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2 Susan Rotkis
3 AZBAR 032866
4 Price Law Group, APC
5 2290 East Speedway Blvd.
6 Tucson, Arizona 85719
7 T: (818) 600-5506
8 F: (818) 600-5406
9 E: susan@pricelawgroup.com
10 *Attorneys for Plaintiff*

11
12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF ARIZONA**
14

15 John Fralish, *on behalf of himself*
16 *and those similarly situated,*

17 Plaintiff,

18 v.

19 Early Warning Services, LLC,

20 Defendant.

Case No.:

**Class Action Complaint and
Demand for Jury Trial for
Violations of Fair Credit Reporting
Act, 15 U.S.C. § 1681, et seq.**

21 Plaintiff John Fralish (“Plaintiff”), on behalf of himself and all similarly situated
22 individuals, by counsel, brings this case as a class action based on violations of the Fair
23 Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.* against Defendant Early Warning
24 Services, LLC (“EWS” or “Defendant”).

25 **INTRODUCTION**

26 1. This is an action for actual, statutory and punitive damages, costs, and
27 attorneys’ fees brought pursuant to 15 U.S.C. §§ 1681, *et seq.*, the Fair Credit Reporting
28 Act (“FCRA”).

29 2. This cause arises from EWS’s unlawful conduct by withholding Plaintiff’s
30 consumer reports from him, despite his valid written requests supported by the identifying
31 information required by EWS, and contrary to the requirements set forth pursuant to 15
32 U.S.C. § 1681g.

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2 3. The FCRA imposes several important procedural protections regarding
3 acquisition of consumer reports, which are designed, in part, to ensure that consumer may
4 properly examine their consumer files for accuracy and so that a consumer reporting
5 agency can ensure it is only providing consumer files and report information to the
6 consumers about whom the report or file relates.

7 4. Within two years prior to the filing of this complaint, Plaintiff properly
8 requested his consumer file in writing on three separate occasions with supporting
9 documentation required by EWS to prove his identity.

10 5. In response to each request, EWS refused to promptly provide a copy of his
11 file or report unless he filled out a particular form.

12 **JURISDICTION AND VENUE**

13 6. This Court has federal question jurisdiction because this action arises out of
14 violations of federal law. 28 U.S.C. § 1331, 15 U.S.C. § 1681p (FCRA) (permitting actions
15 to enforce liability in an appropriate United States District Court).

16 7. Venue in the District of Arizona is proper pursuant to 28 U.S.C. § 1391
17 because Defendants regularly transact business within this District, is otherwise subject to
18 personal jurisdiction in this District, and a substantial part of the events giving rise to the
19 claims occurred in this District and Division.

20 **PARTIES**

21 8. Plaintiff John Fralish is a natural person residing in St. Joseph County,
22 Indiana.

23 9. Plaintiff is a *consumer* as defined by the FCRA, 15 U.S.C. §1681a(c).

24 10. Defendant EWS is a *consumer reporting agency*, as defined in 15 U.S.C. §
25 1681a(f). On information and belief, EWS is regularly engaged in the business of
26 assembling, evaluating, and disbursing information concerning consumers for the purpose
27 of furnishing *consumer reports*, as defined in 15 U.S.C. § 1681a(d), to third parties, such
28 as banks, credit unions, or merchants.

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2 11. EWS's principal place of business is located at 16552 N. 90th Street,
3 Scottsdale, Arizona 85260, and its registered agent in Arizona is Cogency Global Inc.,
4 located at 300 W. Clarendon Avenue, Suite 240, Phoenix, Arizona 85013.

5 12. Upon information and belief, EWS disburses consumer reports to third
6 parties for monetary compensation.

7 13. EWS describes itself "bank-owned" and sells consumer reports to over 2500
8 financial institutions about consumers applying for financial products.

9 14. At all relevant times, Defendant acted through duly authorized agents,
10 employees, officers, members, directors, heirs, successors, assigns, principals, trustees,
11 sureties, subrogees, representatives, and insurers.

12 15. Defendant's violations were not made in good faith conduct of their business,
13 but were made intentionally or in reckless disregard of the Plaintiff's rights because
14 Defendant did not maintain procedures reasonably adapted to avoid any such violation.

15 **FACTUAL ALLEGATIONS**

16 16. Under the FCRA, Consumers may request copies of their Early Warning
17 Consumer files and reports from EWS, and EWS must provide all information to the
18 consumers who do so as long as the consumer provides appropriate identification.

19 17. The Plaintiff had suffered the adverse action of one or more of his bank and
20 credit accounts being closed without receiving a legitimate explanation from the financial
21 institution.

22 18. The Plaintiff was justifiably worried that the closure of his accounts was
23 based on false or derogatory consumer information shared about him among financial
24 institutions and EWS.

25 19. The Plaintiff had a right to learn the true reason for the account closures,
26 whether false, derogatory and misleading information was in his file and/or had been
27 shared in an EWS consumer report.

28 20. On or about June 2020, Plaintiff mailed a letter by certified mail, to EWS. In

1 this letter, Plaintiff requested a copy of his Early Warning Consumer Report (the “First
2 Request”).

3 21. Within the First Request, Plaintiff included his name, address, phone
4 number, social security number, date of birth, and Indiana driver’s license number for
5 identification purposes. Plaintiff also included a photocopy of the front and back of his
6 Indiana driver’s license. Plaintiff signed the request.

7 22. Instead of providing the Plaintiff with the information he is entitled to and
8 which he had requested, EWS mailed a non-responsive boilerplate letter to Plaintiff, dated
9 June 24, 2020, and postmarked on June 29, 2020 (the “First Response”).

10 23. EWS’s First Response letter requested that Plaintiff provide “Identifying
11 Information Needed” to “help us verify your identify,” and enclosed a form entitled
12 “Consumer Identification and Certification Form” for Plaintiff to complete.

13 24. The Consumer Identification and Certification Form specifically requests
14 that the Consumer provide certain identifying information including the Consumer’s name,
15 name(s) previously used, mailing address, phone number(s), social security number, date
16 of birth, and a copy of one form of approved identification, such as a Driver’s License, ID
17 Card, or U.S. Passport.

18 25. Plaintiff’s First Request included the exact identifying information as was
19 requested within the Consumer Identification and Certification Form, where Plaintiff
20 included his name, address, phone number, social security number, date of birth, and a
21 photocopy of his driver’s license.

22 26. Upon information and belief, the Consumer Identification and Certification
23 Form is designed to delay and avoid providing consumers with the information that they
24 request instead of promptly responding to the request when the consumer supplies proof of
25 his or her identity.

26 27. On or about July 23, 2020, Plaintiff sent a second letter by certified mail
27 requesting a copy of his Early Warning Consumer Report (the “Second Request”).
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2 28. In the Second Request, Plaintiff included his name, address, phone number,
3 social security number, date of birth, and his Indiana driver's license number for
4 identification purposes. Plaintiff also included a photocopy of the front and back of his
5 Indiana driver's license, as well as an Indiana Notary Acknowledgement for further
6 identification purposes. He signed the Second Request.

7 29. EWS responded with the same kind of non-responsive, boilerplate letter,
8 dated July 29, 2020, and postmarked on July 30, 2020 (the "Second Response").

9 30. EWS's Second Response requested that Plaintiff provide certain "Identifying
10 Information Needed" to "help us verify your identify," and enclosed a Consumer
11 Identification and Certification Form.

12 31. The Consumer Identification and Certification Form specifically requests
13 that a Consumer provide identifying information including the Consumer's name, name(s)
14 previously used, mailing address, phone number(s), social security number, date of birth,
15 and a copy of one form of identification, such as a Driver's License, ID Card, or Passport.

16 32. Again, just like the First Request, Plaintiff's Second Request also included
17 the exact same identifying information EWS required in its Consumer Identification and
18 Certification Form. The Plaintiff's Second Request included his name, address, phone
19 number, social security number, date of birth, a copy of his Driver's License, and his
20 signature.

21 33. On or about February 13, 2021, Plaintiff sent a third letter requesting a copy
22 of his Early Warning Consumer Report (the "Third Request").

23 34. In Plaintiff's Third Request, Plaintiff included his name, address, phone
24 number, social security number, date of birth, and his Indiana driver's license number for
25 identification purposes. Plaintiff also included a photocopy of the identification page of his
26 U.S. Passport. Furthermore, Plaintiff included a copy of his Mishawaka Utilities bill and a
27 copy of his Santander checking account statement for the 1/1/21 – 1/31/21 statement
28 period.

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2 35. Defendant EWS responded with the same or substantially similar, non-
3 responsive, boilerplate letter, dated February 23, 2021 (the “Third Response”).

4 36. EWS’s Third Response requested that Plaintiff provide certain “Identifying
5 Information Needed” to “help us verify your identify,” and enclosed a Consumer
6 Identification and Certification Form for Plaintiff to complete.

7 37. The Consumer Identification and Certification Form specifically requests
8 that the Consumer provide certain identifying information including the Consumer’s name,
9 name(s) previously used, mailing address, phone number(s), social security number, date
10 of birth, and a copy of one form of identification, such as a Driver’s License, ID Card, or
11 Passport.

12 38. Once again, the Plaintiff’s Third Request included all of the exact identifying
13 information and proof of identity that EWS requested within the Consumer Identification
14 and Certification Form. In Plaintiff’s Third Request, he included his name, address, phone
15 number, social security number, date of birth, driver’s license number, and a photocopy of
16 his U.S. Passport.

17 39. Upon information and belief, when Plaintiff sent EWS his requests for a copy
18 of his consumer file, EWS merely responded with - an automatic boilerplate letter asking
19 for the identifying information that Plaintiff already provided to EWS.

20 40. Plaintiff’s requests were in writing, sent to Defendant at an address where it
21 received such requests, were accompanied by a copy of Plaintiff’s government-issued
22 identification such as an unexpired driver’s license or unexpired U.S. Passport, and other
23 proof of address and identity.

24 41. The information provided by Plaintiff in each of his requests was not only
25 the information requested by EWS in its Consumer Identification and Certification Form,
26 but it is objectively compliant with the “proper identification” requirement of 15 U.S.C. §
27 1681h(a)(1).

28 42. The FCRA states that upon furnishing proper identification, the CRA “shall,

1 upon request, clearly and accurately disclose to the consumer” all information in the
2 consumer’s file at the time of the request. There is no authorization in the FCRA that allows
3 a CRA such as EWS to refuse to comply with the “shall, upon request” provision of 15
4 U.S.C. § 1681g(a)(1) unless a consumer completes a form.

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6 43. Despite receiving multiple, valid requests for the consumer report, all
7 containing government-issued identification and proof of address, Defendant refused to
8 provide Plaintiff with his consumer file.

9
10 44. In all of Defendant’s communications, it failed to include any of the
11 mandatory disclosures pertaining to Plaintiff’s FCRA rights, as mandated by 15 U.S.C. §
12 1681g(a).

13
14 45. Upon information and belief, Defendant obtained or had available substantial
15 written material that informed it of its duties under the FCRA. Indeed, EWS has been
16 previously sued for its violations of its obligations to comply the FCRA’s disclosure
17 requirements.

18
19 46. Despite knowing of these legal obligations, Defendant acted consciously and
20 willfully in breaching its known duties and depriving Plaintiff of his rights under the
21 FCRA.

22
23 47. Plaintiff alleges that Defendant’s conduct as alleged herein was consistent
24 with its established and systematically executed procedures and policies of noncompliance
25 with the FCRA all designed to make more money for itself while depriving consumers of
26 their rights to consumer information that EWS has and disburses about them.

27
28 48. It is especially egregious where, as here, the Plaintiff was trying to find out
the reasons that he had suffered closure of his bank and credit accounts and whether there
was information in his consumer report that led other financial institutions to blackball him
and refuse to extend credit or open a deposit account.

49. Plaintiff was deprived of his right to review the sources of any derogatory or
false information about him so that he could dispute any false or misleading information.

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2 50. To this day, Plaintiff has not been able to review and correct any derogatory,
3 false or misleading information in his EWS report or file.

4 51. Defendant's willful conduct entitles Plaintiff and all persons similarly
5 situated to recover punitive damages, statutory damages, actual damages, and costs and
6 attorney's fees for its violations of the FCRA. 15 U.S.C. § 1681n.

7 52. In the alternative, Defendant negligently failed to comply with the Fair Credit
8 Reporting Act in refusing to supply Plaintiff and similarly situated consumers their
9 consumer file and report information continually sending boilerplate responses to Plaintiff
10 without assessing the Plaintiff's valid request for his consumer file in violation of 15 U.S.C.
11 § 1681o.

12 53. In the alternative, Defendant negligently failed to comply with the Fair Credit
13 Reporting Act by sending boilerplate responses to putative class members who were also
14 requesting a copy of their individual consumer files in violation of 15 U.S.C. § 1681o.

15 54. The number of individuals whose valid request for their individual consumer
16 files that were denied to them by Defendant is likely numerous.

17 **COUNT I**
18 **CLASS CLAIM FOR VIOLATION OF THE FAIR CREDIT REPORTING ACT**
19 **15 U.S.C. § 1681g**

20 55. Plaintiff relies on the facts described in the foregoing paragraphs to support
21 the claims described further in this Complaint.

22 56. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff brings this claim for
23 himself and on behalf of a class initially defined as:

24 **a. § 1681g(a)(1) Failure to Disclose Class**

25 All natural persons residing in the United States: (1) who, within five
26 years prior to the filing of the Complaint through the date of the class
27 certification; (2) requested from Defendant a disclosure of their
28 consumer file or reports; (3) which request contained appropriate
identifying information; and (4) where Defendants failed to provide

1
2 the information required to be disclosed by 15 U.S.C. 1681g unless
3 the consumer first completed a special form.

4 The Plaintiff is a member of this class.

5 57. **Numerosity: Fed. R. Civ. P. 23(a)(1).** EWS is a large, “bank-owned”
6 consumer reporting agency that has 2500 financial institutions as its customers. Because
7 of EWS’s size, number of customers, and likely number of consumers about whom it
8 collects, maintains and sells consumer information, the number of class members likely
9 exceeds 50 individuals. Therefore, Plaintiff alleges that the class members are so numerous
10 that joinder of all is impractical. The names and addresses of the class members are
11 identifiable through the internal business records maintained by Defendants, including
12 email addresses, phone numbers, and postal addresses. The class members may be notified
13 of the pendency of this action through mail and/or email.

14 58. **Predominance of Common Questions of Law or Fact: Fed. R. Civ. P.**
15 **23(a)(2).** Common questions of both law and fact exist as to all members of each putative
16 class. The common factual and legal issues predominate over any potential individual
17 issues. The questions that predominate over questions affecting only individual class
18 members are: (a) whether Plaintiff and each putative class member sent valid requests for
19 mandatory disclosures under 15 U.S.C. § 1681g, (b) whether Defendant thereafter failed
20 to provide such mandatory disclosures; and (c) whether Defendant’s violations were
21 negligent, reckless, knowing or intentionally committed in conscious disregard for the
22 rights of the Plaintiff and putative class members.

23 59. **Typicality. Fed. R. Civ. P. 26(a)(3).** Plaintiff’s claims are typical of the
24 claims of each putative class member. Although the claims of the Plaintiff and class
25 members do not need to be identical, in this case, the Plaintiff’s claims are identical to the
26 putative class members. Defendant failed to provide Plaintiff and each class member with
27 statutorily mandated disclosures upon request in direct violation of the FCRA. The
28 Plaintiff’s claim and the class member claims are based on the same facts and legal theories.

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2 60. **Adequacy of Representation. Fed. R. Civ. P. 23(b)(3).** Both Plaintiff and
3 his counsel are adequate to represent the interests of the class. Plaintiff's interests are
4 coincidental, and are not antagonistic, to the interest of the class members. Plaintiff has
5 retained experienced counsel who are competent in both class action litigation and the Fair
6 Credit Reporting Act. Neither Plaintiff nor counsel have interests that prevent vigorous
7 prosecution of the case on behalf of the class.

8 61. **Superiority. Fed. R. Civ. P 23(b)(3).** Questions of law and fact common to
9 the Class members predominate over question affecting only individual members, and a
10 class action is superior to other available methods for fair and efficient adjudication of the
11 controversy. The damages sought by each member are such that individual prosecution
12 would prove burdensome and expensive. It would be next to impossible for all class
13 members to each find a lawyer and afford individual litigation. Individualized litigation
14 presents the possibility for inconsistent outcomes and contradictory judgments, increases
15 delay and expense to all parties and to the courts. By contrast, the class action device will
16 result in substantial benefits to the litigants and the Court by allowing the Court to resolve
17 numerous individual claims based on a single set of proofs.

18 62. Plaintiff explicitly requested information to which he was statutorily entitled
19 to receive from Defendant several separate times.

20 63. Each time, Plaintiff fully complied with the requirements of 15 U.S.C. 1681g
21 and 1681h in providing adequate identification exactly as requested by EWS.

22 64. Defendant failed to comply with the FCRA in responding to Plaintiff, failing
23 to include the disclosures mandated by 15 U.S.C. 1681g and furthermore making the
24 decision to waste Plaintiff's time by sending him boilerplate responses requesting the same
25 identifying information that Plaintiff had already included in each of his requests.

26 65. Defendant's decision to refuse Plaintiff the mandatory information was either
27 intentional, or Defendant cared so little about the duties owed under the FCRA that their
28 conduct was carried out with reckless disregard, which gives rise to a willful violation,

1 rendering Defendant liable pursuant to 15 U.S.C. § 1681n.

2 66. In the alternative, Defendant negligently failed to comply with the Fair Credit
3 Reporting Act in automatically sending boilerplate responses without first looking at the
4 Plaintiff's and class member's valid requests, in violation of 15 U.S.C. § 1681o.

5 67. Defendant caused Plaintiff and all members of the putative class to be injured
6 by depriving them of their common law and statutory right to privacy and to be free from
7 defamation, thus they have a common law right to know the information in their consumer
8 reports. This deprivation is a harm which the FCRA was enacted to prevent. This harm
9 caused Plaintiff damages in the form of informational injury, lost time, lost money, anxiety,
10 frustration, confusion, mental pain and anguish, and embarrassment.

11 68. Plaintiff and the class are entitled to recover statutory and punitive damages,
12 costs and attorneys' fees in an amount to be determined by the Court pursuant to 15 U.S.C.
13 § 1681n & 1681o.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, the Plaintiff and the putative class members demand that this
16 Court enter judgement against Defendant Early Warning Services, LLC for the following:

- 17 A. Certifying the Class as described above pursuant to Fed. R. Civ. P.23(b)(3);
18 B. Declaration that their FCRA rights were violated by Defendant;
19 C. Judgment for statutory and punitive damages against Defendant;
20 D. Judgment for attorneys' fees and costs, pre-judgment and post-judgment
21 interest at the legal rate; and
22 E. Such other relief the Court deems just, equitable, and proper.

23 **JURY DEMAND**

24 Pursuant to Federal Rule of Civil Procedure 38, Plaintiff hereby demands a trial by
25 jury of all issues triable by jury.

26 /s/ Susan Rotkis
27 Susan Rotkis, AZ Bar # 032866
28 PRICE LAW GROUP, APC

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2290 East Speedway Boulevard
Tucson, AZ 85719
T: (818) 600-5506
E: susan@pricelawgroup.com
Attorney for Plaintiff

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Early Warning Services Unlawfully Refused to Provide Consumer Report, Class Action Alleges](#)
