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9 **IN THE UNITED STATES DISTRICT COURT**
 10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
 11 **SOUTHERN DIVISION**

12 **ROJINA PAZOKI, on behalf of**
 13 **herself and all others similarly**
 14 **situated,**

15 **Plaintiff,**

16 **-against-**

17 **PRIMELENDING, A**
 18 **PLAINSCAPITAL COMPANY,**

19 **Defendant.**

Civil Case No.:

CIVIL ACTION

CLASS ACTION COMPLAINT

- (1) Violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681q;
- (2) Violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(f);
- (3) Violations of Cal. Civ. Code § 1785.19;
- (4) Violations of Cal. Civ. Code § 1785.31;
- (5) Violations of the California Unfair Competition Law (Business and Professional Code § 17200, et seq.)

JURY TRIAL DEMANDED

1 Plaintiff Rojina Pazoki (hereinafter “Plaintiff”), on behalf of herself and all
2 others similarly situated, files this Class Action Complaint against Defendant
3 PrimeLending, A Plainscapital Company, (hereinafter “PrimeLending” or
4 “Defendant”). Plaintiff alleges, based on personal knowledge as to Defendant’s
5 actions and upon information and belief as to all other matters, as follows:
6

7
8 **INTRODUCTION**
9

10 1. This consumer class action is brought under the federal Fair Credit
11 Reporting Act (“FCRA”), the California Consumer Credit Reporting Agencies Act
12 (“CCRAA”), and the California Unfair Competition Law (“UCL”) against a lender
13 who routinely procures credit reports without a permissible purpose and under false
14 pretenses.
15

16
17 2. Specifically, PrimeLending falsely represents to prospective
18 borrowers that PrimeLending will only do a soft inquiry into the prospective
19 borrower’s credit. PrimeLending further represents that the inquiry PrimeLending
20 will do will not affect the prospective borrower’s credit score. In reality,
21 PrimeLending does a hard credit pull that adversely affects the potential borrower’s
22 credit score.
23

24
25 3. PrimeLending’s misleading conduct violates federal and California
26 law.
27

1 4. As Defendant's misleading and illegal practices are routine and
2 systematic, Plaintiff asserts claims for actual, statutory and punitive damages, as
3 well as equitable relief.
4

5 6 **PARTIES** 7

8 5. Plaintiff is a "consumer" as protected and governed by the FCRA, and
9 resides in Aliso Viejo, California.
10

11 6. Defendant PrimeLending is a financial institution with its principal
12 office located in Dallas, Texas.
13

14 **JURISDICTION AND VENUE** 15

16 7. The Court has federal question jurisdiction under the FCRA, 15
17 U.S.C. § 1681p, and 28 U.S.C. § 1331, and further possesses supplemental
18 jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

19 8. Jurisdiction is also proper pursuant to 28 U.S.C. § 1332(d)(2) as at
20 least one member of the putative class and Defendant are citizens of different states
21 and the amount in controversy exceeds \$5,000,000.
22

23 9. Venue is proper in this Court because Defendant regularly does
24 business in this District and a substantial part of the events or omissions giving rise
25 to this claim occurred in this District.
26
27

28 **THE FCRA'S PRIVACY PROTECTIONS**

1 10. Congress enacted the FCRA in 1970 to ensure fair and accurate credit
2 reporting, promote efficiency in the banking system, and protect consumer privacy.

3 11. In order to protect consumer privacy, the FCRA prohibits users
4 from obtaining consumer reports unless the user has a permissible purpose for
5 procuring the report, as defined in the statute. Specifically, the FCRA, 15 U.S.C. §
6 1681b(f), provides:
7

8 A person shall not use or obtain a consumer report for any purpose
9 unless (1) the consumer report is obtained for a purpose for which the
10 consumer report is authorized to be furnished under this section; and
11 (2) the purpose is certified in accordance with section 1681e of this
12 title by a prospective user of the report through a general or specific
13 certification.

14 12. The FCRA also prohibits users from obtaining “information on a
15 consumer from a consumer reporting agency under false pretenses.” 15 U.S.C. §
16 1681q.
17

18 13. Similarly, the CCRAA prohibits users who lack a permissible purpose
19 from “knowingly and willfully obtain[ing] access to a file” or “knowingly and
20 willfully obtain[ing] data from a file.” Cal. Civil Code § 1785.19. The statute also
21 prevents credit reports from being obtained under false pretenses. Cal. Civil Code
22 § 1785.31(a)(3).
23

24 14. One permissible purpose for obtaining a credit report is for use in
25 connection with a credit transaction involving a consumer. See 15 U.S.C. §
26 1681a(3)(A).
27
28

1 15. However, in order to balance consumer privacy against the public
2 interest in creditors being able to make intelligent offers to extend credit, the FCRA
3 differentiates between credit reports that are obtained for the purpose of being used
4 in a credit transaction that was initiated by the consumer and credit reports that are
5 obtained for the purpose of being used in a credit transaction where the credit
6 transaction was not initiated by the consumer.
7
8

9 16. One example of a situation where an entity might procure a credit
10 report in connection with a credit transaction not initiated by the consumer is in a
11 situation where the entity procuring the report intends to make a firm offer of credit
12 to the consumer. See 15 U.S.C. § 1681b(c)(1)(B).
13
14

15 17. In all circumstances relating to reports procured in connection with
16 credit transactions, if the consumer has neither initiated a transaction nor authorized
17 the provision of a full report, the entity procuring the report can see only limited
18 information about the consumer. See 15 U.S.C. §§ 1681b(a)(3)(A) and 1681b(c).
19
20

21 18. Specifically, pursuant to § 1681b(c) a user of consumer reports who
22 is pulling a report for the purpose of using the information in “in connection with
23 a credit transaction involving the consumer on whom the information is to be
24 furnished and involving the extension of credit to, or review or collection of an
25 account of, the consumer” in a situation where no transaction was initiated may not
26 procure an entire credit report.
27
28

1 19. Rather, such an entity may only receive the following information:

2 (A) the name and address of a consumer;

3 (B) an identifier that is not unique to the consumer and that is used by
4 the person solely for the purpose of verifying the identity of the
5 consumer; and

6 (C) other information pertaining to a consumer that does not identify
7 the relationship or experience of the consumer with respect to a
8 particular creditor or other entity

15 U.S.C. § 1681b(c)(2).

9 20. Moreover, the inquiries from entities in circumstances where the
10 consumer neither initiated the transaction nor provided consent for a full report to
11 be procured cannot adversely affect a consumer's credit score or impact the
12 consumer's ability to procure future credit, because such inquiries are viewable
13 only by the consumer. See 15 U.S.C. § 1681b(c)(3) ("a consumer reporting agency
14 shall not furnish to any person a record of inquiries in connection with a credit or
15 insurance transaction that is not initiated by a consumer.")
16
17
18

19 **RECEIVING GENERAL INFORMATION ABOUT PRICES AND**
20 **PRODUCTS IS NOT INITIATING A TRANSACTION**

21
22 21. It is well established that merely inquiring about the possibility of a
23 future transaction, or shopping for rates, is insufficient to satisfy the requirement
24 of the FCRA for a creditor to initiate the kind of full credit inquiry that is allowed
25 when a consumer has initiated a transaction.
26
27
28

1 22. Over fifteen years ago, the FTC opined that a customer who “‘comes
2 to an automobile dealership and requests information’ from a salesman about one
3 or more automobiles” had not initiated a transaction sufficient to allow the
4 dealership to pull a credit report. FTC Letter to Coffey (Feb. 11, 1998), available
5 at <http://www.ftc.gov/policy/advisory-opinions/advisory-opinion-coffey-02-11-98>
6 (last visited May 10, 2023).
7
8

9 23. The FTC reasoned that more than a mere inquiry, or “shopping”
10 behavior, was required for a transaction to have been initiated. Specifically, the
11 FTC stated that “a request for general information about products and prices offered
12 does not involve a business transaction initiated by the consumer.” *Id.*
13
14

15 24. Instead, the FTC opined that a user “may obtain a [consumer] report
16 only in those circumstances in which the consumer clearly understands that he or
17 she is initiating the purchase or lease of a vehicle and the seller has a legitimate
18 business need for the consumer report information in order to complete the
19 transaction.” *Id.*
20
21

22 25. The FTC continued: “Only in those circumstances where it is clear
23 both to the consumer and to the dealer that the consumer is actually initiating the
24 purchase or lease of a specific vehicle and, in addition, the dealer has a legitimate
25 business need for consumer report information may the dealer obtain a report
26 without written permission.” *Id.*
27
28

HARD AND SOFT CREDIT PULLS

1
2 26. Colloquially speaking, inquiries related to those transactions initiated
3 by the consumer are known as “hard inquiries” or “hard pulls.” Inquiries not related
4 to transactions initiated by the consumer are known as “soft inquiries” or “soft
5 pulls.”
6

7
8 27. Hard pulls are visible to third parties who obtain a consumer credit
9 report.
10

11 28. Each hard pull can result in a reduction of a credit score by up to five
12 points. *See Harkins v. Diversified Collection Servs., Inc.*, No. CIV. PJM 12-1229,
13 2012 WL 5928997, at *1 n.1 (D. Md. Nov. 26, 2012).
14

15 29. Creditors often use the number of hard inquiries on a consumer’s
16 credit report as a basis to deny an extension of credit.
17

18 30. A “soft pull,” by contrast, is a credit inquiry that is not visible to
19 anyone other than the consumer, and which does not affect the consumer’s credit
20 score. Soft inquiries include inquiries made when a consumer checks his or her own
21 credit report, inquiries made by businesses with which the consumer already does
22 business, such as a mortgage servicer reviewing the status of the consumer’s
23 account and, as discussed above, and inquiries made by credit card companies or
24 insurance companies to make firm offers of credit even when no *transaction* has
25 been *initiated* by a consumer. “Credit Report Q&A”
26
27
28

1 <https://www.myfico.com/credit-education/credit-reports/credit-checks-and->
2 inquiries (last visited May 10, 2023).

3
4 31. A soft pull inquiry is not visible to other users and does not affect a
5 consumer's credit score. See "Hard and Soft Credit Inquiries, and How One Hurts
6 Your Credit Score." (Dec. 6, 2008) [http://consumerist.com/2008/12/06/hard-and-](http://consumerist.com/2008/12/06/hard-and-soft-credit-inquiries-and-how-one-hurts-your-credit-score/)
7 [soft-credit-inquiries-and-how-one-hurts-your-credit-score/](http://consumerist.com/2008/12/06/hard-and-soft-credit-inquiries-and-how-one-hurts-your-credit-score/) (last visited May 10,
8 2023).

9
10
11 32. As described in further detail below, Defendant encouraged potential
12 borrowers like Plaintiff to "shop around" and view its available loan refinancing
13 options by claiming that potential borrowers could engage in such shopping
14 behavior without causing any harm to their credit scores.

15
16 33. In order to encourage such shopping behavior, Defendant represented
17 that it would only do a limited soft pull before showing consumers available loan
18 rates. Defendant specifically represented that any credit pull it did would not affect
19 the consumer's credit score.

20
21
22 34. Deceitfully, and in direct contradiction to its own representations,
23 however, Defendant did a hard pull, viewing more data than it was allowed to view
24 under the law viewing more data than it told Plaintiff it would view, and, in the
25 process, negatively affecting Plaintiff's credit score and ability to access future
26 credit.
27
28

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2
3
4 **DEFENDANT’S REPRESENTATIONS ABOUT ITS LOAN PROCESS**

5 35. The PrimeLending website requires a potential borrower to provide
6 personal information, including name, address, university, employer, and the
7 amount of the loan they are seeking to refinance. The potential borrower must
8 provide this information before they are able to view available interest rates and
9 loan products.
10

11
12 36. Before a prospective borrower can see their potential interest rates,
13 PrimeLending has the potential borrower consent to a limited soft pull inquiry.
14

15 37. At all times relevant to this action, PrimeLending has affirmatively
16 represented to prospective borrowers that PrimeLending will only perform a soft
17 credit pull that will not affect the prospective borrower’s credit score before the
18 potential borrower can view his or her refinancing options and interest rates.
19

20 38. PrimeLending markets itself in part based on the fact that it allows
21 potential borrowers to view rates without completing a full hard pull credit inquiry.
22 Even as recently as October of 2022, PrimeLending has advertised that their
23 eligibility assessment process only requires a “soft pull” which “has no impact on
24 your credit score”. *See* Exhibit A.
25
26
27
28

1 39. In a July 21, 2022 blog post, a PrimeLending representative advised
2 borrowers “a lender will use the information that you provide regarding your
3 finances. In some cases, they might also complete a soft credit inquiry. *This type*
4 *of inquiry won’t impact your credit scores, so there’s no need to worry about*
5 *giving permission.*” [https://primelendingdallasfw.com/the-difference-between-](https://primelendingdallasfw.com/the-difference-between-preapproval-and-prequalification/)
6 [preapproval-and-prequalification/](https://primelendingdallasfw.com/the-difference-between-preapproval-and-prequalification/) (last visited May 10, 2023).
7
8

9 40. PrimeLending claims that it will only perform a hard credit after the
10 potential borrower has viewed the financing options and applied for a specific
11 financing plan, as an additional step for “full” loan approval. In fact,
12 PrimeLending’s own loan origination system indicates that consent is first obtained
13 for “Authorization to Order Pre-qualification Credit (Soft Pull).” *See Exhibit B.*
14
15

16 41. Notably, in order to complete the process of applying for a loan, a
17 prospective borrower must provide substantially more information than that
18 required to merely review rates and assess their interest.
19

20 42. Despite its representations that it will only do a hard pull to obtain a
21 full credit report if and when a prospective borrower actually applies for a loan, in
22 order to gain as much information about consumers as possible, PrimeLending
23 actually does a hard pull full credit inquiry before any application has been made.
24
25

26 43. PrimeLending therefore does a full credit inquiry before any
27 transaction has been initiated by the consumer.
28

1 44. PrimeLending further does a full credit inquiry without the consumer's
2 consent, because, at most, the consumer has only consented to a soft pull inquiry,
3 which will not affect the consumer's credit score.
4

5 45. PrimeLending further lacks a legitimate business purpose for
6 performing a full credit inquiry, because it affirmatively represented to consumers
7 that they could view rates without affecting their credit scores, and that
8 PrimeLending would only perform a hard credit pull if the consumer actually
9 applied for a loan.
10
11

12 46. In adopting these practices, PrimeLending obtains more information
13 than it told the consumer it would obtain, thereby falsely inducing consumers to
14 provide PrimeLending with the personally identifying information PrimeLending
15 needed in order to do the pull in the first instance.
16
17

18 47. In putting its business interests ahead of consumers' rights to privacy
19 and to protect their credit scores, PrimeLending routinely and systematically breaks
20 the law and violates the rights of thousands of consumers.
21

22 **PLAINTIFF PAZOKI'S EXPERIENCE WITH DEFENDANT**

23 48. In December of 2022, Plaintiff and her mother began to shop for pre-
24 qualification mortgage rates in the hopes of planning for the future purchase of a
25 new home.
26
27
28

1 49. At the suggestion of a coworker, Plaintiff and her mother were
2 referred to a Ms. Fay Hamadanchy, a loan specialist for Defendant PrimeLending.
3 Plaintiff's mother connected via an informal phone call with Ms. Hamadanchy in
4 which she expressed her and her daughter's interest in getting more information on
5 potential rates, how they would qualify, how their joint income would affect their
6 rates, and other such early questions. PrimeLending was one of a number of lenders
7 to which Plaintiff was inquiring so as to best compare and contrast her and her
8 mother's options.
9
10
11

12 50. Plaintiff and her mother specifically indicated that at the time, Plaintiff
13 and her mother were not seeking loan approval, as they had recently sold a home
14 and were waiting for those funds to settle so as to bolster their position for a
15 mortgage, as well as to afford them time to shop for a home they may be interested
16 in.
17
18

19 51. On or around December 15, 2022, Plaintiff received an email from
20 Ms. Hamadanchy with the subject line "Re: Purchase *Pre-qualification*". Ms.
21 Hamadanchy requested that Plaintiff access the PrimeLending portal to provide
22 information including documents regarding their income, tax returns, bank
23 statements, and other financial information. To Plaintiff's knowledge and upon
24 representation by Ms. Hamadanchy on behalf of Defendant, Plaintiff and her
25 mother understood this to still only be related to obtaining pre-qualification rates.
26
27
28

1 52. Plaintiff had no further communications with Ms. Hamadanchy.
2 However, on or around January 17, Plaintiff was notified through her credit
3 monitoring services that a *hard inquiry* from PrimeLending was appearing on her
4 credit reports, dated January 4, 2023. Plaintiff reviewed her mother's reports and
5 saw that a similar hard inquiry was being reported for the same date.
6

7
8 53. Plaintiff was shocked and confused, as she had never provided
9 PrimeLending with consent to pull her credit information at all, let alone a hard
10 pull which would affect her credit score.
11

12 54. Plaintiff immediately emailed Ms. Hamadanchy and indicated that
13 neither she nor her mother had ever provided consent to have their credit
14 information accessed, specifically noting that they had never met in person or
15 signed any documents which would indicate consent.
16

17
18 55. The next day, on January 18, 2023, Ms. Hamadanchy responded to
19 Plaintiff's email in which she asserted that she had "asked [Plaintiff's] mom if it
20 was okay to run your credit and she said it was okay." Plaintiff's mother indicated
21 that she had never provided such consent, and moreover, Plaintiff herself never
22 communicated with Ms. Hamadanchy and had never indicated consent for her
23 credit to be pulled.
24

25
26 56. Dissatisfied with this response, Plaintiff filed a complaint with the
27 CFPB on January 18, 2023, explaining that she had never consented to have her
28

1 credit pulled and was now being damaged by the hard inquiry appearing on her
2 credit reports.

3
4 57. On January 24, 2023, Plaintiff received a response to her CFPB
5 complaint from PrimeLending. In this letter, Defendant asserted that their “loan
6 origination system” indicated that on January 4, 2023, Plaintiff herself had
7 provided personal information to Ms. Hamadanchy and that she “gave verbal
8 permission to order credit.”
9

10
11 58. Despite the fact that Plaintiff never spoke with Ms. Hamadanchy on
12 January 4th, the letter from Defendant included the following image from
13 Defendant’s loan origination system:
14

The screenshot shows a loan origination system interface. At the top right, there is a summary box with the following information:

Loan Number:	BL10417516
Primary Borrower:	Yasaman Ebrahimi Nasr
Collateral:	TBD
	Irvine, CA 92612
Status:	Lead- Credit Pulled

Below this is a section titled "Borrower Consent Information". It contains a table with the following columns: Borrowers, Received, Method of Communi..., Received Date, and F.

Borrowers	Received	Method of Communi...	Received Date	F
<input checked="" type="checkbox"/> Authorization to Order Pre-qualification Credit (Soft Pull)				
Yasaman Ebrahimi Nasr	<input checked="" type="checkbox"/>	Verbal	1/04/2023 11:33 AM	F
Rojina Pazoki	<input checked="" type="checkbox"/>	Verbal	1/04/2023 11:33 AM	F

15
16
17
18
19
20
21
22
23 59. The system specifically indicates that the “authorization” recorded
24 was, at most, for ordering “*Pre-qualification Credit (Soft Pull)*.”
25

26 60. Plaintiff did not consent to *any* credit pull by PrimeLending.
27
28

1 61. Moreover, Plaintiff and her mother never consented to a hard credit
2 pull and were misled by PrimeLending's representations that it would only, at most,
3 do a soft pull of their credit.
4

5 62. Plaintiff would not have consented to Defendant making a hard
6 inquiry on her credit.
7

8 63. To this date, PrimeLending has refused to remove the hard inquiries
9 from Plaintiff's and her mother's credit reports.
10

11 64. PrimeLending continues to misleadingly represent to customers that
12 they are able to shop for rates without damaging their credit.
13

14 65. Plaintiff's credit score has decreased as a result of PrimeLending's
15 unauthorized hard inquiry into Plaintiff's credit.
16

17 66. Plaintiff has refrained from applying for other loans and rates because
18 she is concerned that those lenders will see her reduced credit score.
19

20 67. Plaintiff has suffered emotional distress as a result of PrimeLending's
21 unauthorized and deceitful hard inquiry and the continued effect of PrimeLending's
22 hard pull on her credit score is a constant source of stress, worry, and frustration
23 for Plaintiff.
24

25 **DEFENDANT'S CONDUCT WAS WILLFUL**

26 68. Defendant acted knowingly and willfully.
27
28

1 69. The FCRA was enacted in 1970; Defendant has had over 40 years to
2 become compliant.

3 70. Defendant violated a clear statutory mandate set forth in 15 U.S.C §
4 1681q and 1681b.

5 71. Defendant knew the difference between a hard credit inquiry and a
6 soft credit inquiry, and knew that doing either required express consent from
7 Plaintiff.
8

9 72. Defendant knew that a hard credit inquiry reduces a consumer's credit
10 score and that consumers would be hesitant to take any steps on Defendant's
11 website if the consumers believed taking such a step might lead to a hard inquiry
12 and thereby affect their credit scores.
13

14 73. Defendant and/or its agents falsely represented to borrowers that it
15 would only do a soft credit inquiry in order to induce borrowers to begin the
16 application process by viewing their available interest rates.
17

18 74. In sharp contrast to the kind of clearly initiated transaction described
19 by the FTC in *Coffey* described above, PrimeLending's business model is
20 intentionally designed to mislead the consumer about what PrimeLending will do
21 in response to the customer making an inquiry about PrimeLending's available
22 rates.
23
24
25
26
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28

1 75. As evidenced by the statements on their website, advertising, and loan
2 origination system, Defendant is well aware of the differences between a soft credit
3 pull and a hard credit pull. Defendant knows that a hard credit pull will decrease a
4 borrower's credit score.
5

6 76. Defendant also knows, however, that borrowers are very concerned
7 about protecting their credit scores, and therefore entices borrowers to view its
8 offers by falsely representing that the borrower can view his or her refinancing
9 options by only authorizing a soft credit pull.
10
11

12 77. Given that knowledge, PrimeLending explicitly represents to
13 consumers that they can view loan rates (the equivalent of entering the showroom
14 to shop for an automobile) without it having any effect on their credit scores. This
15 is indicative of PrimeLending's knowledge that a customer's act of viewing rates is
16 not sufficient to constitute the customer initiating a credit transaction.
17
18

19 78. Yet, without respect to its representations, PrimeLending pulls full
20 hard credit reports on consumers who choose only to view PrimeLending's rates
21 and available loan products, and but do not complete the loan application process.
22

23 79. Despite the pellucid statutory text and there being a depth of guidance,
24 Defendant systematically procured consumer information without consent and
25 under the false pretense that it would not affect consumers' credit scores.
26
27
28

1 80. By adopting such a policy of making such misleading representations,
2 Defendant voluntarily ran the risk of violating the law substantially greater than
3 any risk associated with a statutory reading that was merely careless.
4

5 81. By making hard inquiries into the credit reports of Plaintiff and the
6 class members without consent, Defendant has damaged these borrowers' credit
7 scores and creditworthiness.
8

9 **CLASS ACTION ALLEGATIONS**

10 82. Plaintiff asserts her claims individually and behalf of all others
11 similarly situated under Fed. R. Civ. P. Rule 23(b)(3) as follows:
12

13 All individuals whom Defendant made a hard credit
14 inquiry in the two years predating the filing of this
15 complaint and continuing through the date of class
16 certification, where Defendant's records reflect only
17 consent for a soft pull.

18 83. Plaintiff reserves the right to amend the definition of the Class based
19 on discovery or legal developments.
20

21 84. Specifically excluded from the Class are: (a) all federal court judges
22 who preside over this case and their spouses; (b) all persons who elect to exclude
23 themselves from the Class; and (c) Defendant's employees, officers, directors,
24 agents, and representatives and their family members.
25

26 85. **Numerosity:** The Classes are so numerous that joinder of all
27 class members is impracticable. Defendant is one of the nation's largest providers
28

1 of mortgage financing and has done hard credit pulls on thousands of consumers
2 falling within the class definitions.

3
4 86. **Typicality**: Plaintiff's claims are typical of the class members' claims.
5 The FCRA, CCRAA, and UCL violations committed by Defendant were
6 committed pursuant to uniform policies and procedures, and Defendant treated
7 Plaintiff in the same manner as other class members in accordance with its standard
8 policies and practices.
9

10
11 87. **Adequacy**: Plaintiff will fairly and adequately protect the interests of
12 the Class, and has retained counsel experienced in complex class action litigation.
13

14 88. **Commonality**: Common questions of law and fact exist as to all
15 members of the Classes and predominate over any questions solely affecting
16 individual members of the Class, including without limitation:
17

- 18 a. Whether Defendant procured credit reports under false
19 pretenses;
- 20 b. Whether Defendant procured credit reports without a
21 permissible purpose under the FCRA;
- 22 c. Whether Defendant's conduct was willful under the FCRA;
- 23 d. Whether Defendant accessed or obtained data from consumer
24 files in violation of the CCRAA;
25
26
27
28

- e. Whether Defendant's conduct was unlawful, unfair, or fraudulent under the UCL;
- f. The appropriateness and proper measure of statutory damages; and
- g. The appropriate scope of injunctive relief.

89. This case is further maintainable as a class action under Fed. R. Civ. P. 23(b)(2) because Defendant acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class a whole.

90. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the Classes predominate over any questions affecting only individual members of the Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendant's conduct described in this Complaint stems from common and uniform policies and practices, resulting in common violations of the FCRA and the CCRAA. Members of the Class do not have an interest in pursuing separate actions against Defendant, as the amount of each class member's individual claim is small compared to the expense and burden of individual prosecution, and Plaintiff is unaware of any similar claims brought against Defendant by any members of the Class on an individual basis. Class certification

1 also will obviate the need for unduly duplicative litigation that might result in
2 inconsistent judgments concerning Defendant's practices. Moreover, management
3 of this action as a class action will not present any likely difficulties. In the interests
4 of justice and judicial efficiency, it would be desirable to concentrate the litigation
5 of all class members' claims in a single forum.
6

7
8 **CAUSES OF ACTION**

9 **COUNT I: 15 U.S.C. §1681q**

10 **Obtaining Consumer Information Under False Pretenses**

11 91. Plaintiff repeats and realleges all preceding paragraphs.

12 92. Plaintiff brings this claim individually and on behalf of the Class.

13 93. Defendant represented to Plaintiff and the Class that it would perform
14 a soft inquiry only into Plaintiff and the Class members' credit. Defendant further
15 represented that the inquiry it would do would not affect the Class members' credit
16 scores. These representations were false.
17

18 94. Defendant violated the FCRA by knowingly and willfully procuring
19 information on Plaintiff and the Class members under false pretenses. *See* 15
20 U.S.C. § 1681q.
21

22 95. Defendant acted knowingly and willfully. Defendant's knowing and
23 willful conduct is reflected by, among other things:
24

- 25 a. The FCRA was enacted in 1970; Defendant has had over 40
26 years to become compliant;
27
28

- 1 b. Defendant violated a clear statutory mandate set forth in 15
- 2 U.S.C. § 1681q;
- 3
- 4 c. Defendant knew the difference between a hard credit inquiry
- 5 and a soft credit inquiry;
- 6
- 7 d. Defendant knew that a hard credit inquiry reduces a consumers'
- 8 credit score;
- 9
- 10 e. Defendant falsely represented to borrowers that it would only
- 11 do a soft credit inquiry in order to induce borrowers to engage
- 12 in their application process by viewing their interest rates;
- 13
- 14 f. Despite the pellucid statutory text and their being a depth of
- 15 guidance, Defendant systematically procured consumer
- 16 information under false pretenses; and
- 17
- 18 g. By adopting such a policy, Defendant voluntarily ran a risk of
- 19 violating the law substantially greater than the risk associated
- 20 with a reading that was merely careless.
- 21

22 96. Plaintiff and the Class are entitled to actual damages, plus statutory
23 damages of not less than \$100 and not more than \$1,000 for each and every one of
24 these violations, pursuant to 15 U.S.C. § 1681n(a)(1)(A). Plaintiff and the Class
25 members are also entitled to punitive damages for these violations, pursuant to 15
26
27
28

1 U.S.C. § 1681n(a)(2). Plaintiff and the Class members are further entitled to
2 recover their costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).
3
4

5 **COUNT II: 15 U.S.C. §1681b(f)**
6 **Obtaining Consumer Reports Without a Permissible Purpose**

7 97. Plaintiff repeats and realleges all preceding paragraphs.

8 98. Plaintiff brings this claim individually and on behalf of the Class.
9

10 99. Defendant represented to Plaintiff and the Class that it would only
11 perform a soft inquiry only into Plaintiff and the Class members' credit, and only
12 with their consent.
13

14 100. Plaintiff and members of the Class did not authorize Defendant to do
15 a hard pull of their credit reports.
16

17 101. It was an explicit term of Plaintiff and members of the Class's
18 interactions with Defendant that Defendant would not perform a hard pull of
19 Plaintiff and the Class members' credit reports.
20

21 102. Plaintiff and members of the Class did not initiate any credit
22 transaction with Defendant as they did not complete the application for a specific
23 loan product. *See* FTC Letter to Coffey.
24

25 103. Plaintiff and members of the Class did not initiate any credit
26 transaction because it was a material term of any transaction that Defendant would
27
28

1 not initiate a hard pull of Plaintiff and the Damages Class members' credit reports.

2 *See Scott v. Real Estate Fin. Grp.*, 183 F.3d 97, 99-100 (2d Cir. 1999).

3
4 104. In light of Defendant's representations and Plaintiff's responses
5 thereto, Defendant lacked a permissible purpose to obtain full credit reports on
6 Plaintiff and the Class.

7
8 105. Defendant violated the FCRA by willfully procuring consumer reports
9 on Plaintiff and Class members without a permissible purpose. See 15 U.S.C. §
10 1681b(f).

11
12 106. Defendant acted knowingly and willfully. Defendant's knowing and
13 willful conduct is reflected by, among other things:

- 14
- 15 a. The FCRA was enacted in 1970; Defendant has had over 40
 - 16 years to become compliant;
 - 17
 - 18 b. Defendant violated a clear statutory mandate set forth in 15
 - 19 U.S.C. § 1681b(f);
 - 20
 - 21 c. Defendant knew the difference between a hard credit inquiry
 - 22 and a soft credit inquiry;
 - 23
 - 24 d. Defendant knew that a hard credit inquiry reduces a consumers'
 - 25 credit score;
 - 26
 - 27
 - 28

- 1 e. Defendant falsely represented to borrowers that it would only
2 do a soft credit inquiry in order to induce borrowers to engage
3 in their application process by viewing their interest rates;
4
5 f. Defendant knew or should have known it lacked a permissible
6 purpose to do a hard credit pull;
7
8 g. Despite the pellucid statutory text and their being a depth of
9 guidance, Defendant systematically procured consumer
10 information without a permissible purpose; and
11
12 h. By adopting such a policy, Defendant voluntarily ran a risk of
13 violating the law substantially greater than the risk associated
14 with a reading that was merely careless.
15

16 107. Plaintiff and the Class are entitled to actual damages, plus statutory
17 damages of not less than \$100 and not more than \$1,000 for each and every one of
18 these violations, pursuant to 15 U.S.C. § 1681n(a)(1)(A). Plaintiff and the Class
19 members are also entitled to punitive damages for these violations, pursuant to 15
20 U.S.C. § 1681n(a)(2). Plaintiff and the Class members are further entitled to
21 recover their costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).
22
23
24

25 108. Additionally, Defendant acted negligently, Plaintiff and the Class are
26 entitled to actual damages and statutory damages pursuant to 15 U.S.C. §
27
28

1 1681o(a)(1). Plaintiff and the Damages Class members are further entitled to
2 recover their costs and attorneys' fees, pursuant to 15 U.S.C. § 1681o(a)(2).
3
4
5

6 **COUNT III: Cal. Civil Code § 1785.19**
7 **Unlawfully Accessing or Obtaining Data From Consumer Files**
8

9 109. Plaintiff repeats and realleges all preceding paragraphs.

10 110. Plaintiff brings this claim individually and on behalf of the Class.
11

12 111. Defendant represented to Plaintiff and the Class that it would perform
13 a soft inquiry only into Plaintiff and the class members' credit.
14

15 112. Plaintiff and class members did not authorize Defendant to do a hard
16 pull of their credit reports.
17

18 113. It was an explicit term of Plaintiff and class members' interactions
19 with Defendant that Defendant would not perform a hard pull of Plaintiff and the
20 class members' credit reports.
21

22 114. Defendant lacked any permissible purpose to obtain the credit reports
23 under Cal. Civil Code § 1785.11.
24

25 115. Defendant knowingly and willfully access or obtained data from the
26 consumer files of Plaintiff and the class members in violation of Cal. Civil Code §
27 1785.19.
28

1 116. Defendant acted knowingly and willfully. Defendant's knowing
2 willful conduct is reflected by, among other things:

- 3 a. Cal. Civil Code § 1785.19 was enacted in 1990; Defendant has
4 had over 20 years to become compliant;
- 5 b. Defendant violated a clear statutory mandate set forth in Cal.
6 Civil Code § 1785.19;
- 7 c. Defendant knew the difference between a hard credit inquiry
8 and a soft credit inquiry;
- 9 d. Defendant knew that a hard credit inquiry reduces a consumer's
10 credit score;
- 11 e. Defendant falsely represented to borrowers that it would only
12 do a soft credit inquiry in order to induce borrowers to begin the
13 application process while still enabling Defendant to gain
14 access to information that would allow it to calibrate its rates
15 based on detailed information about the consumer's credit
16 history;
- 17 f. Defendant falsely represented to borrowers that it would only
18 do a soft credit inquiry in order to reduce its own costs in
19 connection with procuring reports;
- 20
21
22
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28

1 g. Consumer complaints to Defendant put Defendant on notice
2 about it lacked a permissible purpose to do a hard credit pull;
3 and
4

5 h. Despite the pellucid statutory text and there being a depth of
6 guidance, Defendant systematically procured consumer
7 information without a permissible purpose.
8

9 117. Plaintiff and the Damages Class are entitled to civil penalties of not
10 more than \$2,500 for each and every one of these violations pursuant to Cal. Civil
11 Code § 1785.19. Plaintiff and the Class are further entitled to actual damages and
12 punitive damages of not less than \$100 and not more than \$5,000 for each violation.
13 Plaintiff and the Class are entitled also to injunctive relief, and to recover their costs
14 and attorneys' fees, pursuant to Cal. Civil Code § 1785.31.
15
16

17
18 **COUNT IV: Cal. Civil Code § 1785.31**
19 **Obtaining Consumer Report Under False Pretenses**

20 118. Plaintiff repeats and realleges all preceding paragraphs.

21 119. Plaintiff brings this claim individually and on behalf of the Class.

22 120. Defendant obtained Plaintiff's and the Class members' credit reports
23 under false pretenses or knowingly without a permissible purpose in violation of
24 Cal. Civil Code § 1785.31(a)(3).
25
26

27 121. Defendant's numerous representations that borrowers would only
28 undergo soft credit pulls in order to view their refinancing options were false.

1 Defendant performed a hard credit pull before financing options could be viewed
2 by borrowers.

3
4 122. Defendant acted knowingly or recklessly. Defendant's willful conduct
5 is reflect by, among other things:

- 6 a. This provision of the CCRAA was enacted in 1993; Defendant
7 has had over 20 years to become compliant;
8
9 b. Defendant violated a clear statutory mandate set forth in Cal.
10 Civil Code § 1785.31;
11
12 c. Defendant knew the difference between a hard credit inquiry
13 and a soft credit inquiry;
14
15 d. Defendant knew that a hard credit inquiry reduces a consumer's
16 credit score;
17
18 e. (o) Defendant falsely represented to borrowers that it would
19 only do a
20
21 f. soft credit inquiry in order to induce borrowers to begin the
22
23 g. application process while still enabling Defendant to gain
24 access to
25
26 h. information that would allow it to calibrate its rates based on
27
28 i. detailed information about the consumer's credit history;

- 1 j. Defendant falsely represented to borrowers that it would only
2 do a soft credit inquiry in order to reduce its own costs in
3 connection with procuring reports;
4
5 k. Consumer complaints to Defendant put Defendant on notice
6 about it lacked a permissible purpose to do a hard credit pull;
7
8 l. Despite the pellucid statutory text and there being a depth of
9 guidance, Defendant systematically procured consumer
10 information without a permissible purpose; and
11
12 m. By adopting such a policy, Defendant voluntarily ran a risk of
13 violating the law substantially greater than the risk associated
14 with a reading that was merely careless.
15

16 123. For these violations, Plaintiff and the Class members are entitled to
17 actual damages and punitive damages of not less than \$100 and not more than
18 \$5,000 for each and every violation. Plaintiff and the Class are further entitled to
19 injunctive relief, and to recover their costs and attorneys' fees, pursuant to Cal. Civil
20 Code § 1785.31.
21

22 124. Alternatively, Defendant negligently obtained Plaintiff's and the Class
23 members credit reports under false pretenses. For these violations, Plaintiff and the
24 Class members actual damages, attorneys' fees, and costs.
25
26

27
28 **COUNT V: Cal. Bus. & Prof. Code § 17200**
Unlawful, Unfair, or Fraudulent Conduct

1 125. Plaintiff repeats and realleges all preceding paragraphs.

2
3 126. Plaintiff brings this claim individually and on behalf of the Class.

4 127. Defendant was required to adhere to the requirements of the UCL.

5
6 128. By making hard pulls of Plaintiff and the Class's credit reports,
7 Defendant diminished Plaintiff's and the Class members' credit scores. *See King v.*
8 *Bank of Am., N.A.*, No. C-12-04168 JCS, 2012 WL 4685993, at *8 (N.D. Cal. Oct.
9 1, 2012) ("Allegations of a diminished credit score have been found to satisfy the
10 UCL's standing requirement.").

11
12 129. Defendant's hard credit pulls constituted unlawful, unfair, and
13 fraudulent business practices.

14
15 130. Defendant's practices were unlawful because they violate the FCRA
16 and/or the CCRAA.

17
18 131. Defendant's practices were unfair because it is unethical, immoral,
19 unscrupulous, oppressive, and substantially injurious to consumers to falsely
20 represent that Defendant would only be performing a soft inquiry of Plaintiff's and
21 the Class members' credit reports.

22
23 132. Defendant's practices were fraudulent because Plaintiff and the Class
24 were deceived and/or were likely to be deceived by Defendant's false
25 representations that it would only do a soft inquiry into a potential borrower's
26 credit.
27
28

1 133. The harm caused by these business practices vastly outweighs any
2 legitimate utility they possible could have.

3
4 134. Plaintiff and members of the Class are entitled to injunctive relief and
5 to the recovery of attorney's fees and costs.

6 **PRAYER FOR RELIEF**
7

8 135. WHEREFORE, Plaintiff, on behalf of herself and the Class, prays for
9 relief as follows:

- 10 a. Determining that this action may proceed as a class action
11 under Rule 23(b)(2) and 23(b)(3) of the Federal Rules of Civil
12 Procedure;
13
14 b. Designating Plaintiff as Class Representative and
15 designating Plaintiff's counsel as counsel for the Class;
16
17 c. Issuing proper notice to the Classes at Defendant's expense;
18
19 d. Declaring that Defendant violated the FCRA;
20
21 e. Declaring that Defendant acted willfully, in knowing or
22 reckless disregard of Plaintiff's rights and its obligations under
23 the FCRA;
24
25 f. Awarding actual damages, statutory damages, and punitive
26 damages as provided by the FCRA;
27
28 g. Awarding reasonable attorneys' fees and costs as provided by

1 the FCRA;

2 h. Declaring that Defendant violated the CCRAA;

3 i. Awarding actual damages, punitive damages, civil
4 penalties, costs, and attorney's fees as provided under the
5 CCRAA;

6 j. Declaring that Defendant's actions violated the UCL;

7 k. Awarding attorney's fees and costs as provided under the
8 UCL;

9 l. Awarding appropriate injunctive relief under the UCL
10 and CCRAA, including an injunction requiring that
11 Defendant cease its unlawful practices and ensure that
12 consumer reporting agencies remove Defendant's
13 unauthorized credit inquiries from Plaintiff's and the Class
14 members' credit reports;

15 m. Granting other and further relief, in law or equity, as this
16 Court may deem appropriate and just.
17
18
19
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21
22

23 **DEMAND FOR JURY TRIAL**

24
25 136. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure,
26 Plaintiff and the Class demand a trial by jury.
27
28

1 Dated: June 12, 2023

2 /s/ Jonathan A. Stieglitz
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims PrimeLending Pulls Potential Borrowers' Credit Reports Without Consent](#)
