

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
 2 STEPHEN H. TURNER, SB# 89627
 3 E-Mail: Stephen.Turner@lewisbrisbois.com
 4 PATRIK JOHANSSON, SB# 231769
 5 E-Mail: Patrik.Johansson@lewisbrisbois.com
 6 633 West 5th Street, Suite 4000
 7 Los Angeles, California 90071
 8 Telephone: 213.250.1800
 9 Facsimile: 213.250.7900

6 Attorneys for Defendant, APARTMENT
 MANAGEMENT CONSULTANTS, LLC

8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

11 GREGORY LEGROS, as an individual,
 12 and on behalf of all others similarly
 13 situated,

13 Plaintiff,

14 vs.

15 APARTMENT MANAGEMENT
 16 CONSULTANTS, LLC., a limited
 17 liability corporation; and DOES 1
 18 through 50, inclusive,

18 Defendants.

CASE NO.

NOTICE OF REMOVAL

19 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

20 **PLEASE TAKE NOTICE** that Defendant APARTMENT MANAGEMENT
 21 CONSULTANTS, LLC (“Defendant”) hereby removes to this Court the state court
 22 action described below:

23 1. On or about August 31, 2018, an action was commenced in the San
 24 Diego Superior Court, entitled *Gregory legros v. Apartment Management*
 25 *Consultants, LLC*, case no. CIVDS18230334. A true and correct copy of Plaintiff
 26 GREGORY LEGROS’s Complaint is attached hereto as Exhibit “A.”

27 2. Defendant was served with the Complaint on September 26, 2018.

28 3. This action is a civil action of which this Court has original jurisdiction

1 under 28 U.S.C. § 1331, and is one which may be removed to this Court by
2 Defendant pursuant to the provisions of 28 U.S.C. § 1331 and 28 U.S.C. § 1441(a)
3 in that it arises under the Fair Credit Reporting Act, 15 U.S.C. § 1681.

4 4. There are no other defendants named in the Complaint.

5

6 DATED: October 16, 2018

LEWIS BRISBOIS BISGAARD & SMITH LLP

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By: s/ Stephen H. Turner

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Stephen Turner

Patrik Johansson

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Attorneys for Defendant, APARTMENT

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MANAGEMENT CONSULTANTS, LLC

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Exhibit A

1 LAW OFFICE OF SCOTT ERNEST WHEELER
2 Scott Ernest Wheeler (SBN 187998)
3 250 West First Street, Suite 216
4 Claremont, California 91711
5 Telephone: (909) 621-4988
6 Facsimile: (909) 621-4622
7 Email: sew@scottwheelerlawoffice.com

8 THE WAND LAW FIRM, PC
9 Aubry Wand (SBN 281207)
10 400 Corporate Pointe, Suite 300
11 Culver City, California 90230
12 Telephone: (310) 590-4503
13 Facsimile: (310) 590-4596
14 Email: awand@wandlawfirm.com

15 *Attorneys for Plaintiff and the Putative Classes*

16 **SUPERIOR COURT OF CALIFORNIA**

17 **COUNTY OF SAN BERNARDINO**

18 GREGORY LEGROS, as an individual, and
19 on behalf of all others similarly situated,

20 Plaintiffs,

21 v.

22 APARTMENT MANAGEMENT
23 CONSULTANTS, LLC., a limited liability
24 corporation; and DOES 1 through 50,
25 inclusive,

26 Defendants.

CASE NO.:

CIVDS1823034

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 31 2018

BY Jessica Garcez
JESSICA GARCEZ, DEPUTY

1 INTRODUCTION

2 Plaintiff Gregory LeGros (“Plaintiff”), on behalf of himself and all other persons similarly
3 situated, files this class action complaint against defendant Apartment Management Consultants,
4 LLC (“Defendant”). Plaintiff makes the following allegations on information and belief, except as
5 to allegations pertaining to Plaintiff individually, which are based on his respective personal
6 knowledge.

7 1. Plaintiff brings this action individually and on a class and representative basis in
8 accordance with federal and state background check laws, including the Fair Credit Reporting Act
9 (“FCRA”), 15 U.S.C. § 1681 *et seq.*; the California Investigative Consumer Reporting Agencies
10 Act (“ICRAA”), California Civil Code § 1786 *et seq.*; the California Consumer Credit Reporting
11 Agencies Act (“CCRAA”), California Civil Code § 1785.1 *et seq.*; the Private Attorneys General
12 Act of 2004 (“PAGA”), California Labor Code § 2699 *et seq.*; and the California Unfair
13 Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200 *et seq.*

14 2. The FCRA, ICRAA, and CCRAA impose on entities that use consumer
15 background reports important safeguards designed to protect consumers like Plaintiff, including
16 but not limited to the following: 1) providing “clear and conspicuous” notice in a written
17 document that consists solely of the disclosure that consumer background reports may be
18 procured; 2) obtaining written authorization from consumers prior to obtaining consumer
19 background reports; 3) providing a summary of rights under applicable law prior to taking adverse
20 actions against consumers; and 4) providing copies of the consumer background reports prior to
21 taking adverse actions against consumers. Compliance with these requirements is necessary to
22 prevent the misuse of sensitive personal information and to ensure the accuracy and integrity of
23 consumer background reports. These statutes were enacted to ensure that consumer reporting
24 agencies “exercise their grave responsibilities with fairness, impartiality, and a respect for the
25 consumer’s right to privacy.”

26 3. Although Defendant as a matter of practice obtains consumer background reports
27 on prospective and current employees, and it relies on such information, in whole or in part, as a
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1 basis for employment action it does not provide these persons with adequate disclosure or other
2 form of notice informing them that it is obtaining these consumer background reports.

3 4. As further alleged herein, these violations occurred because Defendant has failed to
4 properly inform itself of the relevant statutory mandates before seeking and acquiring consumer
5 reports; failed to implement reasonable procedures to assure compliance with statutory mandates;
6 and violated the express and unambiguous provisions of the relevant statutes.

7 5. As a result of Defendant's wrongful acts and admissions, Plaintiff, Class members,
8 and aggrieved employees, have had their privacy and statutory rights invaded in violation of the
9 foregoing laws.

10 6. Plaintiff seeks, on behalf of himself and all others similarly situated, statutory
11 damages and penalties, punitive damages, injunctive relief, and attorneys' fees and costs, due to
12 Defendant's willful or grossly negligent conduct and its systematic and willful violation of the
13 foregoing laws.

14 JURISDICTION AND VENUE

15 7. The Superior Court of the State of California has jurisdiction in this matter because
16 Plaintiff is a resident of California, the alleged unlawful conduct took place in part in California,
17 and Plaintiff alleges violations of California laws. This Court has concurrent jurisdiction over
18 Plaintiff's FCRA claim pursuant to 15 U.S.C. § 1681p.

19 8. Venue is proper pursuant to California Code of Civil Procedure § 395 because a
20 substantial part of the events giving rise to Plaintiff's claims occurred in this judicial district.
21 Plaintiff, and other persons similarly situated, performed work for Defendant in the County of San
22 Bernardino and Defendant's unlawful policies and practices, which are the subject of this action,
23 were applied to Plaintiff, and other persons similarly situated, in the County of San Bernardino.

24 PARTIES

25 9. Plaintiff is a resident of the State of California. Plaintiff began working for
26 Defendant as an Employee Community Ambassador Maintenance Technician in approximately
27 April 2017. Plaintiff worked for Defendant at AMC-Village Oaks located at 15773 High Knoll
28 Drive, Chino Hills, CA 91709. Chino Hills is a city located in the County of San Bernardino.

1 10. On information and belief, Defendant is, and at all times relevant herein was, a
 2 corporation organized and existing under the laws of the state of Utah. On further information and
 3 belief, Defendant is authorized to conduct business in the State of California, and does conduct
 4 business in the State of California. Specifically, Defendant maintains offices and facilities
 5 throughout the state of California and it conducts business as an apartment management company.

6 11. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
 7 Plaintiff at this time, and Plaintiff therefore sues such DOE defendants under fictitious names.
 8 Upon information and belief, each Defendant designated as a DOE is in some manner highly
 9 responsible for the occurrences alleged herein, and Plaintiff and Class members' injuries and
 10 damages, as alleged herein, were proximately caused by the conduct of such DOE defendants.
 11 Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
 12 capacities of such DOE defendants when ascertained.

13 FACTUAL ALLEGATIONS

14 12. Defendant is an apartment management company that manages properties
 15 throughout California and the United States. Defendant employs hundreds if not thousands of
 16 employees.

17 13. Plaintiff's job title was Employee Community Ambassador Maintenance
 18 Technician. In this capacity, Plaintiff's primary job duties and responsibilities included
 19 management and upkeep of an apartment building located in Chino Hills, California. Specifically,
 20 Plaintiff was responsible for: daily upkeep and repair of property; assisting residents; attending
 21 community meetings and enforcing community rules; and preparation of vacant units for
 22 occupancy.

23 14. The only educational requirement for this position is a high school diploma or a
 24 GED.

25 15. Plaintiff was terminated in or around November 2017.

26 16. During the relevant statute of limitations period, Defendant performed background
 27 checks on current and prospective employees, including Plaintiff. Specifically, Defendant engaged
 28 a company named Peopletrail to furnish background checks of employees and prospective

1 employees on its behalf, and on information and belief, certified to Peopletrail that it would
2 comply with the FCRA, ICRAA, and CCRAA for purposes of those background checks.

3 17. Peopletrail is a company that specializes in providing employment background
4 checks and screening services.

5 18. On information and belief, Defendant certified to Peopletrail, on a prospective
6 basis, that it would not request a background check without first providing a compliant disclosure
7 to, and obtaining a compliant authorization from, the individuals who were the subjects of these
8 reports.

9 19. At no time during the application process did Defendant or Peopletrail notify
10 Plaintiff in a clear and conspicuous document that consists solely of the disclosure that they would
11 obtain his consumer background report. However, on or about February 21, 2017, Defendant
12 authorized Peopletrail to conduct a consumer background report on Plaintiff. Peopletrail went
13 ahead and conducted this background report.

14 20. The background reports conducted by Peopletrail elicit private information of
15 Plaintiff and Class members, including but not limited to, criminal records, sex offender registries,
16 and address history. These background checks were conducted for the purpose of determining
17 whether Plaintiff and other employees were qualified to perform their jobs, and they were
18 expressly used for making employment decisions, including but not limited to, hiring, promotion,
19 reassignment, or retention decisions.

20 21. Moreover, Defendant failed to provide Plaintiff with a copy of his consumer
21 background report and a description of his rights under federal and California background check
22 laws until Plaintiff affirmatively requested a copy of the background report in January 2018,
23 several months after his employment had ended. Plaintiff received no notice from Defendant or
24 Peopletrail that they conducted a background report. Rather, Plaintiff requested the report out of
25 his own suspicion that they had done so.

26 22. In addition to class claims under the FCRA, ICRAA, CCRAA, and the UCL,
27 Plaintiff alleges violations of California Labor Code § 1024.5, which restricts the use of consumer
28 credit reports to certain job types. Plaintiff applied for a position that did not fall within any

1 category set forth in California Labor Code § 1024.5, and therefore Defendant's procurement of
2 his credit report was also a violation of the California Labor Code, giving rise to a cause of action
3 under PAGA. To that end, Plaintiff seeks civil penalties on behalf of himself and other aggrieved
4 employees pursuant to PAGA on a representative basis.

5 CLASS ACTION ALLEGATIONS

6 23. Plaintiff brings this action as a class action brings this action as a class action on
7 behalf of himself and all others similarly situated pursuant to California Code of Civil Procedure §
8 382 on behalf of the following Classes:

9 The FCRA Class

10 All individuals residing in the United States who worked for, or applied to work for,
11 Defendant during the relevant statute of limitations period and who received no disclosure
12 or inadequate disclosure prior to consumer report procurement, as required by 15 U.S.C. §
13 1681b(b)(2)(A)(i).

14 The CCRAA Class

15 All individuals residing in California who worked for, or applied to work for, Defendant
16 during the relevant statute of limitations period and who received no disclosure or
17 inadequate disclosure prior to consumer credit report procurement, as required by
18 California Civil Code § 1785.20.5(a).

19 The ICRAA Class

20 All individuals residing in California who worked for, or applied to work for, Defendant
21 during the relevant statute of limitations period and who received no disclosure or
22 inadequate disclosure prior to consumer credit report procurement, as required by
23 California Civil Code § 1786.16(2)(B).

24 24. Excluded from all of the Classes are the following individuals and/or entities: all
25 individuals who make a timely election to be excluded from this proceeding using the correct
26 protocol for opting out; and all judges assigned to hear any aspect of this litigation, as well as their
27 immediate family members.

28 25. Plaintiff reserves the right to modify or amend the definition of the proposed
Classes and/or add subclasses before the Court determines whether certification is appropriate.

26 26. The Classes are so numerous that joinder of all members would be impractical. On
27 information and belief, the number of individuals affected by Defendant's unlawful practices as
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1 alleged herein are at minimum in the hundreds. Class members are also readily identifiable and
2 ascertainable through Defendant's records.

3 27. There are questions of law and fact common to the Classes that will drive the
4 resolution of this action. These questions include, but are not limited to, the following:

5 A. Whether Defendant had a policy and/or practice of procuring or causing to be
6 procured consumer reports for its employees and applicants;

7 B. Whether Defendant had a policy and/or practice of providing clear and conspicuous
8 notice in a written document that consists solely of the disclosure that it may procure consumer
9 reports for its employees and applicants;

10 C. Whether Defendant willfully or negligently failed to comply with the FCRA,
11 ICRAA and/or the CCRAA;

12 D. The proper measure of statutory and punitive damages and the availability and
13 appropriateness of declaratory and injunctive relief;

14 28. Defendant engaged in a common course of conduct giving rise to violations of the
15 legal rights sought to be enforced uniformly by Plaintiff and the Class members. Similar or
16 identical statutory and common law violations, business practices, and injuries are involved.
17 Therefore, individual questions, if any, pale in comparison to the numerous common questions
18 presented in this action.

19 29. The injuries sustained by members of the Classes flow, in each instance, from a
20 common nucleus of operative fact. Each instance of harm suffered by Plaintiff and the Classes has
21 directly resulted from a single course of illegal conduct – namely, Defendant's common policy
22 and practice of failing to adequately inform, and failing to secure adequate consent, from
23 prospective and current employees that Defendant was obtaining consumer background reports on
24 them.

25 30. Given the similar nature of the Class members' claims and the absence of material
26 differences in the statutes and common laws upon which the Class members' claims are based, a
27 nationwide class as to Plaintiff's FCRA claims, and a statewide class as to Plaintiff's ICRAA,
28 CCRAA, and UCL claims, will be easily managed by the Court and the parties.

1 31. Because of the relatively small size of the individual Class members' claims, no
2 Class member could afford to seek legal redress on an individual basis. A class action is superior
3 to any alternative means of prosecution.

4 32. The representative Plaintiff's claims are typical of those of the Classes, as all
5 members of the Classes are similarly affected by Defendant's uniform unlawful conduct as alleged
6 herein.

7 33. Defendant acted, and failed to act, on grounds generally applicable to Plaintiff and
8 the Classes, supporting the imposition of uniform relief to ensure compatible standards of conduct
9 toward the members of the Class.

10 34. Plaintiff will fairly and adequately protect the interests of the Classes, and has
11 retained counsel competent and experienced in class action litigation. The Class representative has
12 no interest which conflicts with or is adverse to those of the other Class members.

13 **FIRST CAUSE OF ACTION**
14 **[15 U.S.C. § 1681b(b)(2)(A)(i)]**
(On Behalf of Plaintiff and the FCRA Class against all Defendants)

15 35. Plaintiff incorporates herein by specific reference, as though fully set forth, the
16 allegations in paragraphs 1 through 34.

17 36. Defendant is a person, and Plaintiff and Class members are consumers, within the
18 meaning of 15 U.S.C. § 1681b(b)(2)(A).

19 37. 15 U.S.C. § 1681b(b)(2)(A)(i) governs the conduct of any person who obtains
20 consumer background reports used for employment purposes:

21 "Except as provided in subparagraph (B), a person may not procure a consumer report, or
22 cause a consumer report to be procured, for employment purposes with respect to any
consumer, unless—

23 (i) a clear and conspicuous disclosure has been made in writing to the consumer at any
24 time before the report is procured or caused to be procured, in a document that
25 consists solely of the disclosure, that a consumer report may be obtained for
employment purposes."

26 38. Defendant willfully violated 15 U.S.C. § 1681b(b)(2)(A)(i) by failing to provide
27 Plaintiff and the Class "clear and conspicuous" notice in a written document that consists *solely* of
28 the disclosure that it may procure consumer background reports for employment purposes. Rather,

1 the only purported disclosure Defendant provided to Plaintiff and Class members included
2 extraneous information, including but not limited to: (1) seeking employment information from
3 the employees; and (2) eliciting waivers from the employees regarding their legal rights, including
4 recognition that they would be terminated for providing incorrect information and that they were
5 waiving their rights to any written notice from present or former employers who provide
6 information in connection with the background report.

7 39. Defendant acted willfully, and knew or should have known about its obligations
8 under the FCRA. These obligations are well-established by the plain language of the FCRA and in
9 the promulgations and opinion letters of the Federal Trade Commission.

10 40. Despite Defendant's awareness of its legal obligations, Defendant acted
11 consciously in breaching its known duties and depriving Plaintiff and Class members of their
12 rights under the FCRA. At minimum, Defendant's conduct was reckless in failing to make an
13 appropriate inquiry to ascertain its obligations under the FCRA.

14 41. As a result of these FCRA violations, Defendant is liable to Plaintiff and the Class
15 for statutory damages of \$100 to \$1,000 pursuant to 15 U.S.C. § 1681n(a)(1)(A), punitive
16 damages pursuant to 15 U.S.C. § 1681n(a)(2), and reasonable attorneys' fees and costs pursuant to
17 15 U.S.C. § 1681n(a)(3). Plaintiff and the Class are also entitled to equitable relief against
18 Defendant enjoining further violations of the FCRA.

19 42. Plaintiff seeks statutory damages for himself and Class members for these
20 violations, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

21 43. Plaintiff seeks punitive damages for himself and Class members for these
22 violations, pursuant to 15 U.S.C. § 1681n(a)(2).

23 44. In the alternative to the allegations that these violations were willful, Plaintiff
24 alleges that the violations were negligent and he seeks issue-certification of that issue and
25 appropriate remedies, if any, under 15 U.S.C. § 1681o.

26 45. Plaintiff also seeks reasonable attorney's fees and costs as determined by the Court,
27 pursuant to 15 U.S.C. § 1681n(a)(A)(3).

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SECOND CAUSE OF ACTION

[Cal. Civ. Code § 1785.1 *et seq.*]

(On Behalf of Plaintiff and the CCRAA Class against all Defendants)

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3 46. Plaintiff incorporates herein by specific reference, as though fully set forth, the
4 allegations in paragraphs 1 through 45.

5 47. Cal. Civ. Code § 1785.1 *et seq.* governs the conduct of persons who use a consumer
6 credit report to take adverse action against “consumers.” Pertaining to the use of such reports for
7 employment purposes, Cal. Civ. Code § 1785.20.5 states:

8 (a) Prior to requesting a consumer credit report for employment purposes, the user of the
9 report shall provide written notice to the person involved. The notice shall inform the
10 person that a report will be used, and shall identify the specific basis under subdivision (a)
11 of Section 1024.5 of the Labor Code for use of the report. The notice shall also inform the
12 person of the source of the report, and shall contain a box that the person may check off to
13 receive a copy of the credit report. If the consumer indicates that he or she wishes to
14 receive a copy of the report, the user shall request that a copy be provided to the person
15 when the user requests its copy from the credit reporting agency. The report to the user and
16 to the subject person shall be provided contemporaneously and at no charge to the subject
17 person.

18 (b) Whenever employment involving a consumer is denied either wholly or partly because
19 of information contained in a consumer credit report from a consumer credit reporting
20 agency, the user of the consumer credit report shall so advise the consumer against whom
21 the adverse action has been taken and supply the name and address or addresses of the
22 consumer credit reporting agency making the report. No person shall be held liable for any
23 violation of this section if he or she shows by a preponderance of the evidence that, at the
24 time of the alleged violation, he or she maintained reasonable procedures to assure
25 compliance with this section.

26 48. On information and belief, Defendant had no reasonable procedures in place to
27 assure compliance with Cal. Civ. Code § 1785.20.5.

28 49. Moreover, Defendant violated the CCRAA by failing to provide written notice to
Plaintiff and other members of the CCRAA Class prior to requesting such consumer credit reports
that complied with Cal. Civ. Code § 1785.20.5 by informing them of the specific basis under
subdivision (a) of Section 1024.5 of the Labor Code for use of the reports or informing them of the
source of the reports.

1 50. These reports were conducted for the purposes of making employment and
2 personnel decisions, including including but not limited to, hiring, promotion, reassignment, or
3 retention.

4 51. These reports were consumer credit reports within the meaning of Cal. Civ. Code §
5 1785.3 because the information sought by the consumer credit reporting agency (Peopletrail) bears
6 “on a consumer’s credit worthiness, credit standing, or credit capacity” and it is used for the
7 employment purposes. Specifically, the reports seek information relating to: past and present
8 employers; any and all educational institutions, including colleges and universities; law
9 enforcement and all other federal, state and local agencies; federal, state and local courts, military
10 service, testing facilities; motor vehicle records agencies; all other private and public sector
11 repositories of information; and any other person, organization or agency with any information in
12 their possession regarding or concerning the employee in connection with an application for
13 employment. The report further provides that “the information that can be disclosed to the
14 consumer reporting agency and its agents includes but it not limited to, information concerning my
15 employment history, earnings, history, education, motor vehicle history, criminal history, drug test
16 results, military service, professional credentials, and all other information requested by the
17 consumer reporting agency or its agents.”

18 52. The report further states: “This notice serves as consumer notification that a report
19 will be requested and used for the purpose of evaluating me for employment, promotion,
20 reassignment or retention as an employee.”

21 53. Defendant violated the CCRAA by failing to notify Plaintiff and Class members of
22 the source of the report nor did it supply the name and address of the consumer credit reporting
23 agency making the report, in violation of Cal. Civ. Code § 1785.20.5(a).

24 54. Defendant willfully violated the CCRAA by acting in deliberate or reckless
25 disregard of its obligations and the rights of Plaintiff and the CCRAA Class.

26 55. Pursuant to Cal. Civ. Code § 1785.31(a), Plaintiff and other members of the
27 CCRAA Class are entitled to and seek the following: any actual damages sustained by Plaintiff
28 and Class members as a result of the failure; punitive damages of not less than one hundred dollars

1 (\$100) nor more than five thousand dollars (\$5,000) for each violation as the Court deems proper;
2 injunctive relief requiring Defendant to comply with the CCRAA; and reasonable costs and
3 attorney's fees.

4 **THIRD CAUSE OF ACTION**
5 **[Cal. Civ. Code § 1786.16(2)(B)]**
6 ***(On Behalf of Plaintiff and the ICRAA Class against all Defendants)***

7 56. Plaintiff incorporates herein by specific reference, as though fully set forth, the
8 allegations in paragraphs 1 through 55.

9 57. The reports Defendant conducted and obtained were "investigative consumer
10 report[s]" within the meaning of Cal. Civ. Code § 1786.2(c) because they bear on a "consumer's
11 character, general reputation, personal characteristics, or mode of living." Specifically, they sought
12 information concerning Plaintiff and Class members' "employment history, earnings, history,
13 education, motor vehicle history, criminal history, drug test results, military service, professional
14 credentials, and all other information requested by the consumer reporting agency or its agents."

15 58. Defendant willfully violated Cal. Civ. Code § 1786.16(2)(B) because it failed to
16 provide Plaintiff with "clear and conspicuous" notice of the following in a written document that
17 consists solely of the disclosure: (1) that they may procure a consumer background report for
18 employment purposes; (2) the permissible purpose of the report; (3) that the disclosure may
19 include information on the consumer's character, general reputation, personal characteristics, and
20 mode of living; (4) identification of the name, address, and telephone number of the investigative
21 consumer reporting agency conducting the investigation; (5) notification of the nature and scope
22 of the investigation requested, including a summary of the provisions of Cal. Civ. Code § 1786.22.

23 59. As alleged herein, not only did the reports conducted and obtained by Defendant
24 include extraneous information, but they also failed to include information required under Cal.
25 Civ. Code § 1786.16(2)(B), including the permissible purpose of the report, identification of the
26 name, address, and telephone number of the investigative consumer reporting agency conducting
27 the investigation, and notification of the nature and scope of the investigation requested, including
28 a summary of the provisions of Cal. Civ. Code § 1786.22.

1 60. Plaintiff seeks statutory damages for himself for these violations pursuant to Cal.
2 Civ. Code § 1786.50. Plaintiff also seeks punitive damages on behalf of himself and the ICRAA
3 Class, and reasonable costs and attorney's fees, for these violations pursuant to Cal. Civ. Code §
4 1786.50.

5 **FOURTH CAUSE OF ACTION**
6 **[Cal. Bus. & Prof. Code §§ 17200 *et. seq.*]**
(On Behalf of Plaintiff and the Classes against all Defendants)

7 61. Plaintiff incorporates herein by specific reference, as though fully set forth, the
8 allegations in paragraphs 1 through 60.

9 62. Cal. Bus. & Prof. Code § 17200, *et seq.* prohibits "any unlawful, unfair or
10 fraudulent business act or practice.

11 63. Defendant engaged in unlawful business acts and/or practices by violating state and
12 federal consumer background report statutes as alleged herein. Defendant also engaged in
13 unlawful business acts and/or practices by violating Cal. Lab. Code § 1024.5 as alleged herein.
14 Disregarding such laws provides Defendant with an unfair advantage over competitors who
15 comply with the law.

16 64. As a direct result of Defendant's unlawful and unfair business acts and/or practices,
17 Plaintiff and the Classes have suffered injury in fact and lost money or property. Among other
18 things, Plaintiff was required to expend time and resources to discover information that Defendant
19 had been required to provide to him and Class members, but had failed to provide to them, and
20 Plaintiff was deprived of the timely benefit of information that he had been entitled by law to
21 receive.

22 65. Accordingly, Plaintiff, on behalf of himself and all others similarly situated, seeks
23 restitution and injunctive relief against Defendant in the form of an order prohibiting Defendant
24 from engaging in the alleged misconduct described herein, and other relief specifically prayed for
25 herein.

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FIFTH CAUSE OF ACTION
[Cal. Lab. Code §§ 2698- 2699.5]

(On Behalf of Plaintiff and Aggrieved Employees against all Defendants)

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3 66. Plaintiff incorporates herein by specific reference, as though fully set forth, the
4 allegations in paragraphs 1 through 65, with the exception of Paragraphs 23 through 34.

5 67. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code
6 § 2699(c), and is a proper representative to bring a civil action on behalf of himself and other
7 current and former non-exempt employees of Defendant pursuant to the procedures specified in
8 Cal. Lab. Code § 2699.3, because Plaintiff was employed by Defendant and the alleged violations
9 of the California Labor Code were committed against Plaintiff.

10 68. Pursuant to Cal. Lab. Code § 1024.5, no employer or prospective employer shall
11 use a consumer credit report for employment purposes unless the position of the person for whom
12 the report is sought is any of the following:

- 13 (1) A managerial position.
- 14 (2) A position in the state Department of Justice.
- 15 (3) That of a sworn peace officer or other law enforcement position.
- 16 (4) A position for which the information contained in the report is required by law to be
17 disclosed or obtained.
- 18 (5) A position that involves regular access, for any purpose other than the routine
19 solicitation and processing of credit card applications in a retail establishment, to all of
20 the following types of information of any one person:
- 21 (A) Bank or credit card account information.
22 (B) Social security number.
23 (C) Date of birth.
- 24 (6) A position in which the person is, or would be, any of the following:
- 25 (A) A named signatory on the bank or credit card account of the employer.
26 (B) Authorized to transfer money on behalf of the employer.
27 (C) Authorized to enter into financial contracts on behalf of the employer.
- 28 (7) A position that involves access to confidential or proprietary information, including a
formula, pattern, compilation, program, device, method, technique, process or trade
secret that (i) derives independent economic value, actual or potential, from not being
generally known to, and not being readily ascertainable by proper means by, other

1 persons who may obtain economic value from the disclosure or use of the information,
2 and (ii) is the subject of an effort that is reasonable under the circumstances to maintain
3 secrecy of the information.

4 (8) A position that involves regular access to cash totaling ten thousand dollars (\$10,000)
5 or more of the employer, a customer, or client, during the workday.

6 69. As alleged herein, the reports conducted and obtained by Defendant are consumer
7 credit reports because they sought “information concerning [the employee’s] employment history,
8 earnings, history, education, motor vehicle history, criminal history, drug test results, military
9 service, professional credentials, and all other information requested by the consumer reporting
10 agency or its agents” and thus bear on the employee’s consumer credit worthiness, credit standing,
11 or credit capacity.

12 70. Further, none of the exceptions sets forth in Cal. Lab. Code § 1024.5 applied to
13 Plaintiff or other aggrieved employees, but Defendant conducted consumer background reports on
14 them regardless, in violation of Cal. Lab. Code § 1024.5.

15 71. Aggrieved employees include all other employees for whom Defendant conducted
16 a consumer credit report in violation of Cal. Lab. Code § 1024.5 during the relevant statute of
17 limitations period.

18 72. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Cal.
19 Lab. Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties from Defendant in a
20 representative action for the violations of Cal. Lab. Code § 1024.5. Plaintiff is also entitled to an
21 award of reasonable attorneys’ fees and costs pursuant to California Labor Code § 2699(g)(1).

22 73. Pursuant to Cal. Lab. Code §§ 2699.3, on April 27, 2018, Plaintiff gave written
23 notice to the LWDA, and by certified mail to Defendant, of the specific provisions of the
24 California Labor Code alleged to have been violated, including the facts and theories to support
25 the alleged violations, in compliance with the requirements of Cal. Lab. Code §§ 2699.3. Within
26 sixty (60) calendar of the postmark date of Plaintiff’s claim, the LWDA did not provide notice to
27 Plaintiff that it intends to investigate the alleged violations, nor did Defendant provide any notice
28 that it has or intends to cure the alleged violations. Therefore, Plaintiff has complied with all of the

1 requirements set forth in Cal. Lab. Code § 2699.3 to commence a representative action under
2 PAGA.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff, individually and on behalf of all other persons similarly
5 situated, respectfully prays for relief against Defendant and DOES 1 through 50, inclusive, and
6 each of them, as follows:

7 1. Certification of Plaintiffs' FCRA, CCRAA, ICRAA, and UCL claims as a class
8 action pursuant to California Code of Civil Procedure § 382;

9 2. Appointment of the named Plaintiff as class representative and appointment of
10 Plaintiff's Counsel as Class Counsel;

11 3. Issuance of class notice to all individuals who worked for or applied to work for
12 Defendant during the relevant time periods;

13 4. Declaratory and injunctive relief, including an order preliminarily and permanently
14 enjoining Defendant from engaging in the practices challenged herein;

15 5. An award of actual or statutory damages to Plaintiff and the Class pursuant to 15
16 U.S.C. § 1681n(a)(1)(A) and California Civil Code § 1785.31(a), in an amount subject to proof at
17 trial;

18 6. An award of punitive damages to Plaintiff and the Class pursuant to 15 U.S.C. §
19 1681n(a)(2) and California Civil Code §§ 1785.31(a)(2)(B) and 1786.50;

20 7. An award of actual or statutory damages to Plaintiff pursuant to California Civil
21 Code §§ 1786.50(a)(2);

22 8. An order requiring Defendant to make full restitution to Plaintiff and all FCRA,
23 CCRAA, and ICRAA Class members;

24 9. An award of reasonable attorneys' fees and costs pursuant to 15 U.S.C. §
25 1681n(a)(3), California Code of Civil Procedure § 1021.5, California Civil Code § 1786.50(a)(2),
26 California Civil Code § 1785.31(a), California Labor Code § 2699(g), and any other applicable
27 laws.

28 10. For such further relief that the Court may deem just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: August ~~31~~, 2018

LAW OFFICE OF SCOTT ERNEST WHEELER

By: 
SCOTT ERNEST WHEELER

THE WAND LAW FIRM, PC
Aubry Wand

Attorneys for Plaintiff and the Putative Classes

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Apartment Management Consultants Hit with FCRA Class Action Over Allegedly Improper Background Checks](#)
