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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9

10 ANDREW QUIRUZ, on behalf of himself, all
others similarly situated, and as a representative
11 of other aggrieved employees,

12 *Plaintiff,*

13 vs.

14 SPECIALTY COMMODITIES, INC, a North
Dakota corporation; ARCHER-DANIELS-
15 MIDLAND COMPANY, a business entity form
unknown; and DOES 1-100, inclusive,

16 *Defendants.*
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Case No.: 5:17-cv-03300-BLF

SECOND AMENDED COMPLAINT FOR:

1. Violation of 15 U.S.C. §§ 1681b(b)(2)(A) (Fair Credit Reporting Act);
2. Violation of 15 U.S.C. §§ 1681d(a)(1) and 1681g(c) (Fair Credit Reporting Act);
3. Violation of California Civil Code § 1786 *et seq.* (Investigative Consumer Reporting Agencies Act)
4. Violation of California Civil Code § 1785 *et seq.* (Consumer Credit Reporting Agencies Act)
5. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512, and 1198);
6. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7, and 1198);
7. Failure to Pay Hourly Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1, and 1198);
8. Failure to Pay Employees for All Hours Worked (29 U.S.C. § 201, *et seq.*)
9. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226(a));
10. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
11. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*);
12. Civil Penalties (Lab. Code §§ 2698, *et seq.*)

JURY TRIAL DEMANDED

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1 Plaintiff, Andrew Quiruz (hereafter “Plaintiff”), on behalf of himself, all others similarly situated,
2 and the general public, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class and representative action against defendant SPECIALTY
5 COMMODITIES, INC., a North Dakota corporation (“Specialty Commodities”), ARCHER DANIEL
6 MIDLAND COMPANY., a business entity form unknown (“ADM”) and DOES 1-100, inclusively
7 (collectively, “Defendants”) for alleged violations of the Fair Credit Reporting Act (“FCRA”) and similar
8 California laws.

9 2. Plaintiff alleges that Defendants routinely acquire consumer, investigative consumer and/or
10 consumer credit reports (referred to collectively as “credit and background reports”) to conduct
11 background checks on Plaintiff and other prospective, current and former employees and use information
12 from credit and background reports in connection with their hiring process without complying with the
13 law. Plaintiff, individually and on behalf of all others similarly situated current, former, and prospective
14 employees, seeks compensatory and punitive damages due to Defendants’ systematic and willful
15 violations of the FCRA, 15 U.S.C. §§ 1681 *et seq.*, the California Investigative Consumer Reporting
16 Agencies Act (“ICRAA”) (Cal. Civ. Code § 1786, *et seq.*), and the California Consumer Credit Reporting
17 Agencies Act (“CCRAA”) (Cal. Civ. Code § 1785, *et seq.*).

18 3. Plaintiff brings this class action against defendant Specialty Commodities, Inc., a North
19 Dakota corporation (“Specialty Commodities”); Archer Daniels Midland Company, a business entity form
20 unknown (“ADM”); and DOES 1 through 50 inclusive (hereafter “Defendants”) for alleged violations of
21 the Labor and Business and Professions Codes. As set forth below, Plaintiff alleges that Defendants failed
22 to provide him and all other similarly situated individuals with meal periods, failed to provide them with
23 rest periods, failed to pay premium wages for unprovided meal and/or rest periods, failed to pay them
24 overtime and double time wages for all overtime and double time hours worked, and failed to provide
25 them with accurate written wage statements. Based on these alleged Labor Code violations, Plaintiff now
26 brings this class action to recover unpaid wages, restitution, and related relief on behalf of himself, and all
27 others similarly situated, and the general public.
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1 **A. JURISDICTION AND VENUE**

2 4. This Court has subject matter jurisdiction to hear this case. Federal questions are raised
3 herein, including allegations of violations of the Fair Credit Reporting Act and the Fair Labor Standards
4 Act.

5 5. At the time of filing, Plaintiff was informed and believed that the individual claims of
6 the below-defined classes are under the \$75,000.00 threshold for Federal diversity jurisdiction and the
7 aggregate claim is under the \$5,000,000.00 threshold for Federal jurisdiction, under the Class Action
8 Fairness Act of 2005.

9 6. Venue was proper in Santa Clara County pursuant to California Code of Civil Procedure
10 §§ 395(a) and 395.5 in that liability arose in San Joaquin County because at least some of the transactions
11 that are the subject matter of the original Complaint occurred therein and/or each defendant is found,
12 maintains offices, transacts business, and/or has an agent therein.

13 **II. PARTIES**

14 **A. Plaintiff**

15 7. Plaintiff worked for Defendants in an hourly position as a non-exempt employee from
16 approximately November 2013 to present.

17 **B. Defendants**

18 8. Defendant Specialty Commodities, Inc. is a North Dakota corporation authorized to do
19 business in California.

20 9. Defendant Archer Daniels Midland Company, is a business entity form unknown,
21 authorized to do business in California.

22 10. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation
23 in the conduct alleged herein, of the Defendants sued as Does 1-50, inclusive, but is informed and believes
24 that said Defendants are legally responsible for the conduct alleged herein and therefore sues these
25 Defendants by such fictitious names. Plaintiff will amend this complaint to allege both the true names and
26 capacities of the Doe Defendants when ascertained.

27 11. Plaintiff is informed and believes that each Defendant acted in all respects pertinent to this
28 action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all

1 respects pertinent hereto, and that the acts of each Defendant are legally attributable to each of the other
2 Defendants.

3 **III. CLASS ALLEGATIONS**

4 12. This action has been brought and may be maintained as a class action pursuant to Fed. R.
5 Civ. P. 23 because there is a well-defined community of interest among the persons who comprise the
6 readily ascertainable classes defined below and because Plaintiff is unaware of any difficulties likely to be
7 encountered in managing this case as a class action.

8 13. **Relevant Time Period:** The relevant time period is defined as the time period beginning
9 four years prior to the filing of this action until judgment is entered.

10 14. The class and subclass members are defined as follows:

11 **FCRA Class:** All of Defendants' current, former and prospective applicants for
12 employment in the United States who applied for a job with Defendants at any time
13 during the period beginning five years prior to the filing of this action and ending on the
14 date that final judgment is entered in this action.

14 **ICRAA Class:** All of Defendant's current, former, and prospective applicants for
15 employment in California, at any time during the period beginning five years prior to
16 the filing of this action and ending on the date that final judgment is entered into this
17 action.

16 **CCRAA Class:** All of Defendant's current, former, and prospective applicants for
17 employment in California, at any time during the period beginning seven years prior to
18 the filing of this action and ending on the date that final judgment is entered in this
19 action.

19 **Specialty Commodities/ADM Class:** All persons employed by Specialty
20 Commodities, Inc. and/or Archer Daniels Midland Company in hourly or non-exempt
21 positions in California during the **Relevant Time Period**.

21 **Meal Break Sub-Class:** All Specialty Commodities/ADM Class members who
22 worked a shift in excess of five hours during the **Relevant Time Period**.

22 **Rest Break Sub-Class:** All Specialty Commodities/ADM Class members who
23 worked a shift of at least three and one-half (3.5) hours during the **Relevant**
24 **Time Period**.

24 **Waiting Time Penalties Sub-Class:** All Specialty Commodities/ADM Class
25 members who separated from their employment with Defendants during the
26 period beginning three years before the filing of this action and ending when
27 final judgment is entered.

27 **Wage Statement Penalties Class:** All persons employed by Defendants in California
28 during the period beginning one year before the filing of this action and ending when
29 final judgment is entered.

1 **UCL Class:** All **Specialty Commodities/ADM Class** members employed by
2 Defendants in California during the **Relevant Time Period**.

3 **FSLA Class:** All members of the Specialty Commodities/ADM Class members
4 employed by Defendants in California during the period beginning three years before
5 the filing of this action and ending when final judgment is entered.

6 15. **Reservation of Rights:** Plaintiff reserves the right to amend or modify the class definitions
7 with greater specificity, by further division into subclasses, and/or by limitation to particular issues.

8 16. **Numerosity:** The class members are so numerous that the individual joinder of each
9 individual class member is impractical. While Plaintiff does not currently know the exact number of class
10 members, Plaintiff is informed and believes that the actual number exceeds the minimum required for
11 numerosity under California law.

12 17. **Commonality and Predominance:** Common questions of law and fact exist as to all class
13 members and predominate over any questions which affect only individual class members. These
14 questions include, but are not limited to:

- 15 (a) Have Defendants maintained a policy or practice of failing to provide employees
16 with their meal breaks?
- 17 (b) Have Defendants maintained a policy or practice of failing to provide employees
18 with their rest breaks?
- 19 (c) Have Defendants failed to pay additional wages to class members when they have
20 not been provided with required meal and/or rest periods?
- 21 (d) Have Defendants failed pay class members overtime and double time wages for all
22 overtime and double time hours worked?
- 23 (e) Have Defendant maintained a policy or practice of not paying overtime and double
24 time wages for all overtime and double time hours worked?
- 25 (f) Have Defendants failed to provide class members with accurate written wage
26 statements as a result of providing them with written wage statements with
27 inaccurate entries for, among other things, amounts of gross and net wages, and
28 time worked?
- (g) Are Defendants liable to class members for waiting time penalties under Labor

1 Code § 203?

- 2 (h) Are class members entitled to restitution of money or property that Defendants
3 may have acquired from them through unfair competition?
- 4 (i) Wherein Defendants willfully failed to provide the class with stand-alone written
5 disclosures before obtaining a credit or background report in compliance with the
6 statutory mandates?
- 7 (j) Whether Defendants willfully failed to identify the name, address, telephone
8 number, and/or website of the investigative consumer reporting agency conducting
9 the investigation?
- 10 (k) Whether Defendants willfully failed to identify the source of the credit report to be
11 performed?
- 12 (l) Wherein Defendants willfully failed to comply with the FCRA, ICRAA and/or the
13 CRAA?

14 18. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff is
15 informed and believes and thereon alleges that Defendants have a policy or practice of failing to comply
16 with the Labor Code and the Business and Professions Code as alleged herein.

17 19. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he
18 has no interests that are adverse to, or otherwise conflict with, the interests of absent class members and is
19 dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly and adequately
20 represent and protect the interests of the other class members.

21 20. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they
22 have no known conflicts of interest with Plaintiff or absent class members, are experienced in wage and
23 hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff
24 and absent class members.

25 21. **Superiority:** A class action is vastly superior to other available means for fair and efficient
26 adjudication of the class members' claims and would be beneficial to the parties and the Court. Class
27 action treatment will allow a number of similarly situated persons to simultaneously and efficiently
28 prosecute their common claims in a single forum without the unnecessary duplication of effort and

1 expense that numerous individual actions would entail. In addition, the monetary amounts due to many
2 individual class members are likely to be relatively small and would thus make it difficult, if not
3 impossible, for individual class members to both seek and obtain relief. Moreover, a class action will
4 serve an important public interest by permitting class members to effectively pursue the recovery of
5 moneys owed to them. Further, a class action will prevent the potential for inconsistent or contradictory
6 judgments inherent in individual litigation.

7 **IV. GENERAL ALLEGATIONS**

8 22. Plaintiff was hired and is employed by Defendants in an hourly non-exempt position as a
9 warehouse associate. As a warehouse associate, Plaintiff's duties included but were not limited to pulling
10 orders, unloading and loading products, and dealing with vendors.

11 23. Plaintiff was, within the Relevant Time Period, customarily scheduled to work from 5:00
12 am to 2:00 or 3:00 pm, five days a week. Plaintiff did not ever work a shift that was less than six
13 continuous hours.

14 24. Moreover, Plaintiff was, within the Relevant Time Period, required to work past his
15 scheduled end time by one or two hours, approximately two or three times per week.

16 25. Thus, Plaintiff typically worked in excess of forty hours per week.

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF THE FCRA**

19 **(15 U.S.C. §§ 1681b(b)(2)(A))**

20 **(By Plaintiff and the FCRA Class against all Defendants)**

21 26. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

22 27. Defendants are "persons" as defined by Section 1681a(b) of the FCRA.

23 28. Plaintiff and class members are "consumers" within the meaning Section 1681a(c) of the
24 FCRA, because they are "individuals."

25 29. Section 1681a(d)(1) of the FCRA defines "consumer report" as

26 any oral, or other communication of any information by a consumer reporting agency
27 bearing on a consumer's credit worthiness, credit standing, credit capacity, character,
28 general reputation, personal characteristics, or mode of living which is used or expected
to be used or collected in whole or in part for the purpose of serving as a factor in
establishing the consumer's eligibility" for employment purposes.

1 Thus a credit and background report qualifies as a consumer report.

2 Section 1681a(e) of the FCRA defines “investigative consumer report” as:

3 a consumer report or portion thereof in which information on a consumer's character,
4 general reputation, personal characteristics, or mode of living is obtained through
5 personal interviews with neighbors, friends, or associates of the consumer reported on
or with whom he is acquainted or who may have knowledge concerning any such items
of information.

6 Thus a credit and background report qualifies as an investigative consumer report.

7 30. Section 1681b(b) of the FCRA provides, in relevant part:

8 Conditions for furnishing and using consumer reports for employment purposes

9 (2) Disclosure to consumer

10 (A) In general

11 Except as provided in subparagraph (B), a person may not procure a consumer
12 report, or cause a consumer report to be procured, for employment purposes
with respect to any consumer, unless—

- 13 i. **a clear and conspicuous** disclosure has been made in writing to the
14 consumer at any time before the report is procured or caused to be
15 procured, in a document that **consists solely of the disclosure**, that a
consumer report may be obtained for employment purposes; and
- 16 ii. the consumer has authorized in writing (which authorization may be
17 made on the document referred to in clause (i)) the procurement of the
report by that person. (Emphasis Added).

18 31. As described above, Plaintiff alleges, on information and belief, that in evaluating her and
19 other class members for employment, Defendants procured or caused to be prepared credit and
20 background reports (i.e., a consumer report and/or investigative consumer report, as defined by 15 U.S.C.
21 § 1681a(d)(1)(B) and 15 U.S.C. § 1681a(e)).

22 32. When Plaintiff applied for employment with Defendants, Defendants required her to fill
23 out and sign a two page Document entitled “Employment Application”

24 33. In pertinent part the Employment Application states:

25 ***Applicant in All States Other Than California, Massachusetts and the City of***
26 ***Philadelphia.*** Have you been convicted of a felony offense within the last seven years
27 that hasn't been sealed or expunged? If Yes, state the nature of the offense and the date
the event took place. (Answering yes will not necessarily be a bar to employment and
will be considered in relationship to the position for which you are applying.)

28 ***California Applicants Only.*** In the last seven years have you ever been convicted of a

1 felony that hasn't been sealed or expunged OTHER THAN (1) a marijuana-related
2 conviction that occurred more than two years ago; and (2) an offense for which you
3 were referred to, and participated in, any pretrial or post trial diversion program? If
4 Yes, state the nature of the offense and the date the event took place. (Answering yes
5 will not necessarily be a bar to employment and will be considered in relationship to the
6 position for which you are applying.)

7 34. The purported disclosures are embedded with extraneous information including but not
8 limited to information pertaining to Pennsylvania applicants and Massachusetts applicants.

9 35. Because the purported disclosures are embedded with extraneous information, and are not
10 clear and unambiguous disclosures in stand-alone documents, they do not meet the requirements under the
11 law.

12 36. Under the FCRA, it is unlawful to procure or caused to be procured, a consumer report or
13 investigative consumer report for employment purposes unless the disclosure is made in a document that
14 consists solely of the disclosure and the consumer has authorized, in writing, the procurement of the report.
15 15 U.S.C. § 1681b(b)(2)(A)(i)-(ii). The inclusion of a release as well as other extraneous information,
16 therefore, violates § 1681b(b)(2)(A) of the FCRA.

17 37. Although the disclosure and the authorization may be combined in a single document, the
18 Federal Trade Commission ("FTC") has warned that the form should not include any extraneous
19 information or be part of another document. For example, in response to an inquiry as to whether the
20 disclosure may be set forth within an application for employment or whether it must be included in a
21 separate document, the FTC stated:

22 The disclosure may not be part of an employment application because the language [of
23 15 U.S.C. § 1681b(b)(2)(A) is] intended to ensure that it appears conspicuously in a
24 document not encumbered by any other information. The reason for requiring that the
25 disclosure be in a stand-alone document is to prevent consumers from being distracted
26 by other information side-by-side within the disclosure.

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

[W]e note that your draft disclosure includes a waiver by the consumer of his or her

1 rights under the FCRA. The inclusion of such a waiver in a disclosure form will violate
2 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.

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4 39. In a report dated July 2011, the FTC reiterated that: “the notice [under 15 U.S.C §
5 1681b(b)(2)(A)] may not include extraneous or contradictory information, such as a request for a
6 consumer’s waiver of his or her rights under the FCRA.”

7 40. By including extraneous information, Defendants willfully disregarded the FTC’s
8 regulatory guidance and violated Section 1681b(b)(2)(A) of the FCRA. Additionally, the inclusion of the
9 extraneous provisions causes the disclosure to fail to be “clear and conspicuous” and “clear[] and
10 accurate[],” and thus violates §§ 1681b(b)(2)(A) and 1681d(a).

11 41. Defendants’ conduct in violation of Section 1681b(b)(2)(A) of the FCRA was and is
12 willful. Defendants acted in deliberate or reckless disregard of their obligations and the rights of applicants
13 and employees, including Plaintiff and class members. Defendants’ willful conduct is reflected by, among
14 other things, the following facts:

- 15 (a) Defendants are a large corporation with access to legal advice;
- 16 (b) Defendants required a purported authorization to perform credit and background
17 checks in the process of employing the class members which, although defective,
18 evidences Defendants’ awareness of and willful failure to follow the governing
19 laws concerning such authorizations;
- 20 (c) The plain language of the statute unambiguously indicates that inclusion of a
21 liability release and other extraneous information in a disclosure form violates the
22 disclosure and authorization requirements; and
- 23 (d) The FTC’s express statements, pre-dating Defendants’ conduct, which state that it
24 is a violation of Section 1681b(b)(2)(A) of the FCRA to include a liability waiver
25 in the FCRA disclosure form.

26 42. Based upon the facts likely to have evidentiary support after a reasonable opportunity for
27 further investigation and discovery, Plaintiff alleges that Defendants have a policy and practice of
28 procuring investigative consumer reports or causing investigative consumer reports to be procured for

1 applicants and employees without informing such applicants of their right to request a summary of their
2 rights under the FCRA at the same time as the disclosure explaining that an investigative consumer report
3 may be made. Pursuant to that policy and practice, Defendants procured investigative consumer reports or
4 caused investigative consumer reports to be procured for Plaintiff and class members, as described above,
5 without informing class members of their rights to request a written summary of their rights under the
6 FCRA.

7 43. Accordingly, Defendants willfully violated and continue to violate the FCRA including,
8 but not limited to, §§ 1681b(b)(2)(A) and 1681d(a). Defendants' willful conduct is reflected by, among
9 other things, the facts set forth above.

10 44. As a result of Defendants' illegal procurement of credit and background reports by way of
11 their inadequate disclosures, as set forth above, Plaintiff and class members have been injured including,
12 but not limited to, having their privacy and statutory rights invaded in violation of the FCRA.

13 45. Plaintiff, on behalf of herself and all class members, seeks all available remedies pursuant
14 to 15 U.S.C. § 1681n, including statutory damages and/or actual damages, punitive damages, injunctive
15 and equitable relief and attorneys' fees and costs.

16 46. In the alternative to Plaintiff's allegation that these violations were willful, Plaintiff alleges
17 that the violations were negligent and seeks the appropriate remedy, if any, under 15 U.S.C. § 1681o,
18 including actual damages and attorneys' fees and costs.

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO GIVE PROPER SUMMARY OF RIGHTS IN VIOLATION OF FCRA**

21 **(15 U.S.C. § 1681d(a)(1) and 1681g(c))**

22 **(By Plaintiff and the FCRA Class against all Defendants)**

23 47. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

24 48. Section 1681d(a)(1) provides:

25 Disclosure of fact of preparation

26 A person may not procure or cause to be prepared an investigative consumer report on
27 any consumer unless—

28 (1) it is *clearly and accurately disclosed* to the consumer that an

1 investigative consumer report including information as to his character, general
2 reputation, personal characteristics, and mode of living, whichever are
3 applicable, may be made, and such disclosure;

4 (2) is *made in a writing mailed, or otherwise delivered*, to the

5 consumer, not later than three days after the date on which the report was first
6 requested, and

7 (3) *includes a statement informing the consumer of his right to request the*
8 *additional disclosures* provided for under subsection (b) of this

9 section *and the written summary of the rights of the consumer prepared*
10 *pursuant to section 1681g(c)* of this title; (Emphasis Added.)

11 (4) Subsection (b) of Section 1681d(a)(1) provides:

12 Any person who procures or causes to be prepared an investigative consumer
13 report on any consumer shall, upon written request made by the consumer
14 within a reasonable period of time after the receipt by him of the disclosure
15 required by subsection (a)(1) of this section (a)(1) of this section, make a
16 *complete and accurate disclosure of the nature and scope of the investigation*
17 *requested*; (Emphasis Added). This disclosure shall be made in a writing
18 mailed, or otherwise delivered, to the consumer not later than five days after the
19 date on which the request for such disclosure was received from the consumer
20 or such report was first requested, whichever is the later.

21 49. Defendant did not comply with Section 1681d(a)(1).

22 50. Section 1681g(c) further provides summary of rights to obtain and dispute information in
23 consumer reports and to obtain credit scores as:

24 (A) Commission summary of rights required

25 The Commission shall prepare a *model summary of the rights* of consumers under this
26 subchapter.

27 (B) Content of summary

28 The summary of rights prepared under subparagraph (A) shall include a description
of—

1. the *right of a consumer to obtain a copy of a consumer report* under
subsection (a) of this section from each consumer reporting agency;
2. the *frequency and circumstances under which a consumer is entitled*
to receive a consumer report without charge under section 1681j of this
title;
3. the right of a consumer to *dispute information* in the file of the
consumer under section 1681i of this title;
4. *the right of a consumer to obtain a credit score* from a consumer

1 reporting agency, and a description of how to obtain a credit score;

2 5. the ***method by which a consumer can contact, and obtain a consumer***
3 ***report from, a consumer reporting agency without charge***, as provided
4 in the regulations of the Bureau prescribed under section 211(c) of the
Fair and Accurate Credit Transactions Act of 2003; and

5 6. the method by which a consumer can contact, and obtain a consumer
6 report from, a consumer reporting agency described in section 1681a(w)
of this title, as provided in the regulations of the Bureau prescribed
under section 1681j(a)(1)(C) of this title; (Emphasis Added).

7 51. Defendant did not comply with 1681g(c)(1)(B)(ii) because the summary of rights did not
8 include the right of a consumer to obtain a copy of the consumer report under section 1681j of this title.

9 52. Defendant did not comply with 1681g(c)(1)(B)(ii) because the summary of rights did not
10 include the frequency and circumstances under which a consumer is entitled to receive a consumer report
11 without charge under section 1681j of this title.

12 53. Defendant did not comply with 1681g(c)(1)(B)(iii) because the summary of rights did not
13 include the right of the consumer to dispute information in the file of the consumer under section 1681i of
14 this title.

15 54. Defendant did not comply with 1681g(c)(1)(B)(iv) because the summary of rights did not
16 include the right of the consumer to obtain a credit score from a consumer reporting agency, and a
17 description of how to obtain a credit score.

18 55. Defendant did not comply with 1681g(c)(1)(B)(v) because the summary of rights did not
19 include the method by which a consumer can contact, and obtain a consumer report from, a consumer
20 reporting agency without charge, as provided in the regulations of the Bureau prescribed under section
21 211(c) of the Fair and Accurate Credit Transactions Act of 2003

22 56. Defendant did not comply with 1681g(c)(1)(B)(vi) because the summary of rights did not
23 include the method by which a consumer can contact, and obtain a consumer report from, a consumer
24 reporting agency described in section 1681a(w) of this title, as provided in the regulations of the Bureau
25 prescribed under section 1681j(a)(1)(C) of this title.

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THIRD CAUSE OF ACTION

FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF ICRAA

(Cal. Civ. Code § 1786 et seq.)

(By Plaintiff and the ICRAA Class against all Defendants)

57. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

58. Defendants are “persons” as defined by Section 1786.2(a) of the Investigative Consumer Reporting Agencies Act (“ICRAA”).

59. Plaintiff and **ICRAA Class** members are “consumers” within the meaning Section 1786.2(b) of the ICRAA, because they are “individuals.”

60. Section 1786.2(c) of the ICRAA defines “investigative consumer report” as:
a consumer report in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through any means.

61. Thus a background checks qualifies as an investigative consumer report under the ICRAA

62. Section 1786.16(a)(2) of the ICRAA provides, in relevant part:

If, at any time, an investigative consumer report is sought for employment purposes...the person seeking the investigative consumer report may procure the report, or cause the report to be made, only if all of the following apply:

(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 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

1 information will be sent outside the United States or its territories and
2 information that complies with subdivision (d) of Section 1786.20. This clause
shall become operative on January 1, 2012.

3 (C) The consumer has authorized in writing the procurement of the report.
4 (Emphasis added.)

5 63. As described above, Plaintiff alleges that in evaluating her and other class members for
6 employment, Defendants procured or caused to be prepared investigative consumer report (e.g.
7 background checks), as defined by Cal. Civ. Code § 1786.2(c).

8 64. When Plaintiff applied for employment with Defendants, Defendants required her to fill
9 out and sign a Document entitled “Employment Application” (“Application”).

10 65. In pertinent part the two page Application states:

11 ***Applicant in All States Other Than California, Massachusetts and the City of***
12 ***Philadelphia.*** Have you been convicted of a felony offense within the last seven years
13 that hasn’t been sealed or expunged? If Yes, state the nature of the offense and the date
the event took place. (Answering yes will not necessarily be a bar to employment and
will be considered in relationship to the position for which you are applying.)

14 ***California Applicants Only.*** In the last seven years have you ever been convicted of a
15 felony that hasn’t been sealed or expunged OTHER THAN (1) a marijuana-related
16 conviction that occurred more than two years ago; and (2) an offense for which you
17 were referred to, and participated in, any pretrial or post trial diversion program? If
Yes, state the nature of the offense and the date the event took place. (Answering yes
will not necessarily be a bar to employment and will be considered in relationship to the
position for which you are applying.)

18 66. The purported disclosures are embedded with extraneous information including but not
19 limited to information pertaining to Pennsylvania applicants and Massachusetts applicants.

20 67. Because the purported disclosures are embedded with extraneous information, and are not
21 clear and unambiguous disclosures in stand-alone documents, they do not meet the requirements under the
22 law.

23 68. Under the ICRAA, it is unlawful to procure or caused to be procured, a consumer report or
24 investigative consumer report for employment purposes unless the disclosure is made in a document that
25 consists solely of the disclosure and the consumer has authorized, in writing, the procurement of the report.
26 Cal. Civ. Code § 1786.16(a)(2)(B)-(C). The inclusion of a release as well as extraneous information,
27 therefore, violates § 1786.16(a)(2)(B) of the ICRAA.

28 69. The plain language of the statute clearly indicates that the inclusion of extraneous

1 information in a disclosure form violates the disclosure and authorization requirements of the ICRAA,
2 because such a form would not consist “solely” of the disclosure.

3 70. By including extraneous information, Defendants willfully violated § 1786.16(a)(2)(B) of
4 the ICRAA. Additionally, the inclusion of the extraneous provisions causes the disclosure to fail to be
5 “clear and conspicuous” and thus violates § 1786.16(a)(2)(B).

6 71. Based upon facts that are likely to have evidentiary support after a reasonable opportunity
7 for investigation and discovery, Plaintiff alleges that Defendants have a policy and practice of failing to
8 provide adequate written disclosures to applicants and employees, before procuring background checks or
9 causing background checks to be procured, as described above. Pursuant to that policy and practice,
10 Defendants procured background checks or caused background checks to be procured for Plaintiff and
11 class members without first providing a written disclosure in compliance with § 1786.16(a)(2)(B) of the
12 ICRAA, as described above.

13 72. Defendants’ conduct in violation of § 1786.16(a)(2)(B) of the ICRAA was and is willful
14 and/or grossly negligent. Defendants acted in deliberate or reckless disregard of their obligations and the
15 rights of applicants and employees, including Plaintiff and class members. Defendants’ willful conduct is
16 reflected by, among other things, the following facts:

- 17 (a) Defendants are large corporations with access to legal advice;
- 18 (b) Defendants required a purported authorization to perform credit and background
19 checks in the process of employing the class members which, although defective,
20 evidences Defendants’ awareness of and willful failure to follow the governing
21 laws concerning such authorizations; and
- 22 (c) The plain language of the statute unambiguously indicates that inclusion of a
23 liability release and other extraneous information in a disclosure form violates the
24 disclosure and authorization requirements, and that the disclosure form must
25 contain the name, address, phone number, and/or website address of the
26 investigative consumer reporting agency conducting the investigation.

27 73. As a result of Defendants’ illegal procurement of background reports by way of their
28 inadequate disclosures, as set forth above, Plaintiff and class members have been injured including, but not

1 limited to, having their privacy and statutory rights invaded in violation of the ICRAA.

2 74. Plaintiff, on behalf of herself and all class members, seeks all available remedies pursuant
3 to Cal. Civ. Code § 1786.50, including statutory damages and/or actual damages, punitive damages, and
4 attorneys' fees and costs.

5 75. In the alternative to Plaintiff's allegation that these violations were willful or grossly
6 negligent, Plaintiff alleges that the violations were negligent and seeks the appropriate remedy, if any,
7 under Cal. Civ. Code § 1786.50(a), including actual damages and attorneys' fees and costs.

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF CCRAA**

10 **(Cal. Civ. Code § 1785 et seq.)**

11 **(By Plaintiff and the CCRAA Class against all Defendants)**

12 76. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

13 77. Defendants are "persons" as defined by Section 1785.3(j) of the Consumer Credit
14 Reporting Agencies Act ("CCRAA").

15 78. Plaintiff and **CCRAA Class** members are "consumers" within the meaning Section
16 1785.3(b) of the CCRAA, because they are "natural individuals."

17 79. Section 1785.3(c) of the ICRAA defines "consumer credit report" as:

18 any written, oral, or other communication of any information by a consumer credit
19 reporting agency bearing on a consumer's credit worthiness, credit standing, or credit
20 capacity, which is used or is expected to be used, or collected in whole or in part, for the
purpose of serving as a factor in establishing the consumer's eligibility for: ... (2)
employment purposes...

21 Thus, a credit report qualifies as a consumer credit report under the CCRAA.

22 80. Section 1785.20.5(a) of the CCRAA provides, in relevant part:

23 Prior to requesting a consumer credit report for employment purposes, the user of the
24 report shall provide written notice to the person involved. The notice shall inform the
25 person that a report will be used, and *shall identify the specific basis under subdivision
(a) of Section 1024.5 of the Labor Code for use of the report. The notice shall also
inform the person of the source of the report...*

26 (Emphasis added.)

27 81. As described above, Plaintiff alleges that in evaluating her and other class members for
28 employment, Defendants procured or caused to be prepared consumer credit reports (e.g. credit reports), as

1 defined by Cal. Civ. Code § 1785.3(c).

2 82. When Plaintiff applied for employment with Defendants, Defendants required her to fill
3 out and sign a Document entitled “Employment Application” (“Application”).

4 83. In pertinent part the two page Application states:

5 ***Applicant in All States Other Than California, Massachusetts and the City of***
6 ***Philadelphia.*** Have you been convicted of a felony offense within the last seven years
7 that hasn’t been sealed or expunged? If Yes, state the nature of the offense and the date
the event took place. (Answering yes will not necessarily be a bar to employment and
will be considered in relationship to the position for which you are applying.)

8 ***California Applicants Only.*** In the last seven years have you ever been convicted of a
9 felony that hasn’t been sealed or expunged OTHER THAN (1) a marijuana-related
10 conviction that occurred more than two years ago; and (2) an offense for which you
11 were referred to, and participated in, any pretrial or post trial diversion program? If
Yes, state the nature of the offense and the date the event took place. (Answering yes
will not necessarily be a bar to employment and will be considered in relationship to the
position for which you are applying.)

12 84. The Authorization does not inform that person that a report will be used, does not identify
13 the specific basis under subdivision (a) of Section 1024.5 of the Labor Code for use of the credit report.
14 Nor does the Authorization identify the source of any credit report. Both of these omissions Authorization
15 clearly violate § 1785.20.5(a) of the CCRAA, as delineated above.

16 85. Based upon facts that are likely to have evidentiary support after a reasonable opportunity
17 for investigation and discovery, Plaintiff alleges that Defendants have a policy and practice of failing to
18 provide adequate written disclosures to applicants and employees, before procuring credit reports or
19 causing credit reports to be procured, as described above. Pursuant to that policy and practice, Defendants
20 procured credit reports or caused credit reports to be procured for Plaintiff and class members without first
21 providing a written notice in compliance with § 1785.20.5(a) of the CCRAA, as described above.

22 86. Defendants’ conduct in violation of § 1785.20.5(a) of the CCRAA was and is willful
23 and/or grossly negligent. Defendants acted in deliberate or reckless disregard of their obligations and the
24 rights of applicants and employees, including Plaintiff and class members. Defendants’ willful conduct is
25 reflected by, among other things, the following facts:

26 (a) Defendants are large corporations with access to legal advice;

27 (b) Defendants required a purported authorization to perform credit checks in the
28 process of employing the class members which, although defective, evidences

1 Defendants' awareness of and willful failure to follow the governing laws
2 concerning such authorizations; and

3 (c) The plain language of the statute unambiguously indicates that failure to include
4 the provisions identified above violates the CCRAA's notice requirements, and that
5 the notice must identify the specific basis under subdivision (a) of Section 1024.5
6 of the Labor Code for use of the credit report and must identify the source of any
7 credit report.

8 87. As a result of Defendants' illegal procurement of credit reports by way of their inadequate
9 notice, as set forth above, Plaintiff and class members have been injured including, but not limited to,
10 having their privacy and statutory rights invaded in violation of the CCRAA.

11 88. Plaintiff, on behalf of herself and all class members, seeks all available remedies pursuant
12 to Cal. Civ. Code § 1785.31, including statutory damages and/or actual damages, punitive damages,
13 injunctive relief, and attorneys' fees and costs.

14 89. In the alternative to Plaintiff's allegation that these violations were willful, Plaintiff alleges
15 that the violations were negligent and seeks the appropriate remedy, if any, under Cal. Civ. Code §
16 1785.31(a)(1), including but not limited to actual damages and attorneys' fees and costs.

17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE MEAL PERIODS**

19 **(Lab. Code §§ 204, 223, 226.7, 512, and 1198)**

20 **(Plaintiff and Meal Break Sub-Class)**

21 90. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

22 **91.** At all relevant times, Plaintiff and the **Meal Break Sub-Class** members have been non-
23 exempt employees of Defendants entitled to the full meal period protections of both the Labor Code and
24 the Wage Order.

25 92. Labor Code § 512 and Section 11 of the applicable Wage Order impose an affirmative
26 obligation on employers to provide non-exempt employees with uninterrupted, duty-free, meal periods of
27 at least thirty minutes for each work period of five hours, and to provide them with two uninterrupted,
28 duty-free, meal periods of at least thirty minutes for each work period of ten hours.

1 **Sub-Class** a meal period before the end of the fifth hour.

2 101. Plaintiff alleges that, at relevant times during the applicable limitations period,
3 Defendants maintained a policy or practice of failing to requiring Plaintiff and members of the **Meal**
4 **Break Sub-Class** to be released for a meal period by a supervisor and/or manager. Due to the amount of
5 work and pressure to get the job done, Plaintiff and **Meal Break Sub-Class** members were routinely
6 denied a meal period before the end of the fifth hour.

7 102. Plaintiff alleges that at all relevant times during the applicable limitations period and as
8 matters of policy and practice, Defendants have failed to pay premium wages to **Meal Break Sub-Class**
9 members when they worked five (5) hours without clocking out for any meal period.

10 *Unprovided Second Meal Periods*

11 103. Plaintiff alleges that at all relevant times during the applicable limitations period and as
12 matters of policy and practice, Plaintiff and **Meal Break Sub-Class** members worked shifts in excess of
13 ten (10) hours approximately two or three times per week.

14 104. Plaintiff alleges that at all relevant times during the applicable limitations period and as
15 matters of policy and practice, Defendants employed **Meal Break Sub-Class** members for shifts of ten
16 (10) or more hours without providing them with second meal periods and without paying them premium
17 wages, as required by Labor Code § 512 and the Wage Order.

18 105. At all relevant times, Defendants failed to pay Plaintiff and **Meal Break Sub-Class**
19 members additional premium wages, and/or were not paid premium wages at the employees' regular rates
20 of pay when required meal periods were not provided.

21 106. Pursuant to Labor Code §§ 204, 218.6, and 226.7, Plaintiff, on behalf of himself and the
22 **Meal Break Sub-Class** members, seeks to recover unpaid premium wages, interest thereon, and costs of
23 suit.

24 107. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial benefit
25 doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the **Meal Break Sub-Class**
26 members, seeks to recover reasonable attorneys' fees.

27
28

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(Lab. Code §§ 204, 223, 226.7, and 1198)

(Plaintiff and the Rest Break Sub-Class)

108. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

109. At all relevant times, Plaintiff and **Rest Break Sub-Class** members have been non-exempt employees of Defendants entitled to the full rest period protections of both the Labor Code and the Wage Order.

110. Section 12 of the Wage Order imposes an affirmative obligation on employers to permit and authorize employees to take required rest periods at a rate of no less than ten minutes of net rest time for each four hour work period, or major portion thereof, that must be in the middle of each work period insofar as is practicable.

111. Labor Code § 226.7 and Section 12 the Wage Order both prohibit employers from requiring employees to work during required rest periods and require employers to pay non-exempt employees an hour of premium wages at the employees regular rate of pay, on each workday that the employee is not provided with the required rest period(s).

112. Compensation for missed rest periods constitutes wages within the meaning of the California Labor Code § 200.

113. Labor Code § 1198 makes it unlawful to employ a person under conditions that violate the Wage Order.

114. Plaintiff alleges that at relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing members of the **Rest Break Sub-Class** members with net rest periods of a least ten (10) minutes for each four (4) hour work period, or major portion thereof, as required by the Wage Order.

115. At all relevant times, Defendants failed to pay Plaintiff and other **Rest Break Sub-Class** members additional premium wages when required rest periods were not provided.

116. Pursuant to Labor Code §§ 204, 218.6, and 226.7, Plaintiff, on behalf of himself, **Rest Break Sub-Class** members, seeks to recover unpaid premium wages, interest thereon, and costs of suit.

1 conditions that violate the Wage Order.

2 127. Labor Code § 204 requires employers to pay non-exempt employees their earned wages
3 for the normal work period at least twice during each calendar month on days the employer designates in
4 advance and to pay non-exempt employees their earned wages for labor performed in excess of the normal
5 work period by no later than the next regular payday.

6 128. Labor Code § 223 makes it unlawful for employers to pay their employees lower wages
7 than required by contract or statute while purporting to pay them legal wages.

8 129. Labor Code § 510 and Section 3 of the Wage Order require employers to pay non-exempt
9 employees overtime wages of no less than one and one-half times their respective regular rates of pay for
10 all hours worked in excess of eight hours in one workday, all hours worked in excess of forty hours in one
11 workweek, and/or for the first eight hours worked on the seventh consecutive day of one workweek.

12 130. Labor Code § 510 and Section 3 of the Wage Order also require employers to pay non-
13 exempt employees overtime wages of no less than two times their respective regular rates of pay for all
14 hours worked in excess of twelve hours in one workday and for all hours worked in excess of eight hours
15 on a seventh consecutive workday during a workweek.

16 131. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
17 centrally devised policies and practices to him and **Specialty Commodities/ADM Class** members with
18 respect to working conditions and compensation arrangements.

19 *Overtime and Double Time*

20 132. At relevant times during the applicable limitations period, Defendants maintained a policy
21 or practice of requiring Plaintiff and members of the **Specialty Commodities/ADM Class** to work shifts
22 in excess of ten (10) hours without paying them overtime and double time wages for all overtime and
23 double time hours worked.

24 133. As a result of Defendants' unlawful conduct, Plaintiff and the other class members have
25 suffered damages in an amount, subject to proof, to the extent they were not paid the full amount of wages
26 earned during each pay period during the applicable limitations period, including overtime wages.

27 134. Pursuant to Labor Code §§ 204, 218.6, 223, 510, 1194, and 1194.2 Plaintiff, on behalf of
28 himself and **Specialty Commodities/ADM Class** members, seeks to recover unpaid straight time and

1 overtime wages, interest thereon, and costs of suit.

2 135. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the

3 136. substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of
4 himself and **Specialty Commodities/ADM Class** members, seeks to recover reasonable attorneys' fees.

5 **EIGHTH CAUSE OF ACTION**

6 **FAILURE TO PAY EMPLOYEES FOR ALL HOURS WORKED**

7 **IN VIOLATION OF THE FEDERAL FAIR LABOR STANDARDS ACT**

8 **(29 U.S.C. § 201, *et seq.*)**

9 **(Plaintiff and FLSA Class)**

10 137. Plaintiff incorporates the preceding paragraphs of the Second Amended Complaint as if
11 fully alleged herein.

12 138. At all material times herein, Plaintiff and all similarly situated **FLSA Class** members who
13 submit Consents to become parties are or were employed by and engaged in providing services necessary
14 to day to day operations of California locations of Defendant, and have been entitled to the rights,
15 protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201 *et seq.*

16 139. The FLSA requires, among other things, that employers pay employees the minimum
17 wage for all time worked plus overtime. 29 U.S.C. §§ 206, 207, 215.

18 140. At all material times, the all hours worked, all overtime hours worked, and all double time
19 hours worked are necessarily and directly related to the principal activities of the employees' duties, and
20 thus constitutes compensable time under the FLSA and is subject to the FLSA's overtime requirements. 29
21 C.F.R. § 785.38.

22 141. At all material times herein, Defendants have violated the FLSA by failing to pay Plaintiff
23 and the **FLSA Class** for all hours worked, failing to pay them for all overtime hours worked, and failing to
24 pay them for all double time hours worked.

25 142. At all material times herein, Defendants have violated the FLSA by failing to pay the
26 **FLSA Class** at one-and-one-half (1.5) times the regular rate of pay employees' total hours worked
27 exceeded forty (40) hours in a week.

28 143. Defendants have also violated the FLSA by failing to keep required, accurate records of all

1 hours worked by their **FLSA Class**. 29 U.S.C. § 211(c).

2 144. Plaintiffs and all similarly situated employees are victims of a uniform and entity-wide
3 compensation policy. This uniform policy, in violation of the FLSA, has been applied to all employees
4 employed by Defendants.

5 145. Plaintiff and all similarly situated individuals are entitled to damages equal to the
6 mandated pay and overtime premium pay within the three (3) years preceding the filing of this Complaint,
7 plus periods of equitable tolling, because Defendants acted willfully and knew or showed reckless
8 disregard of whether their conduct was prohibited by the FLSA.

9 146. Defendants have acted neither in good faith nor with reasonable grounds to believe that
10 their actions and omissions were not a violation of the FLSA. Plaintiff and other similarly situated
11 individuals are entitled to recover an award of liquidated damages in an amount equal to the amount of
12 unpaid compensation, including overtime pay, and/or prejudgment interest at the applicable rate. 29 U.S.C.
13 § 216(b).

14 147. As a result of violations of the FLSA's minimum wage and overtime pay provisions,
15 Defendants have unlawfully withheld compensation from Plaintiff and all similarly situated individuals.
16 Defendants are liable for unpaid compensation, together with an amount equal as liquidated damages,
17 attorneys' fees and costs of this action. 29 U.S.C. § 216(b).

18 **NINTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

20 **(Lab. Code § 226)**

21 **(By Plaintiff and Wage Statement Penalties Class)**

22 148. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

23 149. Labor Code § 226(a) states in pertinent part the following: “ (a) every employer shall,
24 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a
25 detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are
26 paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned,
27 (2) total hours worked by the employer, except for an employee whose compensation is solely based on a
28 salary and who is exempt from payment of overtime under subdivision (a) of section 515 or any applicable

1 order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
2 piece rate if the employee is aid on a piece-rate basis, (4) all deductions, provided that all deductions made
3 on written orders of the employee may be aggregated and shown as one time, (5) net wages earned, (6) the
4 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the
5 last four digits of his or her social security number or an employee identification number other than a
6 social security number, (8) the name and address of the legal entity that is the employer and, if the
7 employer”.

8 150. Plaintiff is informed and believes that, at all relevant times, Defendants have failed to
9 provide **Wage Statement Penalties Class** members with written wage statements as described *supra* in
10 this complaint.

11 151. Plaintiff is informed and believes that, at all relevant times, Defendants have failed to
12 provide **Wage Statement Penalties Class** members with written wage statements that that comply with
13 the requirements of Labor Code § 226(a) because applicable meal and rest period premiums were not
14 included and thus gross wages earned was not accurately reflected.

15 152. Plaintiff is informed and believes that, at all relevant times, Defendants have failed to
16 provide **Wage Statement Penalties Class** members with written wage statements that that comply with
17 the requirements of Labor Code § 226(a) because overtime and double time wages for all overtime and
18 double time hours worked was not included and thus gross wages earned was not accurately reflected.
19 Salaried exempt employees are excluded from this alleged violation of Labor Code § 226(a).

20 153. Plaintiff is informed and believes that, at all relevant times, Defendants have failed to
21 provide **Wage Statement Penalties Class** members with written wage statements that that comply with
22 the requirements of Labor Code § 226(a) because total hours worked are not reflected. Salaried exempt
23 employees are excluded from this alleged violation of Labor Code § 226(a).

24 154. Plaintiff is informed and believes that, at all relevant times, Defendants have failed to
25 provide **Wage Statement Penalties Class** members with written wage statements that that comply with
26 the requirements of Labor Code § 226(a) because applicable meal and rest period premiums were not
27 included and thus net wages earned was not accurately reflected.

28 155. Plaintiff is informed and believes that, at all relevant times, Defendants have failed to

1 provide **Wage Statement Penalties Class** members with written wage statements that that comply with
2 the requirements of Labor Code § 226(a) because overtime and double time wages for all overtime and
3 double time hours worked was not included and thus net wages earned was not accurately reflected.
4 Salaried exempt employees are excluded from this alleged violation of Labor Code § 226(a).

5 156. Plaintiff is informed and believes that, at all relevant times, Defendants have failed to
6 provide **Wage Statement Penalties Class** members with written wage statements that that comply with
7 the requirements of Labor Code § 226(a) because the name and address of the legal entity that is the
8 employer is not reflected.

9 157. Plaintiff is informed and believes that, at all relevant times, Defendants have failed to
10 provide **Wage Statement Penalties Class** members with written wage statements that that comply with
11 the requirements of Labor Code § 226(a) because the rate for premiums hours worked is not reflected.
12 Salaried exempt employees are excluded from this alleged violation of Labor Code § 226(a).

13 158. Plaintiff is informed and believes that, at all relevant times, Defendants have failed to
14 provide **Wage Statement Penalties Class** members with written wage statements that that comply with
15 the requirements of Labor Code § 226(a) because gross wages earned was not included.

16 159. Plaintiff is informed and believes that, at all relevant times, Defendants have failed to
17 provide **Wage Statement Penalties Class** members with written wage statements that that comply with
18 the requirements of Labor Code § 226(a) because hourly and overtime wages for time spent working
19 during unpaid meal periods was not included and thus gross wages earned was not accurately reflected.
20 Salaried exempt employees are excluded from this alleged violation of Labor Code § 226(a).

21 160. Plaintiff is informed and believes that, at all relevant times, Defendants have failed to
22 provide **Wage Statement Penalties Class** members with written wage statements that that comply with
23 the requirements of Labor Code § 226(a) because applicable meal and rest period premiums were not
24 included and thus gross wages earned was not accurately reflected.

25 161. Plaintiff is informed and believes that, at all relevant times, Defendants have failed to
26 provide **Wage Statement Penalties Class** members with written wage statements that that comply with
27 the requirements of Labor Code § 226(a) because overtime and double time wages for all overtime and
28 double time hours worked was not included and thus gross wages earned was not accurately reflected.

1 Salaried exempt employees are excluded from this alleged violation of Labor Code § 226(a).

2 162. Plaintiff is informed and believes that, at all relevant times, Defendants have failed to
3 provide **Wage Statement Penalties Class** members with written wage statements that that comply with
4 the requirements of Labor Code § 226(a) because hourly and overtime hours for time spent working
5 during unpaid meal periods was not included and thus total hours worked was not accurately reflected.

6 Salaried exempt employees are excluded from this alleged violation of Labor Code § 226(a).

7 163. Plaintiff is informed and believes that, at all relevant times, Defendants have failed to
8 provide **Wage Statement Penalties Class** members with written wage statements that that comply with
9 the requirements of Labor Code § 226(a) because hourly and overtime wages for time spent working
10 during unpaid meal periods was not included and thus net wages earned was not accurately reflected.

11 164. Plaintiff is informed and believes that, at all relevant times, Defendants have failed to
12 provide **Wage Statement Penalties Class** members with written wage statements that that comply with
13 the requirements of Labor Code § 226(a) because applicable meal and rest period premiums were not
14 included and thus net wages earned was not accurately reflected. Salaried exempt employees are excluded
15 from this alleged violation of Labor Code § 226(a).

16 165. Plaintiff is informed and believes that, at all relevant times, Defendants have failed to
17 provide **Wage Statement Penalties Class** members with written wage statements that that comply with
18 the requirements of Labor Code § 226(a) because overtime and double time wages for all overtime and
19 double time hours worked was not included and thus net wages earned was not accurately reflected.

20 Salaried exempt employees are excluded from this alleged violation of Labor Code § 226(a).

21 166. Plaintiff is informed and believes that, at all relevant times, Defendants have failed to
22 provide **Wage Statement Penalties Class** members with written wage statements that that comply with
23 the requirements of Labor Code § 226(a) because hourly and overtime hours for time spent working
24 during unpaid meal periods was not included and thus all applicable hourly rates in effect during the pay
25 period and the corresponding number of hours worked at each hourly rate by the employee was not
26 accurately reflected. Salaried exempt employees are excluded from this alleged violation of Labor Code §
27 226(a).

28 167. Plaintiff is informed and believes that, at all relevant times, Defendants have failed to

1 provide **Wage Statement Penalties Class** members with written wage statements that that comply with
2 the requirements of Labor Code § 226(a) because overtime and double time hours for all overtime and
3 double time hours worked was not included and thus all applicable hourly rates in effect during the pay
4 period and the corresponding number of hours worked at each hourly rate by the employee was not
5 accurately reflected. Salaried exempt employees are excluded from this alleged violation of Labor Code §
6 226(a).

7 168. Plaintiff is informed and believes that Defendants' failures to provide him and **Wage**
8 **Statement Penalties Sub-Class** members with accurate written wage statements have been intentional in
9 that Defendants have the ability to provide them with accurate wage statements but have intentionally
10 provided them with written wage statements that Defendants have known to not comply with Labor Code
11 226(a).

12 169. Plaintiff and **Wage Statement Penalties Class** members have suffered injuries, in that
13 Defendants have violated their legal rights to receive accurate wage statements and have misled them
14 about their actual rates of pay and wages earned. In addition, inaccurate information on their wage
15 statements has prevented immediate challenges to Defendants' unlawful pay practices, has required
16 discovery and mathematical computations to determine the amount of wages owed, has caused difficulty
17 and expense in attempting to reconstruct time and pay records, and/or has led to the submission of
18 inaccurate information about wages and deductions to state and federal government agencies.

19 170. Pursuant to Labor Code § 226(e), Plaintiff, on behalf of himself and **Wage Statement**
20 **Penalties Class** members, seeks the greater of actual damages or \$50.00 for the initial pay period in which
21 a violation of Labor Code § 226(a) occurred, and \$100.00 for each subsequent pay period in which a
22 violation of Labor Code § 226(a) occurred, not to exceed an aggregate penalty of \$4000.00 per class
23 member, as well as awards of reasonable costs and attorneys' fees.

24 **TENTH CAUSE OF ACTION**

25 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

26 **(Lab. Code §§ 201-203)**

27 **(Plaintiff and Waiting Time Penalties Sub-Class)**

28 171. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

1 172. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members have
2 been entitled, upon the end of their employment with Defendants, to timely payment of all wages earned
3 and unpaid before termination or resignation.

4 173. At all relevant times, pursuant to Labor Code section 201, employees who have been
5 discharged have been entitled to payment of all final wages immediately upon termination.

6 174. At all relevant times, pursuant to Labor Code section 202, employees who have resigned
7 after giving at least seventy-two (72) hours notice of resignation have been entitled to payment of all final
8 wages at the time of resignation.

9 175. At all relevant times, pursuant to Labor Code section 202, employees who have resigned
10 after giving less than seventy-two (72) hours notice of resignation have been entitled to payment of all
11 final wages within seventy-two (72) hours of giving notice of resignation.

12 176. During the applicable limitations period, Defendants failed to pay Plaintiff all of her final
13 wages in accordance with the Labor Code by failing to timely pay her all of her final wages.

14 177. Plaintiff is informed and believes that, at all relevant time during the applicable limitations
15 period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class** members all of their
16 final wages in accordance with the Labor Code.

17 178. Plaintiff is informed and believes that, at all relevant times during the applicable limitations
18 period, Defendants have maintained a policy or practice of paying **Waiting Time Penalties Sub-Class**
19 members their final wages without regard to the requirements of Labor Code sections 201 or 202 by
20 failing to timely pay them all final wages.

21 179. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to timely
22 pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been willful in that
23 Defendants have the ability to pay final wages in accordance with Labor Code sections 201 and/or 202 but
24 have intentionally adopted policies or practices that are incompatible with those requirements.

25 180. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of herself and **Waiting**
26 **Time Penalties Sub-Class** members, seek waiting time penalties from the dates that their final wages
27 have first become due until paid, up to a maximum of thirty days, and interest thereon.

28 181. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine and/or

1 the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time Penalties Sub-Class**
2 members, seek awards of reasonable attorneys' fees and costs.

3 **ELEVENTH CAUSE OF ACTION**

4 **UNFAIR COMPETITION**

5 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

6 **(By Plaintiff and UCL Class)**

7 182. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

8 183. Business and Professions Code § 17200 defines “unfair competition” to include any
9 unlawful business practice.

10 184. Business and Professions Code §§ 17203–17204 allow a person who has lost money or
11 property as a result of unfair competition to bring a class action in accordance with Code of Civil
12 Procedure § 382 to recover money or property that may have been acquired from similarly situated
13 persons by means of unfair competition.

14 185. California law requires employers to pay hourly, non-exempt, employees for all hours they
15 are permitted or suffered to work, including hours that the employer knows or reasonably should know
16 that employees have worked.

17 186. Plaintiff and the UCL Class realleges and incorporates by reference the FIFTH, SIXTH,
18 SEVENTH and EIGHTH causes of action herein.

19 187. Plaintiff lost money or property as a result of the aforementioned unfair competition.

20 188. Defendants have, or may have, acquired money by means of unfair competition.

21 189. Plaintiff is informed and believes and thereon alleges that, by committing the Labor Code
22 violations described in this complaint, Defendants violated Labor Code §§ 215, 216, 225, 226.6, 354, 408,
23 553, 558, 1175, and/or 1199, which make it a misdemeanor to commit the Labor Code violations
24 mentioned herein. Plaintiff also alleges unlawful conduct as a result of violations of 29 U.S.C. § 201, *et*
25 *seq.*

26 190. Defendants have committed criminal conduct through their policies and practices of, *inter*
27 *alia*, failing to comport with their affirmative obligation on employers to provide non-exempt employees
28 with uninterrupted, duty-free, meal periods of at least thirty minutes for each work period of five or more

1 hours and by failing to pay non-exempt employee for all hours worked.

2 ***Wages and Premium Wages***

3 191. At all relevant times, Plaintiff and **UCL Class** members have been non-exempt employees
4 of Defendants and entitled to the full protections of both the Labor Code and the Wage Order.

5 192. As stated above, Defendants have violated the Labor Code in multiple respects with regard
6 to Plaintiff and **UCL Class** members, including but not limited to failing to pay them wages, failing to pay
7 them premium wages, and failing to provide them with accurate wage statements, and failing to pay them
8 all wages due upon separation of employment.

9 193. Defendants have, or may have, acquired money or property from **UCL Class** members by
10 means of unfair competition in that Plaintiff is informed and believes and thereon alleges that Defendants
11 have failed to pay Plaintiff and **UCL Class** members wages and premium wages in for missed meal and/or
12 rest periods.

13 ***Relief Sought***

14 194. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair
15 competition within the meaning of Business & Professions Code §§ 17200, *et seq.* Business &
16 Professions Code §§ 17200, *et seq.*, protects against unfair competition and allows a person who has
17 suffered an injury-in-fact and has lost money or property as a result of an unfair, unlawful, or fraudulent
18 business practice to seek restitution on his own behalf and on behalf of other similarly situated persons in a
19 class action proceeding.

20 195. As a result of Defendants' violations of the Labor Code during the applicable limitations
21 period as alleged herein, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
22 of earned wages. Specifically, Plaintiff has lost money or property as a result of the aforementioned
23 conduct.

24 196. Plaintiff is informed and believes that other similarly situated persons have been subject to
25 the same unlawful policies or practices of Defendants.

26 197. Due to its unfair and unlawful business practices in violation of the Labor Code and the
27 FLSA as alleged herein, Defendants have gained a competitive advantage over other comparable
28 companies doing business in the State of California that comply with their legal obligations under the

1 Labor Code and the FLSA.

2 198. Pursuant to Business & Professions Code § 17203, Plaintiff, on behalf of himself and the
3 other members of the **UCL Class**, seeks declaratory relief and restitution of all monies rightfully
4 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful and
5 unfair business practices.

6 199. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the
7 common fund doctrine, Plaintiff and the other members of the **UCL Class** are entitled to recover
8 reasonable attorneys' fees in connection with their unfair competition claims.

9 **TWELFTH CAUSE OF ACTION**

10 **CIVIL PENALTIES**

11 **(Lab. Code §§ 2698, *et seq.*)**

12 200. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

13 201. During the applicable limitations period, Defendants have violated Labor Code §§ 201,
14 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1194, 1197 and 1198.

15 202. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, of behalf of himself and
16 other current and former employees, to bring a representative civil action to recover civil penalties
17 pursuant to the procedures specified in Labor Code § 2699.3 that may, but need not, be brought or
18 maintained as a class action pursuant to Code of Civil Procedure § 382.

19 203. Plaintiff, as a former employee against whom Defendants committed one or more of the
20 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee within
21 the meaning of Labor Code § 2699(c).

22 204. Plaintiff has complied with the procedures for bringing suit specified in Labor Code §
23 2699.3.

24 205. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiff seeks the following civil penalties for
25 Defendants' violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1194, 1197 and
26 1198:

- 27 (a) For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 1194, 1198, \$100 for
28 each employee per pay period for each initial violation and \$200 for each employee

1 per pay period for each subsequent violation (penalties set by Labor Code §
2 2699(f)(2));

3 (b) For violations of Labor Code § 203, a penalty in an amount not exceeding 30 days
4 pay as waiting time (penalties set by Labor Code § 256).

5 (c) For violations of Labor Code § 204, \$100 for each employee for each initial
6 violation that was neither willful nor intentional, \$200 for each employee, plus
7 25% of the amount unlawfully withheld from each employee, for each initial
8 violation that was either willful or intentional, and \$200 for each employee, plus
9 25% of the amount unlawfully withheld from each employee, for each subsequent
10 violation, regardless of whether the subsequent violation was either willful or
11 intentional (penalties set by Labor Code § 210);

12 (d) For violations of Labor Code § 223, \$100 for each employee for each initial
13 violation that was neither willful nor intentional, \$200 for each employee, plus
14 25% of the amount unlawfully withheld from each employee, for each initial
15 violation that was either willful or intentional, and \$200 for each employee, plus
16 25% of the amount unlawfully withheld from each employee, for each subsequent
17 violation, regardless of whether the subsequent violation was either willful or
18 intentional (penalties set by Labor Code § 225.5);

19 (e) For violations of Labor Code § 226(a), if this action is deemed to be an initial
20 citation, \$250 for each employee for each violation. Alternatively, if an initial
21 citation or its equivalent occurred before the filing of this action, \$1,000 for each
22 employee for each violation (penalties set by Labor Code § 226.3);

23 (f) For violations of Labor Code §§ 510 and 512, \$50 for each employee for each
24 initial pay period for which the employee was underpaid, and \$100 for each
25 employee for each subsequent pay period for which the employee was underpaid,
26 in addition to all underpaid wages (penalties set by Labor Code § 558);

27 (g) For any violation of a section of Chapter 1 of Part 2 of Division 2 of the Labor
28 Code or any provision regulating hours and days of work in any order of the

1 Industrial Welfare Commission, \$50 for each employee for each initial violation,
2 and \$100 for each employee for each subsequent violation; and,

- 3 (h) For violations of Labor Code § 1197, \$100 for each aggrieved employee for each
4 initial violation of Labor Code § 1197 that was intentional, and \$250 for each
5 aggrieved employee per pay period for each subsequent violation of § 1197,
6 regardless of whether the initial violation was intentional (penalties set by Labor
7 Code § 1197.1).

8 206. Pursuant to Labor Code § 2699(g), Plaintiff seeks awards of reasonable costs and
9 attorneys' fees in connection with his claims for civil penalties.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general public,
12 prays for relief and judgment against Defendants as follows:

- 13 (a) An order that the action be certified as a class action;
14 (b) An order that Plaintiff be appointed class representative;
15 (c) An order that counsel for Plaintiff be appointed class counsel;
16 (d) Unpaid Wages;
17 (e) Actual Damages;
18 (f) Restitution;
19 (g) Declaratory relief;
20 (h) Pre-judgment interest;
21 (i) Statutory penalties;
22 (j) Civil penalties;
23 (k) Costs of suit;
24 (l) Reasonable attorneys' fees; and
25 (m) Such other relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself, all others similarly situated, and the general public, hereby demands a jury trial on all issues so triable.

DATED: October 31, 2019

SETAREH LAW GROUP

/s/ Shaun Setareh
SHAUN SETAREH
Attorneys for Plaintiff
ANDREW QUIRUZ