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Attorneys for Plaintiff and all Proposed Class Members

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHRISTOPHER MASTON, an individual, on
behalf of himself and others similarly situated

PLAINTIFF,

v.

BLUESTAR REFRESHMENT SERVICES,

DEFENDANTS.

CASE NO.

CLASS ACTION COMPLAINT

1. Violation of the Fair Credit Reporting Act for Failure to Make Proper Disclosures, 15 U.S.C. § 1681b, et seq.;
2. Violation of the Fair Credit Reporting Act for Failure to Obtain Proper Authorization, 15 U.S.C. § 1681b, et seq.;
3. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
4. Penalties Pursuant to Labor Code § 203
5. Violation of Business & Professions Code § 17200

DEMAND FOR JURY TRIAL

1 Plaintiff CHRISTOPHER MASTON, an individual, on behalf of himself, all others
2 similarly situated, complains of Defendant BLUESTAR REFRESHMENT SERVICES
3 (“Defendant”) and each of them, as follows:

4 I.

5 INTRODUCTION

6 1. This is a class action for violation of federal and state laws by applicants and
7 current and former employees against Defendant for statutory damages, punitive damages,
8 wages, penalties, equitable relief, injunctive relief, and attorneys’ fees and costs.

9 2. Defendant is a California corporation and at all relevant times mentioned herein
10 conducted and continues to conduct substantial and regular business throughout California.

11 3. Defendant is a high-end office refreshment service provider that provides coffee
12 and snack services for corporate kitchens and corporate events.

13 4. In April of 2014, Plaintiff sought employment with Defendant. During the
14 application process, Plaintiff executed a background check disclosure and authorization form
15 permitting Defendant to obtain a consumer report and conduct a background check on him.

16 5. After the application process, Plaintiff began work with Defendant and continued
17 his employment until August 2017.

18 6. Plaintiff now brings this class action on behalf of himself and the following two
19 Proposed Classes defined as:

20 (1) All persons in the United States who executed BLUESTAR
21 REFRESHMENT SERVICES’s Consumer Background
22 Search Authorization and Liability Release form that
23 included a liability release clause at any time from five (5)
years prior to the filing of this action and continuing to the
present. (“Proposed FCRA Class”)

24 (2) All persons who are employed or have been employed by
25 BLUESTAR REFRESHMENT SERVICES in the State of
26 California as hourly employees who received other
27 compensation or PSP and worked overtime in the same pay
28 period since four (4) years prior to the filing of this action
and continuing to the present. (“Proposed California
Class”)

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II.

JURISDICTION AND VENUE

7. The Court has jurisdiction over Plaintiffs' federal claims pursuant to 28 U.S.C. §1331 and 15 U.S.C. §1681 of the FCRA. The Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. §1367.

8. Venue is proper in this district pursuant to 28 U.S.C. §1391(d) because Defendant is subject to personal jurisdiction in this district, maintains offices in this district, and the actions at issue took place in this district.

III.

THE PARTIES

A. PLAINTIFF

9. Plaintiff is a resident of California. He performed work for Defendant in and around the counties of Alameda and Santa Clara, California.

10. Plaintiff worked for Defendant from April 2014 to August 2017 as a driver and hourly worker.

B. DEFENDANT

11. Defendant is a California Corporation that maintains its executive office in Fremont., California and at all times relevant herein conducted and continues to conduct business throughout the State of California.

12. Defendant issues, and during the relevant period issued, payroll checks to Plaintiffs and all other persons similarly situated.

13. With respect to the events at issue in this case, Defendant acted as the employer of Plaintiff and all other persons similarly situated. As the employer, Defendant is liable for the violations of law described in this Complaint.

14. Plaintiff is ignorant of the true name, capacity, relationship and extent of participation in the conduct herein alleged of the Defendant sued herein as DOES 1 through 10, but are informed and believe and thereon allege that said Defendant are legally responsible for the wrongful conduct alleged herein and therefore sue these Defendant by such fictitious names. Plaintiffs will amend this complaint to allege their true names and capacities when ascertained.

1 a liability waiver in the authorization and disclosure form. Defendant's conduct is contrary to
2 the plain language of the statute. As such, Defendant has thus obtained consumer reports from
3 Plaintiff and all Proposed Class Members without proper authorization because the authorization
4 and disclosure form signed by Plaintiff failed to comply with the requirements of the FCRA.

5 20. Although the disclosure required by clause (i) and the authorization required
6 by clause (ii) of section 604(b)(2) may be combined in a single document, the FTC has warned
7 that the form should not include any extraneous information.

8 21. This requirement is meant to prevent the consumer from being distracted by other
9 information side-by-side with this very important disclosure. The disclosure shall not be
10 diminished in importance by including unrelated information. The disclosure must be clear and
11 conspicuous, understandable and noticeable.

12 22. Further, the FTC has also specifically warned that the inclusion of such a waiver
13 in a disclosure form will violate Section 604(b)(2)(A) of the FCRA [15 U.S.C.
14 §§1681b(b)(2)(A)], which requires that a disclosure consist solely of the disclosure that a
15 consumer report may be obtained for employment purposes.

16 23. By including a liability release in its authorization and disclosure form, Defendant
17 willfully disregarded the FTC's guidance and violated 15 U.S.C. §1681b(b)(2)(A)(i)-(ii).

18 24. Such prohibited conduct invalidates the purported authorization and triggers
19 statutory damages under the FCRA in the amount of up to \$1,000 per applicant, punitive
20 damages, equitable relief, and attorneys' fees and costs.

21 25. From at least four (4) years prior to the filing of this action continuing to the
22 present, Defendant has had a consistent policy of failing to pay wages and/or overtime to all
23 members of the Proposed California Class when they work more than eight hours in a day or
24 forty hours in a week. Plaintiff and other Proposed California Class Members were not properly
25 compensated for overtime at the appropriate rate of pay, because when they were paid "PSP" pay
26 that pay was not blended into their regular rate of pay for the purpose of calculating the overtime
27 rate.

28 26. As a result of this failure to pay all wages due at the appropriate rate of pay, for at

1 least three (3) years prior to the filing of this action continuing to the present, Defendant has
2 failed to pay all wages due at the time of termination or resignation to Plaintiff and the Proposed
3 California Class.

4 27. Such conduct constitutes unlawful and unfair business practices within the
5 meaning of Business and Professions Code §17200, et seq. Plaintiff, on behalf of himself and all
6 Proposed California Class Members, pursuant to Business & Professions Code §§ 17200-17208,
7 also seeks injunctive relief, restitution, and disgorgement of all benefits Defendant enjoyed from
8 its unlawful conduct as described herein.

9 V.

10 **CLASS ACTION ALLEGATIONS**

11 **THE FCRA CLASS**

12 28. Plaintiff brings this action on behalf of himself and all others similarly situated as
13 a Class Action pursuant to Rule 23(a) and 23(b)(3) of the F.R.C.P. Plaintiff satisfies the
14 requirements of Rule 23(a) and (b)(3) for the prosecution of this action as a class action.
15 Plaintiff seeks to represent a Class composed of and defined as follows:

16 “All persons in the United States who executed BLUESTAR REFRESHMENT
17 SERVICES’s Consumer Background Search Authorization and Liability Release form
18 that included a liability release clause at any time from five (5) years prior to the filing of
19 this action and continuing to the present. (“Proposed FCRA Class”).

20 29. Plaintiffs reserve the right to amend or modify the Class description with greater
21 specificity or further division into subclasses or limitation to particular issues

22 30. Defendant, as a matter of corporate policy, practice, and procedure, in violation of
23 15 U.S.C. §1681, et seq., intentionally, knowingly, and willfully, engaged in a practice whereby
24 Defendant uniformly, unfairly, and unlawfully instituted a policy of obtaining consumer reports
25 without valid authorization to do so.

26 31. Defendant uniformly violated the rights of the Proposed FCRA Class by violating
27 the FCRA 15 U.S.C. §1681b(b)(2)(A)(i)-(ii) by unlawfully obtaining consumer reports without
28 first obtaining valid signed authorization and disclosure forms.

1 32. This class action on behalf of members of the Proposed FCRA Class meets the
2 statutory prerequisites for the maintenance of a class action as set forth in Rule 23(a) and
3 23(b)(3) of the F.R.C.P.

4 A. Numerosity

5 33. The Proposed FCRA Class is so numerous that joinder of all class members is
6 impracticable. While the precise number of members of the Proposed FCRA Class has not been
7 determined at this time, Plaintiff is informed and believes that Defendant, during the relevant
8 period, had applicants that numbered well over 1,000.

9 34. Plaintiff alleges that Defendant's records will provide information as to the
10 number of all members of the Proposed FCRA Class.

11 B. Commonality

12 35. There are questions of law and fact common to the Proposed FCRA Class that
13 predominate over any questions affecting only individual members of the Class. These common
14 questions of law and fact include, without limitation:

- 15 a. Whether Defendant required members of the Proposed FCRA Class to sign a
16 Consumer Background Search Authorization and Liability Release;
- 17 b. Whether Defendant's Consumer Background Search Authorization and
18 Liability Release complies with 15 U.S.C. §1681, et seq.;
- 19 c. Whether Defendant violated 15 U.S.C. §1681, et seq. by including a liability
20 release in its background check and disclosure authorization form;
- 21 d. Whether Defendant violated 15 U.S.C. §1681, et seq. by procuring consumer
22 reports without valid authorization; and
- 23 e. Whether Defendant's violations of 15 U.S.C. §1681, et seq. were willful.

24 C. Typicality

25 36. The claims of the named Plaintiff are typical of the claims of the members of the
26 Proposed FCRA Class.

27 37. Plaintiff is a member of the Proposed FCRA Class. Plaintiff was an applicant and
28 filled out Defendant's Consumer Background Search Authorization and Liability Release form

1 during his application process. Plaintiff was subjected to the same unlawful practices as other
2 members of the Proposed FCRA Class. Plaintiff and other members of the Proposed FCRA Class
3 suffered the same injuries and seek the same relief.

4 D. Adequacy of Representation

5 38. Plaintiff will fairly and adequately represent and protect the interests of the
6 members of the Proposed FCRA Class.

7 39. Counsel for Plaintiff are competent and experience in litigation large complex
8 consumer and wage and hour class actions.

9 E. Predominance and Superiority of a Class Action

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

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

18 42. Class action treatment will allow a large number of similarly situated agricultural
19 employees to prosecute their common claims in a single forum, simultaneously, efficiently, and
20 without the unnecessary duplication of effort and expense that numerous individual actions
21 would require. Further, the monetary amounts due to many individual class members are likely
22 to be relatively small, and the burden and expense of individual litigation would make it difficult
23 or impossible for individual members of the members of the Proposed FCRA Class to seek and
24 obtain relief. Moreover, a class action will serve an important public interest by permitting
25 employees harmed by Defendant's unlawful practices to effectively pursue recovery of the sums
26 owed to them.

27 ///

1 **THE CALIFORNIA CLASS**

2 43. Plaintiff brings this action on behalf of himself and all others similarly situated as
3 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a
4 proposed class composed of and defined as follows:

5 “All persons who are employed or have been employed by BLUESTAR
6 REFRESHMENT SERVICES in the State of California as hourly employees who
7 received other compensation or PSP and worked overtime in the same pay period since
8 four (4) years prior to the filing of this action and continuing to the present. (“Proposed
9 California Class”).

10 44. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
11 amend or modify the class description with greater specificity, by division into subclasses, or by
12 limitation to particular issues.

13 45. This action has been brought and may properly be maintained as a class action
14 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
15 community of interest in the litigation and the Proposed Classes are easily ascertainable

16 A. Numerosity

17 46. The potential members of the Proposed California Class as defined are so
18 numerous that joinder of all the members of the Proposed Class is impracticable. While the
19 precise number of proposed Class Members has not been determined at this time, Plaintiff is
20 informed and believes that Defendant currently employ, and during the relevant time periods
21 employed 50 to 99 members of the Proposed California Class at any given time.

22 47. Plaintiff alleges that Defendant’s employment records will provide information as
23 to the number of all members of the Proposed California Class.

24 B. Commonality

25 48. There are questions of law and fact common to the Proposed California Class that
26 predominate over any questions affecting only individual members of the Class. These common
27 questions of law and fact include, without limitation:
28

- 1 a. Whether Defendant failed to pay wages and/or overtime compensation as
2 required by the Labor Code and Wage Orders under Labor Code §§ 510,
3 1194, 1194.2, and 1199;
- 4 b. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
5 compensation due and owing at the time that any Proposed Class Member's
6 employment with Defendant terminated
- 7 c. Whether Defendant violated § 17200, *et seq.* of the Business & Professions
8 Code by engaging in the acts previously alleged; and
- 9 d. Whether Plaintiff and the members of the Proposed Class are entitled to
10 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

11 C. Typicality

12 49. The claims of the named Plaintiff are typical of the claims of the members of the
13 Proposed California Class.

14 50. Plaintiff is a member of the Proposed California Class. Plaintiff was an employee
15 of Defendant's from April 2014 to August 2017 and, during that time, worked pay periods where
16 he received overtime pay and PSP pay. Plaintiff and other members of the Proposed California
17 Class suffered the same injuries and seek the same relief.

18 D. Adequacy of Representation

19 51. Plaintiff will fairly and adequately represent and protect the interests of the
20 members of the Proposed California Class.

21 52. Counsel for Plaintiff are competent and experience in litigation large complex
22 consumer and wage and hour class actions.

23 E. Predominance and Superiority of a Class Action

24 53. A class action is superior to other available means for fair and efficient
25 adjudication of this controversy. Individual joinder of all members of the Proposed California
26 Class is not practicable, and questions of law and fact common to the Class predominate over
27 any questions affecting only individual members of the Proposed California Class.

28 54. Class action treatment will allow those similarly situated persons to litigate their

1 claims in the manner that is most efficient and economical for the parties and the judicial system.
2 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
3 action that would preclude its maintenance as a class action.

4 55. Class action treatment will allow a large number of similarly situated agricultural
5 employees to prosecute their common claims in a single forum, simultaneously, efficiently, and
6 without the unnecessary duplication of effort and expense that numerous individual actions
7 would require. Further, the monetary amounts due to many individual class members are likely
8 to be relatively small, and the burden and expense of individual litigation would make it difficult
9 or impossible for individual members of the members of the Proposed California Class to seek
10 and obtain relief. Moreover, a class action will serve an important public interest by permitting
11 employees harmed by Defendant's unlawful practices to effectively pursue recovery of the sums
12 owed to them.

13 **VI.**

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF THE FAIR CREDIT**
16 **REPORTING ACT 15 U.S.C. §1681b(B)(2)(A)(i)**

17 (By Plaintiff and the Proposed FCRA Class and against all Defendants)

18 56. Plaintiff, on behalf of himself and the Proposed FCRA Class, realleges and
19 incorporates by reference all previous paragraphs.

20 57. 15 U.S.C. §1681b(b)(2)(A)(i) provides in relevant part: "a person may not procure
21 a consumer report, or cause a consumer report to be procured, for employment purposes with
22 respect to any consumer, unless a clear and conspicuous disclosure has been made in writing to
23 the consumer at any time before the report is procured or caused to be procured, in a document
24 that consists solely of the disclosure, that a consumer report may be obtained for employment
25 purposes..." (internal citations omitted.)

26 58. Defendant violated 15 U.S.C. §1681b(b)(2)(A)(i) by including a liability release
27 in its Consumer Background Search Authorization and Liability Release form that Plaintiff and
28 all other Proposed FCRA Class members were required to complete.

1 59. Defendant's violations of 15 U.S.C. §1681b(b)(2)(A)(i) were willful. Defendant
2 knew its Consumer Background Search Authorization and Liability Release form should consist
3 solely of the disclosure and should not include any other information that is prohibited by the
4 FCRA. Defendant acted in deliberate disregard of its obligations and the rights of Plaintiff and
5 all other Proposed FCRA Class members under 15 U.S.C. §1681b(b)(2)(A)(i).

6 60. Plaintiff and all other Proposed FCRA Class members are entitled to statutory
7 damages of not less than \$100 and not more than \$1,000 for each and every violation of the
8 FCRA by Defendant pursuant to 15 U.S.C. §1681n(a)(1)(A).

9 61. Plaintiff and all other Proposed FCRA Class members are entitled to punitive
10 damages pursuant to 15 U.S.C. §1681n(a)(2).

11 62. Plaintiff and all other Proposed FCRA Class members are entitled to recover their
12 costs of suit and attorneys' fees pursuant to 15 U.S.C. §1681n(a)(3).

13 **VII.**

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO OBTAIN PROPER AUTHORIZATION IN VIOLATION OF THE FAIR**
16 **CREDIT REPORTING ACT 15 U.S.C. §1681b(B)(2)(A)(ii)**

17 (By Plaintiff and the Proposed FCRA Class and against all Defendants)

18 63. Plaintiff, on behalf of himself and the Proposed FCRA Class, realleges and
19 incorporates by reference all previous paragraphs.

20 64. 15 U.S.C. §1681b(b)(2)(A)(ii) provides, in relevant part, that a consumer must
21 authorize in writing the procurement of a consumer report for employment purposes.

22 65. Defendant violated 15 U.S.C. §1681b(b)(2)(A)(ii) by procuring consumer reports
23 relating to Plaintiff and all other Proposed FCRA Class members without proper written
24 authorization.

25 66. Defendant's violations of 15 U.S.C. §1681b(b)(2)(A)(ii) were willful. Defendant
26 knew its Consumer Background Search Authorization and Liability Release form should consist
27 solely of the disclosure and should not include any other information that is prohibited by the
28 FCRA. Nonetheless, Defendant included such information its Consumer Background Search

1 Authorization and Liability Release form thereby resulting in a failure to obtain proper written
2 authorization. Defendant acted in deliberate disregard of its obligations and the rights of
3 Plaintiff and all other Proposed FCRA Class members under 15 U.S.C. §1681b(b)(2)(A)(ii).

4 67. Plaintiff and all other Proposed FCRA Class members are entitled to statutory
5 damages of not less than \$100 and not more than \$1,000 for each and every violation of the
6 FCRA by Defendant pursuant to 15 U.S.C. §1681n(a)(1)(A).

7 68. Plaintiff and all other Proposed FCRA Class members are entitled to punitive
8 damages pursuant to 15 U.S.C. §1681n(a)(2).

9 **VIII.**

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PAY ALL WAGES AT THE APPROPRIATE RATE IN VIOLATION OF**
12 **LABOR CODE §§510, 1194 and 1199**

13 **(By Plaintiff and the Proposed California Class and against all Defendants)**

14 69. Plaintiff, on behalf of himself and the Proposed California Class, realleges and
15 incorporates by reference all previous paragraphs.

16 70. Labor Code §§510, 1194 and 1199 require an employer to compensate its
17 employees at the rate of no less than one and one-half times the regular rate of pay for any work
18 in excess of eight hours in one workday and any work in excess of 40 hours in any one
19 workweek. California law also requires that any compensation, including any type of
20 bonus/commission/incentive pay be included in the regular rate of pay.

21 71. Plaintiff and the Proposed California Class were forced to work on a regular and
22 consistent basis without receiving compensation for all hours worked at the proper rate.
23 Specifically, Plaintiff and the Proposed California Class were not paid at the proper overtime rate
24 when they were working more than eight (8) hours in one day or forty (40) hours in one week
25 because Defendant failed to include "PSP" pay into the regular rate of pay when calculating
26 overtime.

27 72. By their policy of requiring Plaintiff and members of the Proposed California
28 Class to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek

1 without compensating them at the rate of one-half (1 1/2) their regular rate of pay, Defendant
2 willfully violated the provisions of Labor Code §§ 510, 1194 and 1199.

3 73. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed
4 California Class Members have been deprived of wages and/or overtime in amounts to be
5 determined at trial, and are entitled to recovery of such amounts, plus interest and penalties
6 thereon, attorneys' fees, and costs.

7 **IX.**

8 **FOURTH CAUSE OF ACTION**

9 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

10 **(By Plaintiff and the Proposed California Class and against all Defendants)**

11 74. Plaintiff, on behalf of himself and the Proposed California Class, realleges and
12 incorporates by reference all previous paragraphs.

13 75. Numerous members of the Proposed Class including the Plaintiff are no longer
14 employed by Defendant. They were either fired or quit Defendant's employ.

15 76. Defendant's failure to pay wages, as alleged above, was willful in that Defendant
16 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
17 penalties under Labor Code §203, which provides that an employee's wages shall continue as a
18 penalty until paid for a period of up to thirty (30) days from the time they were due.

19 77. Defendant has failed to pay Plaintiff and others a sum certain at the time of
20 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
21 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff
22 and the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed
23 Class Members' daily wage multiplied by thirty (30) days.

24 **X.**

25 **FIFTH CAUSE OF ACTION**

26 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

27 **(By Plaintiff and the Proposed California Class and against all Defendants)**

28 78. Plaintiff, on behalf of himself and the Proposed California Class, realleges and

1 incorporates by reference all previous paragraphs.

2 79. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of
3 himself, on behalf of the general public, and on behalf of the Proposed Class, bring this claim
4 pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged
5 in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the
6 general public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the
7 public interest within the meaning of Code of Civil Procedure § 1021.5.

8 80. Plaintiff is a “person” within the meaning of Business & Professions Code
9 § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution,
10 and other appropriate equitable relief.

11 81. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair
12 business practices.

13 82. California’s wage and hour laws express fundamental public policies. Providing
14 employees with proper wages and compensation are fundamental public policies of this State and
15 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
16 vigorously minimum labor standards, to ensure that employees are not required or permitted to
17 work under substandard and unlawful conditions, and to protect law-abiding employers and their
18 employees from competitors who lower their costs by failing to comply with minimum labor
19 standards.

20 83. Defendant has violated statutes and public policies as alleged herein. Through the
21 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
22 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
23 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving
24 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
25 privileges guaranteed to all employees under law.

26 84. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
27 violation of § 17200, *et seq.* of the Business & Professions Code.

28 85. Defendant, by engaging in the conduct herein alleged, either knew or in the

1 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
2 violation of § 17200, *et seq.* of the Business & Professions Code.

3 86. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
4 others similarly situated have been damaged in a sum as may be proven.

5 87. Unless restrained, Defendant will continue to engage in the unlawful conduct as
6 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
7 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
8 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices
9 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
10 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
11 proposed Class the money Defendant has unlawfully failed to pay.

12
13 **RELIEF REQUESTED**

14 **WHEREFORE**, Plaintiff prays for judgment and the following relief against each
15 Defendant, jointly and severally, as follows:

16 1. For a determination that Defendant willfully violated 15 U.S.C.
17 §1681b(b)(2)(A)(i);

18 2. For a determination that Defendant willfully violated 15 U.S.C.
19 §1681b(b)(2)(A)(ii);

20 3. For statutory damages in an amount equal to \$1,000 for Plaintiff and each
21 Proposed FCRA Class member for Defendant's willful violation of the FCRA;

22 4. For punitive damages;

23 5. For compensatory damages in the amount of unpaid wages and/or overtime not
24 paid to Plaintiff and each Proposed Class Member from at least four (4) years prior to the filing
25 of this action to the present as may be proven;

26 6. For penalties pursuant to Labor Code § 203 for all employees who were
27 terminated or resigned equal to their daily wage times thirty (30) days;

28 7. An award of prejudgment and post judgment interest;

1 8. An order enjoining Defendant and its agents, servants, and employees, and all
2 persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or
3 overtime and wages upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 510,
4 512,1194, and 1199;

5 9. For restitution for unfair competition pursuant to Business & Professions Code
6 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

7 10. An award providing for payment of costs of suit;

8 11. An award of attorneys' fees; and

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

10
11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

13
14 DATED: October 19, 2017

KINGSLEY & KINGSLEY, APC

15
16 By: _____

Eric B. Kingsley

Kelsey M. Szamet

Attorneys for Plaintiff CHRISTOPHER MASTON

and all Proposed Class members

CIVIL COVER SHEET

JS 44 (Rev. 12/12) cand rev (1/15/13)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CHRISTOPHER MASTON, an individual, on behalf of himself and others similarly situated,

(b) County of Residence of First Listed Plaintiff Alameda
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, ESQ., SBN-185123
KELSEY M. SZAMET, ESQ., SBN-260264
16133 Ventura Blvd., Suite 1200, Encino, CA 91436
(818) 990-8300; FAX (818) 990-2903

DEFENDANTS

BLUESTAR REFRESHMENT SERVICES

County of Residence of First Listed Defendant Alameda
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	
	PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	
	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 441 Voting <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	
	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	
		LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	
		<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
		<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	
		<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	
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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

NORTHERN DISTRICT OF CALIFC

CHRISTOPHER MASTON, an individual, on behalf of himself and others similarly situated

Plaintiff(s)

v.

BLUESTAR REFRESHMENT SERVICES,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) BLUESTAR REFRESHMENT SERVICES

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Eric Bryce Kingsley 16133 Ventura Blvd., Suite 1200 Encino, Ca 91436

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Bluestar Refreshment Services Facing Alleged FCRA, Labor Law Violations](#)
