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14
15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
17 **WESTERN DIVISION**

18 JOHN DOE, *individually and on*
19 *behalf of persons similarly*
20 *situated,*

21 *Plaintiff,*

22 v.

23 FIRST ADVANTAGE BACKGROUND
24 SERVICES CORP.

25 *Defendant.*

No. 2:21-cv-02857

**PLAINTIFF’S ORIGINAL
CLASS ACTION COMPLAINT**

26 Plaintiff John Doe files this Original Class Action Complaint against
27 Defendant First Advantage Background Services Corp. (“First Advantage”).

28 CASE NO. 2:21-cv-02857

I. INTRODUCTION

1
2 1. Recognizing that non-conviction criminal history information, such as
3 arrests or dismissed charges, which does not reflect any actual adjudicated
4 criminal guilt can nevertheless unfairly limit job-seekers' employment prospects,
5 Congress has chosen to regulate the provision of non-conviction criminal history
6 information through the Fair Credit Reporting Act ("FCRA"). To protect citizens
7 who have kept their records clean for at least seven years from the potential life-
8 long consequences of having arrests or dismissed charges on their records,
9 FCRA-regulated Consumer Reporting Agencies ("CRAs") may not furnish non-
10 conviction adverse information if it antedates the report by more than seven
11 years. 15 U.S.C. § 1681c(a). The California legislature has provided California
12 citizens with even more stringent protections under California's Investigative
13 Consumer Reporting Agencies Act ("ICRAA"), which prohibits Investigative
14 Consumer Reporting Agencies ("ICRAs") from furnishing reports containing
15 any criminal history information, including convictions, more than seven years
16 old. CAL. CIV. CODE § 1786.18.

17 2. In violation of these requirements, First Advantage, a regulated
18 CRA/ICRA, has a regular policy and practice of communicating information
19 about job-seekers' complete, life-long criminal history, including arrests,
20 dismissed charges, and other items that do not reflect any actual criminal
21 conviction, from the Federal Bureau of Investigation ("FBI") fingerprint database
22 to potential employers with no time limitation.

23 3. After agreeing to a fingerprint background check, Plaintiff was denied
24 employment with Wells Fargo Bank, N.A. ("Wells Fargo") based on such an
25 illegal First Advantage report. Wells Fargo informed Plaintiff that he was not
26 eligible for the job he had applied for based on information in a First Advantage
27

1 background-check report showing that he had been arrested over 10 years before
2 the date of the report, well outside FCRA/ICRAA's seven-year deadline.

3 4. First Advantage takes the position that FCRA and ICRAA do not apply
4 to background-check reports it furnishes from the FBI based on fingerprints,
5 because it argues it is merely "channeling" this information from the FBI, making
6 the information not a FCRA-governed "consumer report" or an ICRAA-governed
7 "investigative consumer report." FCRA's plain language, however, makes clear
8 that FCRA applies to *all* employment background-check reports by CRAs,
9 regardless of the source of the information. 16 U.S.C. § 1681a(d)(1) (defining
10 "consumer report" as "any written, oral, or other communication by a consumer
11 reporting agency bearing on a consumer's credit worthiness, ... character, general
12 reputation ... which is used or expected to be used ... for ... employment
13 purposes"). Similarly, ICRAA defines an "investigative consumer report" to
14 include "a consumer report in which information on a consumer's character,
15 general reputation, personal characteristics, or mode of living is obtained through
16 any means." CAL. CIV. CODE § 1786.2(c).

17 5. Plaintiff accordingly sues to protect his rights and those of Classes of
18 similarly situated individuals who were the subjects of First Advantage reports
19 from the FBI's fingerprint database. Plaintiff seeks actual damages, statutory
20 damages, injunctive relief, punitive damages, attorneys' fees, costs and expenses
21 of suit, and all other appropriate relief.

22 II. PARTIES

23
24 6. Plaintiff John Doe is an individual who during the relevant time period
25 resided in Los Angeles County, California.

1 12. In connection with his employment application, Wells Fargo required
2 Mr. Doe to submit to a First Advantage background check. Wells Fargo paid First
3 Advantage a fee for the background-check report. First Advantage used means
4 and facilities of interstate commerce for the purpose of preparing and furnishing
5 this consumer report, including but not limited to the internet, interstate telephone
6 services, and interstate mail delivery services.

7 13. On or about March 9, 2020, Mr. Doe had his fingerprints taken in
8 Irvine, California, to facilitate the background check.

9 14. On or about April 10, 2020, Wells Fargo informed Mr. Doe that it was
10 reviewing his employment application and that it might take adverse action
11 against him based on information in the First Advantage background-check
12 report showing that he had been arrested on July 9, 2010, over 10 years before
13 the date of the report.

14 15. Under FCRA, regulated CRAs may not report Obsolete Adverse Non-
15 Conviction Information. 15 U.S.C. § 1681c(a)(2). Violations are subject to
16 liability for actual damages and, in the case of willful violations, statutory
17 damages of \$100–\$1,000 per violation, as well as punitive damages, costs, and
18 attorneys’ fees. 15 U.S.C. § 1681n.

19 16. Under ICRAA, regulated ICRAAs may not report any Obsolete Criminal
20 History Information, including “[r]ecords of arrest, indictment, information,
21 misdemeanor complaint, or conviction of a crime that, from the date of
22 disposition, release, or parole, antedate the report by more than seven years.”
23 CAL. CIV. CODE § 1786.18. Violations are subject to liability for actual damages
24 or statutory damages of \$10,000 (whichever is greater), attorneys’ fees, and costs,
25 as well as, in the case of grossly negligent or willful violations, punitive damages.
26 CAL. CIV. CODE § 1786.50.

1 17. On information and belief, First Advantage obtained the information
2 regarding Mr. Doe's July 9, 2010 arrest from the FBI using Mr. Doe's fingerprint
3 submissions. The FBI's fingerprint database contains criminal history
4 information collected from various local and state law-enforcement authorities
5 around the country. This information includes records of arrest, dismissed
6 charges, as well as convictions and other criminal history information going back
7 decades. In violation of 15 U.S.C. § 1681c(a)(2) and CAL. CIV. CODE § 1786.18,
8 First Advantage assembled this information into a report that was provided to
9 Wells Fargo and used it to evaluate Mr. Doe's eligibility for employment.

10 18. Wells Fargo provided Mr. Doe with what it represented was a copy of
11 the First Advantage report on which its decision was based. The report provided
12 to Mr. Doe, however, did not contain any information about the July 9, 2010
13 arrest record mentioned in Wells Fargo's letter to Mr. Doe. The only information
14 regarding criminal history in the background-check report provided to Mr. Doe
15 showed that First Advantage had not found any criminal history information
16 records for Mr. Doe in the Los Angeles Superior and Metropolitan Municipal
17 Courts records.

18 19. Neither First Advantage nor Wells Fargo ever provided to Mr. Doe the
19 First Advantage report containing the results of the FBI fingerprint database
20 search including the Obsolete Criminal History Information regarding him.
21 Without giving Mr. Doe a copy of the report or an opportunity to dispute it, First
22 Advantage evaluated the Obsolete Criminal History Information and, as a result
23 of its evaluation, scored Mr. Doe as "ineligible for hire."

24 20. On or about April 24, 2020, Wells Fargo informed Mr. Doe that he was
25 not eligible for the position and that the decision was based on information in Mr.
26 Doe's First Advantage report.

1 information on consumers for the purpose of furnishing consumer credit reports
2 to third parties” 15 U.S.C. § 1681a(f).

3 26. A consumer credit report is the “communication of any information by
4 a consumer reporting agency bearing on a consumer’s credit worthiness, credit
5 standing, credit capacity, character, general reputation, personal characteristics,
6 or mode of living which is used or expected to be used or collected in whole or
7 in part for the purpose of serving as a factor in establishing the consumer’s
8 eligibility” for credit, housing, insurance, employment, or other FCRA-governed
9 purposes. 15 U.S.C. §§ 1681a(d)(1), 1681b(a). Under these statutory definitions,
10 employment background-check screening companies like First Advantage,
11 which regularly assemble information bearing on consumers’ character and
12 reputation and furnish those reports to potential employers, are regulated CRAs
13 subject to FCRA.

14 27. A person’s reputation as reflected in his or her employment
15 background check report is vitally important to securing and maintaining a job in
16 the United States. When criminal history appears on background check reports,
17 even a relatively minor incident can cause people to lose job opportunities. With
18 as many as one in three Americans estimated to have a criminal record of some
19 kind, the scale of the problem is enormous. *See* Jo Craven McGinty, *How Many*
20 *Americans Have a Police Record? Probably More Than You Think*, WALL ST. J.,
21 Aug. 7, 2015.¹

22 28. Making a judgment that arrests, dismissed charges, and other items of
23 non-conviction criminal history information that do not reflect actual adjudicated
24 guilt for a crime should not continue to haunt job seekers who have kept a clean

25 ¹ *Available at:* [https://www.wsj.com/articles/how-many-americans-have-a-](https://www.wsj.com/articles/how-many-americans-have-a-police-record-probably-more-than-you-think-1438939802)
26 [police-record-probably-more-than-you-think-1438939802](https://www.wsj.com/articles/how-many-americans-have-a-police-record-probably-more-than-you-think-1438939802) (last viewed October
27 21, 2020).

1 record for over seven years, Congress prohibited CRAs from reporting such
2 Obsolete Adverse Non-Conviction Information, unless the report is to be used in
3 connection with employment at an annual salary of \$75,000 or more. 15 U.S.C.
4 § 1681c(a)(2).

5 29. FCRA also mandates that CRAs provide consumers with notice of
6 adverse public record information reported about them or maintain strict
7 procedures to insure that it is complete and up to date. 15 U.S.C. § 1681k(a)(2).
8 CRAs must also provide consumers with access to the information in their files
9 and an opportunity to dispute any inaccuracies. *See* 15 U.S.C. § 1681g(a); 15
10 U.S.C. § 1681i(a).

11 30. Background-check companies thus have detailed FCRA compliance
12 polices including, for example: (1) procedures to obtain verification that the
13 employer has obtained proper consent for the background check; (2) screening
14 out any adverse information, other than criminal convictions, more than 7 years
15 old (or bankruptcy information more than 10 years old) before furnishing reports
16 to third parties; (3) notifying applicants when the background-check company
17 reports adverse public record information about them and/or employing strict
18 procedures to ensure the information is complete and up to date; (4) providing
19 free annual file disclosures; and (5) providing a process to resolve disputes and
20 correct any inaccurate information.² These procedures provide important
21 protections against consumers' being denied employment based on inaccurate or
22 outdated information.

23
24 ² *See* Ask CFPB, "I've been looking for a job. What do employers see when they
25 do credit checks and background checks?" *available at*
26 [https://www.consumerfinance.gov/ask-cfpb/ive-been-looking-for-a-job-what-](https://www.consumerfinance.gov/ask-cfpb/ive-been-looking-for-a-job-what-do-employers-see-when-they-do-credit-checks-and-background-checks-en-1823/)
27 [do-employers-see-when-they-do-credit-checks-and-background-checks-en-](https://www.consumerfinance.gov/ask-cfpb/ive-been-looking-for-a-job-what-do-employers-see-when-they-do-credit-checks-and-background-checks-en-1823/)
28 [1823/](https://www.consumerfinance.gov/ask-cfpb/ive-been-looking-for-a-job-what-do-employers-see-when-they-do-credit-checks-and-background-checks-en-1823/)

1 **B. ICRAA provides even more stringent privacy protections to**
2 **California job seekers.**

3 31. ICRAA is California’s equivalent of the FCRA. Similar to FCRA,
4 ICRAA recognizes that “[t]here is a need to insure that investigative consumer
5 reporting agencies exercise their grave responsibilities with fairness, impartiality,
6 and a respect for the consumer’s right to privacy.” CAL. CIV. CODE 1786(b).

7 32. Under ICRAA, an “investigative consumer report” is defined as a
8 consumer report disclosing “information on a consumer’s character, general
9 reputation, personal characteristics, or mode of living ... obtained through any
10 means.” CAL. CIV. CODE § 1786.2(c). Any entity that “for monetary fees or dues,
11 engages in whole or in part in the practice of collecting, assembling, evaluating,
12 compiling, reporting, transmitting, transferring, or communicating concerning
13 consumers for the purposes of furnishing investigative consumer reports to third
14 parties” are regulated “Investigative Consumer Reporting Agencies” (“ICRAs”).
15 *See* CAL. CIV. CODE § 1786.2(c)–(d).

16 33. Providing even more privacy protection than FCRA, California law
17 prohibits the reporting of any Obsolete Criminal History Information, including
18 records of criminal conviction, more than seven years old. ICRAA prohibits any
19 ICRA from furnishing an investigative consumer report containing “[r]ecords of
20 arrest, indictment, information, misdemeanor complaint, or conviction of a crime
21 that, from the date of disposition, release, or parole, antedate the report by more
22 than seven years.” CAL. CIV. CODE § 1786.18(a)(7).

23 **C. First Advantage cannot evade the Fair Credit Reporting Act and**
24 **ICRAA.**

25 34. First Advantage is one of the largest background-check screening
26 companies in the United States. As of 2018, it had an estimated 7.4% share of a
27 \$3.2 billion market. CFPB, *Market Snapshot: Background Screening Reports*.

1 *Criminal Background Checks in Employment* 14–15 & n.17 (October 2019). It
2 operates in 26 locations with more than 4,300 employees, and at the time First
3 Advantage was acquired by a private equity group in November 2019, its
4 previous owner estimated that it had 35,000 worldwide clients. *See Press*
5 *Release: Silver Lake to Acquire First Advantage* (November 25, 2019).³

6 35. First Advantage, like other background-check companies, fulfills all
7 the required elements of the statutory definition of a CRA. First Advantage has
8 accordingly instituted FCRA-compliance procedures for background-check
9 reports it furnishes. Acknowledging its responsibilities as a CRA, First
10 Advantage advises potential customers on its website:

11 Because the FCRA stipulates that First Advantage, a
12 Consumer Reporting Agency, can only provide reports to
13 people we believe intend to use the information for an
14 FCRA permissible purpose such as employment and
15 tenant screening purposes, we need to verify that you have
a legitimate business need to request background reports.⁴

16 Because First Advantage’s reports contain criminal history information, which bears
17 on consumers’ “character, general reputation, personal characteristics, or mode of
18 living,” First Advantage is also an ICRA subject to California’s ICRAA. CAL. CIV.
19 CODE § 1786.2(c).

20 36. When First Advantage provides criminal history information from the
21 FBI using the subject’s fingerprints, however, First Advantage takes the position,
22 contrary to the statutes’ plain language, that it can ignore FCRA’s and ICRAA’s
23 requirements. The FBI has approved certain contractors as “channelers” who are

24 _____
25 ³ Available at <https://fadv.com/press-release/silver-lake-to-acquire-first-advantage/>.

26 ⁴ First Advantage, FAQ’s, available at <https://fadv.com/faq/> (last accessed Nov.
27 6, 2020).

1 authorized to submit fingerprints to the FBI and receive FBI criminal history
2 record information on behalf of authorized recipients. Arguably, channelers who
3 do not otherwise qualify as CRAs, and who do not assemble or evaluate the FBI
4 criminal history information for the purpose of furnishing consumer reports to
5 third parties, do not become regulated CRAs simply by passing information from
6 the FBI database through to authorized recipients. *See Mix v. JPMorgan Chase*
7 *Bank, NA*, No. 15-cv-01102, 2016 WL 5850362, at *(D. Ariz. Oct. 6, 2016).

8 37. Under any objectively reasonable interpretation of FCRA’s plain
9 language, however, a company like First Advantage that “regularly engages in
10 whole or in part in the practice of assembling or evaluating consumer credit
11 information” is a CRA regardless of its role in assembling or evaluating any
12 particular item of consumer information. 15 U.S.C. § 1681c; *see Cortez v. Trans*
13 *Union, LLC*, 617 F.3d 688, 707 (3d Cir. 2010) (holding that in enacting FCRA
14 Congress “unequivocally defined ‘consumer report’ to include ‘any ...
15 communication of any information by a consumer reporting agency’”).
16 Moreover, First Advantage in this case did assemble and evaluate the Obsolete
17 Adverse Non-Conviction Information regarding Mr. Doe, because it included the
18 information in a report to First Advantage and scored Mr. Doe as “ineligible for
19 hire” based on the information.

20 38. Similarly under ICRAA, regardless of whether First Advantage is a
21 “channeler,” it is plainly engaged in “collecting, assembling, evaluating,
22 compiling, reporting, transmitting, transferring, or communicating information
23 concerning consumers for the purposes of furnishing investigative consumer
24 reports to third parties.” CAL. CIV. CODE § 1786.2.

25 39. After collecting fingerprints from job applicants like Mr. Doe, First
26 Advantage’s regular policy and practice is to submit the fingerprints to the FBI
27

1 and receive the results of FBI background check searches run against the
2 fingerprints. This information includes records of arrests, indictments, and
3 misdemeanor complaints, as well as criminal convictions, without any time
4 limitation. First Advantage then takes the information received from the FBI and
5 assembles it into electronic reports, which it furnishes to customers through a
6 web-based interface.⁵

7 40. First Advantage also has a regular policy and practice of evaluating
8 the information it receives from the FBI, offering customers “[t]he capability to
9 adjudicate results according to your guidelines and to reconcile the final
10 dispositions of relevant arrest records.”⁶

11 41. First Advantage, as a regulated CRA, always has an obligation under
12 15 U.S.C. § 1681c not to include any Obsolete Non-Conviction Information in
13 consumer reports, including when it furnishes reports to third parties containing
14 information from the FBI fingerprint database. In violation of this requirement,
15 First Advantage’s regular policy and practice is not to screen non-conviction
16 criminal history information over seven years old from the information it receives
17 from the FBI fingerprint database but instead to include this Obsolete Non-
18 Conviction Information in its reports to employers. As a result, First Advantage
19 regularly reports Obsolete Adverse Non-Conviction Information to potential
20 employers.

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24 ⁵ See First Advantage, Employment Solutions, available at
25 [https://www.fadv.com/Fadv-](https://www.fadv.com/Fadv-prod/media/Assets/Resources/Data%20Sheets/PDFs/FA031717_DS_ElectronicFingerprintServices-w.pdf)
26 [prod/media/Assets/Resources/Data%20Sheets/PDFs/FA031717_DS_Electronic](https://www.fadv.com/Fadv-prod/media/Assets/Resources/Data%20Sheets/PDFs/FA031717_DS_ElectronicFingerprintServices-w.pdf)
27 [FingerprintServices-w.pdf](https://www.fadv.com/Fadv-prod/media/Assets/Resources/Data%20Sheets/PDFs/FA031717_DS_ElectronicFingerprintServices-w.pdf) (last accessed Nov. 6, 2020).

28 ⁶ *Id.*

1 42. This Obsolete Adverse Non-Conviction Information seriously harms
2 the subjects' reputations, invades their statutory rights, and puts them at risk of
3 being denied employment.

4 43. As a regulated ICRA, First Advantage also has an obligation under
5 ICRAA not to include any Obsolete Criminal History Information in
6 investigative consumer reports furnished to third parties regarding consumers in
7 California. In violation of this requirement, it is First Advantage's regular policy
8 and practice not to screen Obsolete Criminal History Information from reports
9 provided regarding consumers in California, but instead to include all
10 information received from the FBI in its reports.

11 44. This Obsolete Criminal History information seriously harms
12 California consumers' reputations, invades their statutory rights, and puts them
13 at risk of being denied employment.

14 45. First Advantage's regular policy and practice is also to not provide
15 job applicants like Mr. Doe and the Class and California Class members with
16 reports showing any adverse information First Advantage reports about them
17 from the FBI database. Nor does First Advantage provide any means for
18 consumers to request a copy of this information from the consumer's First
19 Advantage file or dispute mistakes. Indeed, many consumers may simply not
20 receive the jobs they applied for without ever knowing the reason why.

21 46. Given First Advantage's substantial market share and the fact that
22 Americans hold an average of 12.3 jobs from age 18 to age 52,⁷ there is a
23

24 ⁷ U.S. Department of Labor, Bureau of Labor Statistics, *Number of Jobs, Labor*
25 *Market Experience, and Earnings Growth: Results from a National Longitudinal*
26 *Survey* (August 22, 2019), available at [http://](http://https://www.bls.gov/news.release/pdf/nlsoy.pdf)
27 <https://www.bls.gov/news.release/pdf/nlsoy.pdf> (last accessed January 22,
28 2021).

1 substantial likelihood that Mr. Doe and the Class members will be similarly
2 injured in the future.

3 47. In order to redress these injuries, Mr. Doe now sues to enforce not
4 only his own rights, but also those of thousands of others who have similar claims
5 but may not even be aware that their rights are being violated.

6 **D. The Classes**

7 48. Plaintiff brings this action on his own behalf and as a class action
8 pursuant to Federal Rule of Civil Procedure 23 for the following Classes:

9 **Class:**

10 All natural persons in the United States (including all
11 territories and other political subdivisions of the United
12 States) who (1) were the subject of First Advantage FBI
13 fingerprint reports (2) provided to employers from five
14 years preceding the filing of this Complaint to the present
15 and (3) whose reports contained any record of a criminal
16 arrest, charge, information, indictment, or other item of
17 adverse criminal history information other than an actual
conviction of a crime, which antedated the report by more
than seven years.

18 **Disclosure Class:**

19 All natural persons in the United States (including all
20 territories and other political subdivisions of the United
21 States) who (1) requested a disclosure of their files from
22 First Advantage from five years preceding the filing of this
23 Complaint to the present and (2) who were the subject of
24 First Advantage FBI fingerprint reports provided to
employers during the two-year period preceding the date
of the file request.

25 **California Class:**

26 All natural persons in California who (1) were the subject
27 of First Advantage FBI fingerprint reports (2) provided to

1 employers from four years preceding the filing of this
2 Complaint to the present and (3) whose reports contained
3 any record of a criminal arrest, charge, information,
4 indictment, conviction, or other item of adverse criminal
5 history information, which antedated the report by more
6 than seven years.

7 **California Disclosure Class:**

8 All natural persons in California who (1) requested a
9 disclosure of their files from First Advantage from four
10 years preceding the filing of this Complaint to the present
11 and (2) who were the subject of First Advantage FBI
12 fingerprint reports provided to employers during the three-
13 year period preceding the date of the file request.

14 Excluded from the Class are any persons regarding whom First Advantage's
15 customers certified that that they were being considered for positions with annual
16 salaries of \$75,000 or more. Excluded from the Class, Disclosure Class, California
17 Class, and California Disclosure Class are any employees, officers, or directors of
18 First Advantage, any attorneys appearing in this case, and any judges assigned to
19 hear this case as well as their immediate family and staff.

20 **49. Ascertainability.** The Class, Disclosure Class, California Class, and
21 California Disclosure Class are ascertainable in that they comprise individuals
22 who can be identified by reference to purely objective criteria, including
23 information from First Advantage's business records. Notice may be mailed to
24 members of the Class, Disclosure Class, California Class, and California
25 Disclosure Class using the information in First Advantage's files, as updated
26 through the National Change of Address Registry and other commercially
27 available means.

28 **50. Numerosity. Fed. R. Civ. P. 23(a)(1).** The Class, Disclosure Class,
California Class, and California Disclosure Class are so numerous that joinder of
all members is impracticable. Although the precise number of Class, Disclosure

1 Class, California Class, and California Disclosure Class members is not currently
2 known, First Advantage's large size shows that the Classes likely consist of at
3 least thousands of persons and, therefore, it would be impracticable to bring all
4 these persons before the Court as individual plaintiffs.

5 **51. Typicality. Fed. R. Civ. P. 23(a)(3).** Plaintiff's claims are typical of
6 each member of the Class, Disclosure Class, California Class, and California
7 Disclosure Class he seeks to represent. These claims all arise from the same
8 operative facts and are based on the same legal theories.

9 **52. Adequacy of Representation. Fed. R. Civ. P. 23(a)(4).** Plaintiff will
10 fairly and adequately protect the interests of the Class, Disclosure Class,
11 California Class, and California Disclosure Class members. Plaintiff is
12 committed to vigorously litigating this matter, and his interests are aligned with
13 those of the Class, Disclosure Class, California Class, and California Disclosure
14 Class. Plaintiff has retained counsel experienced in handling FCRA/ICRAA and
15 consumer class actions.

16 **53. Commonality and Predominance. Fed. R. Civ. P. 23(a)(2) & (b)(3).**
17 Common issues of law and fact exist regarding Plaintiff's and the Class,
18 Disclosure Class, California Class, and California Disclosure Class members'
19 claims and predominate over any individual issues. These common issues
20 include:

- 21 (a) whether any communication of information bearing on
22 a consumer's credit worthiness, credit standing, credit
23 capacity, character, general reputation, personal
24 characteristics, or mode of living by First Advantage
25 for employment purposes is a "consumer report," as
26 defined in 15 U.S.C. § 1681a;
- 26 (b) whether First Advantage assembled information on
27 consumers from the FBI fingerprint database for the

1 purpose of furnishing consumer reports to third
2 parties;

3 (c) whether First Advantage evaluated information from
4 the FBI fingerprint database for the purpose of
5 furnishing consumer reports to third parties;

6 (d) whether First Advantage engaged in “collecting,
7 assembling, evaluating, compiling, reporting,
8 transmitting, transferring, or communicating
9 information concerning consumers for the purposes of
10 furnishing investigative consumer reports to third
11 parties,” CAL. CIV. CODE § 1786.2;

12 (e) whether First Advantage reported adverse criminal
13 history information regarding Class members that
14 antedated the reports by more than seven years;

15 (f) whether First Advantage violated the duty to clearly
16 and accurately disclose upon request all of the
17 information in consumers’ files;

18 (g) whether First Advantage acted willfully and/or
19 negligently;

20 (h) whether injunctive relief is appropriate; and

21 (i) the appropriate measure of statutory and/or punitive
22 damages.

23 **54. Superiority. Fed. R. Civ. P. 23(b)(3).** A class action is a superior
24 method for the fair and efficient adjudication of this controversy. The interests of
25 Class, Disclosure Class, California Class, and California Disclosure Class
26 members in individually controlling the prosecution of separate claims against
27 First Advantage is small, as the maximum statutory damages recoverable by any
28 one Class member is limited to \$1,000 under the FCRA. Management of the
Class’s claims in a single proceeding will avoid inconsistent judgments and result

1 in a more efficient use of judicial resources than resolving these same issues in
2 many individual actions.

3 **55. Injunctive Relief Appropriate to the Class. Fed. R. Civ. P. 23(b)(2).**

4 This action should also be maintained as a class action because First Advantage
5 has acted or refused to act on grounds that apply generally to the Class and
6 California Class, so that final injunctive relief or corresponding declaratory relief
7 is appropriate respecting the Class and California Class as a whole.

8 **VI. CLAIMS**

9 **COUNT ONE – FAIR CREDIT REPORTING ACT,**
10 **15 U.S.C. § 1681c(a)**

11 *(On behalf of the Class)*

12 56. Plaintiff incorporates the allegations set forth in the preceding
13 paragraphs by reference here.

14 57. First Advantage is a “Consumer Reporting Agency” under the FCRA.
15 First Advantage regularly assembles information on consumers for the purpose
16 of furnishing consumer reports to third parties. First Advantage furnished
17 consumer reports to the prospective employers of Plaintiff and Class members
18 for employment purposes.

19 58. First Advantage willfully violated 15 U.S.C. § 1681c(a) by including
20 adverse information that antedated the reports by more than seven years, other
21 than records of a criminal conviction, in the consumer reports of Plaintiff and
22 other Class members. First Advantage acted in deliberate or reckless disregard of
23 its obligations and/or the rights of Plaintiff and the Class members.

24 59. As a result of First Advantage’s willful violation of the FCRA, Plaintiff
25 and the Class members have suffered and continue to suffer injury and damages.
26 Plaintiff and the Class members seek all relief to which they are entitled,
27 including, but not limited to, statutory damages of not less than \$100 and not

1 more than \$1,000, punitive damages, actual damages, appropriate equitable
2 relief, attorneys’ fees, and costs.

3 **COUNT TWO – FAIR CREDIT REPORTING ACT,**
4 **15 U.S.C. § 1681g**

5 *(On behalf of the Disclosure Class)*

6 60. Plaintiff incorporates the allegations set forth in the preceding
7 paragraphs by reference here.

8 61. First Advantage is a “Consumer Reporting Agency” under the FCRA.
9 First Advantage regularly assembles information on consumers for the purpose
10 of furnishing consumer reports to third parties. First Advantage furnished
11 consumer reports to the prospective employers of Plaintiff and the Disclosure
12 Class members for employment purposes.

13 62. Nevertheless, First Advantage has a policy and procedure of not
14 including the results of FBI fingerprint database searches in response to consumer
15 requests for disclosure of the information in their files.

16 63. Plaintiff and members of the Disclosure Class requested copies of their
17 complete First Advantage files.

18 64. In violation of 15 U.S.C. § 1681g, First Advantage failed to clearly and
19 accurately disclose to Plaintiff and the Disclosure Class members upon their
20 request all information in the consumers’ files.

21 65. First Advantage’s willful violation of 15 U.S.C. § 1681g subjects it to
22 actual damages, statutory damages of between \$100 and \$1,000 per violation,
23 punitive damages, reasonable attorneys’ fees, and costs. 15 U.S.C. § 1681n(a).

**COUNT THREE – INVESTIGATIVE CONSUMER
REPORTING AGENCIES ACT, CAL. CIV. CODE
§ 1786.18**

(On behalf of the California Class)

66. Plaintiff incorporates the allegations set forth in the preceding paragraphs by reference here.

67. The background check reports on Plaintiff and the California Class members that Defendant First Advantage provided to third parties are “investigative consumer reports” as defined under California Civil Code § 1786.2(c), because the information that First Advantage obtained from the FBI and reported in turn to third parties bears on “a consumer’s character, general reputation, personal characteristics, or mode of living.”

68. First Advantage is an “Investigative Consumer Reporting Agency” under the ICRAA because it collects, assembles, evaluates, compiles, reports, transmits, transfers, or communicates consumer information for the purpose of providing an investigative consumer report to third parties for a fee.

69. First Advantage willfully violated CAL. CIV. CODE § 1786.18 by including records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime, that antedated the reports by more than seven years in the investigative consumer reports of Plaintiff and other California Class members. First Advantage’s violation was in conscious reckless disregard of Plaintiff’s and the California Class members’ rights under the statute.

70. Defendant First Advantage’s violation entitles Plaintiff to the statutory damage of \$10,000, along with reasonable attorneys’ fees and costs. CAL. CIV. CODE § 1786.50.

71. Defendant First Advantage’s willful violation also subjects it to punitive damages. CAL. CIV. CODE § 1786.50.

**COUNT FOUR – INVESTIGATIVE CONSUMER
REPORTING AGENCIES ACT, CAL. CIV. CODE
§§ 1786.10 & 1785.15**

(On behalf of the California Disclosure Class)

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72. Plaintiff incorporates the allegations set forth in the preceding paragraphs by reference here.

73. The background check report on Plaintiff that Defendant First Advantage provided to Wells Fargo containing the results of the FBI fingerprint database search is an “investigative consumer report” as defined under California Civil Code § 1786.2(c), because the information that First Advantage obtained from the FBI and reported to Wells Fargo bears on “a consumer’s character, general reputation, personal characteristics, or mode of living.”

74. First Advantage is an “Investigative Consumer Reporting Agency” under the ICRAA because it collects, assembles, evaluates, compiles, reports, transmits, transfers, or communicates consumer information for the purpose of providing an investigative consumer report to third parties for a fee.

75. Nevertheless, First Advantage has a policy and procedure of not including the results of FBI fingerprint database searches in response to consumer requests for inspection of their files.

76. Plaintiff and members of the California Disclosure Class requested inspection of their First Advantage files.

77. In violation of CAL. CIV. CODE §§ 1786.10 & 1786.15, First Advantage failed to disclose all files First Advantage maintained regarding Plaintiff and the California Disclosure Class members.

78. Defendant First Advantage’s violation entitles Plaintiff to the statutory damage of \$10,000, along with reasonable attorneys’ fees and costs. CAL. CIV. CODE § 1786.50.

1 79. Defendant First Advantage’s willful violation also subjects it to
2 punitive damages. CAL. CIV. CODE § 1786.50.

3 **COUNT FIVE – UNFAIR COMPETITION LAW,**
4 **CAL. BUS. & PROF. CODE § 17200, *et seq.***

5 ***(On behalf of the California Class and***
6 ***California Disclosure Class)***

7 80. Plaintiff incorporates the allegations set forth in the preceding
8 paragraphs by reference here.

9 81. California Business and Professions Code § 17200 *et seq.* prohibits
10 acts of unfair competition, which include any “unlawful ... business act or
11 practice.”

12 82. As more fully described above and incorporated here by reference,
13 Defendant First Advantage’s acts and practices are unlawful as they violate
14 ICRAA, CAL. CIV. CODE § 1786.18.

15 83. The acts and practices engaged in by Defendant First Advantage as
16 alleged herein harmed Plaintiff and, on information and belief, harmed other
17 California Class members. On information and belief, First Advantage’s ICRAA
18 violations are ongoing.

19 84. Defendant First Advantage’s misconduct, as alleged herein, gave and
20 continues to give First Advantage a competitive advantage because, in part,
21 Defendant does not have to bear the cost of complying with the statutory
22 requirements regulating the screening out of out-of-date criminal history
23 information.

24 85. As a direct and proximate result of Defendant First Advantage’s
25 misconduct, First Advantage has prospered and benefited from the sales of its
26 non-compliant background-check reports on Plaintiff and California Class
27

1 members and should be enjoined from continuing such practices under CAL. BUS.
2 & PROF. CODE § 17200 and related sections.

3 **VII. CONCLUSION AND PRAYER**

4 WHEREFORE, Plaintiff, individually and on behalf the Class and California
5 Class, respectfully requests that the Court enter judgment ordering relief as follows:

- 6 (a) certifying the Class, Disclosure Class, California Class,
7 and California Disclosure Class pursuant to Federal Rule
8 of Civil Procedure 23(b)(3) and/or (b)(2);
- 9 (b) appointing Plaintiff to represent the Class, Disclosure
10 Class, California Class, and California Disclosure Class;
- 11 (c) appointing Plaintiff's counsel as Class Counsel;
- 12 (d) declaring that First Advantage is financially responsible
13 for notifying all Class, Disclosure Class, California Class,
14 and California Disclosure Class members about this suit;
- 15 (e) enjoining First Advantage from further violations of the
16 Fair Credit Reporting Act and Investigative Consumer
Reporting Agencies Act;
- 17 (f) finding that First Advantage's Fair Credit Reporting Act
18 and Investigative Consumer Reporting Agencies Act
19 violations were willful;
- 20 (g) awarding Plaintiff and the Class, Disclosure Class,
21 California Class, and California Disclosure Class
22 members actual damages, punitive damages,
23 consequential damages, and statutory damages pursuant to
24 15 U.S.C. § 1681n and CAL. CIV. CODE § 1786.50;
- 25 (h) awarding Plaintiff and the Class, Disclosure Class,
26 California Class, and California Disclosure Class
27 members reasonable attorneys' fees, expenses, and costs
28 of suit, pursuant to 15 U.S.C. § 1681o(a)(2), CAL. CIV.
CODE § 1786.50, the common fund theory, or any other
applicable statute, theory, or contract;

- 1 (i) granting leave to amend the Complaint to conform to the
evidence produced at trial; and
- 2
- 3 (j) awarding such other relief as this Court may deem just and
proper.
- 4

5 **VIII. DEMAND FOR JURY TRIAL**

6 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial
7 by jury on all claims so triable.

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9 Dated: April 2, 2021

Respectfully submitted,

10 /s/ Michael A. Caddell

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges First Advantage Included Outdated Criminal History Info in Background Reports](#)
