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AMN HEALTHCARE, INC.

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11
12 KATHARINE L. WHITE, on behalf of
herself, all others similarly situated,

13 Plaintiff,

14 vs.

15 AMN HEALTHCARE, INC., a Nevada
16 corporation; and DOES 1 through 50,
inclusive,

17 Defendants.
18

CASE NO. 3:18-cv-6469

**DEFENDANT AMN HEALTHCARE, INC.'S
NOTICE OF REMOVAL OF ACTION TO
FEDERAL COURT**

[28 U.S.C. §§ 1331, 1332(d), 1441 and 1446]

(Alameda County Superior Court
Case No. RG18921814)

REMOVAL JURISDICTION

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A. The Court Has Original Jurisdiction Over Plaintiff’s FCRA Claims, Which Present Federal Questions

3. Plaintiff’s Complaint alleges violations of the federal Fair Credit Reporting Act, 15 U.S.C § 1681, *et seq.*, (“FCRA”). (Exhibit A, Compl., ¶¶ 24-57 (First and Second Causes of Action).) Plaintiff contends that an authorization form provided to Plaintiff to authorize a background report violated the disclosure requirements of the FCRA. (*Id.*, ¶¶ 23-45.) Plaintiff also alleges that Defendant failed to provide a proper summary of rights in violation of the FCRA. (*Id.*, ¶¶ 46-57.) Thus, the State Court Action is removable to the United States District Court of the Northern District of California because the Court has original jurisdiction over the federal questions presented by Plaintiff’s Complaint pursuant to 28 U.S.C. §§ 1331 and 1441(a).

4. This Court has supplemental jurisdiction under 28 U.S.C. § 1367(a) over any claims over which it does not have original federal question jurisdiction because they form part of the same case or controversy as those claims over which the Court has original jurisdiction. Separate claims “form part of the same case or controversy” when they involve “a common nucleus of operative facts” such that a plaintiff “would ordinarily be expected to try them all in a single judicial proceeding.” *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966). Here, Plaintiff’s non-FCRA claims arise from the same alleged acquisition and use of various reports as Plaintiff’s FCRA claims, and thus all of Plaintiff’s claims arise out of a common nucleus of operative facts. (*See, e.g.*, Exhibit A, Compl. ¶¶ 58-100.) Plaintiff alleges that Defendant’s disclosure and authorization form that supposedly violates the FCRA also violates the California Investigative Consumer Reporting Agencies Act (“ICRAA”) and the California Consumer Credit Reporting Agencies Act (“CCRAA”). (*Id.*, ¶¶ 58-85.) Plaintiff further alleges that the claimed violations of the FCRA, ICRAA and the CCRAA are “unlawful business practices” that violate California Business & Professions Code section 17200 *et seq.* (*Id.*, ¶¶ 86-100.)

5. The Court consequently has supplemental jurisdiction over all other claims for relief under California law. 28 U.S.C. § 1367(a).

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1 **B. The Court Also Has Original Jurisdiction Over This Action Under CAFA**

2 6. The State Court Action was brought as a national class action under Cal. Code
3 of Civ. Proc. § 382 consisting of “[a]ll of Defendants’ current, former and prospective applicants for
4 employment in the United States who applied for a job with Defendants at any time during the
5 period for which a background check was performed beginning five years prior to the filing of this
6 action and ending on the date that final judgment is entered in this action.” (Exhibit A, Compl.
7 ¶¶ 11-12.) Defendant and its affiliates performed background checks on more than 100 individuals,
8 including persons residing outside of California, in that five-year time period. (Declaration of Randy
9 Sellers, ¶ 4.) Thus, this Court also has jurisdiction over this action under the Class Action Fairness
10 Act (“CAFA”), 28 U.S.C. § 1332(d), because there is at least minimal diversity between the parties,
11 the putative class includes more than 100 individuals, and the aggregate amount in controversy for
12 the purported class claims exceeds \$5 million.

13 7. To establish jurisdiction under CAFA, there must be at least minimal diversity
14 between the parties. 28 U.S.C. § 1332(d)(2). CAFA diversity jurisdiction exists if “any member of
15 a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

16 8. In this action, Plaintiff seeks to represent a class on behalf of “[a]ll of
17 Defendants’ current, former and prospective applicants for employment in the United States....”
18 (Exhibit A, Compl. ¶ 12.) *Montelongo v. RadioShack*, No. 09-01235 MMM (AJWx), 2010 WL
19 11507995, at *9 (C.D. Cal. Mar. 31, 2010) (denying remand where plaintiff pled a nationwide class
20 that met the requirements of CAFA); accord *In re HP Inkjet Printer Litig.*, No. C 05-3580 JF (PVT),
21 2009 WL 282051, at *3 (N.D. Cal. Feb. 5, 2009) (“Because there is no indication that Plaintiffs
22 pleaded a putative nationwide class in bad faith, this Court had subject matter jurisdiction”); *Rosas v.*
23 *Carnegie Mortg., LLC*, 2012 WL 1865480, at *5 (S.D. Cal. May 21, 2012) (“Because the complaint
24 alleges a ‘nationwide class,’ [cite], minimal diversity necessarily exists. . . . Accordingly, the Court
25 finds that it has jurisdiction pursuant to CAFA.”). Thus, this national, putative class includes non-
26 California citizens.

27 9. For purposes of determining diversity jurisdiction of Defendant, corporations
28 are only citizens of the state of their principal place of business, *i.e.*, where their “nerve center” is

1 located. *See 3123 SMB LLC v. Horn*, 880 F.3d 461, 465 (9th Cir. 2018) (citing *Hertz Corp. v.*
2 *Friend*, 559 U.S. 77, 93 (2010)). The “nerve center” is the corporation’s main place of business,
3 where the “corporation’s officers direct, control, and coordinate the corporation’s activities.” *Hertz*
4 *Corp.*, 559 U.S. at 93. Here, Defendant is alleged to be an Ohio corporation, with its principal place
5 of business in California. (Exhibit A, Compl. ¶ 7.) Therefore, for diversity purposes, Defendant is a
6 citizen of California.

7 10. Because Defendant is a citizen of California and Plaintiff brings this national
8 class action on behalf of individuals who are not citizens of California, the Parties meet the standard
9 for minimal diversity under CAFA.

10 11. CAFA provides this Court with jurisdiction over a class action when “the
11 number of members of all proposed plaintiff classes in the aggregate [is not] less than 100.” 28
12 U.S.C. § 1332(d)(5)(B). CAFA defines “class members” as those “persons (named or unnamed)
13 who fall within the definition of the proposed or certified class in a class action.” 28 U.S.C.
14 § 1332(d)(1)(D). Here, in this action, the putative class includes more than 50,000 individuals.
15 (Sellers Decl., ¶ 4.) Thus, CAFA’s numerosity requirement is satisfied. *See* 28 U.S.C.
16 § 1332(d)(5)(B).

17 12. The amount in controversy for all claims exceeds \$5 million. CAFA requires
18 the “matter in controversy” to exceed “the sum or value of \$5,000,000 exclusive of interest and
19 costs.” 28 U.S.C. § 1332(d)(2). Where the plaintiff’s complaint does not state the amount in
20 controversy, the defendant’s notice of removal may do so. *See Dart Cherokee Basin Oper. Co. LLC*
21 *v. Brandon W. Owens*, --U.S.--, 135 S. Ct. 547, 551 (2014). All that is required is “a plausible
22 allegation that the amount in controversy exceeds the jurisdictional threshold.” *Id.* at 554; *accord*
23 *Ibarra v. Manheim Inv., Inc.*, 775 F.3d 1193, 1195 (9th Cir. 2015). No evidence establishing the
24 amount in controversy is required. *Dart Cherokee Basin Oper. Co. LLC*, 135 S. Ct. at 551. This is
25 because there is “no anti-removal presumption” in cases invoking CAFA. *Id.* at 554.

26 13. “The claims of the individual class members shall be aggregated to determine
27 whether the matter in controversy exceeds” the jurisdictional minimum. 28 U.S.C. § 1332(d)(6).
28 “In measuring the amount in controversy, a court must assume that the allegations of the complaint

1 are true and that a jury will return a verdict for the plaintiff on all claims made in the complaint.”
2 *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal.
3 2002). The ultimate inquiry is what amount is put “in controversy” by the plaintiff’s complaint, not
4 what a defendant will actually owe. *See Rippee v. Boston Mkt. Corp.*, 408 F. Supp. 2d 982, 986
5 (S.D. Cal. 2005); *see also Ibarra*, 775 F. 3d at 1198 n.1 (explaining that even when the court is
6 persuaded the amount in controversy exceeds \$5 million, defendants are still free to challenge the
7 actual amount of damages at trial because they are only estimating the damages in controversy).

8 14. Plaintiff seeks statutory and actual damages, punitive damages, injunctive
9 relief, restitution, interest, and attorneys’ fees. (*See* Exhibit A, Compl., Prayer for Relief.)

10 15. Although Defendant denies that Plaintiff’s claims have any merit, and
11 likewise denies that this matter should be certified as a class action, when all claims arising under the
12 FCRA are aggregated, the allegations in the Complaint give rise to an amount in controversy that
13 meets this Court’s jurisdictional minimum of \$5 million under CAFA. 28 U.S.C. § 1332(d)(2).

14 16. The FCRA provides for statutory penalties for willful non-compliance in the
15 amount of “not less than \$100 and not more than \$1,000.” 15 U.S.C. § 1681n. In this case, the
16 alleged putative class includes more than 50,000 individuals. (Sellers Dec, ¶ 4.) Thus, the amount
17 in controversy is at least \$5 million (50,000 x \$100).

18 17. In addition, Plaintiff’s putative claims for violations of Cal. Civ. Code § 1786
19 *et seq.* on a class basis are limited to actual damages, inclusive of attorneys’ fees. CAL. CIV. CODE §
20 1786.50(a)(1); *see, e.g., Poinsignon v. Imperva, Inc.*, No. 17-cv-05653-EMC, 2018 WL 1709942, at
21 *4 (N.D. Cal. Apr. 9, 2018). While Plaintiff does not allege the amount of actual damages claimed,
22 in California it is not uncommon for attorneys’ fees award to be 25 to 33 percent of the recovery.
23 *See, e.g., Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) (quoting *Shaw v. Toshiba Am.*
24 *Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) (“Empirical studies show that, regardless
25 whether the percentage method or the lodestar method is used, fee awards in class actions average
26 around one-third of the recovery.”). Thus, Plaintiff’s allegations place at least \$1,250,000 (25% of
27 \$5 million) in controversy.

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1 DATED: October 23, 2018

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/s/ Alison S. Hightower
ALISON S. HIGHTOWER
LITTLER MENDELSON, P.C.
Attorneys for Defendant
AMN HEALTHCARE, INC.

FIRMWIDE:157645611.1 058080.1007

EXHIBIT A

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

AMN HEALTHCARE, INC., a Nevada corporation; and DOES 1 through 50, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

KATHARINE L. WHITE, on behalf of herself, all others similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
ENLUNES
FILED
ALAMEDA COUNTY
SEP 21 2018
CLERK OF THE SUPERIOR COURT
By: ERICA BAKER, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.
You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.
There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.
Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.
Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

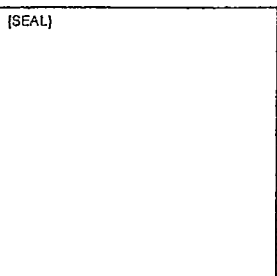
The name and address of the court is:
(El nombre y dirección de la corte es): Rene C. Davidson Courthouse
1225 Fallon Street
Oakland, California 94612

CASE NUMBER:
(Número del Caso): **1818921014**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shaun Setarch, Esq., 315 South Beverly Drive, Suite 315, Beverly Hills, California 90212, (310) 888-7771

DATE: **SEP 21 2018** CHAD FINKE, Clerk, by **Erica Baker**, Deputy
(Fecha) EXECUTIVE OFFICER (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served
1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify): **AMN Healthcare, Inc., a Nevada Corporation**
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

1 Shaun Setareh (SBN 204514)
shaun@setarehlaw.com
2 H. Scott Leviant (SBN 200834)
scott@setarehlaw.com
3 William M. Pao (SBN 219846)
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4 SETAREH LAW GROUP
315 South Beverly Drive, Suite 315
5 Beverly Hills, California 90212
Telephone (310) 888-7771
6 Facsimile (310) 888-0109

7 Attorneys for Plaintiff
KATHARINE L. WHITE
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA
11

12 KATHARINE L. WHITE, on behalf of
herself, all others similarly situated,
13

14 *Plaintiff,*

15 vs.

16 AMN HEALTHCARE, INC., a Nevada
corporation; and DOES 1 through 50,
inclusive,
17

18 *Defendants.*
19
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Case No. **CG18921814**

CLASS ACTION

COMPLAINT

1. Violation of 15 U.S.C. §1681b(b)(2)(A) (Fair Credit Reporting Act);
2. Violation of 15 U.S.C. §1681d(a)(1) and 1681g(c) (Fair Credit Reporting Act);
3. Violation of California Civil Code §1786 *et seq.* (Investigative Consumer Reporting Agencies Act);
4. Violation of California Civil Code §1785 *et seq.* (Consumer Credit Reporting Agencies Act);
5. Unfair Competition (Bus. & Prof. Code §17200 *et seq.*)

JURY TRIAL DEMANDED

ENDORSED
FILED
ALAMEDA COUNTY

SEP 21 2018

CLERK OF THE SUPERIOR COURT
By: ERICA BAKER, Deputy

1 COMES NOW, Plaintiff KATHARINE L. WHITE ("Plaintiff"), on behalf of herself and all
2 others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendants AMN HEALTHCARE, INC. and
5 DOES 1 through 100, inclusively (collectively referred to as "Defendants") for alleged violations of
6 the Fair Credit Reporting Act ("FCRA") and similar California laws.

7 2. Plaintiff alleges that Defendants routinely acquire consumer, investigative consumer
8 and/or consumer credit reports (referred to collectively as "credit and background reports") to
9 conduct background checks on Plaintiff and other prospective, current and former employees and
10 use information from credit and background reports in connection with their hiring process without
11 providing proper disclosures and obtaining proper authorization in compliance with the law.

12 3. Plaintiff, individually and on behalf of all others similarly situated current, former
13 and prospective employees, seeks compensatory and punitive damages due to Defendants'
14 systematic and willful violations of the FCRA (15 U.S.C. §§ 1681 *et seq.*), the California
15 Investigative Consumer Reporting Agencies Act ("ICRAA") (Cal. Civ. Code § 1786 *et seq.*); and
16 the California Consumer Credit Reporting Agencies Act ("CCRAA") (Cal. Civ. Code § 1785, *et*
17 *seq.*).

18 **JURISDICTION AND VENUE**

19 4. This Court has subject matter jurisdiction to hear this case because Plaintiff is
20 informed and believes, and thereupon alleges that the monetary damages and restitution sought
21 herein for Defendants' conduct exceeds the minimal jurisdictional limits of the Superior Court.

22 5. Venue is proper in Alameda County pursuant to Code of Civil Procedure sections
23 395(a) and 395.5 in that liability arose in the county because at least some of the transactions that
24 are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains
25 offices, transacts business and/or has an agent therein.

26 **PARTIES**

27 6. Plaintiff is, and at all relevant times mentioned herein, an individual residing in the
28 State of California.

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2 **ICRAA Class:** All of Defendants' current, former and prospective
3 applicants for employment in California, at any time during the period
beginning five years prior to the filing of this action and ending on the
date that final judgment is entered into this action.

4 **CCRAA Class:** All of Defendants' current, former and prospective
5 applicants for employment in California, at any time during the period
6 beginning seven years prior to the filing of this action and ending on the
date that final judgment is entered in this action.

7 13. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
8 right to amend or modify the class definitions with greater specificity, by further division into sub-
9 classes and/or by limitation to particular issues.

10 14. **Numerosity:** The class members are so numerous that the individual joinder of each
11 individual class member is impractical. While Plaintiff does not currently know the exact number
12 of class members, Plaintiff is informed and believes that the actual number exceeds the minimum
13 required for numerosity under California law.

14 15. **Commonality and Predominance:** Common questions of law and fact exist as to
15 all class members and predominate over any questions which affect only individual class members.
16 These questions include, but are not limited to:

- 17 A. Whether Defendants failed to comply with the requirements of 15 U.S.C. §
18 7001 section 101(c)(1);
- 19 B. Whether Defendants willfully failed to provide the class with stand-alone
20 written disclosures before obtaining a credit or background report in
21 compliance with the statutory mandates;
- 22 C. Whether Defendants willfully failed to identify the name, address, telephone
23 number, and/or website of the investigative consumer reporting agency
24 conducting the investigation;
- 25 D. Whether Defendants willfully failed to identify the source of the credit report
26 to be performed;
- 27 E. Whether Defendants willfully failed to comply with the FCRA, ICRAA
28 and/or the CCRAA.

1 16. Typicality: Plaintiff's claims are typical of the other class members' claims.
2 Plaintiff is informed and believes and thereupon alleges that Defendants have a policy, practice or
3 lack of a policy or practice which resulted in Defendants failing to comply with the FCRA, ICRAA
4 and CCRAA as alleged herein.

5 17. Adequacy of Class Representative: Plaintiff is an adequate class representative in
6 that she has no interests that are adverse to, or otherwise in conflict with, the interests of the absent
7 class members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of class
8 members. Plaintiff will fairly and adequately represent and protect the interests of class members.

9 18. Adequacy of Class Counsel: Plaintiff's counsel are adequate class counsel in that
10 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
11 class action litigation and are dedicated to vigorously prosecuting this action on behalf of Plaintiff
12 and absent class members.

13 19. Superiority: A class action is vastly superior to other available means for fair and
14 efficient adjudication of class members' claims and would be beneficial to the parties and the Court.
15 Class action treatment will allow a number of similarly situated persons to be simultaneously and
16 efficiently prosecute their common claims in a single forum without the unnecessary duplication of
17 effort and expense that numerous individual actions would entail. In addition, the monetary
18 amounts due to many individual class members are likely to be relatively small and would therefore
19 make it difficult, if not impossible, for individual class members to both seek and obtain relief.
20 Moreover, a class action will serve an important public interest by permitting class members to
21 effectively pursue the recovery of monies owed to them. Further, a class action will prevent the
22 potential for inconsistent or contradictory judgments inherent in individual litigation.

23 GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

24 20. Plaintiff was employed with Defendants beginning on or about June 24, 2013 and
25 was terminated on or about September 21, 2013.

26 21. When Plaintiff applied for employment, Defendants performed a background
27 investigation on Plaintiff.

28 22. Based upon information and belief, Defendants did not provide legally compliant

1 disclosure and authorization forms to Plaintiff and the putative class.

2 23. The Background Check Authorization Form was part of a three-page online form
3 that contained extraneous and superfluous language such as:

- 4 a. "This report may be compiled with information from courts record repositories,
5 department of motor vehicles, past or present employers and educational
6 institutions, governmental occupational licensing or registration entities, business
7 or personal references, and any other source required to verify information that I
8 have voluntarily supplied."
- 9 b. "Have you ever been convicted of a crime other than a minor traffic violation?
10 Driving under the influence is not considered a minor traffic violation.
11 Exceptions due to state employment law: Conviction(s) that have been sealed,
12 expunged, or eradicated and California Health & Safety Code §§11357 (b) & (c),
13 11360(c), 11364, 11365, 11550 marijuana-related convictions over 2 years old,
14 should not be revealed."
- 15 c. "The Company complies with state and federal law including the Fair Credit
16 Reporting Act (FCRA) when making employment-related decisions using
17 criminal background checks."
- 18 d. "California, Minnesota and Oklahoma Residents please note: In connection with
19 your application for employment, your consumer report may be obtained and
20 reviewed. Under California, Minnesota and Oklahoma law, you have a right to
21 receive a free copy of your consumer report by checking the appropriate box
22 below."
- 23 e. "YES, I am a Minnesota resident and would like a free copy of my consumer
24 report."
- 25 f. "YES, I am an Oklahoma resident and would like a free copy of my consumer
26 report."
- 27 g. "California Notice: You have the right under Section 1786.22 of the California
28 Civil Code to contact LexisNexis during normal business hours to obtain your

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file for your review. You may obtain such information as follows:

1. In person at LexisNexis’s offices at the address listed above. You will need to furnish proper identification prior to receiving your file. You may have someone accompany you and should inform such person that they will also have to present reasonable identification. If you want LexisNexis to disclose to or discuss your information with this third party, you may be required to provide a written statement granting LexisNexis permission to do so.
2. By certified mail, if you make a written request (and provide proper identification) to have your file sent to a specified addressee.
3. By telephone, if you have previously made a written request and provided proper identification.”

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE PROPER DISCLOSURE IN VIOLATION OF THE FCRA

(15 U.S.C. §§ 1681b(b)(2)(A))

(Plaintiff and FCRA Class Against All Defendants)

24. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully alleged herein.

25. Defendants are “persons” as defined by Section 1681a(b) of the FCRA.

26. Plaintiff and class members are “consumers” within the meaning of Section 1681a(c) of the FCRA because they are “individuals.”

27. Section 1681a(d)(1) of the FCRA defines “consumer report” as:

“The term “consumer report” means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for—

- (A) credit or insurance to be used primarily for personal, family, or household purposes;
- (B) employment purposes; or
- (C) any other purpose authorized under section 1681b of this title.”

1
2 Accordingly, a credit and background report qualifies as a consumer report.

3 28. Section 1681a(e) of the FCRA defines “investigative consumer report” as:

4 “The term ‘investigative consumer report’ means a consumer report or portion
5 thereof in which information on a consumer’s character, general reputation, personal
6 characteristics, or mode of living is obtained through personal interviews with
7 neighbors, friends, or associates of the consumer reported on or with others with
8 whom he is acquainted or who may have knowledge concerning any such items of
9 information. However, such information shall not include specific factual
10 information on a consumer’s credit record obtained directly from a creditor of the
11 consumer or from a consumer reporting agency when such information was obtained
12 directly from a creditor of the consumer or from the consumer.”

13 Accordingly, a credit and background report qualifies as an investigative consumer report.

14 29. Section 1681b(b)(2)(A) of the FCRA provides:

15 Conditions for furnishing and using consumer reports for employment purposes
16 Except as provided in subparagraph (B), a person may not procure a consumer
17 report, or cause a consumer report to be procured, for employment purposes with
18 respect to any consumer, unless—

- 19 (i) A *clear and conspicuous* disclosure has been made in writing to the
20 consumer at any time before the report is procured or caused to be procured,
21 in a document that *consists solely of the disclosure*, that a consumer report
22 may be obtained for employment purposes; and
23 (ii) The consumer has authorized in writing (which authorization may be made
24 on the document referred to in clause (i)) the procurement of the report by
25 that person. (Emphasis added.)

26 30. Section 1681b(b)(2)(A)(i) requires that a clear and conspicuous disclosure be made
27 in writing.

28 31. Because Defendants’ disclosures do not meet the requirement of 15 U.S.C. section
7001(c), the disclosures do not satisfy the written requirement.

32. Plaintiff alleges, upon information and belief, that in evaluating her and other class
members for employment, Defendants procured or caused to be procured credit and background
reports (i.e. a consumer report and/or investigative consumer report as defined by 15 U.S.C. section
1681a(d)(1)(B) and 15 U.S.C. section 1681a(e)).

33. The purported disclosures do not meet the requirements under the law because they
are embedded with extraneous information, and are not clear and unambiguous disclosures in stand-
alone documents.

1 34. Under the FCRA, it is unlawful to procure or caused to be procured, a consumer
2 report or investigative consumer report for employment purposes unless the disclosure is made in a
3 document that consists solely of the disclosure and the consumer has authorized, in writing, the
4 procurement of the report. (15 U.S.C. § 1681b(b)(2)(A)-(ii).) The inclusion of a release and
5 other extraneous information therefore violates section 1681b(b)(2)(A) of the FCRA.

6 35. Although the disclosure and authorization may be combined in a single document,
7 the Federal Trade Commission (“FTC”) has warned that the form should not include any extraneous
8 information or be part of another document. For example, in response to an inquiry as to whether
9 the disclosure may be set forth within an application for employment or whether it must be included
10 in a separate document, the FTC stated:

11 “The disclosure may not be part of an employment application because the language
12 [of 15 U.S.C. section 1681b(b)(2)(A) is] intended to ensure that it appears
13 conspicuously in a document not encumbered by any other information. The reason
14 for requiring that the disclosure be in a stand-alone document is to prevent
consumers from being distracted by other information side-by-side within the
disclosure.”

15 36. The plain language of the statute also clearly indicates that the inclusion of a liability
16 release in a disclosure form violates the disclosure and authorization requirements of the FCRA,
17 because such a form would not consist “solely” of the disclosure. In fact, the FTC expressly warned
18 that the FCRA notice may not include extraneous information such as a release. In a 1998 opinion
19 letter, the FTC stated:

20 “[W]e note that your draft disclosure includes a waiver by the consumer of his or her
21 rights under the FCRA. The inclusion of such a waiver in a disclosure form will
22 violate section 604(b)(2)(A) of the FCRA, which requires that a disclosure consist
‘solely’ of the disclosure that a consumer report may be obtained for employment
purposes.”

23 37. In a report dated July 2011, the FTC reiterated that “the notice [under 15 U.S.C.
24 section 1681b(b)(2)(A)] may not include extraneous or contradictory information, such as a request
25 for a consumer’s waiver of his or her rights under the FCRA.”

26 38. By including a release and other extraneous information, Defendants willfully
27 disregarded the FTC’s regulatory guidance and violated section 1681b(b)(2)(A) of the FCRA.
28 Additionally, the inclusion of the extraneous provisions causes the disclosure to fail to be “clear and

1 conspicuous” and “clear and accurate” and therefore violates sections 1681b(b)(2)(A) and
2 1681d(a).

3 39. Defendants’ conduct in violation of section 1681b(b)(2)(A) of the FCRA was and is
4 willful. Defendants acts in deliberate or reckless disregard of their obligations and the rights of
5 applicants and employees, including Plaintiff and class members. Defendants’ willful conduct is
6 reflected by, among other things, the following facts:

- 7 A. Defendants are a large corporation with access to legal advice;
- 8 B. Defendants required a purported authorization to perform credit and
9 background checks in the process of employing the class members which,
10 although defective, evidences Defendants’ awareness of and willful failure to
11 follow the governing laws concerning such authorizations;
- 12 C. The plain language of the statute unambiguously indicates that inclusion of a
13 liability release and other extraneous information in a disclosure form
14 violates the disclosure and authorization requirements; and
- 15 D. The FTC’s express statements, pre-dating Defendants’ conduct, which state
16 that it is a violation of section 1681b(b)(2)(A) of the FCRA to include a
17 liability waiver in the disclosure form.

18 40. Defendants required a liability release in the disclosure form, along with other
19 extraneous information, that releases all parties involved from any liability and responsibility for
20 releasing information they have about the Plaintiff to Defendants.

21 41. Based upon the facts likely to have evidentiary support after a reasonable
22 opportunity to further investigation and discovery, Plaintiff alleges that Defendants have a policy
23 and practice of procuring investigative consumer reports or causing investigative consumer reports
24 to be procured for applicants and employees without informing them of their right to request a
25 summary of their rights under the FCRA at the same time as the disclosure explaining that an
26 investigative consumer report may be made. Pursuant to that policy and practice, Defendants
27 procured investigative consumer reports or caused investigative consumer reports to be procured for
28 Plaintiff and class members, as described above, without informing class members of their rights to

1 request a written summary of their rights under the FCRA.

2 42. Accordingly, Defendants willfully violated and continue to violate the FCRA,
3 including but not limited to, sections 1681b(b)(2)(A) and 1681d(a). Defendants' willful conduct is
4 reflected by, among other things, the facts set forth above.

5 43. As a result of Defendants' unlawful procurement of credit and background reports by
6 way of their inadequate disclosures, as set forth above, Plaintiff and class members have been
7 injured, including but not limited to, having their privacy and statutory rights invaded in violation of
8 the FCRA.

9 44. Plaintiff, on behalf of herself and all class members, seek all available remedies
10 pursuant to 15 U.S.C. section 1681n, including statutory damages and/or actual damages, punitive
11 damages, injunctive and equitable relief and attorneys' fees and costs.

12 45. In the alternative to Plaintiff's allegation that these violations were willful, Plaintiff
13 alleges that the violations were negligent and seeks the appropriate remedy, if any, under 15 U.S.C.
14 section 1681o, including statutory damages and attorneys' fees and costs.

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO GIVE PROPER SUMMARY OF RIGHTS IN VIOLATION OF THE FCRA**

17 **(15 U.S.C. § 1681d(a)(1) and 1681g(c))**

18 **(Plaintiff and FCRA Class Against All Defendants)**

19 46. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully alleged
20 herein.

21 47. Section 1681d(a) states:

22 (a) Disclosure of fact of preparation
23 A person may not procure or cause to be prepared an investigative consumer report
on any consumer unless--

24 (1) it is *clearly and accurately disclosed to the consumer* that an investigative
25 consumer report including information as to his character, general reputation,
personal characteristics, and mode of living, which are applicable, may be
26 made, and such disclosure

27 (A) is *made in a writing mailed, or otherwise delivered, to the consumer*, not
later than three days after the date on which the report was first requested,
28 and

(B) *includes a statement informing the consumer of his right to request the additional disclosures* provided for under subsection (b) of this section and *the written summary of the rights of the consumer prepared pursuant to section 1681g(c)* of this title; and

(Emphasis added.)

48. Section 1681d(b) states:

(b) Disclosure on request of nature and scope of investigation

Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (a)(1), make a *complete and accurate disclosure of the nature and scope of the investigation requested*. This disclosure shall be made in a writing mailed, or after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.

(Emphasis added.)

49. As previously alleged, because Defendants' disclosures do not meet the requirement of Section 101(c)(1) of 15 U.S.C. section 7001, the disclosures do not satisfy the written requirement.

50. Moreover, even if Defendants' disclosures are deemed to satisfy Section 101(c)(1), Defendants did not comply with Section 1681d(a)(1)(b) because the disclosures fail to inform the consumer of the right to have the person who procured the report provide a complete and accurate disclosure of the nature and scope of the investigation requested.

51. Section 1681g(c) further provides for summary of rights to obtain and dispute information in consumer reports and to obtain credit scores:

(c) Summary of rights to obtain and dispute information in consumer reports and to obtain credit scores

(1) Commission
Summary of rights required

(A) In general

The Commission shall prepare a model summary of the rights of consumers under this subchapter.

(B) Content of summary

The summary of rights prepared under subparagraph (A) shall include a description of-

(i) the right of a consumer to obtain a copy of a consumer report under subsection (a) from each consumer reporting agency;

(ii) the frequency and circumstances under which a consumer is entitled to receive a consumer report without charge under section 1681j of this

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title;

- (iii) the right of a consumer to dispute information in the file of the consumer under section 1681i of this title;
- (iv) the right of a consumer to obtain a credit score from a consumer reporting agency, and a description of how to obtain a credit score;
- (v) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency without charge, as provided in the regulations of the Bureau prescribed under section 211(c) of the Fair and Accurate Credit Transactions Act of 2003; and
- (vi) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency described in section 1681a(w) of this title, as provided in the regulations of the Bureau prescribed under section 1681j(a)(1)(C) of this title.

52. Defendants did not comply with 1681g(c)(B)(1) because the disclosures did not state the right of a consumer to obtain a copy of a consumer report from each consumer reporting agency.

53. Defendants did not comply with 1681g(c)(B)(2) because the disclosure did not state the frequency and circumstances under which a consumer is entitled to receive a consumer report without charge.

54. Defendants did not comply with 1681g(c)(B)(3) because the disclosure did not state the right of a consumer to dispute information in the file of the consumer.

55. Defendants did not comply with 1681g(c)(B)(4) because the disclosure did not state the right of a consumer to obtain a credit score from a consumer reporting agency and a description of how to obtain a credit score.

56. Defendants did not comply with 1681g(c)(B)(5) because the disclosure did not state the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency without charge.

57. Defendants did not comply with 1681g(c)(B)(6) because the disclosure did not state the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency described in section 1681a(w) of this title, as provided in the regulations of the Bureau prescribed under section 1681j(a)(1)(C) of this title.

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THIRD CAUSE OF ACTION

FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF THE ICRAA

(Cal. Civ. Code §§ 1786 *et seq.*)

(Plaintiff and ICRAA Class Against All Defendants)

58. Plaintiff incorporates the preceding paragraphs in the Complaint as if fully alleged herein.

59. Defendants are “persons” as defined by section 1786.2(a) of the ICRAA.

60. Plaintiff and ICRAA Class members are “consumers” within the meaning of section 1786.2(b) of the ICRAA because they are “individuals.”

61. Section 1786.2(c) of the ICRAA defines “investigative consumer report” as:

“The term investigative consumer report means a consumer report in which information on a consumer’s character, general reputation, personal characteristics, or mode of living is obtained through any means.”

62. Accordingly, a background check qualifies as an investigative consumer report under the ICRAA.

63. Section 1786.16(a)(2) of the ICRAA provides:

(2) If, at any time, an investigative consumer report is sought for employment purposes other than suspicion of wrongdoing or misconduct by the subject of the investigation, the person seeking the investigative consumer report may procure the report, or cause the report to be made, only if all of the following apply:

(A) The person procuring or causing the report to be made has a permissible purpose, as defined in Section 1786.12.

(B) The person procuring or causing the report to be made provides a *clear and conspicuous* disclosure in writing to the consumer at any time before the report is procured or caused to be made *in a document that consists solely of the disclosure*, that:

(i) An investigative consumer report may be obtained.

(ii) The permissible purpose of the report is identified.

(iii) The disclosure may include information on the consumer’s character, general reputation, personal characteristics, and mode of living.

(iv) Identifies the *name, address, and telephone number of the investigative consumer reporting agency* conducting the investigation.

(v) Notifies the consumer in writing of the nature and scope of the

1 investigation requested, including a summary of the provisions of Section
2 1786.22.

3 (vi) *Notifies the consumer of the Internet Web site address of the*
4 *investigative consumer reporting agency identified in clause (iv), or, if*
5 *the agency has no Internet Web site address, the telephone number of*
6 *the agency, where the consumer may find information about the*
7 *investigative reporting agency's privacy practices, including whether the*
8 *consumer's personal information will be sent outside the United States or*
9 *its territories and information that complies with subdivision (d) of Section*
10 *1786.20. This clause shall be operative on January 1, 2012.*

11 (C) The consumer has authorized in writing the procurement of the report.

12 (Emphasis added.)

13 64. As previously alleged, because Defendants' disclosures do not meet the requirements
14 of section 101(c)(1) of 15 U.S.C. section 7001, the disclosures do not satisfy section 1786.16(a)(2)
15 of the ICRAA requirement that the disclosures be made in writing.

16 65. As described above, Plaintiff alleges that in evaluating her and other class members
17 for employment, Defendants procured or caused to be prepared investigative consumer report (e.g.
18 background checks) as described by Civil Code section 1786.2(c).

19 66. Because the purported disclosures are embedded with extraneous information and
20 are not clear and unambiguous disclosures in stand-alone documents, they do not meet the
21 requirements under the law.

22 67. Under the ICRAA, it is unlawful to procure or caused to be procured, a consumer
23 report or investigative consumer report for employment purposes unless the disclosure is made in a
24 document that consists solely of the disclosure and the consumer has authorized, in writing, the
25 procurement of the report. Cal. Civ. Code § 1786.16(a)(2)(B)-(C). The inclusion of any other
26 extraneous information violates section 1786.16(a)(2)(B) of the ICRAA.

27 68. By including other extraneous information, Defendants willfully violated section
28 1786.16(a)(2)(B) of the ICRAA. Additionally, the inclusion of the extraneous provisions causes the
disclosure to fail to be "clear and conspicuous" and thus violates section 1786.16(a)(2)(B).

69. Based upon facts that are likely to have evidentiary support after a reasonable
opportunity for investigation and discovery, Plaintiff alleges that Defendants have a policy and
practice of failing to provide adequate written disclosure to applicants and employees, before

1 procuring background checks or causing background checks to be procured, as described above.
2 Pursuant to that policy and practice, Defendants procured background checks or caused background
3 checks to be procured for Plaintiff and class members without first providing a written disclosure in
4 compliance with section 1786.16(a)(2)(B) of the ICRAA, as described above.

5 70. Defendants' conduct in violation of Section 1786.16(a)(2)(B) of the ICRAA was and
6 is willful and/or grossly negligent. Defendants acted in deliberate or reckless disregard of their
7 obligations and the rights of applicants and employees, including Plaintiff and class members.
8 Defendants' willful conduct is reflected by, among other things, the following facts:

- 9 (a) Defendants are large corporations with access to legal advice;
10 (b) Defendants required a purported authorization to perform credit and background
11 checks in the process of employing the class members which, although defective,
12 evidences Defendants' awareness of and willful failure to follow the governing
13 laws concerning such authorizations; and
14 (c) The plain language of the statute unambiguously indicates that inclusion of a
15 liability release and other extraneous information in a disclosure form violates
16 the disclosure and authorization requirements, and that the disclosure form must
17 contain the name, address, phone number, and/or website address of the
18 investigative consumer reporting agency conducting the investigation.

19 71. As a result of Defendants' illegal procurement of background reports by way of their
20 inadequate disclosures, as set forth above, Plaintiff and class members have been injured including,
21 but not limited to, having their privacy and statutory rights invaded in violation of the ICRAA.

22 72. Plaintiff, on behalf of herself and all class members, seeks all available remedies
23 pursuant to Civil Code section 1786.50, including statutory damages and/or actual damages,
24 punitive damages, and attorneys' fees and costs.

25 73. In the alternative to Plaintiff's allegation that these violations were willful or grossly
26 negligent, Plaintiff alleges that the violations were negligent and seeks the appropriate remedy, if
27 any, under Civil Code section 1786.50(a), including actual damages and attorneys' fees and costs.

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FOURTH CAUSE OF ACTION

FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF THE CCRAA

(Cal. Civ. Code §§ 1785 *et seq.*)

(Plaintiff and CCRAA Class Against All Defendants)

74: Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

75. Defendants are “persons” as defined by Section 1785.3(j) of the Consumer Credit Reporting Agencies Act (“CCRAA”).

76. Plaintiff and **CCRAA Class** members are “consumers” within the meaning Section 1785.3(b) of the CCRAA, because they are “natural individuals.”

77. Section 1785.3(c) of the ICRAA defines “consumer credit report” as:

any written, oral, or other communication of any information by a consumer credit reporting agency bearing on a consumer’s credit worthiness, credit standing, or credit capacity, which is used or is expected to be used, or collected in whole or in part, for the purpose of serving as a factor in establishing the consumer’s eligibility for: ... (2) employment purposes...

Thus, a credit report qualifies as a consumer credit report under the CCRAA.

78. Section 1785.20.5(a) of the CCRAA provides, in relevant part:

Prior to requesting a consumer credit report for employment purposes, the user of the report shall provide written notice to the person involved. The notice shall inform the person that a report will be used, and *shall identify the specific basis under subdivision (a) of Section 1024.5 of the Labor Code for use of the report. The notice shall also inform the person of the source of the report...*

(Emphasis added.)

79. As described above, Plaintiff alleges that in evaluating her and other class members for employment, Defendants procured or caused to be prepared consumer credit reports (e.g. credit reports), as defined by Section 1785.3(c).

80. The disclosure provided by Defendants does not identify the specific basis under subdivision (a) of Section 1024.5 of the Labor Code for use of the credit report. This omission clearly violates Section 1785.20.5(a) of the CCRAA, as delineated above.

81. Based upon facts that are likely to have evidentiary support after a reasonable opportunity for investigation and discovery, Plaintiff alleges that Defendants have a policy and practice of failing to provide adequate written disclosures to applicants and employees, before

1 procuring credit reports or causing credit reports to be procured, as described above. Pursuant to
2 that policy and practice, Defendants procured credit reports or caused credit reports to be procured
3 for Plaintiff and class members without first providing a written notice in compliance with Section
4 1785.20.5(a) of the CCRAA, as described above.

5 82. Defendants' conduct in violation of Section 1785.20.5(a) of the CCRAA was and is
6 willful and/or grossly negligent. Defendants acted in deliberate or reckless disregard of their
7 obligations and the rights of applicants and employees, including Plaintiff and class members.
8 Defendants' willful conduct is reflected by, among other things, the following facts:

- 9 (a) Defendants are large corporations with access to legal advice;
10 (b) Defendants required a purported authorization to perform credit checks in the
11 process of employing the class members which, although defective,
12 evidences Defendants' awareness of and willful failure to follow the
13 governing laws concerning such authorizations; and
14 (c) The plain language of the statute unambiguously indicates that failure to
15 include the provisions identified above violates the CCRAA's notice
16 requirements, and that the notice must identify the specific basis under
17 subdivision (a) of Section 1024.5 of the Labor Code for use of the credit
18 report and must identify the source of any credit report.

19 83. As a result of Defendants' illegal procurement of credit reports by way of their
20 inadequate notice, as set forth above, Plaintiff and class members have been injured including, but
21 not limited to, having their privacy and statutory rights invaded in violation of the CCRAA.

22 84. Plaintiff, on behalf of herself and all class members, seeks all available remedies
23 pursuant to Civil Code section 1785.31, including statutory damages and/or actual damages,
24 punitive damages, injunctive relief, and attorneys' fees and costs.

25 85. In the alternative to Plaintiff's allegation that these violations were willful, Plaintiff
26 alleges that the violations were negligent and seeks the appropriate remedy, if any, under Civil
27 Code section 1785.31(a)(1), including but not limited to actual damages and attorneys' fees and
28 costs.

FIFTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, *et seq.*)

(Plaintiff and FCRA, ICRAA and CCRAA Class Against All Defendants)

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5 86. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
6 herein.

7 87. Business and Professions Code section 17200 defines “unfair competition” to
8 include any unlawful business practice.

9 88. Business and Professions Code sections 17203–17204 allow a person who has
10 lost money or property as a result of unfair competition to bring a class action in accordance with
11 Code of Civil Procedure section 382 to recover money or property that may have been acquired
12 from similarly situated persons by means of unfair competition.

13 89. Federal and California laws require certain disclosures and proper authorization
14 before conducting background checks and obtaining information from credit and background
15 reports in connection with a hiring process.

16 90. Plaintiff and the **FCRA, ICRAA and CCRAA Class** re-alleges and incorporates by
17 reference the FIRST, SECOND, THIRD and FOURTH causes of action herein.

18 91. Plaintiff lost money or property as a result of the aforementioned unfair
19 competition.

20 92. Defendants have, or may have, acquired money by means of unfair competition.

21 93. Defendants have violated Federal and California laws through their policies and
22 practices of *inter alia*, routinely acquiring consumer, investigative consumer and/or consumer
23 credit reports (referred to collectively as “credit and background reports”) to conduct background
24 checks on Plaintiff and other prospective, current and former employees and use information from
25 credit and background reports in connection with their hiring process without providing proper
26 disclosures and obtaining proper authorization in compliance with the law.

27 94. The unlawful conduct of Defendants alleged herein amounts to and constitutes
28 unfair competition within the meaning of Business and Professions Code sections 17200, *et seq.*

1 Business and Professions Code section 17200, *et seq.*, protects against unfair competition and
2 allows a person who has suffered an injury-in-fact and has lost money or property as a result of an
3 unfair, unlawful, or fraudulent business practice to seek restitution on his own behalf and on behalf
4 of other similarly situated persons in a class action proceeding.

5 95. Plaintiff is informed and believes that other similarly situated persons have been
6 subject to the same unlawful policies or practices of Defendants.

7 96. Due to its unfair and unlawful business practices in violation of Federal and
8 California laws as alleged herein, Defendants have gained a competitive advantage over other
9 comparable companies doing business in the State of California that comply with their legal
10 obligations.

11 97. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
12 herself and the other members of the **FCRA, ICRAA and CCRAA Class**, seeks declaratory relief
13 and restitution of all monies rightfully belonging to them that Defendants did not pay them or
14 otherwise retained by means of its unlawful and unfair business practices.

15 98. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
16 for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act
17 violates or is considered unlawful under any other state or federal law.

18 99. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
19 Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining
20 Defendants, and each of them, and their agents and employees, from further violations of the
21 FCRA, ICRAA and CCRAA; and upon a final hearing seek an order permanently enjoining
22 Defendants, and each of them, and their respective agents and employees, from further violations
23 of the FCRA, ICRAA and CCRAA.

24 100. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
25 and/or the common fund doctrine, Plaintiff and the other members of the **FCRA, ICRAA and**
26 **CCRAA Class** are entitled to recover reasonable attorneys' fees in connection with their unfair
27 competition claims.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for relief and judgment against Defendants as follows:


- A. An order that the action be certified as a class action;
- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Statutory penalties;
- E. Civil penalties;
- F. Punitive damages;
- G. Injunctive relief;
- H. Costs of suit;
- I. Interest;
- J. Restitution;
- K. Reasonable attorneys' fees; and
- L. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial on all issues so triable.

DATED: September 20, 2018

SETAREH LAW GROUP



SHAUN SETAREH
Attorneys for Plaintiff
KATHARINE L. WHITE

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Shaun Setareh (SBN 204514) SETAREH LAW GROUP 315 South Beverly Drive, Suite 315 Beverly Hills, California 90212 TELEPHONE NO.: (310) 888-7771 FAX NO.: (310) 888-0109 ATTORNEY FOR (Name): Katharine L. White	FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY SEP 21 2018 CLERK OF THE SUPERIOR COURT By: ERICA BAKER, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, California 94612 BRANCH NAME: Rene C. Davidson Courthouse	CASE NAME: White v. AMN Healthcare, Inc. et al.
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
CASE NUMBER: PG18921814 JUDGE: DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|---|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input checked="" type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Five
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 20, 2018
 Shaun Setareh, Esc.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

BY FAX

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)	Breach of Rental/Lease	Construction Defect (10)
	Contract (not unlawful detainer or wrongful eviction)	Claims Involving Mass Tort (40)
	Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)	Securities Litigation (28)
	Negligent Breach of Contract/Warranty	Environmental/Toxic Tort (30)
	Other Breach of Contract/Warranty	Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Other P/PPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Collections (e.g., money owed, open book accounts) (09)	Enforcement of Judgment
Asbestos (04)	Collection Case—Seller Plaintiff	Enforcement of Judgment (20)
Asbestos Property Damage	Other Promissory Note/Collections Case	Abstract of Judgment (Out of County)
Asbestos Personal Injury/Wrongful Death	Insurance Coverage (not provisionally complex) (18)	Confession of Judgment (non-domestic relations)
Product Liability (not asbestos or toxic/environmental) (24)	Auto Subrogation	Sister State Judgment
Medical Malpractice (45)	Other Coverage	Administrative Agency Award (not unpaid taxes)
Medical Malpractice—Physicians & Surgeons	Other Contract (37)	Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Professional Health Care Malpractice	Contractual Fraud	Other Enforcement of Judgment Case
Other P/PPD/WD (23)	Other Contract Dispute	Miscellaneous Civil Complaint
Premises Liability (e.g., slip and fall)	Real Property	RICO (27)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Eminent Domain/Inverse Condemnation (14)	Other Complaint (not specified above) (42)
Intentional Infliction of Emotional Distress	Wrongful Eviction (33)	Declaratory Relief Only
Negligent Infliction of Emotional Distress	Other Real Property (e.g., quiet title) (26)	Injunctive Relief Only (non-harassment)
Other P/PPD/WD	Writ of Possession of Real Property	Mechanics Lien
Non-P/PPD/WD (Other) Tort	Mortgage Foreclosure	Other Commercial Complaint Case (non-tort/non-complex)
Business Tort/Unfair Business Practice (07)	Quiet Title	Other Civil Complaint (non-tort/non-complex)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)	Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	Miscellaneous Civil Petition
Defamation (e.g., slander, libel) (13)	Unlawful Detainer	Partnership and Corporate Governance (21)
Fraud (16)	Commercial (31)	Other Petition (not specified above) (43)
Intellectual Property (19)	Residential (32)	Civil Harassment
Professional Negligence (25)	Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)	Workplace Violence
Legal Malpractice	Judicial Review	Elder/Dependent Adult Abuse
Other Professional Malpractice (not medical or legal)	Asset Forfeiture (05)	Election Contest
Other Non-P/PPD/WD Tort (35)	Petition Re: Arbitration Award (11)	Petition for Name Change
Employment	Writ of Mandate (02)	Petition for Relief From Late Claim
Wrongful Termination (36)	Writ—Administrative Mandamus	Other Civil Petition
Other Employment (15)	Writ—Mandamus on Limited Court Case Matter	
	Writ—Other Limited Court Case Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor Commissioner Appeals	

EXHIBIT B

1 ROD M. FLIEGEL, Bar No. 168289
ALISON S. HIGHTOWER, Bar no. 112429
2 JULIE A. STOCKTON, Bar No. 286944
LITTLER MENDELSON, P.C.
3 333 Bush Street, 34th Floor
San Francisco, CA 94104
4 Telephone: (415) 433-1940
Facsimile: (415) 399-8490
5 Email: rfliegel@littler.com
ahightower@littler.com
6 jstockton@littler.com

ENDORSED
FILED
ALAMEDA COUNTY

OCT 19 2018

SUE PESKO

7 Attorneys for Defendant
AMN HEALTHCARE, INC.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11
12 KATHARINE L. WHITE, on behalf of
herself, all others similarly situated,

CASE NO. RG18921814

13 Plaintiff,

ANSWER TO COMPLAINT (CLASS
ACTION)

14 vs.

15 AMN HEALTHCARE, INC., a Nevada
16 corporation; and DOES 1 through 50,
inclusive,

17 Defendants.

1 Defendant AMN HEALTHCARE, INC. (“Defendant”), through undersigned counsel,
2 answers the unverified Complaint of Plaintiff KATHARINE L. WHITE (“Plaintiff”).

3 **GENERAL DENIAL**

4 1. Pursuant to California Code of Civil Procedure § 431.30(d), Defendant hereby
5 answers Plaintiff’s unverified Complaint by generally denying each and every allegation contained
6 therein, by denying that Plaintiff has been damaged or has sustained any damages as a result of the
7 conduct alleged therein and by asserting the following separate and distinct additional defenses.
8 Defendant further denies that this case is appropriate for class treatment.

9 **ADDITIONAL DEFENSES**

10 2. Without admitting any of the allegations of the Complaint and without admitting or
11 acknowledging that Defendant bears any burden of proof, Defendant asserts the following additional
12 defenses. Defendant intends to rely upon any additional defenses that become available or apparent
13 during pretrial proceedings and discovery in this action and hereby reserves the right to amend this
14 Answer to assert all such further defenses. Defendant also expressly denies the existence of any
15 alleged putative class of “similarly situated” individuals that Plaintiff purports to represent in this
16 lawsuit pursuant to California Code of Civil Procedure § 382, Federal Rule of Civil Procedure 23,
17 and California Business & Professions Code §§ 17203-17204. Defendant thus expressly denies the
18 existence of any such group each and every time it references “Plaintiff” as if fully set forth therein.
19 All defenses asserted are also asserted against the putative class, except where the claim is asserted
20 only on behalf of the named Plaintiff.

21 1. Plaintiff’s Complaint fails to state a claim upon which relief may be granted.

22 2. The Court lacks personal jurisdiction over Defendant to resolve the claims brought by
23 a nationwide class.

24 3. The Court lacks jurisdiction over the claims of certain persons, including putative
25 class members, to the extent they are subject to arbitration.

26 4. Plaintiff’s Complaint, and each and every cause of action contained therein, are
27 barred in whole or in part because, at all material times, Defendant acted reasonably, in good faith
28 and without malice based upon all relevant facts and circumstances known by Defendant at the time,

1 and did not at any time willfully or negligently fail to comply with the applicable law, including but
2 not limited to the Fair Credit Reporting Act (“FCRA”), the California Consumer Credit Reporting
3 Agencies Act (“CCRAA”) and the California Investigative Consumer Reporting Agencies Act
4 (“ICRAA”).

5 5. Plaintiff’s claims for statutory damages and punitive damages violate the Fourth,
6 Fifth, Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution and corresponding
7 Articles of the California Constitution because: (a) the punitive damages claimed are vastly
8 disproportionate to the statutory and/or actual damages claimed or available; (b) the award of
9 punitive and/or statutory damages would constitute an arbitrary and capricious taking of Defendant’s
10 property which is unjustified by any rational governmental interest; (c) the award of punitive
11 damages with wholly standardless discretion is inconsistent with due process; and/or (d) the statutes,
12 including but not limited to section 616 of the FCRA (15 U.S.C. § 1681n), the CCRAA, and the
13 ICRAA are unconstitutionally vague and unjustifiably arbitrary.

14 6. Plaintiff’s claims, and those of putative class members, are barred, in whole or in part,
15 to the extent that Plaintiff and putative class members did not suffer any cognizable injury nor
16 suffered any damages and have no standing pursuant to Article III of the United States Constitution.

17 7. Plaintiff’s substantive claims and her claims for damages (including but not limited to
18 Plaintiff’s claims under sections 1785, *et seq.* and 1786, *et seq.* of the California Civil Code), which
19 seek to recover, among other things, punitive damages and/or penalties, violate the Fourth, Fifth,
20 Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution and corresponding Articles of the
21 California Constitution. Defendant specifically alleges that sections 1785.20.5(a) and 1786.16(b) of
22 the California Civil Code are unconstitutionally vague and ambiguous.

23 8. Plaintiff’s individual and class-wide claims are excluded from coverage by
24 section 604 of the FCRA (15 U.S.C. § 1681b) and corresponding provisions of California law to the
25 extent Defendant obtained any background reports in connection with an investigation of compliance
26 with federal, state or local laws and regulations, the rules of self-regulatory organization or any pre-
27 existing policies (15 U.S.C. § 1681a(y)).
28

1 9. Plaintiff's claims, and those of putative class members, are subject to dismissal
2 because the screening reports Defendant received were not "consumer reports" within the meaning
3 of the CCRAA and the ICRAA.

4 10. Plaintiff's claims are barred, in whole or in part, because notwithstanding
5 Defendant's alleged non-compliance, Plaintiff otherwise was aware of her purported statutory rights.

6 11. Defendant alleges that it has complied with the FCRA, the CCRAA, and the ICRAA
7 in the handling of Plaintiff's consumer report and/or investigative consumer report and is, therefore,
8 entitled to each and every defense stated in and available under the FCRA, the CCRAA, and the
9 ICRAA and to all limitations of liability.

10 12. Plaintiff's Complaint, and each and every cause of action contained therein, are
11 barred in whole or in part because Plaintiff failed to comply fully or at all with procedures available
12 and/or required under the FCRA, the CCRAA, and the ICRAA to address Plaintiff's concerns and/or
13 otherwise failed to take reasonable steps to avoid harm.

14 13. Defendant maintained reasonable procedures to comply with applicable law at all
15 times relevant to Plaintiff's Complaint.

16 14. Plaintiff is not entitled to recover the equitable relief she seeks because: (a) an
17 adequate remedy at law exists; (b) Plaintiff lacks standing to seek equitable relief; (c) equitable relief
18 is only available to the Federal Trade Commission and Consumer Financial Protection Bureau, not
19 to private plaintiffs and the Court lacks subject matter jurisdiction to issue an injunction; (d) Plaintiff
20 is not entitled to such relief for any claimed violation of the ICRAA or the CCRAA because neither
21 statute provides such relief as a remedy; and (e) Plaintiff's claim for equitable relief is moot in any
22 event.

23 15. Plaintiff is barred from recovering statutory damages under the ICRAA because the
24 ICRAA by its terms bars recovery of statutory damages in class actions.

25 16. The damages alleged by Plaintiff under California law are not reasonable and are thus
26 barred by California Civil Code § 3359.

27 17. Plaintiff's Complaint, and each and every cause of action contained therein, are
28 barred in whole or in part because Plaintiff seeks to recover for alleged harm that is outside of the

1 applicable statute of limitations, including but not limited to, 15 U.S.C. § 1681p of the FCRA,
2 California Civil Code § 1786.52 of the ICRAA, California Civil Code § 1785.33 of the CCRAA, and
3 California Business and Professions Code § 17208.

4 18. Plaintiff's claims are barred, in whole, or in part, by the equitable theories of estoppel,
5 waiver, laches, unclean hands, and avoidable consequences.

6 19. All of Plaintiff's claims on behalf of absent putative class members fail because
7 Plaintiff cannot meet her burden of demonstrating that each requirement of class certification,
8 including but not limited to ascertainability, adequacy, typicality, commonality, predominance, and
9 superiority, is met here, and because certifying a class in the circumstances of this case would violate
10 Defendant's rights to due process under the law. To the extent that class certification is nonetheless
11 granted at a future date, Defendant alleges and asserts each of the defenses previously stated herein
12 against each and every putative class member.

13 20. Plaintiff's claims are barred, in whole or in part, because notwithstanding
14 Defendant's alleged non-compliance, Plaintiff otherwise was aware of her purported statutory rights.

15 21. Adjudication of this action on a class-wide basis, as applied to the facts and
16 circumstances of this case, would constitute a denial of Defendant's rights to trial by jury and to
17 substantive and procedural due process, in violation of the Fourteenth Amendment of the United
18 States Constitution. *See, e.g., Wal-Mart v. Dukes*, 131 S. Ct. 2541 (2011).

19 22. Plaintiff's Complaint, and each and every cause of action contained therein, are
20 barred in whole or in part because Plaintiff did not suffer any cognizable damage or other harm as a
21 proximate result of any alleged act or omission of Defendant or its agents or employees.

22 23. Assuming that Plaintiff suffered or sustained any loss, damage or injury, which
23 Defendant specifically denies, such loss, damage or injury was proximately caused or contributed to
24 by the negligence or wrongful conduct of other parties, persons or entities, and that their negligence
25 or wrongful conduct was an intervening and superseding cause of the purported loss, damage or
26 injury of which Plaintiff complains.

27 24. Plaintiff's damages, if any, were caused by the negligence and/or acts or omissions of
28 third parties other than Defendant, whether or not parties to this action. By reason thereof,

1 Plaintiff's damages, if any, as against Defendant, must be reduced by the proportion of fault
2 attributable to such third parties, and to the extent that this is necessary, Defendant may be entitled to
3 partial indemnity from such third parties on a comparative fault basis.

4 25. Plaintiff's prosecution of this action as a representative of the general public under
5 California Business and Professions Code § 17200, *et seq.*, as applied to the facts and circumstances
6 of this case, would constitute a denial of Defendant's substantive and procedural due process rights
7 under the Fourteenth Amendment of the United States Constitution and under the California
8 Constitution.

9 26. Plaintiff's claims under California Business and Professions Code § 17200, *et seq.*,
10 are barred because Plaintiff has an adequate remedy at law.

11 27. Pursuant to California Business and Professions Code § 17200, *et seq.*, Plaintiff's
12 claims for restitution are barred to the extent that these claims constitute damages or penalties of any
13 nature.

14 28. Plaintiff's claims seeking recovery in the form of restitution, disgorgement, or
15 injunctive relief under California Business and Professions Code § 17200, *et seq.*, are barred with
16 respect to any alleged violations that have been discontinued, ceased, or are not likely to recur.

17 29. Plaintiff's claims for injunctive relief fail because, as a former employee, Plaintiff
18 lacks standing to pursue injunctive relief.

19 30. Plaintiff and the putative class members have failed to exercise reasonable care to
20 mitigate their damages, if any.

21 31. Plaintiff's claims, and those of certain putative class members, are barred, in whole or
22 in part, to the extent that they failed to read the disclosure thoroughly or at all.

23 32. Plaintiff's claims, and those of certain putative class members, are barred, in whole or
24 in part, to the extent that they received multiple disclosures and at least one of them complied with
25 the law, including the FCRA, ICRAA and CCRAA.

26 33. Plaintiff's claims, and those of certain putative class members, are barred, in whole or
27 in part, to the extent that they received one or more disclosures that substantially complied with the
28 law, including the FCRA, ICRAA and CCRAA.

1 34. Plaintiff's claims, and those of certain putative class members, are barred, in whole or
2 in part, because Defendant did not adopt a reading of the law that risked any violation of the FCRA,
3 ICRAA and/or CCRAA, let alone an unjustifiably high risk of doing so.

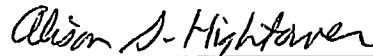
4 35. Plaintiff's claims, and those of certain putative class members, are barred, in whole or
5 in part, on the grounds of res judicata and/or collateral estoppel.

6 36. To the extent Plaintiff and/or those persons she seeks to represent entered into one or
7 more settlements with Defendant or otherwise released Defendant from any liability as alleged in the
8 Complaint, their claims are barred in whole or in part by the doctrine of settlement, accord and
9 satisfaction.

10 WHEREFORE, Defendant prays for judgment in its favor and against Plaintiff as follows:

- 11 1. That the Complaint be dismissed with prejudice;
- 12 2. That Plaintiff takes nothing by way of the Complaint;
- 13 3. That Defendant recover its attorney's fees, costs and disbursements in this action; and
- 14 4. For such other and further relief as the Court deems just and proper.

15 DATED: October 19, 2018

16 

17 _____
18 ROD M. FLIEGEL
19 ALISON S. HIGHTOWER
20 JULIE A. STOCKTON
21 LITTLER MENDELSON, P.C.

22 Attorneys for Defendant
23 AMN HEALTHCARE, INC.
24
25
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PROOF OF SERVICE

I, the undersigned, state:

I am employed in the City and County of San Francisco, State of California. I am over the age of 18 years, and not a party to the within action. My business address is LITTLER MENDELSON, P.C., 333 Bush Street, 34th Floor, San Francisco, CA 94104.

On October 19, 2018, I served the foregoing document(s) described as:

ANSWER TO COMPLAINT (CLASS ACTION)

on the interested parties by enclosing a true copy in a sealed envelope addressed as follows:

Shaun Setareh, Esq.
Scott Leviant, Esq.
William Pao, Esq.
SETAREH LAW GROUP
315 South Beverly Drive, Suite 315
Beverly Hills, CA 90212

Attorney for Plaintiff, KATHERINE L. WHITE

Telephone: (310) 888-7771
Email: shaun@setarehlaw.com

VIA OVERNIGHT DELIVERY: I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the person(s) at the address(es) listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

VIA U.S. MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with Littler Mendelson, P.C.'s practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

VIA FAX TRANSMISSION: Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used.

VIA ELECTRONIC MAIL: Based on a court order or an agreement of the parties to accept electronic service, I caused the document(s) to be sent to the persons at the electronic service addresses listed as follows:

shaun@setarehlaw.com

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VIA MESSENGER SERVICE: I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and providing them to a professional messenger service for service.

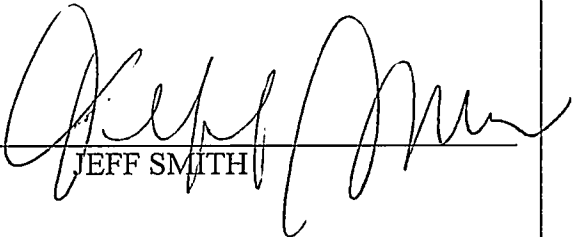
DECLARATION OF MESSENGER: I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed above. For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening; for a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening. At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding. I served the envelope or package, as stated above on October 19, 2018. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____

Signature of Declarant/Messenger

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 19, 2018, at San Francisco, California.



JEFF SMITH

1 ROD M. FLIEGEL, Bar No. 168289
ALISON S. HIGHTOWER, Bar no. 112429
2 JULIE A. STOCKTON, Bar No. 286944
LITTLER MENDELSON, P.C.
3 333 Bush Street, 34th Floor
San Francisco, CA 94104
4 Telephone: (415) 433-1940
Facsimile: (415) 399-8490
5 Email: rfliegel@littler.com
ahightower@littler.com
6 jstockton@littler.com

7 Attorneys for Defendant
AMN HEALTHCARE, INC.

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11
12 KATHARINE L. WHITE, on behalf of
herself, all others similarly situated,

13 Plaintiff,

14 vs.

15 AMN HEALTHCARE, INC., a Nevada
16 corporation; and DOES 1 through 50,
inclusive,

17 Defendants.
18

CASE NO. 3:18-cv-6469

**DECLARATION OF RANDY A. SELLERS
IN SUPPORT OF DEFENDANT'S NOTICE
OF REMOVAL OF ACTION TO FEDERAL
COURT**

(Alameda County Superior Court
Case No. RG18921814)

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I, Randy A. Sellers, declare as follows:

1. I am an adult over the age of 18 and a resident of the state of Texas. The information set forth herein is true and correct of my own personal knowledge (unless otherwise stated) and if asked to testify thereto, I would do so competently.

2. I am currently employed as the Manager, Credentialing for AMN Healthcare, Inc. (“AMN”). In that role, I have personal knowledge regarding the pre-employment background screens conducted of applicants for employment positions with AMN and its affiliates. I am authorized to make these statements on behalf of AMN.

3. AMN screens job applicants across the country for various positions, including physicians, nurses, physical therapists, occupational therapists, and other medical-related positions. AMN’s affiliates seek applicants nationwide, including Arizona, California, Colorado, Georgia, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Minnesota, Missouri, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee and Texas.

4. Based on my review of company records, during the period of September 21, 2013 to October 22, 2018, more than 52,000 individuals seeking jobs with AMN affiliates across the nation submitted to a background check, including applicants residing outside of California. Over 19,000 individuals sought jobs with AMN affiliates in California during the same time period.

I declare under penalty of perjury pursuant to the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on the 23rd day of October, 2018.

Randy A. Sellers

FIRMWIDE:158835981.1 058080.1007

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I, Randy A. Sellers, declare as follows:

1. I am an adult over the age of 18 and a resident of the state of Texas. The information set forth herein is true and correct of my own personal knowledge (unless otherwise stated) and if asked to testify thereto, I would do so competently.

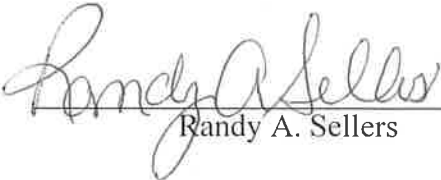
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I declare under penalty of perjury pursuant to the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on the 23rd day of October, 2018.


Randy A. Sellers

FIRMWIDE:158835981.1 058080.1007

JS-CAND 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Katharine L. White

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Shaun Setareh/H. Scott Leviant/William M. Pao, Setareh Law Group
315 South Beverly Drive, Suite 315, Beverly Hills, CA 90212 Phone: 310.888.7771

DEFENDANTS
AMN Healthcare, Inc., et al.

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

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

Attorneys (If Known)
Rod M. Fliegel/Alison S. Hightower/Julie A. Stockton, Littler Mendelson, P.C.
333 Bush Street, 34th Floor, San Francisco, CA 94104 Phone: 415.433.1940

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant 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)

	PTF	DEF	PTF	DEF
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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury-Medical Malpractice	625 Drug Related Seizure of Property 21 USC § 881 690 Other	422 Appeal 28 USC § 158 423 Withdrawal 28 USC § 157	375 False Claims Act 376 Qui Tam (31 USC § 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced & Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 850 Securities/Commodities/Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes
120 Marine	PERSONAL INJURY 365 Personal Injury - Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability	LABOR 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act <input checked="" type="checkbox"/> 790 Other Labor Litigation 791 Employee Retirement Income Security Act	PROPERTY RIGHTS 820 Copyrights 830 Patent 835 Patent-Abbreviated New Drug Application 840 Trademark	
130 Miller Act	PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	IMMIGRATION 462 Naturalization Application 465 Other Immigration Actions	SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g))	
140 Negotiable Instrument	CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/Accommodations 445 Amer. w/Disabilities-Employment 446 Amer. w/Disabilities-Other 448 Education	HABEAS CORPUS 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty	FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS-Third Party 26 USC § 7609	
150 Recovery of Overpayment of Veteran's Benefits				
151 Medicare Act				
152 Recovery of Defaulted Student Loans (Excludes Veterans)				
153 Recovery of Overpayment of Veteran's Benefits				
160 Stockholders' Suits				
190 Other Contract				
195 Contract Product Liability				
196 Franchise				
REAL PROPERTY				
210 Land Condemnation				
220 Foreclosure				
230 Rent Lease & Ejectment				
240 Torts to Land				
245 Tort Product Liability				
290 All Other Real Property				

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 § 1681b, 1681d, 1681g; Class Action Fairness Act, 28 U.S.C. §§ 1331, 1332(d)
Brief description of cause:
Alleged violations of the Fair Credit Reporting Act, CA Investigative Consumer Reporting Act, CA Consumer Reporting Agencies Act, and Unfair Business Practices Act.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. **DEMAND \$**

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 10/23/2018

SIGNATURE OF ATTORNEY OF RECORD

Alison S. Hightower

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Employee Claims AMN Healthcare Illegally Acquired Background Reports](#)
