

1 rates of promotion on the job.”¹

2 5. The Senate Judiciary bill analysis for AB 1008 notes that “[a]round 70 million
3 Americans, including around eight million Californians, have some sort of criminal record,” and
4 “[g]etting a job with a criminal record can be very difficult.”² Job applicants with criminal records
5 have a more difficult time finding employment and have significantly higher unemployment rates
6 than the general public.³ A nationwide survey of employers in 2017—the year the Fair Chance Act
7 was passed—found that 96% of employers ran criminal background checks on job applicants.⁴ “The
8 refusal to consider job applicants with a criminal history perpetuates a vicious cycle: folks who have
9 been involved in criminal activity seek to come clean and refocus their lives on productive, non-
10 criminal endeavors, but find it nearly impossible to land employment. Unable to earn a steady
11 income and excluded from the dignity and social inclusion that a job confers, people with criminal
12 histories sometimes drift back toward criminal endeavors, resulting in increased recidivism.”⁵

13 6. Numerous studies have shown, and the Legislature has recognized, that people with
14 criminal records feel intense shame and depression when they are subject to societal stigma because
15 of their past.⁶ This emotional distress is compounded when the fact of a criminal record means
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17 ¹ Assembly Bill No. 1008 (2017–2018 Reg. Sess.) § 1 (Assembly Bill 1008).

18 ² Sen. Com. on Judiciary, Analysis of Assem. Bill 1008 (2017-2018 Reg. Sess.) July 11, 2017, pp. 2-
19 3.

20 ³ Dylan Minor, Nicola Persico and Deborah M. Weiss, *Criminal background and job performance*,
21 (2018) 7:8 ISA J. OF LAB. POL’Y, p. 3 (“[S]udies have repeatedly found that job applicants with
22 criminal records are much less likely than others to obtain legitimate employment.”); Lucy Couloute
23 and Daniel Kopf, *Out of Prison & Out of Work: Unemployment among formerly incarcerated*
24 *people*, PRISON POLICY INITIATIVE (July 2018).

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

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

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

31 ⁵ Sen. Com. on Judiciary, Analysis of Assem. Bill 1008 (2017-2018 Reg. Sess.) July 11, 2017, pp. 2-
32 3.

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

1 someone is unable to work and provide for their family.⁷

2 7. The Legislature also recognized that the criminal legal system disproportionately
3 affects certain groups often subject to employment discrimination.⁸ Black people and Hispanic
4 people are overrepresented in the criminal legal system; crime victim survey data demonstrates that
5 this overrepresentation is not ascribable to a higher rate of criminal activity in those groups, but
6 instead also necessarily reflects systemic discrimination.⁹ While only about 5% of California’s
7 population is Black, nearly 20% of felony defendants are Black.¹⁰ While a little over one-third of
8 California is Hispanic, over 45% of felony defendants are Hispanic.¹¹

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

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15 ⁷ Assembly Bill 1008 § 1(h).

16 ⁸ Assem. Com. on Labor and Employment on Assem. Bill No. 1008 (2017-2018 Reg. Sess.) May 30,
17 2017, p. 3 (citing social science research asserting that “in California deep and persistent racial and
18 ethnic disparities in the criminal justice system documented in state-wide data support the
19 conclusion that criminal background checks for employment have a significant adverse impact on
20 the state’s African Americans and Latinos that is far too robust to have arisen by chance alone”).

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

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

¹¹ *Ibid.*

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.

1 13. CRD’s Director, in their discretion, may file a complaint on behalf of a group or
2 class. (Gov. Code, § 12961; Cal. Code Regs., tit. 2, §§ 10012, 10013.) Under this authority, the CRD
3 Director filed and served a Notice of Group or Class Complaints and Investigation against Ralphs in
4 2021 (DFEH/CRD Case Nos. 202004-09819103, 202102-12691423, 202005-10140411, 202007-
5 10628608) (“Group Complaint”), which consolidated four administrative complaints of employment
6 discrimination against Ralphs respectively brought by four individuals.¹⁶ Although CRD
7 inadvertently omitted case no. 202007-10628608 from its Group Complaint, CRD and then-
8 Respondent Ralphs treated all four complainants as part of the Group for purposes of investigation
9 and dispute resolution.

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

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

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

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

20 18. The damages amount sought exceeds this court’s jurisdictional minimum of \$10,000,
21 and exceeds the minimum of \$25,000 for unlimited civil cases.¹⁷

22 19. This court also has jurisdiction of this unlimited civil case because CRD seeks
23 injunctive and declaratory relief.¹⁸

24 20. This case is timely filed. The initial administrative complaint was filed with CRD on
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26 ¹⁶ Wilbert Mancia-Mejia is a member of the group/class, as defined in that notice, but he was not one
27 of the initial four complainants. He submitted his administrative complaint in October 2023.

¹⁷ See Civ. Proc. Code, §§ 116.221, 86, subd. (a).

¹⁸ See Civ. Proc. Code, §§ 86, subd. (a), 88.

1 unlawful practice.²⁵ CRD acts “as a public prosecutor” when it pursues civil litigation under the
2 FEHA,²⁶ and it may seek remedies to “‘vindicate’ what it considers to be in ‘the public interest in
3 preventing . . . discrimination.’”²⁷

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

9 24. At all relevant times, Ralphs has been an “employer” subject to FEHA and all other
10 applicable statutes.²⁸

11 **REAL PARTIES IN INTEREST**

12 25. Roberto Rivas filed an intake with CRD on September 5, 2019 and verified his
13 complaint on April 3, 2020 (CRD Case No. 202004-09819103). Mr. Rivas alleged, among other
14 things, that Ralphs unlawfully denied him employment based on his conviction history, failed to
15 satisfy preliminary notice requirements of the Fair Chance Act, and failed to conduct an
16 individualized assessment of his criminal history.

17 a. At the time he applied for a job at Ralphs, Mr. Rivas had a conviction history.
18 According to the background report obtained by Ralphs, this included a 1989 felony
19 conviction and a 2015 misdemeanor conviction, the latter for which he was sentenced to
20 probation for two years.

21 b. On the online Ralphs application, before receiving a conditional job offer, Mr.
22 Rivas responded to all three conviction history questions. (See *infra* ¶¶ 49, 54.)

23 c. After Mr. Rivas received a conditional job offer, Ralphs’s third-party criminal
24 background check provider graded Mr. Rivas’s conviction history with a red flag, and the
25

26 ²⁵ Gov. Code, §12965, subd. (a)(1) (authorizing CRD civil action on behalf of aggrieved persons).

27 ²⁶ *State Personnel Bd. v. Fair Empl. & Hous. Com.* (1985) 39 Cal.3d 422, 444.

28 ²⁷ *Dept. Fair Empl. & Hous. v. Law Sch. Admission Council, Inc.* (2013) 941 F.Supp.2d 1159, 1172.

²⁸ See Gov. Code, §§ 12926, subd. (d), 12952 (regulating employer conduct).

1 word “Hold” was next to it on the report. The report identified “Non Foods Clerk” as the
2 Job Title.

3 d. The August 12, 2019 pre-adverse action notice, addressed to Mr. Rivas, from
4 Ralphs’s background check provider did not state Ralphs’s intent to withdraw the
5 conditional job offer, did not identify the convictions that were the basis for that decision,
6 and did not state that Mr. Rivas could respond with evidence of mitigating circumstances.

7 e. On or around August 19, 2019, the background check provider issued the
8 post-adverse action notice. That notice stated that Ralphs decided to not hire Mr. Rivas or
9 to withdraw his conditional job offer based on the information in the background report.

10 f. As a result of Ralphs’s unlawful practices, Mr. Rivas experienced
11 disappointment, feelings of hopelessness, strain on his family relationships and
12 friendships, and difficulty paying his bills and rent, resulting in eviction proceedings. He
13 ultimately lost his home and became unhoused.

14 26. Rickey Bryant filed an intake with CRD on May 11, 2020, and verified his complaint
15 on July 23, 2020 (CRD Case No. 202005-10140411). Mr. Bryant alleged, among other things, that
16 Ralphs impermissibly inquired into his criminal history before making a conditional job offer,
17 unlawfully denied hire or terminated him based on his criminal history, failed to conduct an
18 individualized assessment of his criminal history, and failed to satisfy preliminary notice
19 requirements of the Fair Chance Act.

20 a. At the time Mr. Bryant applied for a job at Ralphs, he had a conviction
21 history. According to the background report, he had three misdemeanor convictions, all
22 from an incident in July 2016, with a March 2017 disposition date. According to the
23 background report, Mr. Bryant was sentenced to 309 days in jail and three years of
24 probation.

25 b. On the online Ralphs application, before receiving a conditional job offer, Mr.
26 Bryant responded to the “Have you ever been convicted of a crime?” question, did not
27 answer the follow-up question, and responded to the tobacco question. (See *infra* ¶¶ 49,
28

1 54.)

2 c. After Mr. Bryant received a conditional job offer, he worked for about two
3 weeks in the Ralphs deli department without incident.

4 d. Around that time, Ralphs's third-party background check provider graded Mr.
5 Bryant's conviction history as a red flag, and the word "Hold" was next to it on the
6 report. The report identified "Courtesy Clerk" as the Job Title.

7 e. The April 24, 2020 pre-adverse action notice addressed to Mr. Bryant, from
8 the background check provider, did not state Ralphs's intent to withdraw the conditional
9 job offer, did not identify the convictions that were the basis for that decision, and did not
10 state that Bryant could respond with evidence of mitigating circumstances.

11 f. The May 5, 2020 post-adverse action notice from the background check
12 provider, addressed to Mr. Bryant, stated that Ralphs decided to not hire Mr. Bryant or to
13 withdraw his conditional job offer based on the information in the background report.

14 g. As a result of Ralphs's unlawful practices, Mr. Bryant went into debt, had to
15 borrow money from family and friends and had to live with family because he could not
16 afford his rent. Mr. Bryant experienced disappointment, worry about losing the Ralphs's
17 job, and a broken spirit because Ralphs was a company he had hoped to grow in.

18 27. Doe 1 filed an intake with CRD on July 7, 2020 and verified his complaint on
19 September 11, 2020 (CRD Case No. 202007-10628608). He alleged, among other things, that
20 Ralphs impermissibly inquired into his criminal history before making a conditional job offer, failed
21 to satisfy preliminary notice requirements of the Fair Chance Act, and unlawfully denied him hire
22 based on his criminal history.

23 a. At the time Doe 1 applied for a job at Ralphs, he had a conviction history.
24 According to the background report, he had two felony convictions from an incident
25 occurring in January 2011 with a September 2013 disposition date. According to the
26 background report, Doe 1 was sentenced to 6 years in prison.

27 b. On the online Ralphs application, before receiving a conditional job offer,
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1 Doe 1 responded to the question, “Have you, or has anyone under your supervision, been
2 found to have violated a prohibition on selling tobacco to minors?”

3 c. After Doe 1 received a conditional job offer, he began working at Ralphs and
4 did so for almost a month. Doe 1 worked in the warehouse breaking down boxes, a
5 position with little to no contact with customers.

6 d. Around that time, Ralphs’s third-party background check provider graded Doe
7 1’s conviction history with as a red flag, and the word “Hold” was next to it on the report.
8 The report identified “e-Commerce Clerk” as the Job Title.

9 e. The June 16, 2020 pre-adverse action notice addressed to Doe 1 did not state
10 Ralphs’s intent to withdraw the conditional job offer, did not identify the convictions that
11 were the basis for that decision, and did not state that Doe 1 could respond with evidence
12 of mitigating circumstances.

13 f. The June 23, 2020 post-adverse action notice from the background check
14 provider, addressed to Doe 1, stated that Ralphs decided to not hire Doe 1 or to withdraw
15 his conditional job offer based on the information in the background report.

16 g. As a result of Ralphs’s unlawful practices, Doe 1 had to borrow money from
17 family and friends for food, gas for car, maintenance for car, cell phone service, and
18 other essentials, and suffered embarrassment, stress, and worried.

19 28. Wilbert Mancia-Mejia filed an intake with CRD on October 13, 2023 and verified his
20 complaint on September 13, 2024 (CRD Case No. 202310-22316013). He alleged, among other
21 things, that Ralphs unlawfully denied him employment based on his conviction history, failed to
22 satisfy preliminary notice requirements of the Fair Chance Act, and failed to conduct an
23 individualized assessment of his criminal history.

24 a. The application Mr. Mancia-Mejia was required to complete contained
25 questions seeking information regarding his conviction history.

26 b. On October 2, 2023, Mr. Mancia-Mejia received a conditional offer of
27 employment. That same day he submitted a background screening
28

1 authorization. Ralphs’s third-party background check provider graded Mr.
2 Mancia-Mejia’s conviction history with a yellow flag and the words “Client
3 Review Required.”

4 c. At the time Mr. Mancia-Mejia applied for a job at Ralphs, he had a conviction
5 history, but the conviction was not included in the report because it occurred
6 more than seven years prior to his application.

7 d. Ralphs issued a pre-adverse action notice to Mr. Mancia-Mejia on October 5,
8 2023, stating that his offer would be rescinded due to his conviction history. That notice
9 failed to identify the conviction that was the basis for that decision and did not inform
10 Mr. Mancia-Mejia that he could respond with evidence of mitigating circumstances.

11 e. When Mr. Mancia-Mejia contacted Ralphs seeking clarification, he was told
12 that he could provide additional information concerning the accuracy of the report, but
13 not that he could submit evidence of rehabilitation or mitigating circumstances. Mr.
14 Mancia-Mejia therefore did not respond to the notice.

15 f. On October 12, 2023, Ralphs sent Mr. Mancia-Mejia a post-adverse action
16 notice through the background-check provider notifying him that it decided to rescind his
17 conditional job offer based on the information in the background report.

18 g. As a result of Ralphs’s unlawful practices, Mr. Mancia-Mejia incurred credit
19 card debt and had to borrow money from family and friends to stay housed and afford
20 other essentials, fell behind on child support payments incurring interest, and suffered
21 depression, anxiety, and hopelessness.

22 29. Rivas, Bryant, Doe 1, and Mr. Mancia-Mejia filed administrative complaints with
23 CRD alleging Ralphs violated the Fair Chance Act. As persons claiming to be aggrieved, each is a
24 real party in interest and has the right to participate as a party and be represented by their own
25 counsel in this civil action if they so choose. (See Gov. Code, § 12952, subd. (a)(3).)

26 30. CRD is aware that the unlawful practices alleged herein have affected other
27 individuals who may file an administrative complaint with CRD that it subsequently investigates,
28

1 making them persons claiming to be aggrieved and real parties in interest in this action.

2 31. The identity of Real Party in Interest Doe 1 is known to Defendant. Maintaining
3 anonymity therefore does not prejudice Defendant. Doe 1 seeks to maintain anonymity in the public
4 records associated with this case.

5 **STATUTORY FRAMEWORK**

6 32. The Fair Chance Act limits the use of criminal history in hiring in California, both
7 through procedural requirements related to the hiring process and through substantive limits on
8 which convictions an employer can deem disqualifying.

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

12 34. The Act makes it an unlawful employment practice for an employer “[t]o include on
13 any application for employment . . . any question that seeks the disclosure of an applicant’s
14 conviction history,” or to “inquire into or consider the conviction history of the applicant,” prior to
15 extending a conditional offer of employment to an applicant.²⁹

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

22 36. Once an employer has made a conditional offer of employment to a qualified
23 applicant it wishes to hire, an employer may then investigate and consider an applicant’s conviction
24 history.

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

27 _____
28 ²⁹ Gov. Code, § 12952, subs. (a)(1), (a)(2).

1 38. The employer must make an “individualized assessment” of the candidate’s
2 conviction history to determine whether the conditional offer will be revoked.³⁰ This individualized
3 assessment can take into consideration only the narrow factors listed in the statute.

4 39. If an employer determines that it intends to withdraw an applicant’s conditional offer
5 based on the applicant’s conviction history, the employer must provide written notice prior to the
6 withdrawal (the “pre-adverse action notice”). The notice gives the applicant a fair chance to offer
7 context about their conviction history and explain why the applicant is nevertheless qualified to do
8 the job.

9 40. The employer’s written pre-adverse action notice must (1) indicate that the employer
10 has made a “preliminary decision that the applicant’s conviction history disqualifies the applicant
11 from employment”; (2) identify the “disqualifying conviction or convictions that are the basis for the
12 preliminary decision to rescind the offer”; (3) include the “conviction history report”; (4) include an
13 “explanation of the applicant’s right to respond to the notice” and “the deadline by which to
14 respond”; and (5) “inform the applicant that the response may include submission of evidence
15 challenging the accuracy” of the report, along with “evidence of rehabilitation or mitigating
16 circumstances.”³¹

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

27 ³⁰ Gov. Code, § 12952, subd. (c)(1).

28 ³¹ Gov. Code, § 12952, subd. (c)(2).

1 provide it. Thus, the communication they receive cannot be said to be any real notice at all.

2 42. The Fair Chance Act further requires that once the employer has issued a pre-adverse
3 action notice, it must give the applicant at least five business days to respond. If an applicant notifies
4 the employer that the background report is inaccurate and they are taking steps to obtain evidence to
5 prove the inaccuracy, the employer must give them at least another five business days to respond.³²

6 43. If an applicant submits a response to the pre-adverse action notice, the employer must
7 consider the submission before making a final decision to rescind the conditional offer. If the
8 employer makes a final decision to rescind the conditional offer on the basis of an applicant's
9 conviction history, whether or not the applicant has responded to the pre-adverse action notice, it
10 must provide notice of its final decision, which must include (1) "the final denial or
11 disqualification"; (2) "any existing procedure the employer has for the applicant to challenge the
12 decision"; and (3) the "right to file a complaint with the Department."³³

13 44. In addition to its procedural requirements, the Act also substantively limits the use of
14 conviction history to deny an applicant employment.

15 45. Employers cannot withdraw a conditional offer unless the applicant's conviction
16 history has a "direct and adverse relationship with the specific duties of the job that justify denying
17 the applicant the position."³⁴ In order to withdraw an offer on this basis, the employer must conduct
18 an individualized determination based on (1) "the nature and gravity of the offense or conduct"; (2)
19 "the time that has passed since the offense or conduct and completion of the sentence"; and (3) "the
20 nature of the job held or sought."³⁵

21 46. The individualized assessment protects applicants against an employer denying them
22 a position based on the stigma of having been convicted of a criminal offense, rather than on their
23 ability to perform the duties of a position.

24 47. As outlined below in this complaint, Ralphs violated and continues to violate both the
25

26 ³² Gov. Code, § 12952, subd. (c)(3).

27 ³³ Gov. Code, § 12952, subd. (c)(4), (5).

28 ³⁴ Gov. Code, § 12952, subd. (c)(1)(A).

³⁵ *Id.* at subd. (c)(1)(A)(i)-(iii).

1 procedural and substantive requirements of the Fair Chance Act.

2 **FACTUAL ALLEGATIONS**

3 **Procedural Violations**

4 48. Ralphs uses an application form hosted online by Kroger, its parent company, to
5 solicit applications for positions at Ralphs stores.

6 49. The application form includes multiple questions that seek disclosure of an
7 applicant’s criminal convictions and that inquire into the conviction history of the applicant.

8 50. The “Personal Background Information” section asks: “Have you ever been convicted
9 of a crime?” If the answer is yes, the applicant is then asked to “provide the County and State of the
10 conviction, misdemeanor or felony, and a brief description of the conviction. If you fail to provide
11 complete information, your application could be delayed.”

12 51. A boxed disclaimer above these questions states:

13 INSTRUCTIONS FOR ANSWERING CRIMINAL CONVICTION
14 QUESTION can be found by clicking on the following link:
Instructions

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

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

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

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

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

2
3 California: Applicants should not provide and are not to provide
criminal history information on a preliminary employment application.
4 **If the position for which you are applying is located within**
5 **California select from the dropdown box (in answer to the**
6 **criminal history question) the response “Position Is In California –**
7 **No Response.” DO NOT SELECT “YES” OR “NO.”**

8 **California:** At any time prior to employment: Applicants should not
disclose convictions that have been sealed, expunged, or statutorily
9 eradicated or any misdemeanor convictions for which probation has
been successfully completed or otherwise discharged and the case has
10 been judicially dismissed. Applicants should not disclose information
regarding arrests or detentions for which a diversion program has been
11 successfully completed. Cal. Code Regs., tit. 2, § 7287-.4. Applicants
shall not disclose records of arrest, indictment, information,
12 misdemeanor complaint, or conviction of a crime that, from the date of
disposition, release, or parole, antedate the report by more than (7)
13 seven years. Further, these items shall not be reported if in the case of
a conviction a full pardon has been granted, or in the case of an arrest,
14 indictment, information, or misdemeanor complaint a conviction did
not result. Cal. Civ. Code §1785.13.6. Applicants should not disclose
15 any juvenile convictions – including any information related to an
arrest, detention, processing, diversion, supervision, adjudication or
16 court disposition that occurred while the applicant was subject to the
process and jurisdiction of juvenile court law. Cal. Labor Code §
17 432.7. Applicants shall not disclose marijuana-related convictions
entered by the court more than 2 years ago that involve: unlawful
18 possession of marijuana; transportation or giving away of up to 28.5
grams of marijuana, other than concentrated cannabis, or the offering
19 to transport or give away up to 28.5 grams of marijuana, other than
concentrated cannabis; possession of paraphernalia used to smoke
20 marijuana; being in a place with knowledge that marijuana was being
used; or being under the influence of marijuana. Cal Health & Safety
Code §§11357(b) or (c), 11360(b) (formerly subdivision (c) of section
21 11360), 11364, 11365, or 11550.

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

26 54. This disclaimer is ineffective: over 70% of California applicants with conviction
27 histories who applied to Ralphs between 2018 and 2022 answered this question, despite the
28

1 disclaimer. Questions regarding conviction history on an application can also deter applicants from
2 completing an application.³⁶

3 55. Another question on every application asks the applicant if they, or anyone under
4 their supervision, has been found to have violated a prohibition on selling tobacco to minors. In
5 California, knowingly selling tobacco to anyone under the age of 21 is a misdemeanor criminal
6 offense.³⁷ The sale of tobacco to minors is also a criminal offense in at least thirty other states and
7 the District of Columbia.³⁸ This question necessarily “seeks the disclosure of an applicant’s
8 conviction history,” and “inquire[s] into” an applicant’s conviction history.

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

18 57. Ralphs also provided inadequate pre-adverse action notices to applicants.

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

23 59. The pre-adverse action notices Ralphs sent to applicants were wholly inadequate.

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25 ³⁶ See, e.g., Ctr. For Cmty. Alts., *Boxed Out: Criminal History Screening and College Application*
26 *Attrition* (2015) <http://communityalternatives.org/pdf/publications/BoxedOut_FullReport.pdf>.

27 ³⁷ Penal Code, § 308, subd. (a)(1)(A)(i).

28 ³⁸ See Institute of Medicine, *Public Health Implications of Raising the Minimum Age of Legal*
Access to Tobacco Products (2015) pp. 287-313 (“Appendix B, State Laws—Tobacco Transfers to
Minors”) <<https://doi.org/10.17226/18997>>.

1 Most of Ralphs’s pre-adverse action notices failed to inform applicants that Ralphs intended to
2 withdraw its conditional offer; applicants would not know they were in danger of losing a job they
3 had been offered, or in some cases, a job they had already started. Additionally, most pre-adverse
4 action notices also lacked contact information to send a response to the notice or informed applicants
5 that a statement that mitigating circumstances could be provided. Less than one quarter of the
6 notices provided applicants with any contact information; the notices that provided contact
7 information only listed a phone number without explanation and without any indication that that
8 phone number was a FAX line to which information might presumably be faxed.

9 **Substantive Violations**

10 60. In addition to denying applicants with conviction histories a fair chance in their
11 application process, Ralphs also denied, and continues to deny, employment to hundreds of
12 applicants on the basis of criminal histories that do not justify that denial based on their nature,
13 severity, and recency.

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

16 62. Others who had convictions for simple cannabis possession in states where it remains
17 illegal were disqualified.

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

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

25 **Ralphs’s Misconduct Harmed the Group Members**

26 65. The Department’s investigation revealed that applicants denied employment by
27 Ralphs based on their conviction history experienced emotional distress, including depression,
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1 anxiety, and insomnia. They described feeling hopeless and doubting their self-worth. Others noted
2 that the initial job offer had provided them hope, only for its withdrawal to plunge them further into
3 anxiety and depression.

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

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

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

15 **GOVERNMENT ENFORCEMENT ACTION ALLEGATIONS**

16 69. Under Government Code sections 12961 and 12965, CRD brings this government
17 enforcement action in its prosecutorial role, “in the name of the department, acting in the public
18 interest, on behalf of the person[s] claiming to be aggrieved” and “on behalf of the department.”
19 (Gov. Code, § 12965, subs. (a)(1), (4).)³⁹ The aforementioned real parties in interest are such

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22 ³⁹ Due to the Court’s February 6, 2025 order, Plaintiff continues to omit in this Third Amended
23 Complaint its request for damages for Group members, meaning all individuals with a conviction
24 history who applied to a position with Ralphs in California and were denied employment, on or after
25 April 3, 2019, because of their criminal history (herein the “Group). This definition includes
26 aggrieved individuals whether or not they are real parties in interest identified herein or persons
27 claiming to be aggrieved as construed in that order. Specifically, CRD has omitted its request for
28 damages for Group members who did not file administrative complaints with CRD and has amended
the complaint to seek damages for Group members who did file administrative complaints with CRD
and who are identified as real parties in interest in the Third Amended Complaint. In doing so,
Plaintiff does not waive any claims or rights, including the ability to seek any available appellate
review of the order.

1 persons. In bringing this litigation, CRD seeks to remedy, prevent, and deter unlawful employment
2 discrimination based on conviction history. (Gov. Code, §§ 12965, 12920.5.)

3 70. CRD brings this representative enforcement action in its capacity as a state agency
4 and under the authority vested in CRD by the FEHA, which does not require class certification
5 under Code of Civil Procedure sections 378 and 382.⁴⁰ Thus, CRD brings this government
6 enforcement action, “acting in the public interest, on behalf of the person[s] claiming to be
7 aggrieved,” and “on behalf of the department.” (Gov. Code, § 12965, subds. (a)(1), (4).)

8 FIRST CAUSE OF ACTION

9 **The Inclusion of Questions that Seek Disclosure of an Applicant’s Conviction History on an** 10 **Application for Employment (Gov. Code, § 12952, subd. (a)(1))**

11 71. CRD incorporates and realleges all previous allegations as if fully set forth herein.

12 72. Subdivision (a)(1) of section 12952 makes the inclusion “on any application for
13 employment, before the employer makes a conditional offer of employment to the applicant, any
14 question that seeks the disclosure of an applicant’s conviction history” an unlawful employment
15 practice.

16 73. As alleged *supra*, the application form includes multiple questions that seek the
17 disclosure of an applicant’s conviction history in advance of a conditional offer.

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

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

22 76. Ralphs’s disclaimer language addressed to California applicants is ineffective.

23 77. Ralphs thus violated, and continues to violate, section 12952, subdivision (a)(1), by
24 including questions that seek disclosure of an applicant’s conviction history on its employment
25 application, causing injury to Group members.

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28 ⁴⁰ Gov. Code, § 12961.

1 **Failure to Make Individualized Assessments**

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

3 87. CRD incorporates and realleges all previous allegations as if fully set forth herein.

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

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

11 90. Ralphs continues to fail to perform individualized assessments on applicants with
12 conviction histories by automatically sending pre-adverse action notices to applicants with particular
13 convictions and not establishing processes that ensure human resources personnel consider the
14 factors mandated by statute when conducting an individualized assessment.

15 91. Ralphs thus violated, and continues to violate, section 12952, subdivision (c)(1)(A),
16 by failing to perform individualized assessments of applicants’ criminal histories, harming Group
17 members.

18 92. As a result of Ralphs’s unlawful employment practices, those persons claiming to be
19 aggrieved have suffered harm, including but not limited to lost earnings, lost benefits, lost future
20 employment opportunities, and other financial loss, as well as non-economic damages including, but
21 not limited to, emotional distress.

22 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

15 98. Ralphs violated, and continues to violate, section 12952, subdivision (c)(2), by failing
16 to provide adequate notice to applicants regarding the decision to withdraw conditional offers,
17 injuring members of the Group.

18 99. As a result of Ralphs’s unlawful employment practices, those persons claiming to be
19 aggrieved have suffered harm, including but not limited to lost earnings, lost benefits, lost future
20 employment opportunities, and other financial loss, as well as non-economic damages including, but
21 not limited to, emotional distress.

22 **FIFTH CAUSE OF ACTION**

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

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

25 100. CRD incorporates and realleges all previous allegations as if fully set forth herein.

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

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

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

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

17 105. As a result of Ralphs’s unlawful employment practices, those persons claiming to be
18 aggrieved have suffered harm, including but not limited to lost earnings, lost benefits, lost future
19 employment opportunities, and other financial loss, as well as non-economic damages including, but
20 not limited to, emotional distress.

21 **PRAYER FOR RELIEF**

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

24 1. Compensatory damages, for the persons claiming to be aggrieved who are the real
25 parties in interest, including lost wages and benefits (both back pay and front pay, including base
26 pay, incentive pay, pension benefits and awards), and garden variety emotional distress damages;

27 2. Injunctive relief on behalf of the department acting in the public interest;

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- 3. Declaratory relief on behalf of the department acting in the public interest;
- 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: May 29, 2026

CALIFORNIA CIVIL RIGHTS DEPARTMENT



By: ASAF ORR
Attorney for the Department

DEMAND FOR JURY TRIAL

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

DATED: May 29, 2026

CALIFORNIA CIVIL RIGHTS DEPARTMENT



By: ASAF ORR
Attorney for the Department