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ATC Healthcare, Inc., ATC Healthcare Services,
7 LLC (erroneously sued as ATC Healthcare
Services, Inc., and ATC Healthcare Staffing), and
8 ATC West Staffing, Inc.

9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 TONI TORRACA-RIANO and MICHAEL
13 OLSHANSKY, individually, on behalf of
14 themselves and others similarly situated,

15 Plaintiffs,

16 v.

17 ATC HEALTHCARE SERVICES, INC., a
Georgia corporation; ATC
18 HEALTHCARE, INC., a Delaware
corporation; ATC HEALTHCARE
19 SERVICES, LLC, a Georgia limited
liability company; ATC HEALTHCARE
20 STAFFING, an unknown entity; ATC
WEST STAFFING, INC., a California
21 corporation; and DOES 1 through 50
inclusive,

22 Defendants.
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Case No. '19CV0295 L BLM

**DEFENDANTS' NOTICE OF
REMOVAL OF CIVIL ACTION TO
THE UNITED STATES DISTRICT
COURT**

[San Diego County Superior Court Case
No. 37-2018-000653377-CU-OE-CTL]

Trial Date: None Set
Complaint Filed: December 27, 2018

1 **TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN**
2 **DISTRICT OF CALIFORNIA AND TO PLAINTIFFS AND THEIR ATTORNEYS**
3 **OF RECORD:**

4 **PLEASE TAKE NOTICE** that Defendants ATC Healthcare, Inc., ATC
5 Healthcare Services, LLC (erroneously sued as ATC Healthcare Services, Inc., and ATC
6 Healthcare Staffing), and ATC West Staffing, Inc., hereby remove the above-referenced
7 action from the California Superior Court, County of San Diego, pursuant to 28 U.S.C.
8 sections 1441 and 1446, based on federal question jurisdiction (28 U.S.C. § 1331). The
9 removal is proper for the following reasons:

10 **I. BACKGROUND**

11 1. On December 27, 2018, an action was commenced in the Superior Court of
12 the State of California, County of San Diego, entitled *TONI TORRACA-RIANO and*
13 *MICHAEL OLSHANSKY, individually, on behalf of themselves and others similarly*
14 *situated, Plaintiffs vs. ATC HEALTHCARE SERVICES, INC., a Georgia corporation;*
15 *ATC HEALTHCARE, INC., a Delaware corporation; ATC HEALTHCARE SERVICES,*
16 *LLC, a Georgia limited liability company; ATC HEALTHCARE STAFFING, an unknown*
17 *entity; ATC WEST STAFFING, INC., a California corporation; and DOES 1 through 50*
18 *inclusive, Defendants.*

19 2. The Complaint asserts claims for: (1) “Violations of Fair Credit Reporting
20 Act, 15 U.S.C. §§ 1681b(b)(2)(A) § 1681o(a) (Obtaining Consumer Reports Without
21 Proper Disclosure)”; (2) “Violations of Fair Credit Reporting Act, 15 U.S.C.
22 §§ 1681b(b)(2)(A) § 1681o(a) (Obtaining Consumer Reports Without Proper
23 Authorization)”; (3) “Violations of the California Investigative Consumer Reporting
24 Agencies Act (ICRAA) (Civ. Code., § 1786, *et seq.*)”; (4) “Failure to Make Payments
25 Within the Required Time”; (5) “Violations of Labor Code § 226”; (6) “Remedies Under
26 Private Attorney General Act (PAGA California Labor Code §§ 2698, 2699, *et seq.*)”;
27 and (7) “Unfair Business Practices in Violation of Cal. Bus. & Prof. Code §§ 17000, *et*
28 *seq.* and §§ 17200, *et seq.*”

1 3. On **January 11, 2019**, ATC Healthcare Services, LLC's registered agent for
2 service of process received the Complaint. A true and correct copy of the document
3 received is attached as **Exhibit A**.

4 4. On February 1, 2019, Plaintiffs purported to serve the Summons and
5 Complaint on Defendant ATC West Staffing, Inc. (a dissolved corporation), by leaving a
6 copy of the documents outside the door of ATC West Staffing, Inc.'s former business
7 address. A true and correct copy of the documents delivered is attached as **Exhibit B**.

8 5. On February 4, 2019, ATC Healthcare Services, LLC's registered agent for
9 service of process received a Notice of Case Assignment and Case Management
10 Conference, the Summons, and an ADR Packet, along with another copy of the
11 Complaint. A true and correct copy of the documents received is attached as **Exhibit C**.

12 6. On February 7, 2019, Defendants filed their Answer in San Diego County
13 Superior Court. A true and correct copy of the Answer filed is attached as **Exhibit D**.

14 7. Defendants have not filed or received any other pleadings or papers, other
15 than the pleadings described as Exhibits A through D, in this action prior to this Notice of
16 Removal. (Declaration of Mason R. Winters ("Winters Decl.") ¶ 2.)

17 **II. TIMELINESS OF REMOVAL**

18 8. This Notice of Removal is timely because it is being filed within thirty (30)
19 days of ATC Healthcare Services, Inc.'s receipt of the Complaint on January 11, 2019.
20 28 U.S.C. 1446(b)(2)(B) ("Each defendant shall have 30 days after receipt by or service
21 on that defendant of the initial pleading or summons . . . to file the notice of removal.").

22 9. Thus, this Notice of Removal is filed within thirty days of service of a copy
23 of the initial pleading setting forth the claim for relief upon which this action is based and
24 is timely pursuant to 28 U.S.C. section 1446(b).

25 **III. NO JOINDER REQUIRED**

26 10. All named Defendants have consented to removal. Unnamed, or doe
27 defendants, are not required to join in removal. *Emrich v. Touche Ross & Co.*, 846 F.2d
28 1190 n.1 (9th Cir. 1988) (doe defendants need not join in removal).

1 **IV. FEDERAL QUESTION JURISDICTION**

2 11. This action is proper for removal to this Court on the ground that it is a civil
3 action of which this Court has original jurisdiction under 28 U.S.C. section 1331.

4 12. Any civil action commenced in state court is removable if it might have been
5 originally brought in federal court. *See* 28 U.S.C. § 1441; *Exxon Mobil Corp. v.*
6 *Allapattach Servs., Inc.*, 545 U.S. 546, 563-64 (2005) (“district court has original
7 jurisdiction of a civil action for purposes of section 1441(a) as long as it has original
8 jurisdiction over a subset of claims constituting the action”).

9 13. The action may be removed to this Court by Defendants under 28 U.S.C.
10 section 1441(a) because it arises under a federal statute, the Fair Credit Reporting Act, 15
11 U.S.C. §§ 1681b(b)(2)(A) and 1681o(a) (“FCRA”) (*See* Compl. pgs. 15-20.)

12 14. Specifically, on the face of the Complaint, Plaintiff’s First Cause of Action
13 is one for “Violations of Fair Credit Reporting Act, 15 U.S.C. §§ 1681b(b)(2)(A)
14 § 1681o(a) (Obtaining Consumer Reports Without Proper Disclosure).” Plaintiff’s
15 Second Cause of Action is also one for “Violations of Fair Credit Reporting Act, 15
16 U.S.C. §§ 1681b(b)(2)(A) § 1681o(a) (Obtaining Consumer Reports Without Proper
17 Authorization).” Thus, Plaintiff has expressly relied on a federal statute, the FCRA.

18 15. Plaintiffs’ express reliance on the FCRA in their First and Second Causes of
19 Action, and their numerous allegations throughout their Complaint underlying their
20 FCRA claims, is sufficient to establish federal question jurisdiction. Indeed, Plaintiffs
21 are the “master[s] of [their own] complaint,” and could have “avoid[ed] federal
22 jurisdiction by exclusive reliance on state law.” *Caterpillar Inc. v. Williams*, 482 U.S.
23 386, 392 (1987). Plaintiffs did not do so. Consequently, the action is removable based
24 on federal question jurisdiction. *See Vaden v. Discover Bank*, 556 U.S. 49, 59-60 (2009)
25 (a suit arises under federal law when “the plaintiff’s statement of his own cause of action
26 shows that it is based upon [federal law]”); *Abada v. Charles Schwab & Co.*, 300 F.3d
27 1112, 1118 (9th Cir. 2002) (“The presence or absence of federal-question jurisdiction is
28 governed by the ‘well-pleaded complaint rule,’ which provides that federal jurisdiction

1 exists only when a federal question is presented on the face of the plaintiff's well-pleaded
2 complaint.") (quoting *Caterpillar*, 482 U.S. at 392-93).

3 16. Accordingly, Plaintiffs' reliance on the FCRA on the face of their
4 Complaint, and their numerous allegations seeking to support claims under the FCRA,
5 are sufficient to establish that they have pled federal causes of action; therefore, removal
6 to this Court based on federal question jurisdiction is proper.

7 **V. PENDENT JURISDICTION OVER STATE CLAIMS**

8 17. The Court has pendent jurisdiction over Plaintiff's other state law claims
9 because they arise from a nucleus of operative facts common to the state law claims and
10 the FCRA claims. For a District Court to have pendent jurisdiction over state law claims
11 "[t]he state and federal claims must derive from a common nucleus of operative facts."
12 *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966). Once a federal court acquires
13 removal jurisdiction over a case, it also acquires jurisdiction over pendent state law
14 claims. *See, e.g., Bright v. Bechtel Petroleum, Inc.*, 780 F.2d 766, 771 (9th Cir. 1986)
15 ("[t]o conserve judicial resources, it was appropriate for the district court to decide" the
16 state law claims).

17 18. Here, the Court has pendent jurisdiction over Plaintiff's state law claims
18 because they arise out of the same set of facts as those which form the basis of her FCRA
19 claims.

20 19. Plaintiffs' Third Cause of Action for "Violations of the California
21 Investigative Consumer Reporting Agencies Act" ("ICRAA") is based on the same
22 allegations as her First and Second Causes of Action under the federal FCRA. That is,
23 both the FCRA and ICRAA claims allege that: (a) Plaintiffs signed an authorization form
24 allowing ATC Healthcare Staffing to procure consumer reports regarding them (*compare*
25 Ex. A, Compl. ¶¶ 96, 97 *with* Compl. ¶¶ 123, 125); and (b) reliance on those forms was
26 purportedly unlawful because they included "a liability release and multiple state law
27 admonitions" (*compare* Compl. ¶¶ 99, 100 *with* Compl. ¶¶ 126, 127). Indeed, Plaintiffs'
28 FCRA and ICRAA claims both center on the Complaint's identical allegations that

1 Defendants provided “a facially invalid Notification and Authorization Form that was in
2 direct violation of the clear and unambiguous requirements set forth in 15 U.S.C.
3 § 1681b(b)(2)(A)” (i.e., the FCRA) and “in § 1786.16” (the ICRAA). (*See* Ex. A,
4 Compl. ¶¶ 103, 129.) In short, the allegations on which Plaintiffs’ FCRA and ICRAA are
5 based are nearly identical.

6 20. Plaintiff’s Fourth, Fifth, and Sixth Causes of Action for “Failure to Make
7 Payments Within the Required Time,” “Violations of Labor Code § 226,” and “Remedies
8 Under Private Attorney General Act” also share a common nucleus of operative facts
9 with Plaintiffs’ FCRA claims. **First**, both sets of claims arise from Plaintiffs’
10 employment relationship with Defendants. *See Prakash v. Am. Univ.*, 727 F.2d 1174,
11 1183 (D.C. Cir. 1984) (finding that district court had jurisdiction over employee’s federal
12 FLSA claims and pendant jurisdiction over state law claims for breach of contract,
13 interference with contract, conversion, deceit, and defamation; “[t]he federal and
14 nonfederal claims [plaintiff] advances ‘derive from a common nucleus of operative
15 facts’—[the plaintiff’s] contract dispute with the university....”). **Second**, both sets of
16 claims rely on allegations that the wrong entity name was printed on Plaintiffs’
17 employment documents. (*Compare* Ex. A, Compl. ¶¶ 96, 97 *with* Compl. ¶¶ 47, 154.)
18 **Third**, both sets of claims rely on events that took place around the same time. For
19 example, Plaintiff Olshansky signed the allegedly offending background check
20 authorization form on November 18, 2018 (Compl. ¶ 31; FCRA allegation); and the
21 allegedly offending paycheck stub was issued to Plaintiff Olshansky just 11 days later on
22 November 29, 2018 (Compl. ¶ 43; wage allegation). The timeframe for the putative
23 classes also overlaps for four of the last five years. (Compl. at 12:12-24: FCRA class
24 from 12-27-2013 to the present; wage claims class from 12-27-2014 to the present.)
25 **Fourth**, both sets of claims together underlie Plaintiffs’ Seventh Cause of Action for
26 Unfair Business Practices, discussed below. Thus, Plaintiffs’ wage claims share a
27 common nucleus of operative facts with their FCRA claims.
28

1 21. Plaintiffs’ Seventh Cause of Action for “Unfair Business Practices” also
 2 shares a common nucleus of operative facts with Plaintiffs’ FCRA claims. The
 3 Complaint alleges that “Defendants committed the unfair business practices . . . by
 4 violating the laws alleged to have been violated in this Complaint and which allegations
 5 are incorporated herein by reference.” (See Ex. A, Compl. ¶ 177.) The Complaint
 6 concludes that “Defendants’ conduct, as alleged above, constitutes unlawful, unfair, and
 7 fraudulent activity prohibited by Business and Professions Code §§ 17200, *et seq.*” (*Id.*
 8 ¶ 178.) In other words, Plaintiffs’ Seventh Cause of Action for Unfair Business Practices
 9 is premised on the FCRA claims.

10 22. Therefore, the District Court has pendent jurisdiction over Plaintiff’s
 11 remaining causes of action along with her FCRA claims.

12 **VI. VENUE**

13 23. Removal to this Court is proper pursuant to 28 U.S.C. sections 1391(b) and
 14 1441(a) because the state court action was filed in San Diego County.

15 **VII. NOTICE OF REMOVAL**

16 24. Notice of this removal will promptly be served on Plaintiff and the Clerk of
 17 the Superior Court of the State of California in and for the County of San Diego.

18
 19 DATED: February 8, 2019

Respectfully submitted,
 SEYFARTH SHAW LLP

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 21
 22 By: /s/ Mason R. Winters
 23 Laura Wilson Shelby
 Mason R. Winters
 24 Attorneys for Defendants
 25 ATC Healthcare, Inc., ATC Healthcare
 26 Services, LLC (erroneously sued as ATC
 27 Healthcare Services, Inc., and ATC
 28 Healthcare Staffing), and ATC West
 Staffing, Inc.

EXHIBIT “A”
TO
NOTICE OF REMOVAL
[PAGES 7 - 45]

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/27/2018 at 10:37:03 PM
Clerk of the Superior Court
By Vanessa Bahena, Deputy Clerk

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Co-Counsel listed on next page.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO-CENTRAL DIVISION

TONI TORRACA-RIANO and
MICHAEL OLSHANSKY,
individually, on behalf of themselves
and others similarly situated,

Plaintiffs

vs.

ATC HEALTHCARE SERVICES,
INC., a Georgia corporation; ATC
HEALTHCARE, INC., a Delaware
corporation; ATC HEALTHCARE
SERVICES, LLC, a Georgia limited
liability company; ATC
HEALTHCARE STAFFING, an
unknown entity; ATC WEST
STAFFING, INC., a California
corporation; and DOES 1 through 50
inclusive

Defendants.

Case No.: 37-2018-00085377-CU-0E-CTL

**INDIVIDUAL AND CLASS ACTION
COMPLAINT FOR:**

1. **Violations of Fair Credit Reporting Act, 15 U.S.C. §§ 1681b(b)(2)(A) § 1681o(a) (Obtaining Consumer Reports Without Proper Disclosure)**
2. **Violations of Fair Credit Reporting Act, 15 U.S.C. §§ 1681b(b)(2)(A) § 1681o(a) (Obtaining Consumer Reports Without Proper Authorization);**
3. **Violations of the California Investigative Consumer Reporting Agencies Act (ICRAA) (Civ. Code, § 1786, et seq.);**
4. **Failure to Make Payments Within the Required Time;**
5. **Violations of Labor Code § 226;**
6. **Remedies Under Private Attorney General Act (PAGA California Labor Code §§ 2698, 2699, et seq.); and**
7. **Unfair Business Practices in Violation of Cal. Bus. & Prof. Code §§ 17000, et seq. and §§ 17200, et seq.**

DEMAND FOR JURY TRIAL

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14 Attorneys for Plaintiffs

15 Plaintiffs TONI TORRACA-RIANO and MICHAEL OLSHANSKY, on behalf
16 of themselves and acting for the interest of other current and former employees
17 (“Represented Employees”), and all other similarly situated individuals (cumulatively
18 “Plaintiffs”), allege the following:

19 **NATURE OF THE ACTION**

20 1. Plaintiffs bring this nationwide class action on behalf of all individuals
21 who applied for employment with Defendants and who executed a release and
22 authorization form permitting Defendants to procure a consumer report and/or
23 investigative consumer report on them as part of their employment or application for
24 employment with Defendants.

25 2. Specifically, Plaintiffs complain that Defendants have a uniform policy
26 or practice of obtaining an applicant’s consumer report and have violated the Fair
27 Credit Reporting Act (the “FCRA”) through use of a legally invalid authorization
28 form that: (1) fails to provide a clear and conspicuous disclosure; and (2) fails to
provide a disclosure that appears in a document that consists solely of the disclosure.

3. Pursuant to Code of Civil Procedure § 382 and Labor Code Private

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1 Attorney General Act (“PAGA”), §§ 2698, 2699 of the California Labor Code,
2 Plaintiffs also bring a class and representative action against Defendants for wage and
3 hour abuses in violation of the California Labor Code and the Industrial Welfare
4 Commission Wage Orders (the “IWC Wage Orders”), all of which contribute to
5 Defendants’ deliberate unfair competition.

6 4. Plaintiffs OLSHANSKY and TORRACA-RIANO, on behalf of
7 themselves and all Class Members, seek damages, penalties, restitution, injunctive and
8 other equitable relief, reasonable attorneys’ fees, and costs.

9 **JURISDICTION AND VENUE**

10 5. Pursuant to Article VI, § 10 of the California Constitution, subject matter
11 jurisdiction over Plaintiffs’ wage and hour claims is proper in the Superior Court of
12 California, County of San Diego, State of California because Plaintiffs allege claims
13 arising under California law.

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

19 7. This Court has personal jurisdiction over Defendants because Defendants
20 conduct business in this State, have systematic and continuous ties with this state, and
21 have agents and representatives that can be found in this state.

22 8. Pursuant to § 395 of the California Code of Civil Procedure, venue is
23 proper in the Superior Court of California for the County of San Diego because
24 Defendants’ corporate records filed with the California Secretary of State indicate
25 they maintain a principle business office at 9040 Friars Road, Suite 335, San Diego,
26 California 92108.

27 **THE PARTIES**

28 9. Plaintiff TONI TORRACA-RIANO is an individual currently residing in

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1 California.

2 10. Plaintiff MICHAEL OLSHANSKY is an individual residing outside the
3 state of California. During his employment with Defendants from on or about
4 November 2, 2018 to November 28, 2018, however, Plaintiff OLSHANSKY resided
5 in California.

6 11. Defendant ATC HEALTHCARE SERVICES, INC. is a Georgia
7 Corporation doing business in California.

8 12. Defendant ATC HEALTHCARE, INC. is a Delaware Corporation doing
9 business in California.

10 13. Defendant ATC HEALTHCARE SERVICES, LLC is a Georgia limited
11 liability company doing business in California.

12 14. Defendant ATC HEALTHCARE STAFFING is an unknown entity
13 doing business in California.

14 15. Defendant ATC WEST STAFFING, INC. is a California Corporation,
15 but according to the California Secretary of State Website, it is "dissolved."

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

24 17. Unless otherwise specified by name, the named Defendants and DOES 1
25 through 50 will be collectively referred to as "DEFENDANT EMPLOYER" and/or
26 "Defendants."

27 18. Plaintiffs are informed and believe, and based thereon allege, that each
28 Defendant was acting as an agent, joint venturer, an integrated enterprise and/or alter

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1 ego for each of the other Defendants and each were co-conspirators with respect to the
2 acts and the wrongful conduct alleged herein so that each is responsible for the acts of
3 the other pursuant to the conspiracy and in proximate connection with the other
4 Defendant(s).

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

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

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

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

23 **STATUTORY BACKGROUND OF THE FCRA**

24 23. Enacted in 1970, the FCRA's passage was driven in part by two related
25 concerns: first, that consumer reports were playing a central role in people's lives at
26 crucial moments, such as when they applied for a job or credit, and when they applied
27 for housing; second, despite their importance, consumer reports were unregulated and
28 had widespread errors and inaccuracies.

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1 24. While recognizing that consumer reports play an important role in the
2 economy, Congress wanted consumer reports to be "fair and equitable to the
3 consumer" and to ensure their "confidentiality, accuracy, relevancy, and proper
4 utilization." 15 U.S.C. § 1681.

5 25. Congress was particularly concerned about the use of consumer reports by
6 employers. Accordingly, Congress required employers to make a clear and
7 conspicuous written disclosure to employees and job applicants, in a document that
8 consists solely of the disclosure, that a consumer report may be procured for
9 employment purposes. 15 U.S.C. § 1681b(b)(2). This is commonly referred to as the
10 "stand-alone disclosure" requirement. Congress further required that employers obtain
11 written authorization prior to procurement of a consumer report for employment
12 purposes. *Id.*

13 26. The FCRA's stand-alone disclosure requirement is one of many elements
14 of the FCRA that combine to ensure that consumers know when consumer reports may
15 be generated about them, that they know their rights, and that they have the
16 opportunity to dispute errors in their reports. See 15 U.S.C. § 1681b(b)(3)(A) (pre-
17 adverse employment action notice requirement); § 1681b(4)(B) (notification of
18 national security investigation); § 1681 c(h) (notification of address discrepancy); §
19 1681d(a) (disclosure of investigative report); § 1681g (full file disclosure to
20 consumers); § 1681k(a)(1) (disclosure regarding the use of public record information); §
21 1681h (form and conditions of disclosure); § 1681m(a) (post-adverse employment
22 action notice requirement).

23 27. Although the disclosure and the authorization may be combined in a
24 single document, the FTC has warned that the form should not include any extraneous
25 information or be part of another document. For example, in response to an inquiry as
26 to whether the disclosure may be set forth within an application for employment or
27 whether it must be included in a separate document, the FTC stated:

28

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The disclosure may not be part of an employment application because the language [of 15 U.S.C. § 1681b(b)(2)(A)] is intended to ensure that it appears conspicuously in a document not encumbered by any other information. The reason for requiring that the disclosure be in a stand-alone document is to prevent consumers from being distracted by other information side-by-side within the disclosure.

28. The plain language of the statute also clearly indicates that the inclusion of a waiver in a disclosure form violates the disclosure and authorization requirements of the FCRA, because such a form would not consist "solely" of the disclosure. In fact, the FTC expressly has warned that the FCRA notice may not include extraneous information such as a waiver. In a 1998 opinion letter, the FTC stated:

[W]e note that your draft disclosure includes a waiver by the consumer of his or her rights under the FCRA. The inclusion of such a waiver in a disclosure form will violate Section 604(b)(2)(A) of the FCRA, which requires that a disclosure consist 'solely' of the disclosure that a consumer report may be obtained for employment purposes.

29. Consistent with the FTC's construction of the FCRA, courts have repeatedly held that extraneous information renders a purported FCRA disclosure non-compliant. *See, e.g., Woods v. CaremarkPHC, LLC*, No. 4:15-cv-00535, 2015 WL 6742124, *2 (W.D. Mo. Nov. 2, 2015) (denying motion to dismiss FCRA complaint where plaintiff alleged that purported disclosure contained an overbroad authorization for third parties to provide information to defendant and its consumer reporting agency, and state specific notices that did not apply to plaintiff); *Jones v. Halstead Mgmt. Co., LLC*, No. 14-cv-3125, 2015 WL 366244, *5 (S.D.N.Y. Jan 27, 2015) (denying motion to dismiss FCRA complaint where plaintiff alleged that purported disclosure form included timeframes during which applicant must challenge accuracy of any report, an acknowledgement that employment decisions are based on non-discriminatory reasons, the contact information for the consumer reporting agency and state specific notices that "stretched what should be a simple disclosure form into two full pages of eye-straining typeface writing.").

1 30. As discussed below, Defendant routinely violates the FCRA by failing to
2 provide the required stand-alone disclosure to employees and job applicants.

3 **GENERAL ALLEGATIONS REGARDING UNLAWFUL**
4 **PROCUREMENT OF CONSUMER REPORT CLAIMS**

5 31. On or about November 18, 2018, as part of Plaintiffs’ application for
6 employment, DEFENDANT EMPLOYER required Plaintiffs OLSHANSKY and
7 TORRACA-RIANO to sign a document titled “Notification and Authorization to
8 Conduct Employment Background Investigation.” A true and correct redacted copy of
9 Plaintiff OLSHANSKY’S authorization is attached hereto and marked as **Exhibit 1**.

10 32. This form is at the heart of one key part of this dispute.

11 33. The abovementioned form purportedly authorizes “ATC Healthcare
12 Staffing” to conduct a background investigation concerning Plaintiffs OLSHANSKY
13 and TORRACA-RIANO and the putative Class.

14 34. Plaintiffs maintain this form is illegal because, in part, it includes a
15 release and hold harmless clause that provides, “I release employers and persons
16 named in my application from all liability for any damages on account of his/her
17 furnishing said information.” See **Ex. 1**.

18 35. Plaintiffs maintain this form is also illegal because it misstates the name
19 of Plaintiffs OLSHANSKY’S and TORRACA-RIANO’S employer as being “ATC
20 Healthcare Staffing,” when according to their wage and earning statements, the only
21 legal entity identified as being Plaintiffs’ employer was “ATC Healthcare Services,
22 Inc.” See **Ex. 1**.

23 36. To the extent “ATC Healthcare Staffing” (if it exists) is the entity that
24 procured consumer reports on Plaintiffs OLSHANSKY and TORRACA-RIANO and
25 Class Members, this form also fails to provide any disclosure or to obtain any
26 authorization at all.

27 37. Plaintiffs maintain this form is also illegal because it includes other
28 extraneous information in addition to a release, including but not limited to a number

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1 of purported unrelated state law admonitions. See Ex. 1.

2 38. Plaintiffs maintain this form is also illegal to the extent that it is overly
3 broad and purports to authorize the procurement of any information concerning the
4 applicant whether otherwise lawful or appropriate. See Ex. 1.

5 39. Plaintiffs are informed and believe and therefore allege that pursuant to
6 the forms that Plaintiffs OLSHANSKY and TORRACA-RIANO signed on or about
7 November 18, 2018, DEFENDANT EMPLOYER obtained consumer reports on
8 Plaintiffs OLSHANSKY and TORRACA-RIANO.

9 40. On information and belief, DEFENDANT EMPLOYER had a practice
10 and policy of procuring consumer reports on all Class Members based upon this or
11 substantially similar forms during the class period.

12 41. Based on the foregoing, Plaintiffs claim Defendants violated both state
13 and federal law.

14 **GENERAL ALLEGATIONS REGARDING**
15 **LABOR CODE VIOLATIONS**

16 **Labor Code § 226 Violations**

17 42. From at least four years before the filing of this action and continuing to
18 the present, and pursuant to company policy and/or practice and/or direction,
19 Defendants issued inaccurate wage and earning statements to Plaintiffs.

20 43. On or about November 29, 2018, Defendants issued Plaintiff
21 OLSHANSKY a paystub.

22 44. This paystub did not accurately state Plaintiff OLSHANSKY'S gross
23 wages earned or the total hours worked by the employee.

24 45. The November 29, 2018 paystub stated Plaintiff OLSHANSKY earned
25 \$1,810.21 in gross wages, but Plaintiff actually earned \$2,194.59.

26 46. Additionally, the November 29, 2018 statement did not account for
27 Plaintiff OLSHANSKY'S 0.75 hours of overtime and two hours of double time.

28 47. Further, if indeed "ATC Healthcare Staffing" was Plaintiffs' employer,

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1 Defendant failed to identify such entity as being Plaintiffs' employer, as required
2 under Labor Code § 226(a)(8).

3 48. Plaintiff TORRACA-RIANO similarly alleges that her paystubs were
4 inaccurate.

5 49. Plaintiffs are informed and believe and therefore allege that Defendants
6 issued similarly inaccurate paystubs to similarly situated employees.

7 50. Based on the foregoing, Plaintiffs seeks the remedies set forth in this
8 Complaint.

9 **Waiting Time Penalties**

10 51. Pursuant to Defendants' policies, Defendants failed to pay all wages to
11 Plaintiffs in a timely manner.

12 52. On or about November 28, 2018, Defendants involuntarily terminated
13 Plaintiffs OLSHANSKY'S and TORRACA-RIANO'S employment.

14 53. On Plaintiffs OLSHANSKY'S and TORRACA-RIANO'S date of
15 termination, however, Defendants failed to pay Plaintiffs OLSHANSKY and
16 TORRACA-RIANO all their unpaid wages immediately upon their termination.

17 54. Plaintiffs are informed and believe and based thereon allege that
18 Defendants similarly did not pay other similarly situated employees all wages due and
19 payable in a timely manner.

20 55. Based on the foregoing, Plaintiffs seeks the remedies set forth in this
21 Complaint.

22 **REPRESENTATIVE ACTION (PAGA) CLAIMS**

23 56. The duties and business activities of the Represented Employees were
24 essentially the same as the duties and activities of Plaintiffs OLSHANSKY and
25 TORRACA-RIANO described above.

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

28 **All nonexempt persons Defendants employed in the State of**

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1 **California from December 21, 2017 to the present.**

2 58. All members of the represented groups will be referred to as the
3 “Represented Employees.”

4 59. The “Representative Period” means from **December 21, 2017** to the
5 present, the timeframe where the scope of statute allows Plaintiffs to recover wages
6 and penalties.

7 60. At all times during the Representative Period, all the Represented
8 Employees were employed in the same or similar job as Plaintiffs OLSHANSKY and
9 TORRACA-RIANO and were paid in the same manner and under the same standard
10 employment procedures and practices as the Plaintiff.

11 61. Plaintiffs OLSHANSKY and TORRACA-RIANO further allege
12 DEFENDANT EMPLOYER did not pay them and, on information and belief
13 Represented Employees, all wages due at the time their employment ended with
14 DEFENDANT EMPLOYER.

15 62. On information and belief, current and former employees of
16 DEFENDANT EMPLOYER were subject to wage and hour violations by
17 DEFENDANT EMPLOYER, including failing to pay for all wages due.

18 63. California law provides that an employee may file an action against an
19 employer to recover penalties for violations of the Labor Code and Wage Orders,
20 provided the aggrieved employee files an action on behalf of him or herself and
21 similarly situated current and former employees.

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

1 65. As set forth in further detail below, because of the analysis and
2 investigation of the Plaintiffs' claims, Plaintiffs' attorneys sent letters to the California
3 Labor and Workforce Development Agency (hereinafter referred to as "LWDA") and
4 to DEFENDANT EMPLOYER informing DEFENDANT EMPLOYER of their claims
5 and their intent to pursue litigation.

6 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

7 66. As to penalty claims under the Labor Code Private Attorney General
8 Act, on **December 21, 2018**, Plaintiffs began to exhaust his/her administrative
9 remedies by sending correspondence to the LWDA and DEFENDANT EMPLOYER
10 indicating that Plaintiffs OLSHANSKY and TORRACA-RIANO are pursuing the
11 claims alleged in this Complaint.

12 67. By the time an amended Complaint is filed, the statutory period for
13 Plaintiffs will have expired on the letter alleged above and the LWDA will likely not
14 have served Plaintiffs with notice of intent to assume jurisdiction over the applicable
15 penalty claims and did not provide notice as set forth in Labor Code § 2699.3
16 (a)(2)(A) within the statutory period.

17 68. Therefore, Plaintiffs will have exhausted Plaintiffs' administrative
18 remedies to enable Plaintiffs to seek the penalty claims sought in this Complaint.

19 69. The Causes of Action alleged herein are appropriately suited for a
20 Representative Action under PAGA (Labor Code § 2698, *et seq.*) because:

- 21 a. This action involves allegations of violations of
- 22 provisions of the California Labor Code that
- 23 provide for a civil penalty to be assessed and
- 24 collected by the LWDA or any departments,
- 25 divisions, commissions, boards, agencies or
- 26 employees;
- 27 b. Plaintiffs are "aggrieved employees" because
- 28 Plaintiffs were employed by the alleged violator

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and had one or more of the alleged violations committed against them; and
c. Plaintiffs have satisfied the procedural requirements of Labor Code § 2699.3, as set forth above.

CLASS ACTION ALLEGATIONS

70. Plaintiffs OLSHANSKY and TORRACA-RIANO bring this action on behalf of themselves and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure.

71. Plaintiffs OLSHANSKY and TORRACA-RIANO seek to represent the classes and/or subclasses composed of and defined as follows:

Labor Code Class:

All current or former nonexempt employees who worked in the state of California from December 27, 2014 to the present for the Defendants who were issued wage and earning statements from ATC Healthcare Services, Inc.

FCRA Class:

All persons residing in the United States regarding whom Defendants procured or caused to be procured a consumer report for employment purposes during the period five years prior to the filing of the present action through the date of certification.

72. Plaintiffs OLSHANSKY and TORRACA-RIANO also seek to represent the following subclasses composed of and defined as follows:

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

Waiting Time Subclass: All Members of the Plaintiff Class who,

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1 during the applicable limitations period, did not receive all wages due
2 in a timely manner as required by Labor Code §§ 201-204.

3 **UCL Subclass:** All Members of the Plaintiff Class, who, during the
4 relevant period, Defendants owe restitution in the form of (1)
5 unreimbursed expenses and/or (2) wages earned and unpaid because
of Defendants’ uniform pay policies and procedures.

6 73. The above-mentioned class-members will collectively be referred to as
7 “Class Members.”

8 74. Plaintiffs reserve the right under the California Rules of Court, to
9 amend or modify the class description with greater specificity or further division into
10 subclasses or limitation to particular issues.

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

15 **A. Numerosity**

16 76. The potential members of the Class as defined are so numerous or many,
17 that joinder of all the members of the Class is impracticable.

18 77. While the precise number of Class Members has not been determined at
19 this time, Plaintiffs are informed and believe, and on that basis allege, that
20 DEFENDANT EMPLOYER currently employs, and during the relevant time periods
21 employed, over 100 Class Members.

22 78. Accounting for employee turnover during the relevant periods necessarily
23 increases this number substantially.

24 **B. Commonality**

25 79. There are questions of law and fact common to the Class that
26 predominate over any questions affecting only individual Class Members.

27 80. Common questions of law and fact include, without limitation and
28

1 subject to possible further amendment, the following:

- 2 a. Whether the Defendant violated the FCRA by
- 3 procuring consumer reports based on invalid
- 4 authorizations;
- 5 b. Whether Defendants' policy or practice of not paying
- 6 hourly employees all their wages due in their final
- 7 paychecks immediately upon involuntary termination
- 8 or within 72 hours' notice of when its employees
- 9 provided notice of their voluntary resignation, is
- 10 unlawful under Labor Code §§ 201, 202 and/or 203;
- 11 c. Whether Defendants violated Labor Code §§ 226 by
- 12 not providing accurate paystubs; and
- 13 d. Whether Plaintiffs OLSHANSKY and TORRACA-
- 14 RIANO and the members of the Class may recover
- 15 remedies pursuant to Business & Professions Code §§
- 16 17200, *et seq.*

17 **C. Typicality**

18 81. Plaintiffs OLSHANSKY'S and TORRACA-RIANO'S claims are typical
19 of the claims of the Class because Plaintiffs OLSHANSKY and TORRACA-RIANO
20 and all members of the Class sustained injuries and damages arising out of and caused
21 by Defendants' common course of conduct and policies in violation of laws,
22 regulations that have the force and effect of law and statutes as alleged herein.

23 **D. Adequacy of Representation**

24 82. Plaintiffs OLSHANSKY and TORRACA-RIANO are members of the
25 Class, do not have any conflicts of interest with other Class Members, and will
26 prosecute the case vigorously on behalf of the Class.

27 83. Counsel representing Plaintiffs OLSHANSKY and TORRACA-RIANO
28 and the putative Class is competent and experienced in litigating employment class

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1 actions, including wage and overtime class actions.

2 84. Plaintiffs OLSHANSKY and TORRACA-RIANO will fairly and
3 adequately represent and protect the interests of the Class Members.

4 **E. Superiority of Class Action**

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

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

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

14 88. Plaintiffs are unaware of any difficulties that are likely to encounter in
15 the management of this action that would preclude maintenance as a Class Action.

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

18 **FIRST CAUSE OF ACTION**

19 **Individual and Class Claim for**

20 **Violation of the Fair Credit Reporting Act**

21 **(Obtaining Consumer Reports Without Proper Disclosure)**

22 **(Against All Defendants)**

23 90. Plaintiffs allege and incorporates by reference the allegations in the
24 preceding paragraphs as though fully set forth herein.

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

27 92. Likewise, a consumer report may be used for the evaluation of "a
28 consumer for employment, promotion, reassignment or retention of an employee." 15

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1 U.S.C. §1681a(h).

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

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

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

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

17 15 U.S.C. § 1681b(b)(2)(A).

18 96. During the Class Period, DEFENDANT EMPLOYER required Plaintiffs
19 OLSHANSKY and TORRACA-RIANO and the FCRA Class Members to sign an
20 authorization form as part of their job application with DEFENDANT EMPLOYER,
21 which form purported to allow “ATC Healthcare Staffing” to procure consumer
22 reports regarding the Plaintiffs.

23 97. To the extent that ATC Healthcare Staffing (if such entity exists) is not
24 the entity that procured consumer reports on Plaintiffs and FCRA Class Members,
25 DEFENDANT EMPLOYERS failed to provide any disclosure at all prior to
26 procuring consumer reports for employment purposes, as required by the FCRA.

27 98. Moreover, the form that was provided facially violates the FCRA in
28 numerous respects.

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1 99. Included in DEFENDANT EMPLOYER’S Notification and
2 Authorization Form, i.e., **Exhibit 1** are reams of extraneous information, including
3 but not limited to, a liability release and multiple state law admonitions. See **Exhibit**
4 **1**.

5 100. Defendants’ inclusion of the aforementioned, among other extraneous
6 information, in its Notification and Authorization Form executed by applicants
7 facially contravenes the requirements of 15 U.S.C. § 1681b(b)(2)(A) that the
8 disclosure be: (1) “clear and conspicuous”; and (2) appear “in a document that
9 consists solely of the disclosure.”

10 101. As a matter of law, Defendant’s inclusion of the aforementioned
11 information invalidates the Notification and Authorization Form for purposes of the
12 FCRA. See *Syed v. M-I, LLC*, 853 F.3d 492, *10-11 (9th Cir. 2017) (holding an
13 employer violates Section 1681b(b)(2)(A)(I)—(ii) when it requires an employee to
14 sign a form containing a waiver of liability provision as part of a background
15 investigation); *Harris v. Home Depot U.S.A., Inc.*, 114 F. Supp. 3d 868, 870-71 (N.D.
16 Cal. 2015) (release of liability improper); *Feist v. Petco Animal Supplies, Inc.*, 218 F.
17 Supp. 3d 1112 (S.D. Cal. 2016) (a summary of consumer rights in seven different
18 states improper); *Lagos v. The Leland Stanford Junior University*, 2015 U.S. Dist.
19 LEXIS 163119 (N.D. Cal. Dec. 4, 2015) (inclusion of seven state law notices and
20 sentence stating “I also understand that nothing herein shall be construed as an offer
21 of employment or contract for services” plausibly violated stand-alone disclosure
22 requirement); *Woods v. Caremark PHC, L.L.C.*, 2015 U.S. Dist. LEXIS 148051
23 (W.D. Mo. 2015) (“The specific ‘extraneous information’ Plaintiff alleges Defendant
24 included in its Authorization Form for Consumer Reports is: (1) an overbroad
25 authorization for third parties to provide information to Defendant and its consumer
26 reporting agency, (2) state-specific notices that did not apply to Plaintiff, and (3) that
27 the form was part of a five-page stapled packet of three documents. Where FCRA
28 allegations involve the inclusion of extraneous information beyond an authorization,

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1 the complaint meets the 12(b)(6) standard to state a claim for willful violation of the
2 FCRA stand-alone requirement."); *see also* Letter from William Haynes, Attorney,
3 Div. of Credit Practices, Fed Trade Comm'n to Richard W. Hauxwekk, CEO,
4 Accufax Div. (June 12, 1998), 1998 W.L. 34323756 (F.T.C.) (noting that the
5 inclusion of a waiver in a disclosure form will violate the FCRA).

6 102. The Notification and Authorization form is also illegal to the extent that
7 it purports to authorize the procurement of any and all information regarding
8 Plaintiffs and FCRA Class Members, whether legal or proper to do so.

9 103. Defendants acted willfully by providing a facially invalid Notification
10 and Authorization Form that was in direct violation of the clear and unambiguous
11 requirements set forth in 15 U.S.C. § 1681b(b)(2)(A).

12 104. Defendants knew or acted with reckless disregard of its statutory duties
13 and the rights of applicants and employees, including Plaintiff and the Class, thus
14 knowingly and/or recklessly disregarding its statutory duties.

15 105. On information and belief, as well as Plaintiffs' investigation,
16 Defendants' conduct was willful because:

- 17 a. Defendants required Plaintiff and the Class to execute the
18 Notification and Authorization Form knowing that it was
19 facially invalid in violation of the FCRA and Defendants'
20 statutory duties;
- 21 b. Defendants acted with reckless disregard of the FCRA
22 requirements and Defendants' statutory duties when it
23 required Plaintiff and the Class to execute the Notification
24 and Authorization Form that was facially invalid and in
25 violation of the clear and unambiguous requirements of the
26 FCRA;
- 27 c. Upon information and belief, Defendants were advised by
28 skilled lawyers and other professional employees, and

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- 1 advisors knowledgeable about the FCRA requirements;
- 2 d. The plain language of the statute unambiguously indicates
- 3 that inclusion of a liability release in a disclosure form
- 4 violates the disclosure and authorization requirements;
- 5 e. The FTC’s express statements, pre-dating Defendants’
- 6 conduct, state that it is a violation of 15 U.S.C. §
- 7 1681b(b)(2)(A) to include a liability waiver in the FCRA
- 8 disclosure form; and
- 9 f. By adopting such a policy, Defendant voluntarily ran a risk
- 10 of violating the law substantially greater than the risk
- 11 associated with a reading that was merely careless.

12 106. Pursuant to 15 U.S.C. §1681n(a)(1)(A), Plaintiffs OLSHANSKY and
13 TORRACA-RIANO and the FCRA Class may recover statutory damages due to
14 Defendant’s willful failure to comply with the requirements imposed by 15 U.S.C. §
15 1681b(b)(2)(A) of an amount not less than \$100 and not more than \$1,000.

16 107. Plaintiffs OLSHANSKY and TORRACA-RIANO and the Class seek the
17 recovery of punitive damages for Defendants’ willful violations, in an amount as the
18 Court may allow.

19 108. Pursuant to 15 U.S.C. § 1681n(a)(3) and § 1681o(a)(2), Plaintiffs
20 OLSHANSKY and TORRACA-RIANO and the Class seek the recovery costs of suit
21 with reasonable attorneys’ fees, as determined by the Court.

22 **SECOND CAUSE OF ACTION**

23 **Individual and Class Claim for**

24 **Violation of the Fair Credit Reporting Act**

25 **(Obtaining Consumer Reports Without Proper Authorization)**

26 109. Plaintiffs allege and incorporates by reference the allegations in the
27 preceding paragraphs as though fully set forth herein.

28 110. As alleged above, the form presented to Plaintiffs and FCRA Class

1 Members purports to authorize "ATC Healthcare Staffing" to perform a background
2 investigation.

3 111. To the extent the foregoing entity (if it exists at all) is not the entity that
4 procured consumer reports on Plaintiffs and Class Members, Defendants failed to
5 obtain any authorization at all.

6 112. Alternatively, because Defendants failed to make a clear and
7 conspicuous disclosure that a consumer report may be procured in a document
8 consisting solely of the disclosure, Defendants violated the FCRA by procuring
9 consumer reports relating to Plaintiffs and other Class Members without proper
10 authorization. See 15 U.S.C. § 1681b(b)(2)(A)(ii).

11 113. The foregoing violations were willful because Defendants acted in
12 deliberate or reckless disregard of its obligations and the rights of Plaintiffs and other
13 Class Members under 15 U.S.C. § 1681b(b)(2)(A)(ii).

14 114. Defendants' willful conduct is also evidenced by, among other things,
15 the facts previously set forth.

16 115. Pursuant to 15 U.S.C. § 1681n(a)(1)(A), Plaintiffs OLSHANSKY and
17 TORRACA-RIANO and the FCRA Class seek to recover statutory damages due to
18 Defendants' willful failure to comply with the requirements imposed by 15 U.S.C. §
19 1681b(b)(2)(A) of an amount not less than \$100 and not more than \$1,000.

20 116. Plaintiffs OLSHANSKY and TORRACA-RIANO and the Class seek the
21 recovery of punitive damages for Defendants' willful violations, in an amount as the
22 Court may allow.

23 117. Pursuant to 15 U.S.C. § 1681n(a)(3) and § 1681o(a)(2), Plaintiffs
24 OLSHANSKY and TORRACA-RIANO and the Class seek the recovery costs of suit
25 with reasonable attorneys' fees, as determined by the Court.

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THIRD CAUSE OF ACTION
Individual Claim for Violation of the
California Investigative Consumer Reporting
Agencies Act (ICRAA) (Civ. Code, § 1786, *et seq.*)
(Obtaining Consumer Reports Without Facially Valid Authorizations)
(Against All Defendants)

118. Plaintiffs allege and incorporates by reference the allegations in the preceding paragraphs as though fully set forth herein.

119. Pursuant to California Civ. Code, § 1786, *et seq.*, a consumer reporting agency may furnish a consumer investigative report for employment purposes.

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

(A) The person procuring or causing the report to be made has a permissible purpose, as defined in Section 1786.12.

(B) The person procuring or causing the report to be made provides a clear and conspicuous disclosure in writing to the consumer at any time before the report is procured or caused to be made in a document that consists solely of the disclosure, that:

- (i) An investigative consumer report may be obtained.
- (ii) The permissible purpose of the report is identified.
- (iii) The disclosure may include information on the consumer's character, general reputation, personal characteristics, and mode of living.
- (iv) Identifies the name, address, and telephone number of the investigative consumer reporting agency conducting the investigation.
- (v) Notifies the consumer in writing of the nature and scope of the investigation requested, including a summary of the provisions of Section 1786.22.
- (vi) Notifies the consumer of the Internet Web site address of the investigative consumer reporting agency identified in clause (iv), or, if the agency has no Internet Web site address, the telephone number of the agency, where the consumer may find information about the investigative reporting agency's privacy practices, including whether the consumer's personal information will be sent outside the United States or its territories and information

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that complies with subdivision (d) of Section 1786.20. This clause shall become operative on January 1, 2012.
(C) The consumer has authorized in writing the procurement of the report.

(§ 1786.16, subd. (a)(2).)

121. In addition, the person procuring or causing the report to be made must “certify to the investigative consumer reporting agency that the person has made the applicable disclosures to the consumer required by [section 1786.16, subdivision (a)] and that the person will comply with subdivision (b).” (§ 1786.16, subd. (a)(4).)

122. Subdivision (b) of section 1786.16 also requires the person procuring or causing the report to be made to (1) provide the consumer a form with a box that can be checked if the consumer wishes to receive a copy of the report, and send a copy of the report to the consumer within three business days if the box is checked and (2) comply with section 1786.40 if the person procuring or causing the report to be made contemplates taking adverse action against the consumer. (§ 1786.16, subd. (b).)

123. During the Class Period, Defendant ATC HEALTHCARE SERVICES, INC. required Plaintiffs OLSHANSKY and TORRACA-RIANO and FCRA Class Members to sign a disclosure authorization forms as part of their job applications with Defendant ATC HEALTHCARE SERVICES, INC., which forms purported to allow Defendant “ATC HEALTHCARE STAFFING,” not Defendant ATC HEALTHCARE SERVICES, INC., the alleged real employer, to procure a consumer report on the Plaintiff. See **Exhibit 1**.

124. Under Civil Code § 1786.16, subd. (a) “Any person described in subdivision (d) of Section 1786.12 shall not procure or cause to be prepared an investigative consumer report unless . . . The person procuring or causing the report to be made has a permissible purpose, as defined in Section 1786.12,” yet Civil Code § 1786.12, in relevant part, provides “An investigative consumer reporting agency shall only furnish an investigative consumer report. . . To a person that it has reason to believe: (1) Intends to use the information for employment purposes.”

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1 125. If Defendant ATC HEALTHCARE STAFFING was not Plaintiff's
2 employer, it violated Civil Code § 1786.16 because it had no legal basis to procure a
3 consumer report on the Plaintiff.

4 126. In addition, DEFENDANT EMPLOYER'S Notification and
5 Authorization Form, i.e., **Exhibit 1**: (1) was a purported authorization to procure a
6 consumer report and/or investigative consumer report; (2) included a waiver of
7 liability provision; (3) included a purported authorization to investigate "personal
8 history, educational background, military record, motor vehicle records, criminal
9 records, and credit history . . ."; and (4) included other extraneous language, including
10 but not limited to a number of state law admonitions, such as Massachusetts,
11 Minnesota, Oklahoma, none of which are applicable since Plaintiff was applying for
12 work in California; "." See **Exhibit 1**.

13 127. Plaintiff maintains Defendants' inclusion of the aforementioned in its
14 Notification and Authorization Form violates California law because it was not a
15 "clear and conspicuous disclosure in writing to the consumer." (§ 1786.16(a)(2)(B).)
16 See **Exhibit 1**.

17 128. Based on the misconduct alleged in this Complaint, Defendants violated
18 ICRAA.

19 129. Defendants acted willfully by providing a facially invalid Notification
20 and Authorization Form that was in direct violation of the clear and unambiguous
21 requirements set forth in § 1786.16.

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

25 131. On information and belief, as well as Plaintiff's investigation,
26 Defendants' conduct was willful.

27 132. With respect to each of the aforementioned violations of the ICRAA
28 provisions and pursuant to Civ. Code § 1786.50(a)(1), in the event this case does not

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1 proceed as a class action basis regarding the FCRA class claims, Plaintiffs
2 OLSHANSKY and TORRACA-RIANO, not the Class, seek to recover statutory
3 damages due to Defendants' failure to comply with the requirements imposed by §
4 1786.16 of an amount not less than \$10,000 or seek actual damages, if any, in an
5 amount to be proven at trial, whichever is higher.

6 133. Plaintiffs OLSHANSKY and TORRACA-RIANO are informed and
7 believe, and based on such information and belief allege that Defendants' misconduct
8 was reckless and/or willful and/or malicious and/or in conscious disregard of the
9 rights and safety of the Plaintiff and whose recklessness and/or conscious disregard
10 was reasonably foreseeable to cause injury to the Plaintiff, thereby warranting the
11 assessment of punitive damages against these Defendants.

12 134. Plaintiffs OLSHANSKY and TORRACA-RIANO seek the recovery
13 costs of suit with reasonable attorneys' fees, as determined by the Court.

14 **FOURTH CAUSE OF ACTION**

15 **Individual and Representative Claim for**

16 **Failure to Pay Timely Earned Wages during Employment and**

17 **Upon Separation of Employment in Violation of**

18 **California Labor Code §§ 201, 202, 203,**

19 **204 and/or 204b, 218.5, and 218.6**

20 **(Against all Defendant ATC HEALTHCARE SERVICES, INC.)**

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

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

26 137. Pursuant to Labor Code § 202, "If an employee not having a written
27 contract for a definite period quits his or her employment, his or her wages shall
28 become due and payable not later than 72 hours thereafter, unless the employee has

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1 given 72 hours previous notice of his or her intention to quit, in which case the
2 employee is entitled to his or her wages at the time of quitting.”

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

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

11 140. Alternatively, pursuant to Labor Code § 204b, employers must pay its
12 employees on a weekly basis on a regular day determined by the employer as the
13 regular payday.

14 141. Pursuant to Labor Code §§ 218.5 and 218.6, an action may be brought for
15 the nonpayment of wages and fringe benefits.

16 142. Based on the misconduct alleged in this Complaint, Plaintiffs were not
17 properly paid pursuant to the requirements of Labor Code §§ 201, 202, and 204/204b
18 and thereby seek all remedies available to them.

19 143. Plaintiffs are informed and believe and based thereon allege that
20 Defendants willfully failed to pay Plaintiffs’ wages pursuant to the requirements of
21 Labor Code §§ 201, 202, and 204/204b, after Plaintiffs’ demand and, therefore,
22 Plaintiffs may recover the associated unpaid wages and waiting time penalties.

23 144. Plaintiffs are informed and believe and based thereon allege that
24 Defendants did this with the intent to secure for himself, herself and itself a discount
25 on its indebtedness and/or with intent to annoy harass, oppress, hinder, delay and/or
26 defraud Plaintiffs.

27 145. At all material times, DEFENDANT EMPLOYER and DOES 1 through
28 50 were and/or are Represented Employees’ employers or persons acting on behalf of

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

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

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

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

21 149. Defendants deprived Plaintiffs of their rightfully earned wages as a direct
22 and proximate result of Defendants' failure and refusal to pay said compensation and
23 for the reasons alleged in this Complaint.

24 150. Plaintiffs OLSHANSKY and TORRACA-RIANO and Class Members
25 request the unpaid wages, waiting time penalties, interest, attorneys' fees, costs,
26 damages, and other remedies in an amount to be proven at trial.

27 151. Where any of the foregoing statutes do not provide for a private right of
28 actions, Plaintiffs OLSHANSKY and TORRACA-RIANO nevertheless assert

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1 Defendants violated these provisions as part of their PAGA cause of action alleged
2 herein.

3 **FIFTH CAUSE OF ACTION**

4 **Individual and Representative Claim for**
5 **Violations of California Labor Code § 226**
6 **(Against all Defendants)**

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

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

23 154. Based on the foregoing allegations, during all times relevant to this action,
24 Defendants did not provide accurate wage statements throughout the Class Period.

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

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1 wages earned, total hours worked by the employee, among other things.

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

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

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

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

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

27 161. For Defendants' misconduct as alleged herein, Plaintiffs seek injunctive
28 relief and attorneys' fees and costs pursuant to § 226 in an amount to be proven at trial.

1 162. Where any of the foregoing statutes do not provide for a private right of
2 actions, Plaintiffs OLSHANSKY and TORRACA-RIANO nevertheless assert
3 Defendants violated these provisions as part of their PAGA cause of action alleged
4 herein.

5 **SIXTH CAUSE OF ACTION**

6 **Individual and Representative Claim for PAGA**

7 **Penalties and Wage Under California Labor Code**

8 **§§ 2698, 2699, et seq. for Violations of California Labor Code**

9 **§§ 201, 202, 203, 204 and/or 204b, 218.5, 218.6, 226, 226.3, and 226.6.**

10 (Against all Defendants)

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

13 164. Pursuant to law, written notice was provided to the LWDA and
14 Defendants of the specific violations of the California Labor Code Defendants have
15 violated and continue to violate.

16 165. Pursuant to Labor Code § 2699.3, no response will likely be received
17 from the LWDA within 60 days of the postmark date of the above-alleged letter.

18 166. Plaintiffs, therefore, will have exhausted all administrative procedures
19 required of them under Labor Code §§ 2698, 2699, and 2699.3, and, as a result, are
20 justified as a matter of right in bringing forward this cause of action and are entitled to
21 pursue penalties in a representative action for Defendants' violations of the Labor
22 Code.

23 167. Pursuant to Labor Code § 2699, any provision of the Labor Code that
24 provides for a civil penalty to be assessed and collected by the LWDA or any of its
25 departments, divisions, commissions, boards, agencies or employees for violation of
26 the code may, as an alternative, be recovered through a civil action brought by an
27 aggrieved employee on behalf of himself or herself and other current or former
28 employees pursuant to the procedures specified in Labor Code § 2699.3.

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1 168. Plaintiff is an “aggrieved employee” because Plaintiff was employed by
2 the alleged violator and had one or more of the alleged violations committed against
3 Plaintiff, and therefore is properly suited to represent the interests of other current and
4 former Represented Employees.

5 169. Because of the acts alleged above, Plaintiffs seek penalties under Labor
6 Code §§ 2698 and 2699 because of Defendants’ violation of numerous provisions of
7 the California Labor Code as alleged in this Complaint.

8 170. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
9 penalties for violating Labor Code §§ 201, 202, 203, 204 and/or 204b, 218.5, 218.6,
10 226, 226.3, and 226.6.

11 171. Labor Code § 558 establishes a civil penalty as follows: Any employer
12 or other person acting on behalf of an employer who violates, or causes to be violated,
13 a section of this chapter or any provision regulating hours and days of work in any
14 order of the Industrial Welfare Commission (including the “Hours and Days of Work”
15 section of the Wage Order) shall be subject to a civil penalty of (1) for any initial
16 violation, fifty dollars (\$50) for each underpaid employee for each pay period for
17 which the employee was underpaid in addition to an amount sufficient to recover
18 underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for
19 each underpaid employee for each pay period for which the employee was underpaid
20 in addition to an amount sufficient to recover underpaid wages; and (3) wages
21 recovered pursuant to this section shall be paid to the affected employee.

22 172. Plaintiffs seek penalties for Defendants’ conduct as alleged herein as
23 permitted by law.

24 173. Specifically, Plaintiffs seeks penalties under Labor Code § 2699, for the
25 following in addition to those Code provisions mentioned in this Cause of Action:

- 26 a. For violations of Labor Code §§ 201, 202, 203,
- 27 and 204/204b for failing to pay Plaintiff and
- 28 Represented Employees in a timely manner; and

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1 b. For the violation of Labor Code §§ 226 and 226.3,
2 for failing to provide Plaintiff and Represented
3 Employees accurate wage statements.

4 174. Pursuant to Labor Code § 2698, *et seq.*, Plaintiffs seek to recover
5 attorney’s fees, costs, civil penalties, and wages on behalf of Plaintiff and other
6 current and former Represented Employees as alleged herein in an amount to be
7 shown according to proof at trial and within the jurisdictional limits of this Court.

8 **SEVENTH CAUSE OF ACTION**

9 **Individual Claim for Remedies for Violations**

10 **of the California Unfair Business**

11 **Practices Code §§ 17200, *et seq.***

12 (Against all Defendants)

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

15 176. Defendants, and each of them, are “persons” as defined under Business
16 and Professions Code § 17021.

17 177. Plaintiffs are informed and believe and based thereon allege that
18 Defendants committed the unfair business practices, as defined by Cal. Bus. & Prof.
19 Code § 17200, *et seq.*, by violating the laws alleged to have been violated in this
20 Complaint and which allegations are incorporated herein by reference.

21 178. Defendants’ conduct, as alleged above, constitutes unlawful, unfair, and
22 fraudulent activity prohibited by Business and Professions Code §§ 17200, *et seq.*

23 179. The unlawful and unfair business practices conducted by Defendants,
24 and each of them, are ongoing and present a threat and likelihood of continuing
25 against Plaintiffs and, accordingly, Plaintiff seeks injunctive relief where appropriate.

26 180. Plaintiffs has suffered injury in fact and lost money or property because
27 of the aforementioned unfair competition.

28 181. Because of their improper acts, Defendants, and each of them, have

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1 reaped and continue to reap unfair benefits and illegal profits at the expense of
2 Plaintiffs OLSHANSKY and TORRACA-RIANO and other employees and former
3 employees of Defendants, and each of them.

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

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

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs OLSHANSKY and TORRACA-RIANO, on behalf
14 of the Class, pray for an order for relief as follows:

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

17 2. For appointment of the Plaintiffs OLSHANSKY and TORRACA-
18 RIANO as the representatives of the Class;

19 3. For appointment of counsel for Plaintiffs OLSHANSKY and
20 TORRACA-RIANO as Class Counsel;

21 4. That Defendants be found liable to Plaintiffs OLSHANSKY and
22 TORRACA-RIANO and the Class;

23 5. For a declaration that Defendants violated the rights of Plaintiffs
24 OLSHANSKY and TORRACA-RIANO and the Class under the FCRA and any other
25 applicable law alleged in this Complaint;

26 6. Pursuant to 15 U.S.C. § 1681n(a)(1)(A), an award of statutory damages
27 to Plaintiff and the Class in an amount equal to \$1,000 for Plaintiffs OLSHANSKY
28 and TORRACA-RIANO and each member of the Class for Defendant's willful

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1 violations of the FCRA;

2 7. In the event this case does not proceed on a FCRA class action basis,
3 pursuant to Civ. Code § 1786.50, an award of statutory damages to Plaintiffs
4 OLSHANSKY and TORRACA-RIANO in the amount of \$10,000 each, or in the
5 alternative actual damages in an amount according to proof;

6 8. For an award of punitive damages to Plaintiffs OLSHANSKY and
7 TORRACA-RIANO and the members of the Class in an amount to be determined by
8 the Court;

9 9. For costs of suit and expenses incurred herein, including reasonable
10 attorneys' fees and costs allowed under relevant provision of law including, but not
11 limited to, those allowed under 15 U.S.C. §1681n(a)(3), 15 U.S.C. §1681o(a)(2), Civ.
12 Code § 1786.50, and/or other applicable provisions of law;

13 10. That Defendants, and each of them, be ordered and enjoined to pay
14 restitution to Plaintiff and/or the Class and/or Represented Employees pursuant to
15 Business and Professions Code §§ 17200-05;

16 11. That Defendants, and each of them, be required to issue to Plaintiff
17 and/or the Class and/or Represented Employees accurate wage and earning
18 statements;

19 12. For disgorgement through restitution of all ill-gotten and/or ill-gained
20 profits, including unpaid wages and/or penalties to Plaintiffs OLSHANSKY and
21 TORRACA-RIANO and/or the Class and/or Represented Employees, resulting from
22 Defendants' unfair business practices pursuant to Business and Professions Code §§
23 17200-05;

24 13. For an order by the Court requiring Defendants, and each of them, to
25 show cause, if any they have, as to why to Plaintiff and/or the Class and/or
26 Represented Employees should not have been issued itemized wage statements as
27 required by § 226 of the Labor Code and why Defendants should not be required to
28 pay Plaintiff minimum wages and overtime compensation under applicable state law;

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1 14. For all remedies available to Plaintiffs OLSHANSKY and TORRACA-
2 RIANO under the applicable provisions of the Labor Code via PAGA Labor Code §
3 2698, *et seq.* including an award of attorneys' fees, costs, interest, liquidated
4 damages, damages, penalties and waiting time penalties according to proof to the
5 extent permitted by law;

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

10 16. That Defendants, and each of them, be required to issue to Plaintiffs
11 OLSHANSKY and TORRACA-RIANO and/or the Class and/or Represented
12 Employees accurate wage and earning statements;

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

14 18. For special and general damages;

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

19 20. For any other relief the Court may deem just, proper and equitable in the
20 circumstances.

21 Dated: December 27, 2018

Law Offices of
Thomas D. Rutledge

By: /s/Thomas D. Rutledge
/s/Thomas D. Rutledge
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial of this matter.

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Dated: December 27, 2018

Law Offices of
Thomas D. Rutledge

By: /s/Thomas D. Rutledge
Thomas D. Rutledge (SBN 200497)
Attorneys for Plaintiffs

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Exhibit 1

Notification and Authorization to Conduct Employment Background Investigation

I hereby authorize ATC Healthcare Staffing and [redacted] choice of reporting company to ascertain information regarding my background to determine any and all information of concern to my record, whether same is of record or not, and I release employers and persons named in my application from all liability for any damages on account of his/her furnishing said information. I understand that this form indicates that a background search will be conducted and that this is my notification of that intent. I understand that the purpose of this background investigation is to determine my suitability for employment and may elicit information on my character, general reputation, personal characteristics and mode of living. Additionally, you are hereby authorized to make any investigation of my personal history, educational background, military record, motor vehicle records, criminal records, and credit history through an investigative or credit agency or bureau of your choice. I authorize the release of this information by the appropriate agencies to the investigating service. I understand that my consent will apply throughout my employment, unless I revoke or cancel my consent by sending a signed letter or statement to the Company at any time, stating that I revoke my consent and no longer allow the Company to obtain consumer or investigative consumer reports about me.

PLEASE PRINT CLEARLY

FULL NAME: Michael Olshansky

OTHER NAMES USED/MAIDEN NAME/DATES: _____

CURRENT ADDRESS: Redacted PHONE: Redacted

LIST ALL ADDRESSES FOR PAST 7 YEARS:

_____ Dates: _____
_____ Dates: _____
_____ Dates: _____

EMAIL ADDRESS: Redacted

SOCIAL SECURITY # REDACTED DATE OF BIRTH: REDACTED

DRIVER'S LICENSE # Redacted STATE ISSUED: PA

*** MAY WE CONTACT YOUR CURRENT EMPLOYER? YES NO

*** HAVE YOU EVER BEEN CONVICTED OF A CRIME? YES NO

If yes, please explain: _____

Notice to California Applicants - You may omit minor traffic offenses, any convictions which have been sealed, expunged or statutorily eradicated, convictions more than two years old for the following marijuana related offenses: HS11357b&c, HS11360c, HS11364, HS11365, HS11550, and misdemeanors for which probation was completed and the case was judicially dismissed.

Notice to Massachusetts Applicants: You may omit a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, or any conviction of a misdemeanor where the date of such conviction or the completion of any period of incarceration resulting there from, whichever date is later, occurred five or more years prior to the date of this application for employment, unless you have been convicted of any offense within five years immediately preceding the date of this application for employment.

Note: No applicant will be denied employment solely on the grounds of conviction of a crime. The nature of the offense, the date of the offense, the surrounding circumstances and the relevance of the offense to the position will be considered.

SIGNATURE: [redacted] DATE: Nov 18, 2018

California Applicants: Under Section 1786.22 of the California Civil Code, you have the right to request from Justifacts (5250 Logan Ferry Rd, Murrysville PA 15626 - 800-356-6885, www.justifacts.com), upon proper identification, the nature and substance of all information in its files on you, including the sources of information, and the recipients of any reports on you to whom Justifacts has previously furnished within the three-year period preceding your request. Files maintained on a consumer shall be made available for the consumer's visual inspection, as follows: (1) In-person, if he appears in person and furnishes proper identification. A copy of his file shall also be available to the consumer for a fee not to exceed the actual costs of duplication services provided. (2) By certified mail, if he makes a written request, with proper identification, for copies to be sent to a specified addressee. (3) A summary of all information contained in files on a consumer and required to be provided by Section 1786.10 shall be provided by telephone, if the consumer has made a written request, with proper identification for telephone disclosure, and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

California, Minnesota & Oklahoma Applicants Only: Please check this box if you would like a copy of the background check mailed to you. Minnesota and Oklahoma applicants will receive a copy direct from Justifacts or its designee. California applicants may receive a copy from either the prospective employer or Justifacts.

NOTICE: Under federal law, you have the right to request disclosure of the nature and scope of our investigation by providing us with a written request within 60 days of our background investigation.

Subscriber certifies that consumer credit information, consumer reports, as defined by the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq. ("FCRA"), will be ordered only when intended to be used as a factor in establishing a consumer's eligibility for employment and that consumer credit information will be used for no other purposes. It is recognized and understood that the FCRA provides that anyone "who knowingly and willfully obtains information on a consumer from a consumer reporting agency" (such as Justifacts) "under false pretenses shall be fined not more than \$2,500 or imprisoned not more than two years or both."

EXHIBIT “B”
TO
NOTICE OF REMOVAL
[PAGES 46 - 90]

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

See attached.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

TONI TORRACA-RIANO and MICHAEL OLSHANSKY, individually,
on behalf of themselves and others similarly situated.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/27/2018 at 10:37:03 PM
Clerk of the Superior Court
By Vanessa Bahena, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA
330 WEST BROADWAY, SAN DIEGO, CALIFORNIA 92101

CASE NUMBER:
(Número del Caso): 37-2018-00066377-CU-0E-CTL

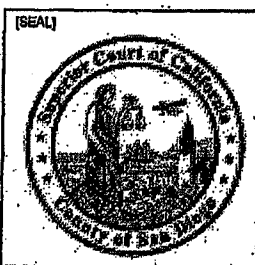
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
THOMAS D. RUTLEDGE, 500 W. HARBOR DR., STE. 1113, SAN DIEGO, CA 92101 Tel.: 619-886-7224

DATE: 12/28/2018
(Fecha)

Clerk, by *V. Bahena*
(Secretario) V. Bahena Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify): *ATC West Staffing, Inc.*
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date): *Feb. 1, 2019.*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 (Rev. July 1, 2009)

SUMMONS

Page 1 of 1
Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

SUM-200(A)

SHORT TITLE: Olshansky, et al. v. ATC Healthcare Services, Inc., et al.	CASE NUMBER:
---	---------------------

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

- Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

ATC HEALTHCARE SERVICES, INC., a Georgia corporation; ATC HEALTHCARE, INC., a Delaware corporation; ATC HEALTHCARE SERVICES, LLC, a Georgia limited liability company; ATC HEALTHCARE STAFFING, an unknown entity; ATC WEST STAFFING, INC., a California corporation; and DOES 1 through 50 inclusive.

Page _____ of _____

Page 1 of 1

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/27/2018 at 10:37:03 PM
Clerk of the Superior Court
By Vanessa Bahena, Deputy Clerk

1 Thomas D. Rutledge (SBN 200497)
2 Attorney-at-Law
3 500 West Harbor Drive, Suite 1113
4 San Diego, California 92101
5 Telephone: (619) 886-7224
6 Facsimile: (619) 259-5455

7
8 Co-Counsel listed on next page.

9
10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO-CENTRAL DIVISION**

13 TONI TORRACA-RIANO and)
14 MICHAEL OLSHANSKY,)
15 individually, on behalf of themselves)
16 and others similarly situated,)

17 **Plaintiffs**

18 vs.

19 ATC HEALTHCARE SERVICES,)
20 INC., a Georgia corporation; ATC)
21 HEALTHCARE, INC., a Delaware)
22 corporation; ATC HEALTHCARE)
23 SERVICES, LLC, a Georgia limited)
24 liability company; ATC)
25 HEALTHCARE STAFFING, an)
26 unknown entity; ATC WEST)
27 STAFFING, INC., a California)
28 corporation; and DOES 1 through 50)
inclusive)

Defendants.

Case No.: 37-2018-00065377-CU-DE-CTL

INDIVIDUAL AND CLASS ACTION COMPLAINT FOR:

1. **Violations of Fair Credit Reporting Act, 15 U.S.C. §§ 1681b(b)(2)(A) § 1681o(a) (Obtaining Consumer Reports Without Proper Disclosure)**
2. **Violations of Fair Credit Reporting Act, 15 U.S.C. §§ 1681b(b)(2)(A) § 1681o(a) (Obtaining Consumer Reports Without Proper Authorization);**
3. **Violations of the California Investigative Consumer Reporting Agencies Act (ICRAA) (Civ. Code, § 1786, et seq.);**
4. **Failure to Make Payments Within the Required Time;**
5. **Violations of Labor Code § 226;**
6. **Remedies Under Private Attorney General Act (PAGA California Labor Code §§ 2698, 2699, et seq.); and**
7. **Unfair Business Practices in Violation of Cal. Bus. & Prof. Code §§ 17000, et seq. and §§ 17200, et seq.**

DEMAND FOR JURY TRIAL

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COMPLAINT – Torraca-Riano, et al. v. ATC Healthcare Services, Inc., et al.

1 Greenstone Law APC
2 Mark S. Greenstone (SBN 199606)
3 1925 Century Park East, Suite 2100
4 Los Angeles, California 90067
5 Telephone: (310) 201-9156
6 Facsimile: (310) 201-9160

7 Glancy Prongay & Murray LLP
8 Marc L. Godino (SBN 182689)
9 Danielle L. Manning (SBN 313272).
10 1925 Century Park East, Suite 2100
11 Los Angeles, California 90067
12 Telephone: (310) 201-9150
13 Facsimile: (310) 201-9160

14 Attorneys for Plaintiffs

15 Plaintiffs TONI TORRACA-RIANO and MICHAEL OLSHANSKY, on behalf
16 of themselves and acting for the interest of other current and former employees
17 (“Represented Employees”), and all other similarly situated individuals (cumulatively
18 “Plaintiffs”), allege the following:

19 **NATURE OF THE ACTION**

20 1. Plaintiffs bring this nationwide class action on behalf of all individuals
21 who applied for employment with Defendants and who executed a release and
22 authorization form permitting Defendants to procure a consumer report and/or
23 investigative consumer report on them as part of their employment or application for
24 employment with Defendants.

25 2. Specifically, Plaintiffs complain that Defendants have a uniform policy
26 or practice of obtaining an applicant’s consumer report and have violated the Fair
27 Credit Reporting Act (the “FCRA”) through use of a legally invalid authorization
28 form that: (1) fails to provide a clear and conspicuous disclosure; and (2) fails to
provide a disclosure that appears in a document that consists solely of the disclosure.

3. Pursuant to Code of Civil Procedure § 382 and Labor Code Private

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1 Attorney General Act (“PAGA”), §§ 2698, 2699 of the California Labor Code,
2 Plaintiffs also bring a class and representative action against Defendants for wage and
3 hour abuses in violation of the California Labor Code and the Industrial Welfare
4 Commission Wage Orders (the “IWC Wage Orders”), all of which contribute to
5 Defendants’ deliberate unfair competition.

6 4. Plaintiffs OLSHANSKY and TORRACA-RIANO, on behalf of
7 themselves and all Class Members, seek damages, penalties, restitution, injunctive and
8 other equitable relief, reasonable attorneys’ fees, and costs.

9 **JURISDICTION AND VENUE**

10 5. Pursuant to Article VI, § 10 of the California Constitution, subject matter
11 jurisdiction over Plaintiffs’ wage and hour claims is proper in the Superior Court of
12 California, County of San Diego, State of California because Plaintiffs allege claims
13 arising under California law.

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

19 7. This Court has personal jurisdiction over Defendants because Defendants
20 conduct business in this State, have systematic and continuous ties with this state, and
21 have agents and representatives that can be found in this state.

22 8. Pursuant to § 395 of the California Code of Civil Procedure, venue is
23 proper in the Superior Court of California for the County of San Diego because
24 Defendants’ corporate records filed with the California Secretary of State indicate
25 they maintain a principle business office at 9040 Friars Road, Suite 335, San Diego,
26 California 92108.

27 **THE PARTIES**

28 9. Plaintiff TONI TORRACA-RIANO is an individual currently residing in

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1 California.

2 10. Plaintiff MICHAEL OLSHANSKY is an individual residing outside the
3 state of California. During his employment with Defendants from on or about
4 November 2, 2018 to November 28, 2018, however, Plaintiff OLSHANSKY resided
5 in California.

6 11. Defendant ATC HEALTHCARE SERVICES, INC. is a Georgia
7 Corporation doing business in California.

8 12. Defendant ATC HEALTHCARE, INC. is a Delaware Corporation doing
9 business in California.

10 13. Defendant ATC HEALTHCARE SERVICES, LLC is a Georgia limited
11 liability company doing business in California.

12 14. Defendant ATC HEALTHCARE STAFFING is an unknown entity
13 doing business in California.

14 15. Defendant ATC WEST STAFFING, INC. is a California Corporation,
15 but according to the California Secretary of State Website, it is "dissolved."

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

24 17. Unless otherwise specified by name, the named Defendants and DOES 1
25 through 50 will be collectively referred to as "DEFENDANT EMPLOYER" and/or
26 "Defendants."

27 18. Plaintiffs are informed and believe, and based thereon allege, that each
28 Defendant was acting as an agent, joint venturer, an integrated enterprise and/or alter

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1 ego for each of the other Defendants and each were co-conspirators with respect to the
2 acts and the wrongful conduct alleged herein so that each is responsible for the acts of
3 the other pursuant to the conspiracy and in proximate connection with the other
4 Defendant(s).

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

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

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

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

23 **STATUTORY BACKGROUND OF THE FCRA**

24 23. Enacted in 1970, the FCRA's passage was driven in part by two related
25 concerns: first, that consumer reports were playing a central role in people's lives at
26 crucial moments, such as when they applied for a job or credit, and when they applied
27 for housing; second, despite their importance, consumer reports were unregulated and
28 had widespread errors and inaccuracies.

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1 24. While recognizing that consumer reports play an important role in the
2 economy, Congress wanted consumer reports to be "fair and equitable to the
3 consumer" and to ensure their "confidentiality, accuracy, relevancy, and proper
4 utilization." 15 U.S.C. § 1681.

5 25. Congress was particularly concerned about the use of consumer reports by
6 employers. Accordingly, Congress required employers to make a clear and
7 conspicuous written disclosure to employees and job applicants, in a document that
8 consists solely of the disclosure, that a consumer report may be procured for
9 employment purposes. 15 U.S.C. § 1681b(b)(2). This is commonly referred to as the
10 "stand-alone disclosure" requirement. Congress further required that employers obtain
11 written authorization prior to procurement of a consumer report for employment
12 purposes. *Id.*

13 26. The FCRA's stand-alone disclosure requirement is one of many elements
14 of the FCRA that combine to ensure that consumers know when consumer reports may
15 be generated about them, that they know their rights, and that they have the
16 opportunity to dispute errors in their reports. See 15 U.S.C. § 1681b(b)(3)(A) (pre-
17 adverse employment action notice requirement); § 1681b(4)(B) (notification of
18 national security investigation); § 1681 c(h) (notification of address discrepancy); §
19 1681d(a) (disclosure of investigative report); § 1681g (full file disclosure to
20 consumers); § 1681k(a)(1) (disclosure regarding the use of public record information); §
21 1681h (form and conditions of disclosure); § 1681m(a) (post-adverse employment
22 action notice requirement).

23 27. Although the disclosure and the authorization may be combined in a
24 single document, the FTC has warned that the form should not include any extraneous
25 information or be part of another document. For example, in response to an inquiry as
26 to whether the disclosure may be set forth within an application for employment or
27 whether it must be included in a separate document, the FTC stated:
28

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The disclosure may not be part of an employment application because the language [of 15 U.S.C. § 1681b(b)(2)(A)] is intended to ensure that it appears conspicuously in a document not encumbered by any other information. The reason for requiring that the disclosure be in a stand-alone document is to prevent consumers from being distracted by other information side-by-side within the disclosure.

28. The plain language of the statute also clearly indicates that the inclusion of a waiver in a disclosure form violates the disclosure and authorization requirements of the FCRA, because such a form would not consist "solely" of the disclosure. In fact, the FTC expressly has warned that the FCRA notice may not include extraneous information such as a waiver. In a 1998 opinion letter, the FTC stated:

[W]e note that your draft disclosure includes a waiver by the consumer of his or her rights under the FCRA. The inclusion of such a waiver in a disclosure form will violate Section 604(b)(2)(A) of the FCRA, which requires that a disclosure consist 'solely' of the disclosure that a consumer report may be obtained for employment purposes.

29. Consistent with the FTC's construction of the FCRA, courts have repeatedly held that extraneous information renders a purported FCRA disclosure non-compliant. *See, e.g., Woods v. CaremarkPHC, LLC*, No. 4:15-cv-00535, 2015 WL 6742124, *2 (W.D. Mo. Nov. 2, 2015) (denying motion to dismiss FCRA complaint where plaintiff alleged that purported disclosure contained an overbroad authorization for third parties to provide information to defendant and its consumer reporting agency, and state specific notices that did not apply to plaintiff); *Jones v. Halstead Mgmt. Co., LLC*, No. 14-cv-3125, 2015 WL 366244, *5 (S.D.N.Y. Jan 27, 2015) (denying motion to dismiss FCRA complaint where plaintiff alleged that purported disclosure form included timeframes during which applicant must challenge accuracy of any report, an acknowledgement that employment decisions are based on non-discriminatory reasons, the contact information for the consumer reporting agency and state specific notices that "stretched what should be a simple disclosure form into two full pages of eye-straining typeface writing.").

1 30. As discussed below, Defendant routinely violates the FCRA by failing to
2 provide the required stand-alone disclosure to employees and job applicants.

3 **GENERAL ALLEGATIONS REGARDING UNLAWFUL**
4 **PROCUREMENT OF CONSUMER REPORT CLAIMS**

5 31. On or about November 18, 2018, as part of Plaintiffs’ application for
6 employment, DEFENDANT EMPLOYER required Plaintiffs OLSHANSKY and
7 TORRACA-RIANO to sign a document titled “Notification and Authorization to
8 Conduct Employment Background Investigation.” A true and correct redacted copy of
9 Plaintiff OLSHANSKY’S authorization is attached hereto and marked as **Exhibit 1**.

10 32. This form is at the heart of one key part of this dispute.

11 33. The abovementioned form purportedly authorizes “ATC Healthcare
12 Staffing” to conduct a background investigation concerning Plaintiffs OLSHANSKY
13 and TORRACA-RIANO and the putative Class.

14 34. Plaintiffs maintain this form is illegal because, in part, it includes a
15 release and hold harmless clause that provides, “I release employers and persons
16 named in my application from all liability for any damages on account of his/her
17 furnishing said information.” See **Ex. 1**.

18 35. Plaintiffs maintain this form is also illegal because it misstates the name
19 of Plaintiffs OLSHANSKY’S and TORRACA-RIANO’S employer as being “ATC
20 Healthcare Staffing,” when according to their wage and earning statements, the only
21 legal entity identified as being Plaintiffs’ employer was “ATC Healthcare Services,
22 Inc.” See **Ex. 1**.

23 36. To the extent “ATC Healthcare Staffing” (if it exists) is the entity that
24 procured consumer reports on Plaintiffs OLSHANSKY and TORRACA-RIANO and
25 Class Members, this form also fails to provide any disclosure or to obtain any
26 authorization at all.

27 37. Plaintiffs maintain this form is also illegal because it includes other
28 extraneous information in addition to a release, including but not limited to a number

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1 of purported unrelated state law admonitions. See **Ex. 1**.

2 38. Plaintiffs maintain this form is also illegal to the extent that it is overly
3 broad and purports to authorize the procurement of any information concerning the
4 applicant whether otherwise lawful or appropriate. See **Ex. 1**.

5 39. Plaintiffs are informed and believe and therefore allege that pursuant to
6 the forms that Plaintiffs OLSHANSKY and TORRACA-RIANO signed on or about
7 November 18, 2018, DEFENDANT EMPLOYER obtained consumer reports on
8 Plaintiffs OLSHANSKY and TORRACA-RIANO.

9 40. On information and belief, DEFENDANT EMPLOYER had a practice
10 and policy of procuring consumer reports on all Class Members based upon this or
11 substantially similar forms during the class period.

12 41. Based on the foregoing, Plaintiffs claim Defendants violated both state
13 and federal law.

14 **GENERAL ALLEGATIONS REGARDING**
15 **LABOR CODE VIOLATIONS**

16 **Labor Code § 226 Violations**

17 42. From at least four years before the filing of this action and continuing to
18 the present, and pursuant to company policy and/or practice and/or direction,
19 Defendants issued inaccurate wage and earning statements to Plaintiffs.

20 43. On or about November 29, 2018, Defendants issued Plaintiff
21 OLSHANSKY a paystub.

22 44. This paystub did not accurately state Plaintiff OLSHANSKY'S gross
23 wages earned or the total hours worked by the employee.

24 45. The November 29, 2018 paystub stated Plaintiff OLSHANSKY earned
25 \$1,810.21 in gross wages, but Plaintiff actually earned \$2,194.59.

26 46. Additionally, the November 29, 2018 statement did not account for
27 Plaintiff OLSHANSKY'S 0.75 hours of overtime and two hours of double time.

28 47. Further, if indeed "ATC Healthcare Staffing" was Plaintiffs' employer,

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1 Defendant failed to identify such entity as being Plaintiffs' employer, as required
2 under Labor Code § 226(a)(8).

3 48. Plaintiff TORRACA-RIANO similarly alleges that her paystubs were
4 inaccurate.

5 49. Plaintiffs are informed and believe and therefore allege that Defendants
6 issued similarly inaccurate paystubs to similarly situated employees.

7 50. Based on the foregoing, Plaintiffs seeks the remedies set forth in this
8 Complaint.

9 **Waiting Time Penalties**

10 51. Pursuant to Defendants' policies, Defendants failed to pay all wages to
11 Plaintiffs in a timely manner.

12 52. On or about November 28, 2018, Defendants involuntarily terminated
13 Plaintiffs OLSHANSKY'S and TORRACA-RIANO'S employment.

14 53. On Plaintiffs OLSHANSKY'S and TORRACA-RIANO'S date of
15 termination, however, Defendants failed to pay Plaintiffs OLSHANSKY and
16 TORRACA-RIANO all their unpaid wages immediately upon their termination.

17 54. Plaintiffs are informed and believe and based thereon allege that
18 Defendants similarly did not pay other similarly situated employees all wages due and
19 payable in a timely manner.

20 55. Based on the foregoing, Plaintiffs seeks the remedies set forth in this
21 Complaint.

22 **REPRESENTATIVE ACTION (PAGA) CLAIMS**

23 56. The duties and business activities of the Represented Employees were
24 essentially the same as the duties and activities of Plaintiffs OLSHANSKY and
25 TORRACA-RIANO described above.

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

28 **All nonexempt persons Defendants employed in the State of**

1 **California from December 21, 2017 to the present.**

2 58. All members of the represented groups will be referred to as the
3 "Represented Employees."

4 59. The "Representative Period" means from **December 21, 2017** to the
5 present, the timeframe where the scope of statute allows Plaintiffs to recover wages
6 and penalties.

7 60. At all times during the Representative Period, all the Represented
8 Employees were employed in the same or similar job as Plaintiffs OLSHANSKY and
9 TORRACA-RIANO and were paid in the same manner and under the same standard
10 employment procedures and practices as the Plaintiff.

11 61. Plaintiffs OLSHANSKY and TORRACA-RIANO further allege
12 DEFENDANT EMPLOYER did not pay them and, on information and belief
13 Represented Employees, all wages due at the time their employment ended with
14 DEFENDANT EMPLOYER.

15 62. On information and belief, current and former employees of
16 DEFENDANT EMPLOYER were subject to wage and hour violations by
17 DEFENDANT EMPLOYER, including failing to pay for all wages due.

18 63. California law provides that an employee may file an action against an
19 employer to recover penalties for violations of the Labor Code and Wage Orders,
20 provided the aggrieved employee files an action on behalf of him or herself and
21 similarly situated current and former employees.

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

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1 65. As set forth in further detail below, because of the analysis and
2 investigation of the Plaintiffs' claims, Plaintiffs' attorneys sent letters to the California
3 Labor and Workforce Development Agency (hereinafter referred to as "LWDA") and
4 to DEFENDANT EMPLOYER informing DEFENDANT EMPLOYER of their claims
5 and their intent to pursue litigation.

6 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

7 66. As to penalty claims under the Labor Code Private Attorney General
8 Act, on December 21, 2018, Plaintiffs began to exhaust his/her administrative
9 remedies by sending correspondence to the LWDA and DEFENDANT EMPLOYER
10 indicating that Plaintiffs OLSHANSKY and TORRACA-RIANO are pursuing the
11 claims alleged in this Complaint.

12 67. By the time an amended Complaint is filed, the statutory period for
13 Plaintiffs will have expired on the letter alleged above and the LWDA will likely not
14 have served Plaintiffs with notice of intent to assume jurisdiction over the applicable
15 penalty claims and did not provide notice as set forth in Labor Code § 2699.3
16 (a)(2)(A) within the statutory period.

17 68. Therefore, Plaintiffs will have exhausted Plaintiffs' administrative
18 remedies to enable Plaintiffs to seek the penalty claims sought in this Complaint.

19 69. The Causes of Action alleged herein are appropriately suited for a
20 Representative Action under PAGA (Labor Code § 2698, *et seq.*) because:

- 21 a. This action involves allegations of violations of
- 22 provisions of the California Labor Code that
- 23 provide for a civil penalty to be assessed and
- 24 collected by the LWDA or any departments,
- 25 divisions, commissions, boards, agencies or
- 26 employees;
- 27 b. Plaintiffs are "aggrieved employees" because
- 28 Plaintiffs were employed by the alleged violator

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and had one or more of the alleged violations committed against them; and

c. Plaintiffs have satisfied the procedural requirements of Labor Code § 2699.3, as set forth above.

CLASS ACTION ALLEGATIONS

70. Plaintiffs OLSHANSKY and TORRACA-RIANO bring this action on behalf of themselves and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure.

71. Plaintiffs OLSHANSKY and TORRACA-RIANO seek to represent the classes and/or subclasses composed of and defined as follows:

Labor Code Class:

All current or former nonexempt employees who worked in the state of California from December 27, 2014 to the present for the Defendants who were issued wage and earning statements from ATC Healthcare Services, Inc.

FCRA Class:

All persons residing in the United States regarding whom Defendants procured or caused to be procured a consumer report for employment purposes during the period five years prior to the filing of the present action through the date of certification.

72. Plaintiffs OLSHANSKY and TORRACA-RIANO also seek to represent the following subclasses composed of and defined as follows:

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

Waiting Time Subclass: All Members of the Plaintiff Class who,

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during the applicable limitations period, did not receive all wages due in a timely manner as required by Labor Code §§ 201-204.

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

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

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

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

A. Numerosity

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

77. While the precise number of Class Members has not been determined at this time, Plaintiffs are informed and believe, and on that basis allege, that DEFENDANT EMPLOYER currently employs, and during the relevant time periods employed, over 100 Class Members.

78. Accounting for employee turnover during the relevant periods necessarily increases this number substantially.

B. Commonality

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

80. Common questions of law and fact include, without limitation and

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subject to possible further amendment, the following:

- a. Whether the Defendant violated the FCRA by procuring consumer reports based on invalid authorizations;
- b. Whether Defendants' policy or practice of not paying hourly employees all their wages due in their final paychecks immediately upon involuntary termination or within 72 hours' notice of when its employees provided notice of their voluntary resignation, is unlawful under Labor Code §§ 201, 202 and/or 203;
- c. Whether Defendants violated Labor Code §§ 226 by not providing accurate paystubs; and
- d. Whether Plaintiffs OLSHANSKY and TORRACA-RIANO and the members of the Class may recover remedies pursuant to Business & Professions Code §§ 17200, *et seq.*

C. Typicality

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

D. Adequacy of Representation

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

83. Counsel representing Plaintiffs OLSHANSKY and TORRACA-RIANO and the putative Class is competent and experienced in litigating employment class

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1 actions, including wage and overtime class actions.

2 84. Plaintiffs OLSHANSKY and TORRACA-RIANO will fairly and
3 adequately represent and protect the interests of the Class Members.

4 **E. Superiority of Class Action**

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

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

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

14 88. Plaintiffs are unaware of any difficulties that are likely to encounter in
15 the management of this action that would preclude maintenance as a Class Action.

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

18 **FIRST CAUSE OF ACTION**

19 **Individual and Class Claim for**

20 **Violation of the Fair Credit Reporting Act**

21 **(Obtaining Consumer Reports Without Proper Disclosure)**

22 **(Against All Defendants)**

23 90. Plaintiffs allege and incorporates by reference the allegations in the
24 preceding paragraphs as though fully set forth herein.

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

27 92. Likewise, a consumer report may be used for the evaluation of "a
28 consumer for employment, promotion, reassignment or retention of an employee." 15

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1 U.S.C. §1681a(h).

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

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

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

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

17 15 U.S.C. § 1681b(b)(2)(A).

18 96. During the Class Period, DEFENDANT EMPLOYER required Plaintiffs
19 OLSHANSKY and TORRACA-RIANO and the FCRA Class Members to sign an
20 authorization form as part of their job application with DEFENDANT EMPLOYER,
21 which form purported to allow “ATC Healthcare Staffing” to procure consumer
22 reports regarding the Plaintiffs.

23 97. To the extent that ATC Healthcare Staffing (if such entity exists) is not
24 the entity that procured consumer reports on Plaintiffs and FCRA Class Members,
25 DEFENDANT EMPLOYERS failed to provide any disclosure at all prior to
26 procuring consumer reports for employment purposes, as required by the FCRA.

27 98. Moreover, the form that was provided facially violates the FCRA in
28 numerous respects.

1 99. Included in DEFENDANT EMPLOYER’S Notification and
2 Authorization Form, i.e., **Exhibit 1** are reams of extraneous information, including
3 but not limited to, a liability release and multiple state law admonitions. See **Exhibit**
4 **1**.

5 100. Defendants’ inclusion of the aforementioned, among other extraneous
6 information, in its Notification and Authorization Form executed by applicants
7 facially contravenes the requirements of 15 U.S.C. § 1681b(b)(2)(A) that the
8 disclosure be: (1) “clear and conspicuous”; and (2) appear “in a document that
9 consists solely of the disclosure.”

10 101. As a matter of law, Defendant’s inclusion of the aforementioned
11 information invalidates the Notification and Authorization Form for purposes of the
12 FCRA. See *Syed v. M-I, LLC*, 853 F.3d 492, *10-11 (9th Cir. 2017) (holding an
13 employer violates Section 1681b(b)(2)(A)(I)—(ii) when it requires an employee to
14 sign a form containing a waiver of liability provision as part of a background
15 investigation); *Harris v. Home Depot U.S.A., Inc.*, 114 F. Supp. 3d 868, 870-71 (N.D.
16 Cal. 2015) (release of liability improper); *Feist v. Petco Animal Supplies, Inc.*, 218 F.
17 Supp. 3d 1112 (S.D. Cal. 2016) (a summary of consumer rights in seven different
18 states improper); *Lagos v. The Leland Stanford Junior University*, 2015 U.S. Dist.
19 LEXIS 163119 (N.D. Cal. Dec. 4, 2015) (inclusion of seven state law notices and
20 sentence stating “I also understand that nothing herein shall be construed as an offer
21 of employment or contract for services” plausibly violated stand-alone disclosure
22 requirement); *Woods v. Caremark PHC, L.L.C.*, 2015 U.S. Dist. LEXIS 148051
23 (W.D. Mo. 2015) (“The specific ‘extraneous information’ Plaintiff alleges Defendant
24 included in its Authorization Form for Consumer Reports is: (1) an overbroad
25 authorization for third parties to provide information to Defendant and its consumer
26 reporting agency, (2) state-specific notices that did not apply to Plaintiff, and (3) that
27 the form was part of a five-page stapled packet of three documents. Where FCRA
28 allegations involve the inclusion of extraneous information beyond an authorization,

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1 the complaint meets the 12(b)(6) standard to state a claim for willful violation of the
2 FCRA stand-alone requirement."); *see also* Letter from William Haynes, Attorney,
3 Div. of Credit Practices, Fed Trade Comm'n to Richard W. Hauxwekk, CEO,
4 Accufax Div. (June 12, 1998), 1998 W.L. 34323756 (F.T.C.) (noting that the
5 inclusion of a waiver in a disclosure form will violate the FCRA).

6 102. The Notification and Authorization form is also illegal to the extent that
7 it purports to authorize the procurement of any and all information regarding
8 Plaintiffs and FCRA Class Members, whether legal or proper to do so.

9 103. Defendants acted willfully by providing a facially invalid Notification
10 and Authorization Form that was in direct violation of the clear and unambiguous
11 requirements set forth in 15 U.S.C. § 1681b(b)(2)(A).

12 104. Defendants knew or acted with reckless disregard of its statutory duties
13 and the rights of applicants and employees, including Plaintiff and the Class, thus
14 knowingly and/or recklessly disregarding its statutory duties.

15 105. On information and belief, as well as Plaintiffs' investigation,
16 Defendants' conduct was willful because:

- 17 a. Defendants required Plaintiff and the Class to execute the
- 18 Notification and Authorization Form knowing that it was
- 19 facially invalid in violation of the FCRA and Defendants'
- 20 statutory duties;
- 21 b. Defendants acted with reckless disregard of the FCRA
- 22 requirements and Defendants' statutory duties when it
- 23 required Plaintiff and the Class to execute the Notification
- 24 and Authorization Form that was facially invalid and in
- 25 violation of the clear and unambiguous requirements of the
- 26 FCRA;
- 27 c. Upon information and belief, Defendants were advised by
- 28 skilled lawyers and other professional employees, and

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- 1 advisors knowledgeable about the FCRA requirements;
- 2 d. The plain language of the statute unambiguously indicates
- 3 that inclusion of a liability release in a disclosure form
- 4 violates the disclosure and authorization requirements;
- 5 e. The FTC’s express statements, pre-dating Defendants’
- 6 conduct, state that it is a violation of 15 U.S.C. §
- 7 1681b(b)(2)(A) to include a liability waiver in the FCRA
- 8 disclosure form; and
- 9 f. By adopting such a policy, Defendant voluntarily ran a risk
- 10 of violating the law substantially greater than the risk
- 11 associated with a reading that was merely careless.

12 106. Pursuant to 15 U.S.C. §1681n(a)(1)(A), Plaintiffs OLSHANSKY and
13 TORRACA-RIANO and the FCRA Class may recover statutory damages due to
14 Defendant’s willful failure to comply with the requirements imposed by 15 U.S.C. §
15 1681b(b)(2)(A) of an amount not less than \$100 and not more than \$1,000.

16 107. Plaintiffs OLSHANSKY and TORRACA-RIANO and the Class seek the
17 recovery of punitive damages for Defendants’ willful violations, in an amount as the
18 Court may allow.

19 108. Pursuant to 15 U.S.C. § 1681n(a)(3) and § 1681o(a)(2), Plaintiffs
20 OLSHANSKY and TORRACA-RIANO and the Class seek the recovery costs of suit
21 with reasonable attorneys’ fees, as determined by the Court.

22 **SECOND CAUSE OF ACTION**

23 **Individual and Class Claim for**

24 **Violation of the Fair Credit Reporting Act**

25 **(Obtaining Consumer Reports Without Proper Authorization)**

26 109. Plaintiffs allege and incorporates by reference the allegations in the
27 preceding paragraphs as though fully set forth herein.

28 110. As alleged above, the form presented to Plaintiffs and FCRA Class

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1 Members purports to authorize "ATC Healthcare Staffing" to perform a background
2 investigation.

3 111. To the extent the foregoing entity (if it exists at all) is not the entity that
4 procured consumer reports on Plaintiffs and Class Members, Defendants failed to
5 obtain any authorization at all.

6 112. Alternatively, because Defendants failed to make a clear and
7 conspicuous disclosure that a consumer report may be procured in a document
8 consisting solely of the disclosure, Defendants violated the FCRA by procuring
9 consumer reports relating to Plaintiffs and other Class Members without proper
10 authorization. *See* 15 U.S.C. § 1681b(b)(2)(A)(ii).

11 113. The foregoing violations were willful because Defendants acted in
12 deliberate or reckless disregard of its obligations and the rights of Plaintiffs and other
13 Class Members under 15 U.S.C. § 1681b(b)(2)(A)(ii).

14 114. Defendants' willful conduct is also evidenced by, among other things,
15 the facts previously set forth.

16 115. Pursuant to 15 U.S.C. §1681n(a)(1)(A), Plaintiffs OLSHANSKY and
17 TORRACA-RIANO and the FCRA Class seek to recover statutory damages due to
18 Defendants' willful failure to comply with the requirements imposed by 15 U.S.C. §
19 1681b(b)(2)(A) of an amount not less than \$100 and not more than \$1,000.

20 116. Plaintiffs OLSHANSKY and TORRACA-RIANO and the Class seek the
21 recovery of punitive damages for Defendants' willful violations, in an amount as the
22 Court may allow.

23 117. Pursuant to 15 U.S.C. § 1681n(a)(3) and § 1681o(a)(2), Plaintiffs
24 OLSHANSKY and TORRACA-RIANO and the Class seek the recovery costs of suit
25 with reasonable attorneys' fees, as determined by the Court.

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THIRD CAUSE OF ACTION

**Individual Claim for Violation of the
California Investigative Consumer Reporting
Agencies Act (ICRAA) (Civ. Code, § 1786, *et seq.*)
(Obtaining Consumer Reports Without Facially Valid Authorizations)
(Against All Defendants)**

118. Plaintiffs allege and incorporates by reference the allegations in the preceding paragraphs as though fully set forth herein.

119. Pursuant to California Civ. Code, § 1786, *et seq.*, a consumer reporting agency may furnish a consumer investigative report for employment purposes.

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

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

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that complies with subdivision (d) of Section 1786.20. This clause shall become operative on January 1, 2012.
(C) The consumer has authorized in writing the procurement of the report.

(§ 1786.16, subd. (a)(2).)

121. In addition, the person procuring or causing the report to be made must “certify to the investigative consumer reporting agency that the person has made the applicable disclosures to the consumer required by [section 1786.16, subdivision (a)] and that the person will comply with subdivision (b).” (§ 1786.16, subd. (a)(4).)

122. Subdivision (b) of section 1786.16 also requires the person procuring or causing the report to be made to (1) provide the consumer a form with a box that can be checked if the consumer wishes to receive a copy of the report, and send a copy of the report to the consumer within three business days if the box is checked and (2) comply with section 1786.40 if the person procuring or causing the report to be made contemplates taking adverse action against the consumer. (§ 1786.16, subd. (b).)

123. During the Class Period, Defendant ATC HEALTHCARE SERVICES, INC. required Plaintiffs OLSHANSKY and TORRACA-RIANO and FCRA Class Members to sign a disclosure authorization forms as part of their job applications with Defendant ATC HEALTHCARE SERVICES, INC., which forms purported to allow Defendant “ATC HEALTHCARE STAFFING,” not Defendant ATC HEALTHCARE SERVICES, INC., the alleged real employer, to procure a consumer report on the Plaintiff. See **Exhibit 1**.

124. Under Civil Code § 1786.16, subd. (a) “Any person described in subdivision (d) of Section 1786.12 shall not procure or cause to be prepared an investigative consumer report unless . . . The person procuring or causing the report to be made has a permissible purpose, as defined in Section 1786.12,” yet Civil Code § 1786.12, in relevant part, provides “An investigative consumer reporting agency shall only furnish an investigative consumer report. . . To a person that it has reason to believe: (1) Intends to use the information for employment purposes.”

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1 125. If Defendant ATC HEALTHCARE STAFFING was not Plaintiff's
2 employer, it violated Civil Code § 1786.16 because it had no legal basis to procure a
3 consumer report on the Plaintiff.

4 126. In addition, DEFENDANT EMPLOYER'S Notification and
5 Authorization Form, i.e., **Exhibit 1**: (1) was a purported authorization to procure a
6 consumer report and/or investigative consumer report; (2) included a waiver of
7 liability provision; (3) included a purported authorization to investigate "personal
8 history, educational background, military record, motor vehicle records, criminal
9 records, and credit history . . ."; and (4) included other extraneous language, including
10 but not limited to a number of state law admonitions, such as Massachusetts,
11 Minnesota, Oklahoma, none of which are applicable since Plaintiff was applying for
12 work in California; ". See **Exhibit 1**.

13 127. Plaintiff maintains Defendants' inclusion of the aforementioned in its
14 Notification and Authorization Form violates California law because it was not a
15 "clear and conspicuous disclosure in writing to the consumer." (§ 1786.16(a)(2)(B).)
16 See **Exhibit 1**.

17 128. Based on the misconduct alleged in this Complaint, Defendants violated
18 ICRAA.

19 129. Defendants acted willfully by providing a facially invalid Notification
20 and Authorization Form that was in direct violation of the clear and unambiguous
21 requirements set forth in § 1786.16.

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

25 131. On information and belief, as well as Plaintiff's investigation,
26 Defendants' conduct was willful.

27 132. With respect to each of the aforementioned violations of the ICRAA
28 provisions and pursuant to Civ. Code § 1786.50(a)(1), in the event this case does not

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1 proceed as a class action basis regarding the FCRA class claims, Plaintiffs
2 OLSHANSKY and TORRACA-RIANO, not the Class, seek to recover statutory
3 damages due to Defendants' failure to comply with the requirements imposed by §
4 1786.16 of an amount not less than \$10,000 or seek actual damages, if any, in an
5 amount to be proven at trial, whichever is higher.

6 133. Plaintiffs OLSHANSKY and TORRACA-RIANO are informed and
7 believe, and based on such information and belief allege that Defendants' misconduct
8 was reckless and/or willful and/or malicious and/or in conscious disregard of the
9 rights and safety of the Plaintiff and whose recklessness and/or conscious disregard
10 was reasonably foreseeable to cause injury to the Plaintiff, thereby warranting the
11 assessment of punitive damages against these Defendants.

12 134. Plaintiffs OLSHANSKY and TORRACA-RIANO seek the recovery
13 costs of suit with reasonable attorneys' fees, as determined by the Court.

FOURTH CAUSE OF ACTION

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

(Against all Defendant ATC HEALTHCARE SERVICES, INC.)

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

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

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

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

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

11 140. Alternatively, pursuant to Labor Code § 204b, employers must pay its
12 employees on a weekly basis on a regular day determined by the employer as the
13 regular payday.

14 141. Pursuant to Labor Code §§ 218.5 and 218.6, an action may be brought for
15 the nonpayment of wages and fringe benefits.

16 142. Based on the misconduct alleged in this Complaint, Plaintiffs were not
17 properly paid pursuant to the requirements of Labor Code §§ 201, 202, and 204/204b
18 and thereby seek all remedies available to them.

19 143. Plaintiffs are informed and believe and based thereon allege that
20 Defendants willfully failed to pay Plaintiffs’ wages pursuant to the requirements of
21 Labor Code §§ 201, 202, and 204/204b, after Plaintiffs’ demand and, therefore,
22 Plaintiffs may recover the associated unpaid wages and waiting time penalties.

23 144. Plaintiffs are informed and believe and based thereon allege that
24 Defendants did this with the intent to secure for himself, herself and itself a discount
25 on its indebtedness and/or with intent to annoy harass, oppress, hinder, delay and/or
26 defraud Plaintiffs.

27 145. At all material times, DEFENDANT EMPLOYER and DOES 1 through
28 50 were and/or are Represented Employees’ employers or persons acting on behalf of

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

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

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

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

21 149. Defendants deprived Plaintiffs of their rightfully earned wages as a direct
22 and proximate result of Defendants' failure and refusal to pay said compensation and
23 for the reasons alleged in this Complaint.

24 150. Plaintiffs OLSHANSKY and TORRACA-RIANO and Class Members
25 request the unpaid wages, waiting time penalties, interest, attorneys' fees, costs,
26 damages, and other remedies in an amount to be proven at trial.

27 151. Where any of the foregoing statutes do not provide for a private right of
28 actions, Plaintiffs OLSHANSKY and TORRACA-RIANO nevertheless assert

1 Defendants violated these provisions as part of their PAGA cause of action alleged
2 herein.

3 **FIFTH CAUSE OF ACTION**

4 **Individual and Representative Claim for**

5 **Violations of California Labor Code § 226**

6 (Against all Defendants)

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

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

23 154. Based on the foregoing allegations, during all times relevant to this action,
24 Defendants did not provide accurate wage statements throughout the Class Period.

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

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1 wages earned, total hours worked by the employee, among other things.

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

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

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

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

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

27 161. For Defendants' misconduct as alleged herein, Plaintiffs seek injunctive
28 relief and attorneys' fees and costs pursuant to § 226 in an amount to be proven at trial.

1 162. Where any of the foregoing statutes do not provide for a private right of
2 actions, Plaintiffs OLSHANSKY and TORRACA-RIANO nevertheless assert
3 Defendants violated these provisions as part of their PAGA cause of action alleged
4 herein.

5 **SIXTH CAUSE OF ACTION**

6 **Individual and Representative Claim for PAGA**

7 **Penalties and Wage Under California Labor Code**

8 **§§ 2698, 2699, et seq. for Violations of California Labor Code**

9 **§§ 201, 202, 203, 204 and/or 204b, 218.5, 218.6, 226, 226.3, and 226.6.**

10 (Against all Defendants)

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

13 164. Pursuant to law, written notice was provided to the LWDA and
14 Defendants of the specific violations of the California Labor Code Defendants have
15 violated and continue to violate.

16 165. Pursuant to Labor Code § 2699.3, no response will likely be received
17 from the LWDA within 60 days of the postmark date of the above-alleged letter.

18 166. Plaintiffs, therefore, will have exhausted all administrative procedures
19 required of them under Labor Code §§ 2698, 2699, and 2699.3, and, as a result, are
20 justified as a matter of right in bringing forward this cause of action and are entitled to
21 pursue penalties in a representative action for Defendants' violations of the Labor
22 Code.

23 167. Pursuant to Labor Code § 2699, any provision of the Labor Code that
24 provides for a civil penalty to be assessed and collected by the LWDA or any of its
25 departments, divisions, commissions, boards, agencies or employees for violation of
26 the code may, as an alternative, be recovered through a civil action brought by an
27 aggrieved employee on behalf of himself or herself and other current or former
28 employees pursuant to the procedures specified in Labor Code § 2699.3.

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1 168. Plaintiff is an “aggrieved employee” because Plaintiff was employed by
2 the alleged violator and had one or more of the alleged violations committed against
3 Plaintiff, and therefore is properly suited to represent the interests of other current and
4 former Represented Employees.

5 169. Because of the acts alleged above, Plaintiffs seek penalties under Labor
6 Code §§ 2698 and 2699 because of Defendants’ violation of numerous provisions of
7 the California Labor Code as alleged in this Complaint.

8 170. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
9 penalties for violating Labor Code §§ 201, 202, 203, 204 and/or 204b, 218.5, 218.6,
10 226, 226.3, and 226.6.

11 171. Labor Code § 558 establishes a civil penalty as follows: Any employer
12 or other person acting on behalf of an employer who violates, or causes to be violated,
13 a section of this chapter or any provision regulating hours and days of work in any
14 order of the Industrial Welfare Commission (including the “Hours and Days of Work”
15 section of the Wage Order) shall be subject to a civil penalty of (1) for any initial
16 violation, fifty dollars (\$50) for each underpaid employee for each pay period for
17 which the employee was underpaid in addition to an amount sufficient to recover
18 underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for
19 each underpaid employee for each pay period for which the employee was underpaid
20 in addition to an amount sufficient to recover underpaid wages; and (3) wages
21 recovered pursuant to this section shall be paid to the affected employee.

22 172. Plaintiffs seek penalties for Defendants’ conduct as alleged herein as
23 permitted by law.

24 173. Specifically, Plaintiffs seeks penalties under Labor Code § 2699, for the
25 following in addition to those Code provisions mentioned in this Cause of Action:

- 26 a. For violations of Labor Code §§ 201, 202, 203,
27 and 204/204b for failing to pay Plaintiff and
28 Represented Employees in a timely manner; and

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b. For the violation of Labor Code §§ 226 and 226.3,
for failing to provide Plaintiff and Represented
Employees accurate wage statements.

174. Pursuant to Labor Code § 2698, *et seq.*, Plaintiffs seek to recover attorney’s fees, costs, civil penalties, and wages on behalf of Plaintiff and other current and former Represented Employees as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional limits of this Court.

SEVENTH CAUSE OF ACTION

Individual Claim for Remedies for Violations

of the California Unfair Business

Practices Code §§ 17200, *et seq.*

(Against all Defendants)

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

176. Defendants, and each of them, are “persons” as defined under Business and Professions Code § 17021.

177. Plaintiffs are informed and believe and based thereon allege that Defendants committed the unfair business practices, as defined by Cal. Bus. & Prof. Code § 17200, *et seq.*, by violating the laws alleged to have been violated in this Complaint and which allegations are incorporated herein by reference.

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

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

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

181. Because of their improper acts, Defendants, and each of them, have

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1 reaped and continue to reap unfair benefits and illegal profits at the expense of
2 Plaintiffs OLSHANSKY and TORRACA-RIANO and other employees and former
3 employees of Defendants, and each of them.

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

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

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs OLSHANSKY and TORRACA-RIANO, on behalf
14 of the Class, pray for an order for relief as follows:

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

17 2. For appointment of the Plaintiffs OLSHANSKY and TORRACA-
18 RIANO as the representatives of the Class;

19 3. For appointment of counsel for Plaintiffs OLSHANSKY and
20 TORRACA-RIANO as Class Counsel;

21 4. That Defendants be found liable to Plaintiffs OLSHANSKY and
22 TORRACA-RIANO and the Class;

23 5. For a declaration that Defendants violated the rights of Plaintiffs
24 OLSHANSKY and TORRACA-RIANO and the Class under the FCRA and any other
25 applicable law alleged in this Complaint;

26 6. Pursuant to 15 U.S.C. § 1681n(a)(1)(A), an award of statutory damages
27 to Plaintiff and the Class in an amount equal to \$1,000 for Plaintiffs OLSHANSKY
28 and TORRACA-RIANO and each member of the Class for Defendant's willful

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1 violations of the FCRA;

2 7. In the event this case does not proceed on a FCRA class action basis,
3 pursuant to Civ. Code § 1786.50, an award of statutory damages to Plaintiffs
4 OLSHANSKY and TORRACA-RIANO in the amount of \$10,000 each, or in the
5 alternative actual damages in an amount according to proof;

6 8. For an award of punitive damages to Plaintiffs OLSHANSKY and
7 TORRACA-RIANO and the members of the Class in an amount to be determined by
8 the Court;

9 9. For costs of suit and expenses incurred herein, including reasonable
10 attorneys' fees and costs allowed under relevant provision of law including, but not
11 limited to, those allowed under 15 U.S.C. §1681n(a)(3), 15 U.S.C. §1681o(a)(2), Civ.
12 Code § 1786.50, and/or other applicable provisions of law;

13 10. That Defendants, and each of them, be ordered and enjoined to pay
14 restitution to Plaintiff and/or the Class and/or Represented Employees pursuant to
15 Business and Professions Code §§ 17200-05;

16 11. That Defendants, and each of them, be required to issue to Plaintiff
17 and/or the Class and/or Represented Employees accurate wage and earning
18 statements;

19 12. For disgorgement through restitution of all ill-gotten and/or ill-gained
20 profits, including unpaid wages and/or penalties to Plaintiffs OLSHANSKY and
21 TORRACA-RIANO and/or the Class and/or Represented Employees, resulting from
22 Defendants' unfair business practices pursuant to Business and Professions Code §§
23 17200-05;

24 13. For an order by the Court requiring Defendants, and each of them, to
25 show cause, if any they have, as to why to Plaintiff and/or the Class and/or
26 Represented Employees should not have been issued itemized wage statements as
27 required by § 226 of the Labor Code and why Defendants should not be required to
28 pay Plaintiff minimum wages and overtime compensation under applicable state law;

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1 14. For all remedies available to Plaintiffs OLSHANSKY and TORRACA-
2 RIANO under the applicable provisions of the Labor Code via PAGA Labor Code §
3 2698, *et seq.* including an award of attorneys' fees, costs, interest, liquidated
4 damages, damages, penalties and waiting time penalties according to proof to the
5 extent permitted by law;

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

10 16. That Defendants, and each of them, be required to issue to Plaintiffs
11 OLSHANSKY and TORRACA-RIANO and/or the Class and/or Represented
12 Employees accurate wage and earning statements;

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

14 18. For special and general damages;

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

19 20. For any other relief the Court may deem just, proper and equitable in the
20 circumstances.

21 Dated: December 27, 2018

Law Offices of
Thomas D. Rutledge

23 By: /s/Thomas D. Rutledge
24 /s/Thomas D. Rutledge
25 Attorneys for Plaintiffs

26 **DEMAND FOR JURY TRIAL**

27 Plaintiffs hereby demand a jury trial of this matter.

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Dated: December 27, 2018

Law Offices of
Thomas D. Rutledge

By: /s/Thomas D. Rutledge
Thomas D. Rutledge (SBN 200497)
Attorneys for Plaintiffs

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Exhibit 1

Notification and Authorization to Conduct Employment Background Investigation

I hereby authorize ATC Healthcare Staffing and their choice of reporting company to ascertain information regarding my background to determine any and all information of concern to my record, whether same is of record or not, and I release employers and persons named in my application from all liability for any damages on account of his/her furnishing said information. I understand that this form indicates that a background search will be conducted and that this is my notification of that intent. I understand that the purpose of this background investigation is to determine my suitability for employment and may elicit information on my character, general reputation, personal characteristics and mode of living. Additionally, you are hereby authorized to make any investigation of my personal history, educational background, military record, motor vehicle records, criminal records, and credit history through an investigative or credit agency or bureau of your choice. I authorize the release of this information by the appropriate agencies to the investigating service. I understand that my consent will apply throughout my employment, unless I revoke or cancel my consent by sending a signed letter or statement to the Company at any time, stating that I revoke my consent and no longer allow the Company to obtain consumer or investigative consumer reports about me.

PLEASE PRINT CLEARLY

FULL NAME: Michael Olshansky

OTHER NAMES USED/MAIDEN NAME/DATES: _____

CURRENT ADDRESS: Redacted PHONE: Redacted

LIST ALL ADDRESSES FOR PAST 7 YEARS:

Dates: _____

Dates: _____

Dates: _____

EMAIL ADDRESS: Redacted

SOCIAL SECURITY # REDACTED DATE OF BIRTH: REDACTED

DRIVER'S LICENSE # Redacted STATE ISSUED: PA

*** MAY WE CONTACT YOUR CURRENT EMPLOYER? YES NO

*** HAVE YOU EVER BEEN CONVICTED OF A CRIME? YES NO

If yes, please explain: _____

Notice to California Applicants - You may omit minor traffic offenses, any convictions which have been sealed, expunged or statutorily eradicated, convictions more than two years old for the following marijuana related offenses: HS11357b&c, HS11360c, HS11364, HS11365, HS11550, and misdemeanors for which probation was completed and the case was judicially dismissed.

Notice to Massachusetts Applicants: You may omit a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, or any conviction of a misdemeanor where the date of such conviction or the completion of any period of incarceration resulting there from, whichever date is later, occurred five or more years prior to the date of this application for employment, unless you have been convicted of any offense within five years immediately preceding the date of this application for employment.

Note: No applicant will be denied employment solely on the grounds of conviction of a crime. The nature of the offense, the date of the offense, the surrounding circumstances and the relevance of the offense to the position will be considered.

SIGNATURE: _____ DATE: Nov 18, 2018

California Applicants: Under Section 1786.22 of the California Civil Code, you have the right to request from Justifacts (\$250 Logan Ferry Rd, Murrysville PA 15626 - 800-356-6885, www.justifacts.com), upon proper identification, the nature and substance of all information in its files on you, including the sources of information, and the recipients of any reports on you to whom Justifacts has previously furnished within the three-year period preceding your request. Files maintained on a consumer shall be made available for the consumer's visual inspection, as follows: (1) In-person, if he appears in person and furnishes proper identification. A copy of his file shall also be available to the consumer for a fee not to exceed the actual costs of duplication services provided. (2) By certified mail, if he makes a written request, with proper identification, for copies to be sent to a specified addressee. (3) A summary of all information contained in files on a consumer and required to be provided by Section 1786.10 shall be provided by telephone, if the consumer has made a written request, with proper identification, for telephone disclosure, and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

California, Minnesota & Oklahoma Applicants Only: Please check this box if you would like a copy of the background check mailed to you. Minnesota and Oklahoma applicants will receive a copy direct from Justifacts or its designee. California applicants may receive a copy from either the prospective employer or Justifacts.

NOTICE: Under federal law, you have the right to request disclosure of the nature and scope of our investigation by providing us with a written request within 60 days of our background investigation.

Subscriber certifies that consumer credit information, consumer reports, as defined by the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq. ("FCRA"), will be ordered only when intended to be used as a factor in establishing a consumer's eligibility for employment and that consumer credit information will be used for no other purposes. It is recognized and understood that the FCRA provides that anyone "who knowingly and willfully obtains information on a consumer from a consumer reporting agency" (such as Justifacts) "under false pretenses shall be fined not more than \$2,500 or imprisoned not more than two years or both."

ATC Personnel/Payroll 0056

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 460-7071	
PLAINTIFF(S) / PETITIONER(S): MICHAEL OLSHANSKY et.al.	
DEFENDANT(S) / RESPONDENT(S): ATC HEALTHCARE SERVICES INC et.al.	
TORRACA-RIANO VS. ATC HEALTHCARE SERVICES INC [EFILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2018-00065377-CU-OE-CTL

CASE ASSIGNMENT

Judge: Gregory W Pollack

Department: C-71

COMPLAINT/PETITION FILED: 12/27/2018

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	05/31/2019	01:30 pm	C-71	Gregory W Pollack

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases or guidelines and procedures.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

***ALTERNATIVE DISPUTE RESOLUTION (ADR):** THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO		<i>FOR COURT USE ONLY</i>
STREET ADDRESS:	330 West Broadway	
MAILING ADDRESS:	330 West Broadway	
CITY, STATE, & ZIP CODE:	San Diego, CA. 92101-3827	
BRANCH NAME:	Central	
PLAINTIFF(S): MICHAEL OLSHANSKY et.al.		
DEFENDANT(S): ATC-HEALTHCARE SERVICES INC et.al.		
SHORT TITLE: TORRACA-RIANO VS. ATC HEALTHCARE SERVICES INC [EFILE]		
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)		CASE NUMBER: 37-2018-00065377-CU-OE-CTL

Judge: Gregory W Pollack

Department: C-71

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|---|--|
| <input type="checkbox"/> Mediation (court-connected) | <input type="checkbox"/> Non-binding private arbitration |
| <input type="checkbox"/> Mediation (private) | <input type="checkbox"/> Binding private arbitration |
| <input type="checkbox"/> Voluntary settlement conference (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff _____

Name of Defendant _____

Signature _____

Signature _____

Name of Plaintiff's Attorney _____

Name of Defendant's Attorney _____

Signature _____

Signature _____

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 12/28/2018

JUDGE OF THE SUPERIOR COURT



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2018-00065377-CU-OE-CTL CASE TITLE: Torraca-Riano vs. ATC Healthcare Services Inc [EFILE]

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages:

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

EXHIBIT “C”
TO
NOTICE OF REMOVAL
[PAGES 91 - 136]

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7071	
PLAINTIFF(S) / PETITIONER(S):	MICHAEL OLSHANSKY et.al.
DEFENDANT(S) / RESPONDENT(S):	ATC HEALTHCARE SERVICES INC et.al.
TORRACA-RIANO VS. ATC HEALTHCARE SERVICES INC [EFILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2018-00065377-CU-OE-CTL

CASE ASSIGNMENT

Judge: Gregory W Pollack

Department: C-71

COMPLAINT/PETITION FILED: 12/27/2018

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	05/31/2019	01:30 pm	C-71	Gregory W Pollack

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases or guidelines and procedures.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS:	330 W Broadway
MAILING ADDRESS:	330 W Broadway
CITY AND ZIP CODE:	San Diego, CA 92101-3827
BRANCH NAME:	Central
TELEPHONE NUMBER:	(619) 450-7071
PLAINTIFF(S) / PETITIONER(S):	MICHAEL OLSHANSKY et.al.
DEFENDANT(S) / RESPONDENT(S):	ATC HEALTHCARE SERVICES INC et.al.
TORRACA-RIANO VS. ATC HEALTHCARE SERVICES INC [EFILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2018-00065377-CU-OE-CTL

CASE ASSIGNMENT

Judge: Gregory W Pollack

Department: C-71

COMPLAINT/PETITION FILED: 12/27/2018

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SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

See attached.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

**TONI TORRACA-RIANO and MICHAEL OLSHANSKY, individually,
on behalf of themselves and others similarly situated.**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/27/2018 at 10:37:03 PM

Clerk of the Superior Court
By Vanessa Bahena, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorta.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorta.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desochar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

**SUPERIOR COURT OF CALIFORNIA
330 WEST BROADWAY, SAN DIEGO, CALIFORNIA 92101**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
THOMAS D. RUTLEDGE, 500 W. HARBOR DR., STE. 1113, SAN DIEGO, CA 92101 Tel.: 619-886-7224

CASE NUMBER:
(Número del Caso): **37-2018-00065377-CU-05-CTL**

DATE: **12/28/2018**
(Fecha)

Clerk by
(Secretario)

V. Bahena
V. Bahena

Deputy
(Acjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant
- 2. as the person sued under the fictitious name of (specify):

- 3. on behalf of (specify):

- under CCP 416.10 (corporation) CCP 416.80 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify):

- 4. by personal delivery on (date):



Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 (Rev. July 1, 2009)

SUMMONS

Page 1 of 1
Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

SUM-200(A)

SHORT TITLE: Olshansky, et al. v. ATC Healthcare Services, Inc., et al.	CASE NUMBER:
---	---------------------

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

ATC HEALTHCARE SERVICES, INC., a Georgia corporation; ATC HEALTHCARE, INC., a Delaware corporation; ATC HEALTHCARE SERVICES, LLC, a Georgia limited liability company; ATC HEALTHCARE STAFFING, an unknown entity; ATC WEST STAFFING, INC., a California corporation; and DOES 1 through 50 inclusive.

Page _____ of _____

Page 1 of 1

Form Adopted for Mandatory Use
 Judicial Council of California
 SUM-200(A) [Rev. January 1, 2007]

ADDITIONAL PARTIES ATTACHMENT
 Attachment to Summons

EXHIBIT C

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	FOR COURT USE ONLY
PLAINTIFF(S): MICHAEL OLSHANSKY et.al.	
DEFENDANT(S): ATC HEALTHCARE SERVICES INC et.al.	
SHORT TITLE: TORRACA-RIANO VS. ATC HEALTHCARE SERVICES INC [EFILE]	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 37-2018-00065377-CU-OE-CTL

Judge: Gregory W Pollack

Department: C-71

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- | | |
|---|--|
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| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

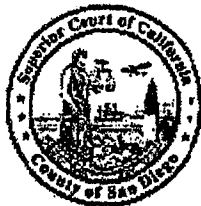
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No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 12/28/2018

JUDGE OF THE SUPERIOR COURT



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2018-00065377-CU-OE-CTL CASE TITLE: Torraca-Riano vs. ATC Healthcare Services Inc [EFILE]

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Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

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Superior Court of California,
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12/27/2018 at 10:37:03 PM
Clerk of the Superior Court
By Vanessa Bahena, Deputy Clerk

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Co-Counsel listed on next page.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO-CENTRAL DIVISION

TONI TORRACA-RIANO and
MICHAEL OLSHANSKY,
individually, on behalf of themselves
and others similarly situated,

Plaintiffs

vs.

ATC HEALTHCARE SERVICES,
INC., a Georgia corporation; ATC
HEALTHCARE, INC., a Delaware
corporation; ATC HEALTHCARE
SERVICES, LLC, a Georgia limited
liability company; ATC
HEALTHCARE STAFFING, an
unknown entity; ATC WEST
STAFFING, INC., a California
corporation; and DOES 1 through 50
inclusive

Defendants.

Case No.: 37-2018-00065377-CU-0E-CTL

**INDIVIDUAL AND CLASS ACTION
COMPLAINT FOR:**

1. Violations of Fair Credit Reporting Act, 15 U.S.C. §§ 1681b(b)(2)(A) § 1681o(a) (Obtaining Consumer Reports Without Proper Disclosure)
2. Violations of Fair Credit Reporting Act, 15 U.S.C. §§ 1681b(b)(2)(A) § 1681o(a) (Obtaining Consumer Reports Without Proper Authorization);
3. Violations of the California Investigative Consumer Reporting Agencies Act (ICRAA) (Civ. Code, § 1786, *et seq.*);
4. Failure to Make Payments Within the Required Time;
5. Violations of Labor Code § 226;
6. Remedies Under Private Attorney General Act (PAGA California Labor Code §§ 2698, 2699, *et seq.*); and
7. Unfair Business Practices in Violation of Cal. Bus. & Prof. Code §§ 17000, *et seq.* and §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

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14 Attorneys for Plaintiffs

15 Plaintiffs TONI TORRACA-RIANO and MICHAEL OLSHANSKY, on behalf
16 of themselves and acting for the interest of other current and former employees
17 (“Represented Employees”), and all other similarly situated individuals (cumulatively
18 “Plaintiffs”), allege the following:

19 **NATURE OF THE ACTION**

20 1. Plaintiffs bring this nationwide class action on behalf of all individuals
21 who applied for employment with Defendants and who executed a release and
22 authorization form permitting Defendants to procure a consumer report and/or
23 investigative consumer report on them as part of their employment or application for
24 employment with Defendants.

25 2. Specifically, Plaintiffs complain that Defendants have a uniform policy
26 or practice of obtaining an applicant’s consumer report and have violated the Fair
27 Credit Reporting Act (the “FCRA”) through use of a legally invalid authorization
28 form that: (1) fails to provide a clear and conspicuous disclosure; and (2) fails to
provide a disclosure that appears in a document that consists solely of the disclosure.

3. Pursuant to Code of Civil Procedure § 382 and Labor Code Private

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1 Attorney General Act (“PAGA”), §§ 2698, 2699 of the California Labor Code,
2 Plaintiffs also bring a class and representative action against Defendants for wage and
3 hour abuses in violation of the California Labor Code and the Industrial Welfare
4 Commission Wage Orders (the “TWC Wage Orders”), all of which contribute to
5 Defendants’ deliberate unfair competition.

6 4. Plaintiffs OLSHANSKY and TORRACA-RIANO, on behalf of
7 themselves and all Class Members, seek damages, penalties, restitution, injunctive and
8 other equitable relief, reasonable attorneys’ fees, and costs.

9 **JURISDICTION AND VENUE**

10 5. Pursuant to Article VI, § 10 of the California Constitution, subject matter
11 jurisdiction over Plaintiffs’ wage and hour claims is proper in the Superior Court of
12 California, County of San Diego, State of California because Plaintiffs allege claims
13 arising under California law.

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

19 7. This Court has personal jurisdiction over Defendants because Defendants
20 conduct business in this State, have systematic and continuous ties with this state, and
21 have agents and representatives that can be found in this state.

22 8. Pursuant to § 395 of the California Code of Civil Procedure, venue is
23 proper in the Superior Court of California for the County of San Diego because
24 Defendants’ corporate records filed with the California Secretary of State indicate
25 they maintain a principle business office at 9040 Friars Road, Suite 335, San Diego,
26 California 92108.

27 **THE PARTIES**

28 9. Plaintiff TONI TORRACA-RIANO is an individual currently residing in

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1 California.

2 10. Plaintiff MICHAEL OLSHANSKY is an individual residing outside the
3 state of California. During his employment with Defendants from on or about
4 November 2, 2018 to November 28, 2018, however, Plaintiff OLSHANSKY resided
5 in California.

6 11. Defendant ATC HEALTHCARE SERVICES, INC. is a Georgia
7 Corporation doing business in California.

8 12. Defendant ATC HEALTHCARE, INC. is a Delaware Corporation doing
9 business in California.

10 13. Defendant ATC HEALTHCARE SERVICES, LLC is a Georgia limited
11 liability company doing business in California.

12 14. Defendant ATC HEALTHCARE STAFFING is an unknown entity
13 doing business in California.

14 15. Defendant ATC WEST STAFFING, INC. is a California Corporation,
15 but according to the California Secretary of State Website, it is "dissolved."

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

24 17. Unless otherwise specified by name, the named Defendants and DOES 1
25 through 50 will be collectively referred to as "DEFENDANT EMPLOYER" and/or
26 "Defendants."

27 18. Plaintiffs are informed and believe, and based thereon allege, that each
28 Defendant was acting as an agent, joint venturer, an integrated enterprise and/or alter

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1 ego for each of the other Defendants and each were co-conspirators with respect to the
2 acts and the wrongful conduct alleged herein so that each is responsible for the acts of
3 the other pursuant to the conspiracy and in proximate connection with the other
4 Defendant(s).

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

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

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

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

23 **STATUTORY BACKGROUND OF THE FCRA**

24 23. Enacted in 1970, the FCRA's passage was driven in part by two related
25 concerns: first, that consumer reports were playing a central role in people's lives at
26 crucial moments, such as when they applied for a job or credit, and when they applied
27 for housing; second, despite their importance, consumer reports were unregulated and
28 had widespread errors and inaccuracies.

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1 24. While recognizing that consumer reports play an important role in the
2 economy, Congress wanted consumer reports to be "fair and equitable to the
3 consumer" and to ensure their "confidentiality, accuracy, relevancy, and proper
4 utilization." 15 U.S.C. § 1681.

5 25. Congress was particularly concerned about the use of consumer reports by
6 employers. Accordingly, Congress required employers to make a clear and
7 conspicuous written disclosure to employees and job applicants, in a document that
8 consists solely of the disclosure, that a consumer report may be procured for
9 employment purposes. 15 U.S.C. § 1681b(b)(2). This is commonly referred to as the
10 "stand-alone disclosure" requirement. Congress further required that employers obtain
11 written authorization prior to procurement of a consumer report for employment
12 purposes. *Id.*

13 26. The FCRA's stand-alone disclosure requirement is one of many elements
14 of the FCRA that combine to ensure that consumers know when consumer reports may
15 be generated about them, that they know their rights, and that they have the
16 opportunity to dispute errors in their reports. See 15 U.S.C. § 1681b(b)(3)(A) (pre-
17 adverse employment action notice requirement); § 1681b(4)(B) (notification of
18 national security investigation); § 1681 c(h) (notification of address discrepancy); §
19 1681d(a) (disclosure of investigative report); § 1681g (full file disclosure to
20 consumers); § 1681k(a)(1) (disclosure regarding the use of public record information); §
21 1681h (form and conditions of disclosure); § 1681m(a) (post-adverse employment
22 action notice requirement).

23 27. Although the disclosure and the authorization may be combined in a
24 single document, the FTC has warned that the form should not include any extraneous
25 information or be part of another document. For example, in response to an inquiry as
26 to whether the disclosure may be set forth within an application for employment or
27 whether it must be included in a separate document, the FTC stated:

28

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The disclosure may not be part of an employment application because the language [of 15 U.S.C. § 1681b(b)(2)(A)] is intended to ensure that it appears conspicuously in a document not encumbered by any other information. The reason for requiring that the disclosure be in a stand-alone document is to prevent consumers from being distracted by other information side-by-side within the disclosure.

28. The plain language of the statute also clearly indicates that the inclusion of a waiver in a disclosure form violates the disclosure and authorization requirements of the FCRA, because such a form would not consist "solely" of the disclosure. In fact, the FTC expressly has warned that the FCRA notice may not include extraneous information such as a waiver. In a 1998 opinion letter, the FTC stated:

[W]e note that your draft disclosure includes a waiver by the consumer of his or her rights under the FCRA. The inclusion of such a waiver in a disclosure form will violate Section 604(b)(2)(A) of the FCRA, which requires that a disclosure consist 'solely' of the disclosure that a consumer report may be obtained for employment purposes.

29. Consistent with the FTC's construction of the FCRA, courts have repeatedly held that extraneous information renders a purported FCRA disclosure non-compliant. *See, e.g., Woods v. CaremarkPHC, LLC*, No. 4:15-cv-00535, 2015 WL 6742124, *2 (W.D. Mo. Nov. 2, 2015) (denying motion to dismiss FCRA complaint where plaintiff alleged that purported disclosure contained an overbroad authorization for third parties to provide information to defendant and its consumer reporting agency, and state specific notices that did not apply to plaintiff); *Jones v. Halstead Mgmt. Co., LLC*, No. 14-cv-3125, 2015 WL 366244, *5 (S.D.N.Y. Jan 27, 2015) (denying motion to dismiss FCRA complaint where plaintiff alleged that purported disclosure form included timeframes during which applicant must challenge accuracy of any report, an acknowledgement that employment decisions are based on non-discriminatory reasons, the contact information for the consumer reporting agency and state specific notices that "stretched what should be a simple disclosure form into two full pages of eye-straining typeface writing.").

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1 30. As discussed below, Defendant routinely violates the FCRA by failing to
2 provide the required stand-alone disclosure to employees and job applicants.

3 **GENERAL ALLEGATIONS REGARDING UNLAWFUL**
4 **PROCUREMENT OF CONSUMER REPORT CLAIMS**

5 31. On or about November 18, 2018, as part of Plaintiffs' application for
6 employment, DEFENDANT EMPLOYER required Plaintiffs OLSHANSKY and
7 TORRACA-RIANO to sign a document titled "Notification and Authorization to
8 Conduct Employment Background Investigation." A true and correct redacted copy of
9 Plaintiff OLSHANSKY'S authorization is attached hereto and marked as **Exhibit 1**.

10 32. This form is at the heart of one key part of this dispute.

11 33. The abovementioned form purportedly authorizes "ATC Healthcare
12 Staffing" to conduct a background investigation concerning Plaintiffs OLSHANSKY
13 and TORRACA-RIANO and the putative Class.

14 34. Plaintiffs maintain this form is illegal because, in part, it includes a
15 release and hold harmless clause that provides, "I release employers and persons
16 named in my application from all liability for any damages on account of his/her
17 furnishing said information." See **Ex. 1**.

18 35. Plaintiffs maintain this form is also illegal because it misstates the name
19 of Plaintiffs OLSHANSKY'S and TORRACA-RIANO'S employer as being "ATC
20 Healthcare Staffing," when according to their wage and earning statements, the only
21 legal entity identified as being Plaintiffs' employer was "ATC Healthcare Services,
22 Inc." See **Ex. 1**.

23 36. To the extent "ATC Healthcare Staffing" (if it exists) is the entity that
24 procured consumer reports on Plaintiffs OLSHANSKY and TORRACA-RIANO and
25 Class Members, this form also fails to provide any disclosure or to obtain any
26 authorization at all.

27 37. Plaintiffs maintain this form is also illegal because it includes other
28 extraneous information in addition to a release, including but not limited to a number

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1 of purported unrelated state law admonitions. See **Ex. 1**.

2 38. Plaintiffs maintain this form is also illegal to the extent that it is overly
3 broad and purports to authorize the procurement of any information concerning the
4 applicant whether otherwise lawful or appropriate. See **Ex. 1**.

5 39. Plaintiffs are informed and believe and therefore allege that pursuant to
6 the forms that Plaintiffs OLSHANSKY and TORRACA-RIANO signed on or about
7 November 18, 2018, DEFENDANT EMPLOYER obtained consumer reports on
8 Plaintiffs OLSHANSKY and TORRACA-RIANO.

9 40. On information and belief, DEFENDANT EMPLOYER had a practice
10 and policy of procuring consumer reports on all Class Members based upon this or
11 substantially similar forms during the class period.

12 41. Based on the foregoing, Plaintiffs claim Defendants violated both state
13 and federal law.

14 **GENERAL ALLEGATIONS REGARDING**
15 **LABOR CODE VIOLATIONS**

16 **Labor Code § 226 Violations**

17 42. From at least four years before the filing of this action and continuing to
18 the present, and pursuant to company policy and/or practice and/or direction,
19 Defendants issued inaccurate wage and earning statements to Plaintiffs.

20 43. On or about November 29, 2018, Defendants issued Plaintiff
21 OLSHANSKY a paystub.

22 44. This paystub did not accurately state Plaintiff OLSHANSKY'S gross
23 wages earned or the total hours worked by the employee.

24 45. The November 29, 2018 paystub stated Plaintiff OLSHANSKY earned
25 \$1,810.21 in gross wages, but Plaintiff actually earned \$2,194.59.

26 46. Additionally, the November 29, 2018 statement did not account for
27 Plaintiff OLSHANSKY'S 0.75 hours of overtime and two hours of double time.

28 47. Further, if indeed "ATC Healthcare Staffing" was Plaintiffs' employer,

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1 Defendant failed to identify such entity as being Plaintiffs' employer, as required
2 under Labor Code § 226(a)(8).

3 48. Plaintiff TORRACA-RIANO similarly alleges that her paystubs were
4 inaccurate.

5 49. Plaintiffs are informed and believe and therefore allege that Defendants
6 issued similarly inaccurate paystubs to similarly situated employees.

7 50. Based on the foregoing, Plaintiffs seeks the remedies set forth in this
8 Complaint.

9 **Waiting Time Penalties**

10 51. Pursuant to Defendants' policies, Defendants failed to pay all wages to
11 Plaintiffs in a timely manner.

12 52. On or about November 28, 2018, Defendants involuntarily terminated
13 Plaintiffs OLSHANSKY'S and TORRACA-RIANO'S employment.

14 53. On Plaintiffs OLSHANSKY'S and TORRACA-RIANO'S date of
15 termination, however, Defendants failed to pay Plaintiffs OLSHANSKY and
16 TORRACA-RIANO all their unpaid wages immediately upon their termination.

17 54. Plaintiffs are informed and believe and based thereon allege that
18 Defendants similarly did not pay other similarly situated employees all wages due and
19 payable in a timely manner.

20 55. Based on the foregoing, Plaintiffs seeks the remedies set forth in this
21 Complaint.

22 **REPRESENTATIVE ACTION (PAGA) CLAIMS**

23 56. The duties and business activities of the Represented Employees were
24 essentially the same as the duties and activities of Plaintiffs OLSHANSKY and
25 TORRACA-RIANO described above.

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

28 **All nonexempt persons Defendants employed in the State of**

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1 **California from December 21, 2017 to the present.**

2 58. All members of the represented groups will be referred to as the
3 "Represented Employees."

4 59. The "Representative Period" means from **December 21, 2017** to the
5 present, the timeframe where the scope of statute allows Plaintiffs to recover wages
6 and penalties.

7 60. At all times during the Representative Period, all the Represented
8 Employees were employed in the same or similar job as Plaintiffs OLSHANSKY and
9 TORRACA-RIANO and were paid in the same manner and under the same standard
10 employment procedures and practices as the Plaintiff.

11 61. Plaintiffs OLSHANSKY and TORRACA-RIANO further allege
12 DEFENDANT EMPLOYER did not pay them and, on information and belief
13 Represented Employees, all wages due at the time their employment ended with
14 DEFENDANT EMPLOYER.

15 62. On information and belief, current and former employees of
16 DEFENDANT EMPLOYER were subject to wage and hour violations by
17 DEFENDANT EMPLOYER, including failing to pay for all wages due.

18 63. California law provides that an employee may file an action against an
19 employer to recover penalties for violations of the Labor Code and Wage Orders,
20 provided the aggrieved employee files an action on behalf of him or herself and
21 similarly situated current and former employees.

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

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1 65. As set forth in further detail below, because of the analysis and
2 investigation of the Plaintiffs' claims, Plaintiffs' attorneys sent letters to the California
3 Labor and Workforce Development Agency (hereinafter referred to as "LWDA") and
4 to DEFENDANT EMPLOYER informing DEFENDANT EMPLOYER of their claims
5 and their intent to pursue litigation.

6 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

7 66. As to penalty claims under the Labor Code Private Attorney General
8 Act, on **December 21, 2018**, Plaintiffs began to exhaust his/her administrative
9 remedies by sending correspondence to the LWDA and DEFENDANT EMPLOYER
10 indicating that Plaintiffs OLSHANSKY and TORRACA-RIANO are pursuing the
11 claims alleged in this Complaint.

12 67. By the time an amended Complaint is filed, the statutory period for
13 Plaintiffs will have expired on the letter alleged above and the LWDA will likely not
14 have served Plaintiffs with notice of intent to assume jurisdiction over the applicable
15 penalty claims and did not provide notice as set forth in Labor Code § 2699.3
16 (a)(2)(A) within the statutory period.

17 68. Therefore, Plaintiffs will have exhausted Plaintiffs' administrative
18 remedies to enable Plaintiffs to seek the penalty claims sought in this Complaint.

19 69. The Causes of Action alleged herein are appropriately suited for a
20 Representative Action under PAGA (Labor Code § 2698, *et seq.*) because:

- 21 a. This action involves allegations of violations of
- 22 provisions of the California Labor Code that
- 23 provide for a civil penalty to be assessed and
- 24 collected by the LWDA or any departments,
- 25 divisions, commissions, boards, agencies or
- 26 employees;
- 27 b. Plaintiffs are "aggrieved employees" because
- 28 Plaintiffs were employed by the alleged violator

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1 and had one or more of the alleged violations
2 committed against them; and
3 c. Plaintiffs have satisfied the procedural
4 requirements of Labor Code § 2699.3, as set forth
5 above.

6 **CLASS ACTION ALLEGATIONS**

7 70. Plaintiffs OLSHANSKY and TORRACA-RIANO bring this action on
8 behalf of themselves and all others similarly situated as a Class Action pursuant to §
9 382 of the Code of Civil Procedure.

10 71. Plaintiffs OLSHANSKY and TORRACA-RIANO seek to represent the
11 classes and/or subclasses composed of and defined as follows:

12 Labor Code Class:

13 **All current or former nonexempt employees who worked in**
14 **the state of California from December 27, 2014 to the**
15 **present for the Defendants who were issued wage and**
16 **earning statements from ATC Healthcare Services, Inc.**

17 FCRA Class:

18 **All persons residing in the United States regarding whom**
19 **Defendants procured or caused to be procured a consumer**
20 **report for employment purposes during the period five**
21 **years prior to the filing of the present action through the**
22 **date of certification.**

23 72. Plaintiffs OLSHANSKY and TORRACA-RIANO also seek to represent
24 the following subclasses composed of and defined as follows:

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

28 **Waiting Time Subclass: All Members of the Plaintiff Class who,**

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1 during the applicable limitations period, did not receive all wages due
2 in a timely manner as required by Labor Code §§ 201-204.

3 **UCL Subclass:** All Members of the Plaintiff Class, who, during the
4 relevant period, Defendants owe restitution in the form of (1)
5 unreimbursed expenses and/or (2) wages earned and unpaid because
of Defendants’ uniform pay policies and procedures.

6 73. The above-mentioned class-members will collectively be referred to as
7 “Class Members.”

8 74. Plaintiffs reserve the right under the California Rules of Court, to
9 amend or modify the class description with greater specificity or further division into
10 subclasses or limitation to particular issues.

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

15 **A. Numerosity**

16 76. The potential members of the Class as defined are so numerous or many,
17 that joinder of all the members of the Class is impracticable.

18 77. While the precise number of Class Members has not been determined at
19 this time, Plaintiffs are informed and believe, and on that basis allege, that
20 DEFENDANT EMPLOYER currently employs, and during the relevant time periods
21 employed, over 100 Class Members.

22 78. Accounting for employee turnover during the relevant periods necessarily
23 increases this number substantially.

24 **B. Commonality**

25 79. There are questions of law and fact common to the Class that
26 predominate over any questions affecting only individual Class Members.

27 80. Common questions of law and fact include, without limitation and
28

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1 subject to possible further amendment, the following:

- 2 a. Whether the Defendant violated the FCRA by
- 3 procuring consumer reports based on invalid
- 4 authorizations;
- 5 b. Whether Defendants' policy or practice of not paying
- 6 hourly employees all their wages due in their final
- 7 paychecks immediately upon involuntary termination
- 8 or within 72 hours' notice of when its employees
- 9 provided notice of their voluntary resignation, is
- 10 unlawful under Labor Code §§ 201, 202 and/or 203;
- 11 c. Whether Defendants violated Labor Code §§ 226 by
- 12 not providing accurate paystubs; and
- 13 d. Whether Plaintiffs OLSHANSKY and TORRACA-
- 14 RIANO and the members of the Class may recover
- 15 remedies pursuant to Business & Professions Code §§
- 16 17200, *et seq.*

17 **C. Typicality**

18 81. Plaintiffs OLSHANSKY'S and TORRACA-RIANO'S claims are typical
19 of the claims of the Class because Plaintiffs OLSHANSKY and TORRACA-RIANO
20 and all members of the Class sustained injuries and damages arising out of and caused
21 by Defendants' common course of conduct and policies in violation of laws,
22 regulations that have the force and effect of law and statutes as alleged herein.

23 **D. Adequacy of Representation**

24 82. Plaintiffs OLSHANSKY and TORRACA-RIANO are members of the
25 Class, do not have any conflicts of interest with other Class Members, and will
26 prosecute the case vigorously on behalf of the Class.

27 83. Counsel representing Plaintiffs OLSHANSKY and TORRACA-RIANO
28 and the putative Class is competent and experienced in litigating employment class

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1 actions, including wage and overtime class actions.

2 84. Plaintiffs OLSHANSKY and TORRACA-RIANO will fairly and
3 adequately represent and protect the interests of the Class Members.

4 **E. Superiority of Class Action**

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

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

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

14 88. Plaintiffs are unaware of any difficulties that are likely to encounter in
15 the management of this action that would preclude maintenance as a Class Action.

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

18 **FIRST CAUSE OF ACTION**

19 **Individual and Class Claim for**

20 **Violation of the Fair Credit Reporting Act**

21 **(Obtaining Consumer Reports Without Proper Disclosure)**

22 **(Against All Defendants)**

23 90. Plaintiffs allege and incorporates by reference the allegations in the
24 preceding paragraphs as though fully set forth herein.

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

27 92. Likewise, a consumer report may be used for the evaluation of "a
28 consumer for employment, promotion, reassignment or retention of an employee." 15

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1 U.S.C. §1681a(h).

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

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

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

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

17 15 U.S.C. § 1681b(b)(2)(A).

18 96. During the Class Period, DEFENDANT EMPLOYER required Plaintiffs
19 OLSHANSKY and TORRACA-RIANO and the FCRA Class Members to sign an
20 authorization form as part of their job application with DEFENDANT EMPLOYER,
21 which form purported to allow “ATC Healthcare Staffing” to procure consumer
22 reports regarding the Plaintiffs.

23 97. To the extent that ATC Healthcare Staffing (if such entity exists) is not
24 the entity that procured consumer reports on Plaintiffs and FCRA Class Members,
25 DEFENDANT EMPLOYERS failed to provide any disclosure at all prior to
26 procuring consumer reports for employment purposes, as required by the FCRA.

27 98. Moreover, the form that was provided facially violates the FCRA in
28 numerous respects.

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1 99. Included in DEFENDANT EMPLOYER'S Notification and
 2 Authorization Form, i.e., **Exhibit 1** are reams of extraneous information, including
 3 but not limited to, a liability release and multiple state law admonitions. See **Exhibit**
 4 **1**.

5 100. Defendants' inclusion of the aforementioned, among other extraneous
 6 information, in its Notification and Authorization Form executed by applicants
 7 facially contravenes the requirements of 15 U.S.C. § 1681b(b)(2)(A) that the
 8 disclosure be: (1) "clear and conspicuous"; and (2) appear "in a document that
 9 consists solely of the disclosure."

10 101. As a matter of law, Defendant's inclusion of the aforementioned
 11 information invalidates the Notification and Authorization Form for purposes of the
 12 FCRA. See *Syed v. M-I, LLC*, 853 F.3d 492, *10-11 (9th Cir. 2017) (holding an
 13 employer violates Section 1681b(b)(2)(A)(I)—(ii) when it requires an employee to
 14 sign a form containing a waiver of liability provision as part of a background
 15 investigation); *Harris v. Home Depot U.S.A., Inc.*, 114 F. Supp. 3d 868, 870-71 (N.D.
 16 Cal. 2015) (release of liability improper); *Feist v. Petco Animal Supplies, Inc.*, 218 F.
 17 Supp. 3d 1112 (S.D. Cal. 2016) (a summary of consumer rights in seven different
 18 states improper); *Lagos v. The Leland Stanford Junior University*, 2015 U.S. Dist.
 19 LEXIS 163119 (N.D. Cal. Dec. 4, 2015) (inclusion of seven state law notices and
 20 sentence stating "I also understand that nothing herein shall be construed as an offer
 21 of employment or contract for services" plausibly violated stand-alone disclosure
 22 requirement); *Woods v. Caremark PHC, L.L.C.*, 2015 U.S. Dist. LEXIS 148051
 23 (W.D. Mo. 2015) ("The specific 'extraneous information' Plaintiff alleges Defendant
 24 included in its Authorization Form for Consumer Reports is: (1) an overbroad
 25 authorization for third parties to provide information to Defendant and its consumer
 26 reporting agency, (2) state-specific notices that did not apply to Plaintiff, and (3) that
 27 the form was part of a five-page stapled packet of three documents. Where FCRA
 28 allegations involve the inclusion of extraneous information beyond an authorization,

- 17 -

COMPLAINT – Torraca-Riano, et al. v. ATC Healthcare Services, Inc., et al.

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1 the complaint meets the 12(b)(6) standard to state a claim for willful violation of the
2 FCRA stand-alone requirement."); *see also* Letter from William Haynes, Attorney,
3 Div. of Credit Practices, Fed Trade Comm'n to Richard W. Hauxwekk, CEO,
4 Accufax Div. (June 12, 1998), 1998 W.L. 34323756 (F.T.C.) (noting that the
5 inclusion of a waiver in a disclosure form will violate the FCRA).

6 102. The Notification and Authorization form is also illegal to the extent that
7 it purports to authorize the procurement of any and all information regarding
8 Plaintiffs and FCRA Class Members, whether legal or proper to do so.

9 103. Defendants acted willfully by providing a facially invalid Notification
10 and Authorization Form that was in direct violation of the clear and unambiguous
11 requirements set forth in 15 U.S.C. § 1681b(b)(2)(A).

12 104. Defendants knew or acted with reckless disregard of its statutory duties
13 and the rights of applicants and employees, including Plaintiff and the Class, thus
14 knowingly and/or recklessly disregarding its statutory duties.

15 105. On information and belief, as well as Plaintiffs' investigation,
16 Defendants' conduct was willful because:

- 17 a. Defendants required Plaintiff and the Class to execute the
- 18 Notification and Authorization Form knowing that it was
- 19 facially invalid in violation of the FCRA and Defendants'
- 20 statutory duties;
- 21 b. Defendants acted with reckless disregard of the FCRA
- 22 requirements and Defendants' statutory duties when it
- 23 required Plaintiff and the Class to execute the Notification
- 24 and Authorization Form that was facially invalid and in
- 25 violation of the clear and unambiguous requirements of the
- 26 FCRA;
- 27 c. Upon information and belief, Defendants were advised by
- 28 skilled lawyers and other professional employees, and

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- 1 advisors knowledgeable about the FCRA requirements;
- 2 d. The plain language of the statute unambiguously indicates
- 3 that inclusion of a liability release in a disclosure form
- 4 violates the disclosure and authorization requirements;
- 5 e. The FTC’s express statements, pre-dating Defendants’
- 6 conduct, state that it is a violation of 15 U.S.C. §
- 7 1681b(b)(2)(A) to include a liability waiver in the FCRA
- 8 disclosure form; and
- 9 f. By adopting such a policy, Defendant voluntarily ran a risk
- 10 of violating the law substantially greater than the risk
- 11 associated with a reading that was merely careless.

12 106. Pursuant to 15 U.S.C. §1681n(a)(1)(A), Plaintiffs OLSHANSKY and
13 TORRACA-RIANO and the FCRA Class may recover statutory damages due to
14 Defendant’s willful failure to comply with the requirements imposed by 15 U.S.C. §
15 1681b(b)(2)(A) of an amount not less than \$100 and not more than \$1,000.

16 107. Plaintiffs OLSHANSKY and TORRACA-RIANO and the Class seek the
17 recovery of punitive damages for Defendants’ willful violations, in an amount as the
18 Court may allow.

19 108. Pursuant to 15 U.S.C. § 1681n(a)(3) and § 1681o(a)(2), Plaintiffs
20 OLSHANSKY and TORRACA-RIANO and the Class seek the recovery costs of suit
21 with reasonable attorneys’ fees, as determined by the Court.

22 **SECOND CAUSE OF ACTION**

23 **Individual and Class Claim for**

24 **Violation of the Fair Credit Reporting Act**

25 **(Obtaining Consumer Reports Without Proper Authorization)**

26 109. Plaintiffs allege and incorporates by reference the allegations in the
27 preceding paragraphs as though fully set forth herein.

28 110. As alleged above, the form presented to Plaintiffs and FCRA Class

1 Members purports to authorize "ATC Healthcare Staffing" to perform a background
2 investigation.

3 111. To the extent the foregoing entity (if it exists at all) is not the entity that
4 procured consumer reports on Plaintiffs and Class Members, Defendants failed to
5 obtain any authorization at all.

6 112. Alternatively, because Defendants failed to make a clear and
7 conspicuous disclosure that a consumer report may be procured in a document
8 consisting solely of the disclosure, Defendants violated the FCRA by procuring
9 consumer reports relating to Plaintiffs and other Class Members without proper
10 authorization. See 15 U.S.C. § 1681b(b)(2)(A)(ii).

11 113. The foregoing violations were willful because Defendants acted in
12 deliberate or reckless disregard of its obligations and the rights of Plaintiffs and other
13 Class Members under 15 U.S.C. § 1681b(b)(2)(A)(ii).

14 114. Defendants' willful conduct is also evidenced by, among other things,
15 the facts previously set forth.

16 115. Pursuant to 15 U.S.C. §1681n(a)(1)(A), Plaintiffs OLSHANSKY and
17 TORRACA-RIANO and the FCRA Class seek to recover statutory damages due to
18 Defendants' willful failure to comply with the requirements imposed by 15 U.S.C. §
19 1681b(b)(2)(A) of an amount not less than \$100 and not more than \$1,000.

20 116. Plaintiffs OLSHANSKY and TORRACA-RIANO and the Class seek the
21 recovery of punitive damages for Defendants' willful violations, in an amount as the
22 Court may allow.

23 117. Pursuant to 15 U.S.C. § 1681n(a)(3) and § 1681o(a)(2), Plaintiffs
24 OLSHANSKY and TORRACA-RIANO and the Class seek the recovery costs of suit
25 with reasonable attorneys' fees, as determined by the Court.

26
27
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THIRD CAUSE OF ACTION

**Individual Claim for Violation of the
California Investigative Consumer Reporting
Agencies Act (ICRAA) (Civ. Code, § 1786, *et seq.*)
(Obtaining Consumer Reports Without Facially Valid Authorizations)
(Against All Defendants)**

118. Plaintiffs allege and incorporates by reference the allegations in the preceding paragraphs as though fully set forth herein.

119. Pursuant to California Civ. Code, § 1786, *et seq.*, a consumer reporting agency may furnish a consumer investigative report for employment purposes.

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

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

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1 that complies with subdivision (d) of Section 1786.20. This
2 clause shall become operative on January 1, 2012.

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

5 (§ 1786.16, subd. (a)(2).)

6 121. In addition, the person procuring or causing the report to be made must
7 “certify to the investigative consumer reporting agency that the person has made the
8 applicable disclosures to the consumer required by [section 1786.16, subdivision (a)]
9 and that the person will comply with subdivision (b).” (§ 1786.16, subd. (a)(4).)

10 122. Subdivision (b) of section 1786.16 also requires the person procuring or
11 causing the report to be made to (1) provide the consumer a form with a box that can
12 be checked if the consumer wishes to receive a copy of the report, and send a copy of
13 the report to the consumer within three business days if the box is checked and (2)
14 comply with section 1786.40 if the person procuring or causing the report to be made
15 contemplates taking adverse action against the consumer. (§ 1786.16, subd. (b).)

16 123. During the Class Period, Defendant ATC HEALTHCARE SERVICES,
17 INC. required Plaintiffs OLSHANSKY and TORRACA-RIANO and FCRA Class
18 Members to sign a disclosure authorization forms as part of their job applications with
19 Defendant ATC HEALTHCARE SERVICES, INC., which forms purported to allow
20 Defendant “ATC HEALTHCARE STAFFING,” not Defendant ATC
21 HEALTHCARE SERVICES, INC., the alleged real employer, to procure a consumer
22 report on the Plaintiff. See **Exhibit 1**.

23 124. Under Civil Code § 1786.16, subd. (a) “Any person described in
24 subdivision (d) of Section 1786.12 shall not procure or cause to be prepared an
25 investigative consumer report unless . . . The person procuring or causing the report to
26 be made has a permissible purpose, as defined in Section 1786.12,” yet Civil Code §
27 1786.12, in relevant part, provides “An investigative consumer reporting agency shall
28 only furnish an investigative consumer report. . . To a person that it has reason to
believe: (1) Intends to use the information for employment purposes.”

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1 125. If Defendant ATC HEALTHCARE STAFFING was not Plaintiff's
2 employer, it violated Civil Code § 1786.16 because it had no legal basis to procure a
3 consumer report on the Plaintiff.

4 126. In addition, DEFENDANT EMPLOYER'S Notification and
5 Authorization Form, i.e., **Exhibit 1**: (1) was a purported authorization to procure a
6 consumer report and/or investigative consumer report; (2) included a waiver of
7 liability provision; (3) included a purported authorization to investigate "personal
8 history, educational background, military record, motor vehicle records, criminal
9 records, and credit history . . ."; and (4) included other extraneous language, including
10 but not limited to a number of state law admonitions, such as Massachusetts,
11 Minnesota, Oklahoma, none of which are applicable since Plaintiff was applying for
12 work in California; "." See **Exhibit 1**.

13 127. Plaintiff maintains Defendants' inclusion of the aforementioned in its
14 Notification and Authorization Form violates California law because it was not a
15 "clear and conspicuous disclosure in writing to the consumer." (§ 1786.16(a)(2)(B).)
16 See **Exhibit 1**.

17 128. Based on the misconduct alleged in this Complaint, Defendants violated
18 ICRAA.

19 129. Defendants acted willfully by providing a facially invalid Notification
20 and Authorization Form that was in direct violation of the clear and unambiguous
21 requirements set forth in § 1786.16.

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

25 131. On information and belief, as well as Plaintiff's investigation,
26 Defendants' conduct was willful.

27 132. With respect to each of the aforementioned violations of the ICRAA
28 provisions and pursuant to Civ. Code § 1786.50(a)(1), in the event this case does not

1 proceed as a class action basis regarding the FCRA class claims, Plaintiffs
2 OLSHANSKY and TORRACA-RIANO, not the Class, seek to recover statutory
3 damages due to Defendants' failure to comply with the requirements imposed by §
4 1786.16 of an amount not less than \$10,000 or seek actual damages, if any, in an
5 amount to be proven at trial, whichever is higher.

6 133. Plaintiffs OLSHANSKY and TORRACA-RIANO are informed and
7 believe, and based on such information and belief allege that Defendants' misconduct
8 was reckless and/or willful and/or malicious and/or in conscious disregard of the
9 rights and safety of the Plaintiff and whose recklessness and/or conscious disregard
10 was reasonably foreseeable to cause injury to the Plaintiff, thereby warranting the
11 assessment of punitive damages against these Defendants.

12 134. Plaintiffs OLSHANSKY and TORRACA-RIANO seek the recovery
13 costs of suit with reasonable attorneys' fees, as determined by the Court.

14 **FOURTH CAUSE OF ACTION**

15 **Individual and Representative Claim for**

16 **Failure to Pay Timely Earned Wages during Employment and**

17 **Upon Separation of Employment in Violation of**

18 **California Labor Code §§ 201, 202, 203,**

19 **204 and/or 204b, 218.5, and 218.6**

20 (Against all Defendant ATC HEALTHCARE SERVICES, INC.)

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

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

26 137. Pursuant to Labor Code § 202, "If an employee not having a written
27 contract for a definite period quits his or her employment, his or her wages shall
28 become due and payable not later than 72 hours thereafter, unless the employee has

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1 given 72 hours previous notice of his or her intention to quit, in which case the
2 employee is entitled to his or her wages at the time of quitting.”

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

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

11 140. Alternatively, pursuant to Labor Code § 204b, employers must pay its
12 employees on a weekly basis on a regular day determined by the employer as the
13 regular payday.

14 141. Pursuant to Labor Code §§ 218.5 and 218.6, an action may be brought for
15 the nonpayment of wages and fringe benefits.

16 142. Based on the misconduct alleged in this Complaint, Plaintiffs were not
17 properly paid pursuant to the requirements of Labor Code §§ 201, 202, and 204/204b
18 and thereby seek all remedies available to them.

19 143. Plaintiffs are informed and believe and based thereon allege that
20 Defendants willfully failed to pay Plaintiffs’ wages pursuant to the requirements of
21 Labor Code §§ 201, 202, and 204/204b, after Plaintiffs’ demand and, therefore,
22 Plaintiffs may recover the associated unpaid wages and waiting time penalties.

23 144. Plaintiffs are informed and believe and based thereon allege that
24 Defendants did this with the intent to secure for himself, herself and itself a discount
25 on its indebtedness and/or with intent to annoy harass, oppress, hinder, delay and/or
26 defraud Plaintiffs.

27 145. At all material times, DEFENDANT EMPLOYER and DOES 1 through
28 50 were and/or are Represented Employees’ employers or persons acting on behalf of

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

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

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

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

21 149. Defendants deprived Plaintiffs of their rightfully earned wages as a direct
22 and proximate result of Defendants' failure and refusal to pay said compensation and
23 for the reasons alleged in this Complaint.

24 150. Plaintiffs OLSHANSKY and TORRACA-RIANO and Class Members
25 request the unpaid wages, waiting time penalties, interest, attorneys' fees, costs,
26 damages, and other remedies in an amount to be proven at trial.

27 151. Where any of the foregoing statutes do not provide for a private right of
28 actions, Plaintiffs OLSHANSKY and TORRACA-RIANO nevertheless assert

1 Defendants violated these provisions as part of their PAGA cause of action alleged
2 herein.

3 **FIFTH CAUSE OF ACTION**
4 **Individual and Representative Claim for**
5 **Violations of California Labor Code § 226**
6 **(Against all Defendants)**

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

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

23 154. Based on the foregoing allegations, during all times relevant to this action,
24 Defendants did not provide accurate wage statements throughout the Class Period.

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

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1 wages earned, total hours worked by the employee, among other things.

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

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

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

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

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

27 161. For Defendants' misconduct as alleged herein, Plaintiffs seek injunctive
28 relief and attorneys' fees and costs pursuant to § 226 in an amount to be proven at trial.

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1 162. Where any of the foregoing statutes do not provide for a private right of
2 actions, Plaintiffs OLSHANSKY and TORRACA-RIANO nevertheless assert
3 Defendants violated these provisions as part of their PAGA cause of action alleged
4 herein.

5 **SIXTH CAUSE OF ACTION**

6 **Individual and Representative Claim for PAGA**

7 **Penalties and Wage Under California Labor Code**

8 **§§ 2698, 2699, et seq. for Violations of California Labor Code**

9 **§§ 201, 202, 203, 204 and/or 204b, 218.5, 218.6, 226, 226.3, and 226.6.**

10 (Against all Defendants)

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

13 164. Pursuant to law, written notice was provided to the LWDA and
14 Defendants of the specific violations of the California Labor Code Defendants have
15 violated and continue to violate.

16 165. Pursuant to Labor Code § 2699.3, no response will likely be received
17 from the LWDA within 60 days of the postmark date of the above-alleged letter.

18 166. Plaintiffs, therefore, will have exhausted all administrative procedures
19 required of them under Labor Code §§ 2698, 2699, and 2699.3, and, as a result, are
20 justified as a matter of right in bringing forward this cause of action and are entitled to
21 pursue penalties in a representative action for Defendants' violations of the Labor
22 Code.

23 167. Pursuant to Labor Code § 2699, any provision of the Labor Code that
24 provides for a civil penalty to be assessed and collected by the LWDA or any of its
25 departments, divisions, commissions, boards, agencies or employees for violation of
26 the code may, as an alternative, be recovered through a civil action brought by an
27 aggrieved employee on behalf of himself or herself and other current or former
28 employees pursuant to the procedures specified in Labor Code § 2699.3.

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1 168. Plaintiff is an "aggrieved employee" because Plaintiff was employed by
2 the alleged violator and had one or more of the alleged violations committed against
3 Plaintiff, and therefore is properly suited to represent the interests of other current and
4 former Represented Employees.

5 169. Because of the acts alleged above, Plaintiffs seek penalties under Labor
6 Code §§ 2698 and 2699 because of Defendants' violation of numerous provisions of
7 the California Labor Code as alleged in this Complaint.

8 170. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
9 penalties for violating Labor Code §§ 201, 202, 203, 204 and/or 204b, 218.5, 218.6,
10 226, 226.3, and 226.6.

11 171. Labor Code § 558 establishes a civil penalty as follows: Any employer
12 or other person acting on behalf of an employer who violates, or causes to be violated,
13 a section of this chapter or any provision regulating hours and days of work in any
14 order of the Industrial Welfare Commission (including the "Hours and Days of Work"
15 section of the Wage Order) shall be subject to a civil penalty of (1) for any initial
16 violation, fifty dollars (\$50) for each underpaid employee for each pay period for
17 which the employee was underpaid in addition to an amount sufficient to recover
18 underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for
19 each underpaid employee for each pay period for which the employee was underpaid
20 in addition to an amount sufficient to recover underpaid wages; and (3) wages
21 recovered pursuant to this section shall be paid to the affected employee.

22 172. Plaintiffs seek penalties for Defendants' conduct as alleged herein as
23 permitted by law.

24 173. Specifically, Plaintiffs seeks penalties under Labor Code § 2699, for the
25 following in addition to those Code provisions mentioned in this Cause of Action:

- 26 a. For violations of Labor Code §§ 201, 202, 203,
- 27 and 204/204b for failing to pay Plaintiff and
- 28 Represented Employees in a timely manner; and

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1 b. For the violation of Labor Code §§ 226 and 226.3,
2 for failing to provide Plaintiff and Represented
3 Employees accurate wage statements.

4 174. Pursuant to Labor Code § 2698, *et seq.*, Plaintiffs seek to recover
5 attorney’s fees, costs, civil penalties, and wages on behalf of Plaintiff and other
6 current and former Represented Employees as alleged herein in an amount to be
7 shown according to proof at trial and within the jurisdictional limits of this Court.

8 **SEVENTH CAUSE OF ACTION**

9 **Individual Claim for Remedies for Violations**

10 **of the California Unfair Business**

11 **Practices Code §§ 17200, *et seq.***

12 (Against all Defendants)

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

15 176. Defendants, and each of them, are “persons” as defined under Business
16 and Professions Code § 17021.

17 177. Plaintiffs are informed and believe and based thereon allege that
18 Defendants committed the unfair business practices, as defined by Cal. Bus. & Prof.
19 Code § 17200, *et seq.*, by violating the laws alleged to have been violated in this
20 Complaint and which allegations are incorporated herein by reference.

21 178. Defendants’ conduct, as alleged above, constitutes unlawful, unfair, and
22 fraudulent activity prohibited by Business and Professions Code §§ 17200, *et seq.*

23 179. The unlawful and unfair business practices conducted by Defendants,
24 and each of them, are ongoing and present a threat and likelihood of continuing
25 against Plaintiffs and, accordingly, Plaintiff seeks injunctive relief where appropriate.

26 180. Plaintiffs has suffered injury in fact and lost money or property because
27 of the aforementioned unfair competition.

28 181. Because of their improper acts, Defendants, and each of them, have

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1 reaped and continue to reap unfair benefits and illegal profits at the expense of
2 Plaintiffs OLSHANSKY and TORRACA-RIANO and other employees and former
3 employees of Defendants, and each of them.

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

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

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs OLSHANSKY and TORRACA-RIANO, on behalf
14 of the Class, pray for an order for relief as follows:

- 15 1. An order that this action may proceed and be maintained as a class
16 action;
- 17 2. For appointment of the Plaintiffs OLSHANSKY and TORRACA-
18 RIANO as the representatives of the Class;
- 19 3. For appointment of counsel for Plaintiffs OLSHANSKY and
20 TORRACA-RIANO as Class Counsel;
- 21 4. That Defendants be found liable to Plaintiffs OLSHANSKY and
22 TORRACA-RIANO and the Class;
- 23 5. For a declaration that Defendants violated the rights of Plaintiffs
24 OLSHANSKY and TORRACA-RIANO and the Class under the FCRA and any other
25 applicable law alleged in this Complaint;
- 26 6. Pursuant to 15 U.S.C. § 1681n(a)(1)(A), an award of statutory damages
27 to Plaintiff and the Class in an amount equal to \$1,000 for Plaintiffs OLSHANSKY
28 and TORRACA-RIANO and each member of the Class for Defendant's willful

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1 violations of the FCRA;

2 7. In the event this case does not proceed on a FCRA class action basis,
3 pursuant to Civ. Code § 1786.50, an award of statutory damages to Plaintiffs
4 OLSHANSKY and TORRACA-RIANO in the amount of \$10,000 each, or in the
5 alternative actual damages in an amount according to proof;

6 8. For an award of punitive damages to Plaintiffs OLSHANSKY and
7 TORRACA-RIANO and the members of the Class in an amount to be determined by
8 the Court;

9 9. For costs of suit and expenses incurred herein, including reasonable
10 attorneys' fees and costs allowed under relevant provision of law including, but not
11 limited to, those allowed under 15 U.S.C. §1681n(a)(3), 15 U.S.C. §1681o(a)(2), Civ.
12 Code § 1786.50, and/or other applicable provisions of law;

13 10. That Defendants, and each of them, be ordered and enjoined to pay
14 restitution to Plaintiff and/or the Class and/or Represented Employees pursuant to
15 Business and Professions Code §§ 17200-05;

16 11. That Defendants, and each of them, be required to issue to Plaintiff
17 and/or the Class and/or Represented Employees accurate wage and earning
18 statements;

19 12. For disgorgement through restitution of all ill-gotten and/or ill-gained
20 profits, including unpaid wages and/or penalties to Plaintiffs OLSHANSKY and
21 TORRACA-RIANO and/or the Class and/or Represented Employees, resulting from
22 Defendants' unfair business practices pursuant to Business and Professions Code §§
23 17200-05;

24 13. For an order by the Court requiring Defendants, and each of them, to
25 show cause, if any they have, as to why to Plaintiff and/or the Class and/or
26 Represented Employees should not have been issued itemized wage statements as
27 required by § 226 of the Labor Code and why Defendants should not be required to
28 pay Plaintiff minimum wages and overtime compensation under applicable state law;

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1 14. For all remedies available to Plaintiffs OLSHANSKY and TORRACA-
2 RIANO under the applicable provisions of the Labor Code via PAGA Labor Code §
3 2698, *et seq.* including an award of attorneys' fees, costs, interest, liquidated
4 damages, damages, penalties and waiting time penalties according to proof to the
5 extent permitted by law;

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

10 16. That Defendants, and each of them, be required to issue to Plaintiffs
11 OLSHANSKY and TORRACA-RIANO and/or the Class and/or Represented
12 Employees accurate wage and earning statements;

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

14 18. For special and general damages;

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

19 20. For any other relief the Court may deem just, proper and equitable in the
20 circumstances.

21 Dated: December 27, 2018

Law Offices of
Thomas D. Rutledge

23 By: /s/Thomas D. Rutledge
24 /s/Thomas D. Rutledge
25 Attorneys for Plaintiffs

26 **DEMAND FOR JURY TRIAL**

27 Plaintiffs hereby demand a jury trial of this matter.

28

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1 Dated: December 27, 2018

Law Offices of
Thomas D. Rutledge

2
3 By: /s/Thomas D. Rutledge
4 Thomas D. Rutledge (SBN 200497)
5 Attorneys for Plaintiffs
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Exhibit 1

Notification and Authorization to Conduct Employment Background Investigation

I hereby authorize ATC Healthcare Staffing and their choice of reporting company to ascertain information regarding my background to determine any and all information of concern to my record, whether same is of record or not, and I release employers and persons named in my application from all liability for any damages on account of his/her furnishing said information. I understand that this form indicates that a background search will be conducted and that this is my notification of that intent. I understand that the purpose of this background investigation is to determine my suitability for employment and may elicit information on my character, general reputation, personal characteristics and mode of living. Additionally, you are hereby authorized to make any investigation of my personal history, educational background, military record, motor vehicle records, criminal records, and credit history through an investigative or credit agency or bureau of your choice. I authorize the release of this information by the appropriate agencies to the investigating service. I understand that my consent will apply throughout my employment, unless I revoke or cancel my consent by sending a signed letter or statement to the Company at any time, stating that I revoke my consent and no longer allow the Company to obtain consumer or investigative consumer reports about me.

PLEASE PRINT CLEARLY

FULL NAME: Michael Olshansky

OTHER NAMES USED/MAIDEN NAME/DATES: _____

CURRENT ADDRESS: Redacted PHONE: Redacted

LIST ALL ADDRESSES FOR PAST 7 YEARS:

Dates: _____

Dates: _____

Dates: _____

EMAIL ADDRESS: Redacted

SOCIAL SECURITY # REDACTED DATE OF BIRTH: REDACTED

DRIVER'S LICENSE # Redacted STATE ISSUED: PA

*** MAY WE CONTACT YOUR CURRENT EMPLOYER? YES NO

*** HAVE YOU EVER BEEN CONVICTED OF A CRIME? YES NO

If yes, please explain: _____

Notice to California Applicants - You may omit minor traffic offenses, any convictions which have been sealed, expunged or statutorily eradicated, convictions more than two years old for the following marijuana related offenses: HS11357b&c, HS11360c, HS11364, HS11365, HS11550, and misdemeanors for which probation was completed and the case was judicially dismissed.

Notice to Massachusetts Applicants: You may omit a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, or any conviction of a misdemeanor where the date of such conviction or the completion of any period of incarceration resulting there from, whichever date is later, occurred five or more years prior to the date of this application for employment, unless you have been convicted of any offense within five years immediately preceding the date of this application for employment.

Note: No applicant will be denied employment solely on the grounds of conviction of a crime. The nature of the offense, the date of the offense, the surrounding circumstances and the relevance of the offense to the position will be considered.

SIGNATURE: _____ DATE: Nov 18, 2018

California Applicants: Under Section 1786.22 of the California Civil Code, you have the right to request from Justifacts (5250 Logan Ferry Rd, Murrysville PA 15626 - 800-356-6885, www.justifacts.com), upon proper identification, the nature and substance of all information in its files on you, including the sources of information, and the recipients of any reports on you to whom Justifacts has previously furnished within the three-year period preceding your request. Files maintained on a consumer shall be made available for the consumer's visual inspection, as follows: (1) In-person, if he appears in person and furnishes proper identification. A copy of his file shall also be available to the consumer for a fee not to exceed the actual costs of duplication services provided. (2) By certified mail, if he makes a written request, with proper identification, for copies to be sent to a specified addressee. (3) A summary of all information contained in files on a consumer and required to be provided by Section 1786.10 shall be provided by telephone, if the consumer has made a written request, with proper identification for telephone disclosure, and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

California, Minnesota & Oklahoma Applicants Only: Please check this box if you would like a copy of the background check mailed to you. Minnesota and Oklahoma applicants will receive a copy direct from Justifacts or its designee. California applicants may receive a copy from either the prospective employer or Justifacts.

NOTICE: Under federal law, you have the right to request disclosure of the nature and scope of our investigation by providing us with a written request within 60 days of our background investigation.

Subscriber certifies that consumer credit information, consumer reports, as defined by the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq. ("FCRA"), will be ordered only when intended to be used as a factor in establishing a consumer's eligibility for employment and that consumer credit information will be used for no other purposes. It is recognized and understood that the FCRA provides that anyone "who knowingly and willfully obtains information on a consumer from a consumer reporting agency" (such as Justifacts) "under false pretenses shall be fined not more than \$2,500 or imprisoned not more than two years or both."

EXHIBIT “D”
TO
NOTICE OF REMOVAL
[PAGES 137 - 149]

1 SEYFARTH SHAW LLP
Laura Wilson Shelby (SBN 151870)
2 lshelby@seyfarth.com
Mason R. Winters (SBN 273639)
3 mwinters@seyfarth.com
2029 Century Park East, Suite 3500
4 Los Angeles, California 90067-3021
Telephone: (310) 277-7200
5 Facsimile: (310) 201-5219

6 Attorneys for Defendants
ATC Healthcare, Inc., ATC Healthcare Services,
7 LLC (erroneously sued as ATC Healthcare
Services, Inc., and ATC Healthcare Staffing), and
8 ATC West Staffing, Inc.

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO - CENTRAL DIVISION
12

13 TONI TORRACA-RIANO and MICHAEL
14 OLSHANSKY, individually, on behalf of
15 themselves and others similarly situated,

16 Plaintiffs,

17 v.

18 ATC HEALTHCARE SERVICES, INC., a
Georgia corporation; ATC HEALTHCARE, INC.,
a Delaware corporation; ATC HEALTHCARE
19 SERVICES, LLC, a Georgia limited liability
company; ATC HEALTHCARE STAFFING, an
20 unknown entity; ATC WEST STAFFING, INC., a
California corporation; and DOES 1 through 50
21 inclusive,

22 Defendants.
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Case No. 37-2018-00065377-CU-OE-CTL

**DEFENDANTS' ANSWER TO
PLAINTIFFS' COMPLAINT**

DEFENDANTS' ANSWER TO COMPLAINT

54259879v.1

1 Defendants ATC Healthcare, Inc., ATC Healthcare Services, LLC (erroneously sued as ATC
2 Healthcare Services, Inc., and ATC Healthcare Staffing), and ATC West Staffing, Inc., (all together
3 “Defendants”) hereby answer the Complaint of Plaintiffs Toni Torraca-Riano and Michael Olshansky
4 (“Plaintiffs”) as follows:

5 **GENERAL DENIAL**

6 Pursuant to California Code of Civil Procedure section 431.30(d), Defendants generally deny
7 each allegation as well as the purported causes of action against Defendants set forth in Plaintiffs’
8 Complaint. In further answer to the Complaint and without limiting the generality of the foregoing,
9 Defendants deny that Plaintiffs have been damaged in any amount, or at all, by reason of any acts or
10 omissions of Defendants.

11 **AFFIRMATIVE AND ADDITIONAL DEFENSES**

12 In further answer to the Complaint, and as separate and distinct affirmative and additional
13 defenses, and without assuming the burden of proof on any defense, Defendants allege as follows:

14 **FIRST AFFIRMATIVE DEFENSE**

15 **(Failure to State a Cause of Action)**

16 Plaintiffs’ Complaint fails to state facts sufficient to constitute a cause of action against
17 Defendants.

18 **SECOND AFFIRMATIVE DEFENSE**

19 **(Reasonable Procedures)**

20 Defendants followed reasonable procedures in the preparation of Plaintiffs’ consumer report, and
21 otherwise made good faith efforts to comply with California’s Investigative Consumer Reporting
22 Agencies Act (“ICRAA”), California’s Consumer Credit Reporting Agencies Act (“CCRAA”), and all
23 applicable laws.

24 **THIRD AFFIRMATIVE DEFENSE**

25 **(Strict Procedures)**

26 Defendants maintained strict procedures to ensure that any information reported about Plaintiffs
27 was complete and up to date, and otherwise made good faith efforts to comply with the ICRAA,
28 CCRAA, and all applicable laws.

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FOURTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

To the extent Plaintiffs has failed to mitigate their alleged damages, their recovery, if any, must be reduced accordingly.

FIFTH AFFIRMATIVE DEFENSE

(No Causation)

Any damages sustained by Plaintiffs were not proximately caused by Defendants.

SIXTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiffs' claims are barred to the extent they occurred and/or accrued outside the applicable statutes of limitations.

SEVENTH AFFIRMATIVE DEFENSE

(Preemption)

Plaintiffs' claims for injunctive relief are preempted by the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*

EIGHTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiffs have waived their right to assert the purported claims contained in the Complaint, and each purported cause of action therein, against Defendants. Plaintiffs, by their own conduct and actions, have waived the right, if any, to assert the claims alleged in the Complaint.

NINTH AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiffs are barred by the doctrine of estoppel from pursuing their Complaint, and each purported cause of action alleged therein. Plaintiffs, by their own conduct and actions, are estopped, as a matter of law, from pursuing the claims alleged in the Complaint.

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TENTH AFFIRMATIVE DEFENSE

(Laches)

Plaintiffs are barred by the doctrine of laches from pursuing their Complaint, and each purported cause of action alleged therein, because Plaintiffs exercised inexcusable delay in commencing this action.

ELEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiffs are precluded from maintaining the Complaint, and each purported cause of action alleged therein, because Plaintiffs engaged in conduct showing unclean hands.

TWELFTH AFFIRMATIVE DEFENSE

(Failure To Use Ordinary Care)

Plaintiffs' Complaint, and each purported cause of action alleged therein, is barred to the extent that Plaintiffs received good consideration in agreement to serve as an employee of Defendants, yet failed to use ordinary care and diligence during their employment, or employment-related duties, pursuant to California Labor Code Section 2854.

THIRTEENTH AFFIRMATIVE DEFENSE

(Failure To Exhaust Administrative Remedies)

Plaintiffs' Complaint, and each purported cause of action alleged therein, is barred to the extent that Plaintiffs have failed to exhaust any administrative or statutory remedies provided under California Labor Code Sections 201, 202, 203, 204, 226, 226.7, and 2698 *et seq.* To the extent that Plaintiffs were required to exhaust any administrative remedies provided by various sections of the Labor Code, they lack standing.

FOURTEENTH AFFIRMATIVE DEFENSE

(Contribution By Plaintiffs' Own Acts)

If the injuries and alleged damages in the Complaint occurred at all (which Defendants deny), such injuries and alleged damages were proximately caused by or contributed to by Plaintiffs' own acts, omissions, or failures to act.

1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 **(Avoidable Consequences Doctrine)**

3 Plaintiffs' Complaint, and each purported cause of action alleged therein, is barred by the
4 avoidable consequences doctrine.

5 **SIXTEENTH AFFIRMATIVE DEFENSE**

6 **(Lack Of Standing Under Proposition 64)**

7 Plaintiffs' Complaint, and each purported cause of action alleged therein, fails to the extent that
8 Plaintiffs, or any person upon whose behalf Plaintiffs purport to act, lacks the requisite standing to sue
9 under Proposition 64, enacted on November 2, 2004, as California Business and Professions Code
10 Section 17204. Under Proposition 64, any plaintiff suing for an alleged violation of the California
11 Unfair Competition Law (the "UCL"), California Business and Professions Code Section 17200, *et seq.*,
12 must show that he or she has suffered an injury in fact, in addition to simply alleging a loss of money or
13 property. Since Plaintiffs, or any other person on whose behalf Plaintiffs purports to act, cannot allege
14 the requisite injury in fact, in addition to the requisite loss of money or property, Plaintiffs lack standing
15 to sue under the UCL.

16 **SEVENTEENTH AFFIRMATIVE DEFENSE**

17 **(Ratification)**

18 Plaintiffs' Complaint, and each purported cause of action alleged therein, is barred on the ground
19 that Plaintiffs ratified Defendants' alleged actions.

20 **EIGHTEENTH AFFIRMATIVE DEFENSE**

21 **(Failure To State Facts Warranting Class Certification And Class Damages Or Any Other**
22 **Representative Action)**

23 Plaintiffs' allegations that this action should be certified as a class action, or representative action
24 fail as a matter of law because Plaintiffs cannot allege facts sufficient to warrant class certification
25 and/or an award of class damages, pursuant to California Code of Civil Procedure Section 382 or Rule
26 23 of the Federal Rules of Civil Procedure. Plaintiffs likewise failed to set forth any facts supporting
27 any other form of representative action.

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NINETEENTH AFFIRMATIVE DEFENSE

(Failure To State Facts Warranting A Predominance Of Common Questions Of Fact And Law)

Plaintiffs' Complaint, and each cause of action alleged therein, fails to the extent that Plaintiffs cannot allege predominant questions of fact and law, as required under California Code of Civil Procedure Section 382 or Rule 23 of the Federal Rules of Civil Procedure.

TWENTIETH AFFIRMATIVE DEFENSE

(Inadequate Class Representative)

Plaintiffs' Complaint, and each purported cause of action alleged therein, fails to the extent that Plaintiffs are not adequate representatives of alleged class that they purport to represent. Defendants allege that Plaintiffs do not have claims typical of the alleged class, if any, and that Plaintiffs' interests are antagonistic to the alleged class they purport to represent. As such, the class action claims and allegations fail as a matter of law.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Failure To Show Adequate Damages)

Plaintiffs' Complaint, and each purported cause of action alleged therein, fails to the extent that Plaintiffs cannot show a specific or reliable measure of alleged damages owed to Plaintiffs or the members of the purported class.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(No Penalty)

Plaintiffs, and those persons in the putative class, are not entitled to any penalty award under any section of the California Labor Code because, at all times relevant and material herein, Defendants did not willfully, knowingly, or intentionally fail to comply with the compensation provisions of the California Labor Code, Cal. Labor Code § 200 *et seq.*, but rather acted in good faith and had reasonable grounds for believing that their policies and procedures fully complied with California law.

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TWENTY-THIRD AFFIRMATIVE DEFENSE

(Failure To Allege Facts To Support Restitution)

Plaintiffs' Complaint, and each purported cause of action alleged therein, fails to the extent that Plaintiffs cannot show a specific and individualized amount of property claimed by Plaintiffs and/or any other member of the purported class, as required for a remedy of restitution under the UCL.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Inability To Pursue Legal And Equitable Claims Involving Same Alleged Facts)

Plaintiffs' Complaint, and each purported cause of action alleged therein, fails to the extent that Plaintiffs seek a jury trial for their legal claims based on the California Labor Code while simultaneously seeking equitable relief for their claims under the UCL. Given that these claims require different triers of fact to address the same facts and legal theories, Plaintiffs' request for both legal and equitable relief may lead to inconsistent results. Also, because Plaintiffs' claims under the California Labor Code involve the same facts and legal theories as Plaintiffs' claims under the UCL, Defendants are necessarily denied the benefits of the streamlined procedure based on the UCL if Plaintiffs continue to pursue both legal and equitable claims.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(No Unfair Business Practice)

Without admitting the allegations of the Complaint, Defendants allege that Plaintiffs' Complaint, and each purported cause of action alleged therein, fails because the alleged practices of Defendants are not unfair, unlawful, or fraudulent; the public is not likely to be deceived by any alleged practices; Defendants gained no competitive advantage by such practices; and the benefits of the alleged practices outweigh any harm or other impact they may cause.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Adequate Remedy At Law)

Plaintiffs are not entitled to the equitable relief sought insofar as they have an adequate remedy at law and/or cannot make the requisite showing to obtain injunctive relief.

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TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Offset)

To the extent a court holds that Plaintiffs are entitled to damages or penalties, Defendants are entitled to an offset for wages and/or a proportionate reduction in any damages or penalties for any overpayments of wages or other consideration previously provided to Plaintiffs.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Failure To Show The Lack Of Itemized Or Accurate Wage Statements)

Plaintiffs' Complaint, and each cause of action contained therein, is barred to the extent that Plaintiffs and the "aggrieved employees" cannot show that Defendants failed to furnish an accurate, itemized statement in writing at the time of each payment of wages.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Lack Of Standing)

Plaintiffs' Complaint, and each purported cause of action alleged therein, is barred for lack of subject matter jurisdiction to the extent Plaintiffs and the "aggrieved employees" lack standing to assert any of the causes of action contained in the Complaint because Plaintiffs have not suffered any injury.

THIRTIETH AFFIRMATIVE DEFENSE

(Consent/Authorization)

Plaintiffs' Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, because the alleged conduct of Defendants complained of in the Complaint was approved, consented to, or otherwise authorized by Plaintiffs through their actions or omissions.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Accord and Satisfaction/Release)

Plaintiffs' Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, pursuant to an accord and satisfaction, or is barred to the extent that Plaintiffs or any purportedly similarly aggrieved individual has entered into or are otherwise bound by compromise, settlement, or release agreements regarding those claims.

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THIRTY-SECOND AFFIRMATIVE DEFENSE

(Inability To Pursue Penalties Under California Labor Code § 2698 *et seq.*)

Plaintiff's Complaint is barred to the extent that Plaintiff and the "aggrieved employees" seek civil penalties for alleged violations of the Labor Code that already contain a statutory or other civil penalty.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Excessive Penalties)

Plaintiffs are not entitled to recover any civil penalties because, under the circumstances of this case, any such recovery would be unjust, arbitrary, and oppressive, or confiscatory or disproportionate to any damage or loss incurred as a result of Defendants' alleged conduct and therefore unconstitutional under numerous provisions of the United States Constitution and the California Constitution, including the excessive fines clause of the Eighth Amendment, the due process clauses of the Fifth Amendment and Section 1 of the Fourteenth Amendment, the self-incrimination clause of the Fifth Amendment, and other provisions of the United States Constitution, and the excessive fines clause of Section 17 of Article I, the due process clause of Section 7 of Article I, the self-incrimination clause of Section 15 of Article I, and other provisions of the California Constitution.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(Not "Aggrieved Employees")

Plaintiffs' Complaint, and each purported claim alleged therein, is barred because Plaintiffs are not aggrieved employees and are not entitled to any relief under Labor Code § 2698 *et seq.* Plaintiffs' Complaint, and each purported claim alleged therein, is further barred to the extent it seeks to recover penalties on behalf of individuals who are not "aggrieved employees."

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(Failure To State Factual Or Legal Theories To Show Manageability)

Plaintiffs' allegations do not contain any factual or legal theory to show a representative PAGA action is manageable. The alleged violations under PAGA cannot be maintained because it requires numerous individualized assessments to identify the aggrieved employees and to determine PAGA violations, for which a PAGA trial will abridge Defendants' due process to present their defenses.

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THIRTY-SIXTH AFFIRMATIVE DEFENSE

(Due Process Violations)

The application of California Business & Professions Code § 17200 to non-California Plaintiffs or to conduct occurring outside of California’s borders by actors operating outside of California, violates the due process requirements of the California and Federal Constitutions.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

(Punitive Damages)

Plaintiffs are not entitled to punitive damages because Defendants’ reading of their obligations under the ICRAA and all applicable laws was objectively reasonable and made in good faith.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

(Award of Punitive Damages is Unconstitutional)

Plaintiffs are not entitled to punitive damages because such an award would violate the right of Defendants to be protected from “excessive fines,” as provided in the Eighth Amendment to the United States Constitution and in Article I, Section 17 of the Constitution of the State of California. Moreover, such an award would violate the right of Defendants to procedural and substantive due process under the Fifth and Fourteenth Amendments to the United States Constitution and under the Constitution of the State of California.

THIRTY-NINTH AFFIRMATIVE DEFENSE

(Improper Party)

Plaintiffs’ claims are barred, in whole or in part, on the grounds that ATC Healthcare, Inc., ATC West Staffing, Inc., and ATC Healthcare Staffing are not proper parties to this case because they were not Plaintiffs’ employer. ATC Healthcare Services, Inc., also is not a proper party because it is merely the predecessor of Defendant ATC Healthcare Services, LLC.

FORTIETH AFFIRMATIVE DEFENSE

(Right To Raise Other Defenses)

Defendants hereby give notice that they intend to rely upon such other and further affirmative defenses as may become available during discovery in this action and Defendants reserve the right to amend this Answer to assert any such defenses.

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PRAYER

WHEREFORE, Defendants pray for judgment against Plaintiffs as follows:

- 1. That Plaintiffs take nothing by their Complaint on file herein;
- 2. That judgment be entered in favor of Defendants and against Plaintiffs on all counts of the Complaint;
- 3. That Defendants be awarded reasonable attorney fees according to proof;
- 4. That Defendants be awarded the costs of suit incurred herein; and
- 5. That Defendants be awarded such other and further relief as the Court may deem appropriate.

DATED: February 7, 2019

Respectfully submitted,
SEYFARTH SHAW LLP

By: 

Laura Wilson Shelby
Mason R. Winters
Attorneys for Defendants
ATC Healthcare, Inc., ATC Healthcare
Services, LLC (erroneously sued as ATC
Healthcare Services, Inc., and ATC
Healthcare Staffing), and ATC West Staffing,
Inc.

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Mason R. Winters (SBN 273639)
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6 Attorneys for Defendants
ATC Healthcare, Inc., ATC Healthcare Services,
7 LLC (erroneously sued as ATC Healthcare
Services, Inc., and ATC Healthcare Staffing), and
8 ATC West Staffing, Inc.

9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 TONI TORRACA-RIANO and MICHAEL
14 OLSHANSKY, individually, on behalf of
themselves and others similarly situated,

15 Plaintiffs,

16 v.

17 ATC HEALTHCARE SERVICES, INC., a
Georgia corporation; ATC
18 HEALTHCARE, INC., a Delaware
corporation; ATC HEALTHCARE
19 SERVICES, LLC, a Georgia limited
liability company; ATC HEALTHCARE
20 STAFFING, an unknown entity; ATC
WEST STAFFING, INC., a California
21 corporation; and DOES 1 through 50
inclusive,

22 Defendants.
23

Case No. **'19CV0295 L BLM**

**DECLARATION OF MASON R.
WINTERS IN SUPPORT OF
DEFENDANTS' NOTICE OF
REMOVAL**

[San Diego County Superior Court Case
No. 37-2018-000653377-CU-OE-CTL]

Trial Date: None Set
Complaint Filed: December 27, 2018

DECLARATION OF MASON R. WINTERS

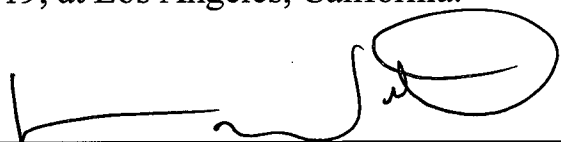
I, Mason R. Winters, hereby declare:

1. I am an attorney admitted to practice in the State of California, and I am an attorney in the law firm of Seyfarth Shaw LLP. I am one of the lawyers responsible for representing ATC Healthcare, Inc., ATC Healthcare Services, LLC (erroneously sued as ATC Healthcare Services, Inc., and ATC Healthcare Staffing), and ATC West Staffing, Inc., (“Defendants”) in the above-captioned lawsuit filed on behalf of Plaintiffs Toni Torraca-Riano and Michael Olshansky (“Plaintiffs”). All of the pleadings and correspondence in this lawsuit are maintained in our office in the ordinary course of business under my direction and control. I have reviewed the pleadings and correspondence in preparing this declaration.

2. Exhibits A through D to the concurrently filed Notice of Removal constitute all of the pleadings in the Superior Court’s record that have been served on Defendants or filed by Defendants.

I declare under penalty of perjury under the laws of the United States and the laws of the State of California that the foregoing is true and correct.

Executed this 8th day of February 2019, at Los Angeles, California.



Mason R. Winters

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/27/2018 at 10:37:03 PM
Clerk of the Superior Court
By Vanessa Bahena, Deputy Clerk

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3 500 West Harbor Drive, Suite 1113
4 San Diego, California 92101
5 Telephone: (619) 886-7224
6 Facsimile: (619) 259-5455

7 Co-Counsel listed on next page.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO-CENTRAL DIVISION

10)
11 TONI TORRACA-RIANO and)
12 MICHAEL OLSHANSKY,)
13 individually, on behalf of themselves)
14 and others similarly situated,)

15 Plaintiffs

16 vs.

17 ATC HEALTHCARE SERVICES,)
18 INC., a Georgia corporation; ATC)
19 HEALTHCARE, INC., a Delaware)
20 corporation; ATC HEALTHCARE)
21 SERVICES, LLC, a Georgia limited)
22 liability company; ATC)
23 HEALTHCARE STAFFING, an)
24 unknown entity; ATC WEST)
25 STAFFING, INC., a California)
26 corporation; and DOES 1 through 50)
27 inclusive)

28 Defendants.

Case No.: 37-2018-00085377-CU-0E-CTL

**INDIVIDUAL AND CLASS ACTION
COMPLAINT FOR:**

1. Violations of Fair Credit Reporting Act, 15 U.S.C. §§ 1681b(b)(2)(A) § 1681o(a) (Obtaining Consumer Reports Without Proper Disclosure)
2. Violations of Fair Credit Reporting Act, 15 U.S.C. §§ 1681b(b)(2)(A) § 1681o(a) (Obtaining Consumer Reports Without Proper Authorization);
3. Violations of the California Investigative Consumer Reporting Agencies Act (ICRAA) (Civ. Code, § 1786, *et seq.*);
4. Failure to Make Payments Within the Required Time;
5. Violations of Labor Code § 226;
6. Remedies Under Private Attorney General Act (PAGA California Labor Code §§ 2698, 2699, *et seq.*); and
7. Unfair Business Practices in Violation of Cal. Bus. & Prof. Code §§ 17000, *et seq.* and §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

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14 Attorneys for Plaintiffs

15 Plaintiffs TONI TORRACA-RIANO and MICHAEL OLSHANSKY, on behalf
16 of themselves and acting for the interest of other current and former employees
17 (“Represented Employees”), and all other similarly situated individuals (cumulatively
18 “Plaintiffs”), allege the following:

19 **NATURE OF THE ACTION**

20 1. Plaintiffs bring this nationwide class action on behalf of all individuals
21 who applied for employment with Defendants and who executed a release and
22 authorization form permitting Defendants to procure a consumer report and/or
23 investigative consumer report on them as part of their employment or application for
24 employment with Defendants.

25 2. Specifically, Plaintiffs complain that Defendants have a uniform policy
26 or practice of obtaining an applicant’s consumer report and have violated the Fair
27 Credit Reporting Act (the “FCRA”) through use of a legally invalid authorization
28 form that: (1) fails to provide a clear and conspicuous disclosure; and (2) fails to
provide a disclosure that appears in a document that consists solely of the disclosure.

3. Pursuant to Code of Civil Procedure § 382 and Labor Code Private

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1 Attorney General Act (“PAGA”), §§ 2698, 2699 of the California Labor Code,
2 Plaintiffs also bring a class and representative action against Defendants for wage and
3 hour abuses in violation of the California Labor Code and the Industrial Welfare
4 Commission Wage Orders (the “IWC Wage Orders”), all of which contribute to
5 Defendants’ deliberate unfair competition.

6 4. Plaintiffs OLSHANSKY and TORRACA-RIANO, on behalf of
7 themselves and all Class Members, seek damages, penalties, restitution, injunctive and
8 other equitable relief, reasonable attorneys’ fees, and costs.

9 **JURISDICTION AND VENUE**

10 5. Pursuant to Article VI, § 10 of the California Constitution, subject matter
11 jurisdiction over Plaintiffs’ wage and hour claims is proper in the Superior Court of
12 California, County of San Diego, State of California because Plaintiffs allege claims
13 arising under California law.

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

19 7. This Court has personal jurisdiction over Defendants because Defendants
20 conduct business in this State, have systematic and continuous ties with this state, and
21 have agents and representatives that can be found in this state.

22 8. Pursuant to § 395 of the California Code of Civil Procedure, venue is
23 proper in the Superior Court of California for the County of San Diego because
24 Defendants’ corporate records filed with the California Secretary of State indicate
25 they maintain a principle business office at 9040 Friars Road, Suite 335, San Diego,
26 California 92108.

27 **THE PARTIES**

28 9. Plaintiff TONI TORRACA-RIANO is an individual currently residing in

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1 California.

2 10. Plaintiff MICHAEL OLSHANSKY is an individual residing outside the
3 state of California. During his employment with Defendants from on or about
4 November 2, 2018 to November 28, 2018, however, Plaintiff OLSHANSKY resided
5 in California.

6 11. Defendant ATC HEALTHCARE SERVICES, INC. is a Georgia
7 Corporation doing business in California.

8 12. Defendant ATC HEALTHCARE, INC. is a Delaware Corporation doing
9 business in California.

10 13. Defendant ATC HEALTHCARE SERVICES, LLC is a Georgia limited
11 liability company doing business in California.

12 14. Defendant ATC HEALTHCARE STAFFING is an unknown entity
13 doing business in California.

14 15. Defendant ATC WEST STAFFING, INC. is a California Corporation,
15 but according to the California Secretary of State Website, it is "dissolved."

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

24 17. Unless otherwise specified by name, the named Defendants and DOES 1
25 through 50 will be collectively referred to as "DEFENDANT EMPLOYER" and/or
26 "Defendants."

27 18. Plaintiffs are informed and believe, and based thereon allege, that each
28 Defendant was acting as an agent, joint venturer, an integrated enterprise and/or alter

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1 ego for each of the other Defendants and each were co-conspirators with respect to the
2 acts and the wrongful conduct alleged herein so that each is responsible for the acts of
3 the other pursuant to the conspiracy and in proximate connection with the other
4 Defendant(s).

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

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

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

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

23 **STATUTORY BACKGROUND OF THE FCRA**

24 23. Enacted in 1970, the FCRA's passage was driven in part by two related
25 concerns: first, that consumer reports were playing a central role in people's lives at
26 crucial moments, such as when they applied for a job or credit, and when they applied
27 for housing; second, despite their importance, consumer reports were unregulated and
28 had widespread errors and inaccuracies.

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1 24. While recognizing that consumer reports play an important role in the
2 economy, Congress wanted consumer reports to be "fair and equitable to the
3 consumer" and to ensure their "confidentiality, accuracy, relevancy, and proper
4 utilization." 15 U.S.C. § 1681.

5 25. Congress was particularly concerned about the use of consumer reports by
6 employers. Accordingly, Congress required employers to make a clear and
7 conspicuous written disclosure to employees and job applicants, in a document that
8 consists solely of the disclosure, that a consumer report may be procured for
9 employment purposes. 15 U.S.C. § 1681b(b)(2). This is commonly referred to as the
10 "stand-alone disclosure" requirement. Congress further required that employers obtain
11 written authorization prior to procurement of a consumer report for employment
12 purposes. *Id.*

13 26. The FCRA's stand-alone disclosure requirement is one of many elements
14 of the FCRA that combine to ensure that consumers know when consumer reports may
15 be generated about them, that they know their rights, and that they have the
16 opportunity to dispute errors in their reports. See 15 U.S.C. § 1681b(b)(3)(A) (pre-
17 adverse employment action notice requirement); § 1681b(4)(B) (notification of
18 national security investigation); § 1681 c(h) (notification of address discrepancy); §
19 1681d(a) (disclosure of investigative report); § 1681g (full file disclosure to
20 consumers); § 1681k(a)(1) (disclosure regarding the use of public record information); §
21 1681h (form and conditions of disclosure); § 1681m(a) (post-adverse employment
22 action notice requirement).

23 27. Although the disclosure and the authorization may be combined in a
24 single document, the FTC has warned that the form should not include any extraneous
25 information or be part of another document. For example, in response to an inquiry as
26 to whether the disclosure may be set forth within an application for employment or
27 whether it must be included in a separate document, the FTC stated:

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The disclosure may not be part of an employment application because the language [of 15 U.S.C. § 1681b(b)(2)(A)] is intended to ensure that it appears conspicuously in a document not encumbered by any other information. The reason for requiring that the disclosure be in a stand-alone document is to prevent consumers from being distracted by other information side-by-side within the disclosure.

28. The plain language of the statute also clearly indicates that the inclusion of a waiver in a disclosure form violates the disclosure and authorization requirements of the FCRA, because such a form would not consist "solely" of the disclosure. In fact, the FTC expressly has warned that the FCRA notice may not include extraneous information such as a waiver. In a 1998 opinion letter, the FTC stated:

[W]e note that your draft disclosure includes a waiver by the consumer of his or her rights under the FCRA. The inclusion of such a waiver in a disclosure form will violate Section 604(b)(2)(A) of the FCRA, which requires that a disclosure consist 'solely' of the disclosure that a consumer report may be obtained for employment purposes.

29. Consistent with the FTC's construction of the FCRA, courts have repeatedly held that extraneous information renders a purported FCRA disclosure non-compliant. *See, e.g., Woods v. CaremarkPHC, LLC*, No. 4:15-cv-00535, 2015 WL 6742124, *2 (W.D. Mo. Nov. 2, 2015) (denying motion to dismiss FCRA complaint where plaintiff alleged that purported disclosure contained an overbroad authorization for third parties to provide information to defendant and its consumer reporting agency, and state specific notices that did not apply to plaintiff); *Jones v. Halstead Mgmt. Co., LLC*, No. 14-cv-3125, 2015 WL 366244, *5 (S.D.N.Y. Jan 27, 2015) (denying motion to dismiss FCRA complaint where plaintiff alleged that purported disclosure form included timeframes during which applicant must challenge accuracy of any report, an acknowledgement that employment decisions are based on non-discriminatory reasons, the contact information for the consumer reporting agency and state specific notices that "stretched what should be a simple disclosure form into two full pages of eye-straining typeface writing.").

1 30. As discussed below, Defendant routinely violates the FCRA by failing to
2 provide the required stand-alone disclosure to employees and job applicants.

3 **GENERAL ALLEGATIONS REGARDING UNLAWFUL**
4 **PROCUREMENT OF CONSUMER REPORT CLAIMS**

5 31. On or about November 18, 2018, as part of Plaintiffs’ application for
6 employment, DEFENDANT EMPLOYER required Plaintiffs OLSHANSKY and
7 TORRACA-RIANO to sign a document titled “Notification and Authorization to
8 Conduct Employment Background Investigation.” A true and correct redacted copy of
9 Plaintiff OLSHANSKY’S authorization is attached hereto and marked as **Exhibit 1**.

10 32. This form is at the heart of one key part of this dispute.

11 33. The abovementioned form purportedly authorizes “ATC Healthcare
12 Staffing” to conduct a background investigation concerning Plaintiffs OLSHANSKY
13 and TORRACA-RIANO and the putative Class.

14 34. Plaintiffs maintain this form is illegal because, in part, it includes a
15 release and hold harmless clause that provides, “I release employers and persons
16 named in my application from all liability for any damages on account of his/her
17 furnishing said information.” See **Ex. 1**.

18 35. Plaintiffs maintain this form is also illegal because it misstates the name
19 of Plaintiffs OLSHANSKY’S and TORRACA-RIANO’S employer as being “ATC
20 Healthcare Staffing,” when according to their wage and earning statements, the only
21 legal entity identified as being Plaintiffs’ employer was “ATC Healthcare Services,
22 Inc.” See **Ex. 1**.

23 36. To the extent “ATC Healthcare Staffing” (if it exists) is the entity that
24 procured consumer reports on Plaintiffs OLSHANSKY and TORRACA-RIANO and
25 Class Members, this form also fails to provide any disclosure or to obtain any
26 authorization at all.

27 37. Plaintiffs maintain this form is also illegal because it includes other
28 extraneous information in addition to a release, including but not limited to a number

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1 of purported unrelated state law admonitions. See Ex. 1.

2 38. Plaintiffs maintain this form is also illegal to the extent that it is overly
3 broad and purports to authorize the procurement of any information concerning the
4 applicant whether otherwise lawful or appropriate. See Ex. 1.

5 39. Plaintiffs are informed and believe and therefore allege that pursuant to
6 the forms that Plaintiffs OLSHANSKY and TORRACA-RIANO signed on or about
7 November 18, 2018, DEFENDANT EMPLOYER obtained consumer reports on
8 Plaintiffs OLSHANSKY and TORRACA-RIANO.

9 40. On information and belief, DEFENDANT EMPLOYER had a practice
10 and policy of procuring consumer reports on all Class Members based upon this or
11 substantially similar forms during the class period.

12 41. Based on the foregoing, Plaintiffs claim Defendants violated both state
13 and federal law.

14 **GENERAL ALLEGATIONS REGARDING**
15 **LABOR CODE VIOLATIONS**

16 **Labor Code § 226 Violations**

17 42. From at least four years before the filing of this action and continuing to
18 the present, and pursuant to company policy and/or practice and/or direction,
19 Defendants issued inaccurate wage and earning statements to Plaintiffs.

20 43. On or about November 29, 2018, Defendants issued Plaintiff
21 OLSHANSKY a paystub.

22 44. This paystub did not accurately state Plaintiff OLSHANSKY'S gross
23 wages earned or the total hours worked by the employee.

24 45. The November 29, 2018 paystub stated Plaintiff OLSHANSKY earned
25 \$1,810.21 in gross wages, but Plaintiff actually earned \$2,194.59.

26 46. Additionally, the November 29, 2018 statement did not account for
27 Plaintiff OLSHANSKY'S 0.75 hours of overtime and two hours of double time.

28 47. Further, if indeed "ATC Healthcare Staffing" was Plaintiffs' employer,

1 Defendant failed to identify such entity as being Plaintiffs' employer, as required
2 under Labor Code § 226(a)(8).

3 48. Plaintiff TORRACA-RIANO similarly alleges that her paystubs were
4 inaccurate.

5 49. Plaintiffs are informed and believe and therefore allege that Defendants
6 issued similarly inaccurate paystubs to similarly situated employees.

7 50. Based on the foregoing, Plaintiffs seeks the remedies set forth in this
8 Complaint.

9 **Waiting Time Penalties**

10 51. Pursuant to Defendants' policies, Defendants failed to pay all wages to
11 Plaintiffs in a timely manner.

12 52. On or about November 28, 2018, Defendants involuntarily terminated
13 Plaintiffs OLSHANSKY'S and TORRACA-RIANO'S employment.

14 53. On Plaintiffs OLSHANSKY'S and TORRACA-RIANO'S date of
15 termination, however, Defendants failed to pay Plaintiffs OLSHANSKY and
16 TORRACA-RIANO all their unpaid wages immediately upon their termination.

17 54. Plaintiffs are informed and believe and based thereon allege that
18 Defendants similarly did not pay other similarly situated employees all wages due and
19 payable in a timely manner.

20 55. Based on the foregoing, Plaintiffs seeks the remedies set forth in this
21 Complaint.

22 **REPRESENTATIVE ACTION (PAGA) CLAIMS**

23 56. The duties and business activities of the Represented Employees were
24 essentially the same as the duties and activities of Plaintiffs OLSHANSKY and
25 TORRACA-RIANO described above.

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

28 **All nonexempt persons Defendants employed in the State of**

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1 **California from December 21, 2017 to the present.**

2 58. All members of the represented groups will be referred to as the
3 “Represented Employees.”

4 59. The “Representative Period” means from **December 21, 2017** to the
5 present, the timeframe where the scope of statute allows Plaintiffs to recover wages
6 and penalties.

7 60. At all times during the Representative Period, all the Represented
8 Employees were employed in the same or similar job as Plaintiffs OLSHANSKY and
9 TORRACA-RIANO and were paid in the same manner and under the same standard
10 employment procedures and practices as the Plaintiff.

11 61. Plaintiffs OLSHANSKY and TORRACA-RIANO further allege
12 DEFENDANT EMPLOYER did not pay them and, on information and belief
13 Represented Employees, all wages due at the time their employment ended with
14 DEFENDANT EMPLOYER.

15 62. On information and belief, current and former employees of
16 DEFENDANT EMPLOYER were subject to wage and hour violations by
17 DEFENDANT EMPLOYER, including failing to pay for all wages due.

18 63. California law provides that an employee may file an action against an
19 employer to recover penalties for violations of the Labor Code and Wage Orders,
20 provided the aggrieved employee files an action on behalf of him or herself and
21 similarly situated current and former employees.

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

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1 65. As set forth in further detail below, because of the analysis and
2 investigation of the Plaintiffs’ claims, Plaintiffs’ attorneys sent letters to the California
3 Labor and Workforce Development Agency (hereinafter referred to as “LWDA”) and
4 to DEFENDANT EMPLOYER informing DEFENDANT EMPLOYER of their claims
5 and their intent to pursue litigation.

6 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

7 66. As to penalty claims under the Labor Code Private Attorney General
8 Act, on **December 21, 2018**, Plaintiffs began to exhaust his/her administrative
9 remedies by sending correspondence to the LWDA and DEFENDANT EMPLOYER
10 indicating that Plaintiffs OLSHANSKY and TORRACA-RIANO are pursuing the
11 claims alleged in this Complaint.

12 67. By the time an amended Complaint is filed, the statutory period for
13 Plaintiffs will have expired on the letter alleged above and the LWDA will likely not
14 have served Plaintiffs with notice of intent to assume jurisdiction over the applicable
15 penalty claims and did not provide notice as set forth in Labor Code § 2699.3
16 (a)(2)(A) within the statutory period.

17 68. Therefore, Plaintiffs will have exhausted Plaintiffs’ administrative
18 remedies to enable Plaintiffs to seek the penalty claims sought in this Complaint.

19 69. The Causes of Action alleged herein are appropriately suited for a
20 Representative Action under PAGA (Labor Code § 2698, *et seq.*) because:

21 a. This action involves allegations of violations of
22 provisions of the California Labor Code that
23 provide for a civil penalty to be assessed and
24 collected by the LWDA or any departments,
25 divisions, commissions, boards, agencies or
26 employees;

27 b. Plaintiffs are “aggrieved employees” because
28 Plaintiffs were employed by the alleged violator

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and had one or more of the alleged violations committed against them; and
c. Plaintiffs have satisfied the procedural requirements of Labor Code § 2699.3, as set forth above.

CLASS ACTION ALLEGATIONS

70. Plaintiffs OLSHANSKY and TORRACA-RIANO bring this action on behalf of themselves and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure.

71. Plaintiffs OLSHANSKY and TORRACA-RIANO seek to represent the classes and/or subclasses composed of and defined as follows:

Labor Code Class:

All current or former nonexempt employees who worked in the state of California from December 27, 2014 to the present for the Defendants who were issued wage and earning statements from ATC Healthcare Services, Inc.

FCRA Class:

All persons residing in the United States regarding whom Defendants procured or caused to be procured a consumer report for employment purposes during the period five years prior to the filing of the present action through the date of certification.

72. Plaintiffs OLSHANSKY and TORRACA-RIANO also seek to represent the following subclasses composed of and defined as follows:

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

Waiting Time Subclass: All Members of the Plaintiff Class who,

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1 during the applicable limitations period, did not receive all wages due
2 in a timely manner as required by Labor Code §§ 201-204.

3 **UCL Subclass:** All Members of the Plaintiff Class, who, during the
4 relevant period, Defendants owe restitution in the form of (1)
5 unreimbursed expenses and/or (2) wages earned and unpaid because
of Defendants’ uniform pay policies and procedures.

6 73. The above-mentioned class-members will collectively be referred to as
7 “Class Members.”

8 74. Plaintiffs reserve the right under the California Rules of Court, to
9 amend or modify the class description with greater specificity or further division into
10 subclasses or limitation to particular issues.

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

15 **A. Numerosity**

16 76. The potential members of the Class as defined are so numerous or many,
17 that joinder of all the members of the Class is impracticable.

18 77. While the precise number of Class Members has not been determined at
19 this time, Plaintiffs are informed and believe, and on that basis allege, that
20 DEFENDANT EMPLOYER currently employs, and during the relevant time periods
21 employed, over 100 Class Members.

22 78. Accounting for employee turnover during the relevant periods necessarily
23 increases this number substantially.

24 **B. Commonality**

25 79. There are questions of law and fact common to the Class that
26 predominate over any questions affecting only individual Class Members.

27 80. Common questions of law and fact include, without limitation and
28

1 subject to possible further amendment, the following:

- 2 a. Whether the Defendant violated the FCRA by
- 3 procuring consumer reports based on invalid
- 4 authorizations;
- 5 b. Whether Defendants' policy or practice of not paying
- 6 hourly employees all their wages due in their final
- 7 paychecks immediately upon involuntary termination
- 8 or within 72 hours' notice of when its employees
- 9 provided notice of their voluntary resignation, is
- 10 unlawful under Labor Code §§ 201, 202 and/or 203;
- 11 c. Whether Defendants violated Labor Code §§ 226 by
- 12 not providing accurate paystubs; and
- 13 d. Whether Plaintiffs OLSHANSKY and TORRACA-
- 14 RIANO and the members of the Class may recover
- 15 remedies pursuant to Business & Professions Code §§
- 16 17200, *et seq.*

17 **C. Typicality**

18 81. Plaintiffs OLSHANSKY'S and TORRACA-RIANO'S claims are typical
19 of the claims of the Class because Plaintiffs OLSHANSKY and TORRACA-RIANO
20 and all members of the Class sustained injuries and damages arising out of and caused
21 by Defendants' common course of conduct and policies in violation of laws,
22 regulations that have the force and effect of law and statutes as alleged herein.

23 **D. Adequacy of Representation**

24 82. Plaintiffs OLSHANSKY and TORRACA-RIANO are members of the
25 Class, do not have any conflicts of interest with other Class Members, and will
26 prosecute the case vigorously on behalf of the Class.

27 83. Counsel representing Plaintiffs OLSHANSKY and TORRACA-RIANO
28 and the putative Class is competent and experienced in litigating employment class

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1 actions, including wage and overtime class actions.

2 84. Plaintiffs OLSHANSKY and TORRACA-RIANO will fairly and
3 adequately represent and protect the interests of the Class Members.

4 **E. Superiority of Class Action**

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

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

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

14 88. Plaintiffs are unaware of any difficulties that are likely to encounter in
15 the management of this action that would preclude maintenance as a Class Action.

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

18 **FIRST CAUSE OF ACTION**

19 **Individual and Class Claim for**

20 **Violation of the Fair Credit Reporting Act**

21 **(Obtaining Consumer Reports Without Proper Disclosure)**

22 **(Against All Defendants)**

23 90. Plaintiffs allege and incorporates by reference the allegations in the
24 preceding paragraphs as though fully set forth herein.

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

27 92. Likewise, a consumer report may be used for the evaluation of "a
28 consumer for employment, promotion, reassignment or retention of an employee." 15

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1 U.S.C. §1681a(h).

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

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

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

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

17 15 U.S.C. § 1681b(b)(2)(A).

18 96. During the Class Period, DEFENDANT EMPLOYER required Plaintiffs
19 OLSHANSKY and TORRACA-RIANO and the FCRA Class Members to sign an
20 authorization form as part of their job application with DEFENDANT EMPLOYER,
21 which form purported to allow “ATC Healthcare Staffing” to procure consumer
22 reports regarding the Plaintiffs.

23 97. To the extent that ATC Healthcare Staffing (if such entity exists) is not
24 the entity that procured consumer reports on Plaintiffs and FCRA Class Members,
25 DEFENDANT EMPLOYERS failed to provide any disclosure at all prior to
26 procuring consumer reports for employment purposes, as required by the FCRA.

27 98. Moreover, the form that was provided facially violates the FCRA in
28 numerous respects.

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1 99. Included in DEFENDANT EMPLOYER’S Notification and
2 Authorization Form, i.e., Exhibit 1 are reams of extraneous information, including
3 but not limited to, a liability release and multiple state law admonitions. See Exhibit
4 1.

5 100. Defendants’ inclusion of the aforementioned, among other extraneous
6 information, in its Notification and Authorization Form executed by applicants
7 facially contravenes the requirements of 15 U.S.C. § 1681b(b)(2)(A) that the
8 disclosure be: (1) “clear and conspicuous”; and (2) appear “in a document that
9 consists solely of the disclosure.”

10 101. As a matter of law, Defendant’s inclusion of the aforementioned
11 information invalidates the Notification and Authorization Form for purposes of the
12 FCRA. See *Syed v. M-I, LLC*, 853 F.3d 492, *10-11 (9th Cir. 2017) (holding an
13 employer violates Section 1681b(b)(2)(A)(I)—(ii) when it requires an employee to
14 sign a form containing a waiver of liability provision as part of a background
15 investigation); *Harris v. Home Depot U.S.A., Inc.*, 114 F. Supp. 3d 868, 870-71 (N.D.
16 Cal. 2015) (release of liability improper); *Feist v. Petco Animal Supplies, Inc.*, 218 F.
17 Supp. 3d 1112 (S.D. Cal. 2016) (a summary of consumer rights in seven different
18 states improper); *Lagos v. The Leland Stanford Junior University*, 2015 U.S. Dist.
19 LEXIS 163119 (N.D. Cal. Dec. 4, 2015) (inclusion of seven state law notices and
20 sentence stating “I also understand that nothing herein shall be construed as an offer
21 of employment or contract for services” plausibly violated stand-alone disclosure
22 requirement); *Woods v. Caremark PHC, L.L.C.*, 2015 U.S. Dist. LEXIS 148051
23 (W.D. Mo. 2015) (“The specific ‘extraneous information’ Plaintiff alleges Defendant
24 included in its Authorization Form for Consumer Reports is: (1) an overbroad
25 authorization for third parties to provide information to Defendant and its consumer
26 reporting agency, (2) state-specific notices that did not apply to Plaintiff, and (3) that
27 the form was part of a five-page stapled packet of three documents. Where FCRA
28 allegations involve the inclusion of extraneous information beyond an authorization,

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1 the complaint meets the 12(b)(6) standard to state a claim for willful violation of the
2 FCRA stand-alone requirement."); *see also* Letter from William Haynes, Attorney,
3 Div. of Credit Practices, Fed Trade Comm'n to Richard W. Hauxwekk, CEO,
4 Accufax Div. (June 12, 1998), 1998 W.L. 34323756 (F.T.C.) (noting that the
5 inclusion of a waiver in a disclosure form will violate the FCRA).

6 102. The Notification and Authorization form is also illegal to the extent that
7 it purports to authorize the procurement of any and all information regarding
8 Plaintiffs and FCRA Class Members, whether legal or proper to do so.

9 103. Defendants acted willfully by providing a facially invalid Notification
10 and Authorization Form that was in direct violation of the clear and unambiguous
11 requirements set forth in 15 U.S.C. § 1681b(b)(2)(A).

12 104. Defendants knew or acted with reckless disregard of its statutory duties
13 and the rights of applicants and employees, including Plaintiff and the Class, thus
14 knowingly and/or recklessly disregarding its statutory duties.

15 105. On information and belief, as well as Plaintiffs' investigation,
16 Defendants' conduct was willful because:

- 17 a. Defendants required Plaintiff and the Class to execute the
- 18 Notification and Authorization Form knowing that it was
- 19 facially invalid in violation of the FCRA and Defendants'
- 20 statutory duties;
- 21 b. Defendants acted with reckless disregard of the FCRA
- 22 requirements and Defendants' statutory duties when it
- 23 required Plaintiff and the Class to execute the Notification
- 24 and Authorization Form that was facially invalid and in
- 25 violation of the clear and unambiguous requirements of the
- 26 FCRA;
- 27 c. Upon information and belief, Defendants were advised by
- 28 skilled lawyers and other professional employees, and

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- 1 advisors knowledgeable about the FCRA requirements;
- 2 d. The plain language of the statute unambiguously indicates
- 3 that inclusion of a liability release in a disclosure form
- 4 violates the disclosure and authorization requirements;
- 5 e. The FTC’s express statements, pre-dating Defendants’
- 6 conduct, state that it is a violation of 15 U.S.C. §
- 7 1681b(b)(2)(A) to include a liability waiver in the FCRA
- 8 disclosure form; and
- 9 f. By adopting such a policy, Defendant voluntarily ran a risk
- 10 of violating the law substantially greater than the risk
- 11 associated with a reading that was merely careless.

12 106. Pursuant to 15 U.S.C. §1681n(a)(1)(A), Plaintiffs OLSHANSKY and
13 TORRACA-RIANO and the FCRA Class may recover statutory damages due to
14 Defendant’s willful failure to comply with the requirements imposed by 15 U.S.C. §
15 1681b(b)(2)(A) of an amount not less than \$100 and not more than \$1,000.

16 107. Plaintiffs OLSHANSKY and TORRACA-RIANO and the Class seek the
17 recovery of punitive damages for Defendants’ willful violations, in an amount as the
18 Court may allow.

19 108. Pursuant to 15 U.S.C. § 1681n(a)(3) and § 1681o(a)(2), Plaintiffs
20 OLSHANSKY and TORRACA-RIANO and the Class seek the recovery costs of suit
21 with reasonable attorneys’ fees, as determined by the Court.

22 **SECOND CAUSE OF ACTION**

23 **Individual and Class Claim for**

24 **Violation of the Fair Credit Reporting Act**

25 **(Obtaining Consumer Reports Without Proper Authorization)**

26 109. Plaintiffs allege and incorporates by reference the allegations in the
27 preceding paragraphs as though fully set forth herein.

28 110. As alleged above, the form presented to Plaintiffs and FCRA Class

1 Members purports to authorize "ATC Healthcare Staffing" to perform a background
2 investigation.

3 111. To the extent the foregoing entity (if it exists at all) is not the entity that
4 procured consumer reports on Plaintiffs and Class Members, Defendants failed to
5 obtain any authorization at all.

6 112. Alternatively, because Defendants failed to make a clear and
7 conspicuous disclosure that a consumer report may be procured in a document
8 consisting solely of the disclosure, Defendants violated the FCRA by procuring
9 consumer reports relating to Plaintiffs and other Class Members without proper
10 authorization. See 15 U.S.C. § 1681b(b)(2)(A)(ii).

11 113. The foregoing violations were willful because Defendants acted in
12 deliberate or reckless disregard of its obligations and the rights of Plaintiffs and other
13 Class Members under 15 U.S.C. § 1681b(b)(2)(A)(ii).

14 114. Defendants' willful conduct is also evidenced by, among other things,
15 the facts previously set forth.

16 115. Pursuant to 15 U.S.C. § 1681n(a)(1)(A), Plaintiffs OLSHANSKY and
17 TORRACA-RIANO and the FCRA Class seek to recover statutory damages due to
18 Defendants' willful failure to comply with the requirements imposed by 15 U.S.C. §
19 1681b(b)(2)(A) of an amount not less than \$100 and not more than \$1,000.

20 116. Plaintiffs OLSHANSKY and TORRACA-RIANO and the Class seek the
21 recovery of punitive damages for Defendants' willful violations, in an amount as the
22 Court may allow.

23 117. Pursuant to 15 U.S.C. § 1681n(a)(3) and § 1681o(a)(2), Plaintiffs
24 OLSHANSKY and TORRACA-RIANO and the Class seek the recovery costs of suit
25 with reasonable attorneys' fees, as determined by the Court.

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THIRD CAUSE OF ACTION
Individual Claim for Violation of the
California Investigative Consumer Reporting
Agencies Act (ICRAA) (Civ. Code, § 1786, *et seq.*)
(Obtaining Consumer Reports Without Facially Valid Authorizations)
(Against All Defendants)

118. Plaintiffs allege and incorporates by reference the allegations in the preceding paragraphs as though fully set forth herein.

119. Pursuant to California Civ. Code, § 1786, *et seq.*, a consumer reporting agency may furnish a consumer investigative report for employment purposes.

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

(A) The person procuring or causing the report to be made has a permissible purpose, as defined in Section 1786.12.

(B) The person procuring or causing the report to be made provides a clear and conspicuous disclosure in writing to the consumer at any time before the report is procured or caused to be made in a document that consists solely of the disclosure, that:

- (i) An investigative consumer report may be obtained.
- (ii) The permissible purpose of the report is identified.
- (iii) The disclosure may include information on the consumer's character, general reputation, personal characteristics, and mode of living.
- (iv) Identifies the name, address, and telephone number of the investigative consumer reporting agency conducting the investigation.
- (v) Notifies the consumer in writing of the nature and scope of the investigation requested, including a summary of the provisions of Section 1786.22.
- (vi) Notifies the consumer of the Internet Web site address of the investigative consumer reporting agency identified in clause (iv), or, if the agency has no Internet Web site address, the telephone number of the agency, where the consumer may find information about the investigative reporting agency's privacy practices, including whether the consumer's personal information will be sent outside the United States or its territories and information

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1 that complies with subdivision (d) of Section 1786.20. This
2 clause shall become operative on January 1, 2012.
3 (C) The consumer has authorized in writing the procurement of
4 the report.

5 (§ 1786.16, subd. (a)(2).)

6 121. In addition, the person procuring or causing the report to be made must
7 “certify to the investigative consumer reporting agency that the person has made the
8 applicable disclosures to the consumer required by [section 1786.16, subdivision (a)]
9 and that the person will comply with subdivision (b).” (§ 1786.16, subd. (a)(4).)

10 122. Subdivision (b) of section 1786.16 also requires the person procuring or
11 causing the report to be made to (1) provide the consumer a form with a box that can
12 be checked if the consumer wishes to receive a copy of the report, and send a copy of
13 the report to the consumer within three business days if the box is checked and (2)
14 comply with section 1786.40 if the person procuring or causing the report to be made
15 contemplates taking adverse action against the consumer. (§ 1786.16, subd. (b).)

16 123. During the Class Period, Defendant ATC HEALTHCARE SERVICES,
17 INC. required Plaintiffs OLSHANSKY and TORRACA-RIANO and FCRA Class
18 Members to sign a disclosure authorization forms as part of their job applications with
19 Defendant ATC HEALTHCARE SERVICES, INC., which forms purported to allow
20 Defendant “ATC HEALTHCARE STAFFING,” not Defendant ATC
21 HEALTHCARE SERVICES, INC., the alleged real employer, to procure a consumer
22 report on the Plaintiff. See **Exhibit 1**.

23 124. Under Civil Code § 1786.16, subd. (a) “Any person described in
24 subdivision (d) of Section 1786.12 shall not procure or cause to be prepared an
25 investigative consumer report unless . . . The person procuring or causing the report to
26 be made has a permissible purpose, as defined in Section 1786.12,” yet Civil Code §
27 1786.12, in relevant part, provides “An investigative consumer reporting agency shall
28 only furnish an investigative consumer report. . . To a person that it has reason to
believe: (1) Intends to use the information for employment purposes.”

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1 125. If Defendant ATC HEALTHCARE STAFFING was not Plaintiff's
2 employer, it violated Civil Code § 1786.16 because it had no legal basis to procure a
3 consumer report on the Plaintiff.

4 126. In addition, DEFENDANT EMPLOYER'S Notification and
5 Authorization Form, i.e., **Exhibit 1**: (1) was a purported authorization to procure a
6 consumer report and/or investigative consumer report; (2) included a waiver of
7 liability provision; (3) included a purported authorization to investigate "personal
8 history, educational background, military record, motor vehicle records, criminal
9 records, and credit history . . ."; and (4) included other extraneous language, including
10 but not limited to a number of state law admonitions, such as Massachusetts,
11 Minnesota, Oklahoma, none of which are applicable since Plaintiff was applying for
12 work in California; ". See **Exhibit 1**.

13 127. Plaintiff maintains Defendants' inclusion of the aforementioned in its
14 Notification and Authorization Form violates California law because it was not a
15 "clear and conspicuous disclosure in writing to the consumer." (§ 1786.16(a)(2)(B).)
16 See **Exhibit 1**.

17 128. Based on the misconduct alleged in this Complaint, Defendants violated
18 ICRAA.

19 129. Defendants acted willfully by providing a facially invalid Notification
20 and Authorization Form that was in direct violation of the clear and unambiguous
21 requirements set forth in § 1786.16.

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

25 131. On information and belief, as well as Plaintiff's investigation,
26 Defendants' conduct was willful.

27 132. With respect to each of the aforementioned violations of the ICRAA
28 provisions and pursuant to Civ. Code § 1786.50(a)(1), in the event this case does not

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1 proceed as a class action basis regarding the FCRA class claims, Plaintiffs
2 OLSHANSKY and TORRACA-RIANO, not the Class, seek to recover statutory
3 damages due to Defendants' failure to comply with the requirements imposed by §
4 1786.16 of an amount not less than \$10,000 or seek actual damages, if any, in an
5 amount to be proven at trial, whichever is higher.

6 133. Plaintiffs OLSHANSKY and TORRACA-RIANO are informed and
7 believe, and based on such information and belief allege that Defendants' misconduct
8 was reckless and/or willful and/or malicious and/or in conscious disregard of the
9 rights and safety of the Plaintiff and whose recklessness and/or conscious disregard
10 was reasonably foreseeable to cause injury to the Plaintiff, thereby warranting the
11 assessment of punitive damages against these Defendants.

12 134. Plaintiffs OLSHANSKY and TORRACA-RIANO seek the recovery
13 costs of suit with reasonable attorneys' fees, as determined by the Court.

14 **FOURTH CAUSE OF ACTION**

15 **Individual and Representative Claim for**

16 **Failure to Pay Timely Earned Wages during Employment and**

17 **Upon Separation of Employment in Violation of**

18 **California Labor Code §§ 201, 202, 203,**

19 **204 and/or 204b, 218.5, and 218.6**

20 **(Against all Defendant ATC HEALTHCARE SERVICES, INC.)**

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

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

26 137. Pursuant to Labor Code § 202, "If an employee not having a written
27 contract for a definite period quits his or her employment, his or her wages shall
28 become due and payable not later than 72 hours thereafter, unless the employee has

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1 given 72 hours previous notice of his or her intention to quit, in which case the
2 employee is entitled to his or her wages at the time of quitting.”

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

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

11 140. Alternatively, pursuant to Labor Code § 204b, employers must pay its
12 employees on a weekly basis on a regular day determined by the employer as the
13 regular payday.

14 141. Pursuant to Labor Code §§ 218.5 and 218.6, an action may be brought for
15 the nonpayment of wages and fringe benefits.

16 142. Based on the misconduct alleged in this Complaint, Plaintiffs were not
17 properly paid pursuant to the requirements of Labor Code §§ 201, 202, and 204/204b
18 and thereby seek all remedies available to them.

19 143. Plaintiffs are informed and believe and based thereon allege that
20 Defendants willfully failed to pay Plaintiffs’ wages pursuant to the requirements of
21 Labor Code §§ 201, 202, and 204/204b, after Plaintiffs’ demand and, therefore,
22 Plaintiffs may recover the associated unpaid wages and waiting time penalties.

23 144. Plaintiffs are informed and believe and based thereon allege that
24 Defendants did this with the intent to secure for himself, herself and itself a discount
25 on its indebtedness and/or with intent to annoy harass, oppress, hinder, delay and/or
26 defraud Plaintiffs.

27 145. At all material times, DEFENDANT EMPLOYER and DOES 1 through
28 50 were and/or are Represented Employees’ employers or persons acting on behalf of

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

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

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

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

21 149. Defendants deprived Plaintiffs of their rightfully earned wages as a direct
22 and proximate result of Defendants' failure and refusal to pay said compensation and
23 for the reasons alleged in this Complaint.

24 150. Plaintiffs OLSHANSKY and TORRACA-RIANO and Class Members
25 request the unpaid wages, waiting time penalties, interest, attorneys' fees, costs,
26 damages, and other remedies in an amount to be proven at trial.

27 151. Where any of the foregoing statutes do not provide for a private right of
28 actions, Plaintiffs OLSHANSKY and TORRACA-RIANO nevertheless assert

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1 Defendants violated these provisions as part of their PAGA cause of action alleged
2 herein.

3 **FIFTH CAUSE OF ACTION**

4 **Individual and Representative Claim for**
5 **Violations of California Labor Code § 226**

6 (Against all Defendants)

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

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

23 154. Based on the foregoing allegations, during all times relevant to this action,
24 Defendants did not provide accurate wage statements throughout the Class Period.

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

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1 wages earned, total hours worked by the employee, among other things.

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

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

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

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

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

27 161. For Defendants' misconduct as alleged herein, Plaintiffs seek injunctive
28 relief and attorneys' fees and costs pursuant to § 226 in an amount to be proven at trial.

1 162. Where any of the foregoing statutes do not provide for a private right of
2 actions, Plaintiffs OLSHANSKY and TORRACA-RIANO nevertheless assert
3 Defendants violated these provisions as part of their PAGA cause of action alleged
4 herein.

5 **SIXTH CAUSE OF ACTION**

6 **Individual and Representative Claim for PAGA**

7 **Penalties and Wage Under California Labor Code**

8 **§§ 2698, 2699, et seq. for Violations of California Labor Code**

9 **§§ 201, 202, 203, 204 and/or 204b, 218.5, 218.6, 226, 226.3, and 226.6.**

10 (Against all Defendants)

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

13 164. Pursuant to law, written notice was provided to the LWDA and
14 Defendants of the specific violations of the California Labor Code Defendants have
15 violated and continue to violate.

16 165. Pursuant to Labor Code § 2699.3, no response will likely be received
17 from the LWDA within 60 days of the postmark date of the above-alleged letter.

18 166. Plaintiffs, therefore, will have exhausted all administrative procedures
19 required of them under Labor Code §§ 2698, 2699, and 2699.3, and, as a result, are
20 justified as a matter of right in bringing forward this cause of action and are entitled to
21 pursue penalties in a representative action for Defendants' violations of the Labor
22 Code.

23 167. Pursuant to Labor Code § 2699, any provision of the Labor Code that
24 provides for a civil penalty to be assessed and collected by the LWDA or any of its
25 departments, divisions, commissions, boards, agencies or employees for violation of
26 the code may, as an alternative, be recovered through a civil action brought by an
27 aggrieved employee on behalf of himself or herself and other current or former
28 employees pursuant to the procedures specified in Labor Code § 2699.3.

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1 168. Plaintiff is an “aggrieved employee” because Plaintiff was employed by
2 the alleged violator and had one or more of the alleged violations committed against
3 Plaintiff, and therefore is properly suited to represent the interests of other current and
4 former Represented Employees.

5 169. Because of the acts alleged above, Plaintiffs seek penalties under Labor
6 Code §§ 2698 and 2699 because of Defendants’ violation of numerous provisions of
7 the California Labor Code as alleged in this Complaint.

8 170. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
9 penalties for violating Labor Code §§ 201, 202, 203, 204 and/or 204b, 218.5, 218.6,
10 226, 226.3, and 226.6.

11 171. Labor Code § 558 establishes a civil penalty as follows: Any employer
12 or other person acting on behalf of an employer who violates, or causes to be violated,
13 a section of this chapter or any provision regulating hours and days of work in any
14 order of the Industrial Welfare Commission (including the “Hours and Days of Work”
15 section of the Wage Order) shall be subject to a civil penalty of (1) for any initial
16 violation, fifty dollars (\$50) for each underpaid employee for each pay period for
17 which the employee was underpaid in addition to an amount sufficient to recover
18 underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for
19 each underpaid employee for each pay period for which the employee was underpaid
20 in addition to an amount sufficient to recover underpaid wages; and (3) wages
21 recovered pursuant to this section shall be paid to the affected employee.

22 172. Plaintiffs seek penalties for Defendants’ conduct as alleged herein as
23 permitted by law.

24 173. Specifically, Plaintiffs seeks penalties under Labor Code § 2699, for the
25 following in addition to those Code provisions mentioned in this Cause of Action:

- 26 a. For violations of Labor Code §§ 201, 202, 203,
27 and 204/204b for failing to pay Plaintiff and
28 Represented Employees in a timely manner; and

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b. For the violation of Labor Code §§ 226 and 226.3,
for failing to provide Plaintiff and Represented
Employees accurate wage statements.

174. Pursuant to Labor Code § 2698, *et seq.*, Plaintiffs seek to recover
attorney’s fees, costs, civil penalties, and wages on behalf of Plaintiff and other
current and former Represented Employees as alleged herein in an amount to be
shown according to proof at trial and within the jurisdictional limits of this Court.

SEVENTH CAUSE OF ACTION

Individual Claim for Remedies for Violations

of the California Unfair Business

Practices Code §§ 17200, *et seq.*

(Against all Defendants)

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

176. Defendants, and each of them, are “persons” as defined under Business
and Professions Code § 17021.

177. Plaintiffs are informed and believe and based thereon allege that
Defendants committed the unfair business practices, as defined by Cal. Bus. & Prof.
Code § 17200, *et seq.*, by violating the laws alleged to have been violated in this
Complaint and which allegations are incorporated herein by reference.

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

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

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

181. Because of their improper acts, Defendants, and each of them, have

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1 reaped and continue to reap unfair benefits and illegal profits at the expense of
2 Plaintiffs OLSHANSKY and TORRACA-RIANO and other employees and former
3 employees of Defendants, and each of them.

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

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

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs OLSHANSKY and TORRACA-RIANO, on behalf
14 of the Class, pray for an order for relief as follows:

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

17 2. For appointment of the Plaintiffs OLSHANSKY and TORRACA-
18 RIANO as the representatives of the Class;

19 3. For appointment of counsel for Plaintiffs OLSHANSKY and
20 TORRACA-RIANO as Class Counsel;

21 4. That Defendants be found liable to Plaintiffs OLSHANSKY and
22 TORRACA-RIANO and the Class;

23 5. For a declaration that Defendants violated the rights of Plaintiffs
24 OLSHANSKY and TORRACA-RIANO and the Class under the FCRA and any other
25 applicable law alleged in this Complaint;

26 6. Pursuant to 15 U.S.C. § 1681n(a)(1)(A), an award of statutory damages
27 to Plaintiff and the Class in an amount equal to \$1,000 for Plaintiffs OLSHANSKY
28 and TORRACA-RIANO and each member of the Class for Defendant's willful

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1 violations of the FCRA;

2 7. In the event this case does not proceed on a FCRA class action basis,
3 pursuant to Civ. Code § 1786.50, an award of statutory damages to Plaintiffs
4 OLSHANSKY and TORRACA-RIANO in the amount of \$10,000 each, or in the
5 alternative actual damages in an amount according to proof;

6 8. For an award of punitive damages to Plaintiffs OLSHANSKY and
7 TORRACA-RIANO and the members of the Class in an amount to be determined by
8 the Court;

9 9. For costs of suit and expenses incurred herein, including reasonable
10 attorneys' fees and costs allowed under relevant provision of law including, but not
11 limited to, those allowed under 15 U.S.C. §1681n(a)(3), 15 U.S.C. §1681o(a)(2), Civ.
12 Code § 1786.50, and/or other applicable provisions of law;

13 10. That Defendants, and each of them, be ordered and enjoined to pay
14 restitution to Plaintiff and/or the Class and/or Represented Employees pursuant to
15 Business and Professions Code §§ 17200-05;

16 11. That Defendants, and each of them, be required to issue to Plaintiff
17 and/or the Class and/or Represented Employees accurate wage and earning
18 statements;

19 12. For disgorgement through restitution of all ill-gotten and/or ill-gained
20 profits, including unpaid wages and/or penalties to Plaintiffs OLSHANSKY and
21 TORRACA-RIANO and/or the Class and/or Represented Employees, resulting from
22 Defendants' unfair business practices pursuant to Business and Professions Code §§
23 17200-05;

24 13. For an order by the Court requiring Defendants, and each of them, to
25 show cause, if any they have, as to why to Plaintiff and/or the Class and/or
26 Represented Employees should not have been issued itemized wage statements as
27 required by § 226 of the Labor Code and why Defendants should not be required to
28 pay Plaintiff minimum wages and overtime compensation under applicable state law;

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1 14. For all remedies available to Plaintiffs OLSHANSKY and TORRACA-
2 RIANO under the applicable provisions of the Labor Code via PAGA Labor Code §
3 2698, *et seq.* including an award of attorneys' fees, costs, interest, liquidated
4 damages, damages, penalties and waiting time penalties according to proof to the
5 extent permitted by law;

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

10 16. That Defendants, and each of them, be required to issue to Plaintiffs
11 OLSHANSKY and TORRACA-RIANO and/or the Class and/or Represented
12 Employees accurate wage and earning statements;

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

14 18. For special and general damages;

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

19 20. For any other relief the Court may deem just, proper and equitable in the
20 circumstances.

21 Dated: December 27, 2018

Law Offices of
Thomas D. Rutledge

By: /s/Thomas D. Rutledge
/s/Thomas D. Rutledge
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

27 Plaintiffs hereby demand a jury trial of this matter.

28

1 Dated: December 27, 2018

Law Offices of
Thomas D. Rutledge

2
3 By: /s/Thomas D. Rutledge
4 Thomas D. Rutledge (SBN 200497)
5 Attorneys for Plaintiffs
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Exhibit 1

Notification and Authorization to Conduct Employment Background Investigation

I hereby authorize ATC Healthcare Staffing and [redacted] choice of reporting company to ascertain information regarding my background to determine any and all information of concern to my record, whether same is of record or not, and I release employers and persons named in my application from all liability for any damages on account of his/her furnishing said information. I understand that this form indicates that a background search will be conducted and that this is my notification of that intent. I understand that the purpose of this background investigation is to determine my suitability for employment and may elicit information on my character, general reputation, personal characteristics and mode of living. Additionally, you are hereby authorized to make any investigation of my personal history, educational background, military record, motor vehicle records, criminal records, and credit history through an investigative or credit agency or bureau of your choice. I authorize the release of this information by the appropriate agencies to the investigating service. I understand that my consent will apply throughout my employment, unless I revoke or cancel my consent by sending a signed letter or statement to the Company at any time, stating that I revoke my consent and no longer allow the Company to obtain consumer or investigative consumer reports about me.

PLEASE PRINT CLEARLY

FULL NAME: Michael Olshansky

OTHER NAMES USED/MAIDEN NAME/DATES:

CURRENT ADDRESS: Redacted PHONE: Redacted

LIST ALL ADDRESSES FOR PAST 7 YEARS: Dates: Dates: Dates:

EMAIL ADDRESS: Redacted

SOCIAL SECURITY # REDACTED DATE OF BIRTH: REDACTED

DRIVER'S LICENSE # Redacted STATE ISSUED: PA

*** MAY WE CONTACT YOUR CURRENT EMPLOYER? YES [checked] NO []

*** HAVE YOU EVER BEEN CONVICTED OF A CRIME? YES [] NO [checked]

If yes, please explain:

Notice to California Applicants - You may omit minor traffic offenses, any convictions which have been sealed, expunged or statutorily eradicated, convictions more than two years old for the following marijuana related offenses: HS11357b&c, HS11360c, HS11364, HS11365, HS11550, and misdemeanors for which probation was completed and the case was judicially dismissed.

Notice to Massachusetts Applicants: You may omit a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, or any conviction of a misdemeanor where the date of such conviction or the completion of any period of incarceration resulting there from, whichever date is later, occurred five or more years prior to the date of this application for employment, unless you have been convicted of any offense within five years immediately preceding the date of this application for employment.

Note: No applicant will be denied employment solely on the grounds of conviction of a crime. The nature of the offense, the date of the offense, the surrounding circumstances and the relevance of the offense to the position will be considered.

SIGNATURE: [redacted] DATE: Nov 18, 2018

California Applicants: Under Section 1786.22 of the California Civil Code, you have the right to request from Justifacts (5250 Logan Ferry Rd, Murrys ville PA 15626 - 800-356-6885, www.justifacts.com), upon proper identification, the nature and substance of all information in its files on you, including the sources of information, and the recipients of any reports on you to whom Justifacts has previously furnished within the three-year period preceding your request. Files maintained on a consumer shall be made available for the consumer's visual inspection, as follows: (1) In-person, if he appears in person and furnishes proper identification. A copy of his file shall also be available to the consumer for a fee not to exceed the actual costs of duplication services provided. (2) By certified mail, if he makes a written request, with proper identification, for copies to be sent to a specified addressee. (3) A summary of all information contained in files on a consumer and required to be provided by Section 1786.10 shall be provided by telephone, if the consumer has made a written request, with proper identification for telephone disclosure, and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

California, Minnesota & Oklahoma Applicants Only: Please check this box if you would like a copy of the background check mailed to you. Minnesota and Oklahoma applicants will receive a copy direct from Justifacts or its designee. California applicants may receive a copy from either the prospective employer or Justifacts.

NOTICE: Under federal law, you have the right to request disclosure of the nature and scope of our investigation by providing us with a written request within 60 days of our background investigation.

Subscriber certifies that consumer credit information, consumer reports, as defined by the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq. ("FCRA"), will be ordered only when intended to be used as a factor in establishing a consumer's eligibility for employment and that consumer credit information will be used for no other purposes. It is recognized and understood that the FCRA provides that anyone "who knowingly and willfully obtains information on a consumer from a consumer reporting agency" (such as Justifacts) "under false pretenses shall be fined not more than \$2,500 or imprisoned not more than two years or both."

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6 Attorneys for Defendants
ATC Healthcare, Inc., ATC Healthcare Services,
7 LLC (erroneously sued as ATC Healthcare
Services, Inc. and ATC Healthcare Staffing), and
8 ATC West Staffing, Inc.

9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 TONI TORRACA-RIANO and MICHAEL
14 OLSHANSKY, individually, on behalf of
themselves and others similarly situated,

15 Plaintiffs,

16 v.

17 ATC HEALTHCARE SERVICES, INC., a
Georgia corporation; ATC
18 HEALTHCARE, INC., a Delaware
corporation; ATC HEALTHCARE
19 SERVICES, LLC, a Georgia limited
liability company; ATC HEALTHCARE
20 STAFFING, an unknown entity; ATC
WEST STAFFING, INC., a California
21 corporation; and DOES 1 through 50
inclusive,

22 Defendants.
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Case No. **'19CV0295 L BLM**

MASTER PROOF OF SERVICE

[San Diego County Superior Court Case
No. 37-2018-000653377-CU-OE-CTL]

Trial Date: None Set
Complaint Filed: December 27, 2018

MASTER PROOF OF SERVICE

1
2 **STATE OF CALIFORNIA**)
3 **COUNTY OF LOS ANGELES**) **SS.**

4 I am employed in the County of Los Angeles, State of California. I am over the
5 age of 18 and not a party to the within action; my business address is: 2029 Century Park
6 East, Suite 3500, Los Angeles, California 90067.

7 On February 8, 2019, I served the within document(s):

8 **SEE ATTACHED LIST OF DOCUMENTS SERVED**

9 **(BY MAIL)** The envelope was mailed with postage thereon fully prepaid. As
10 follows: I am "readily familiar" with the firm's practice of collection and
11 processing correspondence for mailing. Under that practice it would be
12 deposited with U.S. postal service on that same day with postage thereon fully
13 prepaid at Los Angeles, California in the ordinary course of business. I am
14 aware that on motion of the party served, service is presumed invalid if postal
15 cancellation date or postage meter date is more than one day after date of deposit
16 for mailing in affidavit.

17 **(BY HAND DELIVERY)** I delivered the within documents to Nationwide
18 Legal, Inc. for delivery to the person(s) at the address(es) set forth below with
19 instructions that such envelope be delivered personally on _____, 2019.

20 **(BY OVERNIGHT MAIL)** I am readily familiar with the firm's practice of
21 collection and processing correspondence for mailing with GSO/FedEx. Under
22 that practice it would be deposited with GSO/FedEx on that same day thereon
23 fully prepaid at Los Angeles, California in the ordinary course of business. The
24 envelope was sealed and placed for collection and mailing on that date following
25 ordinary business practices.


26 **Electronically by using the Court's CM/ECF System**

27 Thomas D. Rutledge
28 Attorney at Law
500 West Harbor Drive, Suite 1113
San Diego, CA 92101
Telephone: (619) 886-7224
Facsimile: (619) 259-5455

*[Attorneys for Plaintiffs Toni Torracar-
Riano and Michael Olshansky, et al.]*

I declare that I am employed in the office of a member of the bar of this court at
whose direction the service was made.

Executed on February 8, 2019, at Los Angeles, California.


JAMES AGUILERA

LIST OF DOCUMENTS SERVED

1. **CIVIL COVER SHEET**
2. **DEFENDANTS' NOTICE OF REMOVAL OF CIVIL ACTION TO THE UNITED STATES DISTRICT COURT**
3. **NOTICE OF PARTY WITH FINANCIAL INTEREST [Southern District Civil Rule 40.2]**
4. **DEFENDANTS' RULE 7.1 CORPORATE DISCLOSURE STATEMENT**
5. **DECLARATION OF MASON R. WINTERS IN SUPPORT OF DEFENDANTS' NOTICE OF REMOVAL**
6. **MASTER PROOF OF SERVICE**

CIVIL COVER SHEET

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

Toni Torraca-Riano and Michael Olshanksy

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Thomas D. Rutledge (SBN 200497) 500 West Harbor Drive, Suite 1113, San Diego, CA 92101 Telephone: (619) 886-7224

DEFENDANTS

ATC Healthcare, Inc., ATC Healthcare Servs, LLC (erroneously sued as ATC Healthcare Servs, Inc., and ATC Healthcare Staffing), et al.

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

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

Attorneys (If Known)

SEYFARTH SHAW LLP Laura Wilson Shelby (SBN 151870); Mason R. Winters (273639) 2029 Century Park East, Suite 3500, Los Angeles, CA 90067 Telephone: (310) 277-7200; lshelby@seyfarth.com, mwinters@seyfarth.com

19CV0295 L BLM

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

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
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)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FOREFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and codes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. 1681

Brief description of cause:

Fair Credit Reporting Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

02/08/2019 /s/ Mason R. Winters

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [ATC Healthcare Services Hit with FCRA, Wage and Hour Class Action in California](#)
