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on behalf of himself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

TONY NUNLEY, an individual and on behalf
of all others similarly situated,

Plaintiff,

v.

CARDINAL LOGISTICS MANAGEMENT
CORPORATION, a North Carolina
corporation; ROBERT SHEERIN, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: CIVSB2210430

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. VIOLATION OF THE FAIR CREDIT
REPORTING ACT;
2. VIOLATION OF THE CALIFORNIA
INVESTIGATIVE CONSUMER
REPORTING AGENCIES ACT; and
3. VIOLATION OF THE CONSUMER
CREDIT REPORTING AGENCIES ACT.
4. VIOLATION OF LABOR CODE § 432.7;
5. CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL ACT
(2004) FOR VIOLATIONS OF LABOR CODE
SECTIONS 210, 226.3, 558, 1174.5, 1197.1,
AND 2699, *et seq.*

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000]

1 Plaintiff Tony Nunley, on behalf of himself and all others similarly situated and aggrieved,
2 alleges as follows:

3 **GENERAL ALLEGATIONS**

4 **INTRODUCTION**

5 1. This class action arises in part from Defendant Cardinal Logistics Management
6 Corporation's practice of forcing job applicants to answer questions related to criminal
7 convictions, including convictions that has been judicially dismissed or ordered sealed pursuant to
8 law, and otherwise seeking conviction history information in violation of California law and
9 public policy, then unlawfully considering such information in making hiring decisions. The State
10 of California has prohibited similar conduct in furtherance of reducing barriers to employment for
11 people who have previously offended, and decreasing unemployment in communities with
12 concentrated numbers of people who have previously offended. The laws Cardinal has violated
13 are related to measures aimed at increasing employment opportunities, reducing recidivism, and
14 improving economic stability in our communities.

15 2. This is also a class action pursuant to Code of Civil Procedure section 382 against
16 Cardinal Logistics Management Corporation, a North Carolina corporation, and any of its
17 respective subsidiaries or affiliated companies ("Cardinal"), and Robert Sheerin ("Sheerin" and
18 collectively with DOES 1 through 100, as further defined below, "Defendants") on behalf of
19 Plaintiff and all other current, former, or prospective employees of Defendants ("Class Members")
20 for, among other things, alleged violations of the Fair Credit Reporting Act ("FCRA"), the
21 Investigative Consumer Reporting Agencies Act ("ICRAA"), the Consumer Credit Reporting
22 Agencies Act ("CCRAA"), Labor Code section 432.7, and similar California laws.

23 3. This is further a representative action brought pursuant to the Private Attorneys
24 General Act of 2004, codified at California Labor Code section 2698, *et seq.* ("PAGA"), against
25 Defendants, as a proxy of the Labor and Workforce Development Agency of the State of
26 California ("LWDA"), on behalf of Plaintiff and all other current and former non-exempt
27 employees of Defendants working within the Civil Penalty Period, as further defined herein, and
28 against whom one or more violations of any provision, as set forth in this Complaint (collectively,

1 “Aggrieved Employees”). The monetary damages and penalties, sought by Plaintiff, exceed the
2 minimum jurisdiction limits of the Superior Court and will be established according to proof at
3 trial.

4 **PARTIES**

5 **A. Plaintiff**

6 4. Plaintiff is a resident of the State of California. At all relevant times herein,
7 Plaintiff is informed and believes, and based thereon alleges, that Defendants employed Plaintiff
8 with duties that included, but were not limited to, driving and delivering appliances. Plaintiff
9 applied for work with Defendants in or around February of 2021 and stopped working for
10 Defendants in or around October of 2021. At all relevant times herein, Plaintiff is informed and
11 believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee
12 with duties that included, but were not limited to, driving within California.

13 5. Plaintiff is a natural person, and at all times relevant to this Complaint was a
14 “consumer” as defined by the Fair Credit Reporting Act, at 15 U.S.C. § 1681a, the ICRAA, at Civ.
15 Code § 1786.2(b) and the CCRAA at Civ. Code § 1785.3(b).

16 **B. Defendants**

17 6. Plaintiff is informed and believes, and based thereon alleges, that Cardinal is, and
18 at all times relevant hereto was, a corporation organized and existing under and by virtue of the
19 laws of the State of North Carolina and doing business in the County of San Bernardino, State of
20 California. Plaintiff is further informed and believes and based thereon alleges that Cardinal
21 provided Plaintiff with a purported background check disclosure and authorization forms and/or
22 requested, among other things, Plaintiff and other Class Members’ consumer reports.

23 7. Plaintiff is informed and believes and based thereon alleges that defendant Sheerin
24 is, and at all times relevant hereto was, an individual residing in California, as well as an
25 Operations Manager for Cardinal, and DOES 1 through 100, as further defined below

26 8. Plaintiff is informed and believes Defendants are “persons” as those terms are
27 defined under the FCRA at 15 U.S.C. § 1681a(b), under the ICRAA at Civ. Code § 1786.2(a) and
28 under the CCRAA at Civ. Code § 1785.3(j).

9. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall include Cardinal and any of their parent, subsidiary, or affiliated companies within the State of California, as well as Sheerin and DOES 1 through 100 identified herein.

JOINT LIABILITY ALLEGATIONS

10. All of the acts and conduct described herein of each and every corporate defendant was duly authorized, ordered, and directed by the respective and collective defendant corporate employers, and the officers and management-level employees of said corporate employers. In addition thereto, said corporate employers participated in the aforementioned acts and conduct of their said employees, agents, and representatives, and each of them; and upon completion of the aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded, acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the aforementioned corporate employees, agents and representatives.

11. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, each of the defendants was the agent, principal, employee, employer, representative, joint venture or co-conspirator of each of the other defendants, either actually or ostensibly, and in doing the things alleged herein acted within the course and scope of such

1 agency, employment, joint venture, and conspiracy.

2 12. Plaintiff is informed and believes that Defendants' policies regarding the
3 disclosures, authorizations, background checks, and consumer reports mentioned herein were done
4 for the benefit of all Defendants, and at times, expressly named such Defendants in said
5 disclosures, authorizations, background checks, and consumer reports. As a result of the
6 aforementioned facts, Plaintiff is informed and believes, and based thereon alleges, that
7 Defendants, and each of them, are jointly liable for the violations that form the basis of this
8 complaint.

9 13. As a result of the aforementioned facts, Plaintiff is informed and believes, and
10 based thereon alleges, that Defendants, and each of them, are joint employers.

11 **JURISDICTION AND VENUE**

12 14. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
13 of Civil Procedure section 410.10 and the California Constitution, Article VI, section 10.

14 15. This Court has jurisdiction over all Defendants because Defendants are either
15 citizens of California, have sufficient minimum contacts in California, or otherwise intentionally
16 avail themselves of the California market so as to render the exercise of jurisdiction over them by
17 the California courts consistent with traditional notions of fair play and substantial justice. There is
18 no basis for federal diversity jurisdiction in this action given that the State of California, as the real
19 party in interest in this action, is not a "citizen" for purposes of satisfying diversity jurisdiction.
20 Urbino v. Orkin Servs. of Cal., 726 F.3d 1118, 1123 (9th Cir. Cal. 2013).

21 16. Venue is proper in San Bernardino County, California pursuant to Code of Civil
22 Procedure section 410.10. On information and belief, Defendants or some of them reside in San
23 Bernardino County. Defendant Cardinal Logistics Management Corporation is, and at all times
24 mentioned in this complaint has been, a North Carolina corporation, authorized to do business in
25 California, with no designated principal place of business in California identified in its statement
26 filed with the Secretary of State.

27 17. Venue is proper in San Bernardino County, California pursuant to Code of Civil
28 Procedure sections 392, et seq. because, among other things, San Bernardino County is where the

1 causes of action complained of herein arose; the county in which the employment relationship
2 began; the county in which performance of the employment contract, or part of it, between
3 Plaintiff and Defendants was due to be performed; the county in which the employment contract,
4 or part of it, between Plaintiff and Defendants was actually performed; the unlawful acts alleged
5 herein have a direct effect on Plaintiff and those similarly situated within the county and the State
6 of California, and because Defendants employ numerous Class Members in San Bernardino
7 County and the State of California.

8 18. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
9 Defendants during the applicable statutory period and suffered one or more of the Labor Code
10 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term
11 “civil penalty” is defined under ZB N.A. v. Superior Court (2019) 8 Cal.5th 175, under the Labor
12 Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, et seq.
13 (“PAGA”) plus reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current
14 and former employees of Defendants during the Civil Penalty Period.

15 19. Specifically, Plaintiff seeks to recover PAGA civil penalties through a
16 representative action permitted by PAGA and the California Supreme Court in, among other
17 authorities, Arias v. Superior Court (2009) 46 Cal.4th 969. According to the same authorities,
18 class certification of the PAGA allegations described herein is not required.

19 20. During the period beginning one (1) year preceding the provision of notice to the
20 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
21 Defendants violated, inter alia, Labor Code sections 432.7 and 432.8, among others.

22 21. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
23 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees
24 within the statutory period, to bring a civil action to recover civil penalties pursuant to the
25 procedures specified in Labor Code section 2699.3.

26 22. On or around May 11, 2022, Plaintiff provided written notice pursuant to Labor
27 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
28 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,

1 as well as by certified mail, with return receipt requested to Defendants, and each of them.

2 23. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
3 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
4 calendar days of the May 11, 2022 postmarked date of the herein-described notice sent by Plaintiff
5 to the LWDA and Defendants.

6 **FACTUAL BACKGROUND**

7 24. Plaintiff is informed and believes, and based thereon alleges, that without
8 limitation, in or about January of 2021 Defendants purported to provide consumer report
9 disclosures and requested from Plaintiff authorization(s) to procure consumer reports and
10 background checks for purposes of employment.

11 25. Plaintiff is informed and believes, and based thereon alleges, that without
12 limitation, in approximately July of 2019 and again in or about February of 2020, Defendants
13 procured a consumer report about Plaintiff as part of an employment background screening
14 without providing Plaintiff with the proper disclosures and without proper authorization in
15 compliance with the law.

16 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants did
17 not provide legally compliant disclosure and authorization forms to Plaintiff and Class Members
18 as they contained, without limitation, a "clear and conspicuous" disclosure, in a document that
19 consists solely of the disclosure, that "clearly and accurately" disclosed that a consumer report
20 may be obtained for employment purposes; that was authorized in writing the procurement of the
21 report, in violation of 15 U.S.C. §§ 1681b(b)(2)(A) and 1681d(a). Specifically, Plaintiff is
22 informed and believes the disclosures did not comply as a result of, without limitation: including
23 superfluous information within the disclosure, such as, among other things, identifying
24 information of a third party consumer reporting agency, which was not the reporting agency used
25 to obtain or procure the consumer report for Plaintiff and Class Members, and extraneous
26 information relating to various state disclosure requirements; burying the disclosures with small
27 font in a lengthy employment package with dense text that contains extraneous information;
28 failing to obtain proper authorization before procuring a consumer report, including by either

1 obtaining consumer reports without authorization or when such authorization had expired;
2 including a liability waiver in the same document as the disclosure before procuring a consumer
3 report; including a purported authorization for third parties to release information about Plaintiff
4 and other Class Members to Defendant, that is different from an authorization for the Defendant to
5 procure a consumer report; and by failing to provide, before a consumer report was obtained, a
6 summary of Plaintiff and Class Members' rights under 15 U.S.C. § 1681m(a)(3), among other
7 things.

8 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants did
9 not provide legally compliant disclosure and authorization forms to Plaintiff and Class Members
10 as a result of, without limitation, Defendants failing to make a "clear and conspicuous" disclosure
11 in writing to Plaintiff and Class Members at any time before the report is or was procured or
12 caused to be made in a document that consists solely of the disclosure, that: identified the name,
13 address, and telephone number of the investigative consumer reporting agency conducting the
14 investigation in violation of Civ. Code § 1786.16; notified Plaintiff and Class Members in writing
15 of the nature and scope of the investigation requested, including a summary of the provisions of
16 Civ. Code § 1786.22; and notified Plaintiff and Class Members of the internet web site of the
17 investigative consumer reporting agency, or, if the agency had no internet web site address, the
18 telephone number of the agency where Plaintiff and Class Members may find information about
19 the investigative reporting agency's privacy practices, including whether Plaintiff and Class
20 Member's personal information will be sent outside of the United States or its territories and
21 information that complies with subdivision (d) of Section 1786.22, among other things.

22 28. Plaintiff is further informed and believes, and based thereon alleges, that
23 Defendants routinely acquire consumer, investigative and/or consumer credit reports (referred to
24 collectively as "background checks") to conduct background checks as described herein on
25 Plaintiff and other prospective, current and former employees and use information from the
26 background checks without providing proper disclosures and obtaining proper authorization in
27 compliance with the law, including Civil Code § 1785.1, *et seq.* (the "Consumer Credit Reporting
28 Agencies Act" or the "CCRAA").

1 29. Plaintiff is further informed and believes, and based thereon alleges, for at least
2 three (3) years prior to the filing of this Action and continuing to the present, Defendants have had
3 a consistent policy or practice of requiring job applicants and employees to disclose their
4 conviction history without regard to whether the conviction was judicially dismissed or ordered
5 sealed pursuant to law; seeking or utilizing, as a factor in determining conditions of employment
6 convictions that have been judicially dismissed or ordered sealed pursuant to law; considering,
7 distributing, or disseminating information about arrests not followed by conviction, referrals to or
8 participation in a pretrial or posttrial diversion program, convictions that have been sealed,
9 dismissed, expunged, or statutorily eradicated pursuant to law, or any conviction for which the
10 convicted person has received a full pardon or has been issued a certificate of rehabilitation, while
11 conducting conviction history background checks in connection with any applications for
12 employment; intending to deny an applicant a position of employment solely or in part because of
13 the applicant's conviction history without regard to whether the conviction was judicially
14 dismissed or ordered sealed pursuant to law; and asking applicants for employment to disclose,
15 through any written form or verbally, information concerning or related to an arrest, detention,
16 processing, diversion, supervision, adjudication, or court disposition that occurred while the
17 person was subject to the process and jurisdiction of the juvenile court, to the detriment of Plaintiff
18 and Class Members. Defendants would also be liable for civil penalties pursuant to Labor Code
19 section 2698, *et seq.*

20 30. Plaintiff, on behalf of himself and all other similarly situated employees, bring this
21 Action pursuant to, including but not limited to, Labor Code sections 432.7 and 432.8 seeking,
22 *inter alia*, actual damages, treble actual damages, penalties, and reasonable attorneys' fees and
23 costs.

24 31. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor
25 Code section 2698, *et seq.* for the herein-described acts, which violate the California Labor Code
26 as described above, including on behalf of Plaintiff and other Aggrieved Employees pursuant to
27 PAGA.

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CLASS ACTION ALLEGATIONS

32. Plaintiff brings this action on behalf of Plaintiff and all others similarly situated, as a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current, former, and prospective employees of Defendants who applied for a job with Defendants and a background check was performed beginning five (5) years preceding the filing of Plaintiff’s complaint up until the date that final judgment is entered in this action (collectively referred to as “Background Check Class Members”).

33. Pursuant to Code of Civil Procedure section 382, Plaintiff also seeks to represent a class of all current, former, and prospective employees of Defendants who applied for a job with Defendants beginning three (3) years preceding the filing of Plaintiff’s complaint up until the date that final judgment is entered in this action (collectively referred to as “BTB Class Members”).

34. The Background Check Members and BTB Class Members are referred to herein collectively as the “Class Members.” Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b) to amend or modify the class descriptions with greater specificity or further division into subclasses or limitation to particular issues.

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

A. Numerosity

36. The potential Class Members as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined yet, Plaintiff is informed and believes that there are at least seventy-five (75) Class Members within the State of California alone.

37. Accounting for employee turnover during the relevant periods necessarily increases this number substantially. Plaintiff alleges Defendants’ employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

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1 **B. Commonality**

2 38. There are questions of law and fact common to Class Members. These common
3 questions include, but are not limited to:

- 4 (a) Whether Defendants failed to comply with the requirements of the FCRA
5 under 15 U.S.C. § 1681, *et seq.*, including by failing to include the proper
6 disclosures and proper authorizations required by law?
- 7 (b) Whether Defendants failed to comply with the requirements of the ICRAA
8 under California Civil Code section 1786, *et seq.*, including by failing to
9 include the proper disclosures and proper authorizations required by law?
- 10 (c) Whether Defendants failed to comply with the requirements of the
11 Consumer Credit Reporting Agencies Act under California Civil Code
12 section 1785.1, *et seq.*, including by failing to include the proper disclosures
13 and proper authorizations required by law?
- 14 (d) Whether Defendants willfully failed to comply with the FCRA?
- 15 (e) Did Defendants violate Labor Code sections 432.7 and 432.8 by asking
16 Class Members to disclose information concerning an arrest or detention
17 that did not result in conviction, prior to an offer of employment?
- 18 (f) Did Defendants violate Labor Code sections 432.7 and 432.8 by asking
19 Class Members to disclose information concerning a referral to, and
20 participation in, any pretrial or posttrial diversion program, prior to an offer
21 of employment?
- 22 (g) Did Defendants violate Labor Code sections 432.7 and 432.8 by asking
23 Class Members to disclose information concerning a conviction that has
24 been judicially dismissed or ordered sealed pursuant to law, prior to an offer
25 of employment?
- 26 (h) Did Defendants violate Labor Code sections 432.7 and 432.8 by seeking or
27 utilizing as a factor in determining any condition of employment any record
28 of arrest or detention that did not result in a conviction?

- 1 (i) Did Defendants violate Labor Code sections 432.7 and 432.8 by seeking or
2 utilizing as a factor in determining any condition of employment any record
3 regarding a referral to, and participation in, any pretrial or posttrial
4 diversion program?
- 5 (j) Did Defendants violate Labor Code sections 432.7 and 432.8 by seeking or
6 utilizing as a factor in determining any condition of employment any record
7 concerning a conviction that has been judicially dismissed or ordered sealed
8 pursuant to law?
- 9 (k) Did Defendants violate Labor Code sections 432.7 and 432.8 by asking
10 Class Members to disclose information concerning or related to an arrest,
11 detention, processing, diversion, supervision, adjudication, or court
12 disposition that occurred while the person was subject to the process and
13 jurisdiction of the juvenile court?
- 14 (l) Did Defendants violate Labor Code sections 432.7 and 432.8 by seeking or
15 utilizing as a factor in determining any condition of employment any record
16 concerning or related to an arrest, detention, processing, diversion,
17 supervision, adjudication, or court disposition that occurred while a person
18 was subject to the process and jurisdiction of the juvenile court?
- 19 (m) Did Defendants intentionally violate Labor Code sections 432.7 and/or
20 432.8?
- 21 (n) Are Class Members entitled to attorneys' fees?
- 22 (o) Are Class Members entitled to costs?
- 23 (p) Are Class Members entitled to interest?

24 **C. Typicality**

25 39. The claims of Plaintiff herein alleged are typical of those claims which could be
26 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
27 by each Class Member in separate actions. Plaintiff is informed and believes and thereupon alleges
28 that Defendants had and/or have a policy or practice which resulted in Defendants failing to

1 comply with the FCRA, ICRAA, the Consumer Credit Reporting Agencies Act, and others, as
2 alleged herein.

3 40. Further, Plaintiff is informed and believes and thereupon alleges that Plaintiff and
4 Class Members sustained injuries and damages arising out of and caused by Defendants' common
5 course of conduct in violation of laws and regulations that have the force and effect of law and
6 statutes as alleged herein.

7 **D. Adequacy of Representation**

8 41. Plaintiff will fairly and adequately represent and protect the interest of Class
9 Members. Counsel who represents Plaintiff is competent and experienced in litigating class
10 actions and has no interests adverse to, or otherwise conflict with, the interests of the absent Class
11 Members.

12 **E. Superiority of Class Action**

13 42. A class action is superior to other available means for the fair and efficient
14 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
15 questions of law and fact common to Class Members predominate over any questions affecting
16 only individual Class Members. Class Members, as further described therein, have been subjected
17 to Defendants' illegal policy and/or practices as a result of Defendants' alleged improper
18 disclosures and authorizations.

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

23 **FIRST CAUSE OF ACTION**

24 **(Violation of the Fair Credit Reporting Act – Against All Defendants)**

25 44. Plaintiff realleges and incorporates by reference all of the allegations contained in
26 the preceding paragraphs of this Complaint as though fully set forth hereat.

27 45. Defendants are "persons" as defined by section 1681a(b) of the FCRA;

28 46. Plaintiff and Background Check Class Members are "consumers" within the

1 meaning of Section 1681a(c) of the FCRA because they are “individuals.”

2 47. Pursuant to 15 U.S.C. section 1681b(b)(2)(A), an employer may not procure, or
3 cause to be procured, consumer reports for employment purposes without providing the
4 [employee] with “a clear and conspicuous disclosure... made in writing... in a document that
5 consists solely of the disclosure that a consumer report may be obtained for employment
6 purposes” and which the consumer has “authorized in writing” the procurement of the report by
7 that person.

8 48. 15 U.S.C. section 1681d(a)(1)(B) further provides that an employer may not
9 procure or cause to be prepared an investigative consumer report on any consumer unless it is
10 “clearly and accurately disclosed to the [employee] that an investigative consumer report... may
11 be made and such disclosure includes a statement informing the consumer of his right to request
12 the additional disclosures provided for under subsection (b) of this section and the written
13 summary of the rights of the consumer prepared pursuant to section 1681g(c) of this title.”

14 49. Plaintiff is informed and believes, and based thereon alleges, that during the
15 relevant time periods alleged herein, Defendants have, at times, obtained and used information in
16 consumer reports to conduct background checks on prospective and existing employees which
17 failed to comply with the requirements under the FCRA because they, among other things,
18 included superfluous information within the disclosure, such as, without limitation, identifying
19 information of a third party consumer reporting agency, which was not the reporting agency used
20 to obtain or procure the consumer report for Plaintiff and Background Check Class Members, and
21 extraneous information relating to various state disclosure requirements; buried the disclosures
22 with small font in a lengthy employment package with dense text that contains extraneous
23 information; failed to obtain proper authorization before procuring a consumer report, including
24 by either obtaining consumer reports without authorization or when such authorization had
25 expired; included a liability waiver in the same document as the disclosure before procuring a
26 consumer report; including a purported authorization for third parties to release information about
27 Plaintiff and other Background Check Class Members to Defendant, that is different from an
28 authorization for the Defendant to procure a consumer report; and by failing to, before a consumer

1 report was obtained, include a summary of Plaintiff and Background Check Class Members' rights
2 under 15 U.S.C. § 1681m(a)(3), among other things.

3 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
4 violations of the FCRA were willful. Defendant knew or should have known about its obligations
5 under the FCRA as a result of the plain language of the statutes.

6 51. Plaintiff, on behalf of Plaintiff and Background Check Class Members, without
7 limitation, seek some of the statutory remedies available under the FCRA.

8 **SECOND CAUSE OF ACTION**

9 **(Viol. of the Cal. Investigative Consumer Reporting Agencies Act – Against All Defendants)**

10 52. Plaintiff realleges and incorporates by reference all of the allegations contained in
11 the preceding paragraphs as though fully set forth hereat.

12 53. At all relevant times, Plaintiff and Background Check Class Members were current,
13 former, and prospective employees of Defendants covered by the California Investigative
14 Consumer Reporting Agencies Act, California Civil Code section 1786 *et seq.* ("ICRAA").

15 54. Plaintiff is informed and believes that Plaintiff and Background Check Class
16 Members are "consumers" within the meaning Section 1786.2(b) of the ICRAA, because they are
17 "individuals."

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

21 56. Plaintiff is informed and believes that Defendants obtained background checks
22 from Plaintiff and Background Check Class Members, which qualify as an "investigative
23 consumer report" under the ICRAA.

24 57. Section 1786.16(a)(2) of the ICRAA provides, in relevant part, that "[i]f, at any
25 time, an investigative consumer report is sought for employment purposes... the person seeking
26 the investigative consumer report may procure the report, or cause the report to be made, only if
27 all of the following apply:

28 "(A) The person procuring or causing the report to be made has a permissible

1 purpose, as defined in Section 1786.12.

2 (B) The person procuring or causing the report to be made provides a clear and
3 conspicuous disclosure in writing to the consumer at any time before the report is
4 procured or caused to be made in a document that consists solely of the
5 disclosure...” that, among other things, an investigative report may be obtained;
6 identifies the name, address, and telephone number of the investigative consumer
7 reporting agency conducting the investigation; notifies the consumer in writing of
8 the nature of the scope of the investigation, including a summary of the provision
9 of section 1786.22; and notifies the consumer of the internet website address of
10 the investigative consumer reporting agency or the address, the telephone number
11 of the agency, where the consumer may find information about the investigative
12 reporting agency’s privacy practices, including whether the consumer’s personal
13 information will be sent outside of the United States or its territories and
14 information that complies with subdivision (d) of section 1786.20.

15 (C) The consumer has authorized in writing the procurement of the report.

16 58. Plaintiff is informed and believes and based thereon alleges that the plain language
17 of the statute indicates that the inclusion of extraneous information in a disclosure form violates
18 the disclosure and authorization requirements of the ICRAA, because such a form would not
19 consist “solely” of the disclosure and that the notice provided be “clear and conspicuous.”
20 Additionally, section 1786.16 requires that the consumer authorize in writing the procurement of
21 the report.

22 59. Plaintiff is informed and believes that during the relevant time periods alleged
23 herein, Defendants have, at times, failed to make a “clear and conspicuous” disclosure in writing
24 to Plaintiff and Background Check Class Members at any time before the report is or was
25 procured or caused to be made in a document that consists solely of the disclosure, that: identified
26 the name, address, and telephone number of the investigative consumer reporting agency
27 conducting the investigation; notified Plaintiff and Background Check Class Members in writing
28 of the nature and scope of the investigation requested, including a summary of the provisions of
Civ. Code § 1786.22; and notified Plaintiff and Background Check Class Members of the internet
web site of the investigative consumer reporting agency, or, if the agency had no internet web site
address, the telephone number of the agency where Plaintiff and Background Check Class
Members may find information about the investigative reporting agency’s privacy practices,
including whether Plaintiff and Class Member’s personal information will be sent outside of the

1 United States or its territories and information that complies with subdivision (d) of Section
2 1786.22, among other things.

3 60. Plaintiff is informed and believes that as a result of the above, Defendants have, at
4 times, willfully violated the strict disclosure and authorization requirements under the California
5 Investigative Consumer Reporting Agencies Act, California Civil Code section 1786, *et seq.*
6 (“ICRAA”).

7 61. As a result of Defendants’ unlawful procurement of background reports by way of
8 its inadequate disclosures and authorizations, as set forth above, Plaintiff and Background Check
9 Class Members have been deprived of their consumer rights and prevented from making informed
10 decisions about whether to permit Defendants to obtain their personal information.

11 62. Plaintiff is informed and believes that as a result of the above, Defendants have, at
12 times, willfully violated the strict disclosure and authorization requirements under the ICRAA.

13 63. Plaintiff is informed and believes Defendants’ conduct in violation of Section 1786,
14 *et seq.* of the ICRAA was and is willful and/or grossly negligent. Defendants acted in deliberate
15 or reckless disregard of their obligations and the rights of applicants and employees, including
16 Plaintiff and Background Check Class Members.

17 64. Plaintiff, on behalf of Plaintiff and Background Check Class Members, among
18 other things, seek some of the available remedies pursuant to, without limitation, California Civil
19 Code section 1786.50.

20 **THIRD CAUSE OF ACTION**

21 **(Violation of the Consumer Credit Reporting Agencies Act – Against All Defendants)**

22 65. Plaintiff realleges and incorporates by reference all of the allegations contained in
23 the preceding paragraphs as though fully set forth hereat.

24 66. At all relevant times, Plaintiff and Background Check Class Members were
25 employees or former employees of Defendants covered by the Consumer Credit Reporting
26 Agencies Act, California Civil Code section 1785.1, *et seq.* (“CCRAA”).

27 67. Section 1785.3(c) of the ICRAA defines “consumer credit report” as “[a]ny written,
28 oral, or other communication or any information by a consumer credit reporting agency bearing on

1 a consumer's credit worthiness, credit standing, or credit capacity, which is used or is expected to
2 be used, or collected in whole or in part, for the purpose of serving as a factor in establishing the
3 consumer's eligibility for: ... (2) employment purposes...”

4 68. Plaintiff is informed and believes that the employment background checks procured
5 by Defendants on behalf of Plaintiff and Background Check Class Members qualify as consumer
6 credit reports under the CCRAA.

7 69. Section 1785.20.5(a) of the CCRAA provides, in relevant part, that “[p]rior to
8 requesting a consumer credit report for employment purposes, the user of the report shall provide
9 written notice to the person involved. The notice shall inform the person that a report will be
10 used, and shall identify the specific basis under subdivision (a) of Section 1024.5 of the Labor
11 Code for use of the report. The notice shall also inform the person of the source of the report...”

12 70. Plaintiff is informed and believes and based thereon alleges that for the relevant
13 time periods described herein, Defendants have, at times, obtained and used information in
14 consumer reports to conduct background checks on prospective and existing employees without
15 providing proper notice informing Plaintiff and Background Check Class Members of the source
16 of the reports and without supplying the name and address of the consumer credit reporting agency
17 making the report, as required by California Civil Code section 1785.20.5(b), among other things.

18 71. Plaintiff is informed and believes that as a result of the above, Defendants have, at
19 times, willfully violated the strict disclosure and authorization requirements under the CCRAA.

20 72. Plaintiff is informed and believes Defendants’ conduct in violation of Section
21 1785.1, *et seq.* of the CCRAA was and is willful and/or grossly negligent. Defendants acted in
22 deliberate or reckless disregard of their obligations and the rights of applicants and employees,
23 including Plaintiff and Background Check Class Members.

24 73. Plaintiff, on behalf of Plaintiff and Background Check Class Members, without
25 limitation, seek some of the available remedies pursuant to, without limitation, California Civil
26 Code section 1785.31.

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1 **FOURTH CAUSE OF ACTION**

2 **(Violation of Labor Code § 432.7 – Against All Defendants)**

3 69. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
4 and incorporates each by reference as though fully set forth hereat

5 70. At all relevant times, Plaintiff and BTB Class Members were employees of
6 Defendants covered by Labor Code sections 432.7 and 432.8.

7 71. At all times mentioned herein, California Labor Code sections 432.7, subdivision
8 (a)(1) has stated prospective employers “shall not ask an applicant for employment to disclose ...
9 information concerning an arrest or detention that did not result in conviction, or information
10 concerning a referral to, and participation in, any pretrial or posttrial diversion program, or
11 concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law....”

12 72. At all times mentioned herein, California Labor Code sections 432.7, subdivision
13 (a)(2) has stated prospective employers “shall not ask an applicant for employment to disclose,
14 through any written form or verbally, information concerning or related to an arrest, detention,
15 processing, diversion, supervision, adjudication, or court disposition that occurred while the
16 person was subject to the process and jurisdiction of the juvenile court. An employer also shall not
17 seek from any source whatsoever, or utilize, as a factor in determining any condition of
18 employment including hiring, promotion, termination, or any apprenticeship training program or
19 any other training program leading to employment, any record concerning or related to an arrest,
20 detention, processing, diversion, supervision, adjudication, or court disposition that occurred while
21 a person was subject to the process and jurisdiction of the juvenile court.”

22 73. At all relevant times, Plaintiff is informed and believes and thereon alleges that
23 Defendants had and have a practice or policy of requiring job applicants and employees to disclose
24 their conviction history without regard to whether the conviction was judicially dismissed or
25 ordered sealed pursuant to law; seeking or utilizing, as a factor in determining conditions of
26 employment convictions that have been judicially dismissed or ordered sealed pursuant to law;
27 considering, distributing, or disseminating information about arrests not followed by conviction,
28 referrals to or participation in a pretrial or posttrial diversion program, convictions that have been

1 sealed, dismissed, expunged, or statutorily eradicated pursuant to law, or any conviction for which
2 the convicted person has received a full pardon or has been issued a certificate of rehabilitation,
3 while conducting conviction history background checks in connection with any applications for
4 employment; intending to deny an applicant a position of employment solely or in part because of
5 the applicant's conviction history without regard to whether the conviction was judicially
6 dismissed or ordered sealed pursuant to law; and asking applicants for employment to disclose,
7 through any written form or verbally, information concerning or related to an arrest, detention,
8 processing, diversion, supervision, adjudication, or court disposition that occurred while the
9 person was subject to the process and jurisdiction of the juvenile court, to the detriment of Plaintiff
10 and Class Members.

11 74. Pursuant to Labor Code section 432.7, subdivision (c), any person who violates this
12 section may be subject to "actual damages or two hundred dollars (\$200), whichever is greater,
13 plus costs, and reasonable attorney's fees. An intentional of violation of this section shall entitle
14 the applicant to treble actual damages, or five hundred dollars (\$500), whichever is greater, plus
15 costs, and reasonable attorney's fees...."

16 75. As a direct and proximate result of the herein-described Labor Code violations,
17 Plaintiff and other aggrieved employees are entitled to recover attorney's fees, actual damages,
18 treble actual damages, and penalties from Defendants pursuant to Labor Code sections 432.7 and
19 432.8.

20 **FIFTH CAUSE OF ACTION**

21 **(Civil Penalties Under the Private Attorneys' General Act (2004) – Against All Defendants)**

22 76. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
23 and incorporates each by reference as though fully set forth hereat.

24 77. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
25 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
26 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
27 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
28 action brought by an aggrieved employee on behalf of himself or herself and other current or

1 former employees pursuant to the procedures specified in Labor Code section 2699.3.

2 78. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the
3 Labor Code except those for which a civil penalty is specifically provided, the established civil
4 penalty for a violation of those provisions is as follows: if, at the time of the alleged violation, the
5 person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
6 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
7 each aggrieved employee per pay period for each subsequent violation.

8 79. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
9 each of them, violated the Labor Code sections described herein, including, without limitation, for
10 requiring job applicants and employees to disclose their conviction history without regard to
11 whether the conviction was judicially dismissed or ordered sealed pursuant to law; seeking or
12 utilizing, as a factor in determining conditions of employment convictions that have been
13 judicially dismissed or ordered sealed pursuant to law; considering, distributing, or disseminating
14 information about arrests not followed by conviction, referrals to or participation in a pretrial or
15 posttrial diversion program, convictions that have been sealed, dismissed, expunged, or statutorily
16 eradicated pursuant to law, or any conviction for which the convicted person has received a full
17 pardon or has been issued a certificate of rehabilitation, while conducting conviction history
18 background checks in connection with any applications for employment; intending to deny an
19 applicant a position of employment solely or in part because of the applicant's conviction history
20 without regard to whether the conviction was judicially dismissed or ordered sealed pursuant to
21 law; and asking applicants for employment to disclose, through any written form or verbally,
22 information concerning or related to an arrest, detention, processing, diversion, supervision,
23 adjudication, or court disposition that occurred while the person was subject to the process and
24 jurisdiction of the juvenile court.

25 80. Moreover, Plaintiff and other Aggrieved Employees within the State of California
26 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
27 connection with their herein-described claims for civil penalties.

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ATTORNEY’S FEES AND COSTS

81. Plaintiff is entitled to fees and costs, pursuant to California law, including Labor Code §§ 432.7 subdivision (c), and 2699, among others. Further, enforcement of statutory provisions enacted to protect workers and to ensure prompt payment of wages due employees is a fundamental public interest in California. Consequently, Plaintiff’s success in this action will result in the enforcement of important rights affecting the public interest and will confer a significant benefit upon the public.

DEMAND FOR JURY TRIAL

82. Plaintiff demands a trial by jury on all causes of action contained herein.

PRAYER

WHEREFORE, on behalf of Plaintiff and all others similarly situated, Plaintiff prays for judgment against Defendants as follows:

- A. An order certifying this case as a Class Action;
- B. An Order appointing Plaintiff as Class representative and appointing Plaintiff’s counsel as Class Counsel;
- C. For punitive damages;
- D. For statutory penalties in accordance with FCRA, ICRAA, and CCRAA;
- E. For payment of penalties in accordance with California law;
- F. For penalties pursuant to Labor Code sections 432.7 and 432.8;
- G. For all penalties permitted by Labor Code section 2698, *et seq.*;
- H. An award of civil penalties pursuant to Labor Code section 2699;
- I. Actual damages pursuant to Labor Code section 432.7, subdivision (c);
- J. Treble actual damages pursuant to Labor Code section 432.7, subdivision (c);
- K. Preliminary and permanent injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations;
- L. Pre-judgment and post-judgment interest at the maximum rate allowed by law;
- M. Declaratory relief;

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- N. Interest;
- O. For an order awarding reasonable attorneys’ fees and the costs of suit herein, including but not limited to an award of attorneys’ fees and costs pursuant to Labor Code sections 437.2 and 2699; and
- P. N. For such other relief as the Court deems just and proper.

Dated: February 5, 2024 BIBIYAN LAW GROUP, P.C.

BY:

DAVID D. BIBIYAN
JEFFREY D. KLEIN
VEDANG J. PATEL
Attorneys for Plaintiff TONY NUNLEY,
on behalf of himself and all others similarly situated