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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – RIVERSIDE DIVISION**

VICTOR M. AGRAS, an individual, on
behalf of himself and others similarly
situated

PLAINTIFF,

v.

KEMPER SPORTS MANAGEMENT,
INC.; and DOES 1 thru 50, inclusive

DEFENDANTS.

CASE NO.

**CLASS ACTION COMPLAINT
FOR:**

1. Violation of the Fair Credit Reporting Act for Failure to Make Proper Disclosures, 15 U.S.C. § 1681b(b)(2)(A)(i);
2. Violation of the Fair Credit Reporting Act for Failure to Obtain Proper Authorization, 15 U.S.C. § 1681b(b)(2)(A)(ii);

DEMAND FOR A JURY TRIAL

1 Plaintiff VICTOR M. AGRAS (“Plaintiff”), on behalf of himself and all
2 others similarly situated, alleges on information and belief, except for his own acts
3 and knowledge, the following:

4 **I.**

5 **INTRODUCTION**

6 1. Defendant KEMPER SPORTS MANAGEMENT, INC. ("Defendant")
7 is a California Corporation and at all relevant times mentioned herein conducted and
8 continues to conduct substantial and regular business throughout California.

9 2. Defendant provides municipal and public golf courses, private clubs,
10 resorts, development, and renovation.

11 3. Plaintiff applied, was hired, and performed work for Defendant in Palm
12 Desert, California.

13 4. Upon information and belief, during the application process, Plaintiff
14 filled out Defendant’s standard “Authorization of Background Investigation” form
15 (“standard FCRA form”) permitting Desert Willow Golf Resort to obtain a consumer
16 report verifying Plaintiff’s background and experience.

17 5. Defendant’s standard FCRA form is attached hereto as **Exhibit 1**.

18 6. Defendant’s standard FCRA form is a single “document” for purposes
19 of the FCRA and consists of a disclosure and authorization.

20 7. Defendant’s standard FCRA form is invalid on two separate grounds.
21 First, Defendant’s standard FCRA form violates the “standalone” disclosure
22 requirement in 15 U.S.C. § 1681b(b)(2)(A)(i) (the FCRA disclosure must be “in a
23 document that consists solely of the disclosure”). *Gilberg v. California Check*
24 *Cashing Stores, LLC*, 913 F.3d 1169, 1175 (9th Cir. 2019); *Walker v. Fred Meyer,*
25 *Inc.*, 953 F.3d 1082 (9th Cir. 2020). Second, Defendant’s standard FCRA form
26 violates the “clear and conspicuous disclosure” requirement in 15 U.S.C. §
27 1681b(b)(2)(A)(i) because Defendant’s standard FCRA form combines both federal
28 and state disclosures. *Id.* at 1176.

1 8. Since Defendant’s standard FCRA form is non-complaint, Plaintiff was
2 confused regarding the nature of rights under the FCRA and accordingly did not
3 give valid authorization for Defendant to procure a consumer report in violation of
4 15 U.S.C. § 1681b(b)(2)(A)(ii).

5 9. Plaintiff now brings this Class Action on behalf of himself and a
6 nationwide class, defined as:

- 7 (a) All individuals in the United States who filled out
8 Defendant’s “Authorization of Background Investigation”
9 form at any time during the period beginning five (5) years
10 prior to the filing of this action to the present. (the
11 “Proposed Class”)

12 II.

13 JURISDICTION AND VENUE

14 10. The Court has jurisdiction over Plaintiff’s federal claims pursuant to 28
15 U.S.C. §1331 and 15 U.S.C. §1681 of the FCRA.

16 11. Venue is proper in this district pursuant to 28 U.S.C. §1391(d) because
17 Defendant is subject to personal jurisdiction in this district, maintains offices in this
18 district, and the actions at issue took place in this district.

19 III.

20 THE PARTIES

21 A. PLAINTIFF

22 12. Plaintiff completed Defendant’s standard FCRA form on June 14,
23 2019.

24 B. DEFENDANT

25 13. Defendant is a California Corporation. At all times relevant herein,
26 Defendant conducted and continues to conduct business throughout the State of
27 California including hiring and employees such as Plaintiff.

28 14. Defendant’s entity address listed with the California Secretary of State
is 500 Skokie Boulevard #444 Northbrook, IL 60062.

1 15. Defendant requires Plaintiff and all other persons similarly situated to
2 fill out Defendant's standard FCRA form (Exhibit 1) permitting Defendant to obtain
3 a consumer report verifying the applicant's background and experience.

4 16. Plaintiff is informed and believes and thereon allege that each
5 Defendant acted in all respects pertinent to this action as the agent of the other
6 Defendant, and/or carried out a joint scheme, business plan or policy in all respects
7 pertinent hereto, and/or the acts of each Defendant are legally attributable to the
8 other Defendant.

9 **IV.**

10 **NATURE OF THE ACTION**

11 17. The FCRA provides individuals with a number of rights. Specifically,
12 pertaining to employment-related background checks referred to as "consumer
13 reports", the FCRA provides that a prospective employee must give valid written
14 authorization to the background check after receiving a compliant written
15 disclosure.

16 18. The FCRA's disclosure and authorization requirements are listed in 15
17 U.S.C. § 1681b(b)(2)(A).

18 **V.**

19 **FACTUAL ALLEGATIONS**

20 19. In connection with his employment, Plaintiff was required to fill out
21 Defendant's standard FCRA form (Exhibit 1) permitting Defendant to obtain a
22 consumer report verifying Plaintiff's background and experience.

23 20. Plaintiff filled out Defendant's standard FCRA form on June 14, 2019.

24 21. Upon information and belief, Defendant required all similarly situated
25 persons to complete the same standard FCRA form.

26 22. Defendant's standard FCRA form is a single "document" for purposes
27 of the FCRA and consists of a disclosure and authorization.
28

1 Defendant's standard FCRA form contained extraneous information such as state
2 disclosures in violation of 15 U.S.C. § 1681b(b)(2)(A)(i)'s so-called "standalone"
3 disclosure and "clear and conspicuous" requirements. *Gilberg*, 913 F.3d at 1175-
4 76; *Walker*, 953 F.3d at 1088.

5 23. Accordingly, Plaintiff was confused regarding the nature of his rights
6 under the FCRA and did not give valid authorization for Defendant to procure a
7 consumer report in violation of 15 U.S.C. § 1681b(b)(2)(A)(ii).

8 24. Nevertheless, Defendant procured or caused to be procured Plaintiff's
9 consumer report.

10 25. Defendant's failure to provide a compliant disclosure, and failure to
11 obtain proper authorization, deprived Plaintiff and others similarly situated of the
12 right to information and the right to privacy guaranteed by 15 U.S.C. §
13 1681b(b)(2)(A). *Syed v. M-I, LLC*, 853 F.3d 492, 499 (9th Cir. 2017).

14 26. By including extraneous information in its standard FCRA form,
15 Defendant's conduct is contrary to the plain language of the statute, case law, and
16 unambiguous regulatory guidance from the Federal Trade Commission ("FTC").

17 27. Thus, Defendant "willfully" violated the FCRA. Defendant knew that
18 its standard FCRA form must not contain surplus or extraneous information related
19 to state disclosures and must be clear and not likely to confuse a reasonable reader.

20 **VI.**

21 **THE CLASS**

22 28. Plaintiff brings this action on behalf of himself and all others similarly
23 situated as a Class Action pursuant to Rule 23(a) and 23(b)(3) of the F.R.C.P.
24 Plaintiff satisfies the requirements of Rule 23(a) and (b)(3) for the prosecution of
25 this action as a class action. Plaintiff seeks to represent a Class composed of and
26 defined as follows:

27
28 All individuals in the United States who filled out Defendant's

1 “Authorization of Background Investigation” form at any time
2 during the period beginning five (5) years prior to the filing of
3 this action to the present. (the “Proposed Class”)

4 29. Plaintiff reserves the right to amend or modify the Class description
5 with greater specificity or further division into subclasses or limitation to particular
6 issues.

7 30. This class action on behalf of members of the Proposed Class meets the
8 statutory prerequisites for the maintenance of a class action as set forth in Rule 23(a)
9 and 23(b)(3) of the F.R.C.P.

10 A. Numerosity

11 31. The Proposed Class is so numerous that joinder of all class members is
12 impracticable.

13 32. While the precise number of members of the Proposed Class has not
14 been determined at this time, Plaintiff is informed and believes that Defendant,
15 during the relevant period, had applicants that numbered well over 1,000.

16 33. Plaintiff alleges that Defendant’s records will provide information as to
17 the number of all members of the Proposed Class.

18 B. Commonality

19 34. There are questions of law and fact common to the Proposed Class that
20 predominate over any questions affecting only individual members of the Class.
21 These common questions of law and fact include, without limitation:

- 22 a. Whether Defendant’s standard FCRA form (Exhibit 1) is “in a
23 document that consists solely of the disclosure” (15 U.S.C.
24 §1681b(b)(2)(A)(i));
- 25 b. Whether Defendant’s standard FCRA form (Exhibit 1) meets 15 U.S.C.
26 §1681b(b)(2)(A)(i)’s “clear and conspicuous disclosure” requirement;
- 27 c. Whether Defendant acquires applicants’ consumer reports without
28 authorization in violation of 15 U.S.C. §1681b(b)(2)(A)(ii); and
- d. Whether Defendant “willfully” violated the FCRA pursuant to 15

1 U.S.C. §1681n.

2 C. Typicality

3 35. The claims of the named Plaintiff are typical of the claims of the
4 members of the Proposed Class.

5 36. Plaintiff is a member of the Proposed Class. Plaintiff filled out
6 Defendant's "Authorization of Background Investigation" form (Exhibit 1) in
7 connection with his employment.

8 37. Plaintiff was subjected to the same unlawful practices as other members
9 of the Proposed Class. Plaintiff suffered the same injuries and seek the same relief
10 as the members of the Proposed Class.

11 D. Adequacy of Representation

12 38. Plaintiff will fairly and adequately represent and protect the interests of
13 the members of the Proposed Class.

14 39. Counsel for Plaintiff are competent and experience in litigation large
15 complex consumer and wage and hour class actions.

16 E. Predominance and Superiority of a Class Action

17 40. A class action is superior to other available means for fair and efficient
18 adjudication of this controversy. Individual joinder of all members of the Proposed
19 Class is not practicable, and questions of law and fact common to the Class
20 predominate over any questions affecting only individual members.

21 41. Class action treatment will allow those similarly situated persons to
22 litigate their claims in the manner that is most efficient and economical for the parties
23 and the judicial system. Plaintiff is unaware of any difficulties that are likely to be
24 encountered in the management of this action that would preclude its maintenance
25 as a class action.

26 42. Class action treatment will allow a large number of similarly situated
27 employees to prosecute their common claims in a single forum, simultaneously,
28 efficiently, and without the unnecessary duplication of effort and expense that

1 numerous individual actions would require. Further, the monetary amounts due to
2 many individual class members are likely to be relatively small, and the burden and
3 expense of individual litigation would make it difficult or impossible for individual
4 members of the members of the Proposed Class to seek and obtain relief. Moreover,
5 a class action will serve an important public interest by permitting employees
6 harmed by Defendant's unlawful practices to effectively pursue recovery of the sums
7 owed to them.

8 **VII.**

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF THE**

11 **FCRA**

12 **[15 U.S.C. § 1681B(B)(2)(A)(I), ET SEQ.]**

13 **(BY PLAINTIFF AND ALL MEMBERS OF THE PROPOSED CLASS**

14 **AGAINST ALL DEFENDANTS)**

15 43. Plaintiff, and the other members of the Proposed Class, reallege and
16 incorporate by this reference, as though set forth herein, the prior paragraphs of this
17 complaint.

18 44. Under the FCRA, it is unlawful to procure a consumer report or cause
19 a consumer report to be procured for employment purposes, unless:

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

28 15 U.S.C. §§ 1681b(b)(2)(A)(i)-(ii)

45. Defendant's standard FCRA form is unlawful on two separate grounds.

1 First, Defendant’s standard FCRA form violates the so-called “standalone”
2 disclosure requirement in 15 U.S.C. § 1681b(b)(2)(A)(i) (the FCRA disclosure
3 must be “in a document that consists solely of the disclosure”) because
4 Defendant’s standard FCRA form combines both federal and state disclosures,
5 among other extraneous and irrelevant information. *Gilberg*, 913 F.3d at 1175;
6 *Walker*, 953 F.3d at 1088.

7 46. Second, Defendant’s standard FCRA form violates the “clear and
8 conspicuous disclosure” requirement in 15 U.S.C. § 1681b(b)(2)(A)(i). The FCRA
9 disclosure is unclear, as it would “confuse a reasonable reader because it combines
10 federal and state disclosures.” *Gilberg*, 913 F.3d at 1176.

11 47. The violations of the FCRA were willful based on the clear statutory
12 text, case law guidance, and regulatory guidance. The statutory text of the standalone
13 requirement is straightforward. The word “solely” in subsection (i) and the one
14 express exception in subsection (ii), which allows the authorization to be on the same
15 document as the disclosure, shows that “the FCRA should not be read to have
16 implied exceptions[.]” *Gilberg*, 913 F.3d at 1175 (citing to *Syed*, 853 F.3d at 501-
17 03).

18 48. Defendant also had specific case law to provide guidance. *See Gilberg*,
19 913 F.3d at 1175 (“*Syed*’s holding and statutory analysis were not limited to liability
20 waivers; *Syed* considered the standalone requirement with regard to *any*
21 *surplusage*”) (citing to *Syed*, 853 F.3d at 501) (emphasis added).

22 49. Lastly, informal guidance from the FTC is unambiguous that no
23 extraneous information should be included in the FCRA disclosure. *See* FTC,
24 Opinion Letter, 1997 WL 33791227, at *1 (Oct. 21, 1997) (“[The] document should
25 include nothing more than the disclosure and the authorization for obtaining a
26 consumer report.”); FTC, Opinion Letter, 1998 WL 34323748, at *2 (Feb. 11, 1998)
27 (disclosure may describe the “nature of the consumer reports” it covers, but
28 otherwise should “not be encumbered with extraneous information”); FTC, Opinion

1 Letter, 1998 WL 34323756, at *1 (June 12, 1998) (inclusion of a waiver in a
2 disclosure form violates Section 1681b(b)(2)(A)).

3 50. In addition, Defendant’s violation of the “clear and conspicuous
4 disclosure” requirement was willful. Defendant knew that its standard disclosure
5 form must be clear and not contain extraneous information, such as state disclosures,
6 that would confuse a reasonable person about the nature of his rights under the
7 FCRA.

8 51. Plaintiff and all other members of the Proposed Class are entitled to
9 statutory damages of not less than \$100 and not more than \$1,000 for every willful
10 violation of the FCRA, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

11 52. Plaintiff and all other members of the Proposed Class are also entitled
12 to punitive damages for these willful violations, pursuant to 15 U.S.C. §1681n(a)(2).

13 53. Plaintiff and all other members of the Proposed Class are further
14 entitled to recover their costs and attorneys’ fees, pursuant to 15 U.S.C.
15 §1681n(a)(3).

16 **VIII.**

17 **SECOND CAUSE OF ACTION**

18 **FOR FAILURE TO OBTAIN PROPER AUTHORIZATION IN**

19 **VIOLATION OF THE FCRA**

20 **[15 U.S.C. § 1681B(B)(2)(A)(II)]**

21 **(BY PLAINTIFF AND ALL MEMBERS OF THE PROPOSED CLASS**

22 **AGAINST ALL DEFENDANTS)**

23 54. Plaintiff, and the other members of the Proposed Class, reallege and
24 incorporate by this reference, as though fully set forth herein, the prior paragraphs
25 of this Complaint.

26 55. Since Defendant’s standard FCRA form contains extraneous
27 information, such as state disclosures, the FCRA disclosure does not consist “solely”
28 of the disclosure nor is it “clear and conspicuous” as required by 15 U.S.C. §

1 1681b(b)(2)(A)(i).

2 56. Accordingly, Plaintiff was confused regarding the nature of his rights
3 under the FCRA and did not give valid authorization for Defendant to procure a
4 consumer report in violation of 15 U.S.C. § 1681b(b)(2)(A)(ii).

5 57. Nevertheless, Defendant procured a consumer report or caused a
6 consumer report to be procured for employment purposes on Plaintiff and the
7 Proposed Class in violation of 15 U.S.C. § 1681b(b)(2)(A).

8 58. This violation of the FCRA is willful. 15 U.S.C. §1681n. Defendant
9 knew that its standard FCRA form must stand alone and must be clear and
10 conspicuous. In addition, Defendant knew that proper authorization is not possible
11 without a legally compliant disclosure.

12 59. Plaintiff and all other members of the Proposed Class are entitled to
13 statutory damages of not less than \$100 and not more than \$1,000 for every willful
14 violation of the FCRA, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

15 60. Plaintiff and all other members of the Proposed Class are also entitled
16 to punitive damages for these willful violations, pursuant to 15 U.S.C. § 1681n(a)(2).

17 61. Plaintiff and all other members of the Proposed Class are further
18 entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C. §
19 1681n(a)(3).

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly
22 and severally, as follows:

23 1. On behalf of the Proposed Class:

24 A) That the Court certify the First and Second Causes of Action asserted
25 by the Proposed Class as a Class Action pursuant to Fed. R. Civ. Proc.
26 23(b)(2) and/or (3);

27 B) A determination and judgment that Defendant willfully violated 15
28 U.S.C. § 1681(b)(2)(A)(i) and(ii) of the FCRA;

- 1 C) Pursuant to 15 U.S.C. § 1681n(a)(1)(A), an award of statutory damages
- 2 to Plaintiff and all other members of the Proposed Class in an amount
- 3 equal to \$1,000 for Plaintiff and all other members of the Proposed
- 4 Class for Defendant's willful violation of the FCRA;
- 5 D) Pursuant to 15 U.S.C. § 1681n(a)(2), an award of punitive damages to
- 6 Plaintiff and all other members of the Proposed Class;
- 7 E) An award for costs of suit and reasonable attorneys' fees pursuant to 15
- 8 U.S.C. § 1681n(a)(3); and,
- 9 F) Such other and further relief as the Court deems just and equitable.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a trial of his claims by jury to the extent authorized
12 by law.

13
14 DATED: October 8, 2020

KINGSLEY & KINGSLEY, APC

15
16 By: 

Eric B. Kingsley
Kelsey M. Szamet
Attorneys for Plaintiff

EXHIBIT “1”

Authorization of Background Investigation

ENTERED

I have carefully read and understand this Disclosure and Authorization form and the attached summary of rights under the Fair Credit Reporting Act. By my signature below, I consent to preparation of background reports by a consumer reporting agency such as HireRight, Inc. ("HireRight"), and to the release of such background reports to the Company and its designated representatives and agents, for the purpose of assisting the Company in making a determination as to my eligibility for employment (including independent contractor assignments, as applicable), promotion, retention or for other lawful employment purposes. I understand that if the Company hires me or contracts for my services, my consent will apply, and the Company may, as allowed by law, obtain additional background reports pertaining to me, without asking for my authorization again, throughout my employment or contract period from HireRight and/or other consumer reporting agencies.

I understand that information contained in my employment or contractor application, or otherwise disclosed by me before or during my employment or contract assignment, if any, may be used for the purpose of obtaining and evaluating background reports on me. I also understand that nothing herein shall be construed as an offer of employment or contract for services.

I hereby authorize all of the following, without limitation, to disclose information about me to the consumer reporting agency and its agents: law enforcement and all other federal, state and local agencies, learning institutions (including public and private schools, colleges and universities), testing agencies, information service bureaus, credit bureaus, record/data repositories, courts (federal, state and local), motor vehicle records agencies, my past or present employers, the military, and all other individuals and sources with any information about or concerning me. The information that can be disclosed to the consumer reporting agency and its agents includes, but is not limited to, information concerning my employment and earnings history, education, credit history, motor vehicle history, criminal history, military service, professional credentials and licenses.

By my signature below, I also certify the information I provided on and in connection with this form is true, accurate and complete. I agree that this form in original, faxed, photocopied or electronic (including electronically signed) form, will be valid for any background reports that may be requested by or on behalf of the Company.

California, Minnesota or Oklahoma applicants only: Please check this box if you would like to receive (whenever you have such right under the applicable state law) a copy of your background report if one is obtained on you by the Company.

Applicant Last Name Agarwal First Victor Middle M
Applicant Signature [Signature] Date 6/14/19

IDENTIFYING INFORMATION FOR CONSUMER REPORTING AGENCY

Other Names Used _____ Years Used _____

Current Address: _____
Street /P. O. Box City State Zip Code County Dates

Former Address: _____
Street /P. O. Box City State Zip Code County Dates

*Social Security Number _____ Daytime Phone Number: _____

E-mail Address _____ Driver's License Number: _____ State of Issuance: _____

*Date of Birth: _____ *Gender M

* This information will be used only for background screening purposes and will not be taken into consideration in any employment decisions.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Kemper Sports Hit with Class Action Over Alleged 'Non-Compliant' Background Check Authorization Form](#)
