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

Judge: Hon. Katherine Bacal
Dept. C-69

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

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

Complaint Filed: May 25, 2022
Trial Date: NA

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 Employees),
3 the putative class, and all others similarly situated individuals (cumulatively
4 “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 also bring this nationwide class action on behalf of all
15 individuals with respect to whom Defendants unlawfully procured or caused to be
16 procured a consumer report for employment purposes in connection with the job
17 application process on the basis of invalid consumer report disclosures.

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

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

JURISDICTION AND VENUE

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

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

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

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

THE PARTIES

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

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

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

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

14. The true names and capacities, whether individual, corporate, associate or otherwise of the Defendants named herein as DOES 3 through 50, are unknown to

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

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

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

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

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

26 19. Plaintiffs are informed and believe, and based thereon allege that each of
27 the Defendants is liable to Plaintiffs under legal theories and doctrines including but
28 not limited to (1) joint employer; (2) integrated enterprise; (3) agency; and/or (4) alter

ego, based in part, on the facts set forth below.

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

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

GENERAL ALLEGATIONS

22. Defendants are in the lending and insurance business.

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

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

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

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

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

27. On May 9, 2022, DEFENDANT EMPLOYER, via counsel, sent another written response via email to the foregoing letter providing portions of Plaintiff's

1 employee personnel file.

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

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

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

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

18 **Minimum Wage/Regular Wage claims.**

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

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

27 **Failure to Pay State Overtime.**

28 34. From at least four years before the filing of this action and continuing to

1 the present, and pursuant to company policy and/or practice and/or direction,
2 DEFENDANT EMPLOYER failed to pay Plaintiffs and the putative Class state
3 overtime compensation and/or the correct amount of overtime compensation.

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

13 36. For example, on October 23, 2020, DEFENDANT EMPLOYER paid
14 Plaintiff BARNETT \$1,500 in commissions, yet in the corresponding pay period this
15 Aggrieved Employee worked 29.75 hours of overtime and DEFENDANT
16 EMPLOYER paid only \$28.875 per hour to this Aggrieved Employee based on the
17 employee's regular rate of pay of \$19.25 erroneously excluding the earned
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 37. By further example, on November 20, 2020, DEFENDANT EMPLOYER
21 paid Plaintiff BARNETT \$1,925 in commissions, yet in the corresponding pay period
22 of November 8, 2020 to November 21, 2020 this Aggrieved Employee worked 13
23 hours of overtime and DEFENDANT EMPLOYER paid only \$28.875 per hour to this
24 Aggrieved Employee based on the employee's regular rate of pay of \$19.25
25 erroneously not including the commissions proceeds into the regular rate of pay for
26 overtime pay purposes, resulting in an underpayment of overtime in an amount to be
27 proven at trial.

28 38. Similarly, on December 24, 2020, DEFENDANT EMPLOYER paid

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

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

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

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

1 purposes, resulting in an underpayment of overtime in an amount to be proven at trial.

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

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

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

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

1 resulting in an underpayment of overtime in an amount to be proven at trial.

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

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

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

19 **Meal and Rest Break Claims.**

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

26 50. Plaintiffs are informed and believe, and therefore allege, that Plaintiff
27 BARNETT and, upon information and belief, other putative Class Members' meal
28 breaks were late, missed, or noncompliant because of work demands imposed on them

1 by management and/or the demands of their customers, among other reasons.

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

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

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

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

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

23 **Failure to Reimburse.**

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

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

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

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

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

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

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

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

26 63. As alleged above, for example, on November 20, 2020, Defendants issued
27 Plaintiff BARNETT a wage and earning statement that said Defendants paid him
28 \$246.98 in overtime, but the number of overtime hours worked was missing where

1 instead it erroneously reported that Plaintiff worked “0” overtime hours.

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

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

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

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

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

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

26 70. On November 19, 2021, Defendants issued Plaintiff BARNETT a wage
27 and earning statement that said Defendants paid him \$308.60 in overtime, but the
28 number of overtime hours worked was missing where instead it erroneously reported

1 that Plaintiff worked “0” overtime hours.

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

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

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

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

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

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

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

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

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

27 79. Plaintiffs are informed and believe and based thereon allege that, to date,
28 DEFENDANT EMPLOYER has not paid Plaintiffs all of Plaintiffs’ wages due and

1 payable, in an amount to be proven at trial.

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

5 **ICRAA Claims.**

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

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

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

1 did not have a complaint privacy policy in effect ((Civ. Code § 1786.20), among other
2 reasons.

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

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

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

14 **FCRA Claims.**

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

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

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

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

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

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

21 **REPRESENTATIVE ACTION (PAGA) CLAIMS**

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

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

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

28 94. The “PAGA Period” means from **May 25, 2021** to the present, the

1 timeframe where the scope of statute allows Plaintiff to recover wages and penalties.

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

6 96. 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 97. As set forth in further detail below, because of the analysis and
14 investigation of the Plaintiffs' claims, Plaintiff's attorneys sent correspondence to the
15 California Labor and Workforce Development Agency ("LWDA") and to
16 DEFENDANT EMPLOYER informing DEFENDANT EMPLOYER of their claims
17 and their intent to pursue litigation.

18 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

19 98. As to penalty claims under the Labor Code Private Attorney General
20 Act, on or about **May 25, 2021**, Plaintiffs began to exhaust their administrative
21 remedies by sending correspondence to the LWDA and via certified mail to QW
22 INSURANCE SOLUTIONS, LLC indicating Plaintiff are pursuing the claims alleged
23 in this Complaint. A true and correct copy of the letter Plaintiffs sent is attached
24 hereto and marked as **Exhibit 2**, which contents are incorporated herein by reference
25 as though set forth herein.

26 99. On **August 16, 2022**, Plaintiff sent amended correspondence to the
27 LWDA and via certified mail to DEFENDANT EMPLOYER indicating Plaintiff is
28 pursuing the claims alleged in this Complaint. A true and correct copy of the letter

1 Plaintiffs sent is attached hereto and marked as **Exhibit 3**, which contents are
2 incorporated herein by reference as though set forth herein.

3 100. The statutory period from these letters alleged above expired and the
4 LWDA did not serve Plaintiffs with notice of intent to assume jurisdiction over the
5 applicable penalty claims and did not provide notice as set forth in Labor Code §
6 2699.3(a)(2)(A) within the statutory period.

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

10 **CLASS ACTION ALLEGATIONS**

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

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

15 **Class I (Labor Class).**

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

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

21 **All persons who are or were applicants and/or employees of**
22 **Defendants anywhere in the United States who completed**
23 **background check disclosures at any time from May 25,**
24 **2017, to the date of certification.**

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

27 **Minimum/Regular Wage Subclass:** All Members of the Class who
28 during the relevant period, failed to receive minimum/regular wages

for all hours worked.

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

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

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

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

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

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

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

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

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

1 subclasses or limitation to particular issues.

2 107. This action is brought and may properly be maintained as a Class Action
3 under the provisions of § 382 of the Code of Civil Procedure because there is a
4 well-defined community of interest in the litigation and the proposed Class is easily
5 ascertainable.

6 **A. Numerosity.**

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

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

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

16 **B. Commonality.**

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

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

- 21 a. Whether Defendants violated the Labor Code and the
22 applicable Wage Order by not fully compensating
23 Plaintiffs and the Class by failing to pay minimum wage
24 and/or regular wages as required by law;
- 25 b. Whether Defendants' policy or practice of not
26 paying Plaintiffs and putative class members
27 overtime compensation for the hours they worked
28 over 40 in a workweek or eight hours in a day is

1 illegal under Labor Code §§ 510, 1771, 1774, 1776,
2 1194, and the applicable Wage Order;

- 3 c. Whether Defendants violated the meal and rest break
4 provisions of California law by failing to provide
5 Plaintiffs with duty-free 30-minute meal breaks for shifts
6 of five hours or more and/or duty free 10-minute rest
7 breaks as required by law and Defendants' failure to pay
8 premium pay as a result thereof;
- 9 d. Whether Defendants violated Labor Code §§ 2802
10 by failing to reimburse Plaintiffs for business
11 expenses;
- 12 e. Whether Defendants violated Labor Code §§ 226
13 by not providing accurate paystubs;
- 14 f. Whether Defendants' policy or practice of not
15 paying hourly employees all their wages due in
16 their final paychecks immediately upon involuntary
17 termination or when 72 hours' notice was provided
18 before voluntary resignation, is unlawful under
19 Labor Code §§ 201, 202 and/or 203;
- 20 g. Whether Defendants violated the PAGA under California
21 Labor Code §§ 2698, 2699, *et seq.*, by committing
22 the wrongful conduct as alleged in this
23 Amended Complaint; and
- 24 h. Whether Plaintiffs and the members of the Class
25 May recover remedies pursuant to Business &
26 Professions Code §§ 17200, *et seq.*

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

- a. Whether the Defendants violated the FCRA by procuring consumer reports based on invalid disclosure/ authorization forms;
- b. Whether the Defendants violated the FCRA by procuring consumer reports under the false identity, "Lending Tree," an unknown entity; and
- c. Whether the Defendants violated § 1681b(b)(1) of the FCRA by failing to provide the required certifications under the FCRA.

C. Typicality.

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

D. Adequacy of Representation.

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

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

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

E. Superiority of Class Action.

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

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

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

121. 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.

122. 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)**

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

124. 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.

125. 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.

126. 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."

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

3 128. During all times relevant, Plaintiffs and putative Class Members are
4 informed and believe, and based thereupon allege, that Class Members including
5 Plaintiffs, were not paid minimum/regular wages for all hours suffered or permitted to
6 work in violation of state and, where applicable, local law and/or their agreement with
7 DEFENDANT EMPLOYER.

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

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

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

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

133. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, 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 DEFENDANT EMPLOYER violated the minimum wage and/or regular wage provisions of the Labor Code, including but not limited to §§ 216, 218, 218.5, 223, 1182.12, 1194, 1194.2, and 1197, the exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

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

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

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

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

SECOND CAUSE OF ACTION

Individual, Class, and Representative Claim under the PAGA for Failure to Pay State Overtime and/or Double-Time Compensation in Violation of California Labor Code §§ 510, 1194, 1198, and the Applicable Wage Order (Against all Defendants)

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

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

3 140. Pursuant to the applicable Wage Order, "hours worked" include the
4 time during which an employee is "suffered or permitted to work, whether or not
5 required to do so."

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

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

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

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

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

1 the amount of overtime paid was too low.

2 146. At all material times, DEFENDANT EMPLOYER and DOES 1 through
3 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
4 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
5 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
6 Labor Code or any provision regulating hours and days of work in any Order of the
7 Industrial Welfare Commission and, as such, are subject to penalties for each
8 underpaid employee as set for in Labor Code § 558.

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

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

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

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

28 151. Based on the misconduct alleged in this Complaint, Plaintiffs and

1 similarly situated members of the Class have suffered damages in an amount to be
2 proven at trial.

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

6 **THIRD CAUSE OF ACTION**

7 **Individual, Class, and Representative Claim under the PAGA for** 8 **Failure to Comply with the Meal Break Requirements of Labor Code §§ 226.7,** 9 **512, 1198, and the applicable IWC Wage Order**

10 (Against all Defendants)

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

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

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

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

1 underpaid employee as set for in Labor Code § 558.

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

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

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

18 160. Wherefore, Plaintiffs request all remedies available to them and to the
19 putative Class.

20 **FOURTH CAUSE OF ACTION**

21 **Individual, Class, and Representative Claim under the PAGA for** 22 **Failure to Comply with the Rest Break Requirements of Labor Code §§ 226.7,** 23 **512, 1198, and the applicable IWC Wage Order**

24 (Against all Defendants)

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

27 162. Plaintiffs are informed and believe, and based thereon allege, that based
28 on the misconduct alleged in this Complaint, Defendants failed to authorize and permit

1 Plaintiffs to receive a rest period of at least 10 minutes on a separate hourly basis when
2 paid commissions or otherwise to provide paid ten-minute rest periods for every four
3 (4) hours or major fraction thereof worked per day, and by failing to provide premium
4 wages at the regular rate of pay when these periods were not permitted or authorized,
5 Defendants willfully violated the provisions of Labor Code § 226.7, and the applicable
6 IWC Wage Order.

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

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

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

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

28 167. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a

1 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
2 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
3 pay period for each subsequent violation in which all culpable Defendants violated Cal.
4 Labor Code § 226.7, the exact amount of the applicable penalty is all in an amount to
5 be shown according to proof at trial.

6 168. Wherefore, Plaintiffs request all remedies available to them and to the
7 putative Class.

8 **FIFTH CAUSE OF ACTION**

9 **Individual, Class, and Representative Claim under the PAGA for** 10 **Failure to Indemnify/Reimburse Business Expenses in Violation of** 11 **California Labor Code § 1198, 2802, and the applicable Wage Order** 12 **(Against all Defendants)**

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

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

18 171. California Labor Code § 2804 mandates that this statutory right cannot be
19 waived.

20 172. The Plaintiffs incurred losses in obedience to the directions of
21 Defendants in the form of purchase of work-related expenses described in this
22 Complaint.

23 173. As a direct result of Defendants' violation of California Labor Code §
24 2802, the Plaintiffs and Class Members suffered and continue to suffer substantial
25 losses related to unpaid expenses, the use and enjoyment of monies owed, lost interest
26 on monies owed, and attorneys' fees in an amount to be proven at the time of trial.

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

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

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

177. 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).)

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

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

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

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

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

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

28 184. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, a

1 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
2 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
3 pay period for each subsequent violation in which DEFENDANT EMPLOYER
4 violated Labor Code § 226, the exact amount of the applicable penalty is all in an
5 amount to be shown according to proof at trial.

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

9 **SEVENTH CAUSE OF ACTION**

10 **Individual, Class, and Representative Claim under the PAGA for**
11 **Failure to Pay Timely Earned Wages during Employment and**
12 **Upon Separation of Employment in Violation of**
13 **California Labor Code §§ 201, 202, 203,**
14 **204 and/or 204b, 218.5, and 218.6**
15 **(Against all Defendants)**

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

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

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

26 189. Labor Code § 203 provides, in pertinent part: "If an employer willfully
27 fails to pay, without abatement or reduction, ... any wages of an employee who is
28 discharged or who quits, the wages of the employee shall continue as a penalty from

1 the due date thereof at the same rate until paid or until an action therefore is
2 commenced; but the wages shall not continue for more than 30 days. ..."

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

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

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

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

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

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

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

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

1 underpaid employee as set for in Labor Code § 558.

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

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

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

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

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

23 **EIGHTH CAUSE OF ACTION**

24 **Representative Claim for PAGA Penalties**

25 **For Failure to Maintain and Provide Required Records in Violation of** 26 **California Labor Code §§ 226, 432, 1174, 1198.5, 2751, 2810.5,** 27 **and the Applicable Wage Order and/or § 1198**

28 (Against all Defendants)

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

3 204. California Labor Code § 226, subdivision (b), requires employers doing
4 business in the State of California to “afford current and former employees the right
5 to inspect or copy records pertaining to their employment, upon a reasonable request
6 to the employer...” and subdivision (c), requires employers to produce such records
7 within “21 calendar days from the date of the request.”

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

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

14 207. Plaintiff maintains the records requested fall within the meaning of
15 Labor Code § 432 because some of the records requested constitute written
16 instruments the Plaintiff signed.

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

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

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

28 211. California Labor Code § 2810.5 requires employers to furnish

1 employees with written notice provided at the time of hire that complies with all
2 aspects of the statute, namely, providing the employee with written notice of their rate
3 of pay, the name of their employer, etc.

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

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

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

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

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

28

NINTH CAUSE OF ACTION

Individual Claims for

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

(Against all Defendants)

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

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

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

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

reporting agency's privacy practices, including whether the consumer's personal information will be sent outside the United States or its territories and information that complies with subdivision (d) of Civ. Code § 1786.20. This clause shall become operative on January 1, 2012.

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

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

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

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

TENTH CAUSE OF ACTION

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

(Against all Defendants)

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

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

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

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

Labor Code;

b. Failing to pay the Class and Plaintiffs all wages due and owing including minimum/regular wages and overtime compensation, minimum wages and overtime, and meal and rest break premiums;

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

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

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

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

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

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

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

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

Code of Civil Procedure § 1021.5.

ELEVENTH CAUSE OF ACTION

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

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

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

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

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

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

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

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

the document referred to in clause (i)) the procurement of the report by that person. . . .

15 U.S.C. § 1681b(b)(2)(A).

238. During the employment application process, Defendants presented the named Plaintiff and presumably others with and required them to sign **Exhibit 1** or forms closely resembling **Exhibit 1**.

239. As a matter of law, Defendants’ procurement of consumer reports on the basis of this purported disclosure violates 15 U.S.C. § 1681b(b)(2)(A), which requires that the disclosure be: (1) “clear and conspicuous”; and (2) appear “in a document that consists solely of the disclosure.” *See Gilberg v. Cal. Check Cashing Stores, LLC*, 913 F.3d 1169, 1174 (9th Cir. 2019) (holding that the FCRA’s standalone document requirement in a case where an employer procured a job applicant’s consumer report after including various out-of-state disclosure requirements, a notice about background investigation, and a summary of the applicant’s rights under the FCRA in the same document); *Syed v. M-I, LLC*, 853 F.3d 492, *10-11 (9th Cir. 2017) (holding an employer violates Section 1681b(b)(2)(A)(I)—(ii) when it requires an employee to sign a form containing a waiver of liability provision as part of a background investigation); *Harris v. Home Depot U.S.A., Inc.*, 114 F. Supp. 3d 868, 870-71 (N.D. Cal. 2015) (release of liability improper); *Feist v. Petco Animal Supplies, Inc.*, 218 F. Supp. 3d 1112 (S.D. Cal. 2016) (a summary of consumer rights in seven different states improper); *Lagos v. The Leland Stanford Junior University*, 2015 U.S. Dist. LEXIS 163119 (N.D. Cal. Dec. 4, 2015) (inclusion of seven state law notices and sentence stating “I also understand that nothing herein shall be construed as an offer of employment or contract for services” plausibly violated stand-alone disclosure requirement); *Woods v. Caremark PHC, L.L.C.*, 2015 U.S. Dist. LEXIS 148051 (W.D. Mo. 2015) (“The specific ‘extraneous information’ Plaintiff alleges Defendant included in its Authorization Form for Consumer Reports is: (1) an overbroad authorization for third parties to provide information to Defendant and its consumer

1 reporting agency, (2) state-specific notices that did not apply to Plaintiff, and (3) that
2 the form was part“of a five-page stapled packet of three documents. Where FCRA
3 allegations involve the inclusion of extraneous information beyond an authorization,
4 the complaint meets the 12(b)(6) standard to state a claim for willful violation of the
5 FCRA stand-alone requirement.”).

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

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

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

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

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

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

- 27 a. Defendants procured consumer reports without first
28 providing a legally valid disclosure form to the Plaintiff

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

associated with a reading that was merely careless.

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

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

TWELFTH CAUSE OF ACTION

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

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

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

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

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

252. Alternatively, because Defendants failed to make a clear and conspicuous disclosure that a consumer report may be procured in a document consisting solely of the disclosure, Defendants violated the FCRA by procuring consumer reports relating to Plaintiff and other Class Members without proper

1 authorization. See 15 U.S.C. § 1681b(b)(2)(A)(i)-(ii).

2 253. The foregoing violations were willful because by procuring a consumer
3 report without properly identifying the employer or the correct legal entity procuring
4 the report, Defendants acted in deliberate or reckless disregard of its obligations and
5 the rights of Plaintiffs and other Class Members under 15 U.S.C. §
6 1681b(b)(2)(A)(ii).

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

9 255. Pursuant to 15 U.S.C. §1681n(a)(1)(A), the named Plaintiff and the
10 FCRA Class seek to recover any actual damages sustained by the consumer as a result
11 of the failure or statutory damages due to Defendants' willful failure to comply with
12 the requirements imposed by 15 U.S.C. § 1681b(b)(2)(A) of an amount not less than
13 \$100 and not more than \$1,000.

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

17 **THIRTEENTH CAUSE OF ACTION**

18 **Individual Claim for Common Law Violations of the Right to Privacy** 19 **(Against All Defendants)**

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

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

26 259. The intrusion was offensive and objectionable to the Plaintiff and to a
27 reasonable person of ordinary sensibilities because Defendants obtained and used
28 sensitive, highly personal information including but not limited to background

1 reports, criminal record, driving record, verification of employment record, character,
2 reputation, personal characteristics, mode of living, and last known home addresses.

3 260. The intrusion was into a place or thing which was private and entitled to
4 be private because Defendants procured and used the reports illegally – that is,
5 without first making the disclosures required by California law, including but not
6 limited to the FCRA and the ICRAA.

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

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

16 **PRAYER FOR RELIEF**

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

- 18 1. An order that this action may proceed and be maintained as a class
19 action;
- 20 2. For appointment of the named Plaintiff as the representative of Class I
21 and Class II;
- 22 3. For appointment of counsel for Plaintiffs as Class Counsel;
- 23 4. That the Court find that Defendants’ violations as described above were
24 willful;
- 25 5. That the Court award to Plaintiffs and/or the Class and/or Aggrieved
26 Employees damages for the amount of unpaid wages subject to proof at trial;
- 27 6. For payment of all unpaid wages, including but not limited to state
28 minimum wages and overtime compensation to Plaintiffs and/or the Class and/or

1 Aggrieved Employees in an amount subject to proof at trial;

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

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

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

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

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

18 12. For all remedies available to Plaintiffs under the applicable Industrial
19 Welfare Commission Order and the Labor Code, including but not limited to §§ 90.5,
20 200, 201, 202, 203, 204 and/or 204b, 204.1, 216, 218, 218.5, 221, 222, 223, 224,
21 225.5, 226, 226.3, 226.6, 227.6, 245, 245.5, 246, 246.5, 247, 247.5, 248.5, 249, 432,
22 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, and
23 2802 via PAGA Labor Code § 2698, *et seq.* and the ICRAA including an award of
24 unpaid wages, attorneys' fees, costs, interest, liquidated damages, damages, penalties
25 and waiting time penalties according to proof to the extent permitted by law;

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

1 Code § 558;

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

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

4 16. For a declaration that Defendants violated the rights of the named
5 Plaintiff and the Class under the FCRA;

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

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

9 19. For an order declaring that Defendants violated the privacy rights of
10 Plaintiff;

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

12 21. For special and general damages;

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

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

18 Dated: July 31, 2023

Law Office of
Thomas D. Rutledge

20 By: Thomas D. Rutledge
21 /s/Thomas D. Rutledge
22 Attorneys for Plaintiffs
23
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26
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](#).

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.

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 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 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 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 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.
- **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.

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. 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 1700 G Street N.W. Washington, DC 20552 b. Federal Trade Commission: Consumer Response Center -- FCRA Washington, DC 20580 (877) 382-4357
2. To the extent not included in item 1 above: a. National banks, federal savings associations, and federal branches and federal agencies of foreign banks 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 Customer Assistance Group 1301 McKinney Street, Suite 3450 Houston, TX 77010-9050 b. Federal Reserve Consumer Help Center P.O. Box. 1200 Minneapolis, MN 55480 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 Kansas City, MO 64106
c. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and insured state savings associations	d. National Credit Union Administration Office of Consumer Protection (OCP) Division of Consumer Compliance and Outreach (DCCO) 1775 Duke Street Alexandria, VA 22314
d. Federal Credit Unions	
3. Air carriers	Asst. General Counsel for Aviation Enforcement & Proceedings Aviation Consumer Protection Division Department of Transportation 1200 New Jersey Avenue, S.E. Washington, DC 20423
4. Creditors Subject to Surface Transportation Board	Office of Proceedings, Surface Transportation Board Department of Transportation 395 E Street, S.W. 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 United States Small Business Administration 409 Third Street, S.W., 8th Floor Washington, DC 20549
7. Brokers and Dealers	Securities and Exchange Commission 100 F St N.E. Washington, DC 20549
8. Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations	Farm Credit Administration 1501 Farm Credit Drive 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 Washington, DC 20580 (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.

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

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.

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.

Presented on page 8 of the application flow

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

Exhibit 2

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

May 25, 2022

File No. 731.01

VIA INTERNET UPLOAD

Director
Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, California 94612

VIA CERTIFIED MAIL (HAND RECEIPT REQUESTED)(70182290000187894945)

President/HR
QW Insurance Solutions, LLC
2001 6th Ave., Suite 3420
Seattle, Washington 98121

Re: *Barnett, et al. v. QW Insurance Solutions, LLC, et al.*

Dear Sir or Madam:

This office represents Vernon Barnett and aggrieved employees employed by the above-named employer pursuant to California Labor Code §§ 2699, *et seq.* Accordingly, we are informing you of our representation and ask that all communication regarding this matter be directed to our attention at the address located on this letterhead and that no contact be made directly with our client. This letter is sent pursuant to the provisions of California Labor Code §§ 2699, *et seq.*

I. FACTS & NATURE OF THE DISPUTE

This is a representative action seeking penalties for Defendants' violations of various California Labor Code provisions. The details of our client's claims are discussed in the enclosed draft Complaint, which allegations are incorporated by reference as though set forth herein.

II. § 2699, et seq., LABOR CODE VIOLATIONS

Our client has numerous legal claims against the abovementioned parties. In summary, Defendants wantonly, intentionally, and willfully refuse to provide Plaintiff's personnel file and payroll records despite multiple written attempts to obtain them. Further, Defendants issued confusing wage and earning statements to the Plaintiff. Moreover, Defendants unlawfully underpaid paid Plaintiff overtime compensation.

The details of our client's Labor Code § 2699 claims are discussed in the enclosed draft Complaint, which allegations are incorporated by reference and incorporated herein as though set forth herein. These violations include all California Labor Code provisions including but not limited to violations of Labor Code subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7.

III. CONCLUSION

Please take notice this letter is intended to exhaust the pre-litigation requirements set forth under California Labor Code §§ 2699, *et seq.* By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of § 2699, *et seq.*, by seeking redress in court. (Labor Code § 2699.3(a)(1).) The LWDA must then notify the employer and the employee within the time required by statute regarding whether it intends to investigate the alleged violation. (Labor Code § 2699.3(a)(2)(B).) If the LWDA advises it will not investigate, or if no notice is provided within the time required by statute, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. (Labor Code § 2699.3(a)(2)(A).) It is the intention of this office to file a civil complaint and to bring the appropriate claims under Labor Code § 2699 seeking the remedies for the Labor Code violations referenced in this letter and its enclosure should your office not address these matters within the proscribed time.

We write this letter subject to and without waiver of our client's rights and remedies, all of which we expressly reserve. This letter is not an express statement of all facts and circumstances concerning this matter.

Very truly yours,

Thomas D. Rutledge
/s/Thomas D. Rutledge

Enclosure

Cc: Vernon Barnett (via e-mail)
C. Grainger Pierce, Jr. (via e-mail)

ENCLOSURE 1

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

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

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

Plaintiffs,

vs.

QW INSURANCE SOLUTIONS, LLC,)
a Washington limited liability company;)
and DOES 1 through 50,)

Defendants.

Case No.:

**CLASS AND PAGA ACTION
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.***

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. The true names and capacities, whether individual, corporate, associate or
21 otherwise of the Defendants named herein as DOES 1 through 50, are unknown to
22 Plaintiffs at this time. Plaintiffs therefore sues said Defendants by such fictitious names
23 pursuant to § 474 of the California Code of Civil Procedure. Plaintiffs will seek leave
24 to amend this Complaint to allege the true names and capacities of DOES 1 through 50
25 when their names are ascertained. Plaintiffs are informed and believe, and based
26 thereon allege, that each of the DOE Defendants is in some manner liable to Plaintiffs
27 for the events and actions alleged herein.

28 12. Unless otherwise specified by name, the named Defendants and DOES 1

1 through 50 will be collectively referred to as "DEFENDANT EMPLOYER" and/or
2 "Defendants."

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

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

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

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

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

27 18. Plaintiffs are informed and believe, and therefore allege, that one, more
28 than one, or each of the named Defendants are liable to the Plaintiffs under legal

1 theories and doctrines including but not limited to (1) the common law joint employer
2 doctrine and/or (2) Labor Code § 2810.3 because at least one of these named
3 Defendants worked as the central hub to an overall business operation by which the
4 interrelationship between these Defendants makes each of the Defendants liable for
5 the wage and hour violations alleged herein.

6 **GENERAL ALLEGATIONS**

7 19. Defendants are in the insurance business.

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

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

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

15 22. On April 8, 2022, Plaintiff, via counsel, sent a letter to DEFENDANT
16 EMPLOYER requesting access to Plaintiff's payroll records and employee personnel
17 file.

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

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

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

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

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

9 28. To date, DEFENDANT EMPLOYER has failed to produce the
10 remaining portions of Plaintiff's personnel file.

11 **Minimum Wage/Regular Wage claims.**

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

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

20 **Failure to Pay State Overtime.**

21 31. From at least four years before the filing of this action and continuing to
22 the present, and pursuant to company policy and/or practice and/or direction,
23 DEFENDANT EMPLOYER failed to pay Plaintiffs and the putative Class state
24 overtime compensation and/or the correct amount of overtime compensation.

25 32. In particular, DEFENDANT EMPLOYER failed to accurately calculate
26 the regular rate of pay and, thus, paid Plaintiffs and the putative Class overtime
27 compensation at less than the rate required by law not only because Defendants paid
28 Plaintiffs at a wage rate less than what DEFENDANT EMPLOYER was required to

1 pay under local law as alleged above but also because Defendants failed to include
2 earned nondiscretionary bonuses and/or earned commissions into putative Class
3 Members' regular rate of pay for overtime pay purposes in violation of California law.
4 (See § 49.1.1 of the California Division of Labor Standards and Enforcement Policies
5 and Interpretations Manual.)

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

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

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

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

9 37. Again, on February 19, 2021, DEFENDANT EMPLOYER paid Plaintiff
10 BARNETT \$1,450 in commissions, yet in the corresponding pay period of January 31,
11 2021 to February 13, 2021 this Aggrieved Employee worked ten hours of overtime and
12 DEFENDANT EMPLOYER paid only \$28.875 per hour to this Aggrieved Employee
13 based on the employee's regular rate of pay of \$19.25 erroneously not including the
14 commissions proceeds into the regular rate of pay for overtime pay purposes, resulting
15 in an underpayment of overtime in an amount to be proven at trial.

16 38. Similarly, on March 19, 2021, DEFENDANT EMPLOYER paid Plaintiff
17 BARNETT \$1,180 in commissions, yet in the corresponding pay period of February
18 28, 2021 to March 13, 2021 this Aggrieved Employee worked nine hours of overtime
19 and DEFENDANT EMPLOYER paid only \$29.16 per hour to this Aggrieved
20 Employee based on the employee's regular rate of pay of \$19.44 erroneously not
21 including the commissions proceeds into the regular rate of pay for overtime pay
22 purposes, resulting in an underpayment of overtime in an amount to be proven at trial.

23 39. Likewise, on April 23, 2021, DEFENDANT EMPLOYER paid Plaintiff
24 BARNETT \$1,835 in commissions, yet in the corresponding pay period of April 11,
25 2021 to April 24, 2021 this Aggrieved Employee earned \$85.87 in overtime and
26 DEFENDANT EMPLOYER paid this overtime at only \$29.16 per hour based on the
27 employee's regular rate of pay of \$19.44 erroneously not including the commissions
28 proceeds into the regular rate of pay for overtime pay purposes, resulting in an

1 underpayment of overtime in an amount to be proven at trial.

2 40. Again, on August 20, 2021, DEFENDANT EMPLOYER paid Plaintiff
3 BARNETT \$1,135 in commissions, yet in the corresponding pay period of August 1,
4 2021 to August 14, 2021 this Aggrieved Employee earned \$16.40 in overtime and
5 DEFENDANT EMPLOYER paid this overtime at only \$29.16 per hour based on the
6 employee's regular rate of pay of \$19.44 erroneously not including the commissions
7 proceeds into the regular rate of pay for overtime pay purposes, resulting in an
8 underpayment of overtime in an amount to be proven at trial.

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

16 42. On November 26, 2021, DEFENDANT EMPLOYER paid Plaintiff
17 BARNETT \$500 in a referral bonus, yet in the corresponding pay period of November
18 7, 2021 to November 20, 2021 this Aggrieved Employee worked 24 hours of overtime
19 and DEFENDANT EMPLOYER paid only \$29.16 per hour to this Aggrieved
20 Employee based on the employee's regular rate of pay of \$19.44 erroneously not
21 including the referral bonus into the regular rate of pay for overtime pay purposes,
22 resulting in an underpayment of overtime in an amount to be proven at trial.

23 43. On December 23, 2021, DEFENDANT EMPLOYER paid Plaintiff
24 BARNETT \$5,740 in commissions, yet in the corresponding pay period of December
25 5, 2021 to December 18, 2021 this Aggrieved Employee worked 3.5 hours of overtime
26 and DEFENDANT EMPLOYER paid only \$29.16 per hour to this Aggrieved
27 Employee based on the employee's regular rate of pay of \$19.44 erroneously not
28 including the earned commissions into the regular rate of pay for overtime pay

1 purposes, resulting in an underpayment of overtime in an amount to be proven at trial.

2 44. On January 21, 2022, DEFENDANT EMPLOYER paid Plaintiff
3 BARNETT \$1,685 in commissions, yet in the corresponding pay period of January 1,
4 2022 to January 15, 2022 this Aggrieved Employee earned \$69.45 in overtime and
5 DEFENDANT EMPLOYER paid this overtime at only \$29.16 per hour based on the
6 employee's regular rate of pay of \$19.44 erroneously not including the commissions
7 proceeds into the regular rate of pay for overtime pay purposes, resulting in an
8 underpayment of overtime in an amount to be proven at trial.

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

12 **Meal and Rest Break Claims.**

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

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

23 48. Defendants never paid Plaintiff BARNETT and, upon information and
24 belief, other putative Class Members premium pay for missed and noncompliant meal
25 breaks.

26 49. With respect to rest break violations, DEFENDANT EMPLOYER
27 required Plaintiffs to be available by phone for calls or texts or have email access and
28 to keep such devices on--even during rest periods--and to remain vigilant and

1 responsive to calls or emails when needs arose during working hours and/or during off
2 work times, among other instances during which DEFENDANT EMPLOYER had an
3 obligation to pay premium pay for Plaintiffs' missed rest breaks.

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

9 51. Because of the foregoing policies, Defendants prevented Plaintiffs from
10 taking all their uninterrupted rest breaks to which they had the right under California
11 law, in an amount to be proven at trial. (*See Augustus v. ABM Security Services* (2016)
12 2 Cal.5th 257.)

13 52. 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 **Failure to Reimburse.**

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

22 54. The unreimbursed purchases Plaintiffs and proposed Class Members
23 were required to make to perform their work include, but are not limited to internet
24 connections, office space in their homes devoted to work, and work-related office
25 supplies/equipment.

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

1 56. Defendants passed the cost of doing business onto its employees by
2 requiring, without reimbursement, their employees to purchase equipment, tools, and
3 services necessary to perform work for Defendants.

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

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

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

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

19 60. As alleged above, for example, on November 20, 2020, Defendants issued
20 Plaintiff BARNETT a wage and earning statement that said Defendants paid him
21 \$246.98 in overtime, but the number of overtime hours worked was missing where
22 instead it erroneously reported that Plaintiff worked "0" overtime hours.

23 61. Similarly, on December 24, 2020, Defendants issued Plaintiff BARNETT
24 a wage and earning statement that said Defendants paid him \$154.99 in overtime, but
25 the number of overtime hours worked was missing where instead it erroneously
26 reported that Plaintiff worked "0" overtime hours.

27 62. Likewise, on January 22, 2021, Defendants issued Plaintiff BARNETT a
28 wage and earning statement that said Defendants paid him \$61.32 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 63. Again, on February 19, 2021, Defendants issued Plaintiff BARNETT a
4 wage and earning statement that said Defendants paid him \$36.25 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 64. On March 19, 2021, Defendants issued Plaintiff BARNETT a wage and
8 earning statement that said Defendants paid him \$44.85 in overtime, but the number of
9 overtime hours worked was missing where instead it erroneously reported that Plaintiff
10 worked “0” overtime hours.

11 65. On April 23, 2021, Defendants issued Plaintiff BARNETT a wage and
12 earning statement that said Defendants paid him \$85.87 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 66. On August 20, 2021, Defendants issued Plaintiff BARNETT a wage and
16 earning statement that said Defendants paid him \$16.40 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 67. On November 19, 2021, Defendants issued Plaintiff BARNETT a wage
20 and earning statement that said Defendants paid him \$308.60 in overtime, but the
21 number of overtime hours worked was missing where instead it erroneously reported
22 that Plaintiff worked “0” overtime hours.

23 68. On December 23, 2021, Defendants issued Plaintiff BARNETT a wage
24 and earning statement that said Defendants paid him \$640.07 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 69. On January 21, 2021, Defendants issued Plaintiff BARNETT a wage and
28 earning statement that said Defendants paid him \$69.45 in overtime, but the number of

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

3 70. The above problems made interpretation of the foregoing wage and
4 earning statements hopelessly confusing.

5 71. In addition to the foregoing claims under Labor Code § 226, Plaintiffs’
6 paystubs and those of similarly situated employees of Defendants were inaccurate
7 because Defendants failed to pay them all wages, as alleged above, supporting a
8 derivative claim under Labor Code § 226.

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

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

13 73. Pursuant to the above-mentioned policies, DEFENDANT EMPLOYER
14 failed to pay all wages to which Plaintiffs had the right to receive under the law.

15 74. When Plaintiff BARNETT and putative Class Members’ employment
16 ended, DEFENDANT EMPLOYER failed to provide Plaintiffs all unpaid wages in
17 their final paycheck or in a timely manner.

18 75. Further, during Plaintiffs’ employment, their pay was untimely in
19 violation of the Labor Code.

20 76. Plaintiffs are informed and believe and based thereon allege that, to date,
21 DEFENDANT EMPLOYER has not paid Plaintiffs all of Plaintiffs’ wages due and
22 payable, in an amount to be proven at trial.

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

26 **ICRAA Claims.**

27 78. Plaintiff is informed and believes and based thereon alleges that upon
28 Plaintiff BARNETT’s hiring, as part of Defendants’ routine practice, policy, and

1 procedure, Defendants required Plaintiff, a job applicant at that time, to sign various
2 forms that purported to allow Defendants to obtain a consumer investigative report on
3 the Plaintiff via a third party.

4 79. Plaintiff is informed and believes and based thereon alleges that
5 Defendants' purported permission to conduct the foregoing investigative consumer
6 report was based, in part, on an unlawful form, the contents of which are incorporated
7 herein by reference as though alleged herein upon receipt of the form via the discovery
8 process.

9 80. Plaintiff is informed and believes and based thereon alleges that the
10 foregoing form Defendants used violates Civ. Code § 1786.16 in a manner described in
11 more detail at time of trial.

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

16 82. Plaintiff is informed and believes and based thereon alleges there is no
17 evidence of certifications whatsoever from the Defendants as required under the
18 ICRAA.

19 83. Accordingly, Plaintiff is informed and believes and based thereon alleges
20 that Defendants violated the ICRAA by procuring a consumer report on the Plaintiff
21 without complying with the certification requirements set forth in the FCRA and the
22 ICRAA.

23 84. Plaintiff, via counsel, requested Defendants to provide a copy of the
24 abovementioned form and related records, but Defendants thus far have refused to
25 produce the foregoing, another claim under the ICRAA Plaintiff is pursuing.

26 **REPRESENTATIVE ACTION (PAGA) CLAIMS**

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

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

86. All members of the Aggrieved groups will be referred to as the
“Aggrieved Employees.”

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

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

89. 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.

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

EXHAUSTION OF ADMINISTRATIVE REMEDIES

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

1 92. By the time the statutory period for Plaintiffs expires from the first letter
2 alleged above and the LWDA likely will not have served Plaintiffs with notice of
3 intent to assume jurisdiction over the applicable penalty claims and did not provide
4 notice as set forth in Labor Code § 2699.3(a)(2)(A) within the statutory period, but
5 more to follow as time expires before this Complaint is amended to report the actual
6 facts.

7 93. Therefore, once the statutory waiting period expires based on the
8 presumed facts above, Plaintiffs will have exhausted all applicable administrative
9 remedies thus permitting Plaintiffs the ability to seek the penalty claims sought in this
10 Complaint.

11 **CLASS ACTION ALLEGATIONS**

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

14 95. Plaintiffs seek to represent the classes and/or subclasses composed of
15 and defined as follows:

16 **All of Defendants' current or former nonexempt employees**
17 **who worked in the state of California from May 25, 2018 to**
18 **the present.**

19 96. Plaintiffs also seek to represent the following subclasses composed of
20 and defined as follows:

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

24 **State Overtime Subclass:** All Members of the Class who, during the
25 relevant period, worked more than eight hours per day and/or in 40
26 hours per week and who did not receive overtime pay at the requisite
27 overtime rate of pay.
28

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

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

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

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

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

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

24 97. The above-mentioned class-members will collectively be referred to as
25 "Class Members."

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

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

1 **A. Numerosity.**

2 100. The potential members of the Class as defined are so numerous or many,
3 that joinder of all the members of the Class is impracticable.

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

9 102. Accounting for employee turnover during the relevant periods necessarily
10 increases the number of potential members of the Class.

11 **B. Commonality.**

12 103. There are questions of law and fact common to the Class that predominate
13 over any questions affecting only individual Class Members.

14 104. Common questions of law and fact include, without limitation and subject
15 to possible further amendment, the following:

- 16 a. Whether Defendants violated the Labor Code and the
17 applicable Wage Order by not fully compensating
18 Plaintiffs and the Class by failing to pay minimum wage
19 and/or regular wages as required by law;
20 b. Whether Defendants' policy or practice of not
21 paying Plaintiffs and putative class members
22 overtime compensation for the hours they worked
23 over 40 in a workweek or eight hours in a day is
24 illegal under Labor Code §§ 510, 1771, 1774, 1776,
25 1194, and the applicable Wage Order;
26 c. Whether Defendants violated the meal and rest break
27 provisions of California law by failing to provide
28 Plaintiffs with duty-free 30-minute meal breaks for shifts

of five hours or more and/or duty free 10-minute rest breaks as required by law and Defendants' failure to pay premium pay as a result thereof;

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

C. Typicality.

105. 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.

106. Plaintiffs are members of the Class, do not have any conflicts of interest

1 with other Class Members, and will prosecute the case vigorously on behalf of the
2 Class.

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

6 108. Plaintiffs will fairly and adequately represent and protect the interests of
7 the Class Members.

8 **E. Superiority of Class Action.**

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

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

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

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

20 113. For the reasons alleged in this Complaint, this action should be certified
21 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)

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

115. 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.

116. 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.

117. 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.”

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

119. 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
work in violation of state and, where applicable, local law and/or their agreement with
DEFENDANT EMPLOYER.

120. Labor Code § 1194.2, subdivision (a) provides that, in an action to recover
wages because of the payment of a wage less than the minimum wage fixed by IWC

1 Wage Orders, an employee may recover liquidated damages in an amount equal to the
2 wages unlawfully unpaid and interest thereon.

3 121. At all material times, DEFENDANT EMPLOYER and DOES 1 through
4 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
5 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
6 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
7 Labor Code or any provision regulating hours and days of work in any Order of the
8 Industrial Welfare Commission and, as such, are subject to penalties for each
9 underpaid employee as set for in Labor Code § 558.

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

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

20 124. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, a
21 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
22 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
23 pay period for each subsequent violation in which DEFENDANT EMPLOYER
24 violated the minimum wage and/or regular wage provisions of the Labor Code,
25 including but not limited to §§ 216, 218, 218.5, 223, 1182.12, 1194, 1194.2, and 1197,
26 the exact amount of the applicable penalty is all in an amount to be shown according to
27 proof at trial.

28 125. Additionally, pursuant to Labor Code § 2699, Plaintiffs and Class

Members seek to recover from Defendants, and each of them, penalties, attorneys' fees, and costs incurred herein.

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

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

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

SECOND CAUSE OF ACTION

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

(Against all Defendants)

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

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

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

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

133. For each hour (or fraction thereof) an employee works more than twelve

1 (12) hours in one day or more than eight (8) hours a day on the seventh consecutive
2 day of work, the employee must be compensated at the rate of no less than twice the
3 regular rate of pay for that employee.

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

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

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

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

28 138. In committing the violations of state law as herein alleged, Defendants

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

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

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

16 141. Additionally, pursuant to Labor Code § 2699, Plaintiffs seek to recover
17 from Defendants, and each of them, penalties, attorneys' fees, and costs incurred
18 herein.

19 142. Based on the misconduct alleged in this Complaint, Plaintiffs and
20 similarly situated members of the Class have suffered damages in an amount to be
21 proven at trial.

22 143. Plaintiffs on behalf of herself and Class requests the unpaid wages,
23 waiting time penalties, interest, attorneys' fees, costs, liquidated damages, and any
24 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)**

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

145. 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.

146. 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.

147. 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.

148. 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.

150. 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.

13 151. 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)**

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

153. 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.

2 154. 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.

6 155. 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.

13 156. 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.

17 157. 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.

23 158. 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.

1 159. 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)**

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

10 161. 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.

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

15 163. 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.

18 164. 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.

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

24 166. 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)

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

168. 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).)

169. 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.

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

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

172. 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 business 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 forth in Labor Code § 558.

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

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

175. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, 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 DEFENDANT EMPLOYER violated Labor Code § 226, the exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

176. 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)

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

178. 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."

179. 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."

180. 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. ..."

181. 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."

1 182. 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.

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

6 184. 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.

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

10 186. 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.

14 187. 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.

18 188. 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.

25 189. 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.

28 190. 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.

6 191. 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.

12 192. 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.

15 193. 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)

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

26 195. 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.”

3 196. 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.”

6 197. 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.

9 198. 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.

12 199. 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.

16 200. 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.

19 201. 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.

23 202. 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.

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

205. 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.

206. 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.

207. 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.

Individual Claims for

(Against all Defendants)

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

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

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

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

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

211. Plaintiff is informed and believes and based thereon alleges that Defendants violated Civ. Code § 1786.16 because the disclosure form Defendant required Plaintiff to sign failed to comply with Civ. Code § 1786.16, *et seq.*, Defendants failed to provide a copy of the report and consent form he requested, Defendants failed to provide the proper certifications to the consumer reporting agency that procured his report, among other reasons.

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

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

TENTH CAUSE OF ACTION

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

(Against all Defendants)

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

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

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

- a. Failing to provide the Class and Plaintiffs an accurate itemized wage statement in violation of § 226 of the Labor Code;
- b. Failing to pay the Class and Plaintiffs all wages due and owing including minimum/regular wages and overtime compensation, minimum wages and overtime, and meal and rest break premiums;
- c. Failure to reimburse employees for all employer incurred

expenses; and

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

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

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. An order that this action may proceed and be maintained as a class action;

2. For appointment of the named Plaintiffs as the representatives of the

1 Class;

2 3. For appointment of counsel for Plaintiffs as Class Counsel;

3 4. That the Court find that Defendants' violations as described above were
4 willful;

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

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

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

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

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

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

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

26 12. For all remedies available to Plaintiffs under the applicable Industrial
27 Welfare Commission Order and the Labor Code, including but not limited to §§ 90.5,
28 200, 201, 202, 203, 204 and/or 204b, 204.1, 216, 218, 218.5, 221, 222, 223, 224,

1 225.5, 226, 226.3, 226.6, 227.6, 245, 245.5, 246, 246.5, 247, 247.5, 248.5, 249, 432,
2 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, and
3 2802 via PAGA Labor Code § 2698, *et seq.* including an award of unpaid wages,
4 attorneys' fees, costs, interest, liquidated damages, damages, penalties and waiting
5 time penalties according to proof to the extent permitted by law;

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

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

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

12 16. For special and general damages;

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

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

18 Dated: May 25, 2022

Law Office of
Thomas D. Rutledge

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

Thomas D. Rutledge
Attorney-at-Law
16956 Via de Santa Fe, Suite 1847
Rancho Santa Fe, California 92091
Telephone: (619) 886-7224

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial of this matter.

Dated: May 25, 2022

Law Office of
Thomas D. Rutledge

By: *Thomas D. Rutledge*_____
/s/Thomas D. Rutledge
Attorney for the Plaintiffs

Exhibit 3

Thomas D. Rutledge
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Rancho Santa Fe, California 92091-4606
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thomasrutledgelaw@gmail.com

August 16, 2022

File No. 731.01

VIA INTERNET UPLOAD

Director
Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, California 94612

VIA CERTIFIED MAIL (HAND RECEIPT REQUESTED)(70210350000188018242)

President/HR
QW Insurance Solutions, LLC
2001 6th Ave., Suite 3420
Seattle, Washington 98121

VIA CERTIFIED MAIL (HAND RECEIPT REQUESTED)(70210350000188018259)

President/HR
LENDINGTREE, INC.
1415 Vantage Park Drive, Suite 700
Charlotte, North Carolina 28203

VIA CERTIFIED MAIL (HAND RECEIPT REQUESTED)(70210350000188018266)

President/HR
LENDINGTREE, LLC
1415 Vantage Park Drive, Suite 700
Charlotte, North Carolina 28203

Re: *Barnett, et al. v. QW Insurance Solutions, LLC, et al.*
LWDA Case No. LWDA-CM-885767-22
SDSC Case No. 37-2022-00019924-CU-OE-CTL

Dear Sir or Madam:

This letter shall serve as an amended notice pursuant to the California Private Attorney General Act ("PAGA"), California Labor Code Section 2699, *et seq.*, regarding Plaintiff's notice of May 25, 2022. This filing adds two new defendants, namely, LENDINGTREE, INC. and LENDINGTREE, LLC.

I. FACTS & NATURE OF THE DISPUTE

This is a representative action seeking penalties for Defendants' violations of various California Labor Code provisions. The details of our client's claims are discussed in the enclosed draft Complaint, which allegations are incorporated by reference as though set forth herein.

II. § 2699, et seq., LABOR CODE VIOLATIONS

Our client has numerous legal claims against the abovementioned parties. In summary, Defendants wantonly, intentionally, and willfully issued confusing wage and earning statements to the Plaintiff. Moreover, Defendants unlawfully underpaid Plaintiff overtime compensation.

The details of our client's Labor Code § 2699 claims are discussed in the enclosed draft Complaint, which allegations are incorporated by reference and incorporated herein as though set forth herein. These violations include all California Labor Code provisions including but not limited to violations of Labor Code subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7.

III. CONCLUSION

Please take notice this letter is intended to exhaust the pre-litigation requirements set forth under California Labor Code §§ 2699, *et seq.* By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of § 2699, *et seq.*, by seeking redress in court. (Labor Code § 2699.3(a)(1).) The LWDA must then notify the employer and the employee within the time required by statute regarding whether it intends to investigate the alleged violation. (Labor Code § 2699.3(a)(2)(B).) If the LWDA advises it will not investigate, or if no notice is provided within the time required by statute, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. (Labor Code §2699.3(a)(2)(A).) It is the intention of this office to file a civil complaint and to bring the appropriate claims under Labor Code § 2699 seeking the remedies for the Labor Code violations referenced in this letter and its enclosure should your office not address these matters within the proscribed time.

We write this letter subject to and without waiver of our client's rights and remedies, all of which we expressly reserve. This letter is not an express statement of all facts and circumstances concerning this matter.

Very truly yours,

Thomas D. Rutledge
/s/Thomas D. Rutledge

Enclosure

Cc: Vernon Barnett (via e-mail)
David A. Wimmer, Esq. (via e-mail)

ENCLOSURE 1

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

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

Plaintiffs,)

vs.)

QW INSURANCE SOLUTIONS, LLC,)
a Washington limited liability company;)
LENDINGTREE INC., a Delaware)
corporation; LENDINGTREE LLC, a)
Delaware limited liability company; and)
DOES 1 through 50,)

Defendants.)

Case No.: 37-2022-00019924-CU-OE-CTL

Judge: Hon. Katherine Bacal
Dept. C-69

**FIRST AMENDED CLASS AND
PAGA ACTION 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.

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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 10,12. Defendant LENDINGTREE LLC is a Delaware limited liability
23 company doing business in the State of California.

24 11,13. 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 ~~12.14.~~ Unless otherwise specified by name, the named Defendants and DOES 1
5 through 50 will be collectively referred to as "DEFENDANT EMPLOYER" and/or
6 "Defendants."

7 ~~13.15.~~ 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 ~~14.16.~~ 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 ~~15.17.~~ 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 ~~16.18.~~ 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 ~~17.19.~~ 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 ~~18:20~~ 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 ~~19:21~~ Defendants are in the insurance business.

12 ~~20:22~~ 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 ~~21:23~~ 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 ~~22:24~~ 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 ~~23:25~~ On April 29, 2022, DEFENDANT EMPLOYER, via counsel, responded
23 to the foregoing letter via email providing only Plaintiff's paystubs.

24 ~~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 ~~25:27~~ 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 26-28. 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 27-29. 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 28-30. ~~To date~~As of this filing, DEFENDANT EMPLOYER has ~~failed~~
14 ~~purported~~ to produce the remaining portions of Plaintiff’s personnel file, but
15 discovery is still ongoing.

16 **Minimum Wage/Regular Wage claims.**

17 29-31. Plaintiffs are informed and believe, and therefore allege, that from at
18 least four years before the filing of this action and continuing to the present, and
19 pursuant to company policy and/or practice and/or direction, DEFENDANT
20 EMPLOYER paid Plaintiffs and the putative Class minimum wages at less than the
21 rate required under state, federal, and local law.

22 30-32. This claim is premised on Plaintiffs’ right to pursue all Labor Code claims
23 on behalf of Aggrieved Employees per Huff v. Securitas Security Services USA, Inc.
24 (2018) 23 Cal.App.5th 745.

25 **Failure to Pay State Overtime.**

26 31-33. From at least four years before the filing of this action and continuing to
27 the present, and pursuant to company policy and/or practice and/or direction,
28 DEFENDANT EMPLOYER failed to pay Plaintiffs and the putative Class state

- 7 -

1 overtime compensation and/or the correct amount of overtime compensation.

2 ~~32.34.~~ In particular, DEFENDANT EMPLOYER failed to accurately calculate
3 the regular rate of pay and, thus, paid Plaintiffs and the putative Class overtime
4 compensation at less than the rate required by law not only because Defendants paid
5 Plaintiffs at a wage rate less than what DEFENDANT EMPLOYER was required to
6 pay under local law as alleged above but also because Defendants failed to include
7 earned nondiscretionary bonuses and/or earned commissions into putative Class
8 Members' regular rate of pay for overtime pay purposes in violation of California law.
9 (See § 49.1.1 of the California Division of Labor Standards and Enforcement Policies
10 and Interpretations Manual.)

11 ~~33.35.~~ For example, on October 23, 2020, DEFENDANT EMPLOYER paid
12 Plaintiff BARNETT \$1,500 in commissions, yet in the corresponding pay period this
13 Aggrieved Employee worked 29.75 hours of overtime and DEFENDANT
14 EMPLOYER paid only \$28.875 per hour to this Aggrieved Employee based on the
15 employee's regular rate of pay of \$19.25 erroneously excluding the earned
16 commissions proceeds into the regular rate of pay for overtime pay purposes, resulting
17 in an underpayment of overtime in an amount to be proven at trial.

18 ~~34.36.~~ By further example, on November 20, 2020, DEFENDANT EMPLOYER
19 paid Plaintiff BARNETT \$1,925 in commissions, yet in the corresponding pay period
20 of November 8, 2020 to November 21, 2020 this Aggrieved Employee worked 13
21 hours of overtime and DEFENDANT EMPLOYER paid only \$28.875 per hour to this
22 Aggrieved Employee based on the employee's regular rate of pay of \$19.25
23 erroneously not including the commissions proceeds into the regular rate of pay for
24 overtime pay purposes, resulting in an underpayment of overtime in an amount to be
25 proven at trial.

26 ~~35.37.~~ Similarly, on December 24, 2020, DEFENDANT EMPLOYER paid
27 Plaintiff BARNETT \$2,055 in commissions, yet in the corresponding pay period of
28 December 6, 2020 to December 19, 2020 this Aggrieved Employee worked four hours

1 of overtime and DEFENDANT EMPLOYER paid only \$28.875 per hour to this
2 Aggrieved Employee based on the employee's regular rate of pay of \$19.25
3 erroneously not including the commissions proceeds into the regular rate of pay for
4 overtime pay purposes, resulting in an underpayment of overtime in an amount to be
5 proven at trial.

6 ~~36-38~~ Likewise, on January 22, 2021, DEFENDANT EMPLOYER paid
7 Plaintiff BARNETT \$1,300 in commissions, yet in the corresponding pay period of
8 January 3, 2021 to January 16, 2021 this Aggrieved Employee worked four hours of
9 overtime and DEFENDANT EMPLOYER paid only \$28.875 per hour to this
10 Aggrieved Employee based on the employee's regular rate of pay of \$19.25
11 erroneously not including the commissions proceeds into the regular rate of pay for
12 overtime pay purposes, resulting in an underpayment of overtime in an amount to be
13 proven at trial.

14 ~~37-39~~ Again, on February 19, 2021, DEFENDANT EMPLOYER paid Plaintiff
15 BARNETT \$1,450 in commissions, yet in the corresponding pay period of January 31,
16 2021 to February 13, 2021 this Aggrieved Employee worked ten hours of overtime and
17 DEFENDANT EMPLOYER paid only \$28.875 per hour to this Aggrieved Employee
18 based on the employee's regular rate of pay of \$19.25 erroneously not including the
19 commissions proceeds into the regular rate of pay for overtime pay purposes, resulting
20 in an underpayment of overtime in an amount to be proven at trial.

21 ~~38-40~~ Similarly, on March 19, 2021, DEFENDANT EMPLOYER paid Plaintiff
22 BARNETT \$1,180 in commissions, yet in the corresponding pay period of February
23 28, 2021 to March 13, 2021 this Aggrieved Employee worked nine hours of overtime
24 and DEFENDANT EMPLOYER paid only \$29.16 per hour to this Aggrieved
25 Employee based on the employee's regular rate of pay of \$19.44 erroneously not
26 including the commissions proceeds into the regular rate of pay for overtime pay
27 purposes, resulting in an underpayment of overtime in an amount to be proven at trial.

28 ~~39-41~~ Likewise, on April 23, 2021, DEFENDANT EMPLOYER paid Plaintiff

1 BARNETT \$1,835 in commissions, yet in the corresponding pay period of April 11,
2 2021 to April 24, 2021 this Aggrieved Employee earned \$85.87 in overtime and
3 DEFENDANT EMPLOYER paid this overtime at only \$29.16 per hour based on the
4 employee's regular rate of pay of \$19.44 erroneously not including the commissions
5 proceeds into the regular rate of pay for overtime pay purposes, resulting in an
6 underpayment of overtime in an amount to be proven at trial.

7 ~~40-42.~~ Again, on August 20, 2021, DEFENDANT EMPLOYER paid Plaintiff
8 BARNETT \$1,135 in commissions, yet in the corresponding pay period of August 1,
9 2021 to August 14, 2021 this Aggrieved Employee earned \$16.40 in overtime and
10 DEFENDANT EMPLOYER paid this overtime at only \$29.16 per hour based on the
11 employee's regular rate of pay of \$19.44 erroneously not including the commissions
12 proceeds into the regular rate of pay for overtime pay purposes, resulting in an
13 underpayment of overtime in an amount to be proven at trial.

14 ~~41-43.~~ Similarly, on November 19, 2021, DEFENDANT EMPLOYER paid
15 Plaintiff BARNETT \$4,530 in commissions, yet in the corresponding pay period of
16 November 7, 2021 to November 20, 2021 this Aggrieved Employee earned \$308.60 in
17 overtime and DEFENDANT EMPLOYER paid this overtime at only \$29.16 per hour
18 based on the employee's regular rate of pay of \$19.44 erroneously not including the
19 commissions proceeds into the regular rate of pay for overtime pay purposes, resulting
20 in an underpayment of overtime in an amount to be proven at trial.

21 ~~42-44.~~ On November 26, 2021, DEFENDANT EMPLOYER paid Plaintiff
22 BARNETT \$500 in a referral bonus, yet in the corresponding pay period of November
23 7, 2021 to November 20, 2021 this Aggrieved Employee worked 24 hours of overtime
24 and DEFENDANT EMPLOYER paid only \$29.16 per hour to this Aggrieved
25 Employee based on the employee's regular rate of pay of \$19.44 erroneously not
26 including the referral bonus into the regular rate of pay for overtime pay purposes,
27 resulting in an underpayment of overtime in an amount to be proven at trial.

28 ~~43-45.~~ On December 23, 2021, DEFENDANT EMPLOYER paid Plaintiff

1 BARNETT \$5,740 in commissions, yet in the corresponding pay period of December
2 5, 2021 to December 18, 2021 this Aggrieved Employee worked 3.5 hours of overtime
3 and DEFENDANT EMPLOYER paid only \$29.16 per hour to this Aggrieved
4 Employee based on the employee's regular rate of pay of \$19.44 erroneously not
5 including the earned commissions into the regular rate of pay for overtime pay
6 purposes, resulting in an underpayment of overtime in an amount to be proven at trial.

7 44-46. On January 21, 2022, DEFENDANT EMPLOYER paid Plaintiff
8 BARNETT \$1,685 in commissions, yet in the corresponding pay period of January 1,
9 2022 to January 15, 2022 this Aggrieved Employee earned \$69.45 in overtime and
10 DEFENDANT EMPLOYER paid this overtime at only \$29.16 per hour based on the
11 employee's regular rate of pay of \$19.44 erroneously not including the commissions
12 proceeds into the regular rate of pay for overtime pay purposes, resulting in an
13 underpayment of overtime in an amount to be proven at trial.

14 45-47. This claim is also premised, in part, on Plaintiffs' right to pursue all Labor
15 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
16 *USA, Inc.* (2018) 23 Cal.App.5th 745.

17 **Meal and Rest Break Claims.**

18 46-48. Plaintiffs are informed and believe, and therefore allege, that from at least
19 four years before the filing of this action and continuing to the present, and pursuant to
20 company policy and/or practice and/or direction, DEFENDANT EMPLOYER failed to
21 authorize and/or permit Plaintiffs from taking all their compliant off-duty meal and rest
22 breaks during the required timeframe as required by law and failed to pay them
23 premium pay, in an amount to be proven at trial.

24 47-49. Plaintiffs are informed and believe, and therefore allege, that Plaintiff
25 BARNETT and, upon information and belief, other putative Class Members' meal
26 breaks were late, missed, or noncompliant because of work demands imposed on them
27 by management and/or the demands of their customers, among other reasons.

28 48-50. Defendants never paid Plaintiff BARNETT and, upon information and

1 belief, other putative Class Members premium pay for missed and noncompliant meal
2 breaks.

3 ~~49.51.~~ With respect to rest break violations, DEFENDANT EMPLOYER
4 required Plaintiffs to be available by phone for calls or texts or have email access and
5 to keep such devices on--even during rest periods--and to remain vigilant and
6 responsive to calls or emails when needs arose during working hours and/or during off
7 work times, among other instances during which DEFENDANT EMPLOYER had an
8 obligation to pay premium pay for Plaintiffs' missed rest breaks.

9 ~~50.52.~~ Pursuant to this policy, Plaintiffs maintained a cell phone or similar
10 electronic device they kept with them in operating condition at all times making any
11 breaks available to them not a rest break in compliance with California law and
12 DEFENDANT EMPLOYER, upon information and belief, failed to pay these
13 employees for rest breaks.

14 ~~51.53.~~ Because of the foregoing policies, Defendants prevented Plaintiffs from
15 taking all their uninterrupted rest breaks to which they had the right under California
16 law, in an amount to be proven at trial. (*See Augustus v. ABM Security Services* (2016)
17 2 Cal.5th 257.)

18 ~~52.54.~~ This claim is also premised, in part, on Plaintiffs' right to pursue all Labor
19 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
20 *USA, Inc.* (2018) 23 Cal.App.5th 745.

21 **Failure to Reimburse.**

22 ~~53.55.~~ During all times relevant, and pursuant to company policy and/or practice
23 and/or direction, Defendants required Plaintiff BARNETT and, upon information and
24 belief, other employees, to work from home as a condition of his/her employment and
25 required Plaintiffs and the Class to use their home internet, and incur various other
26 expenses associated with their work for Defendants.

27 ~~54.56.~~ The unreimbursed purchases Plaintiffs and proposed Class Members
28 were required to make to perform their work include, but are not limited to internet

connections, office space in their homes devoted to work, and work-related office supplies/equipment.

~~55-57~~. Plaintiffs are informed and believe, and thereupon allege, that Defendants' requirement for employees to use their supplies and equipment to perform their work duties without reimbursement was an attempt to defray the costs onto its employees.

~~56-58~~. Defendants passed the cost of doing business onto its employees by requiring, without reimbursement, their employees to purchase equipment, tools, and services necessary to perform work for Defendants.

~~57-59~~. This claim is also premised, in part, on Plaintiffs' right to pursue all Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.

Erroneous Wage Statements in Violation of Labor Code § 226.

~~58-60~~. During all times relevant, and pursuant to company policy and/or practice and/or direction and continuing to the present, and pursuant to company policy and/or practice and/or direction, Defendants issued confusing and inaccurate wage and earning statements to Plaintiffs, which wage and earning statements failed to comply with Labor Code § 226 because they failed to, among other things, identify their correct rates of pay and/or correct gross and net earnings during the applicable pay period.

~~59-61~~. As a standalone claim, Defendants also issued confusing and inaccurate wage and earning statements to Plaintiffs that in some cases omitted any reference to the number of overtime hours worked, among other required entries, as part of the "detachable part of the check" within the requirements of Labor Code § 226(a).

~~60-62~~. As alleged above, for example, on November 20, 2020, Defendants issued Plaintiff BARNETT a wage and earning statement that said Defendants paid him \$246.98 in overtime, but the number of overtime hours worked was missing where instead it erroneously reported that Plaintiff worked "0" overtime hours.

~~61-63~~. Similarly, on December 24, 2020, Defendants issued Plaintiff BARNETT

1 a wage and earning statement that said Defendants paid him \$154.99 in overtime, but
2 the number of overtime hours worked was missing where instead it erroneously
3 reported that Plaintiff worked “0” overtime hours.

4 ~~62-64.~~ Likewise, on January 22, 2021, Defendants issued Plaintiff BARNETT a
5 wage and earning statement that said Defendants paid him \$61.32 in overtime, but the
6 number of overtime hours worked was missing where instead it erroneously reported
7 that Plaintiff worked “0” overtime hours.

8 ~~63-65.~~ Again, on February 19, 2021, Defendants issued Plaintiff BARNETT a
9 wage and earning statement that said Defendants paid him \$36.25 in overtime, but the
10 number of overtime hours worked was missing where instead it erroneously reported
11 that Plaintiff worked “0” overtime hours.

12 ~~64-66.~~ On March 19, 2021, Defendants issued Plaintiff BARNETT a wage and
13 earning statement that said Defendants paid him \$44.85 in overtime, but the number of
14 overtime hours worked was missing where instead it erroneously reported that Plaintiff
15 worked “0” overtime hours.

16 ~~65-67.~~ On April 23, 2021, Defendants issued Plaintiff BARNETT a wage and
17 earning statement that said Defendants paid him \$85.87 in overtime, but the number of
18 overtime hours worked was missing where instead it erroneously reported that Plaintiff
19 worked “0” overtime hours.

20 ~~66-68.~~ On August 20, 2021, Defendants issued Plaintiff BARNETT a wage and
21 earning statement that said Defendants paid him \$16.40 in overtime, but the number of
22 overtime hours worked was missing where instead it erroneously reported that Plaintiff
23 worked “0” overtime hours.

24 ~~67-69.~~ On November 19, 2021, Defendants issued Plaintiff BARNETT a wage
25 and earning statement that said Defendants paid him \$308.60 in overtime, but the
26 number of overtime hours worked was missing where instead it erroneously reported
27 that Plaintiff worked “0” overtime hours.

28 ~~68-70.~~ On December 23, 2021, Defendants issued Plaintiff BARNETT a wage

1 and earning statement that said Defendants paid him \$640.07 in overtime, but the
2 number of overtime hours worked was missing where instead it erroneously reported
3 that Plaintiff worked “0” overtime hours.

4 ~~69-71~~. On January 21, 2021, Defendants issued Plaintiff BARNETT a wage and
5 earning statement that said Defendants paid him \$69.45 in overtime, but the number of
6 overtime hours worked was missing where instead it erroneously reported that Plaintiff
7 worked “0” overtime hours.

8 ~~70-72~~. The above problems made interpretation of the foregoing wage and
9 earning statements hopelessly confusing.

10 ~~71-73~~. In addition to the foregoing claims under Labor Code § 226, Plaintiffs’
11 paystubs and those of similarly situated employees of Defendants were inaccurate
12 because Defendants failed to pay them all wages, as alleged above, supporting a
13 derivative claim under Labor Code § 226.

14 ~~72-74~~. This claim is also premised, in part, on Plaintiffs’ right to pursue all Labor
15 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
16 *USA, Inc.* (2018) 23 Cal.App.5th 745.

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

18 ~~73-75~~. Pursuant to the above-mentioned policies, DEFENDANT EMPLOYER
19 failed to pay all wages to which Plaintiffs had the right to receive under the law.

20 ~~74-76~~. When Plaintiff BARNETT and putative Class Members’ employment
21 ended, DEFENDANT EMPLOYER failed to provide Plaintiffs all unpaid wages in
22 their final paycheck or in a timely manner.

23 ~~75-77~~. Further, during Plaintiffs’ employment, their pay was untimely in
24 violation of the Labor Code.

25 ~~76-78~~. Plaintiffs are informed and believe and based thereon allege that, to date,
26 DEFENDANT EMPLOYER has not paid Plaintiffs all of Plaintiffs’ wages due and
27 payable, in an amount to be proven at trial.

28 ~~77-79~~. Derivative claims also premised, in part, on Plaintiffs’ right to pursue all

1 Labor Code claims on behalf of Aggrieved Employees per Huff v. Securitas Security
2 Services USA, Inc. (2018) 23 Cal.App.5th 745.

3 **ICRAA Claims.**

4 ~~78-80. Plaintiff is informed and believes and based thereon alleges that u~~Upon
5 Plaintiff BARNETT's hiring, as part of Defendants' routine practice, policy, and
6 procedure, Defendants required Plaintiff, a job applicant at that time, to sign various
7 forms that purported to allow Defendants to obtain a consumer investigative report on
8 the Plaintiff via a third party.

9 ~~79-81. Plaintiff is informed and believes and based thereon~~ alleges that
10 Defendants' purported permission to conduct the foregoing investigative consumer
11 report was based, in part, on an unlawful form, a true and correct copy of which is
12 attached hereto as Exhibit 1 the contents of which are incorporated herein by reference
13 as though alleged herein upon receipt of the form via the discovery process.

14 ~~80-82. Plaintiff is informed and believes and based thereon~~ alleges that the
15 foregoing form Defendants used violates Civ. Code § 1786.16 ~~in a manner described in~~
16 ~~more detail at time of trial~~ because (1) there is no block to check to allow the Plaintiff
17 to obtain a copy of the report (Civ. Code § 1786.16(b)(1)), (2) the report was procured
18 by Lendingtree, an unknown entity and if not the admitted employer, than an entity
19 without statutory authorization to procure the report (Civ. Code §§ 1786.2(f);
20 1786.12(d)(1); 1786.16(a)), (3) the disclosure form was presented not as a single
21 document as required under the statute, but as part of a multipage document (Civ. Code
22 § 1786.16(a)(2)(B)), (4) the disclosure included a number of extraneous references
23 prohibited by law, such as reference to the states of Washington, New York,
24 Minnesota, among many other unlawful extraneous references (Civ. Code §
25 1786.16(a)(2)(B)), (5) the form contains an unlawful evergreen provision purporting to
26 allow Defendants to procure Plaintiff's report anytime during his employment (Civ.
27 Code § 1786.16(a)(2)), and (6) the consumer reporting agency Defendant employed
28 did not have a complaint privacy policy in effect ((Civ. Code § 1786.20), among other

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1 reasons.

2 81-83. Similarly, by law before an employer can procure a report on an employee
3 or job applicant, the employer must certify to the furnishing agency that it (the
4 employer) complied, and will continue to comply, with various requirements of the
5 ICRAA. Civ. Code §1786.16(a)(4).

6 82-84. Plaintiff is informed and believes and based thereon alleges there is no
7 evidence of certifications whatsoever from the Defendants as required under the
8 ICRAA.

9 83-85. Accordingly, Plaintiff is informed and believes and based thereon alleges
10 that Defendants violated the ICRAA by procuring a consumer report on the Plaintiff
11 without complying with the certification requirements set forth in the FCRA and the
12 ICRAA.

13 84-86. Plaintiff, via counsel, requested Defendants to provide a copy of the
14 abovementioned form and related records, but Defendants thus far have refused to
15 produce the foregoing, another claim under the ICRAA Plaintiff is pursuing.

16 **REPRESENTATIVE ACTION (PAGA) CLAIMS**

17 85-87. This is a wage and hour representative action filed pursuant to the
18 PAGA, Labor Code §§ 2698, 2699 generally consists of the following group:

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

21 86-88. All members of the Aggrieved groups will be referred to as the
22 “Aggrieved Employees.”

23 87-89. The “PAGA Period” means from **May 25, 2021** to the present, the
24 timeframe where the scope of statute allows Plaintiffs to recover wages and penalties.

25 88-90. California law provides that an employee may file an action against an
26 employer to recover penalties for violations of the Labor Code and Wage Orders
27 provided the aggrieved employee files an action on behalf of him or himself and
28 similarly-situated current and former employees.

1 ~~89-91.~~ At all material times, DEFENDANT EMPLOYER and DOES 1 through
2 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
3 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
4 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
5 Labor Code or any provision regulating hours and days of work in any Order of the
6 Industrial Welfare Commission and, as such, are subject to penalties for each
7 underpaid employee as set forth in Labor Code § 558.

8 ~~90-92.~~ As set forth in further detail below, because of the analysis and
9 investigation of the Plaintiffs' claims, Plaintiffs' attorneys sent correspondence to the
10 California Labor and Workforce Development Agency ("LWDA") and to
11 DEFENDANT EMPLOYER informing DEFENDANT EMPLOYER of their claims
12 and their intent to pursue litigation.

13 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

14 ~~91-93.~~ As to penalty claims under the Labor Code Private Attorney General
15 Act, on or about **May 25, 2021**, Plaintiffs began to exhaust his/her administrative
16 remedies by sending correspondence to the LWDA and via certified mail to
17 DEFENDANT EMPLOYER indicating Plaintiffs are pursuing the claims alleged in
18 this Complaint.

19 ~~92-94.~~ ~~By the time t~~ The statutory period for ~~Plaintiffs expires~~ from the first
20 letter alleged above ~~expired~~ and the LWDA ~~likely will~~ did not have served Plaintiffs
21 with notice of intent to assume jurisdiction over the applicable penalty claims and did
22 not provide notice as set forth in Labor Code § 2699.3(a)(2)(A) within the statutory
23 period, ~~but more to follow as time expires before this Complaint is amended to report~~
24 ~~the actual facts.~~

25 ~~93-95.~~ Therefore, ~~once~~ the statutory waiting period expired~~s~~ based on the
26 presumed facts above, ~~and (with the exception of Defendants LENDINGTREE INC.~~
27 ~~and LENDINGTREE LLC)~~ Plaintiffs ~~will~~ have exhausted all applicable
28 administrative remedies thus permitting Plaintiffs the ability to seek the penalty

claims sought in this Complaint.

CLASS ACTION ALLEGATIONS

~~94.96.~~ Plaintiffs bring this action on behalf of himself and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure.

~~95.97.~~ Plaintiffs seek to represent the classes and/or subclasses composed of and defined as follows:

All of Defendants' current or former nonexempt employees who worked in the state of California from May 25, 2018 to the present.

~~96.98.~~ Plaintiffs also seek to represent the following subclasses composed of and defined as follows:

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

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

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

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

Unreimbursed Expense Subclass: All Members of the Class who, during the relevant period, Defendants did not reimburse for

reasonable and necessary expenses.

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

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

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

~~97-99.~~ The above-mentioned class-members will collectively be referred to as "Class Members."

~~98-100.~~ Plaintiffs reserve the right under the California Rules of Court, to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

~~99-101.~~ This action is brought and may properly be maintained as a Class Action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity.

~~100-102.~~ The potential members of the Class as defined are so numerous or many, that joinder of all the members of the Class is impracticable.

~~101-103.~~ While the precise number of Class Members has not been determined at this time, Plaintiffs are informed and believe, and based thereon allege, that DEFENDANT EMPLOYER currently employs, and during the relevant time periods employed, a sufficient number of employees to warrant class certification if all other elements are met.

~~102-104.~~ Accounting for employee turnover during the relevant periods

1 necessarily increases the number of potential members of the Class.

2 **B. Commonality.**

3 ~~103~~105. There are questions of law and fact common to the Class that
4 predominate over any questions affecting only individual Class Members.

5 ~~104~~106. Common questions of law and fact include, without limitation and
6 subject to possible further amendment, the following:

- 7 a. Whether Defendants violated the Labor Code and the
8 applicable Wage Order by not fully compensating
9 Plaintiffs and the Class by failing to pay minimum wage
10 and/or regular wages as required by law;
- 11 b. Whether Defendants' policy or practice of not
12 paying Plaintiffs and putative class members
13 overtime compensation for the hours they worked
14 over 40 in a workweek or eight hours in a day is
15 illegal under Labor Code §§ 510, 1771, 1774, 1776,
16 1194, and the applicable Wage Order;
- 17 c. Whether Defendants violated the meal and rest break
18 provisions of California law by failing to provide
19 Plaintiffs with duty-free 30-minute meal breaks for shifts
20 of five hours or more and/or duty free 10-minute rest
21 breaks as required by law and Defendants' failure to pay
22 premium pay as a result thereof;
- 23 d. Whether Defendants violated Labor Code §§ 2802
24 by failing to reimburse Plaintiffs for business
25 expenses;
- 26 e. Whether Defendants violated Labor Code §§ 226
27 by not providing accurate paystubs;
- 28 f. Whether Defendants' policy or practice of not

1 paying hourly employees all their wages due in
2 their final paychecks immediately upon involuntary
3 termination or when 72 hours' notice was provided
4 before voluntary resignation, is unlawful under
5 Labor Code §§ 201, 202 and/or 203;

6 g. Whether Defendants violated the PAGA under California
7 Labor Code §§ 2698, 2699, *et seq.*, by committing
8 the wrongful conduct as alleged in this
9 Complaint; and

10 h. Whether Plaintiffs and the members of the Class
11 May recover remedies pursuant to Business &
12 Professions Code §§ 17200, *et seq.*

13 **C. Typicality.**

14 ~~105,107.~~ Plaintiffs' claims are typical of the claims of the Class because
15 Plaintiffs and all members of the Class sustained injuries and damages arising out of
16 and caused by Defendants' common course of conduct and policies in violation of
17 laws, regulations that have the force and effect of law and statutes as alleged herein.

18 **D. Adequacy of Representation.**

19 ~~106,108.~~ Plaintiffs are members of the Class, do not have any conflicts of
20 interest with other Class Members, and will prosecute the case vigorously on behalf
21 of the Class.

22 ~~107,109.~~ Counsel representing Plaintiffs and the putative Class are
23 competent and experienced in litigating employment class actions, including wage
24 and overtime class actions.

25 ~~108,110.~~ Plaintiffs will fairly and adequately represent and protect the
26 interests of the Class Members.

27 **E. Superiority of Class Action.**

28 ~~109,111.~~ A class action is superior to other available means for the fair and

1 efficient adjudication of this controversy because individual joinder of all Class
2 Members is not practicable, and questions of law and fact common to the Class
3 predominate over any questions affecting only individual members of the Class.

4 ~~110,112.~~ Each Class Member was damaged or suffered injury and may
5 recover by reasons of Defendants' illegal policies and/or practices.

6 ~~111,113.~~ Class Action treatment will allow those similarly situated persons
7 to litigate their claims in the manner that is most efficient and economical for the
8 parties and the judicial system.

9 ~~112,114.~~ Plaintiffs are unaware of any difficulties that are likely to be
10 encountered in the management of this action that would preclude maintenance as a
11 Class Action.

12 ~~113,115.~~ For the reasons alleged in this Complaint, this action should be
13 certified as a Class Action.

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21 **FIRST CAUSE OF ACTION**

22 **Individual, Class, and Representative Claim under the PAGA for**
23 **Failure to Pay State and Local Minimum/Regular Wages in Violation of**
24 **California Labor Code §§ 216, 218, 218.5, 223, 1182.12, 1194,**
25 **1194.2, 1197, 1198, and the applicable Industrial Welfare Commission ("IWC")**
26 **Wage Order**
27 **(Against all Defendants)**

28 ~~114,116.~~ Plaintiffs re-allege and incorporate by reference the foregoing

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1 allegations as though set forth herein.

2 ~~115,117.~~ Pursuant to Labor Code §§ 216, 223, 218, 218.5, 1182.12, 1194,
3 1194.2, and 1197 it is unlawful for a California employer to suffer or permit an
4 employee to work without paying wages for all hours worked, as required by the
5 applicable IWC Wage Order.

6 ~~116,118.~~ During all times relevant, the applicable IWC Wage Order,
7 including but not limited to Wage Order 4 and/or 5, applied to Plaintiffs' and the Class
8 members' employment with Defendants.

9 ~~117,119.~~ Pursuant to the applicable IWC Wage Order, "hours worked"
10 include the time during which an employee is "suffered or permitted to work, whether
11 or not required to do so."

12 ~~118,120.~~ Every employer must pay each employee minimum wage as
13 required under state law and, where applicable and if higher, local law.

14 ~~119,121.~~ During all times relevant, Plaintiffs and putative Class Members are
15 informed and believe, and based thereupon allege, that Class Members including
16 Plaintiffs, were not paid minimum/regular wages for all hours suffered or permitted to
17 work in violation of state and, where applicable, local law and/or their agreement with
18 DEFENDANT EMPLOYER.

19 ~~120,122.~~ Labor Code § 1194.2, subdivision (a) provides that, in an action to
20 recover wages because of the payment of a wage less than the minimum wage fixed by
21 IWC Wage Orders, an employee may recover liquidated damages in an amount equal
22 to the wages unlawfully unpaid and interest thereon.

23 ~~121,123.~~ At all material times, DEFENDANT EMPLOYER and DOES 1
24 through 50 were and/or are Aggrieved Employees' employers or persons acting on
25 behalf of Aggrieved Employees' employer, within the meaning of California Labor
26 Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the
27 California Labor Code or any provision regulating hours and days of work in any
28 Order of the Industrial Welfare Commission and, as such, are subject to penalties for

1 each underpaid employee as set for in Labor Code § 558.

2 ~~122,124.~~ In committing the violations of state law as herein alleged,
3 Plaintiffs are informed and believe based there upon allege that Defendants have
4 knowingly and willfully refused to perform their obligations to compensate Aggrieved
5 Employees for all wages earned and all hours worked.

6 ~~123,125.~~ As a direct result, Aggrieved Employees have suffered and continue
7 to suffer, substantial losses related to the use and enjoyment of such compensation,
8 wages, lost interest on such monies and expenses and attorneys' fees in seeking to
9 compel Defendants to fully perform their obligations under state law, all to their
10 respective damage in amounts according to proof at trial and within the jurisdictional
11 limitations of this Court.

12 ~~124,126.~~ Labor Code § 2699, *et seq.* imposes upon Defendants, and each of
13 them, a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
14 period for the initial violation and two hundred (\$200.00) for each aggrieved employee
15 per pay period for each subsequent violation in which DEFENDANT EMPLOYER
16 violated the minimum wage and/or regular wage provisions of the Labor Code,
17 including but not limited to §§ 216, 218, 218.5, 223, 1182.12, 1194, 1194.2, and 1197,
18 the exact amount of the applicable penalty is all in an amount to be shown according to
19 proof at trial.

20 ~~125,127.~~ Additionally, pursuant to Labor Code § 2699, Plaintiffs and Class
21 Members seek to recover from Defendants, and each of them, penalties, attorneys'
22 fees, and costs incurred herein.

23 ~~126,128.~~ Upon information and belief, Class Members including Plaintiffs
24 should have received minimum wages in a sum according to proof during all times
25 relevant to this action.

26 ~~127,129.~~ Upon information and belief, Defendants have intentionally failed
27 and refused, and continue to fail and refuse, to pay Class Members including Plaintiffs
28 minimum wages for all time suffered or permitted to work.

1 ~~128,130.~~ Plaintiffs and the Class request the recovery of the unpaid
2 minimum, waiting time penalties, liquidated damages, interest, attorneys' fees, and
3 costs in an amount to be determined at trial.

4 **SECOND CAUSE OF ACTION**

5 **Individual, Class, and Representative Claim under the PAGA for**
6 **Failure to Pay State Overtime and/or Double-Time**
7 **Compensation in Violation of California Labor Code §§ 510, 1194, 1198,**
8 **and the Applicable Wage Order**
9 (Against all Defendants)

10 ~~129,131.~~ Plaintiffs re-allege and incorporate by reference the foregoing
11 allegations as though set forth herein.

12 ~~130,132.~~ During all times relevant, the applicable Wage Order, including
13 but not limited to Wage Order 4 and/or 5, applied to Plaintiffs' employment with
14 Defendants.

15 ~~131,133.~~ Pursuant to the applicable Wage Order, "hours worked" include
16 the time during which an employee is "suffered or permitted to work, whether or not
17 required to do so."

18 ~~132,134.~~ For each hour (or fraction thereof) an employee works over forty
19 (40) hours in a week or more than eight (8) hours in a workday the employer must pay
20 the rate of one and a half times the employee's regular hourly wage.

21 ~~133,135.~~ For each hour (or fraction thereof) an employee works more than
22 twelve (12) hours in one day or more than eight (8) hours a day on the seventh
23 consecutive day of work, the employee must be compensated at the rate of no less than
24 twice the regular rate of pay for that employee.

25 ~~134,136.~~ According to § 49.1.1 of the California Division of Labor
26 Standards and Enforcement Policies and Interpretations Manual, "In California, as with
27 the federal FLSA, overtime is computed based on the regular rate of pay. The regular
28 rate of pay includes many different kinds of remuneration, for example: hourly

1 earnings, salary, piecework earnings, *commissions*, *certain bonuses*, and the value of
2 meals and lodging.” (Emphasis added.)

3 ~~135,137.~~ As alleged in this Complaint, DEFENDANT EMPLOYER failed
4 to pay all overtime compensation to the Plaintiffs and the Class because DEFENDANT
5 EMPLOYER, among other things, failed to include bonuses and/or fringe benefits
6 earned towards the overtime hourly rate in violation of California law, among other
7 reasons alleged in this Complaint (see § 49.1.1 of the California Division of Labor
8 Standards and Enforcement Policies and Interpretations Manual).

9 ~~136,138.~~ Additionally, from at least four years before the filing of this
10 action and continuing to the present, and pursuant to company policy and/or practice
11 and/or direction, Plaintiffs are informed and believe, and therefore allege, that
12 Defendants failed to pay its employees the correct rate of minimum/regular wages and,
13 as a result, the amount of overtime paid was too low.

14 ~~137,139.~~ At all material times, DEFENDANT EMPLOYER and DOES 1
15 through 50 were and/or are Aggrieved Employees’ employers or persons acting on
16 behalf of Aggrieved Employees’ employer, within the meaning of California Labor
17 Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the
18 California Labor Code or any provision regulating hours and days of work in any
19 Order of the Industrial Welfare Commission and, as such, are subject to penalties for
20 each underpaid employee as set for in Labor Code § 558.

21 ~~138,140.~~ In committing the violations of state law as herein alleged,
22 Defendants have knowingly and willfully refused to perform their obligations to
23 compensate Aggrieved Employees for all wages earned and all hours worked.

24 ~~139,141.~~ As a direct result, Aggrieved Employees have suffered and
25 continue to suffer, substantial losses related to the use and enjoyment of such
26 compensation, wages, lost interest on such monies and expenses and attorney’s fees in
27 seeking to compel Defendants to full perform their obligation under state law, all to
28 their respective damage in amounts according to proof at trial and within the

jurisdictional limitations of this Court.

140,142. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, 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 DEFENDANT EMPLOYER violated the overtime provisions of the Labor Code, including but not limited to §§ 510 at 1194, the exact amount of the penalties sought is in an amount to be shown according to proof at trial.

141,143. Additionally, pursuant to Labor Code § 2699, Plaintiffs seek to recover from Defendants, and each of them, penalties, attorneys' fees, and costs incurred herein.

142,144. Based on the misconduct alleged in this Complaint, Plaintiffs and similarly situated members of the Class have suffered damages in an amount to be proven at trial.

143,145. Plaintiffs on behalf of herself and Class requests the unpaid wages, waiting time penalties, interest, attorneys' fees, costs, liquidated damages, and any 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)

144,146. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

1 ~~145,147.~~ Plaintiffs are informed and believe, and based thereon allege, that
2 by failing to provide duty-free meal periods of at least thirty (30) minutes for shifts of
3 five hours or more, which began before the end of the fifth hour of work, and failing to
4 pay such employees premium wages of one (1) hour of pay at their regular rate of
5 compensation for each workday the meal period was not provided, Defendants
6 willfully violated the provisions of Labor Code § 226.7, and the applicable IWC Wage
7 Order.

8 ~~146,148.~~ Based on the misconduct alleged in this Complaint, Plaintiffs are
9 informed and believe, and based thereon allege, that Defendants failed to pay all
10 premium wages owed.

11 ~~147,149.~~ At all material times, DEFENDANT EMPLOYER and DOES 1
12 through 50 were and/or are Aggrieved Employees' employers or persons acting on
13 behalf of Aggrieved Employees' employer, within the meaning of California Labor
14 Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the
15 California Labor Code or any provision regulating hours and days of work in any
16 Order of the Industrial Welfare Commission and, as such, are subject to penalties for
17 each underpaid employee as set for in Labor Code § 558.

18 ~~148,150.~~ In committing the violations of state law as herein alleged,
19 Plaintiffs are informed and believe and based thereon allege that Defendants have
20 knowingly and willfully refused to perform their obligations to compensate Aggrieved
21 Employees for all wages earned and all hours worked.

22 ~~149,151.~~ As a direct result, Aggrieved Employees have suffered and continue
23 to suffer, substantial losses related to the use and enjoyment of such compensation,
24 wages, lost interest on such monies and expenses and attorneys' fees in seeking to
25 compel Defendants to fully perform their obligations under state law, all to their
26 respective damage in amounts according to proof at trial and within the jurisdictional
27 limitations of this Court.

28 ~~150,152.~~ Cal. Labor Code § 2699, *et seq.* imposes upon all culpable

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

6 ~~151,153.~~ Wherefore, Plaintiffs request all remedies available to them and to
7 the putative Class.

8 **FOURTH CAUSE OF ACTION**

9 **Individual, Class, and Representative Claim under the PAGA for**
10 **Failure to Comply with the Rest Break Requirements of Labor Code §§ 226.7,**
11 **512, 1198, and the applicable IWC Wage Order**
12 **(Against all Defendants)**

13 ~~152,154.~~ Plaintiffs re-allege and incorporate by reference the foregoing
14 allegations as though set forth herein.

15 ~~153,155.~~ Plaintiffs are informed and believe, and based thereon allege, that
16 based on the misconduct alleged in this Complaint, Defendants failed to authorize and
17 permit Plaintiffs to receive a rest period of at least 10 minutes on a separate hourly
18 basis when paid commissions or otherwise to provide paid ten-minute rest periods for
19 every four (4) hours or major fraction thereof worked per day, and by failing to provide
20 premium wages at the regular rate of pay when these periods were not permitted or
21 authorized, Defendants willfully violated the provisions of Labor Code § 226.7, and
22 the applicable IWC Wage Order.

23 ~~154,156.~~ Plaintiffs are informed and believe, and based thereon allege, that
24 based on the misconduct alleged in this Complaint, Defendants failed to pay premium
25 pay for Plaintiffs' missed meal breaks DEFENDANT EMPLOYER failed to provide or
26 authorize.

27 ~~155,157.~~ At all material times, DEFENDANT EMPLOYER and DOES 1
28 through 50 were and/or are Aggrieved Employees' employers or persons acting on

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

6 ~~156.~~158. In committing the violations of state law as herein alleged,
7 Plaintiffs are informed and believe and based thereon allege that Defendants have
8 knowingly and willfully refused to perform their obligations to compensate Aggrieved
9 Employees for all wages earned and all hours worked.

10 ~~157.~~159. As a direct result, Aggrieved Employees have suffered and continue
11 to suffer, substantial losses related to the use and enjoyment of such compensation,
12 wages, lost interest on such monies and expenses and attorneys' fees in seeking to
13 compel Defendants to fully perform their obligations under state law, all to their
14 respective damage in amounts according to proof at trial and within the jurisdictional
15 limitations of this Court.

16 ~~158.~~160. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable
17 Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee
18 per pay period for the initial violation and two hundred (\$200.00) for each aggrieved
19 employee per pay period for each subsequent violation in which all culpable
20 Defendants violated Cal. Labor Code § 226.7, the exact amount of the applicable
21 penalty is all in an amount to be shown according to proof at trial.

22 ~~159.~~161. Wherefore, Plaintiffs request all remedies available to them and to
23 the putative Class.

24 **FIFTH CAUSE OF ACTION**

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

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1 ~~160,162.~~ Plaintiffs re-allege and incorporate by reference the foregoing
2 allegations as though set forth herein.

3 ~~161,163.~~ California Labor Code § 2802 requires employers to indemnify
4 their employees for expenses and losses incurred while discharging their duties or
5 obedience to the directions of their employer.

6 ~~162,164.~~ California Labor Code § 2804 mandates that this statutory right
7 cannot be waived.

8 ~~163,165.~~ The Plaintiffs incurred losses in obedience to the directions of
9 Defendants in the form of purchase of work-related expenses described in this
10 Complaint.

11 ~~164,166.~~ As a direct result of Defendants' violation of California Labor
12 Code § 2802, the Plaintiffs and Class Members suffered and continue to suffer
13 substantial losses related to unpaid expenses, the use and enjoyment of monies owed,
14 lost interest on monies owed, and attorneys' fees in an amount to be proven at the time
15 of trial.

16 ~~165,167.~~ Defendants derive an unjust and inequitable economic benefit in
17 failing to comply with the law regarding indemnification and reimbursement of
18 employees.

19 ~~166,168.~~ Plaintiffs request all remedies available to them and to the putative
20 Class for Defendants' violations of California Labor Code § 2802, including but not
21 limited to back-owed reimbursement for work-related expenses, interest, statutory and
22 equitable attorneys' fees, costs, and applicable penalties in an amount to be proven at
23 trial.

24 **SIXTH CAUSE OF ACTION**

25 **Individual, Class, and Representative Claim under the PAGA for**
26 **Violations of California Labor Code §§ 226 and 1198**

27 (Against all Defendants)

28 ~~167,169.~~ Plaintiffs re-allege and incorporate by reference the foregoing

- 32 -

1 allegations as though set forth herein.

2 168,170. Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in
3 pertinent part, that every employer shall, “semimonthly or at the time of each
4 payment of wages, shall furnish to his or her employees, either as a detachable part of
5 the check, draft, or voucher paying the employee's wages, or separately if wages are
6 paid by personal check or cash, an accurate itemized statement in writing showing (1)
7 gross wages earned, (2) total hours worked by the employee. . . (3) the number of
8 piece-rate units earned and any applicable piece rate if the employee is paid on a
9 piece-rate basis, (4) all deductions, provided that all deductions made on written
10 orders of the employee may be aggregated and shown as one item, (5) net wages
11 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
12 name of the employee and only the last four digits of his or her social security
13 number..., (8) the name and address of the legal entity that is the employer. . . , and
14 (9) all applicable hourly rates in effect during the pay period and the corresponding
15 number of hours worked at each hourly rate by the employee and, beginning July 1,
16 2013, if the employer is a temporary services employer as defined in Section 201.3,
17 the rate of pay and the total hours worked for each temporary services assignment. . .”
18 (Labor Code § 226 subdivision (a).)

19 169,171. Likewise, California Labor Code § 226, subdivisions (b) and (c),
20 require employers doing business in the State of California to provide current and
21 former employees access to their payroll records.

22 170,172. Upon information and belief, during all times relevant to this
23 action, Defendants did not provide accurate wage statements throughout the Class
24 Period.

25 171,173. Plaintiffs allege that on numerous occasions, an exact amount by
26 which will be proven at trial, Defendants violated various provisions of § 226,
27 including but not limited to subdivisions (a)(1), (a)(2), (a)(4), (a)(5), (a)(6), (a)(8), and
28 (a)(9) by failing to provide Plaintiffs accurate itemized statement in writing accurately

1 showing gross wages earned, total hours worked by the employee, net wages earned,
2 among other things.

3 ~~172,174.~~ At all material times DEFENDANT EMPLOYER and DOES 1
4 through 50 were and/or are Aggrieved Employees' employers or persons acting on
5 behalf of Aggrieved Employees' employer, within the meaning of California Labor
6 Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the
7 California Labor Code or any provision regulating business hours and days of work in
8 any Order of the Industrial Welfare Commission and, as such, are subject to penalties
9 for each underpaid employee as set forth in Labor Code § 558.

10 ~~173,175.~~ In committing the violations of state law as herein alleged,
11 Defendants have knowingly and willfully refused to perform their obligations to
12 compensate Aggrieved Employees for all wages earned and all hours worked.

13 ~~174,176.~~ As a direct result, Aggrieved Employees have suffered and continue
14 to suffer, substantial losses related to the use and enjoyment of such compensation,
15 wages, lost interest on such monies and expenses and attorney's fees in seeking to
16 compel Defendants to fully perform their obligations under state law, all to their
17 respective damage in amounts according to proof at trial and within the jurisdictional
18 limitations of this Court.

19 ~~175,177.~~ Labor Code § 2699, *et seq.* imposes upon Defendants, and each of
20 them, a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
21 period for the initial violation and two hundred (\$200.00) for each aggrieved employee
22 per pay period for each subsequent violation in which DEFENDANT EMPLOYER
23 violated Labor Code § 226, the exact amount of the applicable penalty is all in an
24 amount to be shown according to proof at trial.

25 ~~176,178.~~ For Defendants' misconduct as alleged in this Complaint, Plaintiffs
26 seek damages, penalties, costs, and attorneys' fees pursuant to Labor Code §§ 226,
27 226.3, and 226.6 in an amount to be proven at trial.

28 **SEVENTH CAUSE OF ACTION**

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**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)**

~~177,179.~~ Plaintiffs re-allege and incorporate by reference the foregoing
allegations as though set forth herein.

~~178,180.~~ 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.”

~~179,181.~~ 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.”

~~180,182.~~ 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. ...”

~~181,183.~~ 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.”

~~182,184.~~ Alternatively, pursuant to Labor Code § 204b, employers must pay
its employees on a weekly basis on a regular day determined by the employer as the
regular payday.

~~183,185.~~ Pursuant to Labor Code §§ 218.5 and 218.6, an action may be

1 brought for the nonpayment of wages and fringe benefits.

2 ~~184,186.~~ Plaintiffs were not properly paid pursuant to the requirements of
3 Labor Code §§ 201, 202, and 204/204b and thereby seek all remedies available to
4 them.

5 ~~185,187.~~ To date, for example, Defendants have not paid Plaintiffs all earned
6 wages as required by law.

7 ~~186,188.~~ Plaintiffs are informed and believe and based thereon allege that
8 Defendants willfully failed to pay Plaintiffs' wages pursuant to the requirements of
9 Labor Code §§ 201, 202, and 204/204b, after Plaintiffs' demand and, therefore,
10 Plaintiffs may recover the associated unpaid wages and waiting time penalties.

11 ~~187,189.~~ Plaintiffs are informed and believe and based thereon allege that
12 Defendants did this with the intent to secure for himself, herself, and itself a discount
13 on its indebtedness and/or with intent to annoy harass, oppress, hinder, delay and/or
14 defraud Plaintiffs.

15 ~~188,190.~~ At all material times, DEFENDANT EMPLOYER and DOES 1
16 through 50 were and/or are Aggrieved Employees' employers or persons acting on
17 behalf of Aggrieved Employees' employer, within the meaning of California Labor
18 Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the
19 California Labor Code or any provision regulating hours and days of work in any
20 Order of the Industrial Welfare Commission and, as such, are subject to penalties for
21 each underpaid employee as set for in Labor Code § 558.

22 ~~189,191.~~ In committing the violations of state law as herein alleged,
23 Defendants have knowingly and willfully refused to perform their obligations to
24 compensate Aggrieved Employees for all wages earned and all hours worked.

25 ~~190,192.~~ As a direct result, Aggrieved Employees have suffered and continue
26 to suffer, substantial losses related to the use and enjoyment of such compensation,
27 wages, lost interest on such monies and expenses and attorney's fees in seeking to
28 compel Defendants to full perform their obligation under state law, all to their

1 respective damage in amounts according to proof at trial and within the jurisdictional
2 limitations of this Court.

3 ~~191,193.~~ Labor Code § 2699, *et seq.* imposes upon Defendants, and each of
4 them, a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
5 period for the initial violation and two hundred (\$200.00) for each aggrieved employee
6 per pay period for each subsequent violation in which DEFENDANT EMPLOYER
7 violated Labor Code §§ 201, 202, 203, and 204/204b. The exact amount of the
8 applicable penalty is all in an amount to be shown according to proof at trial.

9 ~~192,194.~~ Plaintiffs were deprived of their rightfully earned wages as a direct
10 and proximate result of Defendants' failure and refusal to pay said compensation and
11 for the reasons alleged in this Complaint.

12 ~~193,195.~~ Plaintiffs and Class Members request the unpaid wages, waiting
13 time penalties, interest, attorneys' fees, costs, damages, and other remedies in an
14 amount to be proven at trial.

15 **EIGHTH CAUSE OF ACTION**

16 **Representative Claim for PAGA Penalties**

17 **For Failure to Maintain and Provide Required Records in Violation of**
18 **California Labor Code §§ 226, 432, 1174, 1198.5, 2751, 2810.5,**
19 **and the Applicable Wage Order and/or § 1198**
20 **(Against all Defendants)**

21 ~~194,196.~~ Plaintiffs re-allege and incorporate by reference the foregoing
22 allegations as though set forth herein.

23 ~~195,197.~~ California Labor Code § 226, subdivision (b), requires employers
24 doing business in the State of California to "afford current and former employees the
25 right to inspect or copy records pertaining to their employment, upon a reasonable
26 request to the employer..." and subdivision (c), requires employers to produce such
27 records within "21 calendar days from the date of the request."

28 ~~196,198.~~ Plaintiff maintains the records requested fall within the meaning of

1 Labor Code § 226 because, among other reasons, the requested documents are
2 “records pertaining to [his] employment.”

3 ~~197,199.~~ California Labor Code § 432, subdivision (b), requires employers
4 doing business in the State of California to provide current, former employees, and
5 applicants copies of all written instruments they sign upon request.

6 ~~198,200.~~ Plaintiff maintains the records requested fall within the meaning of
7 Labor Code § 432 because some of the records requested constitute written
8 instruments the Plaintiff signed.

9 ~~199,201.~~ California Labor Code § 1198.5, *et seq.*, similarly provides current
10 and former employees the right to inspect their employee personnel records and
11 requires the employer to provide the employee access to such records no later than 30
12 calendar days from the date the employer receives a written request.

13 ~~200,202.~~ Plaintiff maintains the records requested fall within the meaning of
14 Labor Code § 1198.5, *et seq.* because they were part of and/or related to Plaintiff’s
15 personnel file within the meaning of Labor Code § 1198.5.

16 ~~201,203.~~ California Labor Code § 2751 requires employers who pay its
17 employees commissions (i.e., the named Plaintiff here and others) to have a written
18 agreement that describes how commissions are “computed and paid,” which
19 agreement must be signed by all applicable employees.

20 ~~202,204.~~ California Labor Code § 2810.5 requires employers to furnish
21 employees with written notice provided at the time of hire that complies with all
22 aspects of the statute, namely, providing the employee with written notice of their rate
23 of pay, the name of their employer, etc.

24 ~~203,205.~~ Section 7 of the typical Wage Order requires every employer to
25 maintain time and payroll records.

26 ~~204,206.~~ As alleged above, Defendants did not provide Plaintiff access to
27 Plaintiff’s employee personnel file and/or the records to which Plaintiff has the right
28 to obtain within the meaning of the foregoing statutes in violation of the

1 abovementioned statutes and/or Defendants did not comply with the abovementioned
2 statutes.

3 205-207. Further, Plaintiffs are informed and believe and based thereon
4 alleges that during all times relevant, Defendants failed to comply with § 7 of the
5 applicable IWC Orders and with Labor Code § 1174 by failing to maintain certain
6 records which employers are required to maintain, including but not limited to, an
7 accurate record indicating the number hours worked by the Plaintiffs, evidenced in
8 part by Defendants failure to provide the named Plaintiff's time records despite his
9 request.

10 206-208. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable
11 Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee
12 per pay period for the initial violation and two hundred (\$200.00) for each aggrieved
13 employee per pay period for each subsequent violation in which all culpable
14 Defendants violated the applicable Cal. Labor Code provisions alleged in this
15 Complaint, the exact amount of the applicable penalty is in an amount to be shown
16 according to proof at trial.

17 207-209. For the reasons alleged herein, Plaintiffs seek all remedies
18 available to them including but not limited to attorneys' fees, costs, interest, and
19 penalties pursuant to the PAGA, the Labor Code, and permissible by law in an
20 amount to be proven at trial.

21 **NINTH CAUSE OF ACTION**

22 **Individual Claims for**

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

25 (Against all Defendants)

26 208-210. Plaintiff BARNETT re-alleges and incorporates by reference the
27 foregoing allegations as though set forth herein.

28 209-211. Pursuant to California Civ. Code § 1786, *et seq.*, it is

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FIRST AMENDED COMPLAINT-Barnett, et al. v. QR Ins. Solutions, LLC, et al.

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

210,212. The ICRAA requires that, before procuring a consumer report on an individual for employment purposes, the employer must comply with all the following:

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

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

211,213. As described in detail above, Plaintiff ~~is informed and believes and based thereon~~ alleges that Defendants violated ~~Civ. Code § 1786.16 various provisions of the ICRAA because the disclosure form Defendant required Plaintiff to sign failed to comply with Civ. Code § 1786.16, et seq., Defendants failed to provide a copy of the report and consent form he requested, Defendants failed to provide the proper certifications to the consumer reporting agency that procured his report, among other reasons.~~

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1 212,214. With respect to each violation of the ICRAA provisions and
2 pursuant to Civ. Code § 1786.50(a)(1), Plaintiff seeks to recover statutory damages in
3 the amount of no less than \$10,000 due to Defendants' failure to comply with the
4 requirements imposed by Civ. Code § 1786, *et seq.*, all in an amount to be proven at
5 trial.

6 213,215. Plaintiff seeks recovery costs of suit with reasonable attorneys'
7 fees in an amount as the Court may allow.

8 **TENTH CAUSE OF ACTION**

9 **Individual and Class Claim for Remedies for Violations**
10 **of the California Unfair Business**
11 **Practices Code §§ 17200, *et seq.***

12 (Against all Defendants)

13 214,216. Plaintiffs re-allege and incorporate by reference the foregoing
14 allegations as though set forth herein.

15 215,217. Defendants, and each of them, are "persons" as defined under
16 Business and Professions Code § 17021.

17 216,218. Plaintiffs are informed and believe and based thereon allege that
18 Defendants committed the unfair business practices, as defined by Cal. Bus. & Prof.
19 Code § 17200, *et seq.*, by violating the laws alleged to have been violated in this
20 Complaint and which allegations are incorporated herein by reference and which
21 allegations include, but are not limited to:

- 22 a. Failing to provide the Class and Plaintiffs an accurate
- 23 itemized wage statement in violation of § 226 of the
- 24 Labor Code;
- 25 b. Failing to pay the Class and Plaintiffs all wages due and
- 26 owing including minimum/regular wages and overtime
- 27 compensation, minimum wages and overtime, and meal
- 28 and rest break premiums;

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

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

217-219. Defendants' conduct, as alleged above, constitutes unlawful, unfair, and fraudulent activity prohibited by Business and Professions Code §§ 17200, *et seq.*

218-220. The unlawful and unfair business practices conducted by Defendants, and each of them, are ongoing and present a threat and likelihood of continuing against Plaintiffs and, accordingly, Plaintiffs seek injunctive relief where appropriate.

219-221. Plaintiffs have suffered injury in fact and lost money or property because of the aforementioned unfair competition.

220-222. Because of their improper acts, Defendants, and each of them, have reaped and continue to reap unfair benefits and illegal profits at the expense of Plaintiffs and other employees and former employees of Defendants, and each of them.

221-223. Defendants, and each of them, should be enjoined from this activity and made to disgorge these ill-gotten gains and restore to Plaintiffs and the Class the wrongfully withheld wages and/or penalties, pursuant to Business and Professions Code §§ 17202 and/or 17203.

222-224. Plaintiffs and the Class have also incurred and continue to incur attorneys' fees and legal expenses in an amount according to proof at the time of trial and for which they seek compensation pursuant to law including but not limited to Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

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- 1 1. An order that this action may proceed and be maintained as a class
- 2 action;
- 3 2. For appointment of the named Plaintiffs as the representatives of the
- 4 Class;
- 5 3. For appointment of counsel for Plaintiffs as Class Counsel;
- 6 4. That the Court find that Defendants' violations as described above were
- 7 willful;
- 8 5. That the Court award to Plaintiffs and/or the Class and/or Aggrieved
- 9 Employees damages for the amount of unpaid wages subject to proof at trial;
- 10 6. For payment of all unpaid wages, including but not limited to state
- 11 minimum wages and overtime compensation to Plaintiffs and/or the Class and/or
- 12 Aggrieved Employees in an amount subject to proof at trial;
- 13 7. That Defendants, and each of them, be ordered and enjoined to pay
- 14 restitution to Plaintiffs and/or the Class and/or Aggrieved Employees pursuant to
- 15 Business and Professions Code §§ 17200-05;
- 16 8. That Defendants, and each of them, be required to issue to Plaintiffs
- 17 and/or the Class and/or Aggrieved Employees accurate wage and earning
- 18 statements;
- 19 9. For disgorgement through restitution of all ill-gotten and/or ill-gained
- 20 profits, including unpaid wages and/or penalties to Plaintiffs and/or the Class and/or
- 21 Aggrieved Employees, resulting from Defendants' unfair business practices pursuant
- 22 to Business and Professions Code §§ 17200-05;
- 23 10. For an order by the Court requiring Defendants, and each of them, to
- 24 show cause, if any they have, as to why to Plaintiffs and/or the Class and/or
- 25 Aggrieved Employees should not have been be issued itemized wage statements as
- 26 required by § 226 of the Labor Code and why Defendants should not be required to
- 27 pay Plaintiffs minimum wages and overtime compensation under applicable state law;
- 28 11. For damages in an amount to be proven at trial;

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

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

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

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

16. For special and general damages;

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

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

Dated: August 16, 2022

Law Office of
Thomas D. Rutledge

By: Thomas D. Rutledge
/s/Thomas D. Rutledge
Attorneys for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial of this matter.

Dated: August 16, 2022

Law Office of
Thomas D. Rutledge

By: *Thomas D. Rutledge* _____
/s/Thomas D. Rutledge
Attorney for the Plaintiffs

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](#).

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.

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 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 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 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 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.
- **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.

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. 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 1700 G Street N.W. Washington, DC 20552 b. Federal Trade Commission: Consumer Response Center -- FCRA Washington, DC 20580 (877) 382-4357
2. To the extent not included in item 1 above: a. National banks, federal savings associations, and federal branches and federal agencies of foreign banks 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 Customer Assistance Group 1301 McKinney Street, Suite 3450 Houston, TX 77010-9050 b. Federal Reserve Consumer Help Center P.O. Box. 1200 Minneapolis, MN 55480 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 Kansas City, MO 64106
c. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and insured state savings associations	d. National Credit Union Administration Office of Consumer Protection (OCP) Division of Consumer Compliance and Outreach (DCCO) 1775 Duke Street Alexandria, VA 22314
d. Federal Credit Unions	
3. Air carriers	Asst. General Counsel for Aviation Enforcement & Proceedings Aviation Consumer Protection Division Department of Transportation 1200 New Jersey Avenue, S.E. Washington, DC 20423
4. Creditors Subject to Surface Transportation Board	Office of Proceedings, Surface Transportation Board Department of Transportation 395 E Street, S.W. 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 United States Small Business Administration 409 Third Street, S.W., 8th Floor Washington, DC 20549
7. Brokers and Dealers	Securities and Exchange Commission 100 F St N.E. Washington, DC 20549
8. Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations	Farm Credit Administration 1501 Farm Credit Drive 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 Washington, DC 20580 (877) 382-4357

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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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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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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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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