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11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13 TOMAS ALCALA, an individual, on
 14 behalf of himself, and on behalf of all
 15 persons similarly situated,

16 Plaintiff,

17 vs.

18 MEYER LOGISTICS, INC., a
 19 Corporation,

20 Defendant.

Case No. 2:17-cv-07211

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF THE FAIR CREDIT REPORTING ACT FOR FAILURE TO MAKE PROPER DISCLOSURES [15 U.S.C. § 1681, *et seq.*];
 2. VIOLATION OF THE FAIR CREDIT REPORTING ACT FOR FAILURE TO OBTAIN PROPER AUTHORIZATION [15 U.S.C. § 1681, *et seq.*];
 3. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
 4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
 5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
 6. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
 7. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
 8. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226.;
 9. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and,
 10. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203.
- DEMAND FOR A JURY TRIAL**

1 Plaintiff Tomas Alcala ("PLAINTIFF"), on behalf of himself and all others similarly
2 situated, alleges on information and belief, except for his own acts and knowledge, the
3 following:

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5 **THE PARTIES**

6 1. Defendant Meyer Logistics, Inc. ("DEFENDANT") is a corporation that at all
7 relevant times relevant mentioned herein conducted and continues to conduct substantial
8 business in the state of California.

9 2. DEFENDANT provides logistics services. The Company offers transportation,
10 warehousing, and inventory management services.

11 3. PLAINTIFF worked for DEFENDANT in California as a non-exempt Truck
12 Driver from April of 2016 to June of 2017. At all times during his employment with
13 DEFENDANT, PLAINTIFF was classified as a non-exempt employee paid and entitled to meal
14 and rest periods. In connection with his employment application, PLAINTIFF completed
15 DEFENDANT's standard application materials. Among other things, these application
16 materials included a background investigation disclosure and consent form. To date, and as
17 described below, DEFENDANT has not fully paid PLAINTIFF the compensation still owed to
18 him or any penalty wages owed to him under Cal. Lab. Code § 203.

19 4. During the employment application process PLAINTIFF executed the background
20 check disclosure and authorization form permitting DEFENDANT to have a third-party obtain
21 a consumer report, which form included, among other things, a liability release provision.

22 5. PLAINTIFF brings this Class Action on behalf of himself and a nationwide class,
23 defined as all employees or prospective employees of DEFENDANT in the United States who
24 executed DEFENDANT's standard FCRA disclosure form that included a liability release
25 clause (the "FCRA CLASS") at any time during the period beginning five (5) years prior to the
26 filing of this Complaint and ending on the date as determined by the Court (the "FCRA CLASS
27 PERIOD").

1 9. In violation of 15 U.S.C. § 1681b(b)(2)(A)(I), DEFENDANT has unlawfully
2 inserted a liability release provision into forms purporting to grant DEFENDANT and its third-
3 party background checking company the authority to obtain and use consumer report
4 information for employment purposes. The FCRA prohibits this practice and requires that
5 forms granting the authority to access and use consumer report information for employment
6 purposes be stand alone forms, and not include any additional information or agreements.
7 DEFENDANT’s decision to include liability release provisions in its authorization forms is
8 contrary to the plain language of the statute and unambiguous regulatory guidance from the
9 Federal Trade Commission (“FTC”).

10 10. In violation of 15 U.S.C. § 1681b(b)(2)(A)(ii) DEFENDANT has obtained
11 consumer reports without proper authorization because the authorization and disclosure form
12 signed by PLAINTIFF and other FCRA CLASS Members failed to comply with the
13 requirements of the FCRA. The inclusion of the liability release clause in DEFENDANT’s
14 authorization forms invalidates the purported consent and also triggers statutory damages under
15 the FCRA in the amount of up to \$1,000 for each applicant that DEFENDANT obtained a
16 consumer report without a facially valid authorization, as well as punitive damages, equitable
17 relief, and attorneys’ fees and costs.

18 11. State law provides that employees must be paid overtime at one-and-one-half
19 times their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were
20 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
21 employee’s performance.

22 12. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
23 Members’ compensation was DEFENDANT’s non-discretionary incentive program that paid
24 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
25 performance for DEFENDANT. The non-discretionary incentive program provided all
26 employees paid on an hourly basis with incentive compensation when the employees met the
27 various performance goals set by DEFENDANT. However, when calculating the regular rate
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1 of pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
2 DEFENDANT failed to include the incentive compensation as part of the employees’ “regular
3 rate of pay” for purposes of calculating overtime pay. Management and supervisors described
4 the incentive program to potential and new employees as part of the compensation package. As
5 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
6 CLASS Members must be included in the “regular rate of pay.” The failure to do so has
7 resulted in a systematic underpayment of overtime compensation to PLAINTIFF and other
8 CALIFORNIA CLASS Members by DEFENDANT

9 13. Additionally, Pursuant to the Industrial Welfare Commission Wage Orders,
10 DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all
11 their time worked, meaning the time during which an employee is subject to the control of an
12 employer, including all the time the employee is suffered or permitted to work. DEFENDANT
13 consistently required PLAINTIFF and CALIFORNIA CLASS Members to work without paying
14 them for all the time they were under DEFENDANT’s control. As a result, the PLAINTIFF and
15 other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation
16 by regularly working without their time being accurately recorded and without compensation
17 at the applicable overtime rates. DEFENDANT’s uniform policy and practice not to pay
18 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by
19 DEFENDANT’s business records

20 14. As a result of their rigorous work schedules, PLAINTIFF and other
21 CALIFORNIA CLASS Members were also from time to time unable to take thirty (30) minute
22 off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF
23 and other CALIFORNIA CLASS Members were required to perform work as ordered by
24 DEFENDANT for more than five (5) hours during a shift without receiving a meal break as
25 evidenced by daily time reports for these employees. Further, DEFENDANT failed to provide
26 PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period from
27 time to time in which these employees were required by DEFENDANT to work ten (10) hours
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1 of work. Specifically, DEFENDANT's employees would assign PLAINTIFF and
2 CALIFORNIA CLASS Members loads and route directions for their assigned loads and also
3 told these employees a time when the delivery should be completed. PLAINTIFF and other
4 CALIFORNIA CLASS Members often had no choice (due to pick up and delivery obligations)
5 but to forego their meal and rest breaks in order to make sure that their deliveries for
6 DEFENDANT were within DEFENDANT's required time frames. DEFENDANT was aware
7 that PLAINTIFF and other CALIFORNIA CLASS Members did not take their meal and rest
8 periods because of the workload and time constraints imposed upon them by DEFENDANT but
9 DEFENDANT refused to remit premium payments to these employees for their missed meal
10 and rest breaks. As a result, DEFENDANT's failure to provide PLAINTIFF and the
11 CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
12 DEFENDANT's business. PLAINTIFF and other members of the CALIFORNIA CLASS
13 therefore forfeited meal breaks without additional compensation and in accordance with
14 DEFENDANT's strict corporate policy and practice.

15 15. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
16 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
17 being provided ten (10) minute rest periods. Further, these employees were denied their first
18 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
19 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
20 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)
21 minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other
22 CALIFORNIA CLASS Members were also not provided with one hour wages in lieu thereof.
23 As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS
24 Members were periodically denied their proper rest periods by DEFENDANT and
25 DEFENDANT's managers. In addition, DEFENDANT failed to provide all the legally required
26 paid, off-duty rest periods to PLAINTIFF and the other CALIFORNIA CLASS Members when
27 they were paid by piece rate delivering loads for DEFENDANT as required by the applicable
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1 Wage Order and Labor Code. DEFENDANT did not have a policy or practice which provided
2 or recorded all the legally required paid, off-duty rest periods to PLAINTIFF and the other
3 CALIFORNIA CLASS Members. As a result, DEFENDANT's failure to provide the
4 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
5 periods is evidenced by DEFENDANT's business records.

6 16. PLAINTIFF sought employment with DEFENDANT in April of 2016. In
7 connection with his employment application, PLAINTIFF completed DEFENDANT's standard
8 application materials. These application materials included a background check disclosure and
9 authorization form and included on the form was extraneous information, including but not
10 limited to, a liability release clause releasing DEFENDANT and its third-party it contracted
11 with from all liability stemming from the conducting of a background check on PLAINTIFF.
12 Following his submission of the employment application materials DEFENDANT's third party
13 conducted a background check on PLAINTIFF and PLAINTIFF was hired to work for
14 DEFENDANT.

15 17. The background check disclosure and authorization form disclosed that
16 DEFENDANT intended to conduct a background investigation on the applicant that would
17 involve investigating the applicant's work record, references and education. In addition, the
18 form also contained a liability release provision.

19 18. The inclusion of this liability release provision in the background check disclosure
20 and authorization form violates the FCRA, 15 U.S.C. § 1681, *et seq.*

21 19. Under the FCRA, it is unlawful to procure a consumer report or cause a consumer
22 report to be procured for employment purposes, unless:

- 23 (i) a clear and conspicuous disclosure has been made in writing to the consumer at
24 any time before the report is procured or caused to be procured, ***in a document***
that consists solely of the disclosure, that a consumer report may be obtained for
25 employment purposes; and
26 (ii) the consumer has authorized in writing (which authorization may be made on the
27 document referred to in clause(I)) the procurement of the report.

28 15 U.S.C. §§ 1681b(b)(2)(A)(I)-(ii) (emphasis added).

20. After PLAINTIFF executed the background check disclosure and authorization

1 form in April of 2016, DEFENDANT obtained a consumer report on the PLAINTIFF
2 notwithstanding the fact that the background check disclosure and authorization form was
3 invalid under the requirements of the FCRA.

4 21. Although the disclosure required by clause (i) and the authorization required by
5 clause (ii) may be combined in a single document, the FTC has warned that the form should not
6 include any extraneous information. Further, the FTC has also specifically warned that “[t]he
7 inclusion of such a waiver in a disclosure form will violate Section 604(b)(2)(A) of the FCRA
8 [15 U.S.C. §§ 1681b(b)(2)(A)], which requires that a disclosure consist ‘solely’ of the
9 disclosure that a consumer report may be obtained for employment purposes.”

10 22. By including a liability release clause in its background check disclosure and
11 authorization form, DEFENDANT willfully disregarded the FTC’s regulatory guidance and
12 violated 15 U.S.C. §§ 1681b(b)(2)(A).

13 23. DEFENDANT as a matter of corporate policy, practice and procedure,
14 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and
15 the other CALIFORNIA CLASS Members for required business expenses incurred by
16 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
17 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
18 are required to indemnify employees for all expenses incurred in the course and scope of their
19 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
20 her employee for all necessary expenditures or losses incurred by the employee in direct
21 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
22 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
23 believed them to be unlawful."

24 24. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
25 Members as a business expense, were required by DEFENDANT to use their own personal
26 cellular phones as a result of and in furtherance of their job duties as employees for
27 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
28 associated with the use of their personal cellular phones for DEFENDANT’s benefit.

1 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members would have to
2 communicate via their personal cell phones with DEFENDANT's dispatchers and
3 DEFENDANT's customers regarding delivery and pickup obligations among other things. As
4 a result, in the course of their employment with DEFENDANT the PLAINTIFF and other
5 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which
6 included, but were not limited to, costs related to the use of their personal cellular phones all
7 on behalf of and for the benefit of DEFENDANT.

8 25. When PLAINTIFF and other CALIFORNIA CLASS Members were not
9 compensated for all their time worked and their missed meal and rest breaks, DEFENDANT
10 also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
11 complete and accurate wage statements. Cal. Lab. Code § 226 provides that every employer
12 shall furnish each of his or her employees with an accurate itemized wage statement in writing
13 showing, among other things, gross wages earned and all applicable hourly rates in effect during
14 the pay period and the corresponding amount of time worked at each hourly rate. As a result,
15 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
16 wage statements which violate Cal. Lab. Code § 226. Aside, from the violations listed above
17 in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that
18 lists all the requirements under California Labor Code 226 *et seq.*

19 26. By reason of this uniform conduct applicable to PLAINTIFF and CALIFORNIA
20 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the
21 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by
22 engaging in a company-wide policy and procedure which failed to accurately record and pay
23 for all time worked and missed meal and rest breaks by PLAINTIFF and other CALIFORNIA
24 CLASS Members. The proper payment for all time worked and premiums for missed meal and
25 rest breaks is the DEFENDANT's burden.

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27 **THE FCRA CLASS ALLEGATIONS**

28 27. PLAINTIFF brings the First and Second Cause of Action pursuant to Fed. R. Civ.

1 Proc. 23(b)(2) and/or (3), on behalf of a nationwide Class, defined as all employees or
2 prospective employees of DEFENDANT in the United States who executed DEFENDANT's
3 standard FCRA disclosure form that included a liability release clause (the "FCRA CLASS")
4 at any time during the period beginning five (5) years prior to the filing of this Complaint and
5 ending on the date as determined by the Court (the "FCRA CLASS PERIOD").

6 28. To the extent equitable tolling operates to toll claims by the FCRA CLASS
7 against DEFENDANT, the FCRA CLASS PERIOD should be adjusted accordingly.

8 29. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
9 violation of The Fair Credit Reporting Act 15 U.S.C. § 1681, *et seq.*, intentionally, knowingly,
10 and wilfully, engaged in a practice whereby DEFENDANT uniformly, unfairly, unlawfully, and
11 deceptively instituted a practice of obtaining consumer reports without valid authorization to
12 do so.

13 30. The FCRA CLASS is so numerous that joinder of all FCRA CLASS
14 Members is impracticable.

15 31. DEFENDANT uniformly violated the rights of the FCRA CLASS by:

- 16 (a) Violating The Fair Credit Reporting Act 15 U.S.C. § 1681, *et seq.*,
17 by unlawfully, unfairly and/or deceptively having in place company
18 policies, practices and procedures that uniformly obtained credit
19 reports on prospective employees without first obtaining valid
20 authorization consent forms.

21 32. Common questions of law and fact exist as to members of the FCRA
22 CLASS, including, but not limited, to the following:

- 23 (a) Whether DEFENDANT required the FCRA CLASS Members to
24 sign a background check disclosure and authorization form;
25 (b) Whether DEFENDANT's background check disclosure and
26 authorization form complies with the Fair Credit Reporting Act 15
27 U.S.C. § 1681, *et seq.* ("FCRA");
28 (c) Whether DEFENDANT violated the FCRA by including a liability

- 1 release in its background check disclosure and authorization form;
- 2 (d) Whether DEFENDANT violated the FCRA by procuring consumer
- 3 report information based on invalid authorizations;
- 4 (e) Whether DEFENDANT's violations of the FCRA were willful;
- 5 (f) The proper measure of statutory damages and punitive damages; and,
- 6 (g) The proper form of injunctive and declaratory relief.

7 33. This Class Action meets the statutory prerequisites for the maintenance of
8 a Class Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

- 9 (a) The persons who comprise the FCRA CLASS are so numerous that
- 10 the joinder of all such persons is impracticable and the disposition of
- 11 their claims as a class will benefit the parties and the Court;
- 12 (b) Nearly all factual, legal, statutory, and declaratory relief issues that
- 13 are raised in this Complaint are common to the FCRA CLASS will
- 14 apply uniformly to every member of the FCRA CLASS;
- 15 (c) The claims of the representative PLAINTIFF are typical of the
- 16 claims of each member of the FCRA CLASS. PLAINTIFF, like all
- 17 the other members of the FCRA CLASS, had a credit report obtained
- 18 on his behalf by DEFENDANT prior to obtaining valid authorization
- 19 to do so in violation of the FCRA as described herein. PLAINTIFF
- 20 and the members of the FCRA CLASS were and are similarly or
- 21 identically harmed by the same unlawful, deceptive, unfair and
- 22 pervasive pattern of misconduct engaged in by DEFENDANT; and,
- 23 (d) The representative PLAINTIFF will fairly and adequately represent
- 24 and protect the interest of the FCRA CLASS, and has retained
- 25 counsel who are competent and experienced in Class Action
- 26 litigation. There are no material conflicts between the claims of the
- 27 representative PLAINTIFF and the members of the FCRA CLASS
- 28 that would make class certification inappropriate. Counsel for the

1 FCRA CLASS will vigorously assert the claims of all employees in
2 the FCRA CLASS.

3 34. In addition to meeting the statutory prerequisites to a Class Action, this
4 Action is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2)
5 and/or (3), in that:

6 (a) Without class certification and determination of declaratory,
7 statutory and other legal questions within the class format,
8 prosecution of separate actions by individual members of the FCRA
9 CLASS will create the risk of:

10 1) Inconsistent or varying adjudications with respect to
11 individual members of the FCRA CLASS which would
12 establish incompatible standards of conduct for the parties
13 opposing the FCRA CLASS; and/or,

14 2) Adjudication with respect to individual members of the FCRA
15 CLASS which would as a practical matter be dispositive of
16 interests of the other members not party to the adjudication or
17 substantially impair or impede their ability to protect their
18 interests.

19 (b) The parties opposing the FCRA CLASS have acted or refused to act
20 on grounds generally applicable to the FCRA CLASS, making
21 appropriate class-wide relief with respect to the FCRA CLASS as a
22 whole;

23 (c) Common questions of law and fact exist as to the members of the
24 FCRA CLASS, with respect to the practices and violations of the
25 FCRA as listed above, and predominate over any question affecting
26 only individual FCRA CLASS Members, and a Class Action is
27 superior to other available methods for the fair and efficient
28 adjudication of the controversy, including consideration of:

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- 1) The interests of the members of the FCRA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual FCRA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the FCRA CLASS, which would establish incompatible standards of conduct for DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the FCRA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of employment litigation because as a practical matter a substantial number of individual FCRA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A Class Action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary

1 duplicative litigation that is likely to result in the absence of
2 certification of this Action pursuant to Fed. R. Civ. Proc.
3 23(b)(2) and/or (3).

4 35. This Court should permit this Action to be maintained as a Class Action
5 pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), because:

- 6 (a) The questions of law and fact common to the FCRA CLASS
7 predominate over any question affecting only individual FCRA
8 CLASS Members because DEFENDANT's employment practices
9 were uniform and systematically applied with respect to the FCRA
10 CLASS;
- 11 (b) A Class Action is superior to any other available method for the fair
12 and efficient adjudication of the claims of the members of the FCRA
13 CLASS because in the context of employment litigation a substantial
14 number of individual FCRA CLASS Members will avoid asserting
15 their rights individually out of fear of retaliation or adverse impact
16 on their employment;
- 17 (c) The members of the FCRA CLASS are so numerous that it is
18 impractical to bring all members of the FCRA CLASS before the
19 Court;
- 20 (d) PLAINTIFF, and the other FCRA CLASS Members, will not be able
21 to obtain effective and economic legal redress unless the action is
22 maintained as a Class Action;
- 23 (e) There is a community of interest in obtaining appropriate legal and
24 equitable relief for the acts of statutory violations and other
25 improprieties, and in obtaining adequate compensation for the
26 injuries which DEFENDANT's actions have inflicted upon the
27 FCRA CLASS;
- 28 (f) There is a community of interest in ensuring that the combined assets

- 1 of DEFENDANT are sufficient to adequately compensate the
2 members of the FCRA CLASS for the injuries sustained;
- 3 (g) DEFENDANT has acted or refused to act on grounds generally
4 applicable to the FCRA CLASS, thereby making final class-wide
5 relief appropriate with respect to the FCRA CLASS as a whole;
- 6 (h) The members of the FCRA CLASS are readily ascertainable from
7 the business records of DEFENDANT. The FCRA CLASS consists
8 of all employees or prospective employees of DEFENDANT in the
9 United States who executed DEFENDANT's standard FCRA
10 disclosure form that included a liability release clause allowing
11 DEFENDANT to obtain a consumer report during the FCRA
12 CLASS PERIOD; and,
- 13 (i) Class treatment provides manageable judicial treatment calculated to
14 bring an efficient and rapid conclusion to all litigation of all FCRA
15 claims arising out of the conduct of DEFENDANT as to the
16 members of the FCRA CLASS.

17 36. DEFENDANT maintains records from which the Court can ascertain and
18 identify by name and job title, each of DEFENDANT's employees who have been
19 systematically, intentionally and uniformly subjected to DEFENDANT's corporate
20 policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend
21 the Complaint to include any additional job titles of similarly situated employees when
22 they have been identified.

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THE CALIFORNIA CLASS

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37. PLAINTIFF brings the Third Cause of Action for Unfair, Unlawful and
Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
"UCL") as a Class Action, pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), on behalf
of a California class, defined as all individuals who are or previously were employed by

1 DEFENDANT as Truck Drivers in California (the “CALIFORNIA CLASS”) at any time
2 during the period beginning four (4) years prior to the filing of this Complaint and
3 ending on the date of the filing of this Complaint (the “CALIFORNIA CLASS
4 PERIOD”). To the extent equitable tolling operates to toll claims by the CALIFORNIA
5 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
6 accordingly.

7 38. The California Legislature has commanded that “all wages... ..earned by
8 any person in any employment are due and payable twice during each calendar month,
9 on days designated in advance by the employer as the regular paydays”, and further that
10 “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours
11 in any one workweek . . . shall be compensated at the rate of no less than one and one-
12 half times the regular rate of pay for an employee.” (Lab. Code § 204 and § 510(a).) The
13 Industrial Welfare Commission (IWC), however, is statutorily authorized to “establish
14 exemptions from the requirement that an overtime rate of compensation be paid... ..for
15 executive, administrative, and professional employees, provided [inter alia] that the
16 employee is primarily engaged in duties that meet the test of the exemption, [and]
17 customarily and regularly exercises discretion and independent judgment in performing
18 those duties...” (Lab. Code § 510(a).) Neither the PLAINTIFF nor the other members
19 of the CALIFORNIA CLASS qualify for exemption from the above requirements.

20 39. DEFENDANT has the legal burden to establish that each and every
21 CALIFORNIA CLASS Member was paid all wages due to them and premiums due to
22 them for missed meal and rest breaks as required by California law. DEFENDANT,
23 however, as a matter of uniform and systematic policy and procedure failed to have in
24 place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy
25 or practice to ensure that each and every CALIFORNIA CLASS Member was provided
26 an off duty meal and/or rest period and was paid a premium if these employees missed
27 their meal and/or rest period as required by law. This common business practice is
28 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a

1 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions
2 Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements
3 of this claim.

4 40. The CALIFORNIA CLASS, is so numerous that joinder of all
5 CALIFORNIA CLASS Members is impracticable.

6 41. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS
7 under California law by:

- 8 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof.
9 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
10 deceptively having in place company policies, practices and
11 procedures that uniformly and systematically failed to record and pay
12 PLAINTIFF and the other members of the CALIFORNIA CLASS
13 for all time worked, including overtime worked by these employees;
- 14 (b) Committing an act of unfair competition in violation of the UCL, by
15 failing to provide the PLAINTIFF and the other members of the
16 CALIFORNIA CLASS with the legally required uninterrupted meal and
17 rest breaks;
- 18 (c) Committing an act of unfair competition in violation of the California
19 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
20 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
21 the CALIFORNIA CLASS members with necessary expenses incurred in
22 the discharge of their job duties; and,
- 23 (d) Violating The Fair Credit Reporting Act 15 U.S.C. § 1681, *et seq.*, by
24 unlawfully, unfairly and/or deceptively having in place company policies,
25 practices and procedures that uniformly obtained credit reports on
26 prospective employees without first obtaining valid authorization consent
27 forms.

28 42. This Class Action meets the statutory prerequisites for the maintenance of a Class

1 Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

- 2 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
3 that the joinder of all CALIFORNIA CLASS Members is impracticable
4 and the disposition of their claims as a class will benefit the parties and the
5 Court;
- 6 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
7 that are raised in this Complaint are common to the CALIFORNIA
8 CLASS will apply uniformly to every member of the CALIFORNIA
9 CLASS;
- 10 (c) The claims of the representative PLAINTIFF are typical of the claims of
11 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
12 other members of the CALIFORNIA CLASS, was a Truck Driver and was
13 subjected to DEFENDANT's deceptive practice and policy as described
14 herein. PLAINTIFF sustained economic injury as a result of
15 DEFENDANT's employment practices. PLAINTIFF and the members of
16 the CALIFORNIA CLASS were and are similarly or identically harmed
17 by the same unlawful, deceptive, unfair and pervasive pattern of
18 misconduct engaged in by DEFENDANT; and,
- 19 (d) The representative PLAINTIFF will fairly and adequately represent and
20 protect the interest of the CALIFORNIA CLASS, and has retained counsel
21 who are competent and experienced in Class Action litigation. There are
22 no material conflicts between the claims of the representative PLAINTIFF
23 and the members of the CALIFORNIA CLASS that would make class
24 certification inappropriate. Counsel for the CALIFORNIA CLASS will
25 vigorously assert the claims of all CALIFORNIA CLASS Members.

26 43. In addition to meeting the statutory prerequisites to a Class Action, this action is
27 properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

- 28 (a) Without class certification and determination of declaratory, injunctive,

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statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
- 2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay wages due. Including wages due for overtime worked by the members of the CALIFORNIA CLASS as required by law;

- 1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of

1 California law as listed above, and predominate over any question
2 affecting only individual CALIFORNIA CLASS Members, and a Class
3 Action is superior to other available methods for the fair and efficient
4 adjudication of the controversy, including consideration of:

5 1) The interests of the members of the CALIFORNIA CLASS in
6 individually controlling the prosecution or defense of separate
7 actions in that the substantial expense of individual actions will be
8 avoided to recover the relatively small amount of economic losses
9 sustained by the individual CALIFORNIA CLASS Members when
10 compared to the substantial expense and burden of individual
11 prosecution of this litigation;

12 2) Class certification will obviate the need for unduly duplicative
13 litigation that would create the risk of:

14 A. Inconsistent or varying adjudications with respect to
15 individual members of the CALIFORNIA CLASS, which
16 would establish incompatible standards of conduct for the
17 DEFENDANT; and/or,

18 B. Adjudications with respect to individual members of the
19 CALIFORNIA CLASS would as a practical matter be
20 dispositive of the interests of the other members not parties
21 to the adjudication or substantially impair or impede their
22 ability to protect their interests;

23 3) In the context of wage litigation because a substantial number of
24 individual CALIFORNIA CLASS Members will avoid asserting
25 their legal rights out of fear of retaliation by DEFENDANT, which
26 may adversely affect an individual's job with DEFENDANT or
27 with a subsequent employer, the Class Action is the only means to
28 assert their claims through a representative; and,

- 1 the CALIFORNIA CLASS;
- 2 (f) There is a community of interest in ensuring that the combined assets of
- 3 DEFENDANT are sufficient to adequately compensate the members of the
- 4 CALIFORNIA CLASS for the injuries sustained;
- 5 (g) DEFENDANT has acted or refused to act on grounds generally applicable
- 6 to the CALIFORNIA CLASS, thereby making final class-wide relief
- 7 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 8 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
- 9 the business records of DEFENDANT; and,
- 10 (i) Class treatment provides manageable judicial treatment calculated to bring
- 11 a efficient and rapid conclusion to all litigation of all wage and hour
- 12 related claims arising out of the conduct of DEFENDANT as to the
- 13 members of the CALIFORNIA CLASS.

14 45. DEFENDANT maintains records from which the Court can ascertain and identify
15 by job title each of DEFENDANT’s employees who have been systematically, intentionally and
16 uniformly subjected to DEFENDANT’s company policy, practices and procedures as herein
17 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
18 of similarly situated employees when they have been identified.

19
20 **THE CALIFORNIA LABOR SUB-CLASS**

21 46. PLAINTIFF further brings the Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and
22 Tenth Causes of Action on behalf of a California sub-class, defined as all members of the
23 CALIFORNIA CLASS who are or previously were employed by DEFENDANT as Truck
24 Drivers in California (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the
25 period three (3) years prior to the filing of the complaint and ending on the date of the filing of
26 this Complaint (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Fed. R. Civ.
27 Proc. 23(b)(2) and/or (3).

28 47. DEFENDANT maintains records from which the Court can ascertain and identify

1 by name and job title, each of DEFENDANT's employees who have been systematically,
2 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
3 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include
4 any additional job titles of similarly situated employees when they have been identified.

5 48. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
6 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

7 49. Common questions of law and fact exist as to members of the CALIFORNIA
8 LABOR SUB-CLASS, including, but not limited, to the following:

- 9 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
10 all minimum and overtime wage compensation due to members of the
11 CALIFORNIA LABOR SUB-CLASS in violation of the California Labor
12 Code and California regulations and the applicable California Wage Order
13 (b) Whether DEFENDANT failed to provide PLAINTIFF and the other
14 members of the CALIFORNIA LABOR SUB-CLASS with accurate
15 itemized wage statements;
16 (c) Whether DEFENDANT failed to provide PLAINTIFF and the other
17 members of the CALIFORNIA LABOR SUB-CLASS with legally
18 required uninterrupted thirty (30) minute meal breaks and rest periods;
19 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other
20 members of the CALIFORNIA LABOR SUB-CLASS reimbursement for
21 all necessary business expenses incurred on DEFENDANT's behalf;
22 (e) Whether DEFENDANT has engaged in unfair competition by the
23 above-listed conduct;
24 (f) The proper measure of damages and penalties owed to the members of the
25 CALIFORNIA LABOR SUB-CLASS; and,
26 (g) Whether DEFENDANT's conduct was willful.

27 50. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
28 under California law by:

- 1 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
2 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
3 CLASS all wages due for overtime worked, for which DEFENDANT is
4 liable pursuant to Cal. Lab. Code § 1194;
- 5 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
6 accurately pay PLAINTIFF and the members of the CALIFORNIA
7 LABOR SUB-CLASS the correct minimum wage pay for which
8 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 9 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
10 PLAINTIFF and the other members of the CALIFORNIA CLASS with all
11 legally required off-duty, uninterrupted thirty (30) minute meal breaks and
12 the legally required rest breaks;
- 13 (d) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
14 the CALIFORNIA CLASS members with necessary expenses incurred in
15 the discharge of their job duties;
- 16 (e) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
17 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
18 itemized statement in writing showing all accurate and applicable overtime
19 rates in effect during the pay period and the corresponding amount of time
20 worked at each overtime rate by the employee; and,
- 21 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
22 when an employee is discharged or quits from employment, the employer
23 must pay the employee all wages due without abatement, by failing to
24 tender full payment and/or restitution of wages owed or in the manner
25 required by California law to the members of the CALIFORNIA LABOR
26 SUB-CLASS who have terminated their employment.

27 51. This Class Action meets the statutory prerequisites for the maintenance of a Class
28 Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

- 1 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
2 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
3 Members is impracticable and the disposition of their claims as a class will
4 benefit the parties and the Court;
- 5 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
6 that are raised in this Complaint are common to the CALIFORNIA
7 LABOR SUB-CLASS and will apply uniformly to every member of the
8 CALIFORNIA LABOR SUB-CLASS;
- 9 (c) The claims of the representative PLAINTIFF are typical of the claims of
10 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
11 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
12 was a Truck Driver and was subjected to DEFENDANT's deceptive
13 practice and policy as described herein. PLAINTIFF sustained economic
14 injury as a result of DEFENDANT's employment practices. PLAINTIFF
15 and the members of the CALIFORNIA LABOR SUB-CLASS were and
16 are similarly or identically harmed by the same unlawful, deceptive, unfair
17 and pervasive pattern of misconduct engaged in by DEFENDANT; and,
- 18 (d) The representative PLAINTIFF will fairly and adequately represent and
19 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
20 retained counsel who are competent and experienced in Class Action
21 litigation. There are no material conflicts between the claims of the
22 representative PLAINTIFF and the members of the CALIFORNIA
23 LABOR SUB-CLASS that would make class certification inappropriate.
24 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
25 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

26 52. In addition to meeting the statutory prerequisites to a Class Action, this action is
27 properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

- 28 (a) Without class certification and determination of declaratory, injunctive,

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statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA LABOR SUB-CLASS will create the risk of:

- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
- 2) Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly failed to pay wages due for overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

(c) Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of

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separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3).

1 53. This Court should permit this action to be maintained as a Class Action pursuant
2 to Fed. R. Civ. Proc. 23(b)(2) and/or (3) because:

- 3 (a) The questions of law and fact common to the CALIFORNIA LABOR
4 SUB-CLASS predominate over any question affecting only individual
5 CALIFORNIA LABOR SUB-CLASS Members;
- 6 (b) A Class Action is superior to any other available method for the fair and
7 efficient adjudication of the claims of the members of the CALIFORNIA
8 LABOR SUB-CLASS because in the context of employment litigation a
9 substantial number of individual CALIFORNIA LABOR SUB-CLASS
10 Members will avoid asserting their rights individually out of fear of
11 retaliation or adverse impact on their employment;
- 12 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
13 numerous that it is impractical to bring all members of the CALIFORNIA
14 LABOR SUB-CLASS before the Court;
- 15 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
16 Members, will not be able to obtain effective and economic legal redress
17 unless the action is maintained as a Class Action;
- 18 (e) There is a community of interest in obtaining appropriate legal and
19 equitable relief for the acts of unfair competition, statutory violations and
20 other improprieties, and in obtaining adequate compensation for the
21 damages and injuries which DEFENDANT's actions have inflicted upon
22 the CALIFORNIA LABOR SUB-CLASS;
- 23 (f) There is a community of interest in ensuring that the combined assets of
24 DEFENDANT are sufficient to adequately compensate the members of the
25 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 26 (g) DEFENDANT has acted or refused to act on grounds generally applicable
27 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
28 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-

- 1 CLASS as a whole;
- 2 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
- 3 ascertainable from the business records of DEFENDANT; and,
- 4 (i) Class treatment provides manageable judicial treatment calculated to bring
- 5 an efficient and rapid conclusion to all litigation of all wage and hour
- 6 related claims arising out of the conduct of DEFENDANT as to the
- 7 members of the CALIFORNIA LABOR SUB-CLASS.

8

9 **JURISDICTION AND VENUE**

10 54. This Court has jurisdiction over PLAINTIFF's federal claims pursuant to 28

11 U.S.C. § 1331(a) and 15 U.S.C. 1681p of the FCRA, codified at 15 U.S.C. § 1681, *et seq.*

12 55. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because: (i)

13 DEFENDANT is subject to personal jurisdiction in this District and therefore resides in this

14 District; (ii) DEFENDANT maintains offices and facilities in this District; and, (iii)

15 DEFENDANT committed the wrongful conduct against members of the CLASS, including

16 the PLAINTIFF in this District.

17

18 **FIRST CAUSE OF ACTION**

19 **For Failure to Make Proper Disclosure in Violation of the FCRA**

20 **[15 U.S.C. § 1681b(b)(2)(A)(I), *et seq.*]**

21 **(By PLAINTIFF and the FCRA CLASS and Against All Defendants)**

22 56. PLAINTIFF, and the other members of the FCRA CLASS, reallege and

23 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this

24 Complaint.

25 57. DEFENDANT violated 15 U.S.C. § 1681b(b)(2)(A)(I) of the FCRA by including

26 a liability release clause in DEFENDANT's background check disclosure and authorization

27 form that PLAINTIFF and other FCRA CLASS Members were required to execute as a

28 condition of employment with DEFENDANT.

1 58. The violations of the FCRA were willful. DEFENDANT knew that its
2 background check disclosure and authorization form should not include extraneous information
3 that is prohibited by the FCRA, and acted in deliberate disregard of its obligations and the rights
4 of PLAINTIFF and other FCRA CLASS Members under 15 U.S.C. § 1681b(b)(2)(A)(I).

5 59. PLAINTIFF and the other FCRA CLASS Members are entitled to statutory
6 damages of not less than \$100 and not more than \$1,000 for every violation of the FCRA,
7 pursuant to 15 U.S.C. § 1681n(a)(1)(A).

8 60. PLAINTIFF and FCRA CLASS Members are also entitled to punitive damages
9 for these violations, pursuant to 15 U.S.C. § 1681n(a)(2).

10 61. PLAINTIFF and FCRA CLASS Members are further entitled to recover their
11 costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).

12
13 **SECOND CAUSE OF ACTION**

14 **For Failure to Obtain Proper Authorization in Violations of the FCRA**

15 **[15 U.S.C. § 1681b(b)(2)(A)(ii)]**

16 **(By PLAINTIFF and the FCRA CLASS and Against All Defendants)**

17 62. PLAINTIFF, and the other members of the FCRA CLASS, reallege and
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
19 Complaint.

20 63. DEFENDANT violated the FCRA by procuring consumer reports relating to
21 PLAINTIFF and other FCRA CLASS Members without proper authorization as alleged herein.
22 See 15 U.S.C. § 1681b(b)(2)(A)(ii).

23 64. The violations of the FCRA were willful. DEFENDANT acted in deliberate
24 disregard of its obligations and the rights of PLAINTIFF and other FCRA CLASS Members
25 under 15 U.S.C. § 1681b(b)(2)(A)(ii).

26 65. PLAINTIFF and the FCRA CLASS Members are entitled to statutory damages
27 of not less than \$100 and not more than \$1,000 for every violation of the FCRA, pursuant to 15
28 U.S.C. § 1681n(a)(1)(A).

1 66. PLAINTIFF and the FCRA CLASS Members are also entitled to punitive
2 damages for these violations, pursuant to 15 U.S.C. § 1681n(a)(2).

3 67. PLAINTIFF and the FCRA CLASS Members are further entitled to recover their
4 costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).

5
6 **THIRD CAUSE OF ACTION**

7 **For Unlawful Business Practices**

8 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

9 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

10 68. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

13 69. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.
14 Code § 17021.

15 70. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines
16 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
17 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
18 competition as follows:

19 Any person who engages, has engaged, or proposes to engage in unfair
20 competition may be enjoined in any court of competent jurisdiction. The
21 court may make such orders or judgments, including the appointment of a
22 receiver, as may be necessary to prevent the use or employment by any
23 person of any practice which constitutes unfair competition, as defined in
24 this chapter, or as may be necessary to restore to any person in interest any
25 money or property, real or personal, which may have been acquired by
26 means of such unfair competition.

27 Cal. Bus. & Prof. Code § 17203.

28 71. By the conduct alleged herein, DEFENDANT has engaged and continues to
engage in a business practice which violates California law, including but not limited to, the
applicable Industrial Wage Order(s), the California Code of Regulations and the California
Labor Code including Sections 204, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198 and 2802,

1 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
2 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
3 unfair competition, including restitution of wages wrongfully withheld.

4 72. By the conduct alleged herein, DEFENDANT's practices were unlawful and
5 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
6 unscrupulous or substantially injurious to employees, and were without valid justification or
7 utility for which this Court should issue equitable and injunctive relief pursuant to Section
8 17203 of the California Business & Professions Code, including restitution of wages wrongfully
9 withheld.

10 73. By the conduct alleged herein, DEFENDANT's practices were deceptive and
11 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and
12 other members of the CALIFORNIA CLASS, all wages due to them and premiums for their
13 missed meal and rest periods, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
14 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
15 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
16 including restitution of wages wrongfully withheld.

17 74. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
18 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
19 other members of the CALIFORNIA CLASS to be underpaid during their employment with
20 DEFENDANT.

21 75. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
22 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed
23 to provide legally required uninterrupted meal breaks to PLAINTIFF and the other members of
24 the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

25 76. Therefore, PLAINTIFF demands on behalf of himself and on behalf of
26 each CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-
27 duty meal period was not timely provided for each five (5) hours of work, and/or one (1) hour
28 of pay for each workday in which a second off-duty meal period was not timely provided for

1 each ten (10) hours of work.

2 77. PLAINTIFF further demands on behalf of himself and on behalf of each
3 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
4 was not timely provided and/or paid as required by law.

5 78. By and through the unlawful and unfair business practices described herein,
6 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
7 other members of the CALIFORNIA CLASS, including earned wages for time worked,
8 including overtime worked, and has deprived them of valuable rights and benefits guaranteed
9 by law and contract, all to the detriment of these employees and to the benefit of DEFENDANT
10 so as to allow DEFENDANT to unfairly compete against competitors who comply with the law.

11 79. All the acts described herein as violations of, among other things, the Industrial
12 Welfare Commission Wage Orders, the California Code of Regulations, and the California
13 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
14 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
15 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

16 80. PLAINTIFF and the other members of the CALIFORNIA CLASS were further
17 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair
18 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
19 engaging in any unlawful and unfair business practices in the future.

20 81. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
21 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
22 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
23 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
24 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
25 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
26 engage in these unlawful and unfair business practices.

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FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

82. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

83. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

84. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

85. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according

1 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
2 suit.

3
4 **FIFTH CAUSE OF ACTION**

5 **For Failure to Provide Required Rest Periods**

6 **[Cal. Lab. Code §§ 226.7 & 512]**

7 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
8 **Defendants)**

9 86. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
10 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
11 of this Complaint.

12 87. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
13 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
14 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
15 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten
16 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
17 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
18 more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not
19 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
20 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
21 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.
22 Additionally, because of DEFENDANT's compensation pay plan described herein,
23 DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
24 Members for their rest periods as required by the applicable Wage Order and Labor Code.
25 DEFENDANT did not have a policy or practice which paid for off-duty rest periods to
26 PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members.

27 88. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
28 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-

1 CLASS Members who were not provided a rest period, in accordance with the applicable Wage
2 Order, one additional hour of compensation at each employee's regular rate of pay for each
3 workday that rest period was not provided.

4 89. As a proximate result of the aforementioned violations, PLAINTIFF and
5 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
6 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
7 suit.

8
9 **SIXTH CAUSE OF ACTION**

10 **For Failure To Pay Minimum Wages**

11 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

12 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

13 **and Against All Defendants)**

14 90. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
15 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
16 paragraphs of this Complaint.

17 91. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
18 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
19 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
20 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
21 Members.

22 92. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
23 public policy, an employer must timely pay its employees for all hours worked.

24 93. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
25 commission is the minimum wage to be paid to employees, and the payment of a less wage than
26 the minimum so fixed is unlawful.

27 94. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
28 including minimum wage compensation and interest thereon, together with the costs of suit.

1 95. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
2 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
3 amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice
4 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
5 other members of the CALIFORNIA LABOR SUB-CLASS.

6 96. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
7 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
8 result of implementing a uniform policy and practice that denies accurate compensation to
9 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
10 minimum wage pay.

11 97. In committing these violations of the California Labor Code, DEFENDANT
12 inaccurately calculated the correct time worked and consequently underpaid the actual time
13 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
14 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
15 benefits in violation of the California Labor Code, the Industrial Welfare Commission
16 requirements and other applicable laws and regulations.

17 98. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
18 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
19 receive the correct minimum wage compensation for their time worked for DEFENDANT.

20 99. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
21 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
22 they were entitled to, constituting a failure to pay all earned wages.

23 100. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
24 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
25 CLASS for the true time they worked, PLAINTIFF and the other members of the
26 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
27 injury in amounts which are presently unknown to them and which will be ascertained
28 according to proof at trial.

1 101. DEFENDANT knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
3 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
5 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
6 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
7 correct minimum wages for their time worked.

8 102. In performing the acts and practices herein alleged in violation of California labor
9 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
10 all time worked and provide them with the requisite compensation, DEFENDANT acted and
11 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for
13 their legal rights, or the consequences to them, and with the despicable intent of depriving them
14 of their property and legal rights, and otherwise causing them injury in order to increase
15 company profits at the expense of these employees.

16 103. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
17 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
18 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
19 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
20 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
21 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
22 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
23 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA
24 LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful,
25 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-
26 CLASS Members are entitled to seek and recover statutory costs.

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1 **SEVENTH CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

3 **[Cal. Lab. Code §§ 510, *et seq.*]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

6 104. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
7 reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs
8 of this Complaint.

9 105. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
10 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
11 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay
12 these employees for all overtime worked, including, work performed in excess of eight (8) hours
13 in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

14 106. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
15 public policy, an employer must timely pay its employees for all hours worked.

16 107. Cal. Lab. Code § 510 further provides that employees in California shall not be
17 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
18 unless they receive additional compensation beyond their regular wages in amounts specified
19 by law.

20 108. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
21 including minimum wage and overtime compensation and interest thereon, together with the
22 costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for
23 longer hours than those fixed by the Industrial Welfare Commission is unlawful.

24 109. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
25 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
26 DEFENDANT and were not paid for all the time they worked, including overtime work.

27 110. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
28 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a

1 result of implementing a uniform policy and practice that failed to accurately record overtime
2 worked by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied
3 accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR
4 SUB-CLASS for overtime worked, including, the overtime work performed in excess of eight
5 (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
6 workweek.

7 111. In committing these violations of the California Labor Code, DEFENDANT
8 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
9 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
10 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
11 of the California Labor Code, the Industrial Welfare Commission requirements and other
12 applicable laws and regulations.

13 112. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
14 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
15 receive full compensation for overtime worked.

16 113. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
17 from the overtime requirements of the law. None of these exemptions are applicable to the
18 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
19 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
20 subject to a valid collective bargaining agreement that would preclude the causes of action
21 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself
22 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
23 negotiable, non-waiveable rights provided by the State of California.

24 114. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
25 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
26 worked that they are entitled to, constituting a failure to pay all earned wages..

27 115. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
28 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which

1 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
2 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR
3 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
4 failed to accurately record and pay as evidenced by DEFENDANT's business records and
5 witnessed by employees.

6 116. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
7 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
8 CLASS for the true amount of time they worked, PLAINTIFF and the other members of the
9 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
10 injury in amounts which are presently unknown to them and which will be ascertained
11 according to proof at trial.

12 117. DEFENDANT knew or should have known that PLAINTIFF and the other
13 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
14 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
15 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
16 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
17 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for
18 overtime worked.

19 118. In performing the acts and practices herein alleged in violation of California labor
20 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
21 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
22 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
23 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
24 disregard for their legal rights, or the consequences to them, and with the despicable intent of
25 depriving them of their property and legal rights, and otherwise causing them injury in order to
26 increase company profits at the expense of these employees.

27 119. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
28 therefore request recovery of all overtime wages, according to proof, interest, statutory costs,

1 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
2 by the California Labor Code and/or other applicable statutes. To the extent minimum and/or
3 overtime compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS
4 Members who have terminated their employment, DEFENDANT's conduct also violates Labor
5 Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time
6 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
7 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein
8 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA
9 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

10
11 **EIGHTH CAUSE OF ACTION**

12 **For Failure to Provide Accurate Itemized Statements**

13 **[Cal. Lab. Code § 226]**

14 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
15 **Defendants)**

16 120. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
17 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
18 of this Complaint.

19 121. Cal. Labor Code § 226 provides that an employer must furnish employees with
20 an "accurate itemized" statement in writing showing:

- 21 (1) gross wages earned,
22 (2) total hours worked by the employee, except for any employee whose compensation
23 is solely based on a salary and who is exempt from payment of overtime under
24 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
25 Commission,
26 (3) the number of piecerate units earned and any applicable piece rate if the employee
27 is paid on a piece-rate basis,
28 (4) all deductions, provided that all deductions made on written orders of the employee

- 1 may be aggregated and shown as one item,
2 (5) net wages earned,
3 (6) the inclusive dates of the period for which the employee is paid,
4 (7) the name of the employee and her or her social security number, except that by
5 January 1, 2008, only the last four digits of her or her social security number or an
6 employee identification number other than a social security number may be shown on
7 the itemized statement,
8 (8) the name and address of the legal entity that is the employer, and
9 (9) all applicable hourly rates in effect during the pay period and the corresponding
10 number of hours worked at each hourly rate by the employee.

11 122. When PLAINTIFF and other CALIFORNIA CLASS Members were not
12 compensated for all wages due to them and for their missed meal and rest breaks,
13 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA
14 CLASS with complete and accurate wage statements. Cal. Lab. Code § 226 provides that every
15 employer shall furnish each of his or her employees with an accurate itemized wage statement
16 in writing showing, among other things, gross wages earned and all applicable hourly rates in
17 effect during the pay period and the corresponding amount of time worked at each hourly rate.
18 As a result, DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA
19 CLASS with wage statements which violate Cal. Lab. Code § 226. Aside, from the violations
20 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage
21 statement that lists all the requirements under California Labor Code 226 *et seq.*

22 123. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
23 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
24 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended
25 calculating the correct rates for the overtime hours worked and the amount of employment taxes
26 which were not properly paid to state and federal tax authorities. These damages are difficult
27 to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR
28 SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay

1 period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in
2 a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at
3 the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF
4 and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

5
6 **NINTH CAUSE OF ACTION**

7 **For Failure to Reimburse Employees for Required Expenses**

8 **[Cal. Lab. Code § 2802]**

9 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
10 **Defendants)**

11 124. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members
12 reallege and incorporate by this reference, as though fully set forth herein, the prior
13 paragraphs of this Complaint.

14 125. Cal. Lab. Code § 2802 provides, in relevant part, that:

15 An employer shall indemnify his or her employee for all necessary
16 expenditures or losses incurred by the employee in direct consequence of the
17 discharge of his or her duties, or of his or her obedience to the directions of the
18 employer, even though unlawful, unless the employee, at the time of obeying
19 the directions, believed them to be unlawful.

18 126. DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and
19 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required
20 expenses incurred in the discharge of their job duties for DEFENDANT's benefit.
21 Specifically, DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA
22 LABOR SUB-CLASS members for expenses which included, but were not limited to, costs
23 related to using their personal cellular phones all on behalf of and for the benefit of
24 DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not
25 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses
26 resulting from using their personal cellular phones for DEFENDANT within the course and
27 scope of their employment for DEFENDANT. These expenses were necessary to complete
28 their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert

1 any waiver of this expectation. Although these expenses were necessary expenses incurred
2 by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT
3 failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
4 CLASS members for these expenses as an employer is required to do under the laws and
5 regulations of California.

6 127. PLAINTIFF therefore demands reimbursement for expenditures or losses
7 incurred by him and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
8 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
9 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

10 **TENTH CAUSE OF ACTION**

11 **For Failure to Pay Wages When Due**

12 **[Cal. Lab. Code §§ 201, 202, 203]**

13 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
14 **Defendants)**

15 128. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
16 reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of
17 this Complaint.

18 129. Cal. Lab. Code § 200 provides, in relevant part, that:

19 As used in this article:

20 (a) "Wages" includes all amounts for labor performed by employees of every
description, whether the amount is fixed or ascertained by the standard of time,
21 task, piece, Commission basis, or other method of calculation.

22 (b) "Labor" includes labor, work, or service whether rendered or performed under
contract, subcontract, partnership, station plan, or other agreement if the labor to
be paid for is performed personally by the person demanding payment.

23 106. Cal. Lab. Code § 201 provides, in relevant part, "that if an employer discharges
24 an employee, the wages earned and unpaid at the time of discharge are due and payable
25 immediately."

26 107. Cal. Lab. Code § 202 provides, in relevant part, that:

27 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
28 hours thereafter, unless the employee has given 72 hours previous notice of his or

1 her intention to quit, in which case the employee is entitled to his or her wages at
2 the time of quitting. Notwithstanding any other provision of law, an employee
3 who quits without providing a 72-hour notice shall be entitled to receive payment
4 by mail if he or she so requests and designates a mailing address. The date of the
5 mailing shall constitute the date of payment for purposes of the requirement to
6 provide payment within 72 hours of the notice of quitting.

7 108. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
8 SUB-CLASS Members' employment contract.

9 109. Cal. Lab. Code § 203 provides, in relevant part, that:

10 If an employer willfully fails to pay, without abatement or reduction, in
11 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
12 who is discharged or who quits, the wages of the employee shall continue as a
13 penalty from the due date thereof at the same rate until paid or until an action
14 therefor is commenced; but the wages shall not continue for more than 30 days.

15 110. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
16 Members has terminated and DEFENDANT has not tendered payment of all wages owed as
17 required by law.

18 111. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
19 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated,
20 PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of
21 termination for all employees who terminated employment during the CALIFORNIA LABOR
22 SUB-CLASS PERIOD and demands an accounting and payment of all wages due, plus interest
23 and statutory costs as allowed by law.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
26 severally, as follows:

27 1. On behalf of the FCRA CLASS:

28 A) That the Court certify the First and Second Cause of Action asserted by the
FCRA CLASS as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or
(3);

B) A determination and judgment that DEFENDANT willfully violated the 15 U.S.C.

1 § 1681(b)(2)(A)(I) and(ii) of the FCRA by failing improperly including liability
2 release language in its background check disclosure and authorization form and
3 by obtaining consumer reports on PLAINTIFF and FCRA CLASS Members
4 without having proper authorization to do so;

5 C) Pursuant to 15 U.S.C. § 1681n(a)(1)(A), an award of statutory damages to
6 PLAINTIFF and the members of the FCRA CLASS in an amount equal to \$1,000
7 for PLAINTIFF and each FCRA CLASS Member for DEFENDANT's willful
8 violation of the FCRA:

9 D) Pursuant to 15 U.S.C. § 1681n(a)(2), an award of punitive damages to
10 PLAINTIFF and other FCRA CLASS Members;

11 E) An award for costs of suit and reasonable attorneys' fees pursuant to 15 U.S.C. §
12 1681n(a)(3); and,

13 F) Such other and further relief as the Court deems just and equitable.

14 2. On behalf of the CALIFORNIA CLASS:

15 A) That the Court certify the Third Cause of Action asserted by the CALIFORNIA
16 CLASS as a class action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);

17 B) An order temporarily, preliminarily and permanently enjoining and restraining
18 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

19 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
20 withheld from compensation due to PLAINTIFF and the other members of the
21 CALIFORNIA CLASS; and,

22 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
23 for restitution of the sums incidental to DEFENDANT's violations due to
24 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

25 3. On behalf of the CALIFORNIA LABOR SUB-CLASS:

26 A) That the Court certify the Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth
27 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
28 action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);

- 1 B) Compensatory damages, according to proof at trial, including compensatory
2 damages for minimum and overtime compensation due PLAINTIFF and the other
3 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
4 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
5 statutory rate;
- 6 C) Meal and rest period compensation pursuant to California Labor Code Section
7 226.7 and the applicable IWC Wage Order;
- 8 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
9 in which a violation occurs and one hundred dollars (\$100) per each member of
10 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
11 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
12 an award of costs for violation of Cal. Lab. Code § 226;
- 13 E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
14 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
15 costs of suit; and,
- 16 F) The wages of all terminated employees from the CALIFORNIA LABOR
17 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
18 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

19 4. On all claims:

- 20 A) An award of interest, including prejudgment interest at the legal rate;
- 21 B) Such other and further relief as the Court deems just and equitable; and,

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1 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
2 including, but not limited to, pursuant to Labor Code §218.5, §226, and/or §1194.
3

4 Dated: September 29, 2017

BLUMENTHAL, NORDREHAUG & BHOWMIK LLP

5 By: /s/ Norman B. Blumenthal
6 Norman B. Blumenthal
Attorneys for Plaintiff

7
8 **LAW OFFICES OF MAURO FIORE, JR., A.P.C.**
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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: September 29, 2017

**BLUMENTHAL, NORDREHAUG & BHOWMIK
LLP**

By: /s/ Norman B. Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff

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ClassAction.org

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