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14 Attorneys for Plaintiffs FORREST MARTZ, *et al.*

15 UNITED STATES DISTRICT COURT
16 SOUTHERN DISTRICT OF CALIFORNIA

17 '17CV2464 L BLM

18 FORREST MARTZ, an individual, on
19 behalf of himself in a representative
20 capacity only and on behalf of others
21 similarly situated,

22 Plaintiffs,

23 vs.

24 HCI SYSTEMS, INC., a California
25 corporation; ORION RISK
26 MANAGEMENT INSURANCE
27 SERVICES, INC., a California
28 corporation; UNIVERSAL
BACKGROUND SCREENING, INC.,
an Arizona corporation; and DOES 1
through 50 inclusive

Defendants.

COMPLAINT FOR:
[CLASS ACTION]

- 1. Violations of Fair Credit Reporting Act, 15 U.S.C. § 1681b(b)(2)(A); 15 U.S.C. § 1681o(a);
- 2. Violations of the California Investigative Consumer Reporting Agencies Act (ICRAA) (Civ. Code, § 1786, *et seq.*); and
- 3. Violations of the California Investigative the California Consumer Credit Reporting Agencies Act (California Civil Code § 1785.1 *et seq.*)

DEMAND FOR JURY TRIAL

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1 Plaintiff FORREST MARTZ (“Plaintiff”), on behalf of himself in his
2 representative capacity and all other similarly situated individuals (cumulatively
3 “Plaintiffs”) alleges the following:

4 **NATURE OF THE ACTION**

5 1. Plaintiff brings this California class action on behalf of himself and all
6 other individuals who applied for employment with Defendant and who executed a
7 release and authorization forms permitting Defendants to procure a consumer report
8 and/or investigative consumer report on them as part of Defendant HCI SYSTEMS,
9 INC.’s employment application (hereinafter the “Class”).

10 2. Specifically, Plaintiff complains that Defendant has a uniform policy or
11 practice of obtaining an applicant’s consumer report and has violated the Fair Credit
12 Reporting Act (the “FCRA”) through the use of a legally invalid authorization form
13 that: 1) fails to provide a clear and conspicuous disclosure; and 2) fails to provide a
14 disclosure that appears in a document that consists solely of the disclosure.

15 **JURISDICTION AND VENUE**

16 3. This Court has federal question jurisdiction over this action pursuant to
17 28 U.S.C. § 1331 because this action arises under the FCRA, 15 U.S.C. § 1681 *et seq.*

18 4. This Court has personal jurisdiction over Defendants because Defendants
19 conduct business in this State, has systematic and continuous ties with this state, and
20 has agents and representatives that can be found in this state.

21 5. Venue is proper in the United States District Court, Southern District of
22 California pursuant to 28 U.S.C. § 1391.

23 **THE PARTIES**

24 6. FORREST MARTZ (“Plaintiff”) is a resident of California.

25 7. Defendant HCI SYSTEMS, INC. (“HCI”), is a California Corporation
26 doing business in California.

27 8. Defendant UNIVERSAL BACKGROUND SCREENING, INC.
28 (“UBS”), is an Arizona Corporation doing business in California.

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1 9. Defendant ORION RISK MANAGEMENT INSURANCE SERVICES,
2 INC. (“ORION”), is a California Corporation doing business in California.

3 **GENERAL ALLEGATIONS**

4 10. On or about December 8, 2015, as part of Plaintiff’s application for
5 employment with Defendant HCI SYSTEMS, INC., Plaintiff signed an authorization
6 and release form that purported to allow Defendants to obtain a consumer report
7 and/or an investigative consumer report on him through and by means of the named
8 Defendants UBS and ORION.

9 11. Defendant HCI’s purported permission to conduct the foregoing
10 background investigations are based on two different disclosure forms Plaintiff
11 signed, one of them titled, “Applicant Certification and Authorization” (**Ex. 1**) and
12 the other titled, “FCRA Disclosure and Acknowledgement” (**Ex. 2**). True and correct
13 redacted copies are attached hereto and marked as **Exhibits 1** and **2**.

14 12. These forms are the heart of this dispute.

15 13. The first abovementioned form purportedly allowed Defendant HCI to
16 hire Defendant ORION to obtain workers’ compensation adjudication records
17 concerning the Plaintiff is illegal because, in part, this form includes an illegal
18 indemnification and hold harmless clause that provides, “I hereby agree to indemnify
19 and hold you harmless against any liability which may result from making such
20 investigation.” See **Ex. 1**.

21 14. Plaintiff maintains **Exhibit 1** also contains illegal extraneous language,
22 such as, “I understand that any false answers, statements, implications, or derogatory
23 information made by me or which is revealed as a result of this background
24 investigation based on information supplied in any application for employment or
25 other documents, may be considered sufficient for discharge.”

26 15. Similarly, the second abovementioned form with which Plaintiff take
27 issue purports to allow “Universal Background Screening *or another outside*
28 *organization*” to perform a background investigation of the Plaintiff. See **Ex. 2**

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1 (Emphasis added).

2 16. This form, however, also includes a number of state law admonitions,
3 such as New York, Maine, Oregon, Washington, none of which are applicable since
4 Plaintiff was applying for work in California. See **Ex. 2**.

5 17. **Exhibit 2** contains further extraneous information, such as statements
6 like, “Credit history will only be requested where such information is substantially
7 related to the duties and responsibilities of the position for which you are applying”
8 and “Please be advised that the nature and scope of the most common form of
9 investigative consumer report obtained is an investigation into your education and/or
10 employment history.” See **Ex. 2**.

11 18. Further, the form includes a California state law advisement that says,
12 “By signing below, you also acknowledge receipt of the NOTICE REGARDING
13 BACKGROUND INVESTIGATION PURSUANT TO CALIFORNIA LAW,” yet
14 Plaintiff denies receiving this Notice and says he signed receipt of the Notice because
15 of his confusion over what he was signing in the first place. See **Ex. 2**.

16 19. Plaintiff, thus, maintains Defendant HCI never provided him such a
17 disclosure form.

18 20. Plaintiff maintains **Exhibit 2** also illegally contains extraneous
19 information, such as statements like, “Credit history will only be requested where
20 such information is substantially related to the duties and responsibilities of the
21 position for which you are applying” and “Please be advised that the nature and scope
22 of the most common form of investigative consumer report obtained is an
23 investigation into your education and/or employment history.” See **Ex. 2**.

24 21. Plaintiff lastly maintains this form is too broad since it purports to allow
25 “another outside organization” to perform a background investigation of the Plaintiff
26 without specifying exactly which outside organization. See **Ex. 2**.

27 22. Pursuant to both forms signed by the Plaintiff, on December 8, 2015,
28 Defendant UBS obtained Plaintiff’s credit and criminal history reports and Defendant

1 ORION obtained a workers’ compensation adjudication record investigation report
2 regarding the Plaintiff.

3 23. Based on the foregoing, Plaintiff claims all Defendants violated federal
4 law and Defendants HCI and ORION violated state law.

5 **CLASS ALLEGATIONS**

6 24. Plaintiff brings this action individually and as a class action pursuant to
7 Rule 23 of the Federal Rules of Civil Procedure.

8 25. The Class to be certified against Defendant is defined as follows:

9 Class 1

10
11 **All individuals who applied for employment with HCI**
12 **between December 8, 2015 to the present and signed one or**
13 **both forms collectively attached as Exhibits “1” and “2” or**
14 **a substantively identical version of those forms; and were**
15 **the subject of a consumer report procured by HCI.**

16 Class 2

17 **All individuals who applied for employment with any third**
18 **party between December 8, 2015 to the present and signed a**
19 **form attached as Exhibit “1” or a substantively identical**
20 **version of this forms and were the subject of a consumer**
21 **report prepared by Defendant ORION RISK**
22 **MANAGEMENT INSURANCE SERVICES, INC.**

23 Class 3

24 **All individuals who applied for employment with any third**
25 **party between December 8, 2015 to the present and signed a**
26 **form attached as Exhibits “2” or a substantively identical**
27 **version of this forms and were the subject of a consumer**
28 **report prepared by Defendants UNIVERSAL**
BACKGROUND SCREENING, INC.

26. The individuals in the Class are so numerous that joinder of all members

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1 is impracticable. Although the precise number of individuals is currently unknown,
2 Plaintiff believes that the number of individual members of the Class exceeds 1,000.

3 27. Notice of the pendency and any resolution of this action can be provided
4 to potential members of the Class by mail, print, and/or internet publication.

5 28. There is a well-defined community of interest in the litigation and the
6 potential members of the Class are readily ascertainable.

7 29. This case is maintainable as a class action under Rule 23(b)(1) and (b)(3)
8 of the Federal Rules of Civil Procedure because questions of law and fact common to
9 the proposed Class predominate over any questions affecting only individual
10 members of the proposed Class, and because a class action is superior to other
11 available methods for the fair and efficient adjudication of this litigation.

12 30. There are common questions of law and fact as to the Class that
13 predominate over questions affecting only individual members, including but not
14 limited to:

- 15 a. Whether Plaintiff and the Class applied for employment
16 positions with Defendant HCI;
- 17 b. Whether Defendant HCI’s Release and Authorization Forms
18 executed by Plaintiff and the Class were facially invalid
19 because the language included in the release and
20 authorization form that no longer makes it a “document that
21 consists solely of the disclosure,” as required by 15 U.S.C. §
22 1681b(b)(2)(A) or under state law [*Syed v. M-I, LLC*, 853
23 F.3d 492, 493 (9th Cir. 2017)];
- 24 c. Whether Defendants HCI and ORION violated 15 U.S.C. §
25 1681b(b)(2)(A) or state law by including language
26 constituting a release of claims as part of its Release and
27 Authorization Forms; and
- 28 d. Whether Defendants HCI and ORION violated state law by

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1 not complying with the statutory provisions of Civil Code §
2 1786.16, *et seq.*

3 **FIRST CAUSE OF ACTION**

4 **Individual and Class Claim for**

5 **Violation of the Fair Credit Reporting Act**

6 **(Obtaining Consumer Reports Without Facially Valid Authorizations)**

7 (Against All Defendants)

8 31. Plaintiffs allege and incorporates by reference the allegations in the
9 preceding paragraphs as though fully set forth herein.

10 32. Pursuant to 15 U.S.C. § 1681b(a)(3)(B), a consumer reporting agency
11 may furnish a consumer report for employment purposes.

12 33. Likewise, a consumer report may be used for the evaluation of “a
13 consumer for employment, promotion, reassignment or retention of an employee.” 15
14 U.S.C. §1681a(h).

15 34. The FCRA requires that, before procuring a consumer report on an
16 individual for employment purposes, the employer must: (1) provide a clear and
17 conspicuous disclosure to each applicant in writing that a consumer report may be
18 obtained for employment purposes; and (2) obtain the applicant’s authorization in
19 writing to obtain the report. 15 U.S.C. § 1681b(b)(2)(A).

20 35. Section 1681b(b)(2)(A) further specifies that the disclosure must be in
21 writing “in a document that consists solely of the disclosure.”

22 36. Specifically, Section 1681b(b)(2)(A) provides, in relevant part:

23 ... a person may not procure a consumer report, or cause a consumer
24 report to be procured, for employment purposes with respect to any
25 consumer, unless--
26 a clear and conspicuous disclosure has been made in writing to the
27 consumer at any time before the report is procured or cause to be
28 procured, in a document that consists solely of the disclosure, that a
consumer report may be obtained for employment purposes; and (ii)
the consumer has authorized in writing (which authorization may be

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made on the document referred to in clause (i)) the procurement of the report by that person.

15 U.S.C. § 1681b(b)(2)(A).

37. During the Class Period, Defendant HCI required Plaintiff MARTZ, and presumably others, to sign two different forms as part of their job application with Defendant HCI, which forms purported to allow Defendant HCI to procure and Defendants ORION and UBS to prepare and provide to Defendant HCI consumer reports regarding the Plaintiffs.

38. Included in one of Defendant HCI’s Release and Authorization Forms, i.e., **Exhibit 1** was: 1) a purported authorization to procure a consumer report and investigative a consumer report; 2) a waiver of liability provision; 3) an authorization of Defendant to investigate “past employment and public records (including but not limited to workers compensation adjudication records)”; and 4) other extraneous language, such as, “I understand that any false answers, statements, implications, or derogatory information made by me or which is revealed as a result of this background investigation based on information supplied in any application for employment or other documents, may be considered sufficient for discharge.” See **Exhibit 1**.

39. Included in another one of Defendant HCI’s Release and Authorization Forms, i.e., **Exhibit 2** was: 1) a purported authorization to procure a consumer report and investigative a consumer report; 2) extraneous information, such as a number of state law admonitions, such as New York, Maine, Oregon, Washington, none of which are applicable since Plaintiff was applying for work in California; 3) extraneous information, such as statements like, “Credit history will only be requested where such information is substantially related to the duties and responsibilities of the position for which you are applying” and “Please be advised that the nature and scope of the most common form of investigative consumer report obtained is an investigation into your education and/or employment history”; and 4)

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1 improperly broad language purporting to allow “another outside organization” to
 2 perform a background investigation of the Plaintiff without specifying exactly which
 3 outside organization. See **Exhibit 2**.

4 40. Defendants’ inclusion of the aforementioned in its Release and
 5 Authorization Forms executed by applicants facially contravenes the requirements of
 6 15 U.S.C. § 1681b(b)(2)(A) that the disclosure be: 1) “clear and conspicuous”; and 2)
 7 appear “in a document that consists solely of the disclosure.”

8 41. As a matter of law, Defendant’s inclusion of the aforementioned
 9 information invalidates the Release and Authorization Form for purposes of the
 10 FCRA. *See Syed v. M-I, LLC*, 853 F.3d 492, *10-11 (9th Cir. 2017) (holding an
 11 employer violates Section 1681b(b)(2)(A)(I)—(ii) when it requires an employee to
 12 sign a form containing a waiver of liability provision as part of a background
 13 investigation); *Harris v. Home Depot U.S.A., Inc.*, 114 F. Supp. 3d 868, 870-71 (N.D.
 14 Cal. 2015) (release of liability improper); *Feist v. Petco Animal Supplies, Inc.*, 218 F.
 15 Supp. 3d 1112 (S.D. Cal. 2016) (a summary of consumer rights in seven different
 16 states improper); *Lagos v. The Leland Stanford Junior University*, 2015 U.S. Dist.
 17 LEXIS 163119 (N.D. Cal. Dec. 4, 2015) (inclusion of seven state law notices and
 18 sentence stating “I also understand that nothing herein shall be construed as an offer
 19 of employment or contract for services” plausibly violated stand-alone disclosure
 20 requirement); *Woods v. Caremark PHC, L.L.C.*, 2015 U.S. Dist. LEXIS 148051
 21 (W.D. Mo. 2015) (“The specific ‘extraneous information’ Plaintiff alleges Defendant
 22 included in its Authorization Form for Consumer Reports is: 1) an overbroad
 23 authorization for third parties to provide information to Defendant and its consumer
 24 reporting agency, 2) state-specific notices that did not apply to Plaintiff, and 3) that
 25 the form was part of a five-page stapled packet of three documents. Where FCRA
 26 allegations involve the inclusion of extraneous information beyond an authorization,
 27 the complaint meets the 12(b)(6) standard to state a claim for willful violation of the
 28 FCRA stand-alone requirement.”); *see also* Letter from William Haynes, Attorney,

1 Div. of Credit Practices, Fed Trade Comm'n to Richard W. Hauxwekk, CEO,
2 Accufax Div. (June 12, 1998), 1998 W.L. 34323756 (F.T.C.) (noting that the
3 inclusion of a waiver in a disclosure form will violate the FCRA).

4 42. Defendants acted willfully by providing a facially invalid Release and
5 Authorization Forms that were in direct violation of the clear and unambiguous
6 requirements set forth in 15 U.S.C. § 1681b(b)(2)(A).

7 43. Defendants knew or acted with reckless disregard of its statutory duties
8 and the rights of applicants and employees, including Plaintiff and the Class, thus
9 knowingly and/or recklessly disregarding its statutory duties.

10 44. On information and belief, as well as Plaintiff's investigation,
11 Defendants' conduct was willful because:

- 12 a. Defendants required Plaintiff and the Class to execute the
13 Release and Authorization Forms knowing that it was
14 facially invalid in violation of the FCRA and Defendants'
15 statutory duties;
- 16 b. Defendants acted with reckless disregard of the FCRA
17 requirements and Defendants' statutory duties when it
18 required Plaintiff and the Class to execute the Release and
19 Authorization Forms that were facially invalid and in
20 violation of the clear and unambiguous requirements of the
21 FCRA;
- 22 c. Upon information and belief, Defendants were advised by
23 skilled lawyers and other professional employees, and
24 advisors knowledgeable about the FCRA requirements;
- 25 d. The plain language of the statute unambiguously indicates
26 that inclusion of a liability release in a disclosure form
27 violates the disclosure and authorization requirements;
- 28 e. The FTC's express statements, pre-dating Defendants'

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1 conduct, state that it is a violation of 15 U.S.C. §
2 1681b(b)(2)(A) to include a liability waiver in the FCRA
3 disclosure form; and

4 f. Defendants ORION RISK MANAGEMENT INSURANCE
5 SERVICES, INC. and UNIVERSAL BACKGROUND
6 SCREENING, INC. informed Defendant HCI of its
7 obligations under the FCRA and required Defendant HCI to
8 certify its compliance with the FCRA as required by law.

9 45. Pursuant to 15 U.S.C. §1681n(a)(1)(A), Plaintiff and the Class are
10 entitled to statutory damages due to Defendant’s willful failure to comply with the
11 requirements imposed by 15 U.S.C. § 1681b(b)(2)(A) of an amount not less than \$100
12 and not more than \$1,000.

13 46. In the alternative, Plaintiffs allege that Defendants’ conduct in violation
14 of the FCRA and Defendants’ statutory duties was negligent, and therefore Plaintiff
15 and the Class seek actual damages, if any, pursuant to 15 U.S.C. § 1681o(a) in an
16 amount to be proven at trial.

17 47. Upon information and belief, Plaintiff and the Class suffered and, as
18 such, seek actual damages from Defendants’ negligent conduct in an amount to be
19 proven at trial.

20 48. Plaintiff and the Class seek the recovery of punitive damages for
21 Defendants’ willful violations, in an amount as the Court may allow.

22 49. Pursuant to 15 U.S.C. § 1681n(a)(3) and § 1681o(a)(2), Plaintiff and the
23 Class seek the recovery costs of suit with reasonable attorneys’ fees, as determined by
24 the Court.

25 **SECOND CAUSE OF ACTION**
26 **Individual and Class Claim for**
27 **Violation of the California Investigative Consumer Reporting**
28 **Agencies Act (ICRAA) (Civ. Code, § 1786, et seq.)**

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1 53. In addition, the person procuring or causing the report to be made must
2 “certify to the investigative consumer reporting agency that the person has made the
3 applicable disclosures to the consumer required by [section 1786.16, subdivision (a)]
4 and that the person will comply with subdivision (b).” (§ 1786.16, subd. (a)(4).)

5 54. Subdivision (b) of section 1786.16 also requires the person procuring or
6 causing the report to be made to (1) provide the consumer a form with a box that can
7 be checked if the consumer wishes to receive a copy of the report, and send a copy of
8 the report to the consumer within three business days if the box is checked and (2)
9 comply with section 1786.40 if the person procuring or causing the report to be made
10 contemplates taking adverse action against the consumer. (§ 1786.16, subd. (b).)

11 55. During the Class Period, Defendant HCI required Plaintiff MARTZ, and
12 presumably others, to sign two different forms as part of their job application with
13 Defendant HCI, which forms purported to allow Defendant HCI to procure and
14 Defendant ORION to prepare and provide to Defendant HCI a consumer report
15 regarding the Plaintiffs. See **Exhibit 1**.

16 56. Included in one of Defendant HCI’s Release and Authorization Forms,
17 i.e., **Exhibit 1** was: 1) a purported authorization to procure a consumer report and
18 investigative a consumer report; 2) a waiver of liability provision; 3) an authorization
19 of Defendant to investigate “past employment and public records (including but not
20 limited to workers compensation adjudication records); and 4) other extraneous
21 language, such as, “I understand that any false answers, statements, implications, or
22 derogatory information made by me or which is revealed as a result of this
23 background investigation based on information supplied in any application for
24 employment or other documents, may be considered sufficient for discharge.” See
25 **Exhibit 1**.

26 57. On behest of Defendant HCI, Defendant Orion prepared a report
27 concerning the Plaintiff’s workers’ compensation adjudication history.

28 58. Plaintiff maintains ORION’s report included information on the

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1 Plaintiff’s “character, general reputation, personal characteristics, or mode of living,”
2 and thus was an investigative consumer report within the meaning of §
3 1786.2 subdivision (c).

4 59. Plaintiff alleges the foregoing investigative consumer report was used for
5 employment purposes, as defined in § 1786.2, subdivision (f).

6 60. Based on these allegations, Defendant ORION, as an investigative
7 consumer reporting agency, and Defendant HCI, as a person who procured or caused
8 the investigative consumer reports to be made, were required to comply with the
9 applicable provisions of the ICRAA, namely § 1786.16.

10 61. Plaintiff maintains, however, that Defendants’ inclusion of the
11 aforementioned in its Release and Authorization Form violates California law because
12 it was not a “clear and conspicuous disclosure in writing to the consumer.”

13 62. Plaintiff alleges the release contained two illegal provisions that made it
14 an unclear and inconspicuous disclosure, such as a waiver and hold harmless clause,
15 and language, “I understand that any false answers, statements, implications, or
16 derogatory information made by me or which is revealed as a result of this
17 background investigation based on information supplied in any application for
18 employment or other documents, may be considered sufficient for discharge.” (§
19 1786.16(a)(2)(B).)

20 63. In addition to the foregoing violation, Plaintiff alleges the form fails to
21 comply with § 1786.16 based on the following:

- 22 a. The form fails to comply with § 1786.16(a)(2)(B)(ii)
23 because it does not specify why the report is being obtained;
- 24 b. The form fails to comply with § 1786.16(a)(2)(B)(iii)
25 because it does not specify “[t]he disclosure may include
26 “information on the consumer’s character, general
27 reputation, personal characteristics, and mode of living”;
- 28 c. The form fails to comply with § 1786.16(a)(2)(B)(iv)

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because it does not identify “the name, address, and telephone number of the investigative consumer reporting agency conducting the investigation”;

d. The form fails to comply with § 1786.16(a)(2)(B)(v) because it does not provide “a summary of the provisions of Section 1786.22”;

e. The form fails to comply with § 1786.16(a)(2)(B)(vi) because it does not notify Plaintiff “of the Internet Web site address of the investigative consumer reporting agency”; and

f. The form fails to comply with § 1786.16(b) because the form does not have a “means by which the consumer may indicate on a written form, by means of a box to check, that the consumer wishes to receive a copy of any report that is prepared.” See **Exhibit 1**.

64. Further, Defendant ORION has violated and continues to violate California Civil Code § 1786.20(d)(1)(A), by not, conspicuously posting, as defined in California Business and Professions Code § 22577(b), on its primary Internet Web site information describing its privacy practices with respect to its preparation and processing of investigative consumer reports.

65. California Civil Code § 1786.16(a)(1) of the ICRAA requires that consumers be provided a disclosure document which includes a summary of the provisions of California Civil Code § 1786.22. The summary must state that: (1) the consumer can view, during normal business hours, the file maintained on the applicant by the consumer reporting agency; (2) the consumer can obtain a copy of the report by submitting proper paperwork and paying the costs of duplication services via mail or appearing at the reporting agency’s location in person; (3) if the consumer appears in person, the consumer may be accompanied by another individual

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1 who furnishes proper identification; and (4) the consumer may receive a summary of
2 the report over the telephone by representatives of the reporting agency. Plaintiff
3 alleges Defendants failed to provide Plaintiff any summary of the foregoing rights.

4 66. Based on the misconduct alleged in this Complaint, Defendants HCI and
5 ORION violated ICRAA.

6 67. Defendants acted willfully by providing a facially invalid Release and
7 Authorization Forms that were in direct violation of the clear and unambiguous
8 requirements set forth in § 1786.16.

9 68. Defendants knew or acted with reckless disregard of its statutory duties
10 and the rights of applicants and employees, including Plaintiff and the Class, thus
11 knowingly and/or recklessly disregarding its statutory duties.

12 69. On information and belief, as well as Plaintiff’s investigation,
13 Defendants’ conduct was willful.

14 70. With respect to each of the aforementioned violations of the ICRAA
15 provisions and pursuant to Civ. Code § 1786.50(a)(1), Plaintiff, not the Class, is
16 entitled to statutory damages due to Defendants’ failure to comply with the
17 requirements imposed by § 1786.16 of an amount not less than \$10,000.

18 71. Based on Defendants’ conduct in violation of the ICRAA, Plaintiff and
19 the Class seek to recover actual damages, if any, in an amount to be proven at trial.

20 72. Plaintiff and the Class seek to recover punitive damages for Defendants’
21 willful violations, in an amount as the Court may allow.

22 73. Plaintiff and the Class seek the recovery costs of suit with reasonable
23 attorneys’ fees, as determined by the Court.

24 **THIRD CAUSE OF ACTION**
25 **Individual and Class Claim for**
26 **Violations of the California Consumer**
27 **Credit Reporting Agencies Act**
28 **(California Civil Code § 1785.1 et seq.)**

(Against Defendant HCI)

74. Plaintiffs allege and incorporates by reference the allegations in the preceding paragraphs as though fully set forth herein.

75. Defendant HCI used a “consumer credit report” as defined in California Civil Code § 1785.3 to make a determination of employment for Plaintiff and other members of the Class.

76. Defendant violated California Civil Code § 1785.20.5 of CCRAA, by failing to provide written notice to Plaintiff and the other members of the California Disclosure Class prior to requesting such consumer reports that complied with California Civil Code § 1785.20.5 by failing to inform them of the specific basis under Labor Code § 1024.5(a) for the use of the reports.

77. Defendant HCI willfully violated California Civil Code § 1785.20.5 by acting in deliberate or reckless disregard of their obligations and the rights of Plaintiff and other members of the Class.

78. Plaintiff seeks statutory damages for herself and all others similarly situated for these violations pursuant to California Civil Code § 1785.31(a)(2)(A).

79. Plaintiff and other members of the California Disclosure Class seek to recover any actual damages sustained by Plaintiff and the other members of the Class members as a result of each such failure; Punitive damages of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) for each violation as the Court deems proper; and costs and reasonable attorneys’ fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of the Class, prays for an order for relief as follows:

1. That Defendants be found liable to Plaintiff and the Class;
2. For a declaration that Defendants violated the rights of Plaintiff and the Class under the FCRA, CCRAA, and ICRAA, and any other applicable law;
3. Pursuant to 15 U.S.C. § 1681n(a)(1)(A), an award of statutory damages to

Thomas D. Rutledge
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San Diego, California 92101
Telephone: (619) 886-7224
Facsimile: (619) 259-5455

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1 Plaintiff and the Class in an amount equal to \$1,000 for Plaintiff and each member of
2 the Class for Defendant’s willful violations of the FCRA;

3 4. Pursuant to Civ. Code § 1786.50, an award of statutory damages to Plaintiff
4 in the amount of \$10,000;

5 5. In the alternative to statutory damages, and pursuant to 15 U.S.C.
6 §16810(a)(1) and Civ. Code § 1786.50, an award of actual damages to Plaintiff and
7 each member of the Class, in an amount according to proof, for Defendants’ negligent
8 violations of the FCRA;

9 6. Pursuant to 15 U.S.C. §1681n(a)(2) and Civ. Code § 1786.50, an award of
10 punitive damages to Plaintiff and the members of the Class in an amount to be
11 determined by the Court;

12 7. For an order certifying the Class under Rule 23 of the Federal Rules of Civil
13 Procedure;

14 8. Damages and remedies under § 1785.31;

15 9. For costs of suit and expenses incurred herein, including reasonable
16 attorneys’ fees and costs allowed under relevant provision of law including, but not
17 limited to, those allowed under 15 U.S.C. §1681n(a)(3), 15 U.S.C. §1681o(a)(2), Civ.
18 Code § 1786.50, and/or other applicable provisions of law; and

19 10. For any other relief the Court may deem just, proper and equitable in the
20 circumstances.

21 **DEMAND FOR JURY TRIAL**

22 Plaintiffs hereby demand trial by jury to the extent authorized by law.

23 LAW OFFICES OF THOMAS D.
24 RUTLEDGE

25 Dated: December 7, 2017

26 By: /s/ Thomas D. Rutledge
27 /s/Thomas D. Rutledge, Esq.
28 Attorneys for Plaintiffs

Exhibit 1

REDACTED

HCI Systems, Inc.

APPLICANT CERTIFICATION AND AUTHORIZATION

I hereby give Orion Risk Management (hereinafter referred to as "you") the right to conduct an investigation of my background. I understand that the investigation may include inquiry into my past employment and public records (including but not limited to workers compensation adjudication records). I hereby agree to indemnify and hold you harmless against any liability which may result from making such investigation. Additionally, I agree that you may obtain an investigative consumer report or other information regarding me and may consult certain files, which are available. I understand that any false answers, statements, implications, or derogatory information made by me or which is revealed as a result of this background investigation based on information supplied in any application for employment or other documents, may be considered sufficient for discharge.

Applicant Name (Print): FORREST CLAYTON MARTZ

Date of Birth: [REDACTED] *Date of Birth information is collected for the sole purpose of expediting your background investigation. It is not a factor considered in the evaluation of your application for employment.*

Social Security Number: [REDACTED]

Phone: [REDACTED] EMAIL: [REDACTED]

Address: [REDACTED]

City: [REDACTED] State: CA Zip: [REDACTED]

Driver's License Number: [REDACTED] State: CA Expiration: [REDACTED]

Signature: [Handwritten Signature]
(Applicant's Signature)

Date: 12-8-15

Exhibit 2

REDACTED

FCRA DISCLOSURE AND ACKNOWLEDGMENT
IMPORTANT -- PLEASE READ CAREFULLY BEFORE SIGNING AUTHORIZATION

DISCLOSURE REGARDING BACKGROUND INVESTIGATION

HCI Systems Inc. ("the Company") may obtain information about you for employment purposes from a third party consumer reporting agency. Thus, you may be the subject of a "consumer report" and/or an "investigative consumer report" which may include information about your credit history, criminal history, social security verification, motor vehicle records ("driving records"), verification of your education or employment history, or other background checks. Credit history will only be requested where such information is substantially related to the duties and responsibilities of the position for which you are applying. An investigative consumer report may include information about your character, general reputation, personal characteristics, and/or mode of living, and which can involve personal interviews with sources such as your neighbors, friends, or associates. Please be advised that the nature and scope of the most common form of investigative consumer report obtained is an investigation into your education and/or employment history. You have the right, upon written request made within a reasonable time, to request whether a consumer report has been run about you, and disclosure of the nature and scope of any investigative consumer report, and to request a copy of your report.


The report may be generated by **Universal Background Screening (Post Office Box 5920 Scottsdale, AZ 85261, 1-877-263-8033, www.universalbackground.com)** or another outside organization. The scope of this notice and authorization is all-encompassing, however, allowing the Company to obtain from any outside organization all manner of consumer reports and investigative consumer reports now and, if you are hired, throughout your employment to the extent permitted by law. As a result, you should carefully consider whether to exercise your right to request disclosure of the nature and scope of any investigative consumer report.

New York and Maine applicants or employees only: You have the right to inspect and receive a copy of any investigative consumer report requested by the Company by contacting the consumer reporting agency identified above directly. You may also contact the Company to request the name, address and telephone number of the nearest unit of the consumer reporting agency designated to handle inquiries, which the Company shall provide within 5 days.
New York applicants or employees only: Upon request, you will be informed whether or not a consumer report was requested by the Company, and if such report was requested, informed of the name and address of the consumer reporting agency that furnished the report. By signing below, you also acknowledge receipt of Article 23-A of the New York Correction Law.
Oregon applicants or employees only: Information describing your rights under federal and Oregon law regarding consumer identity theft protection, the storage and disposal of your credit information, and remedies available should you suspect or find that the Company has not maintained secured records is available to you upon request.
Washington State applicants or employees only: You also have the right to request from the consumer reporting agency a written summary of your rights and remedies under the Washington Fair Credit Reporting Act.

ACKNOWLEDGMENT AND AUTHORIZATION

I acknowledge receipt of the DISCLOSURE REGARDING BACKGROUND INVESTIGATION (above) and A SUMMARY OF YOUR RIGHTS UNDER THE FAIR CREDIT REPORTING ACT (separate document) and certify that I have read and understand both of those documents. I hereby authorize the obtaining of "consumer reports" and/or "investigative consumer reports" by the Company at any time after receipt of this authorization and, if I am hired, throughout my employment, if applicable. To this end, I hereby authorize, without reservation, any law enforcement agency, administrator, state or federal agency, institution, school or university (public or private), information service bureau, employer, or insurance company to furnish any and all background information requested by **Universal Background Screening**, another outside organization acting on behalf of the Company, and/or the Company itself. I agree that a facsimile ("fax"), electronic or photographic copy of this Authorization shall be as valid as the original.

New York applicants or employees only: By signing below, you also acknowledge receipt of Article 23-A of the New York Correction Law.
Minnesota and Oklahoma applicants or employees only: Please check this box if you would like to receive a copy of a consumer report if one is obtained by the Company. <input type="checkbox"/>
California applicants or employees only: By signing below, you also acknowledge receipt of the NOTICE REGARDING BACKGROUND INVESTIGATION PURSUANT TO CALIFORNIA LAW. Please check this box if you would like to receive a copy of an investigative consumer report or consumer credit report at no charge if one is obtained by the Company whenever you have a right to receive such a copy under California law. <input type="checkbox"/>

	12-8-15
Signature	Date
FORREST CLAYTON MARTZ	[Redacted]
Full Name (First/Middle/Last)	Social Security Number (SSN)*
[Redacted]	[Redacted]
Driver License State / Number	Date of Birth*
[Redacted]	[Redacted]

*SSN and DOB will be used for identification purposes and will not be used as hiring criteria.

REDACTED



Request for Background Check

Account #008129

Social Security Number

[Redacted Social Security Number]

Date of Birth

[Redacted Date of Birth]

[Redacted Date of Birth]

[Redacted Date of Birth]

First Name FORREST	Middle Name CLAYTON	Last Name MARTZ
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Other Names Used
NA

Current Residential Address
[Redacted Address]

City [Redacted]	State CA	Zip Code [Redacted]
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List each CITY, STATE and ZIP CODE (if known) where you have lived during the past seven years:

City	State	Zip Code	From Date	To Date
[Redacted]	CA	[Redacted]	2003	2012

Driver's License Number [Redacted]	State of Issue CA
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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

Forrest Martz

(b) County of Residence of First Listed Plaintiff San Bernardino County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Thomas D. Rutledge 500 West Harbor Drive, Suite 1113, San Diego, California 92101 Telephone: 619-886-7224

DEFENDANTS

HCI Systems, Inc; Orion Risk Management Insurance Services, Inc.; Universal Background Screening, Inc.

County of Residence of First Listed Defendant San Bernardino County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'17CV2464 L BLM

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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 (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

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. § 1681i; and Rule 23. Brief description of cause: Violations of FCRA

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Undetermined CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 12/07/2017 SIGNATURE OF ATTORNEY OF RECORD /s/Thomas D. Rutledge, Esquire

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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: [HCI Systems, Two Others Facing Lawsuit Over Employee Background Check Authorization Forms](#)
