

1 ANTHONY J. ORSHANSKY, Cal. Bar No. 199364
anthony@counselonegroup.com
2 ALEXANDRIA R. KACHADOORIAN, Cal. Bar No. 240601
alexandria@counselonegroup.com
3 JUSTIN KACHADOORIAN, Cal. Bar No. 260356
justin@counselonegroup.com
4 COUNSELONE, P.C.
9301 Wilshire Boulevard, Suite 650
5 Beverly Hills, California 90210
Telephone: (310) 277-9945
6 Facsimile: (424) 277-3727

7 Attorneys for Plaintiff MICHAEL DEMERY,
8 on behalf of himself and others similarly situated

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ORANGE
11

12
13 MICHAEL DEMERY, on behalf of himself
and others similarly situated,
14
Plaintiff,
15
v.
16 SECURITAS SECURITY SERVICES USA,
17 INC., a Delaware corporation, and DOES 1
through 50, inclusive,
18
Defendant.

Case No. 30-2019-01095304-CU-OE-CXC
**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**
(1) Violation of 15 U.S.C. § 1681b(b)(2)(A);
(2) Violation of 15 U.S.C. § 1681b(b)(3)(A);
(3) Violation of 15 U.S.C. §§ 1681b(f), 1681q;
(4) Violation of California Civil Code
Section 1786.16(b);
(5) Violation of California Civil Code
§ 1786.40(a)

DEMAND FOR JURY TRIAL

1 Plaintiff Michael Demery (hereinafter, “Plaintiff”), on behalf of himself and all others
2 similarly situated, complains of Defendant Securitas Security Services USA, Inc., a Delaware
3 corporation (“Securitas”), and Does 1 through 50, inclusive (together, “Defendants”), as follows:

4 **NATURE OF ACTION**

5 1. This class action arises from Defendants’ acquisition and use of consumer and/or
6 investigative consumer reports (referred to collectively as “background reports”) to conduct
7 background checks on Plaintiff and other prospective employees.

8 2. Defendants routinely obtain and use information from background reports in
9 connection with their hiring processes without complying with state and federal mandates for doing
10 so.

11 3. Plaintiff, individually and on behalf of all other members of the public similarly
12 situated, seeks compensatory and punitive damages due to Defendants’ systematic and willful
13 violation of, *inter alia*, the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681 *et seq.*

14 4. Defendants have violated the requirements under this statute in at least two separate
15 ways: (1) failure to provide proper pre-authorization disclosures; and (2) failure to provide proper
16 adverse-action disclosures.

17 5. First, the procurement of background reports for employment purposes is subject to
18 strict disclosure requirements under federal law pursuant to the FCRA. Among other things, an
19 employer may not procure a background report concerning a job applicant or employee unless a
20 “clear and conspicuous” disclosure is made in a stand-alone document that consists solely of the
21 disclosure informing the applicant or employee that a report may be obtained for employment
22 purposes.

23 6. Defendants fail to provide the requisite pre-authorization disclosure to applicants
24 before procuring background reports. For these reasons, among others, Defendants violate the law.

25 7. Second, the FCRA requires users of consumer reports to follow certain procedures
26 and provide certain disclosures prior to and after taking adverse actions against current and former
27 employees based in whole or in part on their consumer report information. Among other things,
28 prior to taking an adverse action, an employer must provide a “pre-adverse action” notice, which

1 relevant to this Complaint, engaged in commercial transactions throughout this county, the State of
2 California, and the various states of the United States of America.

3 13. At all times mentioned herein Plaintiff was and is a resident of the State of California.

4 14. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil
5 Procedure § 395.5 because Plaintiff sought employment with Defendants and Defendants incurred
6 their liability to Plaintiff as described below in Orange County, State of California.

7 15. Plaintiff is informed and believes and thereon alleges that each defendant acted in all
8 respects pertinent to this action as the employee, agent, partner, alter-ego, and/or joint venturer of
9 the other defendants; that the defendants carried out a joint scheme, business plan, or policy in all
10 respects pertinent hereto; that the acts of each defendant are legally attributable to the other
11 defendants; and that these defendants exercised a sufficient degree of control over the application
12 and hiring process to render each defendant the employer or joint employers of Plaintiff and putative
13 class members.

14 16. The true names and capacities, whether individual, corporate, associate, or whatever
15 else, of the defendants sued herein as Does 1 to 50, inclusive, are currently unknown to Plaintiff,
16 who therefore sues these defendants by such fictitious names under Code of Civil Procedure § 474.
17 Plaintiff is informed and believes and thereon alleges that each of the defendants designated herein
18 as Does is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
19 seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants
20 designated herein as Does when their identities become known.

21 **FACTUAL BACKGROUND**

22 **Pre-Authorization**

23 17. On or around September 21, 2017, Plaintiff applied to work at Securitas. In
24 connection with Plaintiff's employment application, Defendants obtained a background report (i.e.,
25 a consumer report and/or investigative consumer report, as defined by 15 U.S.C. § 1681a(d)(1)(B)
26 and 15 U.S.C. § 1681a(e)). After procuring a background report on Plaintiff, Defendants declined
27 to hire him.

28 ///

1 18. Under the FCRA, it is unlawful to procure or caused to be procured a consumer
2 report¹ for employment purposes unless a disclosure is made to the applicant or employee in a
3 document that consists solely of the disclosure that a consumer report may be obtained for
4 employment purposes and the applicant or employee authorizes, in writing, the procurement of the
5 report. 15 U.S.C. § 1681b(b)(2)(A)(i)-(ii).

6 19. The FTC has warned that the disclosure form should not include any extraneous
7 information or be part of another document. For example, in response to an inquiry as to whether
8 the disclosure may be set forth within an application for employment or whether it must be included
9 in a separate document, the FTC stated:

10 The disclosure may not be part of an employment application because
11 the language [of 15 U.S.C. § 1681b(b)(2)(A) is] intended to ensure that
12 it appears conspicuously in a document not encumbered by any other
13 information. The reason for requiring that the disclosure be in a stand-
alone document is to prevent consumers from being distracted by other
information side-by-side within the disclosure.²

14 20. The plain language of the statute also clearly indicates that the inclusion of
15 extraneous information in a disclosure form violates the disclosure and authorization requirements
16 of the FCRA because such a form would not consist “solely” of the disclosure. In fact, the FTC
17 expressly warned that the FCRA notice may not include extraneous information. In a report dated
18 July 2011, the FTC emphasized that “the notice [under 15 U.S.C. § 1681b(b)(2)(A)] may not include
19 extraneous or contradictory information[.]”

20 21. Many courts have also determined that the inclusion of extraneous information
21 violates § 1681b(b)(2)(A) of the FCRA. *See, e.g., Gilberg v. California Check Cashing Stores,*
22 *LLC*, No. 17-16263, 913 F.3d 1169 (9th Cir. Jan. 29, 2019) (holding that a disclosure that included
23 state-law notices violates section 1681b(b)(2)(A)); *Syed v. M-I, LLC*, 853 F.3d 492, 504-505 (9th
24 Cir. 2017) (holding inclusion of extraneous information in disclosure constitutes a willful violation

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

28 ² Letter from Clarke W. Brinckerhoff, Fed. Trade Comm’n, to H. Roman Leathers, Manier & Herod
(Sept. 9, 1998), available at <https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-leathers-09-09-98> (last accessed March 16, 2016).

1 of section 1681b(b)(2)(A)); *see also Reardon v. ClosetMaid Corp.*, No. 2:08-CV-01730, 2013 U.S.
2 Dist. LEXIS 169821 (W.D. Pa. Dec. 2, 2013) (granting summary judgment to plaintiff on section
3 1681b(b)(2)(a) claim because disclosure form included extraneous information); *Singleton v.*
4 *Domino's Pizza*, No. 11-1823, 2-12 W.L. 245965, *9 (D. Md. Jan. 25, 2012) (denying employer's
5 motion to dismiss plaintiff's section 1681b(b)(2)(a) claim based on inclusion of extraneous
6 information in disclosure form); *Robrinzine v. Big Lots Stores, Inc.*, 156 F. Supp. 3d 920, 927 (N.D.
7 Ill. 2016) (same, collecting cases); *Hargrett v. Amazon.com DEDC LLC*, No. 8:15-CV-2456-T-
8 26EAJ, 2017 WL 416427, at *5 (M.D. Fla. Jan. 30, 2017) (same, collecting cases); *Doe v. Sentech*
9 *Employment Services, Inc.*, 186 F. Supp. 3d 732, 734 (E.D. Mich. 2016); *Speer v. Whole Food*
10 *Market Group, Inc.*, No. 8:14-CV-3035-T-26TBM, 2015 WL 1456981, at *3 (M.D. Fla. Mar. 30,
11 2015); *Lengel v. HomeAdvisor, Inc.*, 2015 U.S. Dist. LEXIS 59017, at *19-24 (D. Kan. May 5,
12 2015); *Milbourne v. JRK Residential Amer., LLC*, 2015 U.S. Dist. LEXIS 29905, at *14-19 (E.D.
13 Va. Mar. 11, 2015); *Avila v. NOW Health Group, Inc.*, 2014 U.S. Dist. LEXIS 99178, *6-8 (N.D.
14 Ill. July 17, 2014); and *EEOC v. Video Only, Inc.*, 2008 U.S. Dist. LEXIS 46094 (D. Or. June 11,
15 2008).

16 22. Defendants violated the FCRA by failing to provide Plaintiff and other members of
17 the putative class with the requisite disclosure that a consumer report may be procured for
18 employment purposes in a document that consists solely of the disclosure.

19 23. The disclosure presented to Plaintiff and other members of the putative class was
20 part of a lengthy job application and appears in a page of dense text that contains various extraneous
21 information, including but not limited to the following:

- 22 • inclusion of copious state-law consumer-reporting notices (New York, Maine, Oregon, and
23 Washington, California) that are inapplicable to many applicants, referencing state laws by
24 statute name and code number (e.g., "Article 23-A of the New York Correction Law"), and
25 purporting to incorporate separate state-law notice documents by reference ("you also
26 acknowledge receipt of the NOTICE REGARDING BACKGROUND INVESTIGATION PURSUANT TO
27 CALIFORNIA LAW.");

28 ///

- 1 • a purported authorization for third parties to release information about an applicant to the
2 CRA, Securitas, or other, unidentified organizations, which is different from an
3 authorization for the employer to procure a consumer report on an applicant (“I hereby
4 authorize, without reservation, any law enforcement agency, administrator, state or federal
5 agency, institution, school or university (public or private), information service bureau,
6 employer, or insurance company to furnish any and all background information requested
7 by Pinkerton Consulting and Investigations, 11019 McCormick Rd., Ste. 200, Hunt Valley,
8 MD, 800-635-1649, www.pinkertonscreening.com, another outside organization acting on
9 behalf of the Company, and/or the Company itself.”);
- 10 • the combination of and reference to state-consumer reporting laws and requirements that are
11 inapplicable to Plaintiff and similarly situated persons (e.g., credit history and consumer
12 credit reports);
- 13 • a forced acknowledgement of having received the disclosure and FCRA Summary of Rights
14 and a certification by the applicant stating, “I have read and understand both of those
15 documents,” which Securitas hopes to use as an implied liability waiver;
- 16 • incorporation by reference of the FCRA Summary of Rights, a separate document from the
17 disclosure, which statement is false because the document was not provided;
- 18 • incorrect and extraneous information purporting to inform applicants of their rights under
19 law about both consumer reports and investigative consumer reports (“You have the right,
20 upon written request made within a reasonable time, to request whether a consumer report
21 has been run about you and disclosure of the nature and scope of any investigative consumer
22 report and to request a copy of your report.”);
- 23 • confusing representations regarding the scope of the investigation (“Please be advised that
24 the nature and scope of most common form of investigative consumer report obtained with
25 regard to applicants for employment is an investigation into your education and/or
26 employment history ... The scope of this notice and authorization is all-encompassing,
27 however, allowing the Company to obtain from any outside organization all manner of
28 consumer reports and investigative consumer reports now and throughout your

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

employment”);

- given the foregoing bullet-point, confusing legal advice regarding the scope of investigation (“As a result, you should carefully consider whether to exercise your right to request disclosure of the nature and scope of any investigative consumer report.”);
- excess vague information on how and when background information will be gathered and from which sources, including a description of Securitas’s internal procedures and practices (e.g., “Credit history will only be requested where such information is substantially related to the duties and responsibilities of the position for which you are applying.”);
- the disclosure is also part of an 8-page packet of documents that Plaintiff never received a copy of.

24. The overall presentation of the foregoing documents is intended to prevent applicants from seriously reviewing or considering the information presented.

Adverse Action

25. Upon information and belief, Defendants procured or caused to be procured a background report on Plaintiff from a consumer reporting agency and/or investigative consumer reporting agency, and in or around September or October 2017 Defendants declined to hire Plaintiff for employment because of information contained in his background report.

26. Despite Defendants’ intent to take an adverse action, Defendants did not provide Plaintiff with a copy of the report before taking adverse action or the FCRA Summary of Rights promulgated by the Consumer Financial Protection Bureau (CFPB), as required by section 1681b(b)(3)(A) of the FCRA.

27. Additionally, following Defendants’ adverse action, Defendant did not advise Plaintiff or other members of the putative class that adverse action had been taken under circumstances in which a report regarding the consumer was obtained from an investigative consumer reporting agency and did not supply the name and address of the investigative consumer reporting agency making the report.

///
///

1 **Defendants Willfully Violated the FCRA.**

2 28. Defendants' misconduct, as alleged herein, was willful and/or reckless in that
3 Defendants knew or reasonably should have known that their conduct violated the law because of
4 the following facts, among others:

- 5 • The FCRA was enacted in 1970; Defendants have had almost 50 years to become
6 compliant but failed to do so;
- 7 • Defendants' conduct is inconsistent with longstanding FTC guidance and reports,
8 judicial interpretation that pre-dated Defendants' conduct, and the plain language of
9 the statute, as discussed above;
- 10 • Defendants had actual knowledge of FCRA and ICRAA requirements, as evidenced
11 from statements specifically pertaining to the FCRA and ICRAA in application
12 materials;
- 13 • Defendants' authorization form, though defective, shows that Defendants were aware
14 of consumer-reporting laws;
- 15 • Defendants' consumer reporting agency, Pinkerton Consulting and Investigations, is a
16 subsidiary of Securitas, is knowledgeable about the state and federal consumer-
17 reporting requirements, and would have communicated these requirements to
18 Defendants;
- 19 • Upon information and belief, Defendants were required to provide certifications to
20 consumer reporting agencies under the FCRA stating that Defendants would comply
21 with the disclosure, authorization, and adverse-action requirements;³ and
22 • Upon information and belief, Defendants have dedicated in-house and outside counsel
23 with knowledge of FCRA requirements.

24 29. Despite Defendants' knowledge of their legal requirements under the FCRA,
25 Defendants systematically failed to comply with these requirements.

26 ///

27 ///

28 ³ See 15 U.S.C. § 1681b(b)(1).

1 CLASS ALLEGATIONS

2 30. Plaintiff brings this action as a class action pursuant to California Code of Civil
3 Procedure § 382 behalf of the following class:

4 **FCRA Pre-Authorization Class:** All persons residing in the
5 United States (including all territories and other political
6 subdivisions of the United States) who applied for employment with
7 or were employed by Defendants within the longest applicable
8 limitations period and on whom Defendant procured one or more
9 consumer reports.

10 **FCRA Adverse Action Subclass:** All persons residing in the
11 United States (including all territories and other political
12 subdivisions of the United States) who applied for employment with
13 or were employed by Defendants within the longest applicable
14 limitations period against whom Defendants took adverse
15 employment action based in whole or in part on information
16 contained in a consumer report.

17 **California Pre-Authorization Class:** All persons residing in the
18 California who applied for employment with or were employed by
19 Defendants within the longest applicable limitations period on
20 whom Defendant procured one or more investigative consumer
21 reports.

22 **California Adverse Action Subclass:** All persons residing in
23 California who applied for employment with or were employed by
24 Defendants within the longest applicable limitations period against
25 whom Defendants took adverse employment action based in whole
26 or in part on information contained in an investigative consumer
27 report.

28 31. Members of the classes, as described above, will be referred to as “class members.”
Excluded from the classes and subclasses are: (1) Defendants, any entity or division in which either
Defendants have a controlling interest, and their legal representatives, officers, directors, assigns,
and successors; and (2) the judge to whom this case is assigned and the judge’s staff and members
of their immediate family. Plaintiff reserves the right to amend the above classes and subclasses
and to add additional subclasses as appropriate based on investigation, discovery, and the specific
theories of liability.

32. This action has been brought and may properly be maintained as a class action under
California Code of Civil Procedure 382 because there is a well-defined community of interest in the
litigation and the classes and subclasses are easily ascertainable.

1 **A. Numerosity**

2 33. Although the precise number of class members has not been determined at this time,
3 Plaintiff estimates that the classes and subclasses consist of more than one hundred members and
4 that the identity of such persons is readily ascertainable by inspection of Defendants’ employment
5 and/or hiring records. Therefore it is reasonable that the class members are so numerous that joinder
6 is impracticable, and the disposition of their claims in a class action will provide substantial benefits
7 to the parties and the Court.

8 **B. Common Questions Predominate**

9 34. There are questions of law and fact common to the classes and subclasses that
10 predominate over any questions affecting only individual putative class members. Thus proof of a
11 common set of facts will establish the right of each class member to recovery. These common
12 questions of law and fact include but are not limited to:

- 13 a. Whether Defendants violated section 1681b(b)(2)(A)(i) of the FCRA by failing to
14 provide putative class members with a “clear and conspicuous” disclosure in a
15 document that consists solely of the disclosure that a consumer report may be
16 obtained for employment purposes;
- 17 b. Whether Defendants violated section 1681b(b)(2)(A)(ii) of the FCRA by procuring
18 consumer reports on putative class members without obtaining their written
19 authorization to do so;
- 20 c. Whether Defendants violated section 1681b(b)(3)(A) of the FCRA by failing to
21 provide putative class members with the FCRA Summary of Rights promulgated
22 by the CFPB;
- 23 d. Whether Defendants violated section 1681b(b)(3)(A) of the FCRA by failing to
24 provide putative class members with copies of their consumer reports before taking
25 adverse action;
- 26 e. Whether Defendants violated the Cal. Civ. Code § 1786.12(a)(2)(B) by failing to
27 provide putative class members with a clear and conspicuous disclosure in writing
28 before procuring an investigative consumer report in a document that consists

1 solely of the disclosure that an investigative consumer report may be obtained; and
2 f. Whether Defendants violated the Cal. Civ. Code § 1786.40(a) by failing to advise
3 putative class members that adverse action had been taken under circumstances in
4 which a report regarding the consumer was obtained from an investigative
5 consumer reporting agency and by failing to supply the name and address of the
6 investigative consumer reporting agency making the report.

7 **C. Typicality**

8 35. Plaintiff's claims are typical of the claims of the putative class members because
9 Defendants failed to provide Plaintiff with the requisite disclosures and obtain his valid
10 authorization before procuring his background report and engaged in adverse action against him
11 without complying with the notice requirements under the FCRA or ICRAA. Plaintiff and each
12 putative class member sustained similar injuries arising out of Defendants' conduct in violation of
13 law. The injuries of each class member were caused directly by Defendants' wrongful conduct. In
14 addition, the factual underpinning of Defendants' misconduct is common to all putative class
15 members and represents a common thread of misconduct resulting in injury to all putative class
16 members. Plaintiff's claims arise from the same practices and course of conduct that give rise to
17 the claims of the class members and are based on the same legal theories.

18 **D. Adequacy**

19 36. Plaintiff will fairly and adequately represent and protect the interests of the classes
20 and subclasses. Counsel who represent Plaintiff and putative class members are experienced and
21 competent in litigating class actions.

22 **E. Superiority of Class Action**

23 37. A class action is superior to other available means for the fair and efficient
24 adjudication of this controversy. Individual joinder of putative class members is not practicable,
25 and questions of law and fact common to putative class members predominate over any questions
26 affecting only individual putative class members. Each putative class member has been damaged
27 and is entitled to recovery as a result of the violations alleged herein. Moreover, because the
28 damages suffered by individual members of the classes and subclasses may be relatively small, the

1 expense and burden of individual litigation would make it difficult or impossible for individual
2 members of the class to redress the wrongs done to them, while an important public interest will be
3 served by addressing the matter as a class action. Class action treatment will allow those persons
4 similarly situated to litigate their claims in the manner that is most efficient and economical for the
5 parties and the judicial system. Plaintiff is unaware of any difficulties in managing this case that
6 should preclude class action.

7 **FIRST CAUSE OF ACTION**

8 **VIOLATION OF THE FAIR CREDIT REPORTING ACT, 15 U.S.C. § 1681b(b)(2)(A)**

9 ***(Brought on behalf of the FCRA Pre-Authorization Class)***

10 38. Plaintiff hereby incorporates by reference the allegations contained in this
11 Complaint.

12 39. Defendants are “persons” as defined by Section 1681a(b) of the FCRA.

13 40. Plaintiff and class members are “consumers” within the meaning Section 1681a(c)
14 of the FCRA because they are “individuals.”

15 41. Section 1681b(b)(2)(A) of the FCRA provides, in relevant part:

16 (b) Conditions for furnishing and using consumer reports for employment purposes.

17 ...
18 (2) Disclosure to consumer

19 (A) In general

20 Except as provided in subparagraph (B), a person may not procure a
21 consumer report, or cause a consumer report to be procured, for
22 employment purposes with respect to any consumer, unless—

23 (i) a ***clear and conspicuous*** disclosure has been made in writing to
24 the consumer at any time before the report is procured or caused to
25 be procured, ***in a document that consists solely of the disclosure***,
26 that a consumer report may be obtained for employment purposes;
27 and

28 (ii) ***the consumer has authorized in writing*** (which authorization
may be made on the document referred to in clause (i)) the
procurement of the report by that person. (Emphasis Added.)

42. As alleged above, Defendants violate Section 1681b(b)(2)(A)(i) of the FCRA by
failing to provide Plaintiff and putative class members with a clear and conspicuous written
disclosure before a consumer report is procured or caused to be procured that a consumer report
may be obtained for employment purposes in a document that consists solely of the disclosure.

1 the consumer under this subchapter, as prescribed by the [Consumer Financial Protection Bureau]
2 under section 1681g(c)(3) of this title,” i.e., the FCRA Summary of Rights promulgated by the
3 CFPB.

4 51. Based upon the facts likely to have evidentiary support after a reasonable opportunity
5 for further investigation and discovery, Defendants have a policy and practice of taking adverse
6 actions against applicants and employees, including Plaintiff, based in whole or in part on a
7 consumer report, without first providing them with copies of their consumer reports, in violation of
8 Section 1681b(b)(3)(A)(i).

9 52. Moreover, Defendants violated Section 1681b(b)(3)(A)(ii) by taking adverse action
10 against Plaintiff and putative class members with first providing them a current version of the FCRA
11 Summary of Rights promulgated by the CFPB.

12 53. At all relevant times herein, Defendants, pursuant to the policy and practice described
13 above, took adverse action against Plaintiff and putative class members based in whole or in part on
14 a consumer report, without first providing (1) a copy of the consumer report(s) used and/or (2) a
15 written description of the rights of the consumer, i.e., the FCRA Summary of Rights promulgated
16 by the CFPB.

17 54. As alleged above, Defendants’ conduct in violation of Section 1681b(b)(3)(A)(i) and
18 (ii) of the FCRA was and is willful in that Defendants acted in deliberate or reckless disregard of
19 their obligations and the rights of applicants and employees, including Plaintiff and class members.

20 55. As a result of Defendants’ violation of Section 1681b(b)(3)(A)(i) and (ii) of the
21 FCRA, Plaintiff and putative class members have been injured including, but not limited to, having
22 their privacy and statutory rights invaded in violation of the FCRA. As a result of Defendants’
23 conduct, Plaintiff lost out on a job. Furthermore, Plaintiff suffered anxiety, stress, and confusion as
24 a result of Defendants’ failure to provide him his consumer report before taking adverse action.

25 56. Plaintiff, on behalf of himself and all putative class members, seeks all available
26 remedies pursuant to 15 U.S.C. § 1681n, including statutory damages or actual damages, punitive
27 damages, and attorneys’ fees and costs.

28 ///

1 57. In the alternative to Plaintiff's allegation that these violations were willful, Plaintiff
2 alleges that the violations were negligent and seeks the appropriate remedy, if any, under 15 U.S.C.
3 § 1681o.

4 **THIRD CAUSE OF ACTION**

5 **VIOLATION OF FAIR CREDIT REPORTING ACT**

6 **15 U.S.C. §§ 1681b(f), 1681q**

7 *(Brought on behalf of the FCRA Pre-Authorization Class)*

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

10 59. Section 1681b(f) of the FCRA provides, in relevant part:

11 “(f) Certain use or obtaining of information prohibited. A person shall not use or obtain
12 a consumer report for any purpose unless

13 ...

14 “(1) the consumer report is obtained for a purpose for which the consumer report is
15 authorized to be furnished under this section; and

16 “(2) the purpose is certified in accordance with section 607 [§ 1681e] by a prospective
17 user of the report through a general or specific certification.”

18 60. Section 1681b(b)(1)(A)(ii) provides in pertinent part: “Conditions for Furnishing
19 and Using Consumer Reports for Employment Purposes. (1) Certification from user. A consumer
20 reporting agency may furnish a consumer report for employment purposes only if (A) the person
21 who obtains such report from the agency certifies to the agency . . . (ii) information from the
22 consumer report will not be used in violation of any applicable Federal or State equal employment
23 opportunity law or regulation”

24 61. Defendants violate Section 1681b(f) of the FCRA by obtaining consumer reports on
25 Plaintiff and putative class members without providing valid certifications to the consumer reporting
26 agency regarding the consumer reports they procure on job applicants, including certifications that
27 Defendants would provide Plaintiff and members of the putative class with standalone disclosures
28 and obtain authorizations under Section 1681b(b)(2) and that they would provide adversely affected
persons with copies of their reports and a description of their rights under the FCRA pursuant to
section 1681b(b)(3). As alleged above, because of Defendants' violations of Sections 1681b(b)(2)

1 and 1681b(b)(3), any certifications that Defendants made to the CRAs from which it procured
2 consumer reports were false. In this way, Defendants impermissibly accessed consumer reports on
3 Plaintiff and other members of the putative class, in violation of 15 U.S.C. § 1681q.

4 62. Defendants' conduct in violation of Sections 1681b(f) and 1681q of the FCRA was
5 and is willful. Defendants acted in deliberate or reckless disregard of their obligations and the rights
6 of applicants and employees, including Plaintiff and putative class members.

7 63. As a result of Defendants' illegal procurement of background reports by way of its
8 failure to make proper certifications as to proper purpose, as set forth above, Plaintiff and putative
9 class members have been injured in that Defendants' conduct resulted in the invasion of their privacy
10 and informational rights, in violation of the FCRA. Plaintiff did not receive compliant notice that
11 Defendants sought to procure his consumer report for use in his employment determination, and
12 Plaintiff suffered adverse action based on his consumer report without receiving notice of
13 Defendants' intent to take adverse action, including a copy of his consumer report and a summary
14 of his rights under the FCRA. This invasion of Plaintiff's information rights not only deprived
15 Plaintiff of his right to know about determinations affecting his employment and employability but
16 also deprived him of the opportunity to take remedial action such as correcting errors in his report
17 or advocating why he should be hired notwithstanding adverse information. Plaintiff suffered a
18 loss of income from rejection of his job application. Defendants' failure to provide sufficiently clear
19 disclosures of its intent to procure consumer reports also violated Plaintiff's privacy because without
20 a clear disclosure Plaintiff could not and did not authorize the disclosure of this personal information
21 contained in his consumer report to Defendants. Plaintiff's privacy was violated because Defendant
22 obtained a consumer report containing his personal information without his authorization or consent.
23 Had Defendant provided the requisite certification to consumer reporting agencies ("CRAs") under
24 the FCRA, such CRAs would be obligated to inform Defendants of the foregoing obligations and
25 receive further certification from Defendants of compliance before releasing consumer reports to
26 Defendants to be used for employment purposes.

27 64. Plaintiff, on behalf of himself and all putative class members, seeks all available
28 remedies pursuant to 15 U.S.C. § 1681n, including statutory damages or actual damages, punitive

1 that:

2 (i) An investigative consumer report may be obtained.

3 (ii) The permissible purpose of the report is identified.

4 (iii) The disclosure may include information on the consumer's character,
5 general reputation, personal characteristics, and mode of living.

6 (iv) Identifies the name, address, and telephone number of the investigative
7 consumer reporting agency conducting the investigation.

8 (v) Notifies the consumer in writing of the nature and scope of the investigation
9 requested, including a summary of the provisions of Section 1786.22.

10 (vi) Notifies the consumer of the Internet Web site address of the investigative
11 consumer reporting agency identified in clause (iv), or, if the agency has no
12 Internet Web site address, the telephone number of the agency, where the
13 consumer may find information about the investigative reporting agency's
14 privacy practices, including whether the consumer's personal information will
15 be sent outside the United States or its territories and information that complies
16 with subdivision (d) of Section 1786.20. This clause shall become operative on
17 January 1, 2012.

18 71. Defendants violated Section 1786.16(a)(2)(B) of the ICRAA by failing to provide
19 Plaintiff and putative class members with a clear and conspicuous disclosure that an investigative
20 consumer report may be obtained in a document that consists solely of the disclosure. The disclosure
21 provided to Plaintiff and putative class members included inapplicable information relating to
22 consumer *credit* reports, including a lengthy list of permissible purposes for requesting a consumer
23 credit report, information relating to adverse action requirements, the identity of credit reporting
24 agencies that did not prepare the background reports on Plaintiff or putative class members or
25 provide information contained in such reports, and FCRA requirements. Moreover, the disclosure
26 did not adequately summarize the provisions of Section 1786.22, as required under ICRAA.

27 72. On information and belief, and based upon the facts likely to have evidentiary
28 support after a reasonable opportunity for further investigation and discovery, Defendants had and
have a policy and practice of procuring investigative consumer reports or causing investigative
consumer reports to be procured for applicants and employees without providing the required
disclosures under Cal. Civ. Code § 1786.16(a)(2)(B).

1 73. Defendants willfully violated and continue to violate the ICRAA including, but not
2 limited to, Section 1786.16(a)(2)(B). Defendants' willful, reckless, or grossly negligent conduct is
3 reflected by, among other things, the facts set forth above.

4 74. As a result of Defendants' willful, reckless, or grossly negligent failure to provide
5 the required form and/or report(s) as set forth above, Plaintiff and class members have been injured
6 by, among other things, having their privacy and statutory rights invaded in violation of the ICRAA.

7 75. Plaintiff, on behalf of himself and all class members, seeks all available remedies
8 pursuant to Cal. Civ. Code § 1786.50 including actual damages, punitive damages, injunctive and
9 equitable relief, and attorneys' fees and costs.

10 **FIFTH CAUSE OF ACTION**

11 **VIOLATION OF THE CALIFORNIA INVESTIGATIVE CONSUMER REPORTING**
12 **AGENCIES ACT (ICRAA),**
13 **CAL. CIV. CODE § 1786.40**

14 *(Brought on behalf of the California Adverse Action Class)*

15 76. Plaintiff hereby incorporates by reference the allegations contained in this
16 Complaint.

17 77. Section 1786.40(a) of the ICRAA provides in relevant part as follows:

- 18 (a) Whenever insurance for personal, family, or household purposes, employment, or
19 the hiring of a dwelling unit involving a consumer is denied, or the charge for that
20 insurance or the hiring of a dwelling unit is increased, under circumstances in which
21 a report regarding the consumer was obtained from an investigative consumer
22 reporting agency, the user of the investigative consumer report shall so advise the
23 consumer against whom the adverse action has been taken and supply the name and
24 address of the investigative consumer reporting agency making the report.

25 *See also* Cal. Civ. Code §1786.16(b)(2).

26 78. Defendants violated Section 1786.40(a) of the ICRAA by failing to advise Plaintiff
27 and putative class members that they took adverse action against them under circumstances in which
28 a report regarding the consumer was obtained from an investigative consumer reporting agency and
they failed to supply the name and address of the investigative consumer reporting agency making
the reports about them.

1 79. As a result of Defendants' willful, reckless, or grossly negligent failure to advise
2 Plaintiff of their intent to take adverse action and to supply the name and address of the investigative
3 consumer reporting agency, as set forth above, Plaintiff and putative class members have been
4 injured by, among other things, having their privacy and statutory rights invaded in violation of the
5 ICRAA.

6 80. Plaintiff, on behalf of himself and all class members, seeks all available remedies
7 pursuant to Cal. Civ. Code § 1786.50 including actual damages, punitive damages, injunctive and
8 equitable relief, and attorneys' fees and costs.

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on behalf of himself and on behalf of the other members of the
3 putative classes and subclasses, prays as follows:

4 A. For an order certifying that this action is properly brought and may be maintained as
5 a class action, that Plaintiff be appointed the class representative, and that Plaintiff's counsel be
6 appointed counsel for the classes and subclasses;

7 B. For a declaration that Defendants' practices violate the FCRA and ICRAA;

8 C. For an award of statutory, compensatory, special, general, and punitive damages
9 according to proof against Defendants;

10 D. For an award of appropriate equitable relief, including but not limited to an injunction
11 forbidding Defendants from engaging in further unlawful conduct in violation of the ICRAA;

12 E. For an order awarding reasonable attorneys' fees and the costs of suit herein,
13 including but not limited to an award of attorneys' fees and costs pursuant to 15 U.S.C. § 1681n, 15
14 U.S.C. § 1681o, and California Civil Code §1786.50;

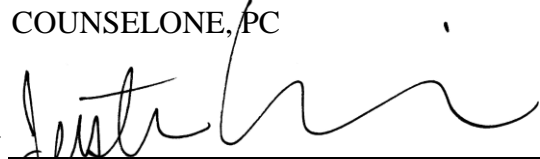
15 F. For an award of pre- and post-judgment interest; and

16 G. For such other and further relief as may be deemed necessary or appropriate.

17
18 DATED: January 16, 2020

COUNSELONE, PC

19
20 By



Anthony J. Orshansky
Alexandria Kachadoorian
Justin Kachadoorian

*Attorneys for Plaintiff Michael Demery
and the Putative Class*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

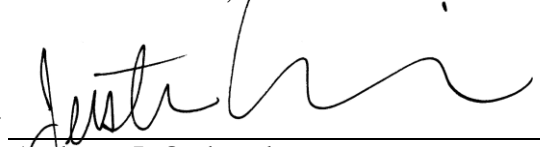
JURY DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

DATED: January 16, 2020

COUNSELONE, PC

By



Anthony J. Orshansky
Alexandria Kachadoorian
Justin Kachadoorian

*Attorneys for Plaintiff Michael Demery
and the Putative Class*

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

3 I am employed in the aforesaid county, State of California; I am over the age of 18 years
4 and not a party to the within action; my business address is 9301 Wilshire Boulevard, Suite 650,
Beverly Hills, California 90210.

5 On January 16, 2020, I served the foregoing **FIRST AMENDED CLASS ACTION**
6 **COMPLAINT** on the entities or individuals listed below:

7 Rod M. Fliegel, Esq. Attorneys for Defendant
rfliegel@littler.com
8 Alison S. Hightower, Esq.
ahightower@littler.com
9 LITTLER MENDELSON, P.C.
333 Bush Street, 34th Floor
San Francisco, CA 94104

10 Sherry Shavit, Esq.
11 sshavit@tharpe-howell.com
Rania Afram, Esq.
12 rafram@tharpe-howell.com
THARPE & HOWELL, LLP
13 15250 Ventura Blvd., 9th Floor
Sherman Oaks, CA 91403

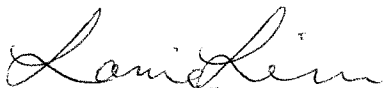
14 **(BY U.S. MAIL)** I placed such envelope with postage thereon fully paid in the United
15 States mail at Beverly Hills, California for regular delivery. I am "readily familiar" with this
firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S.
16 Postal Service on that same day in the ordinary course of business. I am aware that on motion of
party served, service is presumed invalid if postal cancellation date or postage meter date is more
17 than 1 day after date of deposit for mailing in affidavit.

18 **(BY PERSONAL SERVICE)** I caused said envelope to be personally delivered to the
19 office of the person and address identified on the attached service list.

20 **(BY ELECTRONIC SERVICE)** I transmitted a true and correct copy of the above
21 listed document(s) to the court-ordered service provider for electronic service on counsel of
record.

22 **(STATE)** I certify (or declare) under penalty of perjury under the laws of the State of
23 California that the foregoing is true and correct.

24 Executed on January 16, 2020, at Beverly Hills, California.

25 
26 Lanie Lim