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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

STACY MCCOMACK, an
individual, on behalf of herself, and
on behalf of all persons similarly
situated,

Plaintiff,

vs.

MARRIOTT OWNERSHIP
RESORTS, INC., a Corporation,

Defendant.

Case No. **'17CV1663 BEN WVG**

**CLASS ACTION COMPLAINT
FOR:**

1. VIOLATION OF THE FAIR
CREDIT REPORTING ACT FOR

FAILURE TO MAKE PROPER
DISCLOSURES [15 U.S.C. § 1681, *et*
seq.];

2. VIOLATION OF THE FAIR
CREDIT REPORTING ACT FOR
FAILURE TO OBTAIN PROPER
AUTHORIZATION [15 U.S.C. § 1681,
et seq.];

3. UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE §§ 17200, *et seq.*;

4. FAILURE TO PAY OVERTIME
WAGES IN VIOLATION OF CAL.
LAB. CODE §§ 510 & 1198, *et seq.*;

5. FAILURE TO PROVIDE
ACCURATE ITEMIZED
STATEMENTS IN VIOLATION OF
CAL. LAB. CODE § 226.;

6. FAILURE TO PROVIDE WAGES
WHEN DUE IN VIOLATION OF CAL.
LABOR CODE §§ 201, 202 AND 203;
and,

7. FAILURE TO REIMBURSE
EMPLOYEES FOR REQUIRED
EXPENSES IN VIOLATION OF
CAL. LAB. CODE § 2802

DEMAND FOR A JURY TRIAL

1 Plaintiff Stacy McComack ("PLAINTIFF"), on behalf of herself and all others
2 similarly situated, alleges on information and belief, except for her own acts and
3 knowledge, the following:

4
5 **THE PARTIES**

6 1. Defendant Marriott Ownerships Resorts, Inc. ("DEFENDANT") at all
7 relevant times mentioned herein conducted and continues to conduct substantial and
8 regular business throughout California.

9 2. DEFENDANT develops, markets, sells, and manages vacation ownership
10 and related products under the Marriott Vacation Club and Grand Residences by Marriott
11 brands. The company also develops, markets, and sells vacation ownership and related
12 products under The Ritz-Carlton Destination Club brand and holds right to develop,
13 market, and sell ownership residential products under The Ritz-Carlton Residences
14 brand. DEFENDANT sells points-based vacation ownership products through Marriott
15 Vacation Club and weeks-based vacation ownership products. The company sells its
16 upscale tier vacation ownership products primarily through a network of resort-based
17 sales centers and off-site sales locations.

18 2. PLAINTIFF worked for DEFENDANT in California as a Sales Executive
19 from May of 2016 to December 11, 2016. At all times during her employment with
20 DEFENDANT, PLAINTIFF was entitled to meal and rest periods and payment of
21 overtime wages and reporting time wages for all time worked. PLAINTIFF was also
22 required to be paid for her rest periods as DEFENDANT paid PLAINTIFF only
23 commission wages for certain pay periods. DEFENDANT did not separately
24 compensate PLAINTIFF for her rest periods. In connection with her employment
25 application, PLAINTIFF completed DEFENDANT's standard application materials.
26 Among other things, these application materials included a background investigation
27 disclosure and consent form. To date, and as described below, DEFENDANT has not
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1 fully paid PLAINTIFF the compensation still owed to her or any penalty wages owed
2 to her under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF
3 individually does not exceed the sum or value of \$75,000.

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

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

14 5. PLAINTIFF also brings this Class Action on behalf of herself and a
15 California class, defined as all individuals who are or previously were employed by
16 DEFENDANT in California as Sales Executives and who were paid commissions (the
17 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior
18 to the filing of this Complaint and ending on the date of the filing of this Complaint (the
19 "CALIFORNIA CLASS PERIOD").

20 6. PLAINTIFF brings this Class Action on behalf of herself and a
21 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their
22 losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's
23 uniform policy and practice which failed to lawfully compensate these employees for all
24 their time worked and missed meal and rest periods. DEFENDANT's uniform policy
25 and practice alleged herein is an unlawful, unfair and deceptive business practice
26 whereby retained and continues to retain wages due PLAINTIFF and the other members
27 of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
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1 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in
2 the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA
3 CLASS who have been economically injured by DEFENDANT's past and current
4 unlawful conduct, and all other appropriate legal and equitable relief.

5 6 **THE CONDUCT**

7 7. The Fair Credit Reporting Act 15 U.S.C. § 1681, *et seq.* ("FCRA") provides
8 individuals with a number of rights. Specifically, pertaining to employment-related
9 background checks, the FCRA provides that a prospective employee must give valid
10 consent to the background check. The FCRA requires a signed authorization and
11 disclosure from the applicant, sometimes referred to as a "consent" form. The
12 authorization and disclosure form must be executed and signed by the applicant prior to
13 an employer requesting or conducting a background check. Importantly, no extraneous
14 information can be attached or included on the consent form. *The authorization and*
15 *disclosure must stand alone.*

16 8. In violation of 15 U.S.C. § 1681b(b)(2)(A)(I), DEFENDANT has
17 unlawfully inserted a liability release provision into forms purporting to grant
18 DEFENDANT and its third-party background checking company the authority to obtain
19 and use consumer report information for employment purposes. The FCRA prohibits
20 this practice and requires that forms granting the authority to access and use consumer
21 report information for employment purposes be stand alone forms, and not include any
22 additional information or agreements. DEFENDANT's decision to include liability
23 release provisions in its authorization forms is contrary to the plain language of the
24 statute and unambiguous regulatory guidance from the Federal Trade Commission
25 ("FTC").

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

7 10. During the CALIFORNIA CLASS PERIOD, DEFENDANT also failed to
8 accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for
9 the actual amount of time these employees worked, including overtime and reporting
10 time wages due. Pursuant to the Industrial Welfare Commission Wage Orders,
11 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS
12 Members for all time worked, meaning the time during which an employee is subject to
13 the control of an employer, including all the time the employee is suffered or permitted
14 to work. DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to
15 work off the clock without paying them for all the time they were under DEFENDANT's
16 control performing post-shift duties, specifically by failing to provide enough labor hours
17 to accomplish all the job tasks that DEFENDANT expected PLAINTIFF and
18 CALIFORNIA CLASS Members to complete. As a result, the PLAINTIFF and other
19 CALIFORNIA CLASS Members forfeited time worked by working without their time
20 being accurately recorded and without compensation at the applicable rates.

21 11. In addition, when DEFENDANT requires PLAINTIFF and other
22 CALIFORNIA CLASS Members to respond to calls and engage in additional work
23 performing sales work after they had worked their normal shift and went home for the
24 day, this results in a second reporting for work in a single workday. In such a
25 circumstance of a second reporting for work in a single workday, DEFENDANT failed
26 to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, §
27 11040. Subdivision 5(B) states: "If an employee is required to report for work a second
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1 time in any one workday and is furnished less than two (2) hours of work on the second
2 reporting, said employee shall be paid for two (2) hours at the employee's regular rate
3 of pay, which shall not be less than the minimum wage." Cal. Code Regs., tit. 8, § 11040,
4 subd. 5(B).

5 12. As a result of their rigorous work schedules, PLAINTIFF and other
6 CALIFORNIA CLASS Members were also from time to time unable to take thirty (30)
7 minute off duty meal breaks and were not fully relieved of duty for their meal periods.
8 PLAINTIFF and other CALIFORNIA CLASS Members were required to perform work
9 as ordered by DEFENDANT for more than five (5) hours during a shift without
10 receiving a meal break as evidenced by daily time reports for these employees. Further,
11 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with
12 a second off-duty meal period each workday in which these employees were required by
13 DEFENDANT to work ten (10) hours of work. As a result, DEFENDANT's failure to
14 provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
15 meal breaks is evidenced by DEFENDANT's business records which contain no record
16 of these breaks. PLAINTIFF and other members of the CALIFORNIA CLASS therefore
17 forfeited meal breaks without additional compensation and in accordance with
18 DEFENDANT's strict corporate policy and practice.

19 13. In addition, DEFENDANT failed to compensate PLAINTIFF and
20 CALIFORNIA CLASS Members for their rest periods as required by the applicable
21 Wage Order and Labor Code. DEFENDANT did not have a policy or practice which
22 paid for off-duty rest periods to PLAINTIFF and the other CALIFORNIA CLASS
23 Members. PLAINTIFF and other CALIFORNIA CLASS Members were required to be
24 paid for their rest periods as DEFENDANT paid PLAINTIFF and other CALIFORNIA
25 CLASS Members only commission wages for certain pay periods. DEFENDANT did
26 not separately compensate PLAINTIFF and CALIFORNIA CLASS Members for their
27 rest periods. As a result, DEFENDANT's failure to provide PLAINTIFF and the
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1 CALIFORNIA CLASS Members with all the legally required paid rest periods is
2 evidenced by DEFENDANT's business records.

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

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

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

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

- 21 (i) a clear and conspicuous disclosure has been made in writing to the
22 consumer at any time before the report is procured or caused to be
23 procured, *in a document that consists solely of the disclosure*, that a
24 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.

25 15 U.S.C. §§ 1681b(b)(2)(A)(I)-(ii) (emphasis added).

26 18. After PLAINTIFF executed the background check disclosure and
27 authorization form in May of 2016, DEFENDANT obtained a consumer report on the
28 PLAINTIFF notwithstanding the fact that the background check disclosure and

1 authorization forms were invalid under the requirements of the FCRA.

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

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

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

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

1 benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were
2 required by DEFENDANT to use their personal cell phones to respond to potential
3 clients about timeshare information, how many points they would need for certain
4 properties and other work related tasks. As a result, in the course of their employment
5 with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS
6 incurred unreimbursed business expenses which included, but were not limited to, costs
7 related to the use of their personal cellular phones all on behalf of and for the benefit of
8 DEFENDANT.

9 23. When PLAINTIFF and other CALIFORNIA CLASS Members were not
10 compensated all their time worked and missed meal and rest breaks, DEFENDANT also
11 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
12 complete and accurate wage statements which failed to show, among other things, the
13 correct amount of time worked, including, work performed in excess of eight (8) hours
14 in a workday and/or forty (40) hours in any workweek. Cal. Lab. Code § 226 provides
15 that every employer shall furnish each of his or her employees with an accurate itemized
16 wage statement in writing showing, among other things, gross wages earned and all
17 applicable hourly rates in effect during the pay period and the corresponding amount of
18 time worked at each hourly rate. Aside, from the violations listed above in this
19 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that
20 lists all the requirements under California Labor Code 226 *et seq.* As a result,
21 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA
22 CLASS with wage statements which violate Cal. Lab. Code § 226.

23 24. By reason of this uniform conduct applicable to PLAINTIFF and
24 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition
25 in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200,
26 *et seq.* (the “UCL”), by engaging in a company-wide policy and procedure which fail to
27 accurately record overtime worked, including overtime worked by the PLAINTIFF and
28 other CALIFORNIA CLASS Members. The proper recording of these employees’ time

1 worked, including overtime worked, is the DEFENDANT's burden. As a result of
 2 DEFENDANT's intentional disregard of the obligation to meet this burden,
 3 DEFENDANT fails to properly calculate and/or pay all required wages for work
 4 performed by the members of the CALIFORNIA CLASS and violated the California
 5 Labor Code and regulations promulgated thereunder as herein alleged.

6 **THE FCRA CLASS ALLEGATIONS**

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 8 25. PLAINTIFF brings the First and Second Cause of Action pursuant to Fed.
 9 R. Civ. Proc. 23(b)(2) and/or (3), on behalf of a nationwide Class, defined as all
 10 employees or prospective employees of DEFENDANT in the United States who
 11 executed DEFENDANT's standard FCRA disclosure form that included a liability
 12 release clause (the "FCRA CLASS") at any time during the period beginning five (5)
 13 years prior to the filing of this Complaint and ending on the date as determined by the
 14 Court (the "FCRA CLASS PERIOD").

15 26. To the extent equitable tolling operates to toll claims by the FCRA CLASS
 16 against DEFENDANT, the FCRA CLASS PERIOD should be adjusted accordingly.

17 27. DEFENDANT, as a matter of corporate policy, practice and procedure, and
 18 in violation of The Fair Credit Reporting Act 15 U.S.C. § 1681, *et seq.*, intentionally,
 19 knowingly, and wilfully, engaged in a practice whereby DEFENDANT uniformly,
 20 unfairly, unlawfully, and deceptively instituted a practice of obtaining consumer reports
 21 without valid authorization to do so.

22 28. The FCRA CLASS is so numerous that joinder of all FCRA CLASS
 23 Members is impracticable.

24 29. DEFENDANT uniformly violated the rights of the FCRA CLASS by:

- 25 (a) Violating The Fair Credit Reporting Act 15 U.S.C. § 1681, *et seq.*,
 26 by unlawfully, unfairly and/or deceptively having in place company
 27 policies, practices and procedures that uniformly obtained credit
 28 reports on prospective employees without first obtaining valid

1 authorization consent forms.

2 30. Common questions of law and fact exist as to members of the FCRA
3 CLASS, including, but not limited, to the following:

- 4 (a) Whether DEFENDANT required the FCRA CLASS Members to
5 sign a background check disclosure and authorization forms;
6 (b) Whether DEFENDANT's background check disclosure and
7 authorization forms comply with the Fair Credit Reporting Act 15
8 U.S.C. § 1681, *et seq.* ("FCRA");
9 (c) Whether DEFENDANT violated the FCRA by including a liability
10 release in its background check disclosure and authorization forms;
11 and,
12 (d) Whether DEFENDANT violated the FCRA by procuring consumer
13 report information based on invalid authorizations;
14 (e) Whether DEFENDANT's violations of the FCRA were willful;
15 (f) The proper measure of statutory damages and punitive damages; and,
16 (g) The proper form of injunctive and declaratory relief.

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

- 19 (a) The persons who comprise the FCRA CLASS are so numerous that
20 the joinder of all such persons is impracticable and the disposition of
21 their claims as a class will benefit the parties and the Court;
22 (b) Nearly all factual, legal, statutory, and declaratory relief issues that
23 are raised in this Complaint are common to the FCRA CLASS will
24 apply uniformly to every member of the FCRA CLASS;
25 (c) The claims of the representative PLAINTIFF are typical of the
26 claims of each member of the FCRA CLASS. PLAINTIFF, like all
27 the other members of the FCRA CLASS, had a credit report obtained
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1 on her behalf by DEFENDANT prior to obtaining valid
2 authorization to do so in violation of the FCRA as described herein.
3 PLAINTIFF and the members of the FCRA CLASS were and are
4 similarly or identically harmed by the same unlawful, deceptive,
5 unfair and pervasive pattern of misconduct engaged in by
6 DEFENDANT; and,

- 7 (d) The representative PLAINTIFF will fairly and adequately represent
8 and protect the interest of the FCRA CLASS, and has retained
9 counsel who are competent and experienced in Class Action
10 litigation. There are no material conflicts between the claims of the
11 representative PLAINTIFF and the members of the FCRA CLASS
12 that would make class certification inappropriate. Counsel for the
13 FCRA CLASS will vigorously assert the claims of all employees in
14 the FCRA CLASS.

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

- 18 (a) Without class certification and determination of declaratory,
19 statutory and other legal questions within the class format,
20 prosecution of separate actions by individual members of the FCRA
21 CLASS will create the risk of:

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

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

8 (c) Common questions of law and fact exist as to the members of the
9 FCRA CLASS, with respect to the practices and violations of the
10 FCRA as listed above, and predominate over any question affecting
11 only individual FCRA CLASS Members, and a Class Action is
12 superior to other available methods for the fair and efficient
13 adjudication of the controversy, including consideration of:

14 1) The interests of the members of the FCRA CLASS in
15 individually controlling the prosecution or defense of separate
16 actions in that the substantial expense of individual actions
17 will be avoided to recover the relatively small amount of
18 economic losses sustained by the individual FCRA CLASS
19 Members when compared to the substantial expense and
20 burden of individual prosecution of this litigation;

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

23 A. Inconsistent or varying adjudications with respect to
24 individual members of the FCRA CLASS, which would
25 establish incompatible standards of conduct for
26 DEFENDANT; and/or,

27 B. Adjudications with respect to individual members of
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1 the FCRA CLASS would as a practical matter be
2 dispositive of the interests of the other members not
3 parties to the adjudication or substantially impair or
4 impede their ability to protect their interests;

5 3) In the context of employment litigation because as a practical
6 matter a substantial number of individual FCRA CLASS
7 Members will avoid asserting their legal rights out of fear of
8 retaliation by DEFENDANT, which may adversely affect an
9 individual's job with DEFENDANT or with a subsequent
10 employer, the Class Action is the only means to assert their
11 claims through a representative; and,

12 4) A Class Action is superior to other available methods for the
13 fair and efficient adjudication of this litigation because class
14 treatment will obviate the need for unduly and unnecessary
15 duplicative litigation that is likely to result in the absence of
16 certification of this Action pursuant to Fed. R. Civ. Proc.
17 23(b)(2) and/or (3).

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

20 (a) The questions of law and fact common to the FCRA CLASS
21 predominate over any question affecting only individual FCRA
22 CLASS Members because DEFENDANT's employment practices
23 were uniform and systematically applied with respect to the FCRA
24 CLASS;

25 (b) A Class Action is superior to any other available method for the fair
26 and efficient adjudication of the claims of the members of the FCRA
27 CLASS because in the context of employment litigation a substantial
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1 number of individual FCRA CLASS Members will avoid asserting
2 their rights individually out of fear of retaliation or adverse impact
3 on their employment;

4 (c) The members of the FCRA CLASS are so numerous that it is
5 impractical to bring all members of the FCRA CLASS before the
6 Court;

7 (d) PLAINTIFF, and the other FCRA CLASS Members, will not be able
8 to obtain effective and economic legal redress unless the action is
9 maintained as a Class Action;

10 (e) There is a community of interest in obtaining appropriate legal and
11 equitable relief for the acts of statutory violations and other
12 improprieties, and in obtaining adequate compensation for the
13 injuries which DEFENDANT's actions have inflicted upon the
14 FCRA CLASS;

15 (f) There is a community of interest in ensuring that the combined assets
16 of DEFENDANT are sufficient to adequately compensate the
17 members of the FCRA CLASS for the injuries sustained;

18 (g) DEFENDANT has acted or refused to act on grounds generally
19 applicable to the FCRA CLASS, thereby making final class-wide
20 relief appropriate with respect to the FCRA CLASS as a whole;

21 (h) The members of the FCRA CLASS are readily ascertainable from
22 the business records of DEFENDANT. The FCRA CLASS consists
23 of all employees or prospective employees of DEFENDANT in the
24 United States who executed DEFENDANT's standard FCRA
25 disclosure form that included a liability release clause allowing
26 DEFENDANT to obtain a consumer report during the FCRA
27 CLASS PERIOD; and,
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(i) Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all FCRA claims arising out of the conduct of DEFENDANT as to the members of the FCRA CLASS.

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

THE CALIFORNIA CLASS

35. PLAINTIFF brings the Third Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), on behalf of a California class, defined as all individuals who are or previously were employed by DEFENDANT in California as Sales Executives and who were paid commissions (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date of the filing of this Complaint (the "CALIFORNIA CLASS PERIOD"). To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

36. The California Legislature has commanded that "all wages... ..earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays", and further that "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek . . . shall be compensated at the rate of no less than one and one-

1 half times the regular rate of pay for an employee.” (Lab. Code § 204 and § 510(a).) The
2 Industrial Welfare Commission (IWC), however, is statutorily authorized to “establish
3 exemptions from the requirement that an overtime rate of compensation be paid... ..for
4 executive, administrative, and professional employees, provided [inter alia] that the
5 employee is primarily engaged in duties that meet the test of the exemption, [and]
6 customarily and regularly exercises discretion and independent judgment in performing
7 those duties...” (Lab. Code § 510(a).) Neither the PLAINTIFF nor the other members
8 of the CALIFORNIA CLASS qualify for exemption from the above requirements.

9 37. DEFENDANT, as a matter of company policy, practice and procedure, and
10 in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”)
11 Wage Order requirements, and the applicable provisions of California law, intentionally,
12 knowingly, and wilfully, engaged in a practice whereby DEFENDANT systematically
13 failed to record overtime worked by PLAINTIFF and other CALIFORNIA CLASS
14 Members, even though DEFENDANT enjoyed the benefit of this work, required
15 employees to perform this work and permitted or suffered to permit this work.

16 38. DEFENDANT has the legal burden to establish that each and every
17 CALIFORNIA CLASS Member was paid wages due to them for time worked at the rate
18 required by California law, including overtime work. The DEFENDANT, however, as
19 a matter of uniform and systematic policy and procedure failed to have in place during
20 the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice
21 to ensure that each and every CALIFORNIA CLASS Member was paid for their time
22 worked as required by law, including their overtime worked. This common business
23 practice is applicable to each and every CALIFORNIA CLASS Member can be
24 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal.
25 Business & Professions Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and
26 reliance are not elements of this claim.

27 39. The CALIFORNIA CLASS, is so numerous that joinder of all
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1 CALIFORNIA CLASS Members is impracticable.

2 40. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS
3 under California law by:

- 4 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof.
5 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
6 deceptively having in place company policies, practices and
7 procedures that uniformly and systematically failed to record and pay
8 the PLAINTIFF and the other members of the CALIFORNIA
9 CLASS for all time worked, including overtime worked by these
10 employees;
- 11 (b) Committing an act of unfair competition in violation of the UCL, by
12 unlawfully, unfairly, and/or deceptively failing to pay the correct
13 reporting time wages owed to PLAINTIFF and the members of the
14 CALIFORNIA CLASS;
- 15 (c) Committing an act of unfair competition in violation of the
16 California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
17 17200 *et seq.*, by violating Cal. Lab. Code § 2802 by failing to
18 reimburse PLAINTIFF and the CALIFORNIA CLASS members
19 with necessary expenses incurred in the discharge of their job duties;
20 and,
- 21 (d) Committing an act of unfair competition in violation of the UCL, by
22 failing to provide the PLAINTIFF and the other members of the
23 CALIFORNIA CLASS with the legally required uninterrupted meal
24 breaks, and the legally required paid rest breaks.

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

- 27 (a) The persons who comprise the CALIFORNIA CLASS are so
28

1 numerous that the joinder of all CALIFORNIA CLASS Members is
2 impracticable and the disposition of their claims as a class will
3 benefit the parties and the Court;

4 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
5 issues that are raised in this Complaint are common to the
6 CALIFORNIA CLASS will apply uniformly to every member of the
7 CALIFORNIA CLASS;

8 (c) The claims of the representative PLAINTIFF are typical of the
9 claims of each member of the CALIFORNIA CLASS. PLAINTIFF,
10 like all the other members of the CALIFORNIA CLASS, was a Sales
11 Executive employee who was paid commission and was subjected to
12 DEFENDANT's deceptive practice and policy described herein.
13 PLAINTIFF sustained economic injury as a result of
14 DEFENDANT's employment practices. PLAINTIFF and the
15 members of the CALIFORNIA CLASS were and are similarly or
16 identically harmed by the same unlawful, deceptive, unfair and
17 pervasive pattern of misconduct engaged in by DEFENDANT; and,

18 (d) The representative PLAINTIFF will fairly and adequately represent
19 and protect the interest of the CALIFORNIA CLASS, and has
20 retained counsel who are competent and experienced in Class Action
21 litigation. There are no material conflicts between the claims of the
22 representative PLAINTIFF and the members of the CALIFORNIA
23 CLASS that would make class certification inappropriate. Counsel
24 for the CALIFORNIA CLASS will vigorously assert the claims of
25 all CALIFORNIA CLASS Members.

26 42. In addition to meeting the statutory prerequisites to a Class Action, this
27 action is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2)
28

1 and/or (3), in that:

2 (a) Without class certification and determination of declaratory,
3 injunctive, statutory and other legal questions within the class
4 format, prosecution of separate actions by individual members of the
5 CALIFORNIA CLASS will create the risk of:

6 1) Inconsistent or varying adjudications with respect to
7 individual members of the CALIFORNIA CLASS which
8 would establish incompatible standards of conduct for the
9 parties opposing the CALIFORNIA CLASS; and/or,

10 2) Adjudication with respect to individual members of the
11 CALIFORNIA CLASS which would as a practical matter be
12 dispositive of interests of the other members not party to the
13 adjudication or substantially impair or impede their ability to
14 protect their interests.

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

21 1) With respect to the First Cause of Action, the final relief on
22 behalf of the CALIFORNIA CLASS sought does not relate
23 exclusively to restitution because through this claim
24 PLAINTIFF seeks declaratory relief holding that the
25 DEFENDANT's policy and practices constitute unfair
26 competition, along with declaratory relief, injunctive relief,
27 and incidental equitable relief as may be necessary to prevent
28

1 and remedy the conduct declared to constitute unfair
2 competition;

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

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

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

18 A. Inconsistent or varying adjudications with respect to
19 individual members of the CALIFORNIA CLASS,
20 which would establish incompatible standards of
21 conduct for the DEFENDANT; and/or,

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

27 3) In the context of wage litigation because a substantial number
28

1 of individual CALIFORNIA CLASS Members will avoid
2 asserting their legal rights out of fear of retaliation by
3 DEFENDANT, which may adversely affect an individual's
4 job with DEFENDANT or with a subsequent employer, the
5 Class Action is the only means to assert their claims through
6 a representative; and,

- 7 4) A class action is superior to other available methods for the
8 fair and efficient adjudication of this litigation because class
9 treatment will obviate the need for unduly and unnecessary
10 duplicative litigation that is likely to result in the absence of
11 certification of this action pursuant to Fed. R. Civ. Proc.
12 23(b)(2) and/or (3).

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

- 15 (a) The questions of law and fact common to the CALIFORNIA CLASS
16 predominate over any question affecting only individual
17 CALIFORNIA CLASS Members because the DEFENDANT's
18 employment practices are uniformly and systematically applied with
19 respect to the CALIFORNIA CLASS;
- 20 (b) A Class Action is superior to any other available method for the fair
21 and efficient adjudication of the claims of the members of the
22 CALIFORNIA CLASS because in the context of employment
23 litigation a substantial number of individual CALIFORNIA CLASS
24 Members will avoid asserting their rights individually out of fear of
25 retaliation or adverse impact on their employment;
- 26 (c) The members of the CALIFORNIA CLASS are so numerous that it
27 is impractical to bring all members of the CALIFORNIA CLASS
28

1 before the Court;

2 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will
3 not be able to obtain effective and economic legal redress unless the
4 action is maintained as a Class Action;

5 (e) There is a community of interest in obtaining appropriate legal and
6 equitable relief for the acts of unfair competition, statutory violations
7 and other improprieties, and in obtaining adequate compensation for
8 the damages and injuries which DEFENDANT's actions have
9 inflicted upon the CALIFORNIA CLASS;

10 (f) There is a community of interest in ensuring that the combined assets
11 of DEFENDANT are sufficient to adequately compensate the
12 members of the CALIFORNIA CLASS for the injuries sustained;

13 (g) DEFENDANT has acted or refused to act on grounds generally
14 applicable to the CALIFORNIA CLASS, thereby making final class-
15 wide relief appropriate with respect to the CALIFORNIA CLASS as
16 a whole;

17 (h) The members of the CALIFORNIA CLASS are readily ascertainable
18 from the business records of DEFENDANT. The CALIFORNIA
19 CLASS consists of all individuals who are or previously were
20 employed by DEFENDANT in California as Sales Executives and
21 who were paid commissions during the CALIFORNIA CLASS
22 PERIOD; and,

23 (i) Class treatment provides manageable judicial treatment calculated to
24 bring a efficient and rapid conclusion to all litigation of all wage and
25 hour related claims arising out of the conduct of DEFENDANT as
26 to the members of the CALIFORNIA CLASS.

27 44. DEFENDANT maintains records from which the Court can ascertain and
28 identify by job title each of DEFENDANT's employees who have been systematically,

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

5
6 **THE CALIFORNIA LABOR SUB-CLASS**

7 45. PLAINTIFF further brings the Fourth, Fifth, Sixth and Seventh Causes of
8 Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
9 CLASS who are or previously were employed by DEFENDANT in California as Sales
10 Executives and who were paid commissions (the "CALIFORNIA LABOR SUB-
11 CLASS") at any time during the period three (3) years prior to the filing of the complaint
12 and ending on the date of the filing of this Complaint (the "CALIFORNIA LABOR
13 SUB-CLASS PERIOD") pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3).

14 46. DEFENDANT, as a matter of company policy, practice and procedure, and
15 in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC")
16 Wage Order requirements, and the applicable provisions of California law, intentionally,
17 knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to record
18 time worked by PLAINTIFF and members of the CALIFORNIA LABOR SUB-CLASS,
19 including overtime worked, even though DEFENDANT enjoyed the benefit of this work,
20 required employees to perform this work and permitted or suffered to permit this work.
21 DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-CLASS
22 Members wages to which these employees were entitled in order to unfairly cheat the
23 competition and unlawfully profit. To the extent equitable tolling operates to toll claims
24 by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA
25 LABOR SUB-CLASS PERIOD should be adjusted accordingly.

26 47. DEFENDANT maintains records from which the Court can ascertain and
27 identify by name and job title, each of DEFENDANT's employees who have been
28 systematically, intentionally and uniformly subjected to DEFENDANT's company

1 policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend
2 the complaint to include any additional job titles of similarly situated employees when
3 they have been identified.

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

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

- 8 (a) Whether DEFENDANT unlawfully failed to pay overtime wages to
9 members of the CALIFORNIA LABOR SUB-CLASS in violation
10 of the California Labor Code and California regulations and the
11 applicable California Wage Order;
- 12 (c) Whether the members of the CALIFORNIA LABOR SUB-CLASS
13 are entitled to overtime compensation for overtime worked under the
14 overtime pay requirements of California law;
- 15 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other
16 members of the CALIFORNIA LABOR SUB-CLASS with accurate
17 itemized wage statements;
- 18 (e) Whether DEFENDANT failed to provide PLAINTIFF and the other
19 members of the CALIFORNIA LABOR SUB-CLASS with legally
20 required uninterrupted thirty (30) minute meal breaks;
- 21 (f) Whether DEFENDANT has engaged in unfair competition by the
22 above-listed conduct;
- 23 (g) The proper measure of damages and penalties owed to the members
24 of the CALIFORNIA LABOR SUB-CLASS; and,
- 25 (h) Whether DEFENDANT's conduct was willful.

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

- 28 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay

1 the PLAINTIFF and the members of the CALIFORNIA LABOR
2 SUB-CLASS wages due for time worked, including overtime
3 worked for which DEFENDANT is liable pursuant to Cal. Lab. Code
4 § 1194; and,

5 (b) Violating Cal. Lab. Code § 226, by failing to provide the
6 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
7 CLASS with an accurate itemized statement in writing showing all
8 accurate and applicable overtime rates in effect during the pay period
9 and the corresponding amount of time worked at each overtime rate
10 by the employee;

11 (c) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides
12 that when an employee is discharged or quits from employment, the
13 employer must pay the employee all wages due without abatement,
14 by failing to tender full payment and/or restitution of wages owed or
15 in the manner required by California law to the members of the
16 CALIFORNIA LABOR SUB-CLASS who have terminated their
17 employment; and

18 (d) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
19 and the CALIFORNIA CLASS members with necessary expenses
20 incurred in the discharge of their job duties.

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

23 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
24 are so numerous that the joinder of all CALIFORNIA LABOR SUB-
25 CLASS Members is impracticable and the disposition of their claims
26 as a class will benefit the parties and the Court;

27 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
28 issues that are raised in this Complaint are common to the

1 CALIFORNIA LABOR SUB-CLASS and will apply uniformly to
2 every member of the CALIFORNIA LABOR SUB-CLASS;

3 (c) The claims of the representative PLAINTIFF are typical of the
4 claims of each member of the CALIFORNIA LABOR SUB-CLASS.
5 PLAINTIFF, like all the other members of the CALIFORNIA
6 LABOR SUB-CLASS, was a Sales Executive who was subjected to
7 DEFENDANT's deceptive practice and policy described herein.
8 PLAINTIFF sustained economic injury as a result of
9 DEFENDANT's employment practices. PLAINTIFF and the
10 members of the CALIFORNIA LABOR SUB-CLASS were and are
11 similarly or identically harmed by the same unlawful, deceptive,
12 unfair and pervasive pattern of misconduct engaged in by
13 DEFENDANT; and,

14 (d) The representative PLAINTIFF will fairly and adequately represent
15 and protect the interest of the CALIFORNIA LABOR SUB-CLASS,
16 and has retained counsel who are competent and experienced in
17 Class Action litigation. There are no material conflicts between the
18 claims of the representative PLAINTIFF and the members of the
19 CALIFORNIA LABOR SUB-CLASS that would make class
20 certification inappropriate. Counsel for the CALIFORNIA LABOR
21 SUB-CLASS will vigorously assert the claims of all CALIFORNIA
22 LABOR SUB-CLASS Members.

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

26 (a) Without class certification and determination of declaratory,
27 injunctive, statutory and other legal questions within the class
28 format, prosecution of separate actions by individual members of the

1 CALIFORNIA LABOR SUB-CLASS will create the risk of:

2 1) Inconsistent or varying adjudications with respect to
3 individual members of the CALIFORNIA LABOR SUB-
4 CLASS which would establish incompatible standards of
5 conduct for the parties opposing the CALIFORNIA LABOR
6 SUB-CLASS; or,

7 2) Adjudication with respect to individual members of the
8 CALIFORNIA LABOR SUB-CLASS which would as a
9 practical matter be dispositive of interests of the other
10 members not party to the adjudication or substantially impair
11 or impede their ability to protect their interests.

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

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

26 1) The interests of the members of the CALIFORNIA LABOR
27 SUB-CLASS in individually controlling the prosecution or
28 defense of separate actions in that the substantial expense of

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

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

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

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

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

25 4) A class action is superior to other available methods for the
26 fair and efficient adjudication of this litigation because class
27 treatment will obviate the need for unduly and unnecessary
28 duplicative litigation that is likely to result in the absence of

1 certification of this action pursuant to Fed. R. Civ. Proc.
2 23(b)(2) and/or (3).

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

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

1 injuries sustained;

2 (g) DEFENDANT has acted or refused to act on grounds generally
3 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby
4 making final class-wide relief appropriate with respect to the
5 CALIFORNIA LABOR SUB-CLASS as a whole;

6 (h) The members of the CALIFORNIA LABOR SUB-CLASS are
7 readily ascertainable from the business records of DEFENDANT.
8 The CALIFORNIA LABOR SUB-CLASS consists of all
9 CALIFORNIA CLASS Members who are or previously were
10 employed by DEFENDANT in California as Sales Executives and
11 who were paid commissions during the CALIFORNIA LABOR
12 SUB-CLASS PERIOD; and,

13 (i) Class treatment provides manageable judicial treatment calculated to
14 bring an efficient and rapid conclusion to all litigation of all wage
15 and hour related claims arising out of the conduct of DEFENDANT
16 as to the members of the CALIFORNIA LABOR SUB-CLASS.

17 JURISDICTION AND VENUE

18
19 54. This Court has jurisdiction over the PLAINTIFF's federal claims
20 pursuant to 28 U.S.C. § 1331(a) and 15 U.S.C. 1681p of the FCRA, codified at 15
21 U.S.C. § 1681, *et seq.*

22 55. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because: (I)
23 DEFENDANT is subject to personal jurisdiction in this District and therefore resides
24 in this District; (ii) DEFENDANT maintains offices and facilities in this District; and,
25 (iii) DEFENDANT committed the wrongful conduct against members of the CLASS,
26 including the PLAINTIFF in this District.

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FIRST CAUSE OF ACTION

For Failure to Make Proper Disclosure in Violation of the FCRA

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

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

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

57. DEFENDANT violated 15 U.S.C. § 1681b(b)(2)(A)(I) of the FCRA by including a liability release clause in DEFENDANT's background check disclosure and authorization form that PLAINTIFF and other FCRA CLASS Members were required to execute as a condition of employment with DEFENDANT.

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

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

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

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

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SECOND CAUSE OF ACTION

For Failure to Obtain Proper Authorization in Violations of the FCRA

[15 U.S.C. § 1681b(b)(2)(A)(ii)]

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

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

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

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

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

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

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

THIRD CAUSE OF ACTION

For Unlawful Business Practices

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

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

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

1 69. DEFENDANT is a “person” as that term is defined under Cal. Bus. and
2 Prof. Code § 17021.

3 70. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”)
4 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice.
5 Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with
6 respect to unfair competition as follows:

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

12 Cal. Bus. & Prof. Code § 17203.

13 71. By the conduct alleged herein, DEFENDANT has engaged and continues
14 to engage in a business practice which violates California law, including but not limited
15 to, the applicable Industrial Wage Order(s), the California Code of Regulations and the
16 California Labor Code including Sections 204, 226.7, 510, 512, 1198, 2802, and The
17 Fair Credit Reporting Act 15 U.S.C. § 1681, *et seq.* for which this Court should issue
18 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may
19 be necessary to prevent and remedy the conduct held to constitute unfair competition,
20 including restitution of wages wrongfully withheld.

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

27 73. By the conduct alleged herein, DEFENDANT’s practices were deceptive
28 and fraudulent in that DEFENDANT’s uniform policy and practice failed to pay

1 PLAINTIFF, and other members of the CALIFORNIA CLASS, wages due for time
2 worked, including overtime worked, and reporting wages due, pursuant to the applicable
3 Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
4 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and
5 equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of
6 wages wrongfully withheld.

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

11 75. By the conduct alleged herein, DEFENDANT's practices were also
12 unlawful, unfair and deceptive in that DEFENDANT's uniform policies, practices and
13 procedures failed to provide legally required uninterrupted meal breaks to PLAINTIFF
14 and the other members of the CALIFORNIA CLASS as required by Cal. Lab. Code §§
15 226.7 and 512.

16 76. Therefore, PLAINTIFF demands on behalf of herself and on behalf of
17 each CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an
18 off-duty meal period was not timely provided for each five (5) hours of work, and/or one
19 (1) hour of pay for each workday in which a second off-duty meal period was not timely
20 provided for each ten (10) hours of work.

21 77. PLAINTIFF further demands on behalf of herself and on behalf of each
22 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest
23 period was not paid as required by law.

24 78. By and through the unlawful and unfair business practices described herein,
25 DEFENDANT has obtained valuable property, money and services from PLAINTIFF
26 and the other members of the CALIFORNIA CLASS, including earned wages for time
27 worked, including overtime worked, and has deprived them of valuable rights and
28 benefits guaranteed by law and contract, all to the detriment of these employees and to

1 the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against
2 competitors who comply with the law.

3 79. All the acts described herein as violations of, among other things, the
4 Industrial Welfare Commission Wage Orders, the California Code of Regulations, and
5 the California Labor Code, were unlawful and in violation of public policy, were
6 immoral, unethical, oppressive and unscrupulous, were deceptive, and thereby constitute
7 unlawful, unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code
8 §§ 17200, *et seq.*

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

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

21 22 **FOURTH CAUSE OF ACTION**

23 **For Failure To Pay Overtime Compensation**

24 **[Cal. Lab. Code §§ 510 & 1198, *et seq.*]**

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

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

1 prior paragraphs of this Complaint.

2 83. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
3 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
4 California Labor Code and the Industrial Welfare Commission requirements for
5 DEFENDANT's failure to pay these employees for time worked, including overtime
6 worked, including, work performed in excess of eight (8) hours in a workday and/or
7 forty (40) hours in any workweek.

8 84. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
9 public policy, an employer must timely pay its employees for time worked.

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

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

19 87. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF
20 and CALIFORNIA LABOR SUB-CLASS Members have been required by
21 DEFENDANT to work off-the-clock and have not been paid for the off-the-clock time
22 they worked, including overtime worked.

23 88. DEFENDANT's uniform pattern of unlawful wage and hour practices
24 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS
25 as a whole, as a result of implementing a uniform policy and practice that failed to
26 accurately record time worked by PLAINTIFF and other CALIFORNIA LABOR SUB-
27 CLASS Members and denies accurate compensation to the PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS for time worked, including, the

1 overtime work performed in excess of eight (8) hours in a workday and/or forty (40)
2 hours in any workweek.

3 89. In committing these violations of the California Labor Code, DEFENDANT
4 inaccurately recorded time worked and consequently underpaid the actual time worked
5 by PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members.
6 DEFENDANT acted in an illegal attempt to avoid the payment of earned wages, and
7 other benefits in violation of the California Labor Code, the Industrial Welfare
8 Commission requirements and other applicable laws and regulations.

9 90. As a direct result of DEFENDANT's unlawful wage practices as alleged
10 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
11 do not receive full compensation for time worked, including overtime worked.

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

21 92. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF
22 and the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less
23 for time worked that they are entitled to, constituting a failure to pay earned overtime
24 wages at the rate under Labor Code § 1198.

25 93. DEFENDANT failed to accurately pay PLAINTIFF and the other members
26 of the CALIFORNIA LABOR SUB-CLASS overtime for the time they worked which
27 is in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§
28 510, 1194 & 1198, even though PLAINTIFF and the other members of the

1 CALIFORNIA LABOR SUB-CLASS are required to work, and do in fact work,
2 overtime as to which DEFENDANT failed to accurately record and pay as evidenced by
3 DEFENDANT's business records and witnessed by employees.

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

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

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

26 97. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
27 CLASS therefore request recovery of unpaid wages, including overtime wages,
28 according to proof, interest, statutory costs, as well as the assessment of any statutory

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

FIFTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

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

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

(1) gross wages earned,

(2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,

(3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,

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

12 100. When PLAINTIFF and other CALIFORNIA CLASS Members were not
13 compensated for overtime worked and missed meal and rest breaks, DEFENDANT also
14 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
15 complete and accurate wage statements which failed to show, among other things, the
16 correct amount of time worked, including, work performed in excess of eight (8) hours
17 in a workday and/or forty (40) hours in any workweek. Cal. Lab. Code § 226 provides
18 that every employer shall furnish each of her or her employees with an accurate itemized
19 wage statement in writing showing, among other things, gross wages earned and all
20 applicable hourly rates in effect during the pay period and the corresponding amount of
21 time worked at each hourly rate. As a result, DEFENDANT provided PLAINTIFF and
22 the other members of the CALIFORNIA CLASS with wage statements which violate
23 Cal. Lab. Code § 226.

24 101. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
25 Code § 226, causing injury and damages to PLAINTIFF and the other members of the
26 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to,
27 costs expended calculating the correct rates for the overtime hours worked and the
28 amount of employment taxes which were not properly paid to state and federal tax

1 authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the
 2 other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover
 3 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
 4 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent
 5 pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time
 6 of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and
 7 each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

8 9 **SIXTH CAUSE OF ACTION**

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

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

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

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

17 103. Cal. Lab. Code § 200 provides, in relevant part, that:

18 As used in this article:

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

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

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

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

27 If an employee not having a written contract for a definite period quits his or
 28 her employment, his or her wages shall become due and payable not later
 than 72 hours thereafter, unless the employee has given 72 hours previous

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

5 106. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
 6 SUB-CLASS Members' employment contract.

7 107. Cal. Lab. Code § 203 provides, in relevant part, that:

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

11 108. The employment of PLAINTIFF and many CALIFORNIA LABOR
 12 SUB-CLASS Members has terminated and DEFENDANT has not tendered payment of
 13 all wages owed as required by law.

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

21 **SEVENTH CAUSE OF ACTION**

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

23 **[Cal. Lab. Code § 2802]**

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

26 110. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members
 27 reallege and incorporate by this reference, as though fully set forth herein, the prior
 28

1 paragraphs of this Complaint.

2 111. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

6 112. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
7 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR
8 SUB-CLASS members for required expenses incurred in the discharge of their job duties
9 for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the
10 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were
11 not limited to, costs related to using their personal cellular phones all on behalf of and
12 for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA
13 CLASS Members were required by DEFENDANT to use their personal cell phones to
14 respond to work related issues as described above. DEFENDANT's uniform policy,
15 practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA
16 LABOR SUB-CLASS members for expenses resulting from using their personal cellular
17 phones for DEFENDANT within the course and scope of their employment for
18 DEFENDANT. These expenses were necessary to complete their principal job duties.
19 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
20 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF
21 and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to
22 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
23 members for these expenses as an employer is required to do under the laws and
24 regulations of California.

25 113. PLAINTIFF therefore demands reimbursement for expenditures or losses
26 incurred by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge
27 of their job duties for DEFENDANT, or their obedience to the directions of
28 DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

PRAYER FOR RELIEF

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

1. On behalf of the FCRA CLASS:

- A) That the Court certify the First and Second Cause of Action asserted by the FCRA CLASS as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);
- B) A determination and judgment that DEFENDANT willfully violated the 15 U.S.C. § 1681(b)(2)(A)(I) and(ii) of the FCRA by failing improperly including liability release language in its background check disclosure and authorization form and by obtaining consumer reports on PLAINTIFF and FCRA CLASS Members without having proper authorization to do so;
- C) Pursuant to 15 U.S.C. § 1681n(a)(1)(A), an award of statutory damages to PLAINTIFF and the members of the FCRA CLASS in an amount equal to \$1,000 for PLAINTIFF and each FCRA CLASS Member for DEFENDANT's willful violation of the FCRA;
- D) Pursuant to 15 U.S.C. § 1681n(a)(2), an award of punitive damages to PLAINTIFF and other FCRA CLASS Members;
- E) An award for costs of suit and reasonable attorneys' fees pursuant to 15 U.S.C. § 1681n(a)(3); and,
- F) Such other and further relief as the Court deems just and equitable.

2. On behalf of the CALIFORNIA CLASS:

- A) That the Court certify the Third Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);
- B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;

- 1 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
2 withheld from compensation due to PLAINTIFF and the other members of
3 the CALIFORNIA CLASS; and,
- 4 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid
5 fund for restitution of the sums incidental to DEFENDANT's violations due
6 to PLAINTIFF and to the other members of the CALIFORNIA CLASS.
- 7 3. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 8 A) That the Court certify the Fourth, Fifth, Sixth and Seventh Causes of Action
9 asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
10 pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);
- 11 B) Compensatory damages, according to proof at trial, including compensatory
12 damages for overtime compensation due PLAINTIFF and the other
13 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
14 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
15 statutory rate; and,
- 16 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay
17 period in which a violation occurs and one hundred dollars (\$100) per each
18 member of the CALIFORNIA LABOR SUB-CLASS for each violation in
19 a subsequent pay period, not exceeding an aggregate penalty of four
20 thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab.
21 Code § 226;
- 22 D) The wages of all terminated employees from the CALIFORNIA LABOR
23 SUB-CLASS as a penalty from the due date thereof at the same rate until
24 paid or until an action therefore is commenced, in accordance with Cal. Lab.
25 Code § 203; and,
- 26 E) The amount of the expenses PLAINTIFF and each member of the
27 CALIFORNIA LABOR SUBCLASS incurred in the course of their job
28 duties, plus interest, and costs of suit.

1 4. On all claims:

- 2 A) An award of interest, including prejudgment interest at the legal rate;
- 3 B) Such other and further relief as the Court deems just and equitable; and,
- 4 C) An award of penalties, attorneys' fees and cost of suit, as allowable under
- 5 the law, including, but not limited to, pursuant to 15 U.S.C. § 1681n, 15
- 6 U.S.C. § 1681o, Labor Code §218.5, §226, §1194 and/or §2802.
- 7

8 Dated: August 18, 2017 BLUMENTHAL, NORDREHAUG & BHOWMIK LLP

9

10 By: /s/ Norman B. Blumenthal

11 Norman B. Blumenthal

12 Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: August 18, 2017 BLUMENTHAL, NORDREHAUG & BHOWMIK LLP

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