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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – RIVERSIDE DIVISION

MARTIN MARTINEZ SOTO, an individual, on behalf of himself and others similarly situated

PLAINTIFF,

v.

O'REILLY AUTO ENTERPRISES, LLC; and DOES 1 thru 50, inclusive

DEFENDANTS.

CASE NO.

CLASS ACTION COMPLAINT FOR:

1. Violation of the Fair Credit Reporting Act for Failure to Make Proper Disclosures, 15 U.S.C. § 1681b(b)(2)(A)(i);
2. Violation of the Fair Credit Reporting Act for Failure to Obtain Proper Authorization, 15 U.S.C. § 1681b(b)(2)(A)(ii);

DEMAND FOR A JURY TRIAL

1 Plaintiff MARTIN MARTINEZ SOTO (“Plaintiff”), on behalf of himself and
2 all others similarly situated, alleges on information and belief, except for his own
3 acts and knowledge, the following:

4 I.

5 INTRODUCTION

6 1. Defendant O’REILLY AUTO ENTERPRISES, LLC ("Defendant") is
7 a Delaware Corporation and at all relevant times mentioned herein conducted and
8 continues to conduct substantial and regular business throughout California.

9 2. Defendant is an automotive parts store operating within the automotive
10 dealers and gasoline service stations sector and specializing in providing private-
11 label and generic automotive products for domestic and imported cars in the United
12 States.

13 3. Plaintiff applied, was hired, and performed work for Defendant in
14 California.

15 4. Upon information and belief, during the application process, Plaintiff
16 filled out Defendant’s standard “EMPLOYMENT APPLICATION” form
17 permitting Defendant to obtain a consumer report verifying Plaintiff’s background
18 and experience. (“standard FCRA form”).

19 5. Defendant’s standard FCRA form is attached hereto as **Exhibit 1**. This
20 form is a single “document” for purposes of the FCRA and consists of a disclosure
21 and authorization.

22 6. Defendant’s standard FCRA form is invalid on two separate grounds.
23 First, Defendant’s standard FCRA form violates the “standalone” disclosure
24 requirement in 15 U.S.C. § 1681b(b)(2)(A)(i) (the FCRA disclosure must be “in a
25 document that consists solely of the disclosure”). *Gilberg v. California Check*
26 *Cashing Stores, LLC*, 913 F.3d 1169, 1175 (9th Cir. 2019). Defendant’s standard
27 FCRA form contains a liability release. *Syed v. M-I, LLC* (9th Cir. 2017) 853 F.3d
28 492, 503 [“including the waiver violated the statute’s ‘solely’ requirement.”]

1 employee with the title of “auto parts specialist.”

2 13. Plaintiff completed Defendant’s standard FCRA form.

3 B. DEFENDANT

4 14. Defendant is a Delaware Corporation. At all times relevant herein,
5 Defendant conducted and continues to conduct business throughout the State of
6 California including hiring and employees such as Plaintiff.

7 15. Defendant’s entity address listed with the California Secretary of State
8 is 233 S. Patterson Ave., Springfield MO, 65802.

9 16. Defendant requires Plaintiff and all other persons similarly situated to
10 fill out Defendant’s standard FCRA form (Exhibit 1) permitting Defendant to obtain
11 a consumer report verifying the applicant’s background and experience.

12 17. Plaintiff is informed and believes and thereon alleges that each
13 Defendant acted in all respects pertinent to this action as the agent of the other
14 Defendant, and/or carried out a joint scheme, business plan or policy in all respects
15 pertinent hereto, and/or the acts of each Defendant are legally attributable to the
16 other Defendant(s).

17 IV.

18 NATURE OF THE ACTION

19 18. The FCRA provides individuals with a number of rights. Specifically,
20 pertaining to employment-related background checks referred to as “consumer
21 reports”, the FCRA provides that a prospective employee must give valid written
22 authorization to the background check after receiving a compliant written
23 disclosure.

24 19. The FCRA’s disclosure and authorization requirements are listed in 15
25 U.S.C. § 1681b(b)(2)(A).

26 V.

27 FACTUAL ALLEGATIONS

28 20. Plaintiff applied to work for Defendant in California. In connection

1 with his employment application, Plaintiff was required to fill out Defendant's
2 standard FCRA form (Exhibit 1) permitting Defendant to obtain a consumer report
3 verifying Plaintiff's background and experience.

4 21. Upon information and belief, Defendant required all applicants to
5 complete the same standard FCRA form.

6 22. Defendant's standard FCRA form is a single "document" for purposes
7 of the FCRA and consists of a disclosure and authorization.

8 23. Defendant's FCRA disclosure contained extraneous information such
9 as a liability release and state disclosures in violation of 15 U.S.C. §
10 1681b(b)(2)(A)(i)'s so-called "standalone" disclosure and "clear and conspicuous"
11 requirements. *Syed*, 853 F.3d 492, 500-503; *Gilberg*, 913 F.3d at 1175-76.

12 24. Defendant's standard FCRA form states: "I also release O'Reilly and
13 its representatives, as well as former employers, from any liability for damage
14 arising from any such investigation." (See Exhibit 1.)

15 25. Defendant's standard FCRA form states: "If you are a New York
16 applicant, a copy of New York's law on the use of criminal records is attached."
17 (See Exhibit 1.)

18 26. Accordingly, Plaintiff was confused regarding the nature of his rights
19 under the FCRA and did not give valid authorization for Defendant to procure a
20 consumer report in violation of 15 U.S.C. § 1681b(b)(2)(A)(ii).

21 27. Nevertheless, Defendant procured or caused to be procured Plaintiff's
22 consumer report.

23 28. Defendant's failure to provide a compliant disclosure, and failure to
24 obtain proper authorization, deprived Plaintiff and others similarly situated of the
25 right to information and the right to privacy guaranteed by 15 U.S.C. §
26 1681b(b)(2)(A). *Syed v. M-I, LLC*, 853 F.3d 492, 499 (9th Cir. 2017).

27 29. By including extraneous information in its standard FCRA disclosure,
28 Defendant's conduct is contrary to the plain language of the statute, case law, and

1 unambiguous regulatory guidance from the Federal Trade Commission (“FTC”).

2 30. Thus, Defendant “willfully” violated the FCRA. Defendant knew that
3 its standard FCRA disclosure must not contain surplus or extraneous information
4 related to state disclosures and must be clear and not likely to confuse a reasonable
5 reader.

6 **VI.**

7 **THE CLASS**

8 31. Plaintiff brings this action on behalf of himself and all others similarly
9 situated as a Class Action pursuant to Rule 23(a) and 23(b)(3) of the F.R.C.P.
10 Plaintiff satisfies the requirements of Rule 23(a) and (b)(3) for the prosecution of
11 this action as a class action. Plaintiff seeks to represent a class defined as follows:

12 All employees in the United States who filled out
13 O’REILLY AUTO ENTERPRISES, LLC’s standard
14 “EMPLOYMENT APPLICATION” form that contains a
15 liability release and/or combines federal and state
16 disclosures any time during the period beginning five (5)
17 years prior to the filing of this action to the present. (the
18 “Proposed Class”)

19 32. Plaintiff reserves the right to amend or modify the Class description
20 with greater specificity or further division into subclasses or limitation to particular
21 issues.

22 33. This class action on behalf of members of the Proposed Class meets the
23 statutory prerequisites for the maintenance of a class action as set forth in Rule 23(a)
24 and 23(b)(3) of the F.R.C.P.

25 A. Numerosity

26 34. The Proposed Class is so numerous that joinder of all class members is
27 impracticable.

28 35. While the precise number of members of the Proposed Class has not
been determined at this time, Plaintiff is informed and believes that Defendant,

1 during the relevant period, had applicants that numbered well over 1,000.

2 36. Plaintiff alleges that Defendant's records will provide information as to
3 the number of all members of the Proposed Class.

4 B. Commonality

5 37. There are questions of law and fact common to the Proposed Class that
6 predominate over any questions affecting only individual members of the Class.
7 These common questions of law and fact include, without limitation:

- 8 a. Whether Defendant's standard FCRA form (Exhibit 1) meets 15
9 U.S.C. §1681b(b)(2)(A)(i)'s "clear and conspicuous disclosure"
10 requirement;
- 11 b. Whether Defendant's standard FCRA form is "in a document
12 that consists solely of the disclosure" (15 U.S.C.
13 §1681b(b)(2)(A)(i));
- 14 c. Whether Defendant acquires applicants' consumer reports
15 without authorization in violation of 15 U.S.C.
16 §1681b(b)(2)(A)(ii); and
- 17 d. Whether Defendant "willfully" violated the FCRA pursuant to
18 15 U.S.C. §1681n.

19 C. Typicality

20 38. The claims of the named Plaintiff are typical of the claims of the
21 members of the Proposed Class.

22 39. Plaintiff is a member of the Proposed Class. Plaintiff was an applicant
23 and filled out Defendant's "EMPLOYMENT APPLICATION" form (Exhibit 1)
24 during his application process. Plaintiff was subjected to the same unlawful
25 practices as other members of the Proposed Class.

26 40. Plaintiff suffered the same injuries and seeks the same relief as the
27 members of the Proposed Class.

28 ///

1 D. Adequacy of Representation

2 41. Plaintiff will fairly and adequately represent and protect the interests of
3 the members of the Proposed Class.

4 42. Counsel for Plaintiff are competent and experience in litigation large
5 complex consumer and wage and hour class actions.

6 E. Predominance and Superiority of a Class Action

7 43. A class action is superior to other available means for fair and efficient
8 adjudication of this controversy. Individual joinder of all members of the Proposed
9 Class is not practicable, and questions of law and fact common to the Class
10 predominate over any questions affecting only individual members.

11 44. Class action treatment will allow those similarly situated persons to
12 litigate their claims in the manner that is most efficient and economical for the parties
13 and the judicial system. Plaintiff is unaware of any difficulties that are likely to be
14 encountered in the management of this action that would preclude its maintenance
15 as a class action.

16 45. Class action treatment will allow a large number of similarly situated
17 employees to prosecute their common claims in a single forum, simultaneously,
18 efficiently, and without the unnecessary duplication of effort and expense that
19 numerous individual actions would require. Further, the monetary amounts due to
20 many individual class members are likely to be relatively small, and the burden and
21 expense of individual litigation would make it difficult or impossible for individual
22 members of the members of the Proposed Class to seek and obtain relief. Moreover,
23 a class action will serve an important public interest by permitting employees
24 harmed by Defendant's unlawful practices to effectively pursue recovery of the sums
25 owed to them.

26 ///

1 VII.

2 FIRST CAUSE OF ACTION

3 FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF THE

4 FCRA

5 [15 U.S.C. § 1681b(b)(2)(A)(i), ET SEQ.]

6 (BY PLAINTIFF AND ALL MEMBERS OF THE PROPOSED CLASS

7 AGAINST ALL DEFENDANTS)

8 46. Plaintiff, and the other members of the Proposed Class, reallege and
9 incorporate by this reference, as though set forth herein, the prior paragraphs of this
10 complaint.

11 47. Under the FCRA, it is unlawful to procure a consumer report or cause
12 a consumer report to be procured for employment purposes, unless:

13 (i) a clear and conspicuous disclosure has been made in writing to
14 the consumer at any time before the report is procured or causes
15 to be procured, in a document that consists solely of the
16 disclosure, that a consumer report may be obtained for
employment purposes; and

17 (ii) the consumer has authorized in writing (which authorization may
18 be made on the document referred to in clause (i)) the
19 procurement of the report.

20 15 U.S.C. §§ 1681b(b)(2)(A)(i)-(ii)

21 48. Defendant's standard FCRA form is unlawful on two separate grounds.

22 49. First, Defendant's FCRA disclosure violates the so-called "standalone"
23 disclosure requirement in 15 U.S.C. § 1681b(b)(2)(A)(i) (the FCRA disclosure must
24 be "in a document that consists solely of the disclosure") because Defendant's FCRA
25 disclosure includes a liability release and combines both federal and state
26 disclosures, among other extraneous and irrelevant information. *Syed*, 853 F.3d at
27 500-503; *Gilberg*, 913 F.3d at 1175.

28 50. Second, Defendant's FCRA disclosure violates the "clear and

1 conspicuous disclosure” requirement in 15 U.S.C. § 1681b(b)(2)(A)(i). The FCRA
2 disclosure is unclear, as it would “confuse a reasonable reader because it combines
3 federal and state disclosures.” *Gilberg*, 913 F.3d at 1176.

4 51. The violations of the FCRA were willful based on the clear statutory
5 text, case law guidance, and regulatory guidance. The statutory text of the
6 standalone requirement is straightforward. The word “solely” in subsection (i) and
7 the one express exception in subsection (ii), which allows the authorization to be on
8 the same document as the disclosure, shows that “the FCRA should not be read to
9 have implied exceptions[.]” *Gilberg*, 913 F.3d at 1175 (citing to *Syed*, 853 F.3d at
10 501-03).

11 52. Defendant also had specific case law to provide guidance. *See Gilberg*,
12 913 F.3d at 1175 (“*Syed*’s holding and statutory analysis were not limited to liability
13 waivers; *Syed* considered the standalone requirement with regard to *any*
14 *surplusage*”) (citing to *Syed*, 853 F.3d at 501) (emphasis added).

15 53. Lastly, informal guidance from the FTC is unambiguous that no
16 extraneous information should be included in the FCRA disclosure. *See* FTC,
17 Opinion Letter, 1997 WL 33791227, at *1 (Oct. 21, 1997) (“[The] document should
18 include nothing more than the disclosure and the authorization for obtaining a
19 consumer report.”); FTC, Opinion Letter, 1998 WL 34323748, at *2 (Feb. 11, 1998)
20 (disclosure may describe the “nature of the consumer reports” it covers, but
21 otherwise should “not be encumbered with extraneous information”); FTC, Opinion
22 Letter, 1998 WL 34323756, at *1 (June 12, 1998) (inclusion of a waiver in a
23 disclosure form violates Section 1681b(b)(2)(A)).

24 54. In addition, Defendant’s violation of the “clear and conspicuous
25 disclosure” requirement was willful. Defendant knew that its standard disclosure
26 form must be clear and not contain extraneous information, such as state disclosures,
27 that would confuse a reasonable person about the nature of his rights under the
28 FCRA.

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

4 56. Plaintiff and all other members of the Proposed Class are also entitled
5 to punitive damages for these willful violations, pursuant to 15 U.S.C. §1681n(a)(2).

6 57. Plaintiff and all other members of the Proposed Class are further
7 entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C.
8 §1681n(a)(3).

9 **VIII.**

10 **SECOND CAUSE OF ACTION**

11 **FOR FAILURE TO OBTAIN PROPER AUTHORIZATION IN**

12 **VIOLATION OF THE FCRA**

13 **[15 U.S.C. § 1681b(b)(2)(A)(ii)]**

14 **(BY PLAINTIFF AND ALL MEMBERS OF THE PROPOSED CLASS**

15 **AGAINST ALL DEFENDANTS)**

16 58. Plaintiff, and the other members of the Proposed Class, reallege and
17 incorporate by this reference, as though fully set forth herein, the prior paragraphs
18 of this Complaint.

19 59. Since Defendant's standard FCRA form contains extraneous
20 information, such as a liability release and state disclosures, the FCRA disclosure
21 does not consist "solely" of the disclosure nor is it "clear and conspicuous" as
22 required by 15 U.S.C. § 1681b(b)(2)(A)(i).

23 60. Accordingly, Plaintiff was confused regarding the nature of his rights
24 under the FCRA and did not give valid authorization for Defendant to procure a
25 consumer report in violation of 15 U.S.C. § 1681b(b)(2)(A)(ii).

26 61. Nevertheless, Defendant procured a consumer report or caused a
27 consumer report to be procured for employment purposes on Plaintiff and the
28 Proposed Class in violation of 15 U.S.C. § 1681b(b)(2)(A).

1 U.S.C. § 1681n(a)(3); and,

2 F) Such other and further relief as the Court deems just and equitable.

3
4 **DEMAND FOR JURY TRIAL**

5 Plaintiff hereby demands a trial of his claims by jury to the extent authorized
6 by law.

7
8 DATED: January 28, 2020

KINGSLEY & KINGSLEY, APC

9
10 By: 

Eric B. Kingsley
Kelsey M. Szamet
Attorneys for Plaintiff

EXHIBIT 1
TO CLASS ACTION COMPLAINT



Employment Application

GENERAL INFO

Name	Martinez Soto	First	Martin	LAST
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DISCLOSURE

We, the company (consisting of Ozark Automotive Distributors, Inc., O'Reilly Automotive Stores, Inc., Ozark Services, Inc., and O'Reilly Auto Enterprises, LLC), will obtain one or more consumer reports or investigative consumer reports (or both) about you for employment purposes. These purposes may include hiring, contract, assignment, promotion, re-assignment, and termination. The reports will include information about your character, general reputation, personal characteristics, and mode of living.

We will obtain these reports through a consumer reporting agency.

To prepare the reports, the reporting agency may investigate your education, work history, professional licenses and credentials, references, address history, social security number validity, right to work, criminal record, lawsuits, driving record, credit history, and any other information with public or private information sources.

You may obtain a copy of any report and/or file about you (in person, by mail, or by phone) by providing identification to the reporting agency. Please contact our Human Resources department at

HR/CBC Department

233 S. Patterson

Springfield, MO 65802

(417)862-2674 ext 1328

so we may provide you with contact information for the reporting agency. The reporting agency will provide you help to understand the files, including trained personnel and an explanation of any codes. Another person may accompany you by providing identification.

If the reporting agency obtains any information by interview, you have the right to obtain a complete and accurate disclosure of the scope and nature of the investigation performed.

Digitally Signed by: Martin Martinez Soto [2015-03-15 01:09:20-457000]

AUTHORIZATION

By signing below, you authorize: (a) a consumer reporting agency to request information about you from any public or private information source; (b) anyone to provide information about you to a consumer reporting agency; (c) a consumer reporting agency to provide us, the company (consisting of Ozark Automotive Distributors, Inc., O'Reilly Automotive Stores, Inc., Ozark Services, Inc., and O'ReillyAuto Enterprises, LLC) one or more reports based on that information; and (d) us to share those reports with others for legitimate business purposes related to your employment. A consumer reporting agency may investigate your education, work history, professional licenses and credentials, references, address history, social security number validity, right to work, criminal record, lawsuits, driving record, credit history, and any other information with public or private information sources. The Company will provide to a consumer reporting agency your full name, date of birth, Social Security number, and driver's license number and state of issuance which you provided in the application process because some government agencies and other information sources may require this information to check for records. You acknowledge that a fax, image, or copy of this authorization is as valid as the original. You make this authorization to be valid for as long as you are an applicant or employee with us.

The Consumer Financial Protection Bureau's "Summary of Your Rights under the Fair Credit Reporting Act" is attached to this authorization. If you are a New York applicant, a copy of New York's law on the use of criminal records is attached. By signing below, you acknowledge receipt of these documents.

Digitally Signed by: Martin Martinez Soto [2015-03-15 01:09:20-457000]

DIGITAL SIGNATURE

By signing this application for employment, I certify that I have read and understood all parts of it and certify that I have truthfully and completely answered all questions. I understand that any falsification or willful omissions will be grounds for refusal of employment or immediate termination, regardless of when such falsification may be discovered.

I authorize the investigation of information given on my application including education, employment history, criminal conviction records, driving records, and all other aspects of my background. I also release O'Reilly and its representatives, as well as former employers, from any liability for damage arising from any such investigation.

I understand that I may be tested for the presence of illegal drugs as a condition of employment. I also understand that if I refuse to submit to testing or if my test is confirmed positive or indicates adulteration, I will be denied employment. If I have already been hired, my employment will be terminated immediately and I will be required to pay O'Reilly the cost of the drug test where allowed by law.

Furthermore, I understand that the information provided by me regarding my driving record will be verified by my Motor Vehicle Record (MVR), and providing false information or failing to meet the Driving Eligibility Guidelines while employed may be grounds for termination.

If selected for an interview, I acknowledge that I will be presented with a job description detailing the essential functions and physical requirements of the position. During the interview process, I will be asked if I can perform the essential functions of this position with or without reasonable accommodations. I will have the opportunity to request a reasonable accommodation if a conditional job offer has been made.

I understand that if I am hired by O'Reilly, my employment is for no definite period of time, and it may be terminated at will by me or by O'Reilly at any time, with or without cause.

Digitally Signed by:

Martin Martinez Soto [2016-02-15 15:15:17 -0500]

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Says O'Reilly Auto Job Applicants Given Improper Background Check Disclosure Forms](#)
