suit with reasonable attorneys' fees in an amount as the Court may allow.

TENTH CAUSE OF ACTION

Individual and Class Claim for Remedies for Violations

of the California Unfair Business

Practices Code §§ 17200, *et seq.*

(Against all Defendants)

223. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

224. Defendants, and each of them, are "persons" as defined under Business and Professions Code § 17021.

225. Plaintiffs are informed and believe and based thereon allege that Defendants committed the unfair business practices, as defined by Cal. Bus. & Prof. Code § 17200, *et seq.*, by violating the laws alleged to have been violated in this Complaint and which allegations are incorporated herein by reference and which allegations include, but are not limited to:

a. Failing to provide the Class and Plaintiffs an accurate itemized wage statement in violation of § 226 of the Labor Code;

b. Failing to pay the Class and Plaintiffs all wages due and owing including minimum/regular wages and overtime

1 compensation, minimum wages and overtime, and meal
2 and rest break premiums;

3 c. Failure to reimburse employees for all employer incurred
4 expenses; and

5 d. Failure to pay Class Members, including Plaintiffs,
6 wages in a timely manner upon their termination or
7 resignation.

8 226. Defendants' conduct, as alleged above, constitutes unlawful, unfair, and
9 fraudulent activity prohibited by Business and Professions Code §§ 17200, *et seq.*

10 227. The unlawful and unfair business practices conducted by Defendants,
11 and each of them, are ongoing and present a threat and likelihood of continuing
12 against Plaintiffs and, accordingly, Plaintiffs seek injunctive relief where appropriate.

13 228. Plaintiffs have suffered injury in fact and lost money or property because
14 of the aforementioned unfair competition.

15 229. Because of their improper acts, Defendants, and each of them, have
16 reaped and continue to reap unfair benefits and illegal profits at the expense of
17 Plaintiffs and other employees and former employees of Defendants, and each of
18 them.

19 230. Defendants, and each of them, should be enjoined from this activity and
20 made to disgorge these ill-gotten gains and restore to Plaintiffs and the Class the
21 wrongfully withheld wages and/or penalties, pursuant to Business and Professions
22 Code §§ 17202 and/or 17203.

23 231. Plaintiffs and the Class have also incurred and continue to incur
24 attorneys' fees and legal expenses in an amount according to proof at the time of trial
25 and for which they seek compensation pursuant to law including but not limited to
26 Code of Civil Procedure § 1021.5.

1 **ELEVENTH CAUSE OF ACTION**

2 **Individual and Class Claim for**
3 **Violation of § 1681b(b)(2) of the Fair Credit Reporting Act**
4 **(Obtaining Consumer Reports Without Proper Disclosure)**
5 **(Against All Entity Defendants)**

6 232. Plaintiffs re-allege and incorporate by reference the foregoing allegations
7 as though set forth herein.

8 233. Pursuant to 15 U.S.C. § 1681b(a)(3)(B), a consumer reporting agency
9 may furnish a consumer report for employment purposes.

10 234. Likewise, a consumer report may be used for the evaluation of “a
11 consumer for employment, promotion, reassignment or retention of an employee.” 15
12 U.S.C. §1681a(h).

13 235. The FCRA requires that, before procuring or causing to be procured a
14 consumer report on an individual for employment purposes, the employer must: (1)
15 provide a clear and conspicuous disclosure to each applicant in writing that a
16 consumer report may be obtained for employment purposes; and (2) obtain the
17 applicant’s authorization in writing to obtain the report. 15 U.S.C. § 1681b(b)(2)(A).

18 236. Section 1681b(b)(2)(A) further specifies that the disclosure must be in
19 writing “in a document that consists solely of the disclosure.”

20 237. Specifically, Section 1681b(b)(2)(A) provides, in relevant part:

21 ... a person may not procure a consumer report, or cause a consumer report
22 to be procured, for employment purposes with respect to any consumer,
23 unless- (i) a clear and conspicuous disclosure has been made in writing to
24 the consumer at any time before the report is procured or cause to be
25 procured, in a document that consists solely of the disclosure, that a
26 consumer report may be obtained for employment purposes; and (ii) the
consumer has authorized in writing (which authorization may be made on
the document referred to in clause (i)) the procurement of the report by that
person. . . .

27 15 U.S.C. § 1681b(b)(2)(A).

28 238. During the employment application process, Defendants presented the

1 named Plaintiff and presumably others with and required them to sign **Exhibit 1** or
2 forms closely resembling **Exhibit 1**.

3 239. As a matter of law, Defendants’ procurement of consumer reports on the
4 basis of this purported disclosure violates 15 U.S.C. § 1681b(b)(2)(A), which requires
5 that the disclosure be: (1) “clear and conspicuous”; and (2) appear “in a document that
6 consists solely of the disclosure.” *See Gilberg v. Cal. Check Cashing Stores, LLC*,
7 913 F.3d 1169, 1174 (9th Cir. 2019) (holding that the FCRA’s standalone document
8 requirement in a case where an employer procured a job applicant’s consumer report
9 after including various out-of-state disclosure requirements, a notice about
10 background investigation, and a summary of the applicant’s rights under the FCRA in
11 the same document); *Syed v. M-I, LLC*, 853 F.3d 492, *10-11 (9th Cir. 2017) (holding
12 an employer violates Section 1681b(b)(2)(A)(I)—(ii) when it requires an employee to
13 sign a form containing a waiver of liability provision as part of a background
14 investigation); *Harris v. Home Depot U.S.A., Inc.*, 114 F. Supp. 3d 868, 870-71 (N.D.
15 Cal. 2015) (release of liability improper); *Feist v. Petco Animal Supplies, Inc.*, 218 F.
16 Supp. 3d 1112 (S.D. Cal. 2016) (a summary of consumer rights in seven different
17 states improper); *Lagos v. The Leland Stanford Junior University*, 2015 U.S. Dist.
18 LEXIS 163119 (N.D. Cal. Dec. 4, 2015) (inclusion of seven state law notices and
19 sentence stating “I also understand that nothing herein shall be construed as an offer
20 of employment or contract for services” plausibly violated stand-alone disclosure
21 requirement); *Woods v. Caremark PHC, L.L.C.*, 2015 U.S. Dist. LEXIS 148051
22 (W.D. Mo. 2015) (“The specific ‘extraneous information’ Plaintiff alleges Defendant
23 included in its Authorization Form for Consumer Reports is: (1) an overbroad
24 authorization for third parties to provide information to Defendant and its consumer
25 reporting agency, (2) state-specific notices that did not apply to Plaintiff, and (3) that
26 the form was part“of a five-page stapled packet of three documents. Where FCRA
27 allegations involve the inclusion of extraneous information beyond an authorization,
28 the complaint meets the 12(b)(6) standard to state a claim for willful violation of the

1 FCRA stand-alone requirement.”).

2 240. For the reasons alleged above, Defendants’ procurement of Plaintiffs’
3 consumer reports violated the FCRA.

4 241. Based on the misconduct alleged in this Amended Complaint,
5 Defendants violated Plaintiffs’ rights under the FCRA because Defendants obtained
6 and used Plaintiffs’ sensitive, highly personal information including but not limited to
7 background reports, criminal record, credit record, verification of employment record,
8 character, reputation, personal characteristics, mode of living, and last known
9 residences, among other things.

10 242. By trading in and using unlawfully obtained sensitive personal
11 information, such as the Plaintiff’s criminal, credit, and employment records, previous
12 residences, and similar private information, Defendants violated the FCRA and Class
13 Members’ statutory rights under the FCRA.

14 243. Defendants acted willfully by procuring consumer reports without first
15 providing legally adequate disclosure forms to the named Plaintiff and FCRA Class
16 Members that were in direct violation of the clear and unambiguous requirements set
17 forth in 15 U.S.C. § 1681b(b)(2)(A).

18 244. Defendants knew or acted with reckless disregard of its statutory duties
19 and the rights of applicants and employees, including the named Plaintiff and the
20 Class, thus knowingly and/or recklessly disregarding its statutory duties.

21 245. On information and belief, as well as Plaintiffs’ investigation,
22 Defendants’ conduct was willful because:

- 23 a. Defendants procured consumer reports without first
24 providing a legally valid disclosure form to the Plaintiff
25 and the Class;
26 b. Defendants procured consumer reports after requiring
27 Plaintiff and the Class to execute the foregoing forms
28 knowing they were facially invalid in violation of the

- 1 FCRA and Defendants' statutory duties;
- 2 c. Defendants acted with reckless disregard of the FCRA
- 3 requirements and Defendants' statutory duties they when
- 4 procured consumer reports after requiring Plaintiffs and
- 5 the Class to execute the foregoing forms that were
- 6 facially invalid and in violation of the clear and
- 7 unambiguous requirements of the FCRA;
- 8 d. Upon information and belief, Defendants were advised
- 9 by skilled lawyers and other professional employees, and
- 10 advisors knowledgeable about the FCRA requirements;
- 11 e. The statute and case law are clear that procuring a report
- 12 in conjunction with including the unlawful language in a
- 13 disclosure form violates the disclosure and authorization
- 14 requirements;
- 15 f. Case law and the FTC's express statements, pre-dating
- 16 Defendants' conduct, state that it is a violation of 15
- 17 U.S.C. § 1681b(b)(2)(A) to include a liability waiver in a
- 18 FCRA disclosure form;
- 19 g. The FTC's express statements, pre-dating Defendants'
- 20 conduct, state that it is a violation of 15 U.S.C. §
- 21 1681b(b)(2)(A) to embed a consumer report disclosure in
- 22 an employment application; and
- 23 h. By adopting such a policy, Defendants voluntarily ran a
- 24 risk of violating the law substantially greater than the risk
- 25 associated with a reading that was merely careless.

26 246. Pursuant to 15 U.S.C. §1681n(a)(1)(A), the named Plaintiff and the

27 FCRA Class may recover any actual damages sustained by the consumer as a result of

28 the failure or statutory damages due to Defendants' willful failure to comply with the

1 requirements imposed by 15 U.S.C. § 1681b(b)(2)(A) of an amount not less than \$100
2 and not more than \$1,000.

3 247. Pursuant to 15 U.S.C. § 1681n(a)(3) and § 1681o(a)(2), the named
4 Plaintiff and the Class seek the recovery costs of suit with reasonable attorneys' fees,
5 as determined by the Court.

6 **TWELFTH CAUSE OF ACTION**

7 **Individual and Class Claim for**

8 **Violation of § 1681b(b)(2) of the Fair Credit Reporting Act**
9 **(Obtaining Consumer Reports Without Proper Authorization)**

10 (Against All Entity Defendants)

11 248. Plaintiffs re-allege and incorporate by reference the foregoing allegations
12 as though set forth herein.

13 249. As alleged above, **Exhibit 1** purports to authorize "Lending Tree" to
14 procure consumer reports on the named Plaintiff and FCRA Class Members.

15 250. Plaintiffs are informed and based thereon allege that "Lending Tree" is
16 not a lawful entity and was not Plaintiffs' employer.

17 251. To the extent that an entity other than the entity or entities identified in
18 Defendants' disclosure forms procured consumer reports on Plaintiff and Class
19 Members, Defendants failed to obtain any authorization at all. 15 U.S.C. §
20 1681b(b)(2)(A)(ii).

21 252. Alternatively, because Defendants failed to make a clear and
22 conspicuous disclosure that a consumer report may be procured in a document
23 consisting solely of the disclosure, Defendants violated the FCRA by procuring
24 consumer reports relating to Plaintiff and other Class Members without proper
25 authorization. *See* 15 U.S.C. § 1681b(b)(2)(A)(i)-(ii).

26 253. The foregoing violations were willful because by procuring a consumer
27 report without properly identifying the employer or the correct legal entity procuring
28 the report, Defendants acted in deliberate or reckless disregard of its obligations and

1 the rights of Plaintiffs and other Class Members under 15 U.S.C. §
2 1681b(b)(2)(A)(ii).

3 254. Defendants' willful conduct is also evidenced by, among other things,
4 the facts alleged above.

5 255. Pursuant to 15 U.S.C. §1681n(a)(1)(A), the named Plaintiff and the
6 FCRA Class seek to recover any actual damages sustained by the consumer as a result
7 of the failure or statutory damages due to Defendants' willful failure to comply with
8 the requirements imposed by 15 U.S.C. § 1681b(b)(2)(A) of an amount not less than
9 \$100 and not more than \$1,000.

10 256. Pursuant to 15 U.S.C. § 1681n(a)(3) and § 1681o(a)(2), the named
11 Plaintiff and the Class seek the recovery costs of suit with reasonable attorneys' fees,
12 as determined by the Court.

13 **THIRTEENTH CAUSE OF ACTION**

14 **Individual Claim for Common Law Violations of the Right to Privacy** 15 **(Against All Defendants)**

16 257. Plaintiff re-alleges and incorporates by reference the foregoing
17 allegations as though set forth herein.

18 258. Based on the misconduct alleged herein, Plaintiff maintains Defendants,
19 without Plaintiff's lawful consent, invaded Plaintiff's right to privacy by procuring
20 consumer reports and investigative consumer reports concerning the Plaintiff in
21 violation of California and federal law, including but not limited to the FCRA.

22 259. The intrusion was offensive and objectionable to the Plaintiff and to a
23 reasonable person of ordinary sensibilities because Defendants obtained and used
24 sensitive, highly personal information including but not limited to background
25 reports, criminal record, driving record, verification of employment record, character,
26 reputation, personal characteristics, mode of living, and last known home addresses.

27 260. The intrusion was into a place or thing which was private and entitled to
28 be private because Defendants procured and used the reports illegally – that is,

1 without first making the disclosures required by California law, including but not
2 limited to the FCRA and the ICRAA.

3 261. Based on the above alleged misconduct, Plaintiff sustained damages in an
4 amount to be proven at trial.

5 262. Plaintiff alleges that Defendants' misconduct was grossly negligent
6 and/or willful and/or malicious and/or in conscious disregard of the rights and safety
7 of the Plaintiff, and whose recklessness and/or conscious disregard was reasonably
8 foreseeable to cause injury to the Plaintiff, thereby warranting the assessment of
9 punitive damages against these Defendants and, as such, Plaintiff seeks to recover
10 punitive damages for Defendants' willful violations, in an amount as the Court may
11 allow.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 14 1. An order that this action may proceed and be maintained as a class
15 action;
- 16 2. For appointment of the named Plaintiff as the representative of Class I
17 and Class II;
- 18 3. For appointment of counsel for Plaintiffs as Class Counsel;
- 19 4. That the Court find that Defendants' violations as described above were
20 willful;
- 21 5. That the Court award to Plaintiffs and/or the Class and/or Aggrieved
22 Employees damages for the amount of unpaid wages subject to proof at trial;
- 23 6. For payment of all unpaid wages, including but not limited to state
24 minimum wages and overtime compensation to Plaintiffs and/or the Class and/or
25 Aggrieved Employees in an amount subject to proof at trial;
- 26 7. That Defendants, and each of them, be ordered and enjoined to pay
27 restitution to Plaintiffs and/or the Class and/or Aggrieved Employees pursuant to
28 Business and Professions Code §§ 17200-05;

8. That Defendants, and each of them, be required to issue to Plaintiffs and/or the Class and/or Aggrieved Employees accurate wage and earning statements;

9. For disgorgement through restitution of all ill-gotten and/or ill-gained profits, including unpaid wages and/or penalties to Plaintiffs and/or the Class and/or Aggrieved Employees, resulting from Defendants' unfair business practices pursuant to Business and Professions Code §§ 17200-05;

10. For an order by the Court requiring Defendants, and each of them, to show cause, if any they have, as to why to Plaintiffs and/or the Class and/or Aggrieved Employees should not have been be issued itemized wage statements as required by § 226 of the Labor Code and why Defendants should not be required to pay Plaintiffs minimum wages and overtime compensation under applicable state law;

11. For damages in an amount to be proven at trial;

12. For all remedies available to Plaintiffs under the applicable Industrial Welfare Commission Order and the Labor Code, including but not limited to §§ 90.5, 200, 201, 202, 203, 204 and/or 204b, 204.1, 216, 218, 218.5, 221, 222, 223, 224, 225.5, 226, 226.3, 226.6, 227.6, 245, 245.5, 246, 246.5, 247, 247.5, 248.5, 249, 432, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, and 2802 via PAGA Labor Code § 2698, *et seq.* and the ICRAA including an award of unpaid wages, attorneys' fees, costs, interest, liquidated damages, damages, penalties and waiting time penalties according to proof to the extent permitted by law;

13. For maximum civil penalties available under the Labor Code and applicable Wage Order as described more particularly in this Amended Complaint, representative PAGA claims including the payment of wages as set forth in Labor Code § 558;

14. For Labor Code § 226(e) penalties in the amount of \$4,000.00;

15. For Labor Code § 203 penalties in an amount to be proven at trial;

16. For a declaration that Defendants violated the rights of the named

1 Plaintiff and the Class under the FCRA;

2 17. Pursuant to 15 U.S.C. § 1681n(a)(1)(A), an award of statutory damages
3 to Plaintiffs and the Class;

4 18. For an order finding Defendants liable to Plaintiff;

5 19. For an order declaring that Defendants violated the privacy rights of
6 Plaintiff;

7 20. For attorneys' fees, prejudgment, and post judgment interest;

8 21. For special and general damages;

9 22. That Plaintiffs and/or the Class and/or Aggrieved Employees be
10 awarded reasonable attorneys' fees where available by law, including but not limited
11 to pursuant to Labor Code §§ 2698, *et seq.*, Code of Civil Procedure § 1021.5, and/or
12 other applicable laws; and

13 23. Such other and further relief as this Court may deem proper and just.

14 Dated: July 18, 2023

Law Office of
Thomas D. Rutledge

15 By: Thomas D. Rutledge
16 /s/Thomas D. Rutledge
17 Attorneys for Plaintiffs
18
19
20
21
22
23
24
25
26
27
28