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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**KELLIE GADOMSKI,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

PATELCO CREDIT UNION,

Defendant.

Case No.:

**CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF FOR VIOLATIONS OF:**

- 1.) THE FAIR CREDIT REPORTING ACT, 15 U.S.C. § 1681, ET SEQ.;**
- 2.) THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT, CAL. CIV. CODE § 1788, ET SEQ.; AND**
- 3.) CALIFORNIA CONSUMER CREDIT REPORTING AGENCIES ACT, CAL. CIV. CODE § 1785.1, ET SEQ.**

JURY TRIAL DEMANDED

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1 INTRODUCTION

2 1. The United States Congress has found the banking system is dependent upon
3 fair and accurate credit reporting. Inaccurate credit reports directly impair the
4 efficiency of the banking system, and unfair credit reporting methods
5 undermine the public confidence, which is essential to the continued
6 functioning of the banking system. Congress enacted the Fair Credit Reporting
7 Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”), to insure fair and accurate reporting,
8 promote efficiency in the banking system, and protect consumer privacy. The
9 FCRA seeks to ensure consumer reporting agencies exercise their grave
10 responsibilities with fairness, impartiality, and a respect for the consumer’s
11 right to privacy because consumer reporting agencies have assumed such a vital
12 role in assembling and evaluating consumer credit and other information on
13 consumers. The FCRA also imposes duties on the sources that provide credit
14 information to credit reporting agencies, called “furnishers.”

15 2. The United States Congress has also found abundant evidence of the use of
16 abusive, deceptive, and unfair debt collection practices by many debt collectors,
17 and has determined that abusive debt collection practices contribute to the
18 number of personal bankruptcies, to marital instability, to the loss of jobs, and
19 to invasions of individual privacy. Congress wrote the Fair Debt Collection
20 Practices Act, (“FDCPA”) 15 U.S.C. § 1692 *et seq.*, to eliminate abusive debt
21 collection practices by debt collectors, to ensure that those debt collectors who
22 refrain from using abusive debt collection practices are not competitively
23 disadvantaged, and to promote consistent state action to protect consumers
24 against debt collection abuses.

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- 1 3. The California legislature has determined that the banking and credit system
2 and grantors of credit to consumers are dependent upon the collection of just
3 and owing debts and that unfair or deceptive collection practices undermine the
4 public confidence that is essential to the continued functioning of the banking
5 and credit system and sound extensions of credit to consumers. The Legislature
6 has further determined that there is a need to ensure that debt collectors exercise
7 this responsibility with fairness, honesty and due regard for the debtor's rights
8 and that debt collectors must be prohibited from engaging in unfair or deceptive
9 acts or practices.
- 10 4. There exists today in the United States a pervasive and fundamental
11 misunderstanding about the long-term impact filing a consumer bankruptcy has
12 on a consumer's credit worthiness. Specifically, many consumers believe that
13 because a bankruptcy can be reported on their credit report for ten years their
14 credit worthiness will be ruined for the same length of time. This is not true.
- 15 5. The *majority* of consumer debtors who actually file consumer bankruptcy do so
16 to raise their credit score and remedy their poor credit worthiness.
- 17 6. It is entirely possible for consumer debtors to have over a 700 FICO Score
18 within as little as 12 months after filing a consumer bankruptcy (Chapter 7 or
19 Chapter 13).
- 20 7. Creditors and lending institutions are aware of the misconception that filing a
21 consumer bankruptcy destroys a consumer's credit worthiness for ten years.
- 22 8. In an effort to perpetuate the aforementioned bankruptcy myth, creditors
23 intentionally and routinely ignore credit reporting industry standards for
24 accurately reporting bankruptcies and debts included in those bankruptcies in
25 an effort to keep consumers' credit scores low and their interest rates high.
- 26 9. Creditors know that by deviating from recognized credit reporting standards
27 consumers will have difficulty raising their credit scores and improving their
28 credit worthiness.

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- 1 10. Plaintiff **KELLIE GADOMSKI** (“Plaintiff”), through her attorneys, brings
2 this Class Action Complaint for damages, injunctive relief, and any other
3 available legal or equitable remedies on behalf of herself and on behalf of all
4 others similarly situated (the “Class” or “Class Members”), resulting from the
5 illegal actions of Defendant **PATELCO CREDIT UNION** (“Defendant” or
6 “PCU”), in negligently or intentionally systematically reporting negative and
7 inaccurate information on consumers’ credit reports, as that term is defined by
8 15 U.S.C. § 1681a(g), failing to properly investigate disputes concerning the
9 inaccurate data PCU is reporting in consumers’ credit files, and failing to
10 correct such, which PCU knew or should have known was erroneous and which
11 caused Plaintiff and the Class damages.
- 12 11. Plaintiff makes these allegations on information and belief, with the exception
13 of allegations that pertain to Plaintiff, or to Plaintiff’s counsel, which Plaintiff
14 alleges on personal knowledge.
- 15 12. While many violations are described below with specificity, this Complaint
16 alleges violations of the statutes cited in their entirety.
- 17 13. Any violations by PCU were knowing and intentional, and PCU did not
18 maintain procedures reasonably adapted to avoid any such violation.
- 19
- 20 14. Unless otherwise indicated, the use of PCU in this Complaint includes all
21 agents, employees, officers, members, directors, heirs, successors, assigns,
22 principals, trustees, sureties, subrogees, representatives, and insurers of PCU.
- 23 15. Unless otherwise stated, all the conduct engaged in by PCU occurred in
24 California.

25 JURISDICTION AND VENUE

- 26 16. Jurisdiction of this Court arises pursuant to 28 U.S.C. §1331; 15 U.S.C. §
27 1681p; and, 28 U.S.C. § 1367 for supplemental state claims.

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- 1 17. This action arises out of PCU’s violations of (i) the Fair Credit Reporting Act
2 (“FCRA”), 15 U.S.C. §§ 1681 et seq. (“FCRA”); the Rosenthal Fair Debt
3 Collection Practices Act, Cal. Civ. Code §§ 1788, et seq. (“RFDCPA”); and,
4 (iii) the California Consumer Credit Reporting Agencies Act, Cal. Civ. Code
5 §§ 1785.1 et seq. (“CCCRAA”).
- 6 18. The Court has personal jurisdiction over Defendant as Defendant conducts
7 business within the State of California and has purposefully availed themselves
8 of the laws and markets of the State of California and this district.
- 9 19. Venue is proper in the United States District Court, Eastern District of
10 California pursuant to 28 U.S.C. § 1391 for the following reasons: (i) Plaintiff
11 resides in the County of San Joaquin, State of California, which is within this
12 judicial district; (ii) the conduct complained of herein occurred within this
13 judicial district; and, (iii) PCU conducted business within this judicial district
14 at all times relevant.

15 **PARTIES**

- 16 20. Plaintiff is a natural person who resides in the City of Tracy, County of San
17 Joaquin, in the State of California. In addition, Plaintiff is a “consumer” as
18 that term is defined by: Cal. Civ. Code § 1785.3(b) and 15 U.S.C. § 1681a(c).
- 19 21. Plaintiff is also a natural person from whom a debt collector sought to collect
20 a consumer debt which was due and owing or alleged to be due and owing
21 from Plaintiff, and is a “debtor” as that term is defined by Cal. Civ. Code §
22 1788.2(h).
- 23 22. Defendant PCU is a corporation, whose primary corporate address is in the
24 County of San Francisco, State of California.
- 25 23. PCU is a furnisher of information as contemplated by FCRA sections 1681s-
26 2(a) & (b), which regularly and in the ordinary course of business furnishes
27 information to one or more consumer reporting agencies (“CRAs”), about
28 consumer transactions or experiences with any consumer.

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1 24. Plaintiff is informed and believes, and thereon alleges, that PCU, in the ordinary
2 course of business, regularly, on behalf of themselves or others, engages in
3 “debt collection” as that term is defined by California Civil Code § 1788.2(b),
4 and is therefore a “debt collector” as that term is defined by California Civil
5 Code § 1788.2(c).

6 25. Trans Union, LLC (“TransUnion”), Equifax Information Services LLC
7 (“Equifax”), and Experian Information Solutions, Inc. (“Experian”) are each a
8 “consumer reporting agency” (“CRAs”) as that term is defined by 15 U.S.C. §
9 1681a(f).

10 26. This case involves money, property or their equivalent, due or owing or alleged
11 to be due or owing from a natural person by reason of a consumer credit
12 transaction. As such, this action arises out of a “consumer debt” and “consumer
13 credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

14 27. The causes of action herein also pertain to Plaintiff’s “consumer credit report”
15 as that term is defined by Cal. Civ. Code § 1785.3(d), in that inaccurate
16 representations of Plaintiff’s credit worthiness, credit standing, and credit
17 capacity were made via written, oral, or other communication of information
18 by a consumer credit reporting agency, which is used or is expected to be used,
19 or collected in whole or in part, for the purposes of serving as a factor in
20 establishing Plaintiff’s eligibility for, among other things, credit to be used
21 primarily for personal, family, household and employment purposes.

22 **GENERAL CREDIT REPORTING INDUSTRY ALLEGATIONS**

23 28. Plaintiff alleges that PCU is familiar with credit reporting industry standards
24 and subscribes thereto.

25 29. Plaintiff alleges that PCU understands that deviation from credit reporting
26 industry standards can and often does result in denial of credit, higher interest
27 rates, and prompts those making credit decisions to draw a more negative
28 inference from the reported data than if PCU reported in accordance with the

1 recognized industry standard.

2 30. Plaintiff alleges that all actions alleged herein by PCU was done knowingly,
3 intentionally, and in reckless disregard for credit reporting industry standards
4 in an attempt to purposefully undermine Plaintiff's ability to reorganize and
5 repair Plaintiff's FICO Score.

6 31. In the alternative, Plaintiff alleges that PCU's actions were the result of reckless
7 policies and procedures that inevitably led to inaccurate, misleading, or
8 incomplete credit reporting.

9 **a. FICO**

10 32. FICO Inc. ("FICO") is a leading analytics software company with its principal
11 headquarters located in San Jose California. FICO has over 130 patents related
12 to their analytics and decision management technology, and regularly uses
13 mathematical algorithms to predict consumer behavior including credit risk.

14 33. The FICO Score has become the standard measure of consumer credit risk in
15 the United States and is used in ninety percent of lending decisions.

16 34. A FICO score consists of a three-digit number summarizing a consumer's credit
17 risk or likelihood to repay a loan. FICO periodically updates its scoring models
18 resulting in multiple FICO Score versions.

19 35. Base FICO Scores range from 300 to 850, while industry-specific FICO Scores
20 range from 250-900. A higher FICO Score demonstrates lower credit risk or
21 less likelihood of default.

22 36. Different lenders use different versions of FICO Scores when evaluating a
23 consumer's credit worthiness.

24 37. There are 28 FICO Scores that are commonly used by lenders.

25 38. A consumer's FICO Score is calculated based solely on information in
26 consumer credit reports maintained at CRAs.

27 39. The three largest CRAs are Equifax, Experian, and TransUnion.
28

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- 1 40. FICO does not control what information is provided on a consumer's credit
2 report. Instead, the scoring models or algorithms are based on the premise that
3 information provided by the CRAs is accurate and complies with credit
4 reporting industry standards.
- 5 41. There are five key factors that a FICO Score considers: 1) Payment history; 2)
6 Amount of Debt; 3) Length of Credit History; 4) New Credit; and 5) Credit
7 Mix.
- 8 42. Each of the five factors is weighted differently by FICO.
- 9 43. 35% of a consumer's FICO Score relates to payment history, 30% relates to the
10 amount of debt, 15% relates to the length of credit history, 10% relates to new
11 credit, and the last 10% relates to a consumer's credit mix or the different types
12 of debts reported.
- 13 44. Payment history refers to whether a consumer has paid their bills in the past, on
14 time, late or missed payments. The more severe, recent, and frequent the late
15 payment information, the greater the impact on a FICO Score. Public record
16 items such as bankruptcy, foreclosure, judgments, and wage garnishments are
17 also considered part of a consumer's payment history.
- 18 45. In factoring the severity of delinquent payments, a FICO Score considers how
19 late the payment continues to be, how much is owed, how recently this
20 occurred, and how many delinquent accounts exist.
- 21 46. Once a delinquent account has been remedied the longer the account stays
22 current the more a consumer's FICO Score should increase.
- 23 47. FICO Scores are entirely dependent upon information provided by Data
24 Furnishers ("DFs") to CRAs.
- 25 48. The FICO scoring formula treats both Chapter 7 and Chapter 13 Bankruptcies
26 similarly in terms of their impact on one's FICO Score. Specifically, both
27 "Chapters" have the same level of severity with respect to their FICO Score and
28 for both, FICO uses the FILING DATE to determine how long ago the

1 bankruptcy took place.

2 **b. Metro 2**

3 49. The Consumer Data Industry Association (“CDIA”) is an international trade
4 association representing the consumer credit, mortgage reporting, employment
5 and tenant screening and collection service industries.

6 50. The credit reporting industry has adopted a standard electronic data reporting
7 format called the Metro 2 format. The Metro 2 format was developed by the
8 CDIA in an effort to universally report debts in a particular manner that is
9 understood to be the most accurate way in which to report a debt. Specifically,
10 Metro 2 format was designed to allow reporting of the most accurate and
11 complete information on consumers’ credit history.

12 51. The Consumer Data Industry Association’s (“CDIA”) Metro 2 format is *the*
13 credit industry’s standardized, objective reporting format used by furnishers to
14 provide information about consumer accounts to consumer reporting agencies.¹

15 52. Therefore, the credit reporting industry at large depends upon Metro 2 and the
16 CDIA’s recommendations for reporting debt accurately.

17 53. The CDIA is *the* expert on accurate credit reporting. In support of this
18 allegation, Plaintiff avers the following:

- 19 a. The CDIA offers an FCRA certificate program for all CRAs
- 20 b. The CDIA offers an FCRA awareness program for all CRAs.
- 21 c. The CDIA offers an FCRA certificate program for DFs.
- 22 d. The CDIA offers an FCRA awareness program for DFs.
- 23 e. The CDIA offers a Metro 2 Learning system to provide detailed
24 instructions on the use of Metro 2 format to ensure understanding of the
25 reporting guidelines for each field of the Metro 2 Format as well as the
26 relationship between multiple fields.

27 ¹ See Consumer Financial Protection Bureau, Key Dimensions and Processes in
28 the U.S. Credit Reporting System, available at:
http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf

1 f. The CDIA hosts workshops developed and authorized by Equifax,
2 Experian, Innovis, and TransUnion.

3 g. The CDIA developed a credit reporting resource guide for accurately
4 reporting credit.

5 54. The CDIA's Metro 2 is accepted by all CRAs.

6 55. The credit reporting accepted industry standards for reporting Metro 2
7 accurately are found in the CDIA's Credit Reporting Resource Guide
8 ("CRRG").

9 56. The CRRG outlines the industry standards for most accurately reporting debts
10 using Metro 2.

11 57. The CRRG is not readily available to the public. It can be purchased online for
12 approximately \$229.45.ml

13 58. Even if a buyer is ready and able to pay for the CRRG, the CDIA will NOT
14 grant access to the guide unless the buyer represents an organization included
15 in the Metro 2 Access Policy.

16 59. When FICO calculates credit scores the algorithms use Metro 2 information
17 based on industry standards established by the CDIA.

18 60. The algorithms used by FICO in determining a consumer's credit score are
19 premised on the Metro 2 data received comports with the CDIA's
20 recommendations for accurate credit reporting.

21 61. If the Metro 2 data received by FICO deviates from industry standards an
22 inaccurate or incorrect FICO Score results. If the resulting FICO Score is lower,
23 a consumer will be considered a higher credit risk, resulting in less favorable
24 lending terms.

25 62. E-OSCAR is the web based Metro 2 compliant system developed by the CRAs
26 that enables DFs and CRAs to create and respond to consumer credit disputes.

27 63. When a consumer sends a dispute letter to a CRA, the CRA then sends an
28 automated credit dispute verification ("ACDV") via e-Oscar to the DF.

- 1 64. The ACDV contains within it Metro 2 codes next to certain data fields
- 2 associated with a credit file, e.g. “Account Type - 07” (07 in Metro 2 refers to
- 3 a Charge Account).
- 4 65. When a consumer files bankruptcy, certain credit reporting industry standards
- 5 exist.
- 6 66. Certain Metro 2 data is regularly expected and calculated by FICO when
- 7 determining a consumer’s credit worthiness.
- 8 67. The Consumer Information Indicator (“CII”) is a critical *status* field in the
- 9 Metro 2 Format that indicates a special condition that applies to a specific
- 10 consumer.
- 11 68. Under Metro 2, the CII must be reported only on the consumer to whom the
- 12 information applies.
- 13 69. It is the credit reporting industry standard to report a very specific CII upon the
- 14 filing of a consumer bankruptcy.
- 15 70. In the consumer bankruptcy context, CII Metro Code “A” denotes that a petition
- 16 for Chapter 7 has been filed, is active, but no discharge has been entered.
- 17 71. Such a reporting alert any potential lender that the account is no longer in a
- 18 collectable status, but is rather being handled by a Chapter 7 trustee.
- 19 72. The CII Metro 2 Code “E” denotes that a Chapter 7 bankruptcy has been
- 20 discharged.
- 21 73. The CII field is a critical field for consumers and directly relates to and impacts
- 22 a consumer’s credit worthiness.
- 23 74. The lack of a CII reported status makes it appear that a consumer has not
- 24 addressed outstanding debt obligations through the bankruptcy process.
- 25 75. The lack of an accurate reporting of the CII field also suggests that creditors are
- 26 free to collect against a consumer per their pre-bankruptcy contract terms,
- 27 which is inaccurate and materially misleading due to the effect of the
- 28 bankruptcy orders, such as the automatic stay of section 362 of Title 11, that

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1 exist to prevent post-petition collection activity, and the discharge order which
2 enjoins post-discharge collection upon any *in personam* liability for a claim.

3 76. Therefore, failure to report the correct CII status indicator will prompt those
4 making credit decisions to draw a more negative inference regarding a
5 consumer's credit worthiness.

6 77. Under the FCRA, a bankruptcy can be reported for ten years.

7 78. The ten-year rule for reporting runs from the date the bankruptcy was *filed*.

8 79. A consumer's FICO Score is directly related to the date on which a petition is
9 filed and acknowledged.

10 80. The more time that has passed since the filing of the bankruptcy, the less
11 negative impact the bankruptcy will have on a consumer's FICO Score.

12 81. Failure to reference the bankruptcy filing and/or discharge in the CII field
13 and/or the correct petition date shall result in a lower FICO Score resulting in
14 those making credit decisions to draw a more negative inference regarding a
15 consumer's credit worthiness.

16 82. As explained in more detail below, PCU failed to reference the bankruptcy
17 filing and discharge in the CII field in Plaintiff's Credit Reports in respect to a
18 consumer credit account successfully discharged through Plaintiff's Chapter 7
19 Bankruptcy.

20 83. Instead, PCU reported that the *current* (pay) status of the debts were "Charged
21 Off", i.e. still legally collectable, as opposed to "Discharged in Bankruptcy."

22 84. The "Charge Off" status reported by PCU, as opposed to the correct status of
23 "Discharged in Bankruptcy", inaccurately and misleadingly suggested that
24 Plaintiff still has a personal legal liability to pay the alleged Debt, which is the
25 opposite effect of receiving a Chapter 7 bankruptcy discharge.
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27
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GENERAL CLASS ACTION ALLEGATIONS

- 1
- 2 85. Plaintiff is among many thousands of persons in the United States who have
- 3 filed bankruptcies pursuant to Chapters 7 and 13 of the U.S. Bankruptcy Code
- 4 and who have been granted orders of discharge by a U.S. Bankruptcy Court.
- 5 Under federal bankruptcy laws, such an order fully and completely discharges
- 6 all statutorily dischargeable debts incurred prior to the filing of bankruptcies,
- 7 except for those that have been: (1) reaffirmed by the debtor in a reaffirmation
- 8 agreement; or (2) successfully challenged as non-dischargeable by one of the
- 9 creditors in a related adversary proceeding. Plaintiff and the Class Members are
- 10 persons for whom the debts at issue have been discharged through bankruptcy.
- 11 86. Defendant is a debt collector regularly engaged in the business of collecting
- 12 consumer debts from consumers.
- 13 87. In the ordinary course of business, PCU's debtors who are enduring financial
- 14 hardship fall behind on their payments of PCU credit accounts. Prior to the
- 15 filing of any personal bankruptcies, PCU, its collection agencies and delinquent
- 16 debt companies that purchase PCU's debt, act to collect these past due debts by
- 17 threatening in dunning letters to place a "charge off" or other similar "past due"
- 18 notations on the debtors' credit reports. Said letters threaten to ruin the debtors'
- 19 credit unless they pay the past due debt. PCU, its debt collectors and delinquent
- 20 debt companies that purchase PCU's debt also act to collect these past due debts
- 21 by promising in dunning letters to remove the "charge off" or other "past due"
- 22 notations on the debtors' credit reports to show that the past due debts have
- 23 been paid if the debts are paid.
- 24 88. In the ordinary course of business, PCU issues reports to credit reporting
- 25 agencies as to the current status of debts incurred by individuals whom PCU
- 26 has extended credit. It is also an entity which regularly and, in the ordinary
- 27 course of business, furnishes information to one of more credit reporting
- 28 agencies about its transactions and experiences with consumers.

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1 89. PCU has knowledge of when its past due debts are discharged because it
2 receives a discharge notice from the U.S. Bankruptcy Court.

3 90. Despite the fact that PCU has received notice of the discharge of each Class
4 Member's debt to PCU, PCU has a deliberate policy of not notifying credit
5 reporting agencies that debts formerly owing to PCU are no longer "charged
6 off" or currently still due and owing because they have been discharged in
7 bankruptcy. As a result of PCU's refusal to make such updates to credit
8 reporting agencies, debts that have been discharged in bankruptcy are instead
9 listed on Class Members' credit reports as "past due" and/or "charged off."
10 These notations clearly indicate to potential creditors, employers, or other third
11 parties that a Class Member still owes a debt and that debt may be subject to
12 collection. These notations therefore adversely affect a Class Member's ability
13 to obtain credit or employment and have the inherent coercive effect of inducing
14 Class Members to make payment on the debt.

15 91. Moreover, PCU's failure and further refusal to update credit report tradelines
16 for many thousands of consumers to reflect that their debts were, in fact,
17 discharged in Bankruptcy, as opposed to reporting a *current* (pay) status of
18 "charged off" or "past due", runs afoul to Section 727 of the Bankruptcy Code
19 and *the* primary purpose of the protection offered by the Bankruptcy Code—
20 the discharge of a debt. *Marrama v. Citizens Bank of Massachusetts*, 549 U.S.
21 365, 367 (2007).

22 92. Many debtors whose debts have been discharged in bankruptcy have advised
23 PCU, via an FCRA dispute, of its failure to update the information on their
24 credit reports to show that their debts have been discharged through bankruptcy.
25 Said debtors have requested that PCU remove the "charged off" statuses from
26 their credit reports. PCU has refused to do so. Upon information and belief,
27 PCU has a deliberate policy of refusing the debtors' requests to remove
28 "charged off" and other similar "past due" *current* (pay) statuses from the PCU

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1 debts that were transferred/sold prior to the filing of the bankruptcy from the
2 debtors' credit reports. As a result, the credit reports of these individuals and of
3 all Class Members incorrectly show their indebtedness to PCU to be legally
4 collectible.

5 93. Upon information and belief, even in response to notices made pursuant to the
6 FCRA §1681i(a)(2), from Class Members that information contained in their
7 credit reports was inaccurate, PCU has refused to correct erroneous credit
8 information despite its affirmative duty to do so under FCRA §1681s-2(b).

9 94. Upon information and belief, PCU also received many requests from the CRAs
10 that PCU verify that the debt owed by Plaintiff and Class Members were
11 discharged in bankruptcy, to which PCU responded to the debts were still due
12 and owing, despite PCU's knowledge that such debts have in fact been
13 discharged in bankruptcy.

14 95. PCU knew that the existence of such inaccurate information in the Class
15 Members' credit reports would damage the Class Members' credit ratings and
16 their ability to obtain new credit, a lease, a mortgage or employment, all of
17 which may be essential to reestablishing their life after going through
18 bankruptcy.

19 96. PCU has chosen not to advise the CRAs of the fact that the Class Members'
20 debts have been discharged because PCU continues to receive payment either
21 directly or indirectly on discharged debts. This results from the fact that Class
22 Members, in order to obtain favorable credit or credit at all, often feel it
23 necessary to pay off the debt despite its discharge in order to remove the
24 inaccurate information from their credit reports.

25 97. This belief is intentionally reinforced by PCU itself when Class Members
26 contact PCU asking PCU to correct the erroneous credit information. Not only
27 does PCU refuse to make such correction, but it advises Class Members that,
28 so long as the discharged debt remains unpaid, the charge off will remain on

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1 their credit report for at least seven years. Thus, when a Class Member needs to
2 rent a car, obtain employment or rent an apartment, or other similar transactions,
3 and they are advised by PCU that it will not remove the erroneous information
4 unless they pay the debt, Class Members often pay that debt despite the fact that
5 it has been discharged in bankruptcy. Thus, PCU knows that it is obtaining
6 repayment on debts that have been discharged in bankruptcy.

7 98. Class Members often believe that they must pay the debt in order to remove it
8 from the credit reports because they are often advised prior to bankruptcy by
9 PCU and collection agencies that, if their debt is marked as charged off, it will
10 dramatically affect their credit rating and will severely impact their ability to
11 receive credit in the future.

12 99. PCU has adopted a systematic pattern and practice of failing and refusing to
13 update credit information with regard to debts discharged in bankruptcy
14 because it sells those debts and profits by the sale. PCU knows that if the credit
15 information is not updated, then many Class Members will feel compelled to
16 pay off the debt even though it is discharged in bankruptcy. Thus, buyers of
17 PCU debt know, and are willing to pay more for the fact that, they will be able
18 to collect portions of PCU debt despite the discharge of that debt in bankruptcy.

19 100. Upon information and belief, PCU receives a percentage fee of the proceeds of
20 each debt repaid to PCU and forwarded to the buyer of PCU debt. PCU
21 therefore has a clear economic incentive to violate the CCCRAA; RFDCPA;
22 and, FCRA.

23 101. Buyers of PCU consumer accounts that have been “charged off” and sold by
24 PCU prior to a bankruptcy being filed know that, post-sale, PCU will refuse to
25 correct the credit report to reflect the consumer’s bankruptcy discharge, which
26 means that the debtor will feel significant added pressure to obtain a “clean”
27 report by paying on a discharged debt.

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1 102. Although credit report tradelines list the PCU debt as “sold” or “transferred”,
2 they fail to identify the purchaser. Therefore, as far as the debtor is concerned,
3 the only creditor to approach to correct the credit reports is PCU, which, as a
4 matter of policy, refuses to correct them (while, in addition, retaining a
5 percentage of payments sent to PCU by the debtor, as opposed to PCU’s
6 undisclosed buyer). This highlight further the perniciousness of PCU’s
7 systematic approach in refusing to correct such reports.

8 103. Reporting a debt to a credit bureau is a “powerful tool designed, in part, to
9 wrench compliance with payment terms.” *Rivera v. Bank One*, 145 F.R.D. 614,
10 620 (1993).

11 104. PCU’s actions constitute a violation of 11 U.S.C. § 524(a)(2), which provides
12 that a discharge in bankruptcy operates as an injunction against the
13 commencement or continuation of an action, the employment or process, or an
14 act, to collect, recover or offset any such debt as a personal liability of the
15 debtor.

16 105. Accordingly, PCU violated the FCRA and CCCRAA by failing to comport its
17 credit reporting with the terms of the Bankruptcy Discharge under §§ 727 and
18 524(a)(2) of the Bankruptcy Code, which ultimately intentionally assisted in the
19 collection of discharged debt by not correcting the Class Members’ credit
20 reports to reflect that the debt has, in fact, been discharged.

21 106. PCU’s reporting was inaccurate and materially misleading due to the effect of
22 Plaintiff’s successful Bankruptcy Discharge, because:
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1 "The failure to update a credit report to show that a debt has been
2 discharged is also a violation of the discharge injunction if shown
3 to be an attempt to collect the debt. Because debtors often feel
4 compelled to pay debts listed in credit reports when entering into
5 large transactions, such as a home purchase, it should not be
6 difficult to show that the creditor, by leaving discharged debts on
7 a credit report, despite failed attempts to have the creditor update
8 the report, is attempting to collect the debt."²

9 107. PCU's conduct is in bad faith, is vexatious and oppressive and is done with full
10 knowledge that it is in violation of the law.

11 108. As a result of a major class action settlement, the CRAs have agreed to revise
12 their procedures to report all pre-bankruptcy debts as discharged, unless
13 furnishers provide information showing that a debt was excludable from
14 discharge. *White v. Experian Info Solutions, Inc.*, Case No. CV 05-01070 (C.D.
15 Cal. Aug. 19, 2008) (lead case number).

16 109. Therefore, even the CRAs have acknowledged that the accurate and proper way
17 to report the status of all pre-bankruptcy debts, like Plaintiff's and Class
18 Members' debts, following successful Bankruptcy discharges of the debt, is
19 "Discharged in Bankruptcy" (or the equivalent).

20 110. Despite this reform, there continue to be problems with improper reporting of
21 discharged debts, including allegations that creditors have deliberately engaged
22 in the practice to in order to pressure debtors to pay off discharged debts, and
23 even refusals to correct the reporting after being requested to do so by the
24 debtor.³

25 _____
26 ² 4 Collier on Bankruptcy, paragraph 524.02[2][B] (16th Ed. 3 2013), at page 524-
27 23.

28 ³ See, e.g., *Belton v. GE Capital Consumer Lending (In re Belton)*, 2014 WL 5819586 (Bankr. S.D.N.Y. Nov. 10, 2014). See also Jessica Silver Greenberg, Debts Canceled by Bankruptcy Still Mar Consumer Credit Scores, N.Y. Times, Nov. 12, 2014. *Keil v. Equifax Info. Serv.*, 2014 WL 4477610 (N.D. Cal. Sept. 10, 2014) (in response to debtor's dispute, credit union stated its policy was to report all charged-off debts as unpaid, irrespective of bankruptcy discharge); *In re Haynes*, 2014 WL

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1 111. Over the past several years, thousands of consumers have written dispute letters
2 to the CRAs and PCU requesting that PCU correct their erroneous reporting of
3 discharged debts as due and owing because those debts had, in fact, been
4 discharged in bankruptcy. Upon information and belief, in response to such
5 disputes, PCU frequently continued to falsely report those debts as due and
6 owing, despite the fact that the bankruptcy court records show that the debts at
7 issue had been discharged.

8 112. PCU's persistent refusal to provide updated credit information to the credit
9 reporting agencies that Class Members' past due PCU's debts are no longer
10 "charged off" or "past due" because they have been discharged in bankruptcy
11 is knowing and willful and constitutes violations of the CCCRAA and FCRA.

12 113. As a direct consequence of PCU's grossly inadequate and inaccurate initial
13 reporting and investigation practices and procedures, Plaintiff and the Class
14 have been effectively denied the fresh start to which they are legally entitled
15 under the U.S. Bankruptcy Code.

16 114. In each case described above, Plaintiff and the Class members' legally protected
17 interests in being able to apply for credit based on accurate information have
18 been violated, placing them at an increased risk of not being able to obtain
19 valuable credit and in many cases adversely affecting their credit ratings. PCU's
20 publication of false and potentially damaging credit information concerning the
21 Plaintiff and the Class violates their statutorily mandated rights and has caused
22 them particularized and concrete harm.

23 **ALLEGATIONS AS TO PLAINTIFF'S BANKRUPTCY**

24 115. At all times relevant to this matter, Plaintiff was an individual residing within
25 the State of California.

26
27 _____
28 3608891 (Bankr. S.D.N.Y. July 22, 2014) (debtor alleged that creditor refused his
request to remove charge-off notation from account discharged in bankruptcy).

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1 116. Furthermore, PCU conducted business within the State of California at all times
2 relevant.

3 117. On or about April 23, 2013, Plaintiff filed for a no asset Chapter 7 bankruptcy
4 in the United States Bankruptcy Court for the Eastern District of California in
5 Fresno. Plaintiff's case was assigned Case Number 13-bk-25655 (the
6 "Bankruptcy").⁴

7 118. The obligations ("Debt") to PCU, which was a consumer credit card account,
8 were scheduled and included in the Bankruptcy.

9 119. PCU, a creditor, received notice of the Bankruptcy filing on or about April 23,
10 2014 through a Court Certificate of Mailing with Service by the Bankruptcy
11 Noticing Center.

12 120. On or about August 12, 2013, Plaintiff received a successful bankruptcy
13 discharge.

14 121. PCU received notice of the Bankruptcy discharge on or about August 12, 2013
15 through a Court Certificate of Mailing with Service by the Bankruptcy Noticing
16 Center.

17 122. PCU did not file any successful proceedings to declare their Debt "non
18 dischargeable" pursuant to 11 U.S.C. § 523 *et seq.*

19 123. PCU also did not request or receive relief from the "automatic stay" codified at
20 11 U.S.C. §362 *et seq.* while the Plaintiff's Bankruptcy was pending to pursue
21 the Plaintiff for any of the underlying Debts in their pre-bankruptcy form.

22 124. Accordingly, the Debt to PCU was discharged through the Bankruptcy.

23 125. Further, while the automatic stay was in effect during the Bankruptcy, it was
24 illegal and inaccurate for PCU to report any post-Bankruptcy derogatory
25 collection information, which was inconsistent with the Orders entered by the
26 Bankruptcy Court, including the initial Petition for Relief for Bankruptcy

27 ⁴ The District Court has discretion to take judicial notice of the documents
28 electronically filed in the bankruptcy case. *See, Atwood v. Chase Manhattan Mortg.
Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (B.A.P. 9th Cir.2003).

1 protection, the automatic stay, and the Discharge Order (collectively the
2 “Bankruptcy Orders”).

3 126. Reporting credit information to a CRA is a collection activity.

4 127. PCU either reported or caused to be reported inaccurate information after the
5 Bankruptcy was filed *and* discharged, in the form of reporting the *current*
6 account (pay) status of the Debt as being “charged off”, as opposed to
7 “Discharged in Bankruptcy” (or the equivalent).

8 128. The derogatory information reported by PCU after the Bankruptcy was
9 discharged indicates to potential creditors that the Debt was somehow not
10 discharged in the Bankruptcy and Plaintiff was being actively delinquent in
11 respect to PCU’s Debt, which is inaccurate and materially misleading reporting.

12 129. PCU’s attempt to collect upon their respective Debt by reporting post-
13 Bankruptcy derogatory information on Plaintiff’s Equifax and TransUnion
14 Credit Reports, which is a collection activity, was therefore inaccurate and
15 prohibited by the Bankruptcy discharge.

16 130. PCU’s reporting of post-Bankruptcy derogatory information was also
17 inaccurate because a default on an account included in a bankruptcy can occur
18 no later than the bankruptcy filing date, at which point the accounts included in
19 the Bankruptcy were no longer collectable due to the effect of the automatic
20 stay and ultimate discharge.

21 131. Thus, by reporting post-Bankruptcy derogatory information, PCU effectively
22 reported: (1) Plaintiff was being financially irresponsible by failing to pay the
23 debt *after* the Bankruptcy was discharged; and (2) that Plaintiff’s Debt was
24 more recently subject to collection than it really was, which is inaccurate and
25 misleading under the RFDCPA; FCRA and CCCRAA.

26 132. PCU’s attempt to collect upon the Debt by reporting post-Bankruptcy
27 derogatory information on Plaintiff’s Credit Reports, which is a collection
28 activity, was therefore inaccurate and materially misleading.

1 133. PCU’s reporting of post-Bankruptcy derogatory information was also
2 inaccurate and materially misleading because PCU continued reporting
3 information based on PCU’s pre-bankruptcy contract terms with the Plaintiff,
4 which were no longer enforceable upon the filing of the Bankruptcy and
5 ultimate successful discharge, thereby rendering the disputed information
6 inaccurate and materially misleading.

7 134. For decades, courts have recognized that when a bankruptcy discharge is
8 granted, the order relates back to the date of filing the petition and relieves the
9 debtor from personal liability as of this date.

10 135. This is because when a debtor voluntarily files for bankruptcy, the petition
11 constitutes an “order for relief” under the particular chapter the debtor wishes
12 to proceed per Bankruptcy Code 11 U.S.C. § 301(a)-(b).

13 136. When a debtor such as Plaintiff files a chapter 7 petition, Section 727(b) of the
14 Bankruptcy Code provides that the discharge, when entered, applies to “all
15 debts that arose *before the date of the order for relief.*” In other words, the
16 discharge relieves the debtor of personal liability for all prepetition debts.

17 137. Thus, in relation to the FCRA and CCCRAA, the discharge order rendered the
18 information reported by PCU following the bankruptcy discharge inaccurate
19 and patently misleading because the discharge order relieved Plaintiff from any
20 personal obligation to pay PCU as of the date of filing the Bankruptcy
21 petition—April 24, 2013.

22 138. Moreover, the derogatory, delinquent information furnished by PCU following
23 the Bankruptcy Discharge was inaccurate and misleading because end users,
24 including potential creditors, may interpret the reported information to mean
25 that Plaintiff incurred new debt during the Bankruptcy or that Plaintiff
26 reaffirmed the Debt with PCU notwithstanding the discharge.

27 139. However, Plaintiff did not incur new debt with PCU during the pendency of the
28 Bankruptcy or reaffirm the Debt in the Bankruptcy.

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1 140. Further, the Consumer Data Industry Association’s (“CDIA”) Metro 2 format
2 is the credit industry’s standardized, objective reporting format used by
3 furnishers to provide information about consumer accounts to consumer
4 reporting agencies.⁵

5 141. Upon information and belief, Plaintiff alleges that PCU voluntarily chose to
6 subscribe to the Metro 2 format in their credit reporting practices to credit
7 reporting agencies.

8 142. Reasonable entities, including potential creditors, would have thus expected
9 PCU to report in compliance with the Metro 2 format.

10 143. Upon information and belief, PCU has adopted the CDIA’s Metro 2 CRRG as
11 its standard instruction book in respect to credit reporting, which instructs
12 furnishers to update the CII indicator status of accounts discharged in Chapter
13 7 Bankruptcies with an “E” notation, i.e. “Discharged in Bankruptcy.”

14 144. Potential creditors familiar with Metro 2 standard credit reporting instructions
15 would be misled by seeing PCU reporting a “Charged Off” *current* (pay) status
16 in respect to the Debt, as opposed to “Discharged in Bankruptcy”, to believe
17 that Plaintiff incurred new debt during the Bankruptcy or that Plaintiff
18 reaffirmed the debt notwithstanding the discharge, because PCU’s reporting
19 deviated from Metro 2 reporting instructions in this respect.

20 145. However, Plaintiff did not incur new debt with PCU during the Bankruptcy
21 proceeding or reaffirm the Debt in the Bankruptcy.

22 146. Accordingly, by reporting this post-Bankruptcy derogatory information, PCU
23 did not comply with the Metro 2 format.

24 ///

25 ///

26 ///

27 ⁵ See Consumer Financial Protection Bureau, Key Dimensions and Processes in
28 the U.S. Credit Reporting System, available at:
http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf

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1 147. Furnishers utilizing the Metro 2 reporting standard correctly is crucial because
2 the Metro 2 system creates a uniform standard for the meaning given to each
3 field provided, which fosters consistency in how furnishers formulate data to
4 report to the credit bureaus, which ultimately leads to objective credit
5 evaluations and scores.

6 148. Moreover, the FCRA imposes no requirement or mandate that a furnisher
7 provide any information to a CRA. Indeed, the CDIA has repeatedly noted that
8 the act of furnishing information to a CRA is completely voluntary.⁶

9 149. Pursuant to the Voluntary Undertakings Doctrine, found in the Second
10 Restatement of Torts (Section 323 and 324), and as adopted by California, an
11 undertaking once begun, which induces reliance of others for their own safety,
12 cannot be discontinued without reasonable care to avoid increasing the risk.

13 150. The voluntary nature of credit reporting induces the affirmative duty by
14 furnishers, pursuant to the CCCRAA and FCRA, to report accurately to the
15 CRAs.

16 151. Credit reporting is done for the protection of other creditors extending offers of
17 credit and for debtors being accurately portrayed to potential creditors.

18 152. Accordingly, once PCU made the voluntary decision to report Plaintiff's
19 accounts, PCU was required to report accurately to the CRAs.

20 153. Plaintiff alleges that PCU did not comply with the Metro 2 reporting standards
21 in respect to Plaintiff's account and reported inaccurately by failing to comport
22 their reporting practices with the implication of Plaintiff's filing of the
23 Bankruptcy and ultimate discharge.

24
25 _____
26 ⁶ See, e.g., Credit Reports: Consumers' Ability to Dispute and Change Inaccurate
27 Information: Hearing Before the H. Comm. on Fin. Serv., 110 Congr. 50 (2007)
28 (written statement of Stuart Pratt, President and CEO, Consumer Data Industry
Association) ("not a single one of the more than 18,000 data furnishers has to provide
a single record of data to our members").

1 154. Accordingly, PCU’s non-compliance with the Metro 2 reporting standards
2 constitutes an inaccurate or misleading statement under the FCRA and
3 CCCRAA, because a furnisher that fails to comply with the uniform and
4 objective Metro 2 reporting standards compromises the credit reporting system.

5 155. Deviation from credit reporting industry standards can and often does result in
6 denial of credit, higher interest rates, and prompts those making credit decisions
7 to draw a more negative inference from the reported data than if the furnisher
8 reported in accordance with the recognized industry standard.

9 156. Because credit reporting is a voluntary act, PCU’s deviation from the Metro 2
10 format instructions—the industry standard and PCU’s chosen method of
11 reporting—constitutes an inaccurate or misleading statement, because those
12 making credit decisions, who would expect that furnishers like PCU would
13 adhere to the Metro 2 format, would view a *current* account status of “Charged
14 Off” after a bankruptcy is discharged more negatively than “Discharged in
15 Bankruptcy.”

16 157. PCU’s failure to adhere to the Metro 2 format would prompt those making
17 credit decisions to draw a more negative inference from PCU’s reporting of a
18 *current* (pay) status of “Charged Off” than if PCU accurately reported
19 “Discharged through Bankruptcy” because a “Charged Off” account status
20 indicates that a debt is still legally collectable and a legally owed obligation.

21 158. Plaintiff subsequently learned that PCU’s reported post-Bankruptcy derogatory
22 credit information regarding the obligations on Plaintiff’s credit reports, thereby
23 causing erroneous and negative credit information in Plaintiff’s credit files and
24 damaging Plaintiff’s creditworthiness.

25 159. As a direct and proximate result of result of PCU’s willful and untrue
26 communications, Plaintiff and the Class have suffered actual damages
27 including, but not limited to, reviewing credit reports, sending dispute letters,
28 attorney’s fees, and such further expenses in an amount to be determined at trial.

1 160. As a further direct and proximate result of PCU's acts stated herein, Plaintiff
2 and the Class incurred pain and suffering, was impeded in seeking necessary
3 products and services from vendors, suffered humiliation, embarrassment,
4 anxiety, loss of sleep, emotional distress, and defamation of character.

5 **THE PCU INACCURATE CREDIT INFORMATION**

6 **RE: ACCOUNT NO: 1800...**

7 161. In an Experian Credit Report dated November 13, 2016, PCU reported the
8 following inaccurate, derogatory information for the above-referenced account
9 number, as of July 2015:

- 10 • Status: "Petition for Chapter 7 Bankruptcy" (as opposed to "Discharged
11 in Bankruptcy")
- 12 • Delinquent throughout 2014 and 2015, including "90 Days Past Due" as
13 of June 2015 (which was nearly two years following Plaintiff's
14 Bankruptcy discharge)
- 15 • "Filed Chapter 7 Bankruptcy on July 7, 2015" (Plaintiff actually filed her
16 Bankruptcy on April 24, 2013).

17 162. Similarly, in an Equifax Credit Report dated November 13, 2016, PCU reported
18 the following inaccurate, derogatory information for the above-referenced
19 account number, as of October 2016:

- 20 • Current Status: "Charge-Off"
- 21 • Balance: \$32,365
- 22 • Date Major Delinquency First Reported: 05/2016
- 23 • Charge-Off Amount: \$33,156
- 24 • "CO" (i.e. Charged-Off) status notations throughout 2014-2016.

25 163. There was also no notation, status update, or any other indication in the
26 tradelines as they were reported to Experian and Equifax that the Account was
27 *discharged* in Plaintiff's Bankruptcy or even subject to bankruptcy in Plaintiff's
28 Equifax Credit Report.

1 164. Plaintiff's PCU accounts were included and discharged in Plaintiff's Chapter 7
2 Bankruptcy (filed on April 23, 2013 and discharged on August 12, 2013).

3 165. PCU's inaccurate and negative reporting damaged Plaintiff's creditworthiness.

4 166. PCU received notice of the Bankruptcy filing, which listed PCU as a creditor
5 for the Accounts, on or about April 24, 2013 through a Court Certificate of
6 Mailing with Service by the Bankruptcy Noticing Center.

7 167. PCU also received notice of the Bankruptcy discharge on or about August 12,
8 2013 through a Court Certificate of Mailing with Service by the Bankruptcy
9 Noticing Center.

10 168. Rather than using the bankruptcy information sent specifically to PCU that PCU
11 knew or should have known existed, PCU chose to continue reporting
12 inaccurately on Plaintiff's credit report.

13 169. Rather than using the publicly available Bankruptcy information that PCU
14 knew or should have known existed, PCU chose to continue reporting
15 inaccurately on Plaintiff's credit report.

16 170. Although it was "accurate" for PCU to report that the Account was previously
17 "Charged Off" as a *historical* fact, it was inaccurate and materially misleading
18 to report that the *current* (pay) status of the Accounts were "Charged Off",
19 because the true and correct statuses of the Accounts were "Discharged in
20 Bankruptcy" as of August 23, 2013.

21 171. There was also no notation, status update, or any other indication in the tradeline
22 as it was reported to Equifax and TransUnion that the Account was discharged
23 in Plaintiff's Bankruptcy.

24 172. Again, the Account in question was not subject to a reaffirmation agreement
25 with PCU or a successful adversary proceeding brought by PCU, but rather it
26 was successfully discharged through Plaintiff's Bankruptcy. Therefore, in all
27 material respects, Plaintiff's "Charged Off" Account is an example of an
28 incorrect status notation on her credit report that is suffered by all the Class

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1 Members.

2 173. Although PCU did not previously update the reporting of the Account since
3 December 2012, which was before the Bankruptcy was ultimately discharged,
4 by knowingly and willfully failing to update Plaintiff’s Equifax and TransUnion
5 Credit Reports to signify that the Account had been discharged in bankruptcy,
6 PCU was noncompliant with 11 U.S.C. §§ 524(a)(2) and 727 of the Bankruptcy
7 Code by failing to update and correct credit information to CRAs to show that
8 the Accounts were no longer legally due and owing.

9 174. After all, PCU had knowledge of when the “Charged Off” Accounts were
10 discharged because it received a discharge notice from the Bankruptcy Noticing
11 Center. It therefore, has a duty under the Sections 524(a)(2) and 727 of the
12 Bankruptcy Code to promptly notify CRAs of any updates and/or corrections
13 to the information previously provided to such agencies and/or any additional
14 information that is necessary to make the information provided by PCU to the
15 CRAs complete and accurate.

16 175. Therefore, PCU’s inaccurate and negative reporting of the Accounts in light of
17 their knowledge of the Bankruptcy discharge was willful.

18 176. Through this conduct, PCU has violated Cal. Civ. Code § 1785.25(a) by
19 furnishing information to Equifax and TransUnion, each a CRA, that PCU
20 knew or should have known was inaccurate.

21 177. On or about November 2016, Plaintiff disputed PCU’s reported information
22 regarding the Debt pursuant to 15 U.S.C. § 1681i(a)(2) by notifying TransUnion
23 and Equifax, in writing, of the incorrect and inaccurate credit information
24 furnished by PCU.

25 178. Specifically, Plaintiff sent a letter, via certified mail, to TransUnion and Equifax
26 (the “Dispute Letters”), requesting the above inaccurate information be
27 removed.
28

1 179. Upon information and belief, TransUnion and Equifax timely notified PCU of
2 Plaintiff’s dispute, but PCU continued reporting inaccurate, derogatory
3 information.

4 180. PCU was required to conduct a reasonable investigation into this specific
5 account on Plaintiff’s consumer report pursuant to 15 U.S.C. § 1681s-
6 2(b)(1)(A).

7 181. On or about December 2016, Plaintiff received notification from TransUnion
8 and Equifax that PCU received notice of Plaintiff’s dispute pursuant to 15
9 U.S.C. § 1681i(a)(6) and were providing the results of the reinvestigation.

10 182. However, rather than remove all the above inaccurate and materially
11 misleading, derogatory information from Plaintiff’s report, PCU simply left
12 inaccurate and materially misleading information on Plaintiff’s report.

13 183. Specifically, PCU continued to report the following inaccurate and derogatory
14 information for both of the Accounts on Plaintiff’s Equifax and TransUnion
15 Credits as of December 2016, which was over *three years* following Plaintiff’s
16 successful Bankruptcy discharge of the Account:

- 17 • *Current (Pay) Status – Charge Off*

18 184. Following PCU’s FCRA investigation, there was again no notation, status
19 update, or any other indication in either of the tradelines that the Account was
20 discharged in Plaintiff’s Bankruptcy.

21 185. Therefore, end users, including potential creditors, would interpret that as of
22 December 2016, which was the most recent date PCU reported on the Account,
23 the “*Current (Pay) Status*” of the Account was “Charged Off”, as opposed to
24 “Discharged in Bankruptcy”, which is inaccurate and materially misleading
25 under the FCRA for the reasons discussed.

26 186. Upon information and belief, PCU’s investigation was unreasonable. More
27 specifically, PCU, should have discovered from its records, including Plaintiff’s
28 official Dispute Letters, the fact that PCU was reporting the Account status

1 accurately to Experian, and the Bankruptcy documents PCU received copies of
2 from the Bankruptcy Noticing Center and were also publicly available to PCU,
3 that the information PCU was reporting was patently inaccurate and materially
4 misleading because it reported that the *current* (pay) status of the Account was
5 “Charged Off” as of December 2016, as opposed to “Discharged in
6 Bankruptcy.”

7 187. A reasonable investigation would have also led to PCU consulting with the
8 CRRG’s Metro 2 instructions to determine the accurate and proper reporting of
9 the current (pay) status of the Account, which would have revealed that PCU
10 should have reported the CII status as “Discharged in Bankruptcy.”

11 188. Instead, PCU “double-downed” on their original inaccurate and materially
12 misleading reporting to Equifax and TransUnion by reporting that the current
13 (pay) status of the Accounts, as of December 2016, was “Charged Off”, as
14 opposed to “Discharged in Bankruptcy” (or the equivalent).

15 189. Accordingly, PCU failed to conduct a reasonable investigation with respect to
16 the disputed information as required by 15 U.S.C. § 1681s-2(b)(1)(A) by failing
17 to remove and/or correct the disputed and incorrect information.

18 190. PCU failed to review all relevant information provided by Plaintiff in the
19 dispute to Equifax, as required by and in violation of 15 U.S.C. § 1681s-
20 2(b)(1)(B).

21 191. Due to PCU’s failure to reasonably investigate, they further failed to correct
22 and update Plaintiff’s information as required by 15 U.S.C. § 1681s-2(b)(1)(E),
23 thereby causing continued reporting of inaccurate information in violation of
24 15 U.S.C. § 1681-s(2)(b)(1)(C).

25 192. Plaintiff’s continued efforts to correct PCU’s erroneous and negative reporting
26 of the Account by communicating Plaintiff’s dispute with PCU were fruitless.

27 193. PCU’s continued inaccurate and negative reporting of the Accounts in light of
28 its knowledge of the actual error was willful.

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1 194. PCU's failure to correct the previously disclosed inaccuracies on Plaintiff's
2 credit report was intentional and in reckless disregard of its duty to refrain from
3 reporting inaccurate information. Accordingly, PCU willfully and negligently
4 failed to comply with its duty to reasonably investigate Plaintiff's dispute.

5 195. PCU inaccurate and negative reporting damaged Plaintiff's creditworthiness.

6 196. By inaccurately reporting account information relating to the Account after
7 notice and confirmation of its errors, PCU failed to take the appropriate
8 measures as determined in 15 U.S.C. §§ 1681-s(2)(b)(1)(D) and (E).

9 197. Through this conduct, Defendant violated 15 U.S.C. § 1692e by using false,
10 deceptive and misleading representations in connection with the collection of
11 Plaintiff's alleged debt. This section is incorporated into the RFDPCA by Cal.
12 Civ. Code § 1788.17; thus, Defendant violated Cal. Civ. Code § 1788.17.

13 198. Through this conduct, Defendant violated 15 U.S.C. § 1692e(2)(A) by falsely
14 representing the character, amount, and legal status of Plaintiff's alleged debt.
15 This section is incorporated into the RFDPCA by Cal. Civ. Code § 1788.17;
16 thus, Defendant violated Cal. Civ. Code § 1788.17.

17 199. Through this conduct, Defendant violated 15 U.S.C. § 1692e(8) by
18 communication false information to the credit bureaus regarding Plaintiff's
19 alleged debt. This section is incorporated into the RFDPCA by Cal. Civ. Code
20 § 1788.17; thus, Defendant violated Cal. Civ. Code § 1788.17.

21 200. Through this conduct, Defendant violated 15 U.S.C. § 1692e(10) by using false
22 representations and deceptive means to collect Plaintiff's alleged debt. This
23 section is incorporated into the RFDPCA by Cal. Civ. Code § 1788.17; thus,
24 Defendant also violated Cal. Civ. Code § 1788.17.

25 201. Through this conduct, Defendant violated 15 U.S.C. § 1692f by using unfair
26 and unconscionable means to collect Plaintiff's debt. This section is
27 incorporated into the RFDPCA by Cal. Civ. Code § 1788.17; thus, Defendant
28 also violated Cal. Civ. Code § 1788.17.

1 202. Through this conduct, Defendant violated 15 U.S.C. § 1692f(1) by collecting
2 an amount from Plaintiff not permitted by law. This section is incorporated into
3 the RFDPCA by Cal. Civ. Code § 1788.17; thus, Defendant also violated Cal.
4 Civ. Code § 1788.17.

5 **CLASS ACTION ALLEGATIONS**

6 203. Plaintiff brings this action on behalf of herself and on behalf of all others
7 similarly situated (the “Class”).

8 204. Plaintiff seeks to maintain this action as a class action representing a class
9 consisting of the following:

10 All individuals who, on or after February 2012 have had a
11 consumer report relating to them prepared by any of the credit
12 reporting agencies in which one or more of their PCU tradeline
13 accounts or debts was not reported as discharged despite the fact
14 that such debts had been discharged as a result of their
15 bankruptcy under Chapter 7 and Chapter 13 of the Bankruptcy
Code.

16 205. This suit seeks only damages and injunctive relief for recovery of economic
17 injury on behalf of the Class, and it expressly is not intended to request any
18 recovery for personal injury and claims related thereto. Plaintiff reserves the
19 right to expand the Class definition to seek recovery on behalf of additional
20 persons as warranted as facts are learned in further investigation and discovery.

21 206. Ascertainability / Numerosity: This class is ascertainable in that it is comprised
22 of individuals who can be identified by reference to purely objective criteria
23 contained in the records of PCU and the various credit reporting agencies. PCU
24 and its employees or agents are excluded from the Class. Plaintiff does not
25 know the number of members in the Class, but believes the Class members
26 number in the hundreds of thousands, if not more. Thus, this matter should be
27 certified as a Class action to assist in the expeditious litigation of this matter.
28

1 207. Typicality: The claims of the named Plaintiff are typical of the claims of each
2 member of the Class they seek to represent because: (1) they all had debts owed
3 to PCU that were discharged in a Chapter 7 or 13 bankruptcy; (2) they have all
4 been injured by PCU’s refusal to remove the notation “charged off” or “past
5 due/charged off” or similar notations despite the fact that the debts have been
6 discharged in bankruptcy; and (3) each of their claims is based upon the same
7 legal theories, i.e. that PCU violated the FCRA and CCCRAA.

8 208. Adequacy of Representation: Plaintiff is an adequate representative of the Class
9 she seeks to represent because: (a) she is willing and able to represent the
10 proposed class and has every incentive to pursue this action to a successful
11 conclusion; (b) her interest is not in any way antagonistic to those of the other
12 Class Members; and (c) she is represented by counsel experienced in litigating
13 significant consumer issues, including the issues specifically raised in this
14 action.

15 209. Commonality: There are several questions of law and fact common to all
16 members of the Class. The primary question of law and fact that is common to
17 all members of the class is whether PCU, in failing and/or refusing to update
18 and correct the credit reports of Class Members, has acted knowingly and
19 willfully in violation of the FCRA and CCCRAA.

20 210. A class action is a superior method for the fair and efficient adjudication of this
21 controversy. Class-wide damages are essential to induce PCU to comply with
22 federal and California law. The interest of Class members in individually
23 controlling the prosecution of separate claims against PCU is small because the
24 maximum statutory damages in an individual action for the alleged violations
25 are minimal. Management of these claims is likely to present significantly fewer
26 difficulties than those presented in many class claims.

27 211. PCU has acted on grounds generally applicable to the Class, thereby making
28 appropriate final injunctive relief and corresponding declaratory relief with

1 respect to the Class as a whole.

2 **CAUSES OF ACTION**

3 **COUNT I**

4 **VIOLATION OF THE FAIR CREDIT REPORTING ACT**

5 **15 U.S.C. §§ 1681 ET SEQ.**

6 **[AGAINST PCU]**

7 212. Plaintiff incorporates by reference all of the above paragraphs of this Complaint
8 as though fully stated herein.

9 213. The foregoing acts and omissions constitute numerous and multiple willful,
10 reckless, or negligent violations of the FCRA, including, but not limited to, each
11 and every one of the above-cited provisions of the FCRA, 15 U.S.C. § 1681.

12 214. As a result of each and every negligent noncompliance of the FCRA, Plaintiff
13 is entitled to actual damages as the Court may allow pursuant to 15 U.S.C. §
14 1681o(a)(1); and reasonable attorney’s fees and costs pursuant to 15 U.S.C. §
15 1681o(a)(2), from PCU.

16 215. As a result of each and every willful violation of the FCRA, Plaintiff is entitled
17 to actual damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(1);
18 statutory damages pursuant to 15 U.S.C. § 1681n(a)(1); punitive damages as
19 the Court may allow, pursuant to 15 U.S.C. § 1681n(a)(2); and reasonable
20 attorney’s fees and costs pursuant to 15 U.S.C. § 1681n(a)(3) from PCU.

21 **COUNT II**

22 **VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

23 **Cal. Civ. Code §§ 1788-1788.32 (RFDCPA)**

24 **[AGAINST DEFENDANT]**

25 13. Plaintiff incorporates by reference all of the above paragraphs of this
26 Complaint as though fully stated herein.

27 14. The foregoing acts and omissions constitute numerous and multiple violations
28 of the RFDCPA.

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1 15. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to
2 any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory
3 damages for a knowing or willful violation in the amount up to \$1,000.00
4 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney’s fees and
5 costs pursuant to Cal. Civ. Code § 1788.30(c) from each Defendant
6 individually.

7 **COUNT III**

8 **VIOLATION OF THE CALIFORNIA CONSUMER CREDIT REPORTING AGENCIES**

9 **ACT**

10 **CAL. CIV. CODE § 1785.1 ET SEQ.**

11 **[AGAINST PCU]**

12 216. Plaintiff incorporates by reference all of the above paragraphs of this Complaint
13 as though fully stated herein.

14 217. The foregoing acts and omissions constitute numerous and multiple violations
15 of the California Consumer Credit Reporting Agencies Act.

16 218. In the regular course of its business operations, Capital routinely furnish
17 information to credit reporting agencies pertaining to transactions between PCU
18 and PCU’s consumers, so as to provide information to a consumer’s credit
19 worthiness, credit standing and credit capacity.

20 219. Because PCU is a partnership, corporation, association, or other entity, and is
21 therefore a “person” as that term is defined by Cal. Civ. Code § 1785.3(j), PCU
22 is and always were obligated to not furnish information on a specific transaction
23 or experience to any consumer credit reporting agency if they knew or should
24 have known that the information is incomplete or inaccurate, as required by Cal.
25 Civ. Code § 1785.25(a). PCU knew or should have known that Plaintiff’s debt
26 was discharged. Thus, PCU violated Cal. Civ. Code § 1785.25(a).

27 ///

28 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and The Class Members pray for judgment as follows:

- Certifying the Class as requested herein;
- Providing such further relief as may be just and proper;
- An award of actual damages, in an amount to be determined at trial, pursuant to 15 U.S.C. § 1692k(a)(1);
- An award of actual damages, in an amount to be determined at trial, pursuant to Cal. Civ. Code § 1788.30(a);
- An award of actual damages, in an amount to be determined at trial, pursuant to Cal. Civ. Code § 1785.31(a)(2)(A);
- An award of statutory damages of \$1,000.00, pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of statutory damages of \$1,000.00, pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney’s fees, pursuant to Cal. Civ. Code § 1788.30(c);
- An award of attorneys’ fees and costs pursuant to Cal. Civ. Code § 1785.31(a)(1); and, Cal. Civ. Code § 1785.31(d);
- An award of punitive damages pursuant to Cal. Civ. Code § 1785.31(a)(2)(A);
- An award of costs of litigation and reasonable attorney’s fees, pursuant to 15 U.S.C. § 1692k(a)(3); and
- For equitable and injunctive relief pursuant to Cal. Civ. Code § 1785.31(b);
- That the Court preliminarily and permanently enjoin Defendant from engaging in the unlawful debt collection and credit reporting practices stated herein;

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- Any and all other relief the Court deems just and proper.

Dated: March 29, 2017

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s/ Matthew M. Loker
 MATTHEW M. LOKER, ESQ.
 ATTORNEY FOR PLAINTIFF

TRIAL BY JURY

220. Pursuant to FED. R. CIV. P. 38, Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: March 29, 2017

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s/ Matthew M. Loker
 MATTHEW M. LOKER, ESQ.
 ATTORNEY FOR PLAINTIFF

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 COSTA MESA, CA 92626

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
KELLIE GADOMSKI, Individually and on Behalf of All Others Similarly Situated,
(b) County of Residence of First Listed Plaintiff San Joaquin
(c) Attorneys (Firm Name, Address, and Telephone Number)
Matthew M. Loker, Esq. (SBN: 279939)
KAZEROUNI LAW GROUP, APC
245 Fischer Avenue, Unit D1, Costa Mesa, CA 92626 (800) 400-6808

DEFENDANTS
PATELCO CREDIT UNION,
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Motor Vehicle, Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1692; and, 28 U.S.C. § 1367
Brief description of cause:
Plaintiff alleges violations of the FCRA; RFDCPA; and, CCCRAA

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE Troy L. Nunley DOCKET NUMBER 17-cv-669 TLN (AC)

DATE 03/30/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Matthew M. Loker

Case 2:17-at-00353 Document 1-1 Filed 03/31/17 Page 2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Three FDCPA, FCRA Lawsuits Filed Over 'Inaccurate' Credit Reporting](#)
