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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

Judge: Hon. Katherine Bacal  
Dept. C-69

**FIRST AMENDED 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.*); and
10. Violation of B.&P. Code §§ 17200, *et seq.*

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

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

5 **NATURE OF THE ACTION**

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

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

14 3. Plaintiffs seek all remedies available to them including but not limited to  
15 reimbursements, penalties, restitution, injunctive and other equitable relief, reasonable  
16 attorneys’ fees, and costs.

17 4. The monetary damages and restitution sought by Plaintiffs will be  
18 established according to proof at trial. Upon information and belief, the claims of  
19 individual Aggrieved Employees, including the named Plaintiff, is well under the  
20 \$75,000 jurisdictional threshold for federal jurisdiction. No Aggrieved Employee  
21 could reasonably be expected to receive a recovery of \$75,000 or more. Upon  
22 information and belief, the total damages for the Represented Employees are not  
23 anticipated to exceed \$5,000,000. Further, there is no federal question at issue  
24 because all issues related to the payment wages alleged herein are based solely on  
25 California law and statutes. Finally, the claims alleged herein concern only California  
26 workers.

27 5. Please take notice that removal of this action to federal court under Class  
28 Action Fairness Act on the alleged basis the amount in controversy exceeds \$5

1 million without admissible evidence will be in bad faith and, as such, may subject the  
2 moving party or their counsel to monetary sanctions/attorneys' fees.

### 3 **JURISDICTION AND VENUE**

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

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

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

### 16 **THE PARTIES**

17 9. Plaintiff VERNON BARNETT is an individual residing in California.

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

20 11. Defendant LENDINGTREE INC. is a Delaware corporation doing  
21 business in the State of California.

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

24 13. The true names and capacities, whether individual, corporate, associate  
25 or otherwise of the Defendants named herein as DOES 1 through 50, are unknown to  
26 Plaintiffs at this time. Plaintiffs therefore sues said Defendants by such fictitious names  
27 pursuant to § 474 of the California Code of Civil Procedure. Plaintiffs will seek leave  
28 to amend this Complaint to allege the true names and capacities of DOES 1 through 50

1 when their names are ascertained. Plaintiffs are informed and believe, and based  
2 thereon allege, that each of the DOE Defendants is in some manner liable to Plaintiffs  
3 for the events and actions alleged herein.

4 14. Unless otherwise specified by name, the named Defendants and DOES 3  
5 through 50 will be collectively referred to as "DEFENDANT EMPLOYER" and/or  
6 "Defendants."

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

13 16. Plaintiffs are informed and believe, and based thereon allege, that each  
14 Defendant was acting partly within and partly without the scope and course of their  
15 employment, and was acting with the knowledge, permission, consent, and ratification  
16 of every other Defendant.

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

23 18. Plaintiffs are informed and believe, and based thereon allege that each of  
24 the Defendants is liable to Plaintiffs under legal theories and doctrines including but  
25 not limited to (1) joint employer; (2) integrated enterprise; (3) agency; and/or (4) alter  
26 ego, based in part, on the facts set forth below.

27 19. Plaintiffs are informed and believe, and based thereon allege, that each  
28 of the named Defendants are part of an integrated enterprise and have acted or

1 currently act as the employer and/or joint employer of the Plaintiffs/Class Members  
2 making each of them liable for the wage and hour violations alleged herein.

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

### 10 **GENERAL ALLEGATIONS**

11 21. Defendants are in the insurance business.

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

16 23. Defendants paid Plaintiffs and putative Class Members on an hourly  
17 basis and sometimes paid them commissions and bonuses when eligible.

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

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

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

24 26. On May 9, 2022, DEFENDANT EMPLOYER, via counsel, sent another  
25 written response via email to the foregoing letter providing portions of Plaintiff's  
26 employee personnel file.

27 27. On May 10, 2022, Plaintiff, via counsel, sent an email to DEFENDANT  
28 EMPLOYER's counsel indicating the employee personnel file production was

1 incomplete and instructing DEFENDANT EMPLOYER to provide the “background  
2 report you procured, the consent form he signed to permit his employer to procure the  
3 report, the disclosure form he likewise presumably signed vis-a-vis the background  
4 check, all commission plans applicable to his pay, and a copy of his W-2.”

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

9 29. On May 16, 2022, DEFENDANT EMPLOYER’s counsel wrote via  
10 email, “Following up on my last email, I am in the process of gathering some  
11 additional items to provide to you, and will send them over to you with a written  
12 response in the next couple of days.”

13 30. As of this filing, DEFENDANT EMPLOYER has purported to produce  
14 the remaining portions of Plaintiff’s personnel file, but discovery is still ongoing.

15 **Minimum Wage/Regular Wage claims.**

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

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

24 **Failure to Pay State Overtime.**

25 33. From at least four years before the filing of this action and continuing to  
26 the present, and pursuant to company policy and/or practice and/or direction,  
27 DEFENDANT EMPLOYER failed to pay Plaintiffs and the putative Class state  
28 overtime compensation and/or the correct amount of overtime compensation.

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

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

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

25           37. Similarly, on December 24, 2020, DEFENDANT EMPLOYER paid  
26 Plaintiff BARNETT \$2,055 in commissions, yet in the corresponding pay period of  
27 December 6, 2020 to December 19, 2020 this Aggrieved Employee worked four hours  
28 of overtime and DEFENDANT EMPLOYER paid only \$28.875 per hour to this

1 Aggrieved Employee based on the employee's regular rate of pay of \$19.25  
2 erroneously not including the commissions proceeds into the regular rate of pay for  
3 overtime pay purposes, resulting in an underpayment of overtime in an amount to be  
4 proven at trial.

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

13 39. Again, on February 19, 2021, DEFENDANT EMPLOYER paid Plaintiff  
14 BARNETT \$1,450 in commissions, yet in the corresponding pay period of January 31,  
15 2021 to February 13, 2021 this Aggrieved Employee worked ten hours of overtime and  
16 DEFENDANT EMPLOYER paid only \$28.875 per hour to this Aggrieved Employee  
17 based on the employee's regular rate of pay of \$19.25 erroneously not including the  
18 commissions proceeds into the regular rate of pay for overtime pay purposes, resulting  
19 in an underpayment of overtime in an amount to be proven at trial.

20 40. Similarly, on March 19, 2021, DEFENDANT EMPLOYER paid Plaintiff  
21 BARNETT \$1,180 in commissions, yet in the corresponding pay period of February  
22 28, 2021 to March 13, 2021 this Aggrieved Employee worked nine hours of overtime  
23 and DEFENDANT EMPLOYER paid only \$29.16 per hour to this Aggrieved  
24 Employee based on the employee's regular rate of pay of \$19.44 erroneously not  
25 including the commissions proceeds into the regular rate of pay for overtime pay  
26 purposes, resulting in an underpayment of overtime in an amount to be proven at trial.

27 41. Likewise, on April 23, 2021, DEFENDANT EMPLOYER paid Plaintiff  
28 BARNETT \$1,835 in commissions, yet in the corresponding pay period of April 11,

2021 to April 24, 2021 this Aggrieved Employee earned \$85.87 in overtime and DEFENDANT EMPLOYER paid this overtime at only \$29.16 per hour based on the employee's regular rate of pay of \$19.44 erroneously not including the commissions proceeds into the regular rate of pay for overtime pay purposes, resulting in an underpayment of overtime in an amount to be proven at trial.

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

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

44. On November 26, 2021, DEFENDANT EMPLOYER paid Plaintiff BARNETT \$500 in a referral bonus, yet in the corresponding pay period of November 7, 2021 to November 20, 2021 this Aggrieved Employee worked 24 hours of overtime and DEFENDANT EMPLOYER paid only \$29.16 per hour to this Aggrieved Employee based on the employee's regular rate of pay of \$19.44 erroneously not including the referral bonus into the regular rate of pay for overtime pay purposes, resulting in an underpayment of overtime in an amount to be proven at trial.

45. On December 23, 2021, DEFENDANT EMPLOYER paid Plaintiff BARNETT \$5,740 in commissions, yet in the corresponding pay period of December

1 5, 2021 to December 18, 2021 this Aggrieved Employee worked 3.5 hours of overtime  
2 and DEFENDANT EMPLOYER paid only \$29.16 per hour to this Aggrieved  
3 Employee based on the employee's regular rate of pay of \$19.44 erroneously not  
4 including the earned commissions into the regular rate of pay for overtime pay  
5 purposes, resulting in an underpayment of overtime in an amount to be proven at trial.

6 46. On January 21, 2022, DEFENDANT EMPLOYER paid Plaintiff  
7 BARNETT \$1,685 in commissions, yet in the corresponding pay period of January 1,  
8 2022 to January 15, 2022 this Aggrieved Employee earned \$69.45 in overtime and  
9 DEFENDANT EMPLOYER paid this overtime at only \$29.16 per hour based on the  
10 employee's regular rate of pay of \$19.44 erroneously not including the commissions  
11 proceeds into the regular rate of pay for overtime pay purposes, resulting in an  
12 underpayment of overtime in an amount to be proven at trial.

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

16 **Meal and Rest Break Claims.**

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

23 49. Plaintiffs are informed and believe, and therefore allege, that Plaintiff  
24 BARNETT and, upon information and belief, other putative Class Members' meal  
25 breaks were late, missed, or noncompliant because of work demands imposed on them  
26 by management and/or the demands of their customers, among other reasons.

27 50. Defendants never paid Plaintiff BARNETT and, upon information and  
28 belief, other putative Class Members premium pay for missed and noncompliant meal

1 breaks.

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

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

13 53. Because of the foregoing policies, Defendants prevented Plaintiffs from  
14 taking all their uninterrupted rest breaks to which they had the right under California  
15 law, in an amount to be proven at trial. (*See Augustus v. ABM Security Services* (2016)  
16 2 Cal.5th 257.)

17 54. 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 **Failure to Reimburse.**

21 55. During all times relevant, and pursuant to company policy and/or practice  
22 and/or direction, Defendants required Plaintiff BARNETT and, upon information and  
23 belief, other employees, to work from home as a condition of his/her employment and  
24 required Plaintiffs and the Class to use their home internet, and incur various other  
25 expenses associated with their work for Defendants.

26 56. The unreimbursed purchases Plaintiffs and proposed Class Members  
27 were required to make to perform their work include, but are not limited to internet  
28 connections, office space in their homes devoted to work, and work-related office

1 supplies/equipment.

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

5 58. Defendants passed the cost of doing business onto its employees by  
6 requiring, without reimbursement, their employees to purchase equipment, tools, and  
7 services necessary to perform work for Defendants.

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

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

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

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

23 62. As alleged above, for example, on November 20, 2020, Defendants issued  
24 Plaintiff BARNETT a wage and earning statement that said Defendants paid him  
25 \$246.98 in overtime, but the number of overtime hours worked was missing where  
26 instead it erroneously reported that Plaintiff worked "0" overtime hours.

27 63. Similarly, on December 24, 2020, Defendants issued Plaintiff BARNETT  
28 a wage and earning statement that said Defendants paid him \$154.99 in overtime, but

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

3         64. Likewise, on January 22, 2021, Defendants issued Plaintiff BARNETT a  
4 wage and earning statement that said Defendants paid him \$61.32 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         65. Again, on February 19, 2021, Defendants issued Plaintiff BARNETT a  
8 wage and earning statement that said Defendants paid him \$36.25 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. On March 19, 2021, Defendants issued Plaintiff BARNETT a wage and  
12 earning statement that said Defendants paid him \$44.85 in overtime, but the number of  
13 overtime hours worked was missing where instead it erroneously reported that Plaintiff  
14 worked “0” overtime hours.

15         67. On April 23, 2021, Defendants issued Plaintiff BARNETT a wage and  
16 earning statement that said Defendants paid him \$85.87 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 August 20, 2021, Defendants issued Plaintiff BARNETT a wage and  
20 earning statement that said Defendants paid him \$16.40 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 November 19, 2021, Defendants issued Plaintiff BARNETT a wage  
24 and earning statement that said Defendants paid him \$308.60 in overtime, but the  
25 number of overtime hours worked was missing where instead it erroneously reported  
26 that Plaintiff worked “0” overtime hours.

27         70. On December 23, 2021, Defendants issued Plaintiff BARNETT a wage  
28 and earning statement that said Defendants paid him \$640.07 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 January 21, 2021, Defendants issued Plaintiff BARNETT a wage and  
4 earning statement that said Defendants paid him \$69.45 in overtime, but the number of  
5 overtime hours worked was missing where instead it erroneously reported that Plaintiff  
6 worked “0” overtime hours.

7 72. The above problems made interpretation of the foregoing wage and  
8 earning statements hopelessly confusing.

9 73. In addition to the foregoing claims under Labor Code § 226, Plaintiffs’  
10 paystubs and those of similarly situated employees of Defendants were inaccurate  
11 because Defendants failed to pay them all wages, as alleged above, supporting a  
12 derivative claim under Labor Code § 226.

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

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

17 75. Pursuant to the above-mentioned policies, DEFENDANT EMPLOYER  
18 failed to pay all wages to which Plaintiffs had the right to receive under the law.

19 76. When Plaintiff BARNETT and putative Class Members’ employment  
20 ended, DEFENDANT EMPLOYER failed to provide Plaintiffs all unpaid wages in  
21 their final paycheck or in a timely manner.

22 77. Further, during Plaintiffs’ employment, their pay was untimely in  
23 violation of the Labor Code.

24 78. Plaintiffs are informed and believe and based thereon allege that, to date,  
25 DEFENDANT EMPLOYER has not paid Plaintiffs all of Plaintiffs’ wages due and  
26 payable, in an amount to be proven at trial.

27 79. Derivative claims also premised, in part, on Plaintiffs’ right to pursue all  
28 Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security*

1 *Services USA, Inc.* (2018) 23 Cal.App.5th 745.

2 **ICRAA Claims.**

3 80. Upon Plaintiff BARNETT's hiring, as part of Defendants' routine  
4 practice, policy, and procedure, Defendants required Plaintiff, a job applicant at that  
5 time, to sign various forms that purported to allow Defendants to obtain a consumer  
6 investigative report on the Plaintiff via a third party.

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

12 82. Plaintiff alleges the foregoing form Defendants used violates Civ. Code §  
13 1786.16 because (1) there is no block to check to allow the Plaintiff to obtain a copy of  
14 the report (Civ. Code § 1786.16(b)(1)), (2) the report was procured by "Lendingtree,"  
15 an unknown entity and if not the admitted employer, then an entity without statutory  
16 authorization to procure the report (Civ. Code §§ 1786.2(f)) ((indeed, Plaintiff's  
17 employer issued him a W-2 that said QR Insurance was his employer, not  
18 Lendingtree); 1786.12(d)(1); 1786.16(a)), (3) the disclosure form was presented not as  
19 a single document as required under the statute, but as part of a multipage document  
20 (Civ. Code § 1786.16(a)(2)(B)), (4) the disclosure included a number of extraneous  
21 references prohibited by law, such as reference to the states of Washington, New York,  
22 Minnesota, among many other unlawful extraneous references (Civ. Code §  
23 1786.16(a)(2)(B)), (5) the form contains an unlawful evergreen provision purporting to  
24 allow Defendants to procure Plaintiff's report anytime during his employment (Civ.  
25 Code § 1786.16(a)(2)), and (6) the consumer reporting agency Defendant employed  
26 did not have a complaint privacy policy in effect ((Civ. Code § 1786.20), among other  
27 reasons.

28 83. Similarly, by law before an employer can procure a report on an employee

1 or job applicant, the employer must certify to the furnishing agency that it (the  
2 employer) complied, and will continue to comply, with various requirements of the  
3 ICRAA. Civ. Code §1786.16(a)(4).

4 84. Plaintiff is informed and believes and based thereon alleges there is no  
5 evidence of lawful certifications whatsoever from the Defendants as required under the  
6 ICRAA.

7 85. Accordingly, Plaintiff is informed and believes and based thereon alleges  
8 that Defendants violated the ICRAA by procuring a consumer report on the Plaintiff  
9 without complying with the certification requirements set forth in the FCRA and the  
10 ICRAA.

11 **REPRESENTATIVE ACTION (PAGA) CLAIMS**

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

14 **All persons Defendants employed in the State of California**  
15 **from May 25, 2021 to the present.**

16 87. All members of the Aggrieved groups will be referred to as the  
17 “Aggrieved Employees.”

18 88. The “PAGA Period” means from **May 25, 2021** to the present, the  
19 timeframe where the scope of statute allows Plaintiffs to recover wages and penalties.

20 89. California law provides that an employee may file an action against an  
21 employer to recover penalties for violations of the Labor Code and Wage Orders  
22 provided the aggrieved employee files an action on behalf of him or himself and  
23 similarly-situated current and former employees.

24 90. At all material times, DEFENDANT EMPLOYER and DOES 1 through  
25 50 were and/or are Aggrieved Employees’ employers or persons acting on behalf of  
26 Aggrieved Employees’ employer, within the meaning of California Labor Code § 558,  
27 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California  
28 Labor Code or any provision regulating hours and days of work in any Order of the

1 Industrial Welfare Commission and, as such, are subject to penalties for each  
2 underpaid employee as set for in Labor Code § 558.

3 91. As set forth in further detail below, because of the analysis and  
4 investigation of the Plaintiffs' claims, Plaintiffs' attorneys sent correspondence to the  
5 California Labor and Workforce Development Agency ("LWDA") and to  
6 DEFENDANT EMPLOYER informing DEFENDANT EMPLOYER of their claims  
7 and their intent to pursue litigation.

### 8 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

9 92. As to penalty claims under the Labor Code Private Attorney General  
10 Act, on or about **May 25, 2021**, Plaintiffs began to exhaust his/her administrative  
11 remedies by sending correspondence to the LWDA and via certified mail to  
12 DEFENDANT EMPLOYER indicating Plaintiffs are pursuing the claims alleged in  
13 this Complaint.

14 93. The statutory period for from the first letter alleged above expired and  
15 the LWDA did not have serve Plaintiffs with notice of intent to assume jurisdiction  
16 over the applicable penalty claims and did not provide notice as set forth in Labor  
17 Code § 2699.3(a)(2)(A) within the statutory period.

18 94. Therefore, the statutory waiting period expired based on the presumed  
19 facts above, and (with the exception of Defendants LENDINGTREE INC. and  
20 LENDINGTREE LLC) Plaintiffs have exhausted all applicable administrative  
21 remedies thus permitting Plaintiffs the ability to seek the penalty claims sought in this  
22 Complaint.

### 23 **CLASS ACTION ALLEGATIONS**

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

26 96. Plaintiffs seek to represent the classes and/or subclasses composed of  
27 and defined as follows:

28 **All of Defendants' current or former nonexempt employees**

1                   **who worked in the state of California from May 25, 2018 to**  
2                   **the present.**

3           97.    Plaintiffs also seek to represent the following subclasses composed of  
4 and defined as follows:

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

8                   **State Overtime Subclass:** All Members of the Class who, during the  
9 relevant period, worked more than eight hours per day and/or in 40  
10 hours per week and who did not receive overtime pay at the requisite  
overtime rate of pay.

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

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

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

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

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

28                   **UCL Subclass:** All Members of the Class, who, during the relevant

1 period, are owed restitution in the form of (1) unreimbursed expenses  
2 and/or (2) wages earned and unpaid because of Defendants' uniform  
pay policies and procedures.

3 98. The above-mentioned class-members will collectively be referred to as  
4 "Class Members."

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

8 100. This action is brought and may properly be maintained as a Class Action  
9 under the provisions of § 382 of the Code of Civil Procedure because there is a  
10 well-defined community of interest in the litigation and the proposed Class is easily  
11 ascertainable.

12 **A. Numerosity.**

13 101. The potential members of the Class as defined are so numerous or many,  
14 that joinder of all the members of the Class is impracticable.

15 102. While the precise number of Class Members has not been determined at  
16 this time, Plaintiffs are informed and believe, and based thereon allege, that  
17 DEFENDANT EMPLOYER currently employs, and during the relevant time periods  
18 employed, a sufficient number of employees to warrant class certification if all other  
19 elements are met.

20 103. Accounting for employee turnover during the relevant periods necessarily  
21 increases the number of potential members of the Class.

22 **B. Commonality.**

23 104. There are questions of law and fact common to the Class that predominate  
24 over any questions affecting only individual Class Members.

25 105. Common questions of law and fact include, without limitation and subject  
26 to possible further amendment, the following:

- 27 a. Whether Defendants violated the Labor Code and the  
28 applicable Wage Order by not fully compensating

- 1 Plaintiffs and the Class by failing to pay minimum wage  
2 and/or regular wages as required by law;
- 3 b. Whether Defendants' policy or practice of not  
4 paying Plaintiffs and putative class members  
5 overtime compensation for the hours they worked  
6 over 40 in a workweek or eight hours in a day is  
7 illegal under Labor Code §§ 510, 1771, 1774, 1776,  
8 1194, and the applicable Wage Order;
- 9 c. Whether Defendants violated the meal and rest break  
10 provisions of California law by failing to provide  
11 Plaintiffs with duty-free 30-minute meal breaks for shifts  
12 of five hours or more and/or duty free 10-minute rest  
13 breaks as required by law and Defendants' failure to pay  
14 premium pay as a result thereof;
- 15 d. Whether Defendants violated Labor Code §§ 2802  
16 by failing to reimburse Plaintiffs for business  
17 expenses;
- 18 e. Whether Defendants violated Labor Code §§ 226  
19 by not providing accurate paystubs;
- 20 f. Whether Defendants' policy or practice of not  
21 paying hourly employees all their wages due in  
22 their final paychecks immediately upon involuntary  
23 termination or when 72 hours' notice was provided  
24 before voluntary resignation, is unlawful under  
25 Labor Code §§ 201, 202 and/or 203;
- 26 g. Whether Defendants violated the PAGA under California  
27 Labor Code §§ 2698, 2699, *et seq.*, by committing  
28 the wrongful conduct as alleged in this

Complaint; and

h. Whether Plaintiffs and the members of the Class

May recover remedies pursuant to Business &

Professions Code §§ 17200, *et seq.*

**C. Typicality.**

106. Plaintiffs' claims are typical of the claims of the Class 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.**

107. Plaintiffs are members of the Class, do not have any conflicts of interest with other Class Members, and will prosecute the case vigorously on behalf of the Class.

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

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

**E. Superiority of Class Action.**

110. 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 the Class predominate over any questions affecting only individual members of the Class.

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

112. Class Action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

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

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

### **FIRST CAUSE OF ACTION**

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

(Against all Defendants)

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

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

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

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

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

120. During all times relevant, Plaintiffs and putative Class Members are informed and believe, and based thereupon allege, that Class Members including Plaintiffs, were not paid minimum/regular wages for all hours suffered or permitted to

1 work in violation of state and, where applicable, local law and/or their agreement with  
2 DEFENDANT EMPLOYER.

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

7 122. 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.

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

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

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

1 including but not limited to §§ 216, 218, 218.5, 223, 1182.12, 1194, 1194.2, and 1197,  
2 the exact amount of the applicable penalty is all in an amount to be shown according to  
3 proof at trial.

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

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

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

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

## 16 **SECOND CAUSE OF ACTION**

### 17 **Individual, Class, and Representative Claim under the PAGA for** 18 **Failure to Pay State Overtime and/or Double-Time** 19 **Compensation in Violation of California Labor Code §§ 510, 1194, 1198,** 20 **and the Applicable Wage Order**

21 (Against all Defendants)

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

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

26 132. Pursuant to the applicable Wage Order, "hours worked" include the  
27 time during which an employee is "suffered or permitted to work, whether or not  
28 required to do so."

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

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

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

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

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

25           138. At all material times, DEFENDANT EMPLOYER and DOES 1 through  
26 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of  
27 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,  
28 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California

1 Labor Code or any provision regulating hours and days of work in any Order of the  
2 Industrial Welfare Commission and, as such, are subject to penalties for each  
3 underpaid employee as set for in Labor Code § 558.

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

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

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

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

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

26 144. Plaintiffs on behalf of herself and Class requests the unpaid wages,  
27 waiting time penalties, interest, attorneys' fees, costs, liquidated damages, and any  
28 other remedies allowed by law in an amount to be proven at trial.

**THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

13           152. Wherefore, Plaintiffs request all remedies available to them and to the  
14 putative Class.

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

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

154. Plaintiffs are informed and believe, and based thereon allege, that based on the misconduct alleged in this Complaint, Defendants failed to authorize and permit Plaintiffs to receive a rest period of at least 10 minutes on a separate hourly basis when paid commissions or otherwise to provide paid ten-minute rest periods for every four (4) hours or major fraction thereof worked per day, and by failing to provide premium wages at the regular rate of pay when these periods were not permitted or authorized, Defendants willfully violated the provisions of Labor Code § 226.7, and the applicable

1 IWC Wage Order.

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

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

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

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

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

1 160. Wherefore, Plaintiffs request all remedies available to them and to the  
2 putative Class.

3 **FIFTH CAUSE OF ACTION**

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

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

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

13 163. California Labor Code § 2804 mandates that this statutory right cannot be  
14 waived.

15 164. The Plaintiffs incurred losses in obedience to the directions of  
16 Defendants in the form of purchase of work-related expenses described in this  
17 Complaint.

18 165. As a direct result of Defendants' violation of California Labor Code §  
19 2802, the Plaintiffs and Class Members suffered and continue to suffer substantial  
20 losses related to unpaid expenses, the use and enjoyment of monies owed, lost interest  
21 on monies owed, and attorneys' fees in an amount to be proven at the time of trial.

22 166. Defendants derive an unjust and inequitable economic benefit in failing  
23 to comply with the law regarding indemnification and reimbursement of employees.

24 167. Plaintiffs request all remedies available to them and to the putative Class  
25 for Defendants' violations of California Labor Code § 2802, including but not limited  
26 to back-owed reimbursement for work-related expenses, interest, statutory and  
27 equitable attorneys' fees, costs, and applicable penalties in an amount to be proven at  
28 trial.

**SIXTH CAUSE OF ACTION**

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

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

(Against all Defendants)

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

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

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

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

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

7 173. 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 business hours and days of work in any Order  
12 of the Industrial Welfare Commission and, as such, are subject to penalties for each  
13 underpaid employee as set forth in Labor Code § 558.

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

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

23 176. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, a  
24 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period  
25 for the initial violation and two hundred (\$200.00) for each aggrieved employee per  
26 pay period for each subsequent violation in which DEFENDANT EMPLOYER  
27 violated Labor Code § 226, the exact amount of the applicable penalty is all in an  
28 amount to be shown according to proof at trial.

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

**SEVENTH CAUSE OF ACTION**

**Individual, Class, and Representative Claim under the PAGA for  
Failure to Pay Timely Earned Wages during Employment and  
Upon Separation of Employment in Violation of  
California Labor Code §§ 201, 202, 203,  
204 and/or 204b, 218.5, and 218.6**

(Against all Defendants)

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

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

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

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

182. Pursuant to Labor Code § 204, "all wages ... earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays."

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

4 184. Pursuant to Labor Code §§ 218.5 and 218.6, an action may be brought for  
5 the nonpayment of wages and fringe benefits.

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

8 186. To date, for example, Defendants have not paid Plaintiffs all earned wages  
9 as required by law.

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

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

18 189. At all material times, DEFENDANT EMPLOYER and DOES 1 through  
19 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of  
20 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,  
21 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California  
22 Labor Code or any provision regulating hours and days of work in any Order of the  
23 Industrial Welfare Commission and, as such, are subject to penalties for each  
24 underpaid employee as set for in Labor Code § 558.

25 190. In committing the violations of state law as herein alleged, Defendants  
26 have knowingly and willfully refused to perform their obligations to compensate  
27 Aggrieved Employees for all wages earned and all hours worked.

28 191. As a direct result, Aggrieved Employees have suffered and continue to

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

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

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

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

## 18 **EIGHTH CAUSE OF ACTION**

### 19 **Representative Claim for PAGA Penalties**

#### 20 **For Failure to Maintain and Provide Required Records in Violation of** 21 **California Labor Code §§ 226, 432, 1174, 1198.5, 2751, 2810.5,** 22 **and the Applicable Wage Order and/or § 1198**

23 (Against all Defendants)

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

26 196. California Labor Code § 226, subdivision (b), requires employers doing  
27 business in the State of California to "afford current and former employees the right  
28 to inspect or copy records pertaining to their employment, upon a reasonable request

1 to the employer...” and subdivision (c), requires employers to produce such records  
2 within “21 calendar days from the date of the request.”

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

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

9 199. Plaintiff maintains the records requested fall within the meaning of  
10 Labor Code § 432 because some of the records requested constitute written  
11 instruments the Plaintiff signed.

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

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

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

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

27 204. Section 7 of the typical Wage Order requires every employer to  
28 maintain time and payroll records.

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

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

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

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

## **NINTH CAUSE OF ACTION**

### **Individual Claims for**

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

(Against all Defendants)

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

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

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

- 8                   (A) The person procuring or causing the report to be made has a  
                      permissible purpose, as defined in Civ. Code § 1786.12.  
9                   (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  
10                   before the report is procured or caused to be made in a document that  
                      consists solely of the disclosure, that:  
11                       (i) An investigative consumer report may be obtained.  
12                       (ii) The permissible purpose of the report is identified.  
13                       (iii) The disclosure may include information on the consumer's  
                      character, general reputation, personal characteristics, and mode of living.  
14                       (iv) Identifies the name, address, and telephone number of the  
                      investigative consumer reporting agency conducting the investigation.  
15                       (v) Notifies the consumer in writing of the nature and scope of the  
                      investigation requested, including a summary of the provisions of Civ.  
16                       Code § 1786.22.  
17                       (vi) Notifies the consumer of the Internet Web site address of the  
                      investigative consumer reporting agency identified in clause (v), or, if the  
18                       agency has no Internet Web site address, the telephone number of the  
                      agency, where the consumer may find information about the investigative  
19                       reporting agency's privacy practices, including whether the consumer's  
                      personal information will be sent outside the United States or its territories  
20                       and information that complies with subdivision (d) of Civ. Code §  
                      1786.20. This clause shall become operative on January 1, 2012.

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

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

24           213. With respect to each violation of the ICRAA provisions and pursuant to  
25 Civ. Code § 1786.50(a)(1), Plaintiff seeks to recover statutory damages in the amount  
26 of no less than \$10,000 due to Defendants' failure to comply with the requirements  
27 imposed by Civ. Code § 1786, *et seq.*, all in an amount to be proven at trial.  
28

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

3                                   **TENTH CAUSE OF ACTION**

4                   **Individual and Class Claim for Remedies for Violations**  
5                   **of the California Unfair Business**  
6                   **Practices Code §§ 17200, *et seq.***

7                                   (Against all Defendants)

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

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

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

- 17                   a. Failing to provide the Class and Plaintiffs an accurate  
18                   itemized wage statement in violation of § 226 of the  
19                   Labor Code;  
20                   b. Failing to pay the Class and Plaintiffs all wages due and  
21                   owing including minimum/regular wages and overtime  
22                   compensation, minimum wages and overtime, and meal  
23                   and rest break premiums;  
24                   c. Failure to reimburse employees for all employer incurred  
25                   expenses; and  
26                   d. Failure to pay Class Members, including Plaintiffs,  
27                   wages in a timely manner upon their termination or  
28                   resignation.

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

3 219. The unlawful and unfair business practices conducted by Defendants,  
4 and each of them, are ongoing and present a threat and likelihood of continuing  
5 against Plaintiffs and, accordingly, Plaintiffs seek injunctive relief where appropriate.

6 220. Plaintiffs have suffered injury in fact and lost money or property because  
7 of the aforementioned unfair competition.

8 221. Because of their improper acts, Defendants, and each of them, have  
9 reaped and continue to reap unfair benefits and illegal profits at the expense of  
10 Plaintiffs and other employees and former employees of Defendants, and each of  
11 them.

12 222. Defendants, and each of them, should be enjoined from this activity and  
13 made to disgorge these ill-gotten gains and restore to Plaintiffs and the Class the  
14 wrongfully withheld wages and/or penalties, pursuant to Business and Professions  
15 Code §§ 17202 and/or 17203.

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

20 **PRAYER FOR RELIEF**

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

- 22 1. An order that this action may proceed and be maintained as a class  
23 action;  
24 2. For appointment of the named Plaintiff as the representative of the  
25 Class;  
26 3. For appointment of counsel for Plaintiffs as Class Counsel;  
27 4. That the Court find that Defendants' violations as described above were  
28 willful;

1           5.       That the Court award to Plaintiffs and/or the Class and/or Aggrieved  
2 Employees damages for the amount of unpaid wages subject to proof at trial;

3           6.       For payment of all unpaid wages, including but not limited to state  
4 minimum wages and overtime compensation to Plaintiffs and/or the Class and/or  
5 Aggrieved Employees in an amount subject to proof at trial;

6           7.       That Defendants, and each of them, be ordered and enjoined to pay  
7 restitution to Plaintiffs and/or the Class and/or Aggrieved Employees pursuant to  
8 Business and Professions Code §§ 17200-05;

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

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

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

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

22           12.      For all remedies available to Plaintiffs under the applicable Industrial  
23 Welfare Commission Order and the Labor Code, including but not limited to §§ 90.5,  
24 200, 201, 202, 203, 204 and/or 204b, 204.1, 216, 218, 218.5, 221, 222, 223, 224,  
25 225.5, 226, 226.3, 226.6, 227.6, 245, 245.5, 246, 246.5, 247, 247.5, 248.5, 249, 432,  
26 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, and  
27 2802 via PAGA Labor Code § 2698, *et seq.* and the ICRAA including an award of  
28 unpaid wages, attorneys' fees, costs, interest, liquidated damages, damages, penalties

1 and waiting time penalties according to proof to the extent permitted by law;

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

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

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

8 16. For special and general damages;

9 17. 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 18. Such other and further relief as this Court may deem proper and just.

14 Dated: October 11, 2022

Law Office of  
Thomas D. Rutledge

15  
16 By: Thomas D. Rutledge  
17 /s/Thomas D. Rutledge  
18 Attorneys for Plaintiffs

19 **DEMAND FOR JURY TRIAL**

20 Plaintiffs hereby demand a jury trial of this matter.

21 Dated: October 11, 2022

Law Office of  
Thomas D. Rutledge

22  
23  
24 By: Thomas D. Rutledge  
25 /s/Thomas D. Rutledge  
26 Attorney for the Plaintiffs  
27  
28

# Exhibit 1

# Welcome

Lending Tree (the “Company”) has engaged Checkr, Inc. to obtain a consumer report and/or investigative consumer report, as defined in California, for employment purposes. Checkr Inc. will provide a background investigation as a pre-condition of your engagement with the Company and in compliance with applicable law.

After you’ve completed the form, you can check the status of your background check on the [Checkr Candidate Portal](#).

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By clicking **Continue** you agree to Checkr, Inc’s [Privacy Policy](#), and consent to Checkr contacting you by email, phone, or SMS texts with information relating to your background check.

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Presented on page 1 of the application flow

Agreement to Checkr Inc's Privacy Policy including consent to electronic disclosures and automated communications signed electronically on: Jun 8, 2020 06:49:15 PM UTC by Vernon Rashawn Barnett

Para información en español, visite [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore) o escribe a la Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.

## **A Summary of Your Rights Under the Fair Credit Reporting Act**

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under FCRA. **For more information, including information about additional rights, go to [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore) or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
  - a person has taken adverse action against you because of information in your credit report;
  - you are the victim of identity theft and place a fraud alert in your file;
  - your file contains inaccurate information as a result of fraud;
  - you are on public assistance;
  - you are unemployed but expect to apply for employment within 60 days.

In addition, all consumers are entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore) for additional information.

- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore) for an explanation of dispute procedures.
- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete, or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.
- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.
- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need – usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore).
- **You may limit “prescreened” offers of credit and insurance you get based on information in your credit report.** Unsolicited “prescreened” offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt out

with the nationwide credit bureaus at 1-888-5-OPTOUT (1-888-567-8688).

- The following FCRA right applies with respect to nationwide consumer reporting agencies:

## CONSUMERS HAVE THE RIGHT TO OBTAIN A SECURITY FREEZE

**You have a right to place a “security freeze” on your credit report, which will prohibit a consumer reporting agency from releasing information in your credit report without your express authorization.** The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gets access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding a new loan, credit, mortgage, or any other account involving the extension of credit.

As an alternative to a security freeze, you have the right to place an initial or extended fraud alert on your credit file at no cost. An initial fraud alert is a 1-year alert that is placed on a consumer’s credit file. Upon seeing a fraud alert display on a consumer’s credit file, a business is required to take steps to verify the consumer’s identity before extending new credit. If you are a victim of identity theft, you are entitled to an extended fraud alert, which is a fraud alert lasting 7 years.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account that requests information in your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.
- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore).

**States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. For information about your federal rights, contact:**

| TYPE OF BUSINESS:                                                                                                                                                                                                                                                                                                                                                          | CONTACT:                                                                                                                                                                                                                                                                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.a. Banks, savings associations, and credit unions with total assets of over \$10 billion and their affiliates.<br><br>b. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the CFPB:                                                                                                                           | a. Consumer Financial Protection Bureau<br>1700 G Street N.W.<br>Washington, DC 20552<br><br>b. Federal Trade Commission: Consumer Response Center -- FCRA<br>Washington, DC 20580<br>(877) 382-4357                                                                      |
| 2. To the extent not included in item 1 above:<br><br>a. National banks, federal savings associations, and federal branches and federal agencies of foreign banks<br><br>b. State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and Insured State Branches of Foreign Banks), commercial lending companies owned or | a. Office of the Comptroller of the Currency<br>Customer Assistance Group<br>1301 McKinney Street, Suite 3450<br>Houston, TX 77010-9050<br><br>b. Federal Reserve Consumer Help Center<br>P.O. Box. 1200<br>Minneapolis, MN 55480<br><br>c. FDIC Consumer Response Center |

|                                                                                                                              |                                                                                                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act                  | 1100 Walnut Street, Box #11<br>Kansas City, MO 64106                                                                                                                                          |
| c. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and insured state savings associations                  | d. National Credit Union Administration<br>Office of Consumer Protection (OCP)<br>Division of Consumer Compliance and Outreach (DCCO)<br>1775 Duke Street<br>Alexandria, VA 22314             |
| d. Federal Credit Unions                                                                                                     |                                                                                                                                                                                               |
| 3. Air carriers                                                                                                              | Asst. General Counsel for Aviation Enforcement & Proceedings<br>Aviation Consumer Protection Division<br>Department of Transportation<br>1200 New Jersey Avenue, S.E.<br>Washington, DC 20423 |
| 4. Creditors Subject to Surface Transportation Board                                                                         | Office of Proceedings, Surface Transportation Board<br>Department of Transportation<br>395 E Street, S.W.<br>Washington, DC 20423                                                             |
| 5. Creditors Subject to the Packers and Stockyards Act, 1921                                                                 | Nearest Packers and Stockyards Administration area supervisor                                                                                                                                 |
| 6. Small Business Investment Companies                                                                                       | Associate Deputy Administrator for Capital Access<br>United States Small Business Administration<br>409 Third Street, S.W., 8th Floor<br>Washington, DC 20549                                 |
| 7. Brokers and Dealers                                                                                                       | Securities and Exchange Commission<br>100 F St N.E.<br>Washington, DC 20549                                                                                                                   |
| 8. Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations | Farm Credit Administration<br>1501 Farm Credit Drive<br>McLean, VA 22102-5090                                                                                                                 |
| 9. Retailers, Finance Companies, and All Other Creditors Not Listed Above                                                    | FTC Regional Office for region in which the creditor operates <u>or</u> Federal Trade Commission: Consumer Response Center - FCRA<br>Washington, DC 20580<br>(877) 382-4357                   |

Presented on page 4 of the application flow

Summary of Your Rights Under the Fair Credit Reporting Act (FCRA) document presented and acknowledged on: Jun 8, 2020 06:49:15 PM UTC by Vernon Rashawn Barnett

# Disclosure Regarding Background Investigation

Lending Tree (the "Company") may obtain information about you from Checkr, Inc. for employment purposes. Thus, you may be the subject of a "consumer report" and/or an "investigative consumer report," as defined in California, which may include information about your character, general reputation, personal characteristics, and/or mode of living, and which can involve personal interviews with sources such as your neighbors, friends, or associates. These reports may contain information regarding your credit history, criminal history, motor vehicle records ("driving records"), verification of your education or employment history, or other background checks.

Credit history will only be requested where such information is substantially related to the duties and responsibilities of the position for which you are applying.

You have the right, upon written request made within a reasonable time, to request whether a consumer report has been run about you, and disclosure of the nature and scope of any investigative consumer report and to request a copy of your report. Please be advised that the nature and scope of the most common form of investigative consumer report is an employment history or verification. These searches will be conducted by **Checkr, Inc., One Montgomery Street, Suite 2400, San Francisco, CA 94104, 844-824-3257, <https://candidate.checkr.com>**. The scope of this disclosure is all-encompassing, however, allowing the Company to obtain from any outside organization all manner of consumer reports throughout the course of your employment to the extent permitted by law.

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Presented on page 5 of the application flow

Disclosure document presented and acknowledged on: Jun 8, 2020 06:49:15 PM UTC by Vernon Rashawn Barnett

# Notice Regarding Credit Checks Per California Law

Pursuant to Section 1024.5 of the California Labor Code, Lending Tree (the "Company") informs you that it may obtain a credit report about you from Checkr, Inc., because you are seeking to work in the following position:

A position that involves access to confidential or proprietary information

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Presented on page 6 of the application flow

Notice Regarding Credit Checks per CA law presented and acknowledged on: Jun 8, 2020 06:49:15 PM UTC by Vernon Rashawn Barnett

## NOTICE REGARDING BACKGROUND CHECKS PER CALIFORNIA LAW

Lending Tree (the “Company”) intends to obtain information about you for employment screening purposes from a consumer reporting agency. Thus, you can expect to be the subject of an “investigative consumer report” and a “consumer credit report” obtained for employment purposes. Such reports may include information about your character, general reputation, personal characteristics and mode of living. With respect to any investigative consumer report from an investigative consumer reporting agency (“ICRA”), the Company may investigate the information contained in your employment application and other background information about you, including but not limited to obtaining a criminal record report, verifying references, work history, your social security number, your educational achievements, licensure, and certifications, your driving record, and other information about you, and interviewing people who are knowledgeable about you. The results of this report may be used as a factor in making employment decisions. The source of any investigative consumer report (as that term is defined under California law) will be **Checkr, Inc., One Montgomery Street, Suite 2400, San Francisco, CA 94104 | (844) 824-3257 | <https://candidate.checkr.com>**. The Company agrees to provide you with a copy of an investigative consumer report when required to do so under California law.

Under California Civil Code section 1786.22, you are entitled to find out what is in the CRA’s file on you with proper identification, as follows:

- In person, by visual inspection of your file during normal business hours and on reasonable notice. You also may request a copy of the information in person. The CRA may not charge you more than the actual copying costs for providing you with a copy of your file.
- A summary of all information contained in the CRA file on you that is required to be provided by the California Civil Code will be provided to you via telephone, if you have made a written request, with proper identification, for telephone disclosure, and the toll charge, if any, for the telephone call is prepaid by or charged directly to you.
- By requesting a copy be sent to a specified addressee by certified mail. CRAs complying with requests for certified mailings shall not be liable for disclosures to third parties caused by mishandling of mail after such mailings leave the CRAs.

“Proper Identification” includes documents such as a valid driver’s license, social security account number, military identification card, and credit cards. Only if you cannot identify yourself with such information may the CRA require additional information concerning your employment and personal or family history in order to verify your identity.

The CRA will provide trained personnel to explain any information furnished to you and will provide a written explanation of any coded information contained in files maintained on you. This written explanation will be provided whenever a file is provided to you for visual inspection. You may be accompanied by one other person of your choosing, who must furnish reasonable identification. An CRA may require you to furnish a written statement granting permission to the CRA to discuss your file in such person’s presence.

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Presented on page 7 of the application flow

California Disclosure document presented and acknowledged on: Jun 8, 2020 06:49:15 PM UTC by Vernon Rashawn Barnett

# Acknowledgment and Authorization for Background Check

I acknowledge receipt of the separate documents entitled Disclosure Regarding Background Investigation and A Summary of Your Rights Under the Fair Credit Reporting Act and certify that I have read and understand both of those documents. I hereby authorize the obtaining of “consumer reports” and/or “investigative consumer reports” by the Lending Tree (the “Company”) at any time after receipt of this authorization and throughout my employment, if applicable. To this end, I hereby authorize any law enforcement agency, administrator, state or federal agency, institution, school or university (public or private), information service bureau, past or present employers, motor vehicle records agencies, or insurance company to furnish any and all background information requested by **Checkr, Inc., One Montgomery Street, Suite 2400, San Francisco, CA 94104 | (844) 824-3257 | <https://candidate.checkr.com>** and/or the Company. I agree that a facsimile (“fax”), electronic, or photographic copy of this Authorization shall be as valid as the original.

**New York residents/candidates only:** Upon request, you will be informed whether or not a consumer report was requested by the Employer, and if such report was requested, informed of the name and address of the consumer reporting agency that furnished the report. You have the right to inspect and receive a copy of any investigative consumer report requested by the Employer by contacting the consumer reporting agency identified above directly. By signing below, you acknowledge receipt of Article 23-A of the New York Correction Law. [Link to NY Article 23-A](#)

**New York City residents/candidates only:** You acknowledge and authorize the Employer to provide any notices required by federal, state or local law to you at the address(es) and/or email address(es) you provided to the Employer.

**Washington State candidates only:** You also have the right to request from the consumer reporting agency a written summary of your rights and remedies under the Washington Fair Credit Reporting Act.

**Minnesota and Oklahoma candidates only:** Please check the box below if you would like to receive a copy of a consumer report if one is obtained by the Company.

**San Francisco candidates only:** Please click below for the San Francisco Fair Chance Act Notice. - [English](#) - [Spanish](#) - [Tagalog](#) - [Chinese](#)

**Los Angeles candidates only:** Please click [here](#) for the Los Angeles Notice to Candidates and Employees for Private Employers.

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Acknowledgement and Authorization for Background Check signed electronically on: Jun 8, 2020 06:49:15 PM UTC by Vernon Rashawn Barnett

**Electronic Signature**

Vernon Rashawn Barnett

Signature typed electronically on: Jun 8, 2020 06:49:15 PM UTC

IP Address: 174.65.56.218

Checksum: 8943e042622edbd24452c483106f41ac