

1 SEMNAR & HARTMAN, LLP  
2 Babak Semnar, Esq. (SBN 224890)  
3 Bob@SanDiegoConsumerAttorneys.com  
4 Jared M. Hartman, Esq. (SBN 254860)  
5 Jared@SanDiegoConsumerAttorneys.com  
6 41707 Winchester Road, Suite 201  
7 Temecula, CA 92590  
8 PH: 951-293-4187  
9 Fax: 888-819-8230

10 MEYER WILSON CO., LPA  
11 Matthew R. Wilson, Esq. (SBN 290473)  
12 [Mwilson@meyerwilson.com](mailto:Mwilson@meyerwilson.com)  
13 Michael J. Boyle, Jr. (SBN 258560)  
14 [Mboyle@meyerwilson.com](mailto:Mboyle@meyerwilson.com)  
15 1320 Dublin Road, Suite 100  
16 Columbus, OH 43215  
17 PH: 614-224-6000  
18 Fax: 614-224-6066

19 Attorneys for Plaintiff, JOSEPH MOORHEAD

20 **IN THE U.S. DISTRICT COURT**  
21 **SOUTHERN DISTRICT OF CALIFORNIA**

22 JOSEPH MOORHEAD, an  
23 individual,

24 Plaintiff,

25 vs.

26 HKA ENTERPRISES, LLC,

27 Defendant.

Case No.: '18CV2490 L LL

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

- 1. **FEDERAL FAIR CREDIT REPORTING ACT - 15 U.S.C. §1681e; and**
- 2. **FEDERAL FAIR CREDIT REPORTING ACT - 15 U.S.C. §1681k**

28 Plaintiff Joseph Moorhead, on behalf of himself and all others similarly situated, files this Class Action Complaint against Defendant HKA Enterprises, LLC (“HKA” or

1 “Defendant”) for violations of the Fair Credit Reporting Act. Plaintiff alleges, based on  
2 personal knowledge as to Defendant’s actions and upon information and belief as to all  
3 other matters, as follows.

#### 4 NATURE OF THE CASE

5 1. This is a consumer class action under the Fair Credit Reporting Act, 15  
6 U.S.C. §1681, *et seq.* (“FCRA”) brought on behalf of a Class against a Defendant that  
7 procures and uses background information for employment purposes.

8 2. The FCRA regulates the use of “consumer reports” for employment  
9 purposes, commonly called “background reports.” By enacting the FCRA, Congress  
10 found there is a need to insure that consumer reporting agencies (“CRAs”) exercise  
11 their important responsibilities with fairness, impartiality, and a respect for the  
12 consumer’s right to privacy. Moreover, Congress included in the statutory scheme a  
13 series of protections that impose strict rules on “users of consumer reports,” such as  
14 Defendant in this case. These rules ensure that individuals, such as Plaintiff, are  
15 afforded their substantive rights established under the Fair Credit Reporting Act.  
16 Specifically, pertaining to employment-related background checks, the FCRA provides  
17 that a prospective employee must give consent to the background check, which includes  
18 both disclosure and authorization. *The authorization and disclosure forms must stand*  
19 *alone.* Additionally, users of consumer reports, before declining, withdrawing, or  
20 terminating employment based in whole or in part on the contents of the report, must  
21 provide job applicants, such as Plaintiff, with a copy of their respective reports *and* a  
22 written summary of their rights under the FCRA. This class action involves Defendant’s  
23 systematic violations of those rules protecting Plaintiff’s and class members’ important  
24 substantive rights.

25 3. In order to screen or check job applicants’ backgrounds, users of consumer  
26 reports are required by the FCRA to: (1) disclose in writing to the consumer, “in a  
27 document that consists solely of the disclosure, that a consumer report may be obtained  
28 for employment purposes,” and (2) obtain written consent or permission from the

1 applicant. 15 U.S.C. § 1681b(b)(2).

2 4. In violation of 1681b(b)(2)(A)(i), HKA procured a background check on  
3 Plaintiff that relied on a form that did not contain a conspicuous disclosure in a  
4 document *that consists solely of the disclosure*.

5 5. As a result, in violation of 1681b(b)(2)(A)(ii), HKA has obtained  
6 consumer reports without proper authorization. HKA's failure to obtain the proper and  
7 statutorily required consent or authorization triggers statutory damages under the FCRA  
8 - of not less than \$100 and not more than \$1,000 for each violation - in which HKA  
9 obtained a consumer report without valid disclosure and authorization, as well as  
10 punitive damages, equitable relief, and attorneys' fees and costs.

11 6. In addition, when using background reports for employment purposes,  
12 before declining, withdrawing, or terminating employment based in whole or in part on  
13 the contents of the report, the entity taking such adverse action must provide job  
14 applicants like Plaintiff with a copy of their respective reports *and* a written summary of  
15 their rights under the FCRA ("pre-adverse action notification"). 15 U.S.C. §  
16 1681b(b)(3).

17 7. In violation of 15 U.S.C. § 1681b(b)(3), HKA willfully failed to comply  
18 with the FCRA's mandatory pre-adverse action notification requirement *twice*: (1) it did  
19 not send notice to Plaintiff until *after* it had already adjudicated his background grade as  
20 "Fail," and (2) it did not provide Plaintiff a copy of any report or written notice until  
21 *after* the decision had been made not to extend him an employment offer or continue his  
22 on-boarding process. Moreover, HKA failed to inform Plaintiff that its adjudication of  
23 his status as "Fail" constituted an adverse employment action, and that he would not be  
24 hired. By using consumer reports to make adverse employment decisions without,  
25 beforehand, providing the person who is the subject of the report sufficient and timely  
26 notification, a copy of the report, a summary of rights under the FCRA, or any  
27 opportunity to correct any errors on the report, HKA effectively leaves the person who  
28 is the subject of the report without any means to challenge the contents of the report or

1 to even know who prepared the background report. HKA’s actions trigger statutory  
2 damages under the FCRA in the amount of not less than \$100 and not more than \$1,000  
3 for each violation. Plaintiff and class members are also entitled to punitive damages,  
4 equitable relief, and attorneys’ fees and costs.

5 8. Pursuant to 15 U.S.C. §§ 1681n and 1681o, Plaintiff seeks monetary relief  
6 for himself and a Class of similarly situated employment applicants whose vital  
7 substantive rights under FCRA have been violated and/or abridged by Defendant.

8 **PARTIES**

9 9. Plaintiff Joseph Moorhead is a “consumer” as protected and governed by  
10 the FCRA, and resides in Escondido, California.

11 10. Defendant HKA Enterprises, LLC is a for-profit limited liability company  
12 incorporated under the laws of Delaware, with its principal place of business in Duncan,  
13 South Carolina.

14 **JURISDICTION & VENUE**

15 11. The Court has federal question jurisdiction under the FCRA, 15 U.S.C. §  
16 1681p, and 28 U.S.C. § 1331.

17 12. Defendant regularly conduct business within the State of California, and  
18 maintains a principal place of business in California at 511 Honey Lake Court, City of  
19 Danville, CA, and maintains an agent for service of process at the same location.  
20 Therefore, personal jurisdiction is established.

21 13. The Court has personal jurisdiction over the Defendant because it  
22 regularly transacts business in California, and the events giving rise to this cause of  
23 action occurred primarily within the State of California.

24 14. Venue is proper in this District because the Court has personal jurisdiction  
25 over all parties, and the majority of event giving rise to this cause of action occurred in  
26 this District.

## FACTUAL ALLEGATIONS

1  
2 15. Plaintiff's lawsuit against HKA arises from a position that Plaintiff  
3 applied for with HKA on or about April 11, 2017.

4 16. HKA's initial application purported to disclose and require Plaintiff to  
5 consent to a background check as part of the employment hiring process. However, the  
6 "consent" form included many other disclosures in addition to the disclosed  
7 requirement of a background check. The disclosure form was not a "clear and  
8 conspicuous disclosure . . . in a document that consists solely of the disclosure that a  
9 consumer report may be obtained for employment purposes" as required by section  
10 1681b(b)(2)(A)(i) for the FCRA.

11 17. Instead, the application itself contained a small text box "to be read and  
12 signed by the applicant." Rather than the "clear and conspicuous disclosure" that HKA  
13 would be obtaining a background check report on the Plaintiff, the text box  
14 ambiguously states that "I authorize HKA to make such investigations an[d] inquiries  
15 of my personal, employment, and other related matters to the extent necessary to arrive  
16 at an employment decision." Based on that "disclosure," Plaintiff had no way to know  
17 that HKA would, in fact, cause a *background check* to be conducted on him.

18 18. In addition, the Disclosure Form unlawfully included the following  
19 improper and extraneous language that distracts the consumer from the purpose of the  
20 stand-alone disclosure, which is simply to inform the consumer "that a consumer report  
21 may be obtained for employment purposes." The extraneous and distracting language  
22 in the Disclosure Form includes, but is not limited to, the following:

- 23
- 24 • "I hereby authorize employers, schools, and other persons to release the  
25 information requested and I hereby release such providers of information  
26 from all liability in responding to inquiries and releasing information in  
27 connection with my application."
  - 28 • "In the event of employment, I understand that false or misleading  
information given in my application or interview(s) may result in

1 discharge. I also understand that I am required to abide by all rules and  
2 regulations of the Company and its Clients.”

- 3 • “This certified that this application was completed by me and that all  
4 entries and information in it are true and complete to the best of my  
5 knowledge and I understand that any misleading or false information shall  
6 subject me to discipline up to and including termination.”

7 19. Plaintiff was interviewed on or about April 6, 2017, and was given a  
8 conditional offer of a job with HKA on or about April 10, 2017. During the interview  
9 process, and on the application, Plaintiff disclosed that he was convicted of two  
10 criminal offenses and served three years of probation for those offenses. More  
11 specifically, Plaintiff pled guilty to one count of assault pursuant to California Penal  
12 Code § 245(a)(4) and kidnapping pursuant to Penal Code § 207(a). As part of the plea  
13 bargain under which he received probation, he was required to register as a sex  
14 offender pursuant to Penal Code § 290 only for the duration of the probation. The term  
15 of probation automatically expired by law and court order on April 6, 2017, as no  
16 allegations of violation of probation had ever been filed against him.

17 20. On July 17, 2017, the County of San Diego Superior Court set aside those  
18 convictions, withdrew Plaintiff’s guilty pleas, and dismissed the charges against  
19 Plaintiff pursuant to Penal Code § 1203.4(a). The process of having these convictions  
20 expunged was in process at the time Plaintiff applied for a job with HKA. Plaintiff  
21 disclosed to HKA in his application that the convictions were in the process of being  
22 expunged. The charges ultimately were, in fact, expunged.

23 21. After HKA informed Plaintiff on or about April 10, 2017 of its intent to  
24 hire him, Plaintiff ceased his job search. He did not fill out any additional applications  
25 with potential employers and he stopped sending out his resume.

26 22. However, on or about April 20, 2017, HKA ultimately made the decision  
27 to revoke Plaintiff’s conditional offer of employment and to not move forward with  
28 him as a candidate for the position that had been previously offered.

1           23. HKA did not notify Plaintiff of this decision until a telephone call on or  
2 about May 26, 2017, more than one month after its decision was made.

3           24. On or about May 26, 2017, Plaintiff was informed orally via telephone  
4 call that his conditional offer was revoked as a result of “a problem with the  
5 background check.” HKA did not give Plaintiff any details other than just to inform  
6 him that there was “a problem with the background check.” Plaintiff did not receive  
7 any written documentation at any time from any source regarding the revocation of his  
8 conditional offer, or a copy of the background check, in April or May 2017.

9           25. Plaintiff then conducted his own search on Google to determine who the  
10 background check company is that HKA regularly utilizes, and Plaintiff then contacted  
11 that company directly to obtain a copy of the final report that the company collated  
12 based on all information it obtained and provided to HKA.

13           26. In doing so, Plaintiff was forced to undertake his own initiative to obtain  
14 documentation showing that HKA received a background check report from the  
15 company it hired to obtain such a background check, Employment Screening Services,  
16 and that based on the report, HKA decided to revoke the conditional offer of  
17 employment on a preliminary basis on or about April 20, 2017, which was not  
18 communicated to Plaintiff until on or about May 26, 2017. Neither the report nor the  
19 potential adverse action were communicated to Plaintiff prior to the conditional offer  
20 being revoked.

21           27. As a company in the business of obtaining background checks for  
22 employment purposes, HKA knew or should have known that its form, which did not  
23 contain a stand-alone disclosure, was in violation of the FCRA. The statutory language  
24 of section 1681b(b)(2)(A) is clear that no entity can procure a consumer report, or  
25 cause a consumer report to be procured, for employment purposes with respect to any  
26 consumer, unless “a clear and conspicuous disclosure has been made in writing to the  
27 consumer at any time before the report is procured or caused to be procured, in a  
28

1 document that consists solely of the disclosure, that a consumer report may be obtained  
2 for employment purposes.” 15 U.S.C. § 1681b(b)(2)(A)(i).

3 28. Besides being in clear contravention of the FCRA, HKA creates a real risk  
4 of harm to applicants for employment when it procures background reports without  
5 insisting on a proper and statutorily compliant disclosure form. A form in which the  
6 disclosure is buried in one section of a larger document results in information overload,  
7 which inhibits a consumers’ ability to agree to a background check with full  
8 knowledge of their rights and the potential consequences.

9 29. As a result of HKA’s failure to comply with the disclosure and  
10 authorization requirements of the FCRA, Plaintiff suffered concrete harm—he was  
11 deprived of the disclosure that was necessary for him to give informed consent to a  
12 background check. In subsequently obtaining Plaintiff’s background report without  
13 proper authorization, Plaintiff suffered additional harm when his statutory right to  
14 privacy was invaded.

15 30. Upon receiving the first report in April 2017, HKA had an obligation to  
16 provide a copy of the report to Plaintiff, along with a written pre-adverse event notice,  
17 and provide an opportunity to challenge the contents of the report, as required by 15  
18 U.S.C. § 1681b(b)(3). Had it done so, Plaintiff would have been able to inform HKA  
19 that the information it had received was *incorrect*, since he was not, in fact, on the sex  
20 offender registry at the present time, contrary to the findings of the background check.

21 31. As a result of HKA’s failure to comply with the pre-adverse notification  
22 requirements of FCRA by failing to send notice to Plaintiff before adjudicating him as  
23 “fail,” Plaintiff suffered additional concrete harm—he was deprived of information the  
24 he was entitled to receive by statute, including a copy of his report (“informational  
25 injury”) before the adjudication of his employment status.

26 32. Because Plaintiff was not provided any notice of pre-adverse action and/or  
27 a copy of his background check in April 2017, and waited until May 26, 2017 to only  
28 notify Plaintiff verbally via telephone call, HKA caused Plaintiff to suffer additional



1 concrete harm in the form of lost time that could have been used looking for a new  
2 job—he had discontinued his job search and had no reason to believe he should restart  
3 his search—as well as such opportunities he may well have missed during that time.

4 33. HKA caused Plaintiff to suffer additional concrete harm by not giving him  
5 an opportunity to review, verify, or correct any information in the consumer report  
6 before denying him an employment opportunity. Because the report HKA received  
7 was erroneous in several respects, this likely deprived him of employment with HKA.

### 8 **CLASS ACTION ALLEGATIONS**

9 34. Pursuant to Fed. R. Civ. P. 23 and FCRA § 1681b(b), Plaintiff brings this  
10 action on behalf of himself and on behalf of the following Classes:

11 (a) All natural persons residing within the United States and its Territories with  
12 respect to whom, within seven years prior to the filing of this action and  
13 extending through the resolution of this action, HKA procured or caused to be  
14 procured a consumer report for employment purposes without a stand-alone  
15 written disclosure (“Class A”).

16  
17 (b) All natural persons residing within the United States and its Territories: (1)  
18 within seven years prior to the filing of this action and extending through the  
19 resolution of this action; (2) who were the subject of a background report  
20 procured or caused to be procured by HKA; (3) that was used to make an  
21 adverse employment decision regarding such employee or applicant for  
22 employment; and (4) who HKA failed to notify of a forthcoming adverse action  
23 and/or failed to provide the applicant an understandable copy of his or her  
24 consumer report or a copy of the FCRA summary of rights before it took such  
25 adverse action (“Class B”).

26  
27 35. Plaintiff reserves the right to amend the definition of the classes based on  
28 discovery or legal development.

1           36. Plaintiff and all Class members have been harmed by the acts of  
2 Defendant. Plaintiff and members of Class A and Class B have suffered an invasion of  
3 their privacy and been deprived of substantive rights granted to them by the Fair Credit  
4 Reporting Act.

5           37. Plaintiff and members of Class A have suffered concrete informational  
6 harm by HKA's failure to obtain proper consent, which unfairly deprived them of  
7 relevant information.

8           38. Plaintiffs and members of Class A have suffered concrete harm and been  
9 deprived of their ability to meaningfully authorize a consumer background report.

10           39. Additionally, Plaintiff and all members of Class B have suffered  
11 informational harm when the background reports they received contained insufficient  
12 information to assess their accuracy.

13           40. Plaintiff and members of Class B have suffered concrete informational  
14 harm when they were deprived of pre-adverse notices entitled to them under the Fair  
15 Credit Reporting Act.

16           41. Plaintiff and members of Class B have suffered concrete harm because  
17 HKA deprived them of their right to review their reports and challenge their accuracy  
18 before adjudicating them as "Fail" and adverse action was taken.

19           42. Plaintiff and members of Class B have suffered concrete harm in that they  
20 were subject to a real risk of harm by HKA's failure to send a pre-adverse event notice  
21 before denying employment opportunities, because even when the information in the  
22 report is true, it may be amenable to contextual explanation, and Plaintiff and Class  
23 members were deprived of the opportunity to provide such context.

24           43. HKA acted on grounds generally applicable to both Classes, thereby  
25 making final relief with respect to the Classes as a whole appropriate.

26           44. This Class Action Complaint seeks money damages for each member of  
27 the Classes pursuant to the statutory damages provision of 15 U.S.C. § 1681n(a)(1)(A),  
28

1 punitive damages pursuant to 15 U.S.C. § 1681n(a)(2), attorneys' fees pursuant to 15  
2 U.S.C. § 1681n(a)(3), and/or appropriate declaratory/injunctive relief.

3 45. Upon information and belief, Plaintiff alleges that the Class members are  
4 so numerous that joinder is impractical. The names and addresses of the Class  
5 members are identifiable through documents maintained by HKA, and the Class  
6 members may be notified of the pendency of this action by published and/or mailed  
7 notice.

8 46. Common questions of law and fact exist as to all members of the Classes,  
9 and predominate over the questions affecting only individual members. The common  
10 legal and factual questions include, among others:

- 11 • Whether HKA willfully violated Section 1681b(b)(2) of the FCRA by  
12 procuring or causing to be procured consumer reports for employment  
13 purposes without obtaining a clear and conspicuous disclosure in a  
14 document that consists solely of the disclosure that a consumer report may  
15 be obtained for employment purposes;
- 16 • Whether HKA failed to provide notice of a pending adverse employment  
17 decision based on the background check to the applicant or employee at  
18 least five business days before declining to hire or discharging the  
19 applicant or employee based on the results thereof (§1681b(b)(3)(A)(i));
- 20 • Whether by sending an unclear report without adequate information to  
21 assess the accuracy of its findings, HKA failed to provide a copy of the  
22 consumer report to the applicant or employee at least five business days  
23 before declining to hire or discharging the applicant or employee based on  
24 the results thereof (§1681b(b)(3)(A)(i));
- 25 • Whether HKA failed to provide a copy of a summary of the applicant or  
26 employee's rights under the FCRA before declining to hire or discharging  
27 the applicant or employee (§1681b(b)(3)(A)(ii));

- 1 • Whether HKA acted willfully in disregard of the rights of employment  
2 applicants in its failure to permit its employees and automated systems to  
3 send employment applicants their full consumer report and a written  
4 statement of their FCRA rights at least five business days before taking  
5 adverse action based on the consumer report.
- 6 • Whether Class members are entitled statutory damages, and if so, in what  
7 amount;
- 8 • Whether Plaintiff and other Class members are entitled to declaratory,  
9 injunctive, or other equitable relief.

10 47. Plaintiff's claims are typical of the claims of each Class member. Plaintiff  
11 makes the same claims that he makes for the Class members and seeks the same relief  
12 that it seeks for the Class members. In addition, Plaintiff is entitled to relief under the  
13 same causes of action as the other members of both Classes, and Defendant has acted  
14 in the same manner towards Plaintiff and all Class members.

15 48. Plaintiff is an adequate representative of the Classes because his interests  
16 coincide with, and are not antagonistic to, the interests of the members of the Classes  
17 he seeks to represent, he has retained counsel competent and experienced in such  
18 litigation, and he intends to prosecute this action vigorously. Plaintiff and his Counsel  
19 will fairly and adequately protect the interests of the members of the Classes.

20 49. In addition to certification under Fed. R. Civ. P. 23(b)(3), Plaintiff also  
21 seeks certification under Fed. R. Civ. P. 23(b)(2), in that Defendant has acted or  
22 refused to act on grounds that apply generally to the Classes, so that final injunctive  
23 relief and/or corresponding declaratory relief is appropriate respecting the Classes as a  
24 whole.

25 50. Plaintiff has standing to seek an injunction against Defendant in that he  
26 could seek future employment from HKA, and thus would be again subject to the  
27 improper and illegal background check procedures.

1           51. Plaintiff and all Members of Class A seek an injunction and/or  
2 corresponding declaratory relief stipulating that: a) HKA must, prior to obtaining a  
3 prospective employee's authorization to procure a background report, produce in a  
4 clear and conspicuous manner a disclosure in writing to the consumer in a document  
5 that consists solely of the disclosure that a consumer report may be obtained for  
6 employment purposes, and b) that HKA may not procure or cause to be procured a  
7 copy of the prospective employee's consumer report without first obtaining proper  
8 authorization and consent from the prospective employee.

9           52. Plaintiff and all members of Class B seek an injunction and/or  
10 corresponding declaratory relief stipulating that HKA must, prior to taking any adverse  
11 action against a prospective employee based in whole or in part on the prospective  
12 employees consumer report, provide the consumer with the following: (a) the required  
13 Pre-Adverse Action Notice that explains to the applicant in clear and unambiguous  
14 words the forthcoming adverse action; (b) a copy of the consumer report; and (c) a  
15 written description of the consumer's rights under the FCRA.

16           53. Pursuant to Fed. R. Civ. P. 23(b)(3), the questions of law and fact in this  
17 case that are common to all Class members predominate over individual issues (if any)  
18 because the key issues that need to be resolved pertain to HKA's procedures and  
19 knowledge and so do not vary from one Class member to another.

20           54. Questions of law and fact common to the Class members predominate  
21 over questions affecting only individual members, and a class action is superior to  
22 other available methods for fair and efficient adjudication of the controversy. It would  
23 be virtually impossible for the Class members individually to redress effectively the  
24 wrongs done to them. Even if the Class members themselves could afford such  
25 individual litigation, it would be an unnecessary burden on the courts. Furthermore,  
26 individualized litigation presents a potential for inconsistent or contradictory  
27 judgments and increases the delay and expense to all parties and to the court system  
28 present by the complex legal and factual issues raised by HKA's conduct. By contrast,

1 the class action device will result in substantial benefits to the litigants and the Court  
2 by allowing the Court to resolve numerous individual claims based upon a single set of  
3 proof in a unified proceeding.

4 55. Plaintiffs may seek partial certification under Fed. R. Civ. P. 23(c)(4) in  
5 that questions of law and fact common to the class exist as to all Class members. Such  
6 a partial certification would be in the alternative to certification under Fed. R. Civ. P.  
7 23(b)(2) and/or (b)(3).

## 8 **CLAIMS FOR RELIEF**

### 9 **COUNT ONE:**

#### 10 **Failure to Obtain Proper Authorization in Violation of the FCRA** 11 **(On Behalf of Plaintiff and Class A), 15 U.S.C. § 1681b(b)(2)(A)(ii)**

12  
13 56. Plaintiff restates each of the allegations in the preceding paragraphs as if  
14 set forth at length herein.

15 57. HKA violated 15 U.S.C. § 1681b(b)(2)(A)(ii) by procuring, or causing to  
16 be procured, consumer reports relating to Plaintiff and other Class members, without  
17 proper authorization. By failing to require the disclosure and authorization forms to  
18 contain a clear and conspicuous disclosure in writing to the consumer in a document  
19 that consists solely of the disclosure that a consumer report may be obtained for  
20 employment purposes, HKA failed to obtain proper authorization from Plaintiff and  
21 Class members.

22 58. HKA's violations were willful. HKA acted in deliberate disregard of its  
23 obligations and the rights of Plaintiff and other Class members under 15 U.S.C. §  
24 1681b(b)(2)(A)(ii).

25 59. HKA caused Plaintiff and Class members to suffer concrete harm and  
26 damages by not insisting that the individuals for whom HKA was obtaining  
27 background information were fully aware of their rights and protections under the  
28 FCRA. Plaintiff and Class members suffered further concrete harm when their privacy

1 was invaded by the procurement of their consumer without proper consent and  
2 authorization.

3 60. Plaintiff and the Class members are entitled to statutory damages of not  
4 less than \$100 and not more than \$1,000 for every violation of the FCRA pursuant to  
5 15 U.S.C. § 1681n(a)(1)(A).

6 61. Additionally, Plaintiff and Class members seek an injunction and/or  
7 corresponding declaratory relief stipulating that HKA may not procure or cause to be  
8 procured a copy of the prospective employee's consumer report without first obtaining  
9 proper authorization and consent from the prospective employee.

10 **COUNT TWO:**

11 **Failure to Provide Pre-Adverse Action Notification, the Consumer Report, and a**  
12 **Copy of the Consumer's Rights in Violation of the FCRA**  
13 **(On Behalf of Plaintiff and Class B), 15 U.S.C. § 1681b(b)(3)(A)**  
14

15 62. Plaintiff restates each of the allegations in the preceding paragraphs as if  
16 set forth at length herein.

17 63. The FCRA provides that any person "using a consumer report for  
18 employment purposes" who intends to take any "adverse action based in whole or in  
19 part of the report," must provide the consumer with a copy of the report and a written  
20 description of the consumer's rights under the FCRA, as prescribed by the Federal  
21 Trade Commission, before taking such adverse action. 15 U.S.C. 1681b(b)(3)(A).

22 64. For purposes of this requirement, an "adverse action" includes "any . . .  
23 decision . . . that adversely affects any current or prospective employee." 15 U.S.C. §  
24 1681a(k)(1)(B)(ii).

25 65. HKA meets the definition of a "person," and regularly uses background  
26 reports for employment purposes. 15 U.S.C. §§1681b(b)(3)(A)(i) and (ii).

27 66. HKA willfully violated section 1681b(b)(3) of the FCRA by failing to  
28 provide Plaintiff and the members of the Class the following before using such report:

1 (a) the required Pre-Adverse Action Notice; (b) a copy of the consumer report; and (c)  
2 a written description of the consumer's rights under the FCRA.

3 67. HKA caused Plaintiff and Class members to suffer concrete harm by not  
4 making them fully aware of their substantive rights and protections under the FCRA.

5 68. HKA did not provide Plaintiff or Class members the proper pre-adverse  
6 action notice before taking the adverse action based on his or her background report.

7 69. HKA caused Plaintiff and Class members to suffer concrete harm by  
8 making adverse employment decisions without providing Plaintiff or Class members  
9 an opportunity to review, verify, or correct background reports.

10 70. Class members are entitled to statutory damages of not less than \$100 and  
11 not more than \$1,000 for every violation of the FCRA pursuant to 15 U.S.C. §  
12 1681n(a)(1)(A).

13 71. Additionally, Plaintiff and all Class members seek an injunction and/or  
14 corresponding declaratory relief stipulating that HKA must, prior to taking any adverse  
15 action against a prospective employee based in whole or in part on the prospective  
16 employees consumer report, provide the consumer with the following: (a) the required  
17 Pre-Adverse Action Notice; (b) a copy of the consumer report; and (c) a written  
18 description of the consumer's rights under the FCRA.

### 19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff and the Classes pray for relief as follows:

21 1. An order certifying the proposed FCRA classes herein under Federal Rule  
22 23 and appointing Plaintiff and his undersigned Counsel as representatives of record to  
23 represent the same;

24 2. As a result of HKA's willful violation of 15 U.S.C. § 1681b(b)(2)(A)(i),  
25 Plaintiff seeks for himself and each member of Class A damages, as provided by  
26 statute, of between \$100 and \$1,000 per violation;

27 3. As a result of HKA's willful violation of 15 U.S.C. § 1681b(b)(3)(A),  
28 Plaintiff seeks for himself and each member of Class B damages, as provided by statute,



1 of between \$100 and \$1,000 per violation;

2 4. As a result of Defendant’s willful violations of 15 U.S.C. § 1681b(b)(2)(i),  
3 15 U.S.C. § 1681b(b)(2)(ii), and 15 U.S.C. § 1681b(b)(3)(A), Plaintiff seeks punitive  
4 damages in an amount determined at trial;

5 5. That the Court award costs and reasonable attorneys’ fees to Plaintiff and  
6 the Class;

7 6. An award of pre-judgment and post-judgment interest as provided by law;  
8 and

9 7. That the Court grants such other and further relief as may be just and  
10 proper, including but not limited to any injunctive and/or declaratory relief that may be  
11 permitted.

12 **TRIAL BY JURY**

13 Pursuant to the Seventh Amendment to the Constitution of the United States of  
14 America, Plaintiff is entitled to, and demands, a trial by jury.

15 DATED: October 30, 2018

/s/ Jared M. Hartman

17 SEMNAR & HARTMAN, LLP  
18 Babak Semnar  
19 Jared M. Hartman  
20 41707 Winchester Road, Suite 201  
21 Temecula, CA 92590  
22 Telephone: (951) 293-4187  
23 Facsimile: (888) 819-8230  
24  
25  
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JS 44 (Rev. 12/12)

### 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.)

<p><b>I. (a) PLAINTIFFS</b> JOSEPH MOORHEAD</p> <p>(b) County of Residence of First Listed Plaintiff <u>SAN DIEGO</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) SEMNNAR &amp; HARTMAN, LLP; 41707 Winchester Road, Suite 201, Temecula, CA 92590</p>	<p><b>DEFENDANTS</b> HKA ENTERPRISES, LLC</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) <u>'18CV2490 L LL</u></p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

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

<p><b>CONTRACT</b></p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p><b>TORTS</b></p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p><b>PERSONAL PROPERTY</b></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><b>FORFEITURE/PENALTY</b></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p><b>LABOR</b></p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p><b>IMMIGRATION</b></p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p><b>BANKRUPTCY</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><b>PROPERTY RIGHTS</b></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p><b>SOCIAL SECURITY</b></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p><b>OTHER STATUTES</b></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input checked="" type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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**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

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 USC 1681n; 15 USC 1681o

Brief description of cause:  
Federal Fair Credit Reporting Act

**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 \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 10/30/2018    SIGNATURE OF ATTORNEY OF RECORD: /s/ Jared M. Hartman, Esq.

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

Print
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**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: [HKA Enterprises Sued by Job Applicant Over Allegedly Improper Background Check Disclosure](#)

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