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ADRIANA SUAREZ TAPIA and the Proposed Classes

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

ADRIANA SUAREZ TAPIA, an
individual on behalf of herself and all
others similarly situated,

Plaintiff,

v.

FRONTWAVE CREDIT UNION, a
California corporation,

Defendant.

CASE NO. '20CV1950 JM JLB

CLASS ACTION

**PLAINTIFF'S CLASS ACTION
COMPLAINT FOR:**

- 1. VIOLATIONS OF THE FAIR CREDIT REPORTING ACT OF 1970, AS AMENDED, 15 U.S.C. § 1681 ET SEQ.**
- 2. VIOLATIONS OF THE INVESTIGATIVE CONSUMER REPORTING AGENCIES ACT, CALIFORNIA CIVIL CODE § 1786 ET SEQ.**
- 3. VIOLATIONS OF THE CONSUMER CREDIT REPORTING AGENCIES ACT, CALIFORNIA CIVIL CODE § 1785 ET SEQ.**
- 4. VIOLATION OF THE UNFAIR COMPETITION LAW, CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

JURY TRIAL DEMANDED

1 Plaintiff Adrian Suarez Tapia (“Plaintiff”), individually and on behalf of
2 all other members of the public similarly situated, based upon facts which either
3 have evidentiary support, or are likely to have evidentiary support after a
4 reasonable opportunity for further investigation and discovery, alleges as follows:

5 **INTRODUCTION & NATURE OF ACTION**

6 1. This class action arises from the acquisition and use of consumer
7 and/or investigative consumer reports (referred to collectively as “background
8 reports”) by Frontwave Credit Union, a California corporation (“Defendant”) to
9 conduct background checks on Plaintiff and other prospective, current, and
10 former employees.

11 2. Defendant routinely obtain and use information from background
12 reports in connection with their hiring processes without complying with state and
13 federal mandates for doing so. As part of this practice, Defendant provide a
14 requisite disclosure form to applicants. However, the disclosure form that
15 Defendant provided to Plaintiff and each class member as part of its hiring
16 process is noncompliant with federal and state statutes.

17 3. Plaintiff, individually and on behalf of all other members of the
18 public similarly situated, seeks statutory, compensatory and punitive damages due
19 to Defendant’s willful or grossly negligent conduct and its systematic and willful
20 violation of, *inter alia*, the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§
21 1681 *et seq.*, Investigative Consumer Reporting Agencies Act (“ICRAA”), Cal.
22 Civ. Code §§ 1786 *et seq.*, Consumer Credit Reporting Agencies Act
23 (“CCRAA”), Cal. Civ. Code §§ 1785 *et seq.*, and California’s Unfair Competition
24 Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 *et seq.*

25 4. Defendant have violated the requirements under these statutes by
26 failing to provide proper “pre-authorization” disclosures. The procurement of
27 background reports for employment purposes is subject to strict disclosure
28 requirements under federal law pursuant to the FCRA and under California law

1 pursuant to the ICRAA and CCRAA. Among other things, an employer may not
2 procure a background report concerning a job applicant unless a “clear and
3 conspicuous” disclosure is made in a stand-alone document that “consists solely
4 of the disclosure” informing the applicant that a report may be obtained for
5 employment purposes.

6 5. The reason for requiring that the disclosure be in a stand-alone
7 document, according to the Federal Trade Commission (“FTC”), is to prevent
8 consumers from being distracted by other information that is side-by-side within
9 the disclosure. See Leathers, FTC Informal Staff Opinion Letter, Sept. 9, 1998,
10 available at [https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-](https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-leathers-09-09-98)
11 [leathers-09-09-98](https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-leathers-09-09-98) (last accessed March 13, 2019). The FCRA seeks to protect
12 important privacy rights and to ensure that consumers receive adequate disclosure
13 and provide adequate authorization for background checks. A stand-alone
14 disclosure form is essential to achieving that goal.

15 6. 15 U.S.C. § 1681b(b)(2)(A)(i) provides that an employer “may not
16 procure a consumer report, or cause a consumer report to be procured, for
17 employment purposes with respect to any consumer, unless –

- 18 (i) a clear and conspicuous disclosure has been made in writing to the
19 consumer at any time before the report is procured or caused to be
20 procured, **in a document that consists solely of the disclosure**, that
21 a consumer report may be obtained for employment purposes; and
22 (ii) the consumer has authorized in writing (which authorization may
23 be made on the document referred to in clause (i)) the procurement
24 of the report by that person.” (Emphasis added.)

25 7. Defendant violated these sections when it did not provide Plaintiff
26 and other putative class members with a clear and conspicuous disclosure in
27 writing in a document that consists solely of the disclosure that a consumer report
28 may be obtained for employment purposes.

1 8. Instead of abiding by the law, Defendant’s preauthorization is
2 embedded in a multi-page document that contains a host of other unrelated
3 authorizations, disclosures, and disclaimers, including (but not limited to): the
4 requirement to provided sufficient documentation to establish eligibility to work
5 in the United States, agreement to sign a non-solicitation agreement, agreement to
6 sign a non-disclosure agreement, an “at-will” employment disclaimer, drug-
7 screening information, consent to send the employee’s information to affiliated
8 and agents, and other state law disclaimers. (Defendant’s Preauthorization
9 provided to Plaintiff is attached as **Exhibit 1.**)

10 9. The Ninth Circuit has repeatedly held that failure to provide a clear
11 and conspicuous disclosure consisting **solely** of the disclosure that a consumer
12 report may be obtained for employment purposes is a clear violation of the
13 FCRA. See e.g., Syed v. M-I, Ltd. Liab. Co., 853 F.3d 492, 504 (9th Cir. 2017)
14 (Employer violated FCRA when it procured a job applicant’s consumer report
15 after including a liability waiver in the same document as the statutorily mandated
16 disclosure. Given the clear statutory language that the disclosure document had
17 to consist “solely” of the disclosure, the employer’s violation of the FCRA was
18 willful as a matter of law), Gilberg v. Cal. Check Cashing Stores, Ltd. Liab. Co.,
19 913 F.3d 1169, 1176 (9th Cir. 2019) (An employer violated the standalone
20 requirement of the FCRA and state law because under Syed, the standalone
21 requirement foreclosed implicit exceptions, and the employer’s disclosure
22 contained extraneous and irrelevant information beyond what FCRA itself
23 required, particularly as much of the surplusage in the employer’s disclosure form
24 did not effectuate the purposes of FCRA and the presence of the extraneous
25 information was as likely to confuse as it was to inform).

26 10. Based on the foregoing, Plaintiff assert the claims enumerated below
27 against Defendant on behalf of herself and a class of Defendant’s employees and
28 prospective employees.

JURISDICTION AND VENUE

11. The FCRA, codified as 15 U.S.C. § 1681 *et seq.*, authorizes Court actions by private parties to recover damages for failure to comply with its provisions. Jurisdiction over Plaintiff’s FCRA claims is based upon 15 U.S.C. § 1681p and 28 U.S.C. § 1331.

12. Under 28 U.S.C. § 1367, this Court has supplemental jurisdiction over Plaintiff’s state law claims because the state claims are so related to the FCRA claims that they form part of the same case or controversy.

13. Moreover, jurisdiction over Plaintiff’s state law claims is based upon the Class Action Fairness Act of 2005, codified as 28 U.S.C. § 1332(d)(2)(A), because the amount in controversy exceeds five million dollars (\$5,000,000), exclusive of interest and costs, and because at least one member of the proposed class is a citizen of a different state than Defendant, and the number of proposed class members exceeds 100.

14. Venue lies within this judicial district pursuant to 28 U.S.C. § 1391(b)-(c) because Defendant transacts business in this judicial district and certain acts giving rise to the claims asserted in this Complaint occurred within the District. Venue is proper in the Southern District of California pursuant to 28 U.S.C. § 1391 because this District is a District in which a substantial part of the events or omissions giving rise to the claim occurred. Specifically, Plaintiff completed Defendant’s employment application process in the County of San Diego. Venue is proper in the Southern District of California.

PARTIES

15. Plaintiff is a resident of Oceanside, California in San Diego County.

16. Defendant is a California Corporation with its principal place of business located at 1278 Rocky Point Dr., Oceanside, CA 92056.

FACTUAL ALLEGATIONS

1
2 17. Plaintiff applied for a job with Defendant in approximately
3 November of 2019.

4 18. In connection with her employment application, Plaintiff completed
5 Defendant’s standard application materials, which, on information and belief,
6 were used regularly by Defendant for all job applicants during the relevant time
7 period in the connection with their employment policies, procedures, and/or
8 practices.

9 19. As part of the application process, Defendant obtained Plaintiff’s
10 authorization to submit to a pre-employment background check. In evaluating her
11 for employment, Defendant procured or caused to be prepared a background
12 report (i.e., a consumer report and/or investigative consumer report, as defined by
13 15 U.S.C. § 1681a(d)(1)(B) and 15 U.S.C. § 1681a(e), a consumer credit report,
14 as defined by Cal. Civ. Code Section 1785.3(c), and an investigative consumer
15 report, as defined by Cal. Civ. Code Section 1786.2(c)).

16 20. Plaintiff is informed and believes that Defendant routinely conducts
17 background checks on its job applicants as part of a standard screening process.
18 Defendant also conducts background checks on existing employees from time-to-
19 time.

20 21. Defendant’s authorization is embedded in a multi-page document
21 that contains a host of other unrelated authorizations, disclosures, and disclaimers,
22 including (but not limited to): the requirement to provided sufficient
23 documentation to establish eligibility to work in the United States, agreement to
24 sign a non-solicitation agreement, agreement to sign a non-disclosure agreement,
25 an “at-will” employment disclaimer, drug-screening information, consent to send
26 the employee’s information to affiliated and agents, and other state law
27 disclaimers. (Defendant’s Preauthorization provided to Plaintiff is attached as
28 **Exhibit 1.**)

1 22. Plaintiff was confused by the authorization form due to its inclusion
2 of so much other information. Plaintiff would not have signed the authorization
3 for the consumer report if she was provided with a document that consists solely
4 of the disclosure.

5 23. Under the FCRA, it is unlawful to procure or cause to be procured, a
6 consumer report¹ or investigative consumer report² for employment purposes,
7 unless a “clear and conspicuous” disclosure is made in a document that consists
8 “solely of the disclosure” and the consumer has authorized in writing the
9 procurement of the report. 15 U.S.C. § 1681b(b)(2)(A)(i)-(ii).

10 24. Although the disclosure and the authorization may be combined in a
11 single document, the FTC has warned that the form should not include any
12 extraneous information. For example, a 1998 opinion letter from the FTC states:
13 “Section 604(b)(2)(A) of the FCRA [15 U.S.C. § 1681b(b)(2)(A) requires that the
14 consumer disclosure be] . . . in a document that consists solely of the disclosure.”
15 See Coffey, FTC Informal Staff Opinion Letter, Feb. 11, 1998, available at
16 <https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-coffey-02-11-98>
17 (last accessed Sep. 30, 2020).

18 25. In response to an inquiry as to whether the disclosure may be clearly
19 set forth within an application for employment or whether it must truly be
20 included in a separate document, the FTC responded in another 1998 opinion
21 letter that, “[t]he disclosure may not be part of an employment application
22

23 ¹ Section 1681a(d)(1)(B) of the FCRA defines “consumer report” as “any written, oral, or
24 other communication of any information by a consumer reporting agency bearing on a
25 consumer’s credit worthiness, credit standing, credit capacity, character, general reputation,
26 personal characteristics, or mode of living which is used or expected to be used or collected in
27 whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility
28 for employment purposes.”

26 ² Section 1681a(e) of the FCRA defines “investigative consumer report” as “a consumer
27 report or portion thereof in which information on a consumer’s character, general reputation,
28 personal characteristics, or mode of living is obtained through personal interviews with
neighbors, friends, or associates of the consumer reported on or with others with whom he is
acquainted or who may have knowledge concerning any such items of information.”

1 because the language [of 15 U.S.C. § 1681b(b)(2)(A)] is intended to ensure that it
2 appears conspicuously in a document not encumbered by any other information.
3 The reason for requiring that the disclosure be in a stand-alone document is to
4 prevent consumers from being distracted by other information side-by-side with
5 the disclosure. See Leathers, FTC Informal Staff Opinion Letter, Sept. 9, 1998,
6 available at [https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-](https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-leathers-09-09-98)
7 [leathers-09-09-98](https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-leathers-09-09-98) (last accessed Sep. 30, 2020).

8 26. Defendant violated the FCRA by including a host of other unrelated
9 authorizations, disclosures, and disclaimer, including (but not limited to): the
10 requirement to provided sufficient documentation to establish eligibility to work
11 in the United States, agreement to sign a non-solicitation agreement, agreement to
12 sign a non-disclosure agreement, an “at-will” employment disclaimer, consent to
13 send the employee’s information to affiliated and agents, and other state law
14 disclaimers.

15 27. Defendant’s Authorization form also violates Cal. Civ. Code
16 Sections 1785.20.5(a) and 1786.16(b) because it contains extraneous provisions,
17 including an “evergreen consent” provision that in defiance of the requirement
18 that Defendant provide Plaintiff and class members with written disclosures and
19 obtain written authorization each time an investigative consumer report is sought;
20 fails to identify a specific basis for requesting a consumer credit report under Cal.
21 Labor Code Section 1024.5; and did not adequately inform Plaintiff and the class
22 that they may request a copy of a consumer credit report.

23 **CLASS ACTION ALLEGATIONS**

24 28. Plaintiff brings this lawsuit as a class action on behalf of herself and
25 all others similarly situated as members of the proposed class pursuant to Federal
26 Rules of Civil Procedure 23(a) and (b)(1), (b)(2), and/or (b)(3).

27 29. Plaintiff assert her claims on behalf of herself and the putative class
28 defined as follows:

1 **FCRA Class:** All natural persons residing in the United States
2 (including all territories and other political subdivisions of the
3 United States) who were the subject of a consumer report that was
4 procured by Defendant (or that Defendant caused to be procured)
5 within five years of the filing of this Complaint through the date of
6 final judgment in this action under FCRA.

7 30. Plaintiff also assert her claims on behalf of herself and the following
8 putative subclasses defined as follows:

9 **ICRAA Subclass:** All members of the FCRA Class who reside in
10 California.

11 **CCRAA Subclass:** All persons residing in California, who applied
12 for an employment position with Defendant and executed an
13 authorization form related to a consumer report within seven years
14 prior to the filing of this complaint until the date of trial.

15 **UCL Subclass:** All members of the FCRA Class who reside in
16 California and applied for an employment position with Defendant
17 within four years prior to the filing of this complaint.

18 31. Plaintiff reserves the right to amend the definition of the class and/or
19 subclasses as additional facts are discovered. Plaintiff will define a class
20 definition at such time when Plaintiff seeks class certification.

21 32. This action has been brought and may properly be maintained as a
22 class action under Federal Rules of Civil Procedure Rule 23 because there is a
23 well- defined community of interest in the litigation and the proposed class is
24 easily ascertainable:

- 25 a. Numerosity: The potential members of the Class as defined are so
26 numerous that joinder of all the members of the Class is impracticable.
27 Defendant regularly conducts background checks on prospective and
28 existing employees. Plaintiff believe that hundreds of Defendant's

1 employees or prospective employees satisfy the definition of the Putative
2 Class.

3 b. Commonality: There are questions of law and fact common to the
4 Plaintiff and the Class that predominate over any questions affecting
5 only individual members of the Class. These common questions of law
6 and fact include without limitation:

- 7 i. Whether Defendant provides employees and prospective
8 employees with a clear and conspicuous disclosure in writing
9 in a document that consists solely of the disclosure that a
10 consumer report may be obtained for employment purposes
11 before procuring (or causing to be procured) a consumer
12 report;
- 13 ii. Whether Defendant uses consumer reports to conduct
14 background checks on employees and prospective employees;
- 15 iii. Whether it is Defendant's standard procedure to provide
16 applicants and employees reasonable opportunity to obtain
17 copies of their consumer report, investigative consumer
18 report, and/or credit report in compliance with the statutory
19 mandates;
- 20 iv. Whether it is Defendant's standard procedure to provide
21 applicants and employees with copies of their consumer
22 report, investigative consumer report, and/or credit report in a
23 timely matter in compliance with the statutory mandates;
- 24 v. Whether Defendant's failures to comply with the FCRA,
25 ICRAA, or CCRAA were willful or grossly negligent;
- 26 vi. Whether Defendant's conduct described herein constitutes a
27 violation of the UCL; and
- 28 vii. The appropriate amount of statutory damages, attorneys' fees,

1 and costs resulting from Defendant's violations of federal and
2 California law.

3 c. Typicality: Plaintiff's claims are typical of the claims of the Class.
4 Plaintiff and all members of the Class sustained injuries and damages
5 arising out of and caused by Defendant's common course of conduct in
6 violation of law as alleged herein. The FCRA violations suffered by the
7 Plaintiff are typical as Defendant treated all employees and prospective
8 employees with its standard policies and practices.

9 d. Adequacy Of Representation: Plaintiff will fairly and adequately
10 represent and protect the interests of the class members. Counsel for
11 Plaintiff is competent and experienced in litigating complex employment
12 and consumer class actions.

13 e. Superiority Of Class Action: A class action is superior to other
14 available means for the fair and efficient adjudication of this controversy.
15 Individual joinder of all class members is not practicable, and questions
16 of law and fact common to the class predominate over any questions
17 affecting only individual members of the class. Plaintiff anticipates no
18 difficulty in the management of this action as a class action since the
19 unlawful conduct at issue is the same with respect to all class members.

20 33. The prosecution of separate actions by individual class members may
21 create a risk of adjudications with respect to them that would, as a practical
22 matter, be dispositive of the interests of other class members not parties to such
23 adjudication or that would substantially impair or impede the ability of such non-
24 party class members to protect their interests.

25 34. The prosecution of individual actions by class members could
26 establish inconsistent standards of conduct for Defendant.

27 35. Defendant has acted, or refused to act, in respects generally
28 applicable to the Class as a whole, thereby making appropriate final and

1 injunctive relief or corresponding declaratory relief with regard to members of the
2 class as a whole, as requested herein. Likewise, Defendant’s conduct as described
3 above is unlawful, continuing, and capable of repetition and will continue unless
4 restrained and enjoined by the Court.

5 **FIRST CLAIM**

6 **VIOLATIONS OF THE FCRA, 15 U.S.C. § 1681b(b)(2)(A)(i)**
7 **BY PLAINTIFF AND THE FCRA CLASS AGAINST DEFENDANT**

8 36. Plaintiff hereby incorporates by reference the allegations contained
9 in this Complaint.

10 37. Defendant is a “person” as defined by § 1681a(b) of the FCRA.

11 38. Plaintiff and the other class members are consumers within the
12 meaning § 1681a(c) of the FCRA, because they are “individuals.”

13 39. Defendant have a policy and practice of failing to provide adequate
14 written disclosure to applicants and employees before procuring consumer reports
15 or causing consumer reports to be procured. Pursuant to that policy and practice,
16 Defendant procured consumer reports or caused consumer reports to be procured
17 for Plaintiff and class members without first providing a written disclosure in
18 compliance with § 1681b(b)(2)(A) of the FCRA.

19 40. Defendant violated the FCRA by procuring (or causing to be
20 procured) consumer reports for employment purposes without first providing
21 Plaintiff and the other class members with a clear and conspicuous disclosure in
22 writing in a document that consists solely of the disclosure that a consumer report
23 may be obtained for employment purposes.

24 41. The foregoing violations were willful. Defendant knew or should
25 have known about its obligations under the FCRA. These obligations are well
26 established in the (i) plan language of the FCRA, (ii) in the promulgations of the
27 Federal Trade Commission, and (iii) in well-established case law.

28 42. Defendant acted in deliberate and reckless disregard of its

1 obligations to the rights of Plaintiff and other class members under 15 U.S.C. §
2 1681b(b)(2)(A)(i).

3 43. Defendant's willful conduct is reflected by, *inter alia*, the following
4 facts:

- 5 a. Defendant is a large corporation with access to the legal advice
6 through its own general counsel's office and outside employment
7 counsel;
- 8 b. The plain language of the statute unambiguously indicates that
9 inclusion of extraneous or unclear information in a disclosure form
10 violates the disclosure requirements;
- 11 c. The Consumer Reporting Agency that provided Plaintiff's
12 consumer report information to Defendant, a-Check Global, is an
13 established background check provider;
- 14 d. Defendant knew or had reason to know that its conduct was
15 inconsistent with the FTC guidance and case law interpreting the
16 FCRA and the plain language of the statute; and
- 17 e. Defendant voluntarily ran a risk of violating the law substantially
18 greater than the risk associated with a reading that it was merely
19 careless.

20 44. As a result of Defendant's illegal procurement of consumer reports
21 by way of its inadequate disclosures, as set forth above, Plaintiff and class
22 members have been injured including, but not limited to, having their privacy and
23 statutory rights invaded in violation of the FCRA.

24 45. Plaintiff and the class members are entitled to statutory damages of
25 not less than \$100 and not more than \$1,000 for each and every one of these
26 violations, pursuant to 15 U.S.C. § 1681n.

27 46. Plaintiff and the class members are also entitled to recover their costs
28 and attorney's fees, pursuant to 15 U.S.C. § 1681n(a)(3).

SECOND CLAIM

**VIOLATIONS OF THE ICRAA, CAL. CIVIL CODE § 1786.16(A)(2)
BY PLAINTIFF AND THE ICRAA SUBCLASS AGAINST DEFENDANT**

47. Plaintiff hereby incorporates by reference the allegations contained in this Complaint.

48. Defendant is a “person” as defined by Cal. Civ. Code Section 1786.2(a).

49. Plaintiff and class members are “consumers” within the meaning Cal. Civ. Code Section 1786.2(b), because they are natural individuals who have made application to a person for employment purposes.

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

51. Section 1786.2(d) of the ICRAA defines “investigative consumer reporting agency” as “any person who, for monetary fees or dues, engages in whole or in part in the practice of collecting, assembling, evaluating, compiling, reporting, transmitting, transferring, or communicating information concerning consumers for the purposes of furnishing investigative consumer reports to third parties, but does not include any governmental agency whose records are maintained primarily for traffic safety, law enforcement, or licensing purposes, or any licensed insurance agent, insurance broker, or solicitor, insurer, or life insurance agent.”

52. Section 1786.16(a)(2) provides, in relevant part: “If, at any time, an investigative consumer report is sought for employment purposes other than suspicion of wrongdoing or misconduct . . . , the person seeking the investigative consumer report may procure the report, or cause the report to be made, only if all of the following apply: . . . (B) The person procuring or causing the report to be

1 made provides a clear and conspicuous disclosure in writing to the consumer at
2 any time before the report is procured or caused to be made in a document that
3 consists solely of the disclosure.” (Emphasis added.)

4 53. Defendant violated Section 1786.16(a)(2) of the ICRAA by failing to
5 provide Plaintiff and class members with a clear and conspicuous disclosure in
6 writing to the consumer at any time before the report is procured or caused to be
7 made in a document that consists solely of the disclosure.

8 54. Section 1786.16(b)(1) provides, in relevant part:

9 Any person described in subdivision (d) of Section 1786.12 who
10 requests an investigative consumer report, in accordance with
11 subdivision (a) regarding that consumer, shall do the following:

12 (1) ***Provide the consumer a means by which the consumer may***
13 ***indicate on a written form, by means of a box to check, that the***
14 ***consumer wishes to receive a copy of any report that is prepared.***

15 If the consumer wishes to receive a copy of the report, the
16 recipient of the report shall send a copy of the report to the
17 consumer within three business days of the date that the report is
18 provided to the recipient, who may contract with any other entity
19 to send a copy to the consumer. The notice to request the report
20 may be contained on either the disclosure form, as required by
21 subdivision (a), or a separate consent form. The copy of the report
22 shall contain the name, address, and telephone number of the
23 person who issued the report and how to contact them.

24 (Emphasis added.)

25 55. Defendant violated Section 1786.16(b)(1) by failing to provide to
26 Plaintiff and class members a written form, by means of a box to check, to
27 indicate their desire to receive a copy of their investigative consumer report
28 requested by Defendant.

56. Defendant’s violations of the ICRAA including, but not limited to
Section 1786.16(b)(1) was willful or grossly negligent conduct as reflected by,
among other things, the facts set forth above.

1 57. As a result of Defendant’s willful or grossly negligent failure to
2 provide the required form as set forth above, Plaintiff and class members have
3 been injured including, but not limited to, having their privacy and statutory rights
4 invaded in violation of the ICRAA, among other injuries

5 58. Plaintiff, on behalf of herself and the ICRAA Subclass Members,
6 seeks all available remedies pursuant to Cal. Civ. Code Section 1786.50 including
7 actual damages, punitive damages, injunctive and equitable relief, and attorneys’
8 fees and costs.

9 **THIRD CLAIM**

10 **VIOLATIONS OF THE CCRAA, CAL. CIVIL CODE § 1785.20.5(a)**
11 **BY PLAINTIFF AND THE CCRAA SUBCLASS AGAINST DEFENDANT**

12 59. Plaintiff hereby incorporates by reference the allegations contained
13 in this Complaint.

14 60. Defendant is a “person” as defined by Cal. Civ. Code Section
15 1785.3(j).

16 61. Plaintiff and class members are consumers within the meaning of
17 Cal. Civ. Code Section 1785.3(b), because they are “natural individuals.”

18 62. Section 1785.3(c) of the CCRAA defines “consumer credit report” as
19 any written, oral, or other communication of any information by a consumer
20 credit reporting agency bearing on a consumer’s credit worthiness, credit
21 standing, or credit capacity, which is used or is expected to be used, or collected
22 in whole or in part, for the purpose of serving as a factor in establishing the
23 consumer’s eligibility for employment purposes.

24 63. Section 1785.3(d) of the CCRAA defines “consumer credit reporting
25 agency” as: “any person who, for monetary fees, dues, or on a cooperative
26 nonprofit basis, regularly engages in whole or in part in the business of
27 assembling or evaluating consumer credit information or other information on
28 consumers for the purpose of furnishing consumer credit reports to third parties,

1 but does not include any governmental agency whose records are maintained
2 primarily for traffic safety, law enforcement, or licensing purposes.”

3 64. Section 1785.3(f) of the CCRAA defines “employment purposes,”
4 when used in connection with a consumer credit report, as “a report used for the
5 purpose of evaluating a consumer for employment, promotion, reassignment, or
6 retention as an employee.”

7 65. Section 1785.20.5(a) of the CCRAA requires that prior to requesting
8 a consumer credit report for employment purposes, the user of the report shall
9 provide written notice that: (a) identifies the specific basis under Section
10 1024.5(a) of the Labor Code for use of the report; (b) informs the person of the
11 source of the report; and (c) contains a box that the person may check off to
12 receive a copy of the credit report. The employer must provide the report to the
13 applicant or employee contemporaneously and at no charge.

14 66. Defendant willfully violated Section 1785.20.5(a) of the CCRAA as
15 to Plaintiff and class members, because they failed to provide written notice to
16 Plaintiff and class members that references a specific basis for the report under
17 Cal. Labor Code Section 1024.5 and failed include a check box that would allow
18 Plaintiff and class members to opt to receive a copy of their consumer credit
19 report.

20 67. As a result of Defendant’s willful conduct as set forth above,
21 Plaintiff and class members have been injured including, but not limited to,
22 having their privacy and statutory rights invaded in violation of the CCRAA,
23 among other injuries.

24 68. Plaintiff, on behalf of herself and the CCRAA Subclass Members,
25 seeks all available remedies pursuant to Cal. Civ. Code Sections 1785.31
26 including statutory damages and/or actual damages, punitive damages, injunctive
27 and equitable relief, and attorneys’ fees and costs.

28 69. In the alternative to Plaintiff’s allegation that these violations were

1 willful, Plaintiff alleges that the violations were negligent and seeks the
2 appropriate remedy, if any, under Cal. Civ. Code Section 1785.31.

3 **FOURTH CLAIM**

4 **VIOLATIONS OF THE UCL, BUSINESS & PROFESSIONS CODE**

5 **SECTION 17200 ET SEQ.**

6 **BY PLAINTIFF AND THE UCL SUBCLASS AGAINST DEFENDANT**

7 70. Plaintiff hereby incorporates by reference the allegations contained
8 in this Complaint.

9 71. California’s Unfair Competition Law (“UCL”), California Business
10 & Professions Code Section 17200 et seq., protects both consumers and
11 competitors by promoting fair competition in commercial markets for goods and
12 services. The UCL prohibits any unlawful, unfair, or fraudulent business act or
13 practice. A business practice need only meet one of the three criteria to be
14 considered unfair competition. An unlawful business practice is anything that can
15 properly be called a business practice and that at the same time is forbidden by
16 law.

17 72. As described above, Defendant have violated the “unlawful” prong
18 of the UCL in that Defendant’s conduct violated numerous provisions of the
19 FCRA, ICRAA, and CCRAA.

20 73. Defendant have violated the “unfair” prong of the UCL in that they
21 gained an unfair business advantage by failing to comply with state and federal
22 mandates in conducting background checks and otherwise take the necessary
23 steps to adhere to the FCRA, ICRAA, and CCRAA.

24 74. Further, any utility for Defendant’s conduct is outweighed by the
25 gravity of the consequences to Plaintiff and class members and because the
26 conduct offends public policy.

27 75. As a result of Defendant’s conduct described herein and its willful
28 violations of California Business & Professions Code Section 17203, Plaintiff and

1 the Class have lost money and suffered harm as described herein.

2 76. Pursuant to California Business & Professions Code Section 17203,
3 Plaintiff seeks an order enjoining Defendant from continuing to engage in the
4 unfair and unlawful conduct described herein. Plaintiff seeks an order (a)
5 requiring Defendant to cease the unfair and unlawful practices described herein;
6 and (b) awarding reasonable costs and attorneys’ fees pursuant to California Code
7 of Civil Procedure Section 1021.5.

8 **REQUEST FOR JURY TRIAL**

9 77. Plaintiff requests a trial by jury of all issues which may be tried by a
10 jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

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PRAYER FOR RELIEF

78. WHEREFORE, Plaintiff requests the following relief:
- a. An order certifying the proposed class and subclasses, designating Plaintiff as named representative of the classes and subclasses, and designating the undersigned as Class Counsel;
 - b. A Declaration that Defendant’s practices violate the FCRA, ICRAA, CCRAA, and UCL;
 - c. An award of statutory, compensatory, special, general, and punitive damages according to proof against Defendant;
 - d. An award of appropriate equitable relief, including but not limited to an injunction forbidding Defendant from engaging in further unlawful conduct in violation of the FCRA, ICRAA, CCRAA, and UCL;
 - e. An award of attorneys’ fees and costs, as allowed by law, including an award of attorneys’ fees and costs pursuant to 15 U.S.C. § 1681n, 15 U.S.C. 1681o, California Civil Code, §§ 1786.50 and 1785.31(a), Code of Civil Procedure § 1021.5; and
 - f. Such other and further relief as this Court may deem appropriate.

Dated: October 2, 2020

Respectfully submitted,
AZADIAN LAW GROUP, PC

By: /s/ George S. Azadian
GEORGE S. AZADIAN
Attorneys for Plaintiff,
ADRIANA SUAREZ TAPIA and
the Proposed Classes