

1 ANTHONY J. ORSHANSKY, Cal. Bar No. 199364  
 2 anthony@counselonegroup.com  
 3 ALEXANDRIA R. KACHADOORIAN, Cal. Bar No. 240601  
 4 alexandria@counselonegroup.com  
 5 JUSTIN KACHADOORIAN, Cal. Bar No. 260356  
 6 justin@counselonegroup.com  
 7 COUNSELONE, P.C.  
 8 9301 Wilshire Boulevard, Suite 650  
 9 Beverly Hills, California 90210  
 10 Telephone: (310) 277-9945  
 11 Facsimile: (424) 277-3727

12 Attorneys for Plaintiff TAMMY SMIRIN, on behalf of herself  
 13 and others similarly situated

14 UNITED STATES DISTRICT COURT

15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 TAMMY SMIRIN, on behalf of  
 17 herself and others similarly  
 18 situated,  
 19  
 20 Plaintiff,  
 21  
 22 v.  
 23 STEARNS LENDNG, LLC, a  
 24 California limited liability company,  
 25 Defendant.

Case No.

**CLASS ACTION COMPLAINT FOR:**

- (1) Violation of 15 U.S.C. § 1681b(b)(2)(A) (Fair Credit Reporting Act (“FCRA”))
- (2) Violation of 15 U.S.C. § 1681b(b)(3)(A) (FCRA)
- (3) Violation of Cal. Civ. Code § 1786.16(b) (Cal. Investigative Consumer Reporting Agencies Act (“ICRAA”))
- (4) Violation of Cal. Civ. Code § 1786.40(a) (ICRAA)
- (5) Violation of Cal. Civ. Code Section 1786.53 (ICRAA)
- (6) Violation of Cal. Civ. Code § 1785.20.5(a) (Cal. Consumer Credit Reporting Agencies Act (“CCRAA”))
- (7) Violation of Cal. Civ. Code § 1785.20.5(b) (CCRAA)

**DEMAND FOR JURY TRIAL**

1 Plaintiff Tammy Smirin (hereinafter, “Plaintiff”), on behalf of herself and all  
2 others similarly situated, complains of Defendant Stearns Lending, LLC, a California  
3 limited liability company (“Defendant”), as follows:

4 **NATURE OF ACTION**

5 1. This class action arises from Defendant’s acquisition and use of consumer  
6 and/or investigative consumer reports and/or consumer credit reports (referred to  
7 collectively as “background reports”) to conduct background checks on Plaintiff and  
8 prospective employees.

9 2. Defendant routinely obtains and uses information from background  
10 reports in connection with its hiring processes in a manner that violates state and  
11 federal laws.

12 3. Plaintiff, individually and on behalf of all other members of the public  
13 similarly situated, seeks compensatory and punitive damages due to Defendant’s  
14 systematic and willful violation of, *inter alia*, the Fair Credit Reporting Act  
15 (“FCRA”), 15 U.S.C. §§ 1681 *et seq.*; the California Investigative Consumer  
16 Reporting Agencies Act (“ICRAA”), Cal. Civ. Code §§ 1786 *et seq.*; and the  
17 California Consumer Credit Reporting Agencies Act (“CCRAA”), Civ. Code §§  
18 1785.1 *et seq.*

19 4. Defendant has violated the requirements of these laws in at least two  
20 separate ways: (1) by failing to provide proper pre-authorization disclosures; and (2)  
21 by failing to provide proper adverse-action disclosures.

22 5. First, the procurement of background reports for employment purposes is  
23 subject to strict disclosure requirements under state and federal law. Among other  
24 things, an employer may not procure a background report concerning a job applicant  
25 or employee unless a “clear and conspicuous” disclosure is made in a stand-alone  
26 document that consists solely of the disclosure informing the applicant or employee  
27 that a report may be obtained for employment purposes. This required disclosure  
28 document is sometimes referred to as a “pre-authorization” form.

1           6. Defendant violated the law by failing to provide the requisite pre-  
2 authorization disclosure to applicants and employees before procuring background  
3 reports.

4           7. Second, state and federal law requires users of consumer reports to follow  
5 certain procedures and provide certain disclosures prior to and after taking adverse  
6 actions against current and former employees based in whole or in part on their  
7 consumer report information. Among other things, prior to taking an adverse action,  
8 an employer must provide a “pre-adverse action” notice, which includes a copy of the  
9 consumer report and a current version of the FCRA Summary of Rights promulgated  
10 by the Federal Trade Commission (“FTC”) and Bureau of Financial Protection. After  
11 taking the adverse action, the employer must then provide a separate “post-adverse  
12 action” notice, which includes the contact information of the consumer reporting  
13 agency that supplied the report; a statement that the agency supplying the report did  
14 not make the decision to take the unfavorable action and cannot give specific reasons  
15 for the action; and a notice of the applicant or employee’s right to dispute the accuracy  
16 of the information furnished by the consumer reporting agency; and that a free  
17 additional report is available from the agency if the person asks for it within 60 days,  
18 among other requirements.

19           8. Defendant failed to provide a copy of the consumer report and/or a  
20 current version of the FCRA Summary of Rights prior to taking an adverse action  
21 against Plaintiff, namely, terminating her employment, and also failed to provide a  
22 separate notice of the adverse action with the requisite information prescribed under  
23 the FCRA and state consumer-reporting laws after taking the adverse action. For  
24 these reasons, among others, Defendant’s failure to provide any pre- and/or post-  
25 adverse action notices violates the law.

26           9. As further alleged herein, Defendant’s violations occurred because  
27 Defendant has willfully failed to properly apprise itself of and follow the statutory  
28 mandates before seeking, acquiring, and utilizing background reports to make

1 employment decisions; violated the express and unambiguous provisions of the  
2 relevant statutes; and/or failed to implement reasonable procedures to assure  
3 compliance with statutory mandates.

4 10. As a result of Defendant's wrongful acts and omissions, Plaintiff and  
5 other putative class members have been injured, including, without limitation, having  
6 their privacy and statutory rights invaded in violation of state and federal law.

7 11. On behalf of herself and putative class members, Plaintiff seeks  
8 statutory, actual and/or compensatory damages, punitive damages, and equitable  
9 relief, including appropriate injunctive relief requiring Defendant to comply with its  
10 legal obligations, as well as the costs and expenses of litigation and the attorney's fees  
11 incurred herein. Plaintiff reserves the right to amend this Complaint to add additional  
12 relief as permitted under applicable law.

13 **PARTIES**

14 12. At all times mentioned herein, Defendant was and is a California limited  
15 liability company with its principal place of business in Santa Ana, California and  
16 was, at all times relevant to this Complaint, engaged in commercial transactions  
17 throughout this county, the State of California, and the various states of the United  
18 States of America.

19 13. At all times mentioned herein Plaintiff was and is a resident of the State  
20 of California.

21 **JURISDICTION AND VENUE**

22 14. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and  
23 supplemental jurisdiction over the transactionally-related state law claims under 28  
24 USC § 1367(a).

25 15. This Court also has jurisdiction pursuant to 28 U.S.C. § 1441(a) based  
26 on 18 U.S.C. § 1332(d). This is a putative class action whereby: (i) the proposed  
27 nationwide class consists of more than 100 members, (ii) at least some class members  
28 have different citizenships from Defendant, and (iii) the claims of the proposed class

1 exceed \$5,000,000.00 in the aggregate.

2 16. Venue is proper pursuant to 28 U.S.C. §§ 84(c)(3) and 1391(b)(2)  
3 because a substantial part of the events or omissions giving rise to the claims alleged  
4 herein occurred in this judicial district.

5 **FACTUAL BACKGROUND**

6 17. Plaintiff applied to work as an employee of Defendant in or around  
7 August 2016. As part of the application process Defendant conducted a background  
8 check on Plaintiff. Plaintiff was hired and began working at Defendant's Santa Ana,  
9 California location on August 15, 2016. On or about August 18, 2016, Plaintiff was  
10 advised that because of information contained in her background report, she was  
11 immediately being terminated from employment with Defendant.

12 **Pre-Authorization**

13 18. Under the FCRA, it is unlawful to procure or cause to be procured, a  
14 consumer report<sup>1</sup> for employment purposes unless a disclosure is made to the  
15 applicant or employee in a document that consists solely of the disclosure that a  
16 consumer report may be obtained for employment purposes and the applicant or  
17 employee authorizes, in writing, the procurement of the report. 15 U.S.C. §  
18 1681b(b)(2)(A)(i)-(ii).

19 19. Although the disclosure and the authorization may be combined in a  
20 single document, the FTC has warned that the form should not include any extraneous  
21 information or be part of another document. For example, in response to an inquiry  
22 as to whether the disclosure may be set forth within an application for employment or  
23 whether it must be included in a separate document, the FTC stated:

24 ///

25 \_\_\_\_\_  
26 <sup>1</sup> Section 1681a(d)(1) of the FCRA defines "consumer report" as any oral, or other communication  
27 of any information by a consumer reporting agency bearing on a consumer's credit worthiness,  
28 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 employment purposes.

1  
2 The disclosure may not be part of an employment application  
3 because the language [of 15 U.S.C. § 1681b(b)(2)(A) is]  
4 intended to ensure that it appears conspicuously in a  
5 document not encumbered by any other information. The  
6 reason for requiring that the disclosure be in a stand-alone  
7 document is to prevent consumers from being distracted by  
8 other information side-by-side within the disclosure.<sup>2</sup>

9 20. The plain language of the statute also clearly indicates that the inclusion  
10 of extraneous information in a disclosure form violates the disclosure and  
11 authorization requirements of the FCRA because such a form would not consist  
12 “solely” of the disclosure. In fact, the FTC expressly has warned that the FCRA  
13 notice may not include extraneous information. In a report dated July 2011, the FTC  
14 emphasized that “the notice [under 15 U.S.C. § 1681b(b)(2)(A)] may not include  
15 extraneous or contradictory information[.]”

16 21. Many courts have also determined that the inclusion of extraneous  
17 information violates § 1681b(b)(2)(A) of the FCRA. *See, e.g., Speer v. Whole Food*  
18 *Market Group, Inc.*, No. 8:14-CV-3035-T-26TBM, 2015 WL 1456981, \*3 (M.D. Fla.  
19 Mar. 30, 2015); *Lengel v. HomeAdvisor, Inc.*, 2015 U.S. Dist. LEXIS 59017, \*19-24  
20 (D. Kan. May 5, 2015); *Milbourne v. JRK Residential Amer., LLC*, 2015 U.S. Dist.  
21 LEXIS 29905, \*14-19 (E.D. Va. Mar. 11, 2015); *Avila v. NOW Health Group, Inc.*,  
22 2014 U.S. Dist. LEXIS 99178, \*6-8 (N.D. Ill. July 17, 2014); *Reardon v. Closetmaid*  
23 *Corp.*, 2013 U.S. Dist. LEXIS 169821, \*14-27 (W.D. Pa. Dec. 2, 2013); *Singleton v.*  
24 *Domino’s Pizza, LLC*, 2012 U.S. Dist. LEXIS 8626, \*27-34 (D. Md. Jan. 25, 2012);  
25 and *EEOC v. Video Only, Inc.*, 2008 U.S. Dist. LEXIS 46094 (D. Or. June 11, 2008).

26 ///

27 ///

28 ///

---

<sup>2</sup> Letter from Clarke W. Brinckerhoff, Fed. Trade Comm’n, to H. Roman Leathers, Manier & Herod (Sept. 9, 1998), available at <https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-leathers-09-09-98> (last accessed March 16, 2016).

1           22. Defendant violated the FCRA by failing to provide Plaintiff and other  
2 members of the putative class with the requisite disclosure that a consumer report may  
3 be procured for employment purposes and by failing to obtain the required  
4 authorization from them.

5           23. The disclosure that Defendant provided to Plaintiff was part of the job  
6 application and was packed with extraneous information including, but not limited to,  
7 information relating to various “employment questions,” spaces for the provision of  
8 personal information and licenses, a purported authorization for Defendant to conduct  
9 a reference check, a purported authorization for third parties to release information, a  
10 lengthy description of various state-specific consumer-reporting requirements, a  
11 statement of Defendant’s purported equal opportunity employment policy,  
12 Defendant’s policy regarding hiring unauthorized aliens, a statement that Plaintiff’s  
13 employment is at will, and a release of liability.

14           24. In particular, the disclosure was part of the entire employment  
15 application and not a standalone document that called out to applicants the rights they  
16 had under the FCRA.

17           25. The purported authorization signed by Plaintiff and other members of  
18 the proposed class is encumbered with extraneous information including directing  
19 applicants outside the disclosure to online sources: “additional information  
20 concerning the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* is available at the  
21 Federal Trade Commission’s website . . . for more information, including information  
22 about additional rights, go to [www.consumerfinance.gov/learn more](http://www.consumerfinance.gov/learn-more) or write to  
23 Consumer Financial Protection Bureau . . . .”

24           26. The authorization also contained extraneous information regarding  
25 various states, including paragraphs relating to Maine, New York, Washington,  
26 California, Minnesota, and Oklahoma. With respect to California applicants, the state  
27 where Plaintiff lived, the application stated that “[a] consumer credit report will be  
28 obtained through Business Information Group, Inc. (BIG) . . . if you choose to receive

1 a copy of the consumer report, it will be sent within three (3) days of the employer  
2 receiving a copy of the consumer report and you will receive a copy of the  
3 investigative consumer report within seven (7) days of the employer's receipt of the  
4 report (unless you elected not to get a copy of the report). BIG's privacy practices  
5 with respect to the preparation and processing of investigative consumer reports may  
6 be found at [www.bigreport.com](http://www.bigreport.com) . . . California Applicants who will require credit  
7 report review: Please be advised that your credit will be reviewed as part of this  
8 application process. . . . If an investigative consumer report and/or consumer report  
9 is processed, I understand that I am entitled to receive a copy. I have indicated below  
10 whether I would like a copy."

11 27. The authorization also was invalid because it contained extraneous  
12 disclosures completely unrelated to the accessing of a background report on Plaintiff,  
13 including that Defendant "is an equal opportunity employer, dedicated to a policy of  
14 non-discrimination in employment on any basis . . . federal law prohibits the  
15 employment of unauthorized aliens. All persons hired must submit satisfactory proof  
16 of employment authorization and identity within three (3) days of being hired. Failure  
17 to submit su[c]h proof within the required time shall result in immediate employment  
18 termination."

19 28. The application form also forces applicants to release Defendant and  
20 others from liability for its actions, stating that "[a]ll hiring and employment at Stearns  
21 Lending, LLC is at will. I understand this application is not an employment contract,  
22 nor can it be used to create one. Employment at Stearns Lending has no specific term  
23 and may be terminated by the employee or Stearns Lending with or without notice. I  
24 acknowledge that Stearns Lending has not made any promises or representations that  
25 differ from those contained in this paragraph. I understand I must provide satisfactory  
26 documents to establish my identity and right to work in the United States, if I am  
27 offered a position with Stearns Lending, and that failure to provide this evidence will  
28 result in the termination of my employment. [¶] I release and agree to hold harmless



1 any individual, company, business institution or government agency from all liability  
2 with regard to furnishing information to Stearns Lending. I agree to release and hold  
3 harmless Stearns Lending from all liability with respect to the receipt of such  
4 information. I certify that the information I have furnished on this application form  
5 is true and complete. I understand that if any misrepresentation has been made by me  
6 verbally or in writing, any offer of employment made to me may be withdrawn or my  
7 subsequent employment with Stearns Lending may be terminated.”

8           29. Moreover, the putative consumer authorization describes information  
9 that does not constitute a consumer report or investigative consumer report and  
10 therefore misleads the consumer about the type of information he or she is authorizing  
11 will be disclosed. The application states, “I authorize without reservation any party  
12 of agency contacted to furnish the above mentioned information and release all parties  
13 involved from liability and responsibility for doing so. I hereby consent for Stearns  
14 Lending, and/or any of their agents to obtain the above information. This  
15 authorization and consent shall be valid in original, fax, or copy form.” This purports  
16 to authorize Defendant to obtain information directly from its source (e.g., references)  
17 but does not include information compiled from a consumer reporting agency or  
18 investigative consumer reporting agency.

19           30. The FCRA, CCRAA, and ICRAA specifically except this type of  
20 information from the definition of “consumer reports” or “investigative consumer  
21 reports.” *See* 15 U.S.C. § 1681a(d)(2)(A)(i) (excluding “reports containing  
22 information solely as to transactions or experiences between the consumer and the  
23 person making the report” from definition of consumer reports); 15 U.S.C. §  
24 1681a(d)(2)(A)(i) (excluding “specific factual information on a consumer’s credit  
25 record obtained directly from a creditor or a consumer” from definition of  
26 investigative consumer reports); Cal. Civ. Code § 1785.3(c)(1) (excluding “any report  
27 containing information solely as to transactions or experiences between the consumer  
28 and the person making the report” from definition of consumer credit report); Cal.

1 Civ. Code § 1786.2(c) (excluding information obtained “directly from a creditor of  
2 the consumer” from definition of investigative consumer report).

3 31. The inclusion of the foregoing extraneous and irrelevant information  
4 means that the disclosure was not “clear and conspicuous” or “clear[] and accurate[]”  
5 and thus violated Sections 1681b(b)(2)(A).

6 32. Moreover, the putative disclosure/authorization did not contain required  
7 information under the ICRAA, including the name, address, and telephone number of  
8 the investigative consumer reporting agency conducting the investigation; the nature  
9 and scope of the investigation, including a summary of the provisions of Section  
10 1786.22 (regarding the consumer’s right to inspect files); and the website address of  
11 the investigative consumer reporting agency or the telephone number of the agency  
12 where the consumer may find information about the investigative reporting agency’s  
13 privacy practices. *See* Cal. Civ. Code § 1786.16(a)(2)(B)(iv)-(vi). Also in violation  
14 of this section, Defendant failed to provide to the consumer a means by which the  
15 consumer may indicate on a written form, by means of a box to check, that the  
16 consumer wishes to receive a copy of any report that is prepared. *Id.* at subdiv. (b)(1).

17 33. The agency identified in the application (i.e., Business Information  
18 Group) was different from the agency that actually furnished reports on Plaintiff and  
19 other putative class members (i.e., Sterling). Moreover, the application does not  
20 include a box for applicants to check to obtain copies of their reports and Defendant  
21 does not provide copies of reports to applicants who request them.

22 34. Defendant also failed to comply with the disclosure requirements of the  
23 CCRAA, which requires Defendant, prior to requesting a consumer credit report for  
24 employment purposes, to provide written notice to identify the specific basis under  
25 Labor Code § 1024.5 of the use of the credit report and the source of the credit report.  
26 Cal. Civ. Code § 1785.20.5. Also in violation of this section, the disclosure did not  
27 contain a box that the person may check off to receive a copy of the credit report, and  
28 again Defendant does not provide copies of reports to applicants who request them.

**Adverse Action**

1  
2 35. Upon information and belief, Defendant took adverse action against  
3 Plaintiff and numerous other putative class members based on their background  
4 reports. Plaintiff's report provided by Sterling indicated that Plaintiff had criminal  
5 convictions, prompting Defendant to conduct its own investigation into Plaintiff's  
6 background. Based on this investigation, Defendant terminated Plaintiff's  
7 employment.

8 36. Despite Defendant's intent to take an adverse action, Defendant did not  
9 provide Plaintiff or other putative class members with copies of their reports before  
10 taking adverse action or the FCRA Summary of Rights promulgated by the FTC and  
11 Bureau of Financial Protection, as required by section 1681b(b)(3)(A) of the FCRA.

12 37. Additionally, following Defendant's adverse action Defendant failed to  
13 give Plaintiff and other putative class members a notice pursuant to Cal. Civ. Code §  
14 1786.40 of the adverse action and provide them with the name and address of the  
15 agency that made the report. Nor did Defendant provide Plaintiff or other putative  
16 class members with public-record information it obtained on them and did not provide  
17 them with such information upon taking adverse actions.

18 38. Defendant's conduct as alleged herein also violates the CCRAA, which  
19 requires users of consumer credit reports to advise the consumer that adverse action  
20 will be taken either wholly or partly because of information contained in a consumer  
21 credit report or investigative consumer report and supply the name and address or  
22 addresses of the agency making the report. Cal. Civ. Code §§ 1785.20.5(b).

**Defendant Willfully Violated the FCRA.**

23  
24 39. Defendant's misconduct, as alleged herein, was willful and/or reckless  
25 in that Defendant knew or reasonably should have known that its conduct violated the  
26 law because of the following facts, among others:

- 27 • The FCRA was enacted in 1970; Defendant has had over 40 years to  
28 become compliant but failed to do so;

- 1 • Defendant’s conduct is inconsistent with longstanding FTC guidance and
- 2 reports, judicial interpretation, and the plain language of the statute that
- 3 pre-dated Defendant’s conduct, as discussed above;
- 4 • Defendant had actual knowledge of FCRA requirements, as evidenced by
- 5 statements specifically pertaining to the FCRA in application materials;
- 6 • Defendant’s authorization and disclosure forms, though defective, show
- 7 that Defendant was aware of consumer-reporting laws;
- 8 • Upon information and belief, Defendant had communications and/or
- 9 consultations with one or more consumer reporting agencies (including
- 10 but not limited to BIG and Sterling) that are knowledgeable about state
- 11 and federal consumer-reporting requirements and apprised Defendant of
- 12 its obligations under the FCRA and state consumer-reporting law;
- 13 • Upon information and belief, Defendant was required to provide
- 14 certifications to consumer reporting agencies under the FCRA stating that
- 15 Defendant would comply with the disclosure, authorization, and adverse-
- 16 action requirements;<sup>3</sup> and
- 17 • Upon information and belief, Defendant has dedicated in-house and
- 18 outside counsel with knowledge of FCRA requirements.

19 40. Despite Defendant’s knowledge of their legal requirements under the  
20 FCRA, Defendant systematically failed to comply with these requirements.

21 ///  
22 ///  
23 ///  
24 ///  
25 ///  
26 ///  
27 ///

28 <sup>3</sup> See 15 U.S.C. § 1681b(b)(1).

**CLASS ALLEGATIONS**

1  
2 41. Plaintiff brings this action as a class action pursuant to Federal Rule of  
3 Civil Procedure 23(b)(2) and 23(b)(3) on behalf of the following class:

4 All persons residing in the United States (including all  
5 territories and other political subdivisions of the United  
6 States) who applied for employment with or were  
7 employed by Defendant within the five (5) years  
8 immediately preceding the filing of this lawsuit and on  
9 whom Defendant procured one or more consumer reports  
10 (“FCRA Pre-Authorization Class”).

11 42. Plaintiff’s proposed California subclass consists of and is defined as  
12 follows:

13 All persons residing in California who applied for  
14 employment with or were employed by Defendant within  
15 the longest applicable limitations period and on whom  
16 Defendant procured one or more investigative consumer  
17 reports or consumer credit reports (“California Pre-  
18 Authorization Subclass”).

19 43. Plaintiff’s second proposed class consists of and is defined as follows:

20 All persons residing in the United States (including all  
21 territories and other political subdivisions of the United  
22 States) who applied for employment with or were  
23 employed by Defendant within the five (5) years  
24 immediately preceding the filing of this lawsuit against  
25 whom Defendant took adverse employment actions based,  
26 in whole or in part, on information contained a consumer  
27 report (“FCRA Adverse Action Class”).

28 44. Plaintiff’s second proposed California subclass consists of and is  
defined as follows:

All persons residing in California who applied for  
employment with or were employed by Defendant within  
the longest applicable limitations period against whom  
Defendant took adverse employment actions based, in  
whole or in part, on information contained in a consumer  
credit report (“CCRAA Adverse Action Subclass”).

1 45. Plaintiff's third proposed California subclass consists of and is defined  
2 as follows:

3 All persons residing in California who applied for  
4 employment with or were employed by Defendant within  
5 the longest applicable limitations period against whom  
6 Defendant took adverse employment actions under  
7 circumstances in which a report regarding the applicant or  
8 employee was obtained ("ICRAA Adverse Action  
9 Subclass").

10 46. Plaintiff's fourth proposed California subclass consists of and is defined  
11 as follows:

12 All persons residing in California who applied for  
13 employment with or were employed by Defendant within  
14 the longest applicable limitations period and on whom  
15 Defendant obtained public record information bearing on  
16 the applicant's or employee's character, general reputation,  
17 personnel characteristics, or mode of living, for  
18 employment purposes ("ICRAA Public Record Subclass").

19 47. Members of the classes, as described above, will be referred to as "class  
20 members." Excluded from the classes and subclasses are: (1) Defendant, any entity  
21 or division in which either Defendant has a controlling interest, and their legal  
22 representatives, officers, directors, assigns, and successors; and (2) the judge to whom  
23 this case is assigned and the judge's staff and members of their immediate family.  
24 Plaintiff reserves the right to amend the above classes and subclasses and to add  
25 additional subclasses as appropriate based on investigation, discovery, and the  
26 specific theories of liability.

27 48. This action has been brought and may properly be maintained as a class  
28 action under Federal Rule of Civil Procedure 23 because there is a well-defined  
community of interest in the litigation and the classes and subclasses are easily  
ascertainable.

**A. Numerosity**

49. Although the precise number of class members has not been determined  
at this time, Plaintiff estimates that the classes and subclasses consists of more than

1 one hundred members and that the identity of such persons is readily ascertainable by  
2 inspection of Defendant’s employment and/or hiring records. Therefore, it is  
3 reasonable that the class members are so numerous that joinder is impracticable, and  
4 the disposition of their claims in a class action will provide substantial benefits to the  
5 parties and the Court.

6 **B. Common Questions Predominate**

7 50. There are questions of law and fact common to the classes and  
8 subclasses that predominate over any questions affecting only individual putative  
9 class members. Thus proof of a common set of facts will establish the right of each  
10 class member to recovery. These common questions of law and fact include but are  
11 not limited to:

- 12 a. Whether Defendant violated the FCRA by failing to provide class  
13 members with a “clear and conspicuous” disclosure in a document that  
14 consists solely of the disclosure that a consumer report may be obtained  
15 for employment purposes;
- 16 b. Whether Defendant violated the FCRA by failing to obtain class  
17 members’ authorization in writing before procuring a consumer report;
- 18 c. Whether Defendant violated the FCRA by failing to provide class  
19 members with the FCRA Summary of Rights promulgated by the FTC  
20 and Bureau of Financial Protection;
- 21 d. Whether Defendant violated section 1681b(b)(3)(A) of the FCRA by  
22 failing to provide applicants and employees with copies of their  
23 consumer reports before taking adverse action, as required by section  
24 1681b(b)(3)(A) of the FCRA;

25  
26 ///  
27 ///  
28 ////

- 1 e. Whether Defendant violated the ICRAA by failing to provide a clear  
2 and conspicuous disclosure in writing to the consumer at any time  
3 before the report is procured or caused to be made in a document that  
4 consists solely of the disclosure the information required under Cal.  
5 Civ. Code § 1786.16(a)(2)(B)(i)-(vi);
- 6 f. Whether Defendant violated the ICRAA and CCRAA by failing to  
7 provide the consumer a means by which the consumer may indicate on  
8 a written form, by means of a box to check, that the consumer wishes  
9 to receive a copy of any report that is prepared;
- 10 g. Whether Defendant violated the ICRAA and CCRAA by failing to  
11 inform applicants and employees against whom adverse action had  
12 been taken of the name and address of the agency making the report;
- 13 h. Whether Defendant violated the CCRAA by failing to provide written  
14 notice to identify the specific basis under Labor Code § 1024.5 of the  
15 use of the credit report and the source of the credit report prior to  
16 requesting a consumer credit report for employment purposes; and
- 17 i. Whether Defendant violated the ICRAA by failing to provide  
18 applicants and employees with copies of public-record information that  
19 Defendant obtained on them, as required under Cal. Civ. Code §  
20 1786.53.

21 **C. Typicality**

22 51. Plaintiff's claims are typical of the claims of the putative class members  
23 because Defendant failed to provide Plaintiff with the requisite disclosures and  
24 engaged in adverse action against her without complying with the disclosure  
25 requirements under the FCRA, ICRAA, and CCRAA. Plaintiff and each class  
26 member sustained similar injuries arising out of Defendant's conduct in violation of  
27 law. The injuries of each class member were caused directly by Defendant's wrongful  
28 conduct. In addition, the factual underpinning of Defendant's misconduct is common



1 to all putative class members and represents a common thread of misconduct resulting  
2 in injury to all class members. Plaintiff's claims arise from the same practices and  
3 course of conduct that give rise to the claims of the class members and are based on  
4 the same legal theories.

5 **D. Adequacy**

6 52. Plaintiff will fairly and adequately represent and protect the interests of  
7 the classes and subclasses. Counsel who represent Plaintiff and putative class  
8 members are experienced and competent in litigating class actions.

9 **E. Superiority of Class Action**

10 53. A class action is superior to other available means for the fair and  
11 efficient adjudication of this controversy. Individual joinder of putative class  
12 members is not practicable, and questions of law and fact common to putative class  
13 members predominate over any questions affecting only individual putative class  
14 members. Each putative class member has been damaged and is entitled to recovery  
15 as a result of the violations alleged herein. Moreover, because the damages suffered  
16 by individual members of the classes and subclasses may be relatively small, the  
17 expense and burden of individual litigation would make it difficult or impossible for  
18 individual members of the classes and subclasses to redress the wrongs done to them,  
19 while an important public interest will be served by addressing the matter as a class  
20 action. Class action treatment will allow those persons similarly situated to litigate  
21 their claims in the manner that is most efficient and economical for the parties and the  
22 judicial system.

23 54. The prerequisites to maintaining a class action for injunctive or  
24 equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met because Defendant has  
25 acted or refused to act on grounds generally applicable to the classes and subclasses,  
26 thereby making appropriate final injunctive or equitable relief with respect to the  
27 classes and subclasses as whole.

28 ///



1 clause (i)) the procurement of the report by that person.  
2 (Emphasis Added.)

3 61. As alleged above, Defendant violates Section 1681b(b)(2)(A) of the  
4 FCRA by failing to provide Plaintiff and class members with a clear and conspicuous  
5 written disclosure before a consumer report is procured or caused to be procured that  
6 a consumer report may be obtained for employment purposes in a document that  
7 consists solely of the disclosure.

8 62. Based upon the facts likely to have evidentiary support after a  
9 reasonable opportunity for further investigation and discovery, Defendant has policies  
10 and practices of failing to provide adequate written disclosures to applicants and  
11 employees before procuring consumer reports or causing consumer reports to be  
12 procured. Pursuant to these policies and practices, Defendant procured consumer  
13 reports or caused consumer reports to be procured for Plaintiff and class members  
14 without first providing a written disclosure in compliance with Section  
15 1681b(b)(2)(A) of the FCRA.

16 63. As alleged above, Defendant's conduct in violation of Section  
17 1681b(b)(2)(A) of the FCRA was and is willful in that Defendant acted in deliberate  
18 or reckless disregard of its obligations and the rights of applicants and employees,  
19 including Plaintiff and class members.

20 64. As a result of Defendant's illegal procurement of background reports by  
21 way of its inadequate disclosures, as set forth above, Plaintiff and class members have  
22 been injured, including, but not limited to, having their privacy and statutory rights  
23 invaded in violation of the FCRA. Owing to the inadequacy of Defendant's disclosure  
24 and authorization, Plaintiff and putative class members did not know that consumer  
25 reports were being obtained and/or did not understand or appreciate what that meant.

26 65. Plaintiff, on behalf of herself and all class members, seeks all available  
27 remedies pursuant to 15 U.S.C. § 1681n, including statutory damages and/or actual  
28 damages, punitive damages, injunctive and equitable relief, and attorneys' fees and  
costs.



1 a copy of the consumer report(s) used and/or (2) a written description of the rights of  
2 the consumer, i.e., the FCRA Summary of Rights promulgated by the FTC and Bureau  
3 of Financial Protection.

4 72. As alleged above, Defendant's conduct in violation of Section  
5 1681b(b)(3)(A) of the FCRA was and is willful in that Defendant acted in deliberate  
6 or reckless disregard of its obligations and the rights of applicants and employees,  
7 including Plaintiff and class members.

8 73. As a result of Defendant's inadequate disclosures prior to taking adverse  
9 action against Plaintiff and putative class members, Plaintiff and class members have  
10 been injured including, but not limited to, having their privacy and statutory rights  
11 invaded in violation of the FCRA. Plaintiff also suffered anxiety, stress, and  
12 confusion as a result of Defendant's inadequate disclosures. Additionally, Plaintiff  
13 and putative class members have been injured in that Defendant's conduct caused a  
14 material diminishment in their employment prospects without being fully informed of  
15 their statutory rights or having an opportunity to invoke those rights and reverse any  
16 adverse employment action taken by Defendant. For example, Plaintiff was not hired  
17 as a result of Defendant's conduct.

18 74. Plaintiff, on behalf of herself and all putative class members, seeks all  
19 available remedies pursuant to 15 U.S.C. § 1681n, including statutory damages and/or  
20 actual damages, punitive damages, injunctive and equitable relief, and attorneys' fees  
21 and costs.

22 75. In the alternative to Plaintiff's allegation that these violations were  
23 willful, Plaintiff alleges that the violations were negligent and seeks the appropriate  
24 remedy, if any, under 15 U.S.C. § 1681o.

25 ///

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**THIRD CAUSE OF ACTION**  
**VIOLATION OF THE CALIFORNIA INVESTIGATIVE CONSUMER**  
**REPORTING AGENCIES ACT,**  
**CAL. CIV. CODE § 1786.16(b)**

*(As to the California Pre-Authorization Subclass Only)*

76. Plaintiff hereby incorporates by reference the allegations contained in this Complaint.

77. Defendant is a “person” as defined by Cal. Civ. Code § 1786.2(a).

78. Section 1786.2(c) of the ICRAA defines “investigative consumer report” as “a consumer report in which information on a consumer’s character, general reputation, personal characteristics, or mode of living is obtained through any means.”

79. Section 1786.2(d) of the ICRAA defines “investigative consumer reporting agency” as “any person who, for monetary fees or dues, engages in whole or in part in the practice of collecting, assembling, evaluating, compiling, reporting, transmitting, transferring, or communicating information concerning consumers for the purposes of furnishing investigative consumer reports to third parties, but does not include any governmental agency whose records are maintained primarily for traffic safety, law enforcement, or licensing purposes, or any licensed insurance agent, insurance broker, or solicitor, insurer, or life insurance agent.”

80. Section 1786.16(a)(2)(B)(iv)-(vi) of the ICRAA provides in relevant part as follows:

(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:

...

///

///

///

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

5 (i) An investigative consumer report may be obtained.

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

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

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

13 (v) Notifies the consumer in writing of the nature and scope of the  
14 investigation requested, including a summary of the provisions of  
15 Section 1786.22.

16 (vi) Notifies the consumer of the Internet Web site address of the  
17 investigative consumer reporting agency identified in clause (iv),  
18 or, if the agency has no Internet Web site address, the telephone  
19 number of the agency, where the consumer may find information  
20 about the investigative reporting agency's privacy practices,  
21 including whether the consumer's personal information will be sent  
22 outside the United States or its territories and information that  
23 complies with subdivision (d) of Section 1786.20. This clause shall  
24 become operative on January 1, 2012. (Emphasis added.)

25 81. Defendant violated Section 1786.16(a)(2)(B)(i)-(vi) of the ICRAA by  
26 failing to provide Plaintiff and putative class members with a disclosure, in a  
27 document that consists solely of the disclosure, that an investigative consumer report  
28 may be obtained; identifying the permissible purpose of the report; stating that the  
report may include information on the consumer's character, general reputation,  
personal characteristics, and mode of living; disclosing the name, address, and  
telephone number of the investigative consumer reporting agency conducting the  
investigation; describing the nature and scope of the investigation, including a

1 summary of the provisions of Section 1786.22 (right to inspect files); and providing  
2 the website address of the investigative consumer reporting agency or the telephone  
3 number of the agency where the consumer may find information about the  
4 investigative reporting agency's privacy practices. *See* Cal. Civ. Code §  
5 1786.16(a)(2)(B)(iv)-(vi).

6 82. Section 1786.16(b)(1) provides, in relevant part:

7 (b) Any person described in subdivision (d) of Section 1786.12 who requests  
8 an investigative consumer report, in accordance with subdivision (a)  
9 regarding that consumer, shall do the following:

10 (1) Provide the consumer a means by which the consumer may indicate  
11 on a written form, by means of a box to check, that the consumer wishes  
12 to receive a copy of any report that is prepared. If the consumer wishes  
13 to receive a copy of the report, the recipient of the report shall send a  
14 copy of the report to the consumer within three business days of the date  
15 that the report is provided to the recipient, who may contract with any  
16 other entity to send a copy to the consumer. The notice to request the  
17 report may be contained on either the disclosure form, as required by  
18 subdivision (a), or a separate consent form. The copy of the report shall  
19 contain the name, address, and telephone number of the person who  
20 issued the report and how to contact them.

21 83. Defendant violated section 1786.16(b)(1) by failing to provide Plaintiff  
22 and other consumers a means by which the consumer may indicate on a written form,  
23 by means of a box to check, that the consumer wishes to receive a copy of any report  
24 that is prepared, nor did Plaintiff and other putative class members who requested  
25 copies of their reports receive them within the statutorily required time period.

26 84. On information and belief, and based upon the facts likely to have  
27 evidentiary support after a reasonable opportunity for further investigation and  
28 discovery, Defendant had and has a policy and practice of procuring investigative  
consumer reports or causing investigative consumer reports to be procured for  
applicants and employees without providing the required disclosures under Cal. Civ.  
Code § 1786.16(a)(2)(B)(i)-(vi) and by failing to provide Plaintiff and other  
consumers a means by which the consumer may indicate on a written form, by means



1 of a box to check, that the consumer wishes to receive a copy of any report that is  
2 prepared, and by failing to provide reports to Plaintiff and putative class members  
3 who requested them, as required under Cal. Civ. Code 1786.16(b)(1).

4 85. As a result of Defendant's willful, reckless, or grossly negligent failure  
5 to provide the required form and/or report(s) as set forth above, Plaintiff and class  
6 members have been injured by, among other things, having their privacy and statutory  
7 rights invaded in violation of the ICRAA.

8 86. Plaintiff, on behalf of herself and all putative class members, seeks all  
9 available remedies pursuant to Cal. Civ. Code § 1786.50, including actual damages,  
10 punitive damages, injunctive and equitable relief, and attorneys' fees and costs.

11 **FOURTH CAUSE OF ACTION**  
12 **VIOLATION OF THE CALIFORNIA INVESTIGATIVE CONSUMER**  
13 **REPORTING AGENCIES ACT,**  
14 **CAL. CIV. CODE § 1786.40**

15 *(As to the ICRAA Adverse Action Subclass Only)*

16 87. Plaintiff hereby incorporates by reference the allegations contained in  
17 this Complaint.

18 88. California Civil Code section 1786.40 states as follows:  
19 Whenever ... employment ... is denied ... under circumstances in  
20 which a report regarding the consumer was obtained from an  
21 investigative consumer reporting agency, the user of the investigative  
22 consumer report shall so advise the consumer against whom the adverse  
action has been taken and supply the name and address of the  
investigative consumer reporting agency making the report.

23 89. Defendant violated section 1786.40 by failing to make the disclosures  
24 required under section 1786.40 to Plaintiff and other applicants who were denied  
25 employment and on whom Defendant obtained copies of their investigative consumer  
26 reports, and by failing to supply the name and address of the investigative consumer  
27 reporting agency that made the reports.

28 ///



1 96. Plaintiff, on behalf of herself and all class members, seeks all available  
2 remedies pursuant to Cal. Civ. Code § 1786.50, including actual damages, punitive  
3 damages, injunctive and equitable relief, and attorneys’ fees and costs.

4 **SIXTH CAUSE OF ACTION**  
5 **VIOLATION OF THE CALIFORNIA CONSUMER CREDIT REPORTING**  
6 **AGENCIES ACT,**  
7 **CAL. CIV. CODE § 1785.20.5(a)**

8 *(As to the California Pre-Authorization Subclass Only)*

9 97. Plaintiff hereby incorporates by reference the allegations contained in  
10 this Complaint.

11 98. Defendant is a “person” as defined by Cal. Civ. Code § 1785.3(j).

12 99. Section 1785.3(c) of the CCRAA defines “consumer credit report” as  
13 “any written, oral, or other communication of any information by a consumer credit  
14 reporting agency bearing on a consumer’s credit worthiness, credit standing, or credit  
15 capacity, which is used or is expected to be used, or collected in whole or in part, for  
16 the purpose of serving as a factor in establishing the consumer's eligibility for ...  
17 employment purposes[.]” However, this definition explicitly excludes “any report  
18 containing information solely as to transactions or experiences between the consumer  
19 and the person making the report[.]”

20 100. Section 1785.3(d) of the CCRAA defines “consumer credit reporting  
21 agency” as “any person who, for monetary fees, dues, or on a cooperative nonprofit  
22 basis, regularly engages in whole or in part in the business of assembling or evaluating  
23 consumer credit information or other information on consumers for the purpose of  
24 furnishing consumer credit reports to third parties[.]”

25 101. Section 1785.20.5(a) of the CCRAA provides as follows:  
26 Prior to requesting a consumer credit report for employment  
27 purposes, the user of the report shall provide written notice to the  
28 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

1 shall also inform the person of the source of the report, and shall  
2 contain a box that the person may check off to receive a copy of the  
3 credit report. If the consumer indicates that he or she wishes to  
4 receive a copy of the report, the user shall request that a copy be  
5 provided to the person when the user requests its copy from the credit  
6 reporting agency. The report to the user and to the subject person  
7 shall be provided contemporaneously and at no charge to the subject  
8 person.

9 102. Defendant violated section 1785.20.5(a) of the CCRAA by failing,  
10 prior to requesting a consumer credit report for employment purposes, to provide  
11 Plaintiff and other consumer with a written notice identifying the specific basis under  
12 Labor Code § 1024.5 of the use of the credit report and the source of the credit report;  
13 failing to include on the notice to the consumer a box that he or she may check off to  
14 receive a copy of the credit report; and failing to provide Plaintiff and other consumer  
15 with copies of their reports.

16 103. As a result of Defendant's willful or grossly negligent failure to  
17 provide the required form and/or report(s) as set forth above, Plaintiff and class  
18 members have been injured by, among other things, having their privacy and statutory  
19 rights invaded in violation of the CCRAA.

20 104. Plaintiff, on behalf of herself and all class members, seeks all available  
21 remedies pursuant to Cal. Civ. Code § 1785.31, including actual damages, punitive  
22 damages, injunctive and equitable relief, and attorneys' fees and costs.

23 **SEVENTH CAUSE OF ACTION**

24 **VIOLATION OF THE CALIFORNIA CONSUMER CREDIT REPORTING  
25 AGENCIES ACT,**

26 **CAL. CIV. CODE § 1785.20.5(b)**

27 *(As to the CCRAA Adverse Action Subclass Only)*

28 105. Plaintiff hereby incorporates by reference the allegations contained in  
this Complaint.

///



1 D. For an award of appropriate equitable relief, including but not limited to  
2 an injunction forbidding Defendant from engaging in further unlawful conduct in  
3 violation of the FCRA, ICRAA, and CCRAA;

4 E. For an order awarding reasonable attorneys’ fees and the costs of suit  
5 herein, including an award of attorneys’ fees and costs pursuant to 15 U.S.C. § 1681n,  
6 15 U.S.C. § 1681o, California Civil Code §1786.50, California Civil Code §1786.50,  
7 and California Code of Civil Procedure § 1021.5;

8 F. For an award of pre- and post-judgment interest; and

9 G. For such other and further relief as may be deemed necessary or  
10 appropriate.

11 **JURY DEMAND**

12 Plaintiff hereby demands a jury trial on all issues so triable.

13

14 DATED: November 10, 2016

COUNSELONE, PC

15

16

By /s/ Anthony J. Orshansky  
Anthony J. Orshansky  
Alexandria R. Kachadoorian  
Justin Kachadoorian

17

18

*Attorneys for Plaintiff Tammy  
Smirin and the Putative Class*

19

20

21

22

23

24

25

26

27

28

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Lawsuit Says Stearns Lending Violated FCRA](#)

---