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24 UNITED STATES DISTRICT COURT
25 SOUTHERN DISTRICT OF CALIFORNIA

26 KRISTINA RAINES and DARRICK FIGG,
27 individually and on behalf of all others similarly
28 situated,

Plaintiff,

v.

U.S. HEALTHWORKS MEDICAL GROUP, a
corporation; U.S. HEALTHWORKS, INC., a
corporation; SELECT MEDICAL HOLDINGS
CORPORATION, a corporation; SELECT
MEDICAL CORPORATION, a corporation;
CONCENTRA GROUP HOLDINGS, LLC, a
corporation; CONCENTRA, INC., a corporation;
CONCENTRA PRIMARY CARE OF
CALIFORNIA, a medical corporation;
OCCUPATIONAL HEALTH CENTERS OF
CALIFORNIA, a Medical Corporation; and
DOES 4 and 8 through 10, inclusive,

Defendants.

Case No: 19CV1539-DMS-MSB

CLASS ACTION

**THIRD AMENDED COMPLAINT FOR
IMPERMISSIBLE INQUIRIES IN
VIOLATION OF FEHA; VIOLATION OF
UNRUH CIVIL RIGHTS ACT;
INTRUSION UPON SECLUSION; AND
VIOLATION OF UNFAIR BUSINESS
PRACTICES ACT**

DEMAND FOR JURY TRIAL

Complaint Filed: Oct. 23, 2018
FAC Filed: July 16, 2019
SAC Filed: Feb. 19, 2020

1 Plaintiffs, individually and on behalf of all others similarly situated, allege as follows:

2 **INTRODUCTION**

3 1. This is a class action brought by Plaintiffs Kristina Raines and Darrick Figg,
4 individually and on behalf of at least 500,000 California job applicants, against Defendants
5 U.S. HealthWorks and its successors (Concentra and Select Medical), the nation’s and
6 California’s largest providers of occupational health. The job applicants were required by
7 their prospective employers to undergo and pass a “pre-placement” medical examination by
8 Defendants as a condition of being hired.

9 2. In conducting these pre-placement medical exams, Defendants, for the
10 four years prior to filing this action and through at least Spring 2019, engaged in a
11 systematic, ongoing and illegal practice of forcing job applicants to answer highly-
12 intrusive, non-job-related and discriminatory questions in violation of California law.
13 These questions included, for example, whether the applicant has and/or ever has had:
14 1) venereal disease; 2) painful or irregular vaginal discharge; 3) problems with
15 menstrual periods; 4) whether the applicant is pregnant; 5) penile discharge, prostate
16 problems, genital pain or masses; 6) cancer/tumors; 7) HIV; 8) mental illness; 9)
17 disabilities; 10) painful/frequent urination; 11) hair loss; 12) hemorrhoids; 13) diarrhea;
18 14) black stool; 15) constipation; 16) organ transplant; and 17) stroke.

19 3. In engaging in this wrongful conduct, Defendants acted as an agent on
20 behalf of the referring employers, who delegated to Defendants employment decision-
21 making authority and who had the right to control how Defendants conducted
22 significant aspects of the exams. Alternatively, Defendants discriminated against the
23 applicants, who were their patrons or customers, by providing services to determine
24 whether the applicant was able to perform the offered job position, in a discriminatory
25 fashion.

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THE PARTIES

4. Plaintiff KRISTINA RAINES is an individual who was, at all times relevant hereto, a resident of the State of California, and at the time of filing this action was a resident of the State of Florida.

5. Plaintiff DARRICK FIGG is an individual who is, and at all times relevant hereto was, a resident of the State of California.

6. Defendant U.S. HEALTHWORKS MEDICAL GROUP is a California corporation with its principal place of business and offices located in Valencia, California.

7. On information and belief, Defendant U.S. HEALTHWORKS, INC. is a corporation incorporated under the laws of one of the states of the United States of America, with its principal place of business in the State of Texas or the State of Pennsylvania. (As alleged herein, U.S. HEALTHWORKS MEDICAL GROUP and U.S. HEALTHWORKS, INC., and Doe 4, individually and collectively, are hereafter referred to as “USHW MEDICAL GROUP.”)

8. USHW MEDICAL GROUP at all times relevant offered and provided employers comprehensive occupational health services that included both medical examinations and occupational therapy.

9. On information and belief, Defendant CONCENTRA GROUP HOLDINGS, LLC is a corporation incorporated under the laws of one of the states of the United States of America, having its principal place of business in the State of Texas.

10. On information and belief, Defendant CONCENTRA, INC. is a corporation incorporated under the laws of one of the states of the United States of America, having its principal place of business in the State of Texas or the State of Pennsylvania.

11. On information and belief, CONCENTRA PRIMARY CARE OF CALIFORNIA, A MEDICAL CORPORATION, is a corporation incorporated under the laws of the State of California, having its principal place of business in the State of California.

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1 12. On information and belief, Defendant SELECT MEDICAL HOLDINGS
2 CORPORATION is a corporation incorporated under the laws of one of the states of the
3 United States of America, having its principal place of business in the State of Pennsylvania.

4 13. On information and belief, defendant SELECT MEDICAL CORPORATION is
5 a corporation incorporated under the laws of one of the states of the United States of America,
6 having its principal place of business in the State of Texas or the State of Pennsylvania.

7 14. On information and belief, defendant OCCUPATIONAL HEALTH CENTERS
8 OF CALIFORNIA, A MEDICAL CORPORATION (added here as Doe 8), is a corporation
9 incorporated under the laws of one of the states of the United States of America, having its
10 principal place of business in the State of Texas or the State of Pennsylvania.

11 15. As alleged herein, Defendants SELECT MEDICAL HOLDINGS
12 CORPORATION, SELECT MEDICAL CORPORATION, CONCENTRA GROUP
13 HOLDINGS, LLC, CONCENTRA, INC., CONCENTRA PRIMARY CARE OF
14 CALIFORNIA, A MEDICAL CORPORATION, OCCUPATIONAL HEALTH CENTERS OF
15 CALIFORNIA, A MEDICAL CORPORATION and DOES 9-10, and each of them, are
16 individually and collectively referred to as “CONCENTRA DEFENDANTS.”

17 16. The true names or capacities, whether individual, corporate, associate or
18 otherwise of Defendants Does 4 and 9 to 10, inclusive, being unknown to Plaintiffs prior to
19 filing of this action, Plaintiffs assert their claims against these Defendants under fictitious
20 names pursuant to California Code of Civil Procedure § 474.

21 17. Plaintiffs are informed and believe that each Defendant named in this
22 Complaint, and each Doe Defendant, individually and/or collectively (hereafter
23 “Defendants”), is in some manner responsible for the wrongs and damages alleged below,
24 individually and/or, except as specified otherwise herein, as a joint employer, employer and/or
25 as the agent, servant, partner, alter ego and/or employee of, and/or co-conspirator with, each
26 other Defendant or employer(s) which referred the Class Members to Defendants, and each of
27 them, and in doing the actions described below, was acting within the course and scope of its
28 authority as such joint employer, employer, agent, servant, partner, employee, and/or

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1 conspirator, with the permission and consent of each of the other Defendants and/or each
2 referring employer. Defendants, and each of them, also were aider and/or abettors with each
3 other and in doing the actions described below, were acting within the course and scope of its
4 authority as such aider and abettor. On information and belief, Defendants, and each of them,
5 are and/or were successors in interest to each of the other defendants, and/or were transferees
6 and/or obtained ownership or control over the assets of each of the other defendants for no
7 consideration and/or for inadequate consideration, and are therefore liable for the wrongs and
8 damages alleged below on those independent bases. All acts herein alleged were approved of
9 and ratified by the other Defendants.

10 **JURISDICTION AND VENUE**

11 18. On October 23, 2018, Plaintiff Kristina Raines filed this action against
12 defendants U.S. Healthworks Medical Group and Front Porch Communities and Services in
13 California Superior Court (San Diego County), Case No. 37-2018-00053708-CU-CR-CTL.

14 19. On July 16, 2019, Plaintiff filed a First Amended Complaint against these
15 defendants and additional defendants Select Medical Holdings Corporation and Concentra
16 Group Holdings, LLC.

17 20. On August 15, 2019, Defendants (except Front Porch) removed this Action to
18 this court asserting jurisdiction under the Class Action Fairness Act. (28 U.S.C. §1332(d).)

19 21. Assuming this court has proper jurisdiction, venue is appropriate under 28 U.S.C.
20 §1391 because a substantial part of the events or omissions giving rise to the claims alleged
21 occurred in this judicial district.

22 **CONCENTRA ACQUISITION AND MANAGEMENT OF**

23 **USHW AND USHW FACILITIES**

24 22. USHW MEDICAL GROUP was at all times relevant the nation’s second
25 largest provider of occupational health services and the largest provider of occupational health
26 services in California. USHW MEDICAL GROUP at all times relevant owned and operated
27 approximately 78 medical centers in the State of California (“USHW FACILITIES”).
28

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1 which are the subject of this action (at least through Spring 2019) conducted such pre-
2 placement medical exams of the employers’ job applicants (collectively “Class Members”) at
3 the approximately 78 USHW FACILITIES. Plaintiffs are informed and believe that USHW
4 conducted in excess of 200,000 of these examinations annually in the State of California.

5 29. In performing these pre-placement exams, USHW acted as an agent for the
6 employers, and alternatively, as a business establishment providing services to the applicants.

7 AGENCY

8 30. For purposes of all causes of action alleged herein except the Second Cause of
9 Action, USHW acted as an agent on behalf of the referring employers in conducting pre-
10 placement examinations in its dealings with Class Members.

11 31. The referring employers delegated to USHW certain aspects of the employers’
12 employment decisions as to Class Members. For example:

13 a. The employers delegated to USHW the decision to either permit or
14 withhold Class Members from gaining employment. The employers advised USHW that the
15 purpose for the exam was to determine whether the job applicant would be able to get the job.
16 After completing each exam, USHW filled out and sent to the employer a “medical examiner
17 recommendation” form stating either that the applicant is: 1) “medically acceptable for the
18 position offered,” 2) “medically acceptable for the position offered, except that a condition
19 exists which limits work [and specifies],” 3) “Placed on medical hold pending [further
20 investigation]” or 4) “Other” [and specifies]. On information and belief, employers adopted
21 the “recommendations” of USHW as a matter of course. Stating that the applicant was
22 medically acceptable without limitation meant that USHW passed the applicant meaning they
23 got the job. Placing limiting restrictions on an applicant which did not comply with the job
24 description potentially operated as a denial of employment (depending on whether the
25 employer would accept the restrictions). Placing applicants on medical hold (sometimes for a
26 year or more) was often effectively a denial of employment, since there was no guarantee the
27 job position would remain open. This was especially true where the hold or limitation was
28 based on information that USHW obtained from applicant answers to USHW’s discriminatory

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1 and/or irrelevant questions which the applicant was forced to answer in order to try and pass
2 the exam as a condition of getting the job.

3 b. On information and belief, employers who sent job applicants to USHW
4 for pre-placement medical exams generally sent all of their job applicants exclusively to
5 USHW for this purpose. On information and belief, the medical directors at USHW facilities
6 visited employer worksites to familiarize themselves with the employer’s operation, and
7 employers would likewise visit the USHW clinics.

8 c. The employers told job applicants they were required to undergo and
9 pass a pre-placement medical examination by USHW at a USHW facility in order to receive a
10 job. The exam was involuntary and the employers dictated that applicants go to USHW for
11 the exam; applicants were not free to go to a medical provider of their choice for this
12 evaluation. The employers paid for the exam.

13 32. The referring employers also had the right to control USHW in how it conducted
14 the pre-placement medical exams. For example:

15 a. The employers decided and directed USHW on what specific medical
16 tests (known as “protocols”) would be given to job applicants. Employers often required that
17 USHW use the employers’ own physical examination form, rather than USHW’s medical form,
18 in conducting the physical examination component of the pre-placement exam. Employers also
19 gave USHW lifting restrictions for the position, rather than USHW determining what the lifting
20 restrictions were for the job.

21 b. Acting expressly or impliedly at the direction of employers, USHW
22 threatened to deny Class Members getting hired unless they cooperated in the exam. USHW
23 required applicants to sign a form titled “AUTHORIZATION TO DISCLOSE PROTECTED
24 HEALTH INFORMATION TO EMPLOYER,” which unlawfully authorized USHW to disclose
25 the applicant’s protected health information to the employer and others. This form warned that
26 the applicant’s refusal to sign “may violate a condition of employment or employment” and the
27 applicant’s revocation “may carry consequences related to my employment” and directed the
28 applicant to “contact your employer for details.” One of USHW’s physical exam forms which

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1 applicants were required to fill out during at least a portion of the Class Period warned that “I
2 certify that the information above is correct and understand that falsification may be cause of
3 termination.” Employers expressly or impliedly approved the use of these forms by USHW;
4 copies were available on USHW’s website through which many employers made their bookings
5 for the pre-placement exams.

6 c. Employers gave other instructions to USHW as well. For example,
7 Plaintiff Raines’ prospective employer, Front Porch, instructed USHW 1) that if the
8 applicant’s medical evaluation was put on hold by USHW, USHW should “call employee
9 immediately when an employee is on medical hold” and “call patient immediately explaining
10 what the hold is for and how to clear”; 2) that applicants must present a current valid ID at the
11 clinic, and if they did not, directed that USHW not perform the exam and instead refer the
12 applicant back to Front Porch; and 3) to contact the employer if the applicant was unable to
13 meet lifting requirements.

14 **USHW’S ROLE AS A BUSINESS ESTABLISHMENT**
15 **PROVIDING SERVICES TO CLASS MEMBERS**

16 33. For purposes of all causes of action except the First Cause of Action, USHW
17 was at all times a third-party occupational health provider. Job applicants went to USHW to
18 get a non-discriminatory pre-placement medical examination for the sole purpose of
19 evaluating whether they could presently perform the essential functions for the job position
20 they had been offered so the applicants could get the job.

21 34. In addition, USHW led job applicants to believe that USHW was the
22 applicants’ own physician and the applicants were their “patients.” For example:

23 a. USHW considered that it had a physician-patient relationship with each
24 job applicant.

25 b. Many of the USHW forms which applicants were required to sign as
26 part of the pre-placement examination refer to the applicant as the “patient.” These forms had
27 “patient signature” lines for the applicants to sign. The USHW Health History Questionnaire
28 which each applicant was required to fill out had a section for the examiner to fill out (readily

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1 observable by the applicant) stating "Relevant history was discussed *with patient (emphasis*
2 *added).*" A USHW Tuberculosis screening form for pre-placement exams was labeled
3 "patient questionnaire" and had a "Patient signature" line for the applicant to sign.

4 c. The applicant was required to sign a USHW form titled "PATIENT
5 CONSENT TO TREAT AND ACKNOWLEDGMENT OF PRIVACY PRACTICES" which
6 had a "patient signature" line. This form also stated that the applicant may be responsible to
7 pay USHW for its services, stating: "If I am receiving employer-directed services (*e.g.*,
8 physicals), USHW will seek payment from the employer; I may be responsible for payment if
9 allowed by state or federal law," and "If I am responsible for payment and my account is
10 referred to collections, I understand that I may have to pay collections expenses incurred by
11 USHW."

12 d. In conducting the pre-placement exams, USHW considered whether the
13 applicant's future health may be at risk in taking the job. USHW clinicians would attempt to
14 dissuade applicants from taking the job where the clinician thought the job could be potentially
15 hazardous to the applicant's future health even though it would not impact his or her ability to
16 currently perform the essential job functions (such as where the applicant was a smoker and
17 would be working with asbestos creating a heightened chance of developing lung cancer or
18 where a pregnant woman would be working with silica which could increase her exposure to
19 cancer but did not impact her current ability to do the job). This had the effect of
20 discriminatorily attempting to dissuade workers considered to have a disability from taking the
21 job.

22 35. As such, the job applicants were patrons or customers of USHW for the
23 furnishing of these services.

24 **USHW'S UNLAWFUL PRACTICES**

25 36. As part of the pre-placement examinations, USHW at all times relevant during
26 the Class Period engaged in a systematic, on-going and illegal pattern and practice of forcing
27 Class Members to fill-out standardized health history questionnaire(s) (hereinafter "Health
28 History Questionnaire(s)"), and sign unlawful disclosure authorizations.

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1 37. The Health History Questionnaire(s) asked numerous unlawful, highly-
2 intrusive, highly-private, non-job-related and discriminatory questions. These included
3 questions such as whether the applicant has and/or has ever had: 1) venereal disease; 2) painful
4 or irregular vaginal discharge or pain; 3) problems with menstrual periods; 4) irregular
5 menstrual period; 5); penile discharge, prostate problems, genital pain or masses; 6) cancer; 7)
6 mental illness; 8) HIV; 9) permanent disabilities; 10) painful/frequent urination; 11) hair loss;
7 12) hemorrhoids; 13) diarrhea; 14) black stool; 15) constipation; 16) tumors; 17) organ
8 transplant; 18) stroke; or 19) a history of tobacco or alcohol use.

9 38. The Health History Questionnaire(s) likewise illegally asked whether the Class
10 Member was pregnant, sought information regarding every type of over-the-counter and
11 prescribed medication taken by the Class Member (which would include, for example, birth
12 control and medication evidencing non-job-related disabilities and illnesses), and required that
13 the Class Member reveal information about prior on-the-job injuries or illnesses. (The questions
14 in the Health History Questionnaires are hereafter individually and collectively referred to as
15 “Impermissible Non-Job-Related Questions.”)

16 39. The questions concerning pregnancy, menstrual and vaginal issues were in a box
17 marked “FOR WOMEN ONLY.” The questions concerning penile discharge, prostate
18 problems, genital pain or masses were in a box marked “FOR MEN ONLY.”

19 40. Plaintiffs are informed and believe that, when the Class Member provided a
20 positive response to any of the inquiries contained in the Health History Questionnaire(s), it
21 was USHW’s systematic policy and practice to have a USHW medical examiner verbally ask
22 the Class Member to explain the basis for the positive responses.

23 41. Finally, all Class Members were required by USHW to sign an unlawful form
24 titled “AUTHORIZATION TO DISCLOSE PROTECTED HEALTH INFORMATION TO
25 EMPLOYER.” This document authorized USHW to disclose the Class Member’s protected
26 health information to his/her prospective employer and others. USHW itself acknowledged
27 that this authorization violated the Americans with Disabilities Act (“ADA”), since USHW
28 advised every employer that “in compliance with the ADA”, the medical examiner may not

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1 disclose the applicant’s medical diagnoses or conditions to the employer. This Authorization
2 was coerced, since it was unlawful and threatened the Class Member that her or his “refusal to
3 sign” “may violate a condition of [] employment” and that “revocation of this authorization
4 may carry consequences related to my [] employment.”

5 42. The Impermissible Non-Job-Related Questions, and each of them, were highly-
6 intrusive, highly-private, overbroad, unrelated to any Class Member’s ability to perform the
7 functions of any job position, inconsistent with business necessity for any Class Member’s job
8 position and discriminatory. Indeed, except for the specific questions not relating to the
9 applicant’s gender described above, all Class Members were required to answer all of the
10 Impermissible Non-Job-Related Questions, regardless of the nature and duties of their
11 particular job position. If Class Members did not answer all of the questions, they were not
12 permitted to complete the rest of the examination.

13 43. Defendants, and each of them, had no legitimate, necessary, job-related or
14 compelling need to collect and compile such detailed and intimate information about each
15 Class Member regardless of employment position or job duties.

16 44. In sum, and in brazen disregard of the applicants’ statutory protections, USHW
17 at all times followed a practice requiring that every job applicant, at the outset of the exam and
18 regardless of job position, fill out in full and complete an omnibus health history questionnaire
19 requiring that the applicant essentially disclose his/her entire personal and private medical and
20 disability history from birth to present. In direct contravention of California law, USHW’s
21 position was that no medical question was out of bounds, and that only once it had reviewed
22 the applicant’s answers to the questionnaire would it then assess what information was
23 relevant to the job position.

24 45. Instead of taking the additional time to tailor and limit the health questions to
25 those relevant to the specific job position, USHW used an omnibus health history
26 questionnaire asking every conceivable past and current health question to every job applicant.
27 On information and belief, USHW did so for the purpose of expediting exams and thereby
28 permitting it to perform more exams and generate greater revenues.

1 46. Plaintiffs are informed and believe that Defendants, and each of them, approved
2 of, authorized and ratified the use of the Health History Questionnaire(s) and Impermissible
3 Non-Job-Related Questions.

4 **FACTS SPECIFIC TO PLAINTIFF RAINES**

5 47. On or about March 5, 2018, Ms. Raines, a woman, applied for a job with Front
6 Porch Communities and Services (“Front Porch”), a company which provides housing and
7 services to residents in the State of California. Ms. Raines applied to work as a non-exempt
8 Food Service Aide I at Front Porch’s Carlsbad By The Sea facility located in Carlsbad,
9 California.

10 48. At the time of her application, Front Porch provided Ms. Raines with a job
11 description listing the job duties for a Food Service Aide. The job description was similar to
12 what would be expected of any food server – “cleans and maintains work area; transports trash
13 and waste to disposal area; re-stocks dishes, kitchen utensils and food supplies; loads and
14 unloads food service cart; picks up and/or delivers supplies and food; washes dishes, pots and
15 cleans general work area as assigned; and delivers trays to residents as assigned.”

16 49. Front Porch offered Ms. Raines employment. However, as part of the hiring
17 process, Front Porch conditioned such offer upon Ms. Raines passing a pre-employment
18 medical examination by USHW at the USHW facility located in Carlsbad, CA.

19 50. On or about March 7, 2018, at Front Porch’s direction, Ms. Raines attended the
20 required pre-employment medical examination at USHW. During the medical examination,
21 Ms. Raines was directed by the USHW medical staff to fill out the Health History
22 Questionnaires, including the Impermissible Non-Job-Related Questions. She was also
23 directed to sign the form titled AUTHORIZATION TO DISCLOSE PROTECTED HEALTH
24 INFORMATION TO EMPLOYER, which she did.

25 51. The Health History Questionnaires and their components are intrusive,
26 overbroad and unrelated to Ms. Raines’s ability to perform the functions of her offered
27 position as a Food Service Aide I.
28

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1 52. Ms. Raines reluctantly answered all of the Impermissible Non-Job-Related
2 Questions and verbal follow up by a USHW physician assistant, except the specific
3 Impermissible Non-Job-Related Question about the date of her last menstrual period. Ms.
4 Raines objected to such question on the grounds that it had nothing to do with the job duties
5 and was particularly private information.

6 53. In response to Ms. Raines declining to provide the date of her “Last menstrual
7 period,” she was threatened by USHW staff members that she couldn’t pass the exam and get
8 the job without answering all of the questions, and the USHW physician terminated the
9 examination and USHW forced Ms. Raines to leave the premises.

10 54. Shortly after Ms. Raines left the USHW facility, Front Porch verbally told Ms.
11 Raines that it was revoking the job offer because Ms. Raines had refused to answer questions
12 about her menstrual cycle.

13 55. During this conversation, Front Porch’s Human Resources manager informed
14 Ms. Raines that all Front Porch job applicants, including the Human Resources manager
15 herself, had to answer the exact same USHW questions Ms. Raines had been asked in order to
16 get their jobs.

17 **FACTS SPECIFIC TO PLAINTIFF FIGG**

18 56. In or about early January 2018, Mr. Figg, a man, applied to serve as a member
19 of the Volunteer Communication Reserve of the San Ramon Valley Fire Protection District
20 (“SRF”).

21 57. On or about January 10, 2018, SRF made a conditional offer of employment to
22 Mr. Figg. As part of the hiring process, SRF conditioned such offer upon Mr. Figg passing a
23 pre-employment medical examination by USHW. Mr. Figg was directed by SRF to undergo the
24 pre-employment medical examination at USHW.

25 58. On or about January 18, 2018, Mr. Figg attended the required pre-employment
26 medical examination at a USHW facility located in Pleasanton, CA. During the medical
27 examination, Mr. Figg was directed by USHW staff to fill out the Health History
28 Questionnaires, including the Impermissible Non-Job-Related Questions. Mr. Figg complied.

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1 On information and belief, he was also directed to sign the form titled “AUTHORIZATION
2 TO DISCLOSE PROTECTED HEALTH INFORMATION TO EMPLOYER,” which he did.

3 59. The Health History Questionnaires and their components were intrusive,
4 overbroad and unrelated to Mr. Figg’s ability to perform the functions of the offered position
5 in the Volunteer Communication Reserve.

6 60. Mr. Figg reluctantly answered all of the Impermissible Non-Job-Related
7 Questions. He found many of the Impermissible Non-Job-Related questions asked on the
8 Health History Questionnaires to be inappropriate and inapplicable. Because Mr. Figg
9 completed the Health History Questionnaires and answered the Impermissible Non-Job-
10 Related Questions, he was seen by a USHW physician and was allowed to complete the
11 remaining portions of the examination.

12 61. Mr. Figg was deemed “Medically acceptable for the position offered” by
13 USHW.

14 62. Having been passed by USHW, on or about February 15, 2018, SRF hired Mr.
15 Figg for the offered position with the Volunteer Communication Reserve.

16 **CLASS ALLEGATIONS**

17 63. Plaintiffs bring this lawsuit as a class action on behalf of themselves
18 individually and all similarly situated current and former job applicants pursuant to Federal
19 Rule of Civil Procedure 23. The proposed Class is comprised of all applicants for
20 employment in the State of California requested to respond to standardized Impermissible
21 Non-Job-Related Questions at USHW within the Class Period (“Class Members” or the
22 “Class”). Plaintiffs reserve the right to name additional Class and Sub-Class representatives
23 and to identify additional subclasses as necessary and appropriate. (The term “Class”
24 hereafter also includes the term “Sub-Class.”)

25 64. The Class Period is defined as the period commencing on the date that is within
26 four (4) years prior to the filing of this action and ending at the time that USHW ceased its
27 practice of asking job applicants the Impermissible Non-Job Related Questions, which at the
28 earliest, ended in or about Spring 2019 (the “Class Period”).

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1 65. Subject to additional information obtained through further investigation and
2 discovery, the foregoing definition of the Class may be expanded or narrowed by amendment
3 or amended complaint. Defendants, their subsidiaries, their officers, directors, managing
4 agents and members of those persons’ immediate families, the Court, Court personnel, and
5 legal representatives, heirs, successors or assigns of any excluded person or entity are
6 excluded from the Class.

7 66. **Numerosity.** The Class for whose benefit this action is brought is so numerous
8 that joinder of all Class Members is unfeasible and impracticable. Plaintiffs are informed and
9 believe that the entire Class consists of over 500,000 job applicants and that those Class
10 Members can be readily determined and identified through Defendants’ files and other
11 documents maintained by Defendants and, if necessary, appropriate discovery.

12 67. **Typicality.** Plaintiffs’ claims are typical of the claims of the members of the
13 Class. Plaintiffs, like all Class Members, were requested to respond to the standardized
14 Impermissible Non-Job-Related Questions at USHW. Furthermore, the factual bases of
15 Defendants’ misconduct are common to all Class Members and represent a common thread of
16 unfair and/or unlawful conduct resulting in injury to all members of the Class.

17 68. **Commonality.** Common questions of law and fact exist as to all members of
18 the Class and predominate over any questions solely affecting individual members. Issues of
19 law and fact common to the Class include:

- 20 a. Whether Defendants requested Class Members to respond to
21 Impermissible Non-Job-Related Questions;
- 22 b. Whether the Impermissible Non-Job-Related Questions violated the Fair
23 Employment and Housing Act (“FEHA” - Cal. Govt Code § 12940);
- 24 c. Whether the Impermissible Non-Job-Related Questions violated the
25 Class Members’ privacy rights;
- 26 d. Whether Defendants required that Class Members sign an unlawful
27 authorization to disclose protected health information to the employer
28 and others;

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- 1 e. Whether Defendants were subject to and violated Civil Code § 51;
- 2 f. Whether Defendants were an agent of Front Porch, SRF and all other
- 3 employers who referred Class Members to USHW for medical
- 4 examinations and therefore subject to liability under FEHA;
- 5 g. Whether Defendants by way of the conduct alleged herein, engaged in
- 6 unfair or unlawful acts or practices in violation of California unfair
- 7 competition practices laws including, but not limited to, California
- 8 Business & Professions Code § 17200, *et seq.*, for which Class Members
- 9 are entitled to recover;
- 10 h. Whether Class Members have been damaged by Defendants’ actions or
- 11 conduct;
- 12 i. Whether Class Members are entitled to statutory damages under Civil
- 13 Code §52;
- 14 j. Whether Class Members are entitled to statutory damages (compensatory
- 15 and/or nominal) and civil penalties and fines under Civil Code §§ 56.35
- 16 and 56.36;
- 17 k. Whether Class Members are entitled to nominal damages;
- 18 l. The effect upon and the extent of injuries suffered by the Class and the
- 19 appropriate amount of compensation;
- 20 m. Whether declaratory and injunctive relief are appropriate to curtail
- 21 Defendants’ conduct as alleged herein;
- 22 n. Whether Defendants acted with malice, oppression and/or fraud, thereby
- 23 justifying the award of punitive damages;
- 24 o. Whether Defendants operated, managed and/or controlled the USHW
- 25 FACILITIES where Class Members were examined and/or administered
- 26 such examinations and/or are otherwise responsible for the conduct
- 27 alleged in this action;
- 28 p. Whether defendants are the alter ego of one another;

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- 1 q. Whether some or all of the defendants constitute a single enterprise;
- 2 r. Whether the CONCENTRA DEFENDANTS acquired ownership and/or
- 3 control of the USHW FACILITIES for no consideration or inadequate
- 4 consideration in fraud of the CLASS MEMBERS as creditors; and
- 5 s. Whether the CONCENTRA DEFENDANTS are successors in interest to
- 6 the USHW MEDICAL GROUP.

7 69. **Adequacy.** Plaintiffs will fairly and adequately represent the interests of the
8 Class and have no interests adverse to or in conflict with other Class Members. Plaintiffs’
9 retained counsel will vigorously prosecute this case, have previously been designated class
10 counsel in cases in the State and Federal courts of California, and are highly experienced in
11 employment law, class and complex, multi-party litigation.

12 70. **Superiority.** A class action is superior to other available methods for the fair
13 and efficient adjudication of this controversy since, among other things, joinder of all Class
14 Members is impracticable, and a class action will reduce the risk of inconsistent adjudications
15 or repeated litigation on the same conduct. Further, the expense and burden of individual
16 lawsuits would make it virtually impossible for Class Members, Defendants, or the Court to
17 cost-effectively redress separately the unlawful conduct alleged. Thus, absent a class action,
18 Defendants would unjustly retain the benefits of their wrongdoings. Plaintiffs know of no
19 difficulties to be encountered in the management of this action that would preclude its
20 maintenance as a class action, either with or without sub-classes.

21 71. Adequate notice can be given to Class Members directly using information
22 maintained in Defendants’ records, or through notice by publication.

23 72. Accordingly, class certification is appropriate under Code of Civil Procedure §
24 382.

FIRST CAUSE OF ACTION
VIOLATION OF FEHA (GOVT CODE § 12940(d), (e))
(Class Against all Defendants)

26 73. Plaintiffs re-allege and incorporate by this reference the allegations in
27 paragraphs 1-32 and 36-72 as though fully set forth herein.
28

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1 74. The FEHA (Cal. Government Code §12940, *et seq.*) predicates liability for
2 employment discrimination on the status of the defendant as the claimant’s “employer.” FEHA
3 defines an “Employer” to “include[] any person regularly employing five or more persons, *or*
4 *any person acting as an agent of an employer, directly or indirectly.*” (Section 12926(d),
5 emphasis added.)

6 75. Front Porch, SRF and every other person which employed five or more
7 employees in the State of California which sent Class Members to USHW for pre-placement
8 medical examinations are employers subject to FEHA.

9 76. USHW was at all times relevant during the Class Period an agent of Front
10 Porch, SRF and each other employer which sent Class Members for pre-placement
11 examinations to USHW in the State of California and is therefore subject to FEHA. As more
12 fully set forth in paragraphs 30-32, the referring prospective employers delegated to USHW
13 significant aspects of the employers’ employment decisions as to Class Members. The
14 prospective employers also had the right to control the manner in which USHW conducted
15 significant aspects of its pre-employment examinations and they often exercised such control.

16 77. The FEHA (Govt Code §12940, *et seq.*) provides that the following constitute
17 unlawful employment practices:

18 a. Section 12940(d) – which prohibits employers from circulating or
19 causing to be printed any publication, or to make any non-job-related inquiry of an employee or
20 applicant, either verbal or through use of an application form, that expresses, directly or
21 indirectly, any limitation, specification, or discrimination as to physical disability, mental
22 disability, medical condition, sex, gender, age, sexual orientation, or any intent to make any
23 such limitation, specification, or discrimination and

24 b. Section 12940(e) – which prohibits employers as to a job applicant from
25 requiring any medical or psychological examination or making any medical or psychological
26 inquiry or any inquiry whether he or she has a mental or physical disability or medical
27 condition or the nature and severity thereof, after a conditional job offer has been made but
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1 prior to the commencement of employment duties “*unless the examination or inquiry is job*
2 *related and consistent with business necessity*” (emphasis added).

3 78. Under FEHA, medical inquiries must be narrowly tailored to assess only
4 whether the applicant is presently able to perform the essential duties of the specific job
5 position for purposes of a pre-placement medical exam.

6 79. As alleged above, Defendants, and each of them, were at all times relevant
7 employers under FEHA, which engaged in a continuing pattern and practice of unlawfully
8 violating the foregoing FEHA sections by requiring that Class Members answer Impermissible
9 Non-Job-Related Questions. These inquiries were neither job related nor consistent with
10 business necessity, and certainly not tailored. These questions also expressed, directly or
11 indirectly, limitation, specification or discrimination as to physical and/or mental disability,
12 medical condition, sex, gender and/or sexual orientation, and/or an intent to do so.

13 80. As a proximate result of the acts and conduct of Defendants, and each of them,
14 Plaintiffs and the other Class Members have suffered and continue to suffer damages and
15 injury in amounts not yet fully ascertained, but in excess of the jurisdictional minimum of this
16 Court, including but not limited to emotional and mental distress, anguish, humiliation,
17 embarrassment, fright, shock, pain, discomfort, anxiety, loss of self-esteem, stress,
18 sleeplessness, nervousness, stigma and diminishment of enjoyment and quality of life.

19 81. Said Defendants’ actions were malicious, oppressive and fraudulent, and
20 Plaintiffs and the other Class Members are entitled to recover punitive damages from
21 Defendants, and each of them.

22 82. Plaintiffs have exhausted their administrative remedies for themselves and the
23 Class. On or about August 28, 2018, Ms. Raines filed a Complaint with the California
24 Department of Fair Employment and Housing (“DFEH” - No. 201803-01557514) against
25 USHW for harassment, discrimination, improper questions and retaliation, and received a Right
26 to Sue notice. On or about March 21, 2019, Plaintiffs took the deposition of Susan Radoff, the
27 USHW physician assistant who examined Ms. Raines. Ms. Radoff’s testimony revealed that
28 USHW systematically required that every job applicant sent by any employer to USHW in the

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1 State of California for a medical examination answer the Impermissible Non-Job-Related
2 Questions and that Ms. Radoff conducted approximately 20 such pre-hire examinations a week.
3 Accordingly, based on that discovery and out of an abundance of caution and while unnecessary
4 to do so, on or about May 8, 2019, Ms. Raines filed an Amended Complaint with the DFEH
5 against USHW expressly to allege, in addition to plaintiff Kristina Raines, the claims on behalf
6 of all other similarly situated Class Members (which includes Plaintiff Darrick Figg) and
7 received a Right to Sue notice.

8 **SECOND CAUSE OF ACTION**
9 **VIOLATION OF UNRUH CIVIL RIGHTS ACT – CIVIL CODE § 51**
10 **(Class Against All Defendants)**

11 83. Plaintiffs re-allege and incorporate by this reference the allegations in
12 paragraphs 1–29 and 33-72 as though fully set forth herein.

13 84. As an alternative to the First Cause of Action for FEHA violations, Plaintiffs
14 allege a claim under the Unruh Civil Rights Act – Cal. Civil Code § 51, *et seq.* (“UCRA”).
15 The UCRA provides that all persons in California are free and equal, and no matter what, *inter*
16 *alia*, their sex, disability, medical condition and sexual orientation (hereafter “protected
17 characteristics”), are entitled to the full and equal accommodations, advantages, facilities,
18 privileges or services in all business establishments of every kind whatsoever. (UCRA § 51.)
19 The UCRA further provides that no business establishment shall discriminate against any
20 person in California on account of any perceived protected characteristic. (UCRA § 51.5.)

21 85. Defendants, and each of them, were at all times relevant a business
22 establishment subject to liability under the UCRA. As more fully set forth in paragraphs 33-
23 35 above, USHW was a third-party vendor providing services to Class Members to get a non-
24 discriminatory pre-placement medical examination for the sole purpose of evaluating whether
25 they could presently perform the essential functions for the job position they had been offered
26 so the applicants could get the job. USHW also led applicants to believe that USHW was the
27 applicants’ own physician. As such, the applicants were patrons or customers of USHW for
28 purposes of the UCRA.

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1 86. During the pre-placement medical examinations, Defendants’ medical staff asked
2 class members questions which impermissibly sought information about protected
3 characteristics and/or were based upon the class members’ perceived protected characteristics.
4 These included questions seeking information about applicants’ sex (*e.g.*, whether a female
5 applicant has or ever had any history of vaginal discharge or pain, whether she is pregnant, and
6 the date of her last menstrual period; whether a male applicant has penial discharge or prostate
7 problems). These questions also sought information about disability status (*e.g.*, whether the
8 applicant has or ever had any disabilities, mental illness, cancer, tumors, HIV, and every
9 medication the applicant takes).

10 87. The predicate for this claim is not employment discrimination. There was no
11 employment relationship between Class Members and USHW. The Class Members were
12 patrons or customers who visited USHW to obtain their services. They were not employees of
13 USHW nor seeking employment by USHW. USHW did not pay the applicants nor did
14 applicants perform any work for USHW nor was there any intention they do so.

15 88. Based on the foregoing, Defendants, and each of them, denied, aided, incited a
16 denial or made a discrimination or distinction against Class Members contrary to Civil Code
17 §§ 51 and 51.5. USHW discriminated and/or made distinctions against Class Members and/or
18 invaded their legally protected interests as patrons or customers. In asking the impermissible
19 questions, USHW deprived Class Members of USHW’s services to provide a non-
20 discriminatory or non-distinction medical examination to permit the applicant to obtain the
21 offered job position.

22 89. USHW discriminated or made a distinction against each and every Class
23 Member it provided services for by forcing them to answer sex-based and disability-based
24 questions. USHW also denied accommodations to Class Members, since each individual was
25 entitled to a discrimination-free exam and no one got one. USHW discriminated and/or made a
26 distinction in at least two ways:

27 a. First, USHW posed gender-specific questions [under separate categories
28 marked “FOR WOMEN ONLY” and “FOR MEN ONLY”] to applicants and required them to

1 answer those questions to complete their exams. By requiring only female applicants to
2 answer questions about, for example, pregnancy, the date of the applicant’s last menstrual
3 period or vaginal discharge — and not requiring male candidates to disclose that
4 information—USHW discriminated or made a distinction against every female applicant on
5 the basis of sex. Similarly, by requiring only male applicants to answer questions about, for
6 example, penile discharge or prostate problems—and not requiring female applicants to
7 disclose that information—USHW discriminated or made a distinction on the basis of sex
8 against every male applicant. These sex-specific questions simply draw an arbitrary gender
9 distinction contrary to § 51 for which USHW is liable.

10 b. Second, USHW discriminated or made a distinction on the basis of
11 perceived disability. UCRA adopts FEHA’s definition of “disability” (including being
12 “regarded as” having a disability) (Civ. Code § 51(e)(1)) and prohibits distinction-drawing on
13 the basis of any “perceived” protected characteristic (Civ. Code § 51.1). Here, USHW asked
14 every applicant irrelevant questions, spanning from birth to present, about virtually every
15 conceivable past and present health condition (such as past fevers, diarrhea, chills, weight
16 gain, weight loss, vomiting, bruising, etc.) and required every applicant to answer every
17 question (except for questions specific to the opposite sex). As such, all Class Members were
18 required to and did disclose one or more health conditions. A positive answer to even the
19 most banal or universal condition (*e.g.*, of whether the applicant has ever had a fever)
20 triggered the perception of disability. That is, by asking questions designed to bring any and
21 every health condition to the surface for further examination, USHW’s policy was to regard
22 every applicant as having a disability and by ferreting it out discriminated or made a
23 distinction against them on the basis of perceived disability.

24 90. The Class Members have standing to assert claims under the UCRA whether or
25 not they answered the discriminatory or non-distinction questions, whether or not USHW
26 determined them to be medically qualified for the job and whether or not they were denied
27 employment. It is sufficient that the applicant was denied equal rights and encountered a
28 discriminatory or non-distinction policy.

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1 91. As a direct and proximate result of the above conduct of Defendants, and each
2 of them, Plaintiffs and the other Class Members have and will continue to suffer damages in
3 amounts not yet fully ascertained, including but not limited to the following:

- 4 a. past and future pecuniary losses;
- 5 b. loss of other benefits related to the position they were offered by the
6 employer; and
- 7 c. severe emotional and mental distress, anguish, humiliation,
8 embarrassment, fright, shock, pain, discomfort, anxiety, loss of self-esteem, stress,
9 sleeplessness, nervousness, stigma and diminishment of enjoyment and quality of life.

10 92. Civil Code § 52 provides that whoever denies, aids or incites a denial, or makes
11 any discrimination or distinction contrary to Section 51 or 51.5 is liable for each and every
12 offense for the actual damages, and any amount that may be determined by a jury, or a court
13 sitting without a jury, up to a maximum of three times the amount of actual damage but in no
14 case less than four thousand dollars (\$4,000), and any attorneys’ fees that may be determined
15 by the court in addition thereto, suffered by any person denied the rights provided in Sections
16 51 or 51.5.

17 93. The actions of Defendants, and each of them, were malicious, oppressive and
18 fraudulent, and Plaintiffs and the other Class Members are entitled to recover punitive
19 damages from said defendants, and each of them.

THIRD CAUSE OF ACTION
INTRUSION ON SECLUSION
(Class Against All Defendants)

22 94. Plaintiffs re-allege and incorporate by this reference the foregoing allegations
23 as though fully set forth herein.

24 95. The Class Members had a reasonable expectation in the privacy of their
25 personal, private and non-job-related health information. Pre-placement medical examinations
26 are by definition involuntary and coercive - not a routine medical examination performed by
27 the applicant’s own personal physician. The employer requires that the applicant undergo and
28 pass a medical examination by USHW as a condition to getting the job. Applicants go to the

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1 employer-selected doctor for a pre-placement medical exam only after they are given a
2 conditional job offer. Class Members do not have a choice and are forbidden from choosing
3 their own doctor to perform the exam. This is not a personal physician voluntarily chosen and
4 visited by the Class Member. Private physicians do not have the power to influence whether
5 their patients get a job.

6 96. To add to the coercive nature of these involuntary pre-placement medical
7 examinations, USHW required that every applicant sign an unlawful form authorizing USHW
8 to disclose the applicant’s private health information to the prospective employer or to an
9 “entity designated” (unidentified) to evaluate the applicant’s suitability for initial employment
10 or for any other disclosure required by law. The form further stated that “my health
11 information may not be protected from further disclosure by some entities receiving my
12 information under this authorization, and that USHW has no control over subsequent
13 disclosures by other entities.” Thus, applicants were told that their private, health information
14 could be disclosed not only to their prospective employer, but also potentially to other
15 unidentified entities and to the public.

16 97. USHW knew that this authorization was unlawful, since USHW sent a separate
17 form to the prospective employer advising that the Americans with Disabilities Act prohibits
18 the applicant’s health information being disclosed to the prospective employer. To further
19 heighten the applicant’s fears and concerns, USHW even threatened the applicant that refusal
20 to sign the [unlawful] authorization may violate a condition of the employment and revocation
21 of the authorization “may carry consequences related to my employment.”

22 98. Accordingly, in stark contrast to a medical examination by the applicant’s own
23 personal doctor where the applicant knows all medical information will remain within the
24 confines of the medical office, here the applicants were made acutely aware that USHW may
25 disclose to the employer (and potentially to other entities or even to the public) the applicant’s
26 private and invasive medical information about all aspects of their medical history from birth
27 to present.
28

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1 99. The Class Members’ privacy concerns were further heightened given that the
2 disclosure to the company-selected doctor – and potential disclosure to the prospective
3 employers and other unidentified entities and to the public - included the most intimate and
4 private health and personal information, such as venereal diseases, penile or vaginal discharge,
5 pregnancy, menstrual problems, disabilities, cancer, etc. – none of which had anything to do
6 with applicants’ offered job position. Whether or not this information was actually shared
7 with the employer or the other unidentified entities or to the public; it was enough that the
8 applicant understood that it might.

9 100. The applicants’ reasonable expectation of privacy was also established by the
10 FEHA requirement that any medical inquiry or examination in a pre-placement examination
11 must be narrowly tailored, job-related and consistent with business necessity, and by the
12 UCRA’s requirement that USHW’s services be provided in a non-discriminatory fashion.
13 These statutes establish a baseline for what is reasonable to ask of job applicants attending
14 mandatory medical screeners at the post-offer, pre-employment stage. The Impermissible
15 Non-Job Related Questions violated all of these standards. The scope of the applicants’
16 consent was likewise delineated by these statutory restrictions, and was limited to only what
17 was relevant to their present ability to perform the essential job functions.

18 101. USHW’s motives were contrary to the Class Members’ interests. USHW was
19 using the omnibus questionnaire form to enrich itself by expediting the exam process to be
20 able to conduct more exams (and thereby generate more revenue) instead of taking the added
21 time necessary to tailor the questions such that they were strictly limited to assessing the
22 applicants’ present ability to perform the essential duties of the particular job position as
23 required by law. USHW thereby placed its interests over the applicants’ interests.

24 102. The Class Members’ private affairs included their private, personal and non-
25 job-related health history information. These were not matters of legitimate public concern or
26 concern by an employer.

27 103. By forcing Class Members to disclose their private, personal and non-job-
28 related health history information to potentially obtain employment, Defendants, and each of

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1 them, intentionally intruded on and into each respective Class Members’ solitude, seclusion or
2 private affairs.

3 104. Defendants’ intrusions were highly offensive to a reasonable person. As noted,
4 the information involves an applicant’s most intimate and private health and personal
5 information, such as venereal diseases, penile or vaginal discharge, pregnancy, menstrual
6 problems, disabilities, cancer, etc. --, none of which has anything to do with their offered job
7 position. This was not a thorough medical exam conducted by an applicant’s own personal
8 physician, whom the applicant voluntarily visits (*e.g.*, for an annual checkup) to determine
9 whether he/she has any possible condition which would impact their present and/or future
10 health and well-being. To the contrary, the pre-placement exam is involuntary and mandated
11 by a prospective employer for the limited purpose of a company-selected doctor (USHW)
12 determining the applicant’s present ability to perform the essential functions of the job.

13 105. To make matters worse, the Class Members were forced to share this private
14 information with the company-selected doctor even though it had nothing to do with the
15 offered job position. Where an applicant marked yes to any of the medical inquiries, the
16 USHW personnel followed a practice of verbally following up to discuss it, adding to the
17 offensiveness of the intrusion. The applicant was forced to sign an unlawful authorization
18 permitting this information to be disclosed to the prospective employer or other “entity
19 designated” (unidentified), with a disclaimer that the information may not be protected from
20 even further disclosure to others (unidentified) or potentially to the public, under threat that if
21 the applicant did not consent the applicant would likely not get the job. Whether or not this
22 information was actually shared with the employer or some other entity or with the public; it
23 was enough that a reasonable applicant understood that it might be. Whether or not the
24 applicant got the job, the applicant would always be concerned and worried whether their
25 supervisor or HR personnel or potentially some entity designated (unidentified) or a member
26 of the public would know their most personal and intimate medical information or what they
27 did with it or who they disclosed it to.
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1 106. A reasonable applicant would find USHW’s approach highly offensive,
2 cavalier, evidencing a lack of restraint and insensitive. For example, by citing the ADA
3 restrictions on their “medical examiner recommendation” form, USHW knew it was subject to
4 laws protecting job applicants from certain acts relating to private health information.

5 107. As a direct and proximate result of Defendants’ actions, Plaintiffs and the other
6 Class Members have suffered harm, damages and injury in amounts not yet fully ascertained,
7 but in excess of the jurisdictional minimum of this Court, including but not limited to severe
8 emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain,
9 discomfort, anxiety, loss of self-esteem, stress, sleeplessness, nervousness, stigma and
10 diminishment of enjoyment and quality of life.

11 108. Defendants’ actions were malicious, oppressive and fraudulent, and Plaintiffs
12 and the other Class Members are entitled to recover punitive damages from Defendants, and
13 each of them.

FOURTH CAUSE OF ACTION
VIOLATION OF UCL
Cal. Bus. & Prof. Code §§ 17200 et seq.
(Class Against All Defendants)

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15
16
17 109. Plaintiffs re-allege and incorporate by this reference, the foregoing allegations
18 as if fully set forth herein.

19 110. By their actions described in this Complaint, Defendants, and each of them,
20 have committed unfair, unlawful and/or fraudulent business practices in violation of California
21 Business & Professions Code § 17200 *et seq.* (the “UCL”).

22 111. These unlawful, unfair and/or fraudulent business practices affected Plaintiffs
23 and all other Class Members and included, but were not limited to, the following illegal
24 practices:

- 25 a. Requiring that Class Members disclose intimate and sensitive medical
26 and other personal information by asking Impermissible Non-Job-Related Questions, which
27 have no job-related, business necessity justification and/or which are related to or based upon
28

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1 actual or perceived protected characteristics, in violation of the California Constitution, Civil
2 Code §§ 51 and 56.10, the FEHA and Class Members’ privacy rights; and

3 b. Unlawfully requiring that Class Members sign authorizations permitting
4 disclosure of medical information which was unlawfully obtained by asking Impermissible
5 Non-Job-Related Questions, in violation of the California Constitution, Civil Code §§ 51 and
6 56.10, the FEHA and Class Members’ privacy rights.

7 112. The conduct of Defendants, and each of them, as described herein was anti-
8 competitive and injurious to Defendants’ competitors who complied with the laws and policies
9 violated by Defendants, as Defendants’ conduct provided an unfair and illegal advantage in
10 the marketplace.

11 113. Defendants’ actions also were unfair because, in addition to Defendants’
12 statutory and regulatory violations, the Class Members’ injuries were substantial, were not
13 outweighed by any countervailing benefits to Class Members or to competition, and were not
14 injuries that Class Members could reasonably have avoided. Defendants’ practices also
15 offended an established public policy requiring that medical examinations for job applicants
16 be non-discriminatory and limited to job-related inquiries, invaded their constitutional right to
17 privacy and were immoral, unscrupulous, unethical, oppressive, and substantially injurious to
18 Class Members.

19 114. The foregoing conduct by Defendants, and each of them, has injured Plaintiffs
20 and each Class Member.

21 115. Pursuant to Cal. Bus. & Prof. Code § 17200, *et. seq.*, Plaintiffs and the other
22 Class Members are entitled to injunctive and declaratory relief against Defendants’
23 continuation of the unlawful, unfair and/or fraudulent business practices described here and
24 Defendants’ maintenance and retention of records containing the applicants’ unlawfully
25 obtained personal health information, and any additional equitable and relief necessary to
26 remedy the effects of these practices. Plaintiffs and the other Class Members are also entitled
27 to restitution.
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116. As a result of Defendants’ conduct, Plaintiffs and the other Class Members are entitled to reasonable attorneys’ fees and costs of suit as provided in section 1021.5 of the California Code of Civil Procedure.

117. As a proximate result of these unlawful, unfair and/or fraudulent business practices, the general public, including all applicants, have suffered damages.

118. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiffs and the other Class Members are entitled to the return of the unlawful Health History Questionnaire(s), and/or expungement of medical and personal information from the files maintained by Defendants and the disgorgement of Defendants’ profits gained by providing these unlawful examinations.

PRAYER FOR RELIEF

Wherefore, Plaintiffs, on behalf of themselves and on behalf of all other members of the Class defined herein, pray for judgment in their favor and relief against Defendants, and each of them, as follows as appropriate for the above causes of action:

- (a) For an order certifying this case as a class action and appointing Plaintiffs and their counsel to represent the Class;
- (b) For injunctive relief restraining further acts of wrongdoing by Defendants;
- (c) For compensatory damages in an amount to be determined at trial;
- (d) For imposition of a constructive trust over all amounts by which Defendants have been unjustly enriched;
- (e) For nominal damages;
- (f) For disgorgement of Defendants’ profits;
- (g) For restitution;
- (h) For actual damages and treble damages in an amount not less than \$4,000 per class member under Civil Code § 52;
- (i) For punitive and exemplary damages;
- (j) For pre- and post-judgment interest, at the legal rate;

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- 1 (k) For attorneys’ fees and costs, including but not limited to fees and costs pursuant
- 2 to California Code of Civil Procedure § 1021.5, Civil Code §§ 52, 56.35 and
- 3 56.36 and Government Code §12965(b);
- 4 (l) All related costs of this suit; and
- 5 (m) For all such other and further relief as the Court may deem just, proper and
- 6 equitable.

7 Dated: August 6, 2020

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

8 By /s/ R. Scott Erlewine
 9 R. Scott Erlewine
 10 Nicholas A. Carlin
 11 Brian S. Conlon
 12 Kyle P. O’Malley
 13 Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

14 Plaintiffs, and each of them, hereby request a trial by jury of all issues so triable.

16 Dated: August 6, 2020

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

17 By /s/ R. Scott Erlewine
 18 R. Scott Erlewine
 19 Nicholas A. Carlin
 20 Brian S. Conlon
 21 Kyle P. O’Malley
 22 Attorneys for Plaintiffs