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(Fee Exempt, Gov. Code, § 6103)

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11 **SUPERIOR COURT OF CALIFORNIA,**
12 **COUNTY OF LOS ANGELES**

13 **CALIFORNIA CIVIL RIGHTS**
14 **DEPARTMENT**, an agency of the State of
California,

15 Plaintiff,

16 v.

17 **RALPHS GROCERY COMPANY,**

18 Defendant.

) **Case No.**

) **CIVIL RIGHTS COMPLAINT FOR**
) **INJUNCTIVE AND MONETARY**
) **RELIEF – EMPLOYMENT**
) **DISCRIMINATION**

) **JURY TRIAL DEMANDED**

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21 The California Civil Rights Department (“CRD” or “the Department” or “Plaintiff”), a state
22 agency, brings this action against Ralphs Grocery Company (“Ralphs” or “Defendant”) to remedy
23 violations at Ralphs stores in California of the Fair Chance Act (Gov. Code, § 12952), which limits
24 the use of conviction history in hiring decisions. Notwithstanding the Fair Chance Act’s protections,
25 Ralphs has included questions about applicants’ conviction histories on its job application; failed to
26 engage in individualized assessments for each applicant regarding whether their conviction histories
27 actually justify denying them a job under the standards set by the Fair Chance Act; and refused to
28 hire hundreds of applicants whose conviction histories do not justify denying them positions as

1 Ralphs employees. Ralphs also failed to provide the notice required by the Fair Chance Act of its
2 preliminary decisions to deny applicants positions on the basis of their conviction histories, or of
3 their rights to respond to those decisions. These violations are ongoing.

4 5 INTRODUCTION

6 1. California’s Fair Chance Act (Act) went into effect and became a part of the Fair
7 Employment and Housing Act (FEHA) on January 1, 2018, and is codified at Government Code
8 section 12952.

9 2. The California Legislature enacted the Fair Chance Act to reduce arbitrary barriers to
10 employment for people who have conviction histories by preventing employers from inquiring about
11 criminal history when initially screening prospective employees and from using convictions with no
12 connections to the duties of a position to disqualify applicants. The Act also provides procedural
13 safeguards to ensure applicants have a fair chance to respond to employers’ concerns about their
14 criminal history.

15 3. Empirical evidence suggests little correlation between conviction history and poor job
16 performance.

17 4. The Legislature further recognized that “employment is essential to helping formerly
18 incarcerated people support themselves and their families” and reduces recidivism. And people with
19 conviction histories who are able to secure employment have “lower rates of turnover and higher
20 rates of promotion on the job.”¹

21 5. The Senate Judiciary bill analysis for AB 1008 notes that “[a]round 70 million
22 Americans, including around eight million Californians, have some sort of criminal record,” and
23 “[g]etting a job with a criminal record can be very difficult.”² Job applicants with criminal records
24 have a more difficult time finding employment and have significantly higher unemployment rates
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27 ¹ Assembly Bill No. 1008 (2017–2018 Reg. Sess.) § 1 (Assembly Bill 1008).

28 ² Sen. Com. on Judiciary, Analysis of Assem. Bill 1008 (2017-2018 Reg. Sess.) July 11, 2017, pp. 2-3.

1 than the general public.³ A nationwide survey of employers in 2017—the year the Fair Chance Act
2 was passed—found that 96% of employers ran criminal background checks on job applicants.⁴ “The
3 refusal to consider job applicants with a criminal history perpetuates a vicious cycle: folks who have
4 been involved in criminal activity seek to come clean and refocus their lives on productive, non-
5 criminal endeavors, but find it nearly impossible to land employment. Unable to earn a steady
6 income and excluded from the dignity and social inclusion that a job confers, people with criminal
7 histories sometimes drift back toward criminal endeavors, resulting in increased recidivism.”⁵

8 6. Numerous studies have shown, and the Legislature has recognized, that people with
9 criminal records feel intense shame and depression when they are subject to societal stigma because
10 of their past.⁶ This emotional distress is compounded when the fact of a criminal record means
11 someone is unable to work and provide for their family.⁷

12 7. The Legislature also recognized that the criminal legal system disproportionately
13 affects certain groups often subject to employment discrimination.⁸ Black people and Hispanic
14 people are overrepresented in the criminal legal system; crime victim survey data demonstrates that
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16 ³ Dylan Minor, Nicola Persico and Deborah M. Weiss, *Criminal background and job performance*,
17 (2018) 7:8 ISA J. OF LAB. POL’Y, p. 3 (“[S]tudies have repeatedly found that job applicants with
18 criminal records are much less likely than others to obtain legitimate employment.”); Lucy Couloute
19 and Daniel Kopf, *Out of Prison & Out of Work: Unemployment among formerly incarcerated*
20 *people*, PRISON POLICY INITIATIVE (July 2018).

21 <<https://www.prisonpolicy.org/reports/outofwork.html>> (“Our analysis shows that formerly
22 incarcerated people are unemployed at a rate of over 27%—higher than the total U.S. unemployment
23 rate during any historical period, including the Great Depression.”).

24 ⁴ Nat’l Assoc. of Prof. Background Screeners, *National Survey: Employers Universally Using*
25 *Background Checks to Protect Employees, Customers and the Public* (2017)

26 <<https://pubs.napbs.com/pub.cfm?id=6E232E17-B749-6287-0E86-95568FA599D1>>.

27 ⁵ Sen. Com. on Judiciary, Analysis of Assem. Bill 1008 (2017-2018 Reg. Sess.) July 11, 2017, pp. 2-
28 3.

⁶ Michelle Alexander, THE NEW JIM CROW at pp.156-160; Assembly Bill 1008 § 1(h) (noting
“personal contact with potential employees can reduce the negative stigma of a conviction by
approximately 15 percent”).

⁷ Assembly Bill 1008 § 1(h).

⁸ Assem. Com. on Labor and Employment on Assem. Bill No. 1008 (2017-2018 Reg. Sess.) May 30,
2017, p. 3 (citing social science research asserting that “in California deep and persistent racial and
ethnic disparities in the criminal justice system documented in state-wide data support the
conclusion that criminal background checks for employment have a significant adverse impact on
the state’s African Americans and Latinos that is far too robust to have arisen by chance alone”).

1 this overrepresentation is not ascribable to a higher rate of criminal activity in those groups, but
2 instead also necessarily reflects systemic discrimination.⁹ While only about 5% of California’s
3 population is Black, nearly 20% of felony defendants are Black.¹⁰ While a little over one-third of
4 California is Hispanic, over 45% of felony defendants are Hispanic.¹¹

5 8. These disparities are not limited to arrest and conviction, but also to the harshness
6 and length of the sentence received.¹² Once convicted of a felony, Black people and Hispanic people
7 are about ten percent more likely to be sentenced to prison, rather than a lesser or non-carceral
8 sentence, than white people and Asian people.¹³

9 9. FEHA protects individuals against both facially neutral practices that have an
10 unjustified adverse impact on members of a protected classification and those that are motivated by
11 discriminatory intent. In enacting the Fair Chance Act, the Legislature intended to create broader
12 protections than those under existing law prior to its enactment. The Fair Chance Act “differs from
13 the existing law in applying [its] requirements to all applicants [with a criminal history], not just
14 those in a protected class who can demonstrate disparate impact in the criminal justice system.”¹⁴

15 10. The Legislature recognized that past conviction history is a poor predictor of job
16 performance and employment is key to reintegrating people who have been convicted of offenses

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18 ⁹ See, e.g., US DOJ, Bureau of Justice Statistics, Race and Ethnicity of Violent Crime Offenders and
19 Arrestees, 2018 (comparing crime victim surveys to arrest rates and finding arrest rates of Black and
20 Hispanic people higher than their offense rate) <<https://bjs.ojp.gov/content/pub/pdf/revcoa18.pdf>>;
21 Human Rights Watch, Punishment and Prejudice: Racial Disparities in the War on Drugs, Chapter
22 VII (While white people commit more drug crimes, Black people and Hispanic people are arrested at
23 a higher rate) <<https://www.hrw.org/reports/2000/usa/Rcedrg00-05.htm>>.

24 ¹⁰ Judicial Council of California, Disposition of Criminal Cases According to the Race and Ethnicity
25 of the Defendant at p. 5 <[https://www.courts.ca.gov/documents/lr-2019-JC-dispositions-criminal-](https://www.courts.ca.gov/documents/lr-2019-JC-dispositions-criminal-cases-2019-pc1170_45.pdf)
26 [cases-2019-pc1170_45.pdf](https://www.courts.ca.gov/documents/lr-2019-JC-dispositions-criminal-cases-2019-pc1170_45.pdf)>.

27 ¹¹ *Ibid.*

28 ¹² See, e.g., Camplain et al, Racial/Ethnic Differences in Drug- and Alcohol-Related Arrest
Outcomes in a Southwest County From 2009 to 2018, American Journal of Public Health 110,
S85_S92 (Among those arrested for misdemeanor drug and alcohol offenses, White people were
more likely than Black people, American Indian people, or Hispanic people to be cited and released
instead of booked into jail; other groups were also more likely to be convicted and serve time for
their charges) <<https://doi.org/10.2105/AJPH.2019.305409>>.

¹³ Judicial Council of California, Disposition of Criminal Cases According to the Race and Ethnicity
of the Defendant at p. 10.

¹⁴ Sen. Com. on Judiciary, Analysis of Assem. Bill 1008 (2017-2018 Reg. Sess.) July 11, 2017, p. 8.

1 into their communities. Accordingly, the Fair Chance Act uses two strategies to limit how employers
2 can consider conviction history in the job application process: (1) requiring procedural steps
3 designed to give job applicants a fair chance to be considered on their own merits prior to an
4 employer’s consideration of their conviction history, and to respond to an employer’s concerns with
5 their conviction history; and (2) placing substantive limits on the use of conviction history to
6 disqualify an applicant.¹⁵

7 11. Ralphs all but ignored the law following the passage of the Fair Chance Act, violating
8 both its procedural and substantive requirements for years. As a result, more than a thousand
9 applicants have been denied a fair chance to work at Ralphs: they have been denied their procedural
10 rights under the law to make their case regarding their conviction histories, and they have been
11 denied employment at Ralphs based on conviction histories that do not have a direct and adverse
12 relationship with the duties of the job.

13 **JURISDICTION AND VENUE**

14 12. This Court has jurisdiction under Article VI, section 10 of the California Constitution
15 and California Code of Civil Procedure section 410.10.

16 13. CRD’s Director, in their discretion, may file a complaint on behalf of a group or
17 class. (Gov. Code, § 12961; Cal. Code Regs., tit. 2, §§ 10012, 10013.) Under this authority, the CRD
18 Director filed and served a Notice of Group or Class Complaints and Investigation against Ralphs in
19 2021 (DFEH Case Nos. 202004-09819103, 202102-12691423, 202005-10140411) (“Group
20 Complaint”), which consolidated three administrative complaints of employment discrimination
21 against Ralphs respectively brought by three individuals.

22 14. The Group Complaint alleged that Defendant Ralphs engaged in and continues to
23 engage in practices that violate Government Code section 12952 (section 12952), governing the use
24 of conviction history in employment decisions.

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27 ¹⁵ The Fair Chance Act also limits an employer’s consideration, distribution, or dissemination of
28 information pertaining to arrests not followed by convictions, referrals to or participation in a
pretrial or posttrial diversion program, and convictions subject to clean slate relief when conducting
a criminal history background check. (Gov. Code, § 12952, subd. (a)(3)(A)–(C).)

1 15. CRD investigated the Group Complaint under Government Code sections 12930,
2 subdivision (f)(1), 12961, subdivision (b)(1), and 12963 et seq.

3 16. At the conclusion of the investigation, the parties participated in four mediation
4 sessions with a neutral mediator from CRD’s Dispute Resolution Division, but no settlement was
5 reached.

6 17. All administrative procedures precedent to the initiation of this lawsuit in
7 Government Code sections 12963.7 and 12965, subdivision (a), have been fulfilled.

8 18. The damages amount sought exceeds this court’s jurisdictional minimum of \$10,000,
9 and exceeds the minimum of \$25,000 for unlimited civil cases.¹⁶

10 19. This court also has jurisdiction of this unlimited civil case because CRD seeks
11 injunctive and declaratory relief.¹⁷

12 20. This case is timely filed. The initial administrative complaint was filed with CRD on
13 April 3, 2020, at which point CRD had one year to complete its investigation, file a group/class
14 notice, and/or file a civil complaint.¹⁸ The parties tolled the initial April 3, 2021, deadline to July 6,
15 2021. Notice of the group/class investigation was issued on June 28, 2021.¹⁹ The parties entered into
16 multiple tolling agreements that extended the statutory investigation timelines in 12961, and the time
17 to file was further tolled under section 12965, subdivision (a)(5)(D) while the case was pending with
18 DRD.²⁰ After the case was returned to CRD’s Legal Division, this complaint was filed within the
19 time remaining from the parties’ 2022 tolling agreement when the case was initially referred to
20 DRD.

21 21. Venue is proper in the County of Los Angeles County under Government Code
22 section 12965, subdivision (a)(4): the unlawful employment practices alleged in this complaint
23 occurred in the County of Los Angeles; Ralphs’s primary place of business in California is in the
24 County of Los Angeles; and CRD has an office in the County of Los Angeles.

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26 ¹⁶ See Civ. Proc. Code, §§ 116.221, 86, subd. (a).

27 ¹⁷ See Civ. Proc. Code, §§ 86, subd. (a), 88.

28 ¹⁸ See Gov. Code, § 12965, subd. (a)(5).

¹⁹ See Gov. Code, § 12965, subd. (a)(5)(A).

²⁰ See Gov. Code, § 12965, subd. (a)(5)(D).

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PARTIES

22. Plaintiff CRD is a state agency tasked with investigating and prosecuting civil rights actions.²¹ The Legislature exercised its police power in enacting the FEHA and in authorizing CRD “to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination . . .”²² CRD enforces the FEHA, including initiating and investigating complaints on behalf of itself and persons alleged to be aggrieved by discriminatory employment practices.²³ At CRD’s discretion, it may bring a civil action in the name of the Department on behalf of a group or class of persons adversely affected, in a similar manner, by an unlawful practice.²⁴ CRD acts “as a public prosecutor” when it pursues civil litigation under the FEHA,²⁵ and it may seek remedies to “‘vindicate’ what it considers to be in ‘the public interest in preventing . . . discrimination.’”²⁶

23. At all relevant times, Defendant Ralphs has been operating in and under the laws of California and conducting business throughout California. The company operates a chain of grocery stores throughout California, primarily in Southern California, including the County of Los Angeles. Ralphs has over 25,000 employees and over 185 stores in California. Defendant Ralphs’s primary place of business in California is in Compton, California, in the County of Los Angeles.

24. At all relevant times, Ralphs has been an “employer” subject to FEHA and all other applicable statutes.²⁷

STATUTORY FRAMEWORK

25. The Fair Chance Act limits the use of criminal history in hiring in California, both

²¹ Gov. Code, §§ 12930, subd. (f)(1)–(5), 12965, subd. (a).
²² Gov. Code, § 12920; *Dept. Fair Empl. & Hous. v. Cathy’s Creations, Inc.* (2020) 54 Cal.App.5th 404, 410 (“[CRD’s] task is to represent the interests of the state and to effectuate the declared public policy of the state to protect and safeguard the rights and opportunities of all persons from unlawful discrimination.”).
²³ Gov. Code, §§ 12930, 12961.
²⁴ Gov. Code, §12965, subd. (a)(1) (authorizing CRD civil action on behalf of aggrieved persons).
²⁵ *State Personnel Bd. v. Fair Empl. & Hous. Com.* (1985) 39 Cal.3d 422, 444.
²⁶ *Dept. Fair Empl. & Hous. v. Law Sch. Admission Council, Inc.* (2013) 941 F.Supp.2d 1159, 1172.
²⁷ See Gov. Code, §§ 12926, subd. (d), 12952 (regulating employer conduct).

1 through procedural requirements related to the hiring process and through substantive limits on
2 which convictions an employer can deem disqualifying.

3 26. The Act imposes procedural requirements on the hiring process to ensure employers
4 treat applicants fairly and as individuals, and that applicants have a fair chance to respond to an
5 employer’s decision not to hire them based on their conviction history.

6 27. The Act makes it an unlawful employment practice for an employer “[t]o include on
7 any application for employment . . . any question that seeks the disclosure of an applicant’s
8 conviction history,” or to “inquire into or consider the conviction history of the applicant,” prior to
9 extending a conditional offer of employment to an applicant.²⁸

10 28. That is, an employer must go through its hiring processes without asking for or
11 considering an applicant’s conviction history. The employer must make the decision whether it
12 wishes to hire an applicant *before* inquiring about an applicant’s conviction history. The employer
13 can then extend a conditional offer, contingent on a criminal background check, but that offer can
14 only be subsequently withdrawn based on conviction history in compliance with the procedural and
15 substantive requirements of the Act.

16 29. Once an employer has made a conditional offer of employment to a qualified
17 applicant it wishes to hire, an employer may then investigate and consider an applicant’s conviction
18 history.

19 30. Most private employers who use conviction history in hiring contract with a third-
20 party provider to conduct a criminal background check on an applicant.

21 31. The employer must make an “individualized assessment” of the candidate’s
22 conviction history to determine whether the conditional offer will be revoked.²⁹ This individualized
23 assessment can take into consideration only the narrow factors listed in the statute.

24 32. If an employer determines that it intends to withdraw an applicant’s conditional offer
25 based on the applicant’s conviction history, the employer must provide written notice prior to the
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28 ²⁸ Gov. Code, § 12952, subs. (a)(1), (a)(2).

²⁹ Gov. Code, § 12952, subd. (c)(1).

1 withdrawal (the “pre-adverse action notice”). The notice gives the applicant a fair chance to offer
2 context about their conviction history and explain why the applicant is nevertheless qualified to do
3 the job.

4 33. The employer’s written pre-adverse action notice must (1) indicate that the employer
5 has made a “preliminary decision that the applicant’s conviction history disqualifies the applicant
6 from employment”; (2) identify the “disqualifying conviction or convictions that are the basis for the
7 preliminary decision to rescind the offer”; (3) include the “conviction history report”; (4) include an
8 “explanation of the applicant’s right to respond to the notice” and “the deadline by which to
9 respond”; and (5) “inform the applicant that the response may include submission of evidence
10 challenging the accuracy” of the report, along with “evidence of rehabilitation or mitigating
11 circumstances.”³⁰

12 34. The pre-adverse action notice requirement is key to the law’s operation: it is designed
13 to afford applicants a fair chance to respond to an employer’s decision to withdraw a conditional
14 offer. Effective notice requires enough specificity and clarity that the applicant knows their job offer
15 is at risk and has an effective opportunity to respond to the employer. At a minimum, that notice
16 needs to make clear that the job offer is being conditionally withdrawn; which convictions on an
17 applicant’s record the employer finds disqualifying; what kinds of information would be persuasive
18 in trying to convince the employer not to withdraw the offer; and, perhaps most fundamentally,
19 where to send their response to the notice they receive. Without each of these elements, applicants
20 do not know what they need to demonstrate, the types of information they can provide, or how to
21 provide it. Thus, the communication they receive cannot be said to be any real notice at all.

22 35. The Fair Chance Act further requires that once the employer has issued a pre-adverse
23 action notice, it must give the applicant at least five business days to respond. If an applicant notifies
24 the employer that the background report is inaccurate and they are taking steps to obtain evidence to
25 prove the inaccuracy, the employer must give them at least another five business days to respond.³¹

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28 ³⁰ Gov. Code, § 12952, subd. (c)(2).

³¹ Gov. Code, § 12952, subd. (c)(3).

1 36. If an applicant submits a response to the pre-adverse action notice, the employer must
2 consider the submission before making a final decision to rescind the conditional offer. If the
3 employer makes a final decision to rescind the conditional offer on the basis of an applicant’s
4 conviction history, whether or not the applicant has responded to the pre-adverse action notice, it
5 must provide notice of its final decision, which must include (1) “the final denial or
6 disqualification”; (2) “any existing procedure the employer has for the applicant to challenge the
7 decision”; and (3) the “right to file a complaint with the Department.”³²

8 37. In addition to its procedural requirements, the Act also substantively limits the use of
9 conviction history to deny an applicant employment.

10 38. Employers cannot withdraw a conditional offer unless the applicant’s conviction
11 history has a “direct and adverse relationship with the specific duties of the job that justify denying
12 the applicant the position.”³³ In order to withdraw an offer on this basis, the employer must conduct
13 an individualized determination based on (1) “the nature and gravity of the offense or conduct”; (2)
14 “the time that has passed since the offense or conduct and completion of the sentence”; and (3) “the
15 nature of the job held or sought.”³⁴

16 39. The individualized assessment protects applicants against an employer denying them
17 a position based on the stigma of having been convicted of a criminal offense, rather than on their
18 ability to perform the duties of a position.

19 40. As outlined below in this complaint, Ralphs violated and continues to violate both the
20 procedural and substantive requirements of the Fair Chance Act.

21 **FACTUAL ALLEGATIONS**

22 **Procedural Violations**

23 41. Ralphs uses an application form hosted online by Kroger, its parent company, to
24 solicit applications for positions at Ralphs stores.

25 42. The application form includes multiple questions that seek disclosure of an
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27 ³² Gov. Code, § 12952, subd. (c)(4), (5).

28 ³³ Gov. Code, § 12952, subd. (c)(1)(A).

³⁴ *Id.* at subd. (c)(1)(A)(i)-(iii).

1 applicant's criminal convictions and that inquire into the conviction history of the applicant.

2 43. The "Personal Background Information" section asks: "Have you ever been convicted
3 of a crime?" If the answer is yes, the applicant is then asked to "provide the County and State of the
4 conviction, misdemeanor or felony, and a brief description of the conviction. If you fail to provide
5 complete information, your application could be delayed."

6 44. A boxed disclaimer above these questions states:

7 INSTRUCTIONS FOR ANSWERING CRIMINAL CONVICTION
8 QUESTION can be found by clicking on the following link:
9 Instructions

10 The existence of a criminal history will not automatically disqualify
11 you from the job you are applying for (only job related convictions are
12 considered by The Kroger Family of Companies).

13 Omit minor traffic citations and do not answer "Yes" if your
14 conviction record has been annulled, expunged, vacated, sealed,
15 pardoned, erased, impounded or restricted. Do not answer "Yes" or
16 "No" if you are applying for a position in California, Colorado,
17 Connecticut, Illinois, Maryland, Minnesota, New Jersey, New Mexico,
18 Oregon, or Washington or in one of the following cities: Columbia,
19 MO; or Rochester, NY; or St Louis, MO.

20 Type your name in the following field to acknowledge and affirm that
21 you have read and you understand the provided instructions for
22 answering the criminal conviction question.

23 45. The "Instructions" applicants are asked to review are set out in a two-page PDF
24 document that includes the following information for California:

25 NOTE TO APPLICANTS – Thoroughly read and carefully follow the
26 applicable instructions below before answering the criminal history
27 question(s).

28 California: Applicants should not provide and are not to provide
criminal history information on a preliminary employment application.
**If the position for which you are applying is located within
California select from the dropdown box (in answer to the
criminal history question) the response "Position Is In California –
No Response." DO NOT SELECT "YES" OR "NO."**

California: At any time prior to employment: Applicants should not
disclose convictions that have been sealed, expunged, or statutorily
eradicated or any misdemeanor convictions for which probation has
been successfully completed or otherwise discharged and the case has
been judicially dismissed. Applicants should not disclose information
regarding arrests or detentions for which a diversion program has been
successfully completed. Cal. Code Regs., tit. 2, § 7287-.4. Applicants

1 shall not disclose records of arrest, indictment, information,
2 misdemeanor complaint, or conviction of a crime that, from the date of
3 disposition, release, or parole, antedate the report by more than (7)
4 seven years. Further, these items shall not be reported if in the case of
5 a conviction a full pardon has been granted, or in the case of an arrest,
6 indictment, information, or misdemeanor complaint a conviction did
7 not result. Cal. Civ. Code §1785.13.6. Applicants should not disclose
8 any juvenile convictions – including any information related to an
9 arrest, detention, processing, diversion, supervision, adjudication or
10 court disposition that occurred while the applicant was subject to the
11 process and jurisdiction of juvenile court law. Cal. Labor Code §
12 432.7. Applicants shall not disclose marijuana-related convictions
13 entered by the court more than 2 years ago that involve: unlawful
14 possession of marijuana; transportation or giving away of up to 28.5
15 grams of marijuana, other than concentrated cannabis, or the offering
16 to transport or give away up to 28.5 grams of marijuana, other than
17 concentrated cannabis; possession of paraphernalia used to smoke
18 marijuana; being in a place with knowledge that marijuana was being
19 used; or being under the influence of marijuana. Cal Health & Safety
20 Code §§11357(b) or (c), 11360(b) (formerly subdivision (c) of section
21 11360), 11364, 11365, or 11550.

22 46. On their face, the PDF instructions are confusing and misleading. The instructions
23 provide detailed, superfluous instructions concerning how to report convictions, after telling
24 applicants that they do not need to answer the question. Additionally, by suggesting specific
25 convictions that should *not* be reported in California, the instructions necessarily suggest that other
26 convictions *should* be reported.

27 47. This disclaimer is ineffective: over 70% of California applicants with conviction
28 histories who applied to Ralphs between 2018 and 2022 answered this question, despite the
disclaimer. Questions regarding conviction history on an application can also deter applicants from
completing an application.³⁵

48. Another question on every application asks the applicant if they, or anyone under
their supervision, has been found to have violated a prohibition on selling tobacco to minors. In
California, knowingly selling tobacco to anyone under the age of 21 is a misdemeanor criminal
offense.³⁶ The sale of tobacco to minors is also a criminal offense in at least thirty other states and

³⁵ See, e.g., Ctr. For Cmty. Alts., *Boxed Out: Criminal History Screening and College Application Attrition* (2015) <http://communityalternatives.org/pdf/publications/BoxedOut_FullReport.pdf>.

³⁶ Penal Code, § 308, subd. (a)(1)(A)(i).

1 the District of Columbia.³⁷ This question necessarily “seeks the disclosure of an applicant’s
2 conviction history,” and “inquire[s] into” an applicant’s conviction history.

3 49. Ralphs also failed, and continues to fail, to perform individualized assessments on all
4 applicants. Ralphs contracts with third-party background check providers, including HireRite and
5 GIS, to run criminal background checks on applicants to positions with its stores and to provide the
6 pre- and post-adverse action notices that Ralphs is required by law to send. Ralphs had the right and
7 responsibility to determine what conviction history would be flagged by the background check
8 providers as disqualifying. Ralphs denied employment to at least some people automatically based
9 on the results of their background checks, through these preset matrices provided to the background
10 check providers, and failed to conduct adequate individualized assessments for other applicants, in
11 violation of section 12952, subdivision (c)(1)(A).

12 50. Ralphs also provided inadequate pre-adverse action notices to applicants.

13 51. The pre-adverse action notices sent to all applicants from 2018 to at least 2022 failed
14 to identify the convictions that Ralphs believed were disqualifying. While Ralphs sent applicants a
15 copy of their conviction history report, there was no way for an applicant to determine which of the
16 convictions on that report had formed the basis for the decision to withdraw the offer.

17 52. The pre-adverse action notices Ralphs sent to applicants were wholly inadequate.
18 Most of Ralphs’s pre-adverse action notices failed to inform applicants that Ralphs intended to
19 withdraw its conditional offer; applicants would not know they were in danger of losing a job they
20 had been offered, or in some cases, a job they had already started. Additionally, most pre-adverse
21 action notices also lacked contact information to send a response to the notice or informed applicants
22 that a statement that mitigating circumstances could be provided. Less than one quarter of the
23 notices provided applicants with any contact information; the notices that provided contact
24 information only listed a phone number without explanation and without any indication that that
25 phone number was a FAX line to which information might presumably be faxed.

26 _____
27 ³⁷ See Institute of Medicine, Public Health Implications of Raising the Minimum Age of Legal
28 Access to Tobacco Products (2015) pp. 287-313 (“Appendix B, State Laws—Tobacco Transfers to
Minors”) <<https://doi.org/10.17226/18997>>.

1 **Substantive Violations**

2 53. In addition to denying applicants with conviction histories a fair chance in their
3 application process, Ralphs also denied, and continues to deny, employment to hundreds of
4 applicants on the basis of criminal histories that do not justify that denial based on their nature,
5 severity, and recency.

6 54. For instance, information provided to CRD indicated that multiple candidates lost
7 their job offers based on convictions for a single misdemeanor count of excessive noise.

8 55. Others who had convictions for simple cannabis possession in states where it remains
9 illegal were disqualified.

10 56. Another applicant was denied based on two five-year-old, out-of-state juvenile
11 misdemeanor convictions that would have been sealed had they taken place in California.

12 57. These types of convictions, and hundreds more like them, do not bear any direct and
13 adverse relationship with the duties of any job at a grocery store, including the grocery clerk
14 positions that are the vast majority of the positions Ralphs denied on the basis of conviction history.
15 They were not legitimate grounds for a decision by Ralphs to withdraw a conditional offer that had
16 already been made based on the applicant's application and interview.

17 **Ralphs's Misconduct Harmed the Group Members**

18 58. The Department's investigation revealed that applicants denied employment by
19 Ralphs based on their conviction history experienced emotional distress, including depression,
20 anxiety, and insomnia. They described feeling hopeless and doubting their self-worth. Others noted
21 that the initial job offer had provided them hope, only for its withdrawal to plunge them further into
22 anxiety and depression.

23 59. Family stress was a common result of this emotional distress, with the financial and
24 emotional strain of losing employment causing strife with loved ones for some applicants and others
25 describing the pain and heartbreak they felt in being unable to provide for their family members.

26 60. These feelings were compounded when an applicant, sometimes with their family,
27 was unhoused and losing the job at Ralphs compounded their housing insecurity; some applicants
28 indicated they lost their housing as a result of losing their employment with Ralphs.

1 61. Many applicants were unable to make payments for essential services like rent, car
2 insurance, car payments, child support, or phone bills—incurring additional costs from those
3 deferred payments. Some applicants also racked up additional fees or fines due to the missed
4 payments. Many applicants went into debt or spent down their savings as a result of being denied
5 employment by Ralphs.

6 GOVERNMENT ENFORCEMENT ACTION ALLEGATIONS

7 62. Under Government Code sections 12961 and 12965, CRD brings this government
8 enforcement action for Group relief in its prosecutorial role on behalf of the state in the public
9 interest and all individuals with a conviction history who applied to a position with Ralphs in
10 California since January 1, 2018, and all those who may do so in the future (the “Group”). In
11 bringing this litigation as a group or class action pursuant to sections 12961 and 12965, CRD seeks
12 to remedy, prevent, and deter unlawful employment discrimination based on conviction history.

13 63. CRD also brings this action for Group relief on behalf of all individuals who would
14 have applied to Ralphs but were dissuaded from doing so because of the inclusion of questions
15 inquiring into criminal history on its employment application.

16 64. CRD brings this representative enforcement action in its capacity as a state agency
17 and under the authority vested in CRD by the FEHA, which does not require class certification
18 under Code of Civil Procedure sections 378 and 382.³⁸ Thus, CRD brings this government
19 enforcement action on behalf of the State and the Group.

20 FIRST CAUSE OF ACTION

21 **The Inclusion of Questions that Seek Disclosure of an Applicant’s Conviction History on an** 22 **Application for Employment (Gov. Code, § 12952, subd. (a)(1))**

23 65. CRD incorporates and realleges all previous allegations as if fully set forth herein.

24 66. Subdivision (a)(1) of section 12952 makes the inclusion “on any application for
25 employment, before the employer makes a conditional offer of employment to the applicant, any
26 question that seeks the disclosure of an applicant’s conviction history” an unlawful employment
27

28 ³⁸ Gov. Code, § 12961.

1 practice.

2 67. As alleged *supra*, the application form includes multiple questions that seek the
3 disclosure of an applicant's conviction history in advance of a conditional offer.

4 68. First, the application includes a question asking whether the applicant has ever been
5 convicted of a crime, and if the answer is yes, to provide details on the conviction.

6 69. Second, the application includes a question whether the applicant has ever been found
7 to have violated a prohibition on selling tobacco to minors, a crime under California law.

8 70. Ralphs's disclaimer language addressed to California applicants is ineffective.

9 71. Ralphs thus violated, and continues to violate, section 12952, subdivision (a)(1), by
10 including questions that seek disclosure of an applicant's conviction history on its employment
11 application, causing injury to Group members.

12 72. As a result of Ralphs's unlawful employment practices, Group members have suffered
13 harm, including but not limited to lost earnings, lost benefits, lost future employment opportunities,
14 and other financial loss, as well as non-economic damages including, but not limited to, emotional
15 distress.

16 SECOND CAUSE OF ACTION

17 The Inquiry into the Conviction History of an Applicant Prior to a Conditional Offer

18 (Gov. Code, § 12952, subd. (a)(2))

19 73. CRD incorporates and realleges all previous allegations as if fully set forth herein.

20 74. Subdivision (a)(2) of section 12952 makes any inquiry into an applicant's criminal
21 history, "including any inquiry about conviction history on any employment application, until after
22 the employer has made a conditional offer of employment to the applicant," an unlawful
23 employment practice.

24 75. As alleged above, the application form asks multiple questions that constitute
25 inquiries into an applicant's conviction history in advance of a conditional offer.

26 76. First, the application asks whether the applicant has ever been convicted of a crime,
27 and if the answer is yes, to provide details on the conviction.

28 77. Second, the application asks whether the applicant has ever been found to have

1 violated a prohibition on selling tobacco to minors, a crime under California law.

2 78. Ralphs’s disclaimer language addressed to California applicants is ineffective.

3 79. Ralphs thus violated, and continues to violate, section 12952, subdivision (a)(2), by
4 inquiring into an applicant’s conviction history prior to the extension of a conditional offer, violating
5 the rights of Group members.

6 80. As a result of Ralphs’s unlawful employment practices, Group members have suffered
7 harm, including but not limited to lost earnings, lost benefits, lost future employment opportunities,
8 and other financial loss, as well as non-economic damages including, but not limited to, emotional
9 distress.

10 **THIRD CAUSE OF ACTION**

11 **Failure to Make Individualized Assessments**

12 **(Gov. Code, § 12952, subd. (c)(1)(A))**

13 81. CRD incorporates and realleges all previous allegations as if fully set forth herein.

14 82. Subdivision (c)(1)(A) of section 12952 requires than an employer that intends to deny
15 an applicant a position based on their conviction history “shall make an individualized assessment of
16 whether the applicant’s conviction history has a direct and adverse relationship with the specific
17 duties of the job that justify denying the applicant the position.”

18 83. As alleged *supra*, Ralphs failed to perform individualized assessments on members of
19 the Group, including by denying some applicants employment based solely on their “score” on a
20 preset matrix.

21 84. Ralphs thus violated, and continues to violate, section 12952, subdivision (c)(1)(A),
22 by failing to perform individualized assessments of applicants’ criminal histories, harming group
23 members.

24 85. As a result of Ralphs’s unlawful employment practices, Group members have suffered
25 harm, including but not limited to lost earnings, lost benefits, lost future employment opportunities,
26 and other financial loss, as well as non-economic damages including, but not limited to, emotional
27 distress.

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1 **FOURTH CAUSE OF ACTION**

2 **Failure to Provide Adequate Pre-Adverse Action Notice**

3 **(Gov. Code, § 12952, subd. (c)(2))**

4 86. CRD incorporates and realleges all previous allegations as if fully set forth herein.

5 87. Under section 12952, subdivision (c)(2), “[i]f the employer makes a preliminary
6 decision that the applicant’s conviction history disqualifies the applicant from employment,” the
7 employer must notify the applicant of that preliminary decision in writing. In other words, the
8 employer must state in the notice that the offer is being preliminarily withdrawn.

9 88. This notice must also include: “the disqualifying conviction or convictions that are
10 the basis for the preliminary decision to rescind the offer”; the “conviction history report”; an
11 “explanation of the applicant’s right to respond to the notice . . . and the deadline by which to
12 respond”; and an explanation informing “the applicant that the response may include submission of
13 evidence challenging the accuracy of the conviction history report” and “evidence of rehabilitation
14 or mitigating circumstances, or both.” (Gov. Code, § 12952, subd. (c)(2).)

15 89. Ralphs provided inadequate pre-adverse action notices to applicants during the
16 relevant period. As alleged above, during the relevant period, no pre-adverse action notices provided
17 by Ralphs were compliant with the Fair Chance Act and most violated the law in multiple ways,
18 failing to provide adequate notice to members of the Group.

19 90. All versions of the pre-adverse action notice that were sent to the Group failed to
20 comply with the enumerated notice requirements set out in section 12952, subdivision (c)(2).

21 91. Ralphs violated, and continues to violate, section 12952, subdivision (c)(2), by failing
22 to provide adequate notice to applicants regarding the decision to withdraw conditional offers,
23 injuring members of the Group.

24 92. As a result of Ralphs’s unlawful employment practices, Group members have suffered
25 harm, including but not limited to lost earnings, lost benefits, lost future employment opportunities,
26 and other financial loss, as well as non-economic damages including, but not limited to, emotional
27 distress.

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1 **FIFTH CAUSE OF ACTION**

2 **Violation of Substantive Requirements for Individualized Assessments**

3 **(Gov. Code, § 12952, subd. (c)(1)(A))**

4 93. CRD incorporates and realleges all previous allegations as if fully set forth herein.

5 94. Section 12952, subdivision (c)(1)(A), requires “an employer that intends to deny an
6 applicant a position of employment solely or in part because of the applicant’s conviction history” to
7 conduct “an individualized assessment of whether the applicant’s conviction history has a direct and
8 adverse relationship with the specific duties of the job that justify denying the applicant the
9 position.”

10 95. The individualized assessment must include consideration of “[t]he nature and gravity
11 of the offense or conduct,” the “time that has passed since the offense or conduct and completion of
12 the sentence,” and “[t]he nature of the job held or sought.” (Gov. Code, § 12952, subd.
13 (c)(1)(A)(i)-(iii).)

14 96. In addition to the procedural violations of the Fair Chance Act alleged above, Ralphs
15 committed substantive violations by denying employment to hundreds of applicants with conviction
16 histories that do not bear a direct and adverse relationship to the duties of the position for which they
17 applied, in light of the nature and gravity of the offenses, the time that passed since the offense
18 and/or completion of sentence, and the nature of the job that was held or sought.

19 97. Ralphs thus violated, and continues to violate, section 12952, subdivision (c)(1)(A),
20 by denying job applicants positions based on their conviction histories, where those histories did not
21 “ha[ve] a direct and adverse relationship with the specific duties of the job that justifies denying the
22 applicant the position,” causing harm to members of the Group.

23 98. As a result of Ralphs’s unlawful employment practices, Group members have suffered
24 harm, including but not limited to lost earnings, lost benefits, lost future employment opportunities,
25 and other financial loss, as well as non-economic damages including, but not limited to, emotional
26 distress.

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AS TO ALL CAUSES OF ACTION

99. By reason of the continuous nature of Ralphs’s unlawful conduct, the continuing violations doctrine is applicable to all violations alleged herein.

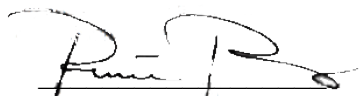
PRAYER FOR RELIEF

WHEREFORE, CRD prays that this Court issue judgment in favor of CRD, and against Defendant, ordering:

1. Compensatory damages, including lost wages and benefits (both back pay and front pay, including base pay, incentive pay, pension benefits and awards), emotional distress damages, and other pecuniary damages;
2. Injunctive relief;
3. Declaratory relief;
4. Prejudgment interest, as required by law;
5. Attorneys’ fees and costs to the California Civil Rights Department; and
6. Other relief the Court deems to be just and proper.

DATED: December 20, 2023

CALIFORNIA CIVIL RIGHTS DEPARTMENT


By: RENEE PARADIS
Attorney for the Department

DEMAND FOR JURY TRIAL

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Plaintiff CRD hereby demands a trial by jury on all claims.

Dated: December 20, 2023

CALIFORNIA CIVIL RIGHTS DEPARTMENT



By: RENE PARADIS
Attorney for the Department