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18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 LASANDRA HILLSON, STEVEN
21 BOHLER, and ASHLEY SCHMIDT,
22 individually and as representatives of the
23 class,

24 Plaintiffs,

25 v.

26 KELLY SERVICES, INC.,

27 Defendant.

Case No.: 4:14-cv-03256-JCS

**FIRST AMENDED CLASS
ACTION COMPLAINT
FOR DAMAGES**

(1) Violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.*

DEMAND FOR JURY TRIAL

28 LaSandra Hillson, Steven Bohler, and Ashley Schmidt (“Plaintiffs”), by and through their attorneys, on behalf of themselves and the class set forth below, bring the following Class Action Complaint against Kelly Services, Inc. (“Defendant”).

INTRODUCTION

1. This consumer class action is brought under the Fair Credit Reporting Act (“FCRA”) against an employer who routinely violates the FCRA’s basic protections by

1 failing to obtain the proper authorization to conduct background checks, and by failing to
2 provide the “stand alone” disclosure required by the FCRA. As Defendant’s practices
3 were routine and systematic, Plaintiffs assert claims for statutory damages on behalf of a
4 class of similarly situated job applicants and employees.

5 **THE PARTIES**

6 2. Plaintiff LaSandra Hillson is an individual person and a resident of
7 Hayward, California.

8 3. Plaintiff Steven Bohler is an individual person and a resident of Mound,
9 Minnesota.

10 4. Plaintiff Ashley Schmidt is an individual person and a resident of
11 Davenport, Iowa.

12 5. Defendant Kelly Services, Inc. is an employment agency and recruitment
13 company incorporated in Delaware and headquartered in Troy, Michigan.

14 **JURISDICTION AND VENUE**

15 6. This Court has federal question jurisdiction over this action pursuant to 28
16 U.S.C. § 1331. Venue is proper in this District pursuant to 28 U.S.C. § 1391
17 because Plaintiff Hillson resides in this district and a substantial part of the events or
18 omissions giving rise to this claim occurred in this district.

19 **INTRADISTRICT STATEMENT**

20 7. Pursuant to L.R. 3-2(c) and (d), this action is properly assigned to the
21 Oakland Division of the Northern District of California because a substantial portion of
22 the events giving rise to the dispute occurred in Alameda County, California.

23 **STATUTORY BACKGROUND**

24 8. Enacted in 1970, the FCRA’s passage was driven in part by two related
25 concerns: first, that consumer reports were playing a central role in people’s lives at
26 crucial moments, such as when they applied for a job or credit, and when they applied for
27 housing. Second, despite their importance, consumer reports were unregulated and had
28 widespread errors and inaccuracies.

1 9. While recognizing that consumer reports play an important role in the
2 economy, Congress wanted consumer reports to be “fair and equitable to the consumer”
3 and to ensure “the confidentiality, accuracy, relevancy, and proper utilization” of
4 consumer reports. 15 U.S.C. § 1681.

5 10. Congress was particularly concerned about the use of consumer reports by
6 employers to deny otherwise qualified job applicants or to take other adverse actions
7 against employees. Accordingly, Congress required employers to make a clear and
8 conspicuous written disclosure to employees and job applicants, in a document that
9 consists solely of the disclosure, that a consumer report may be obtained for employment
10 purposes. 15 U.S.C. § 1681b(b)(2). This is commonly referred to as the “stand-alone
11 disclosure” requirement.

12 11. The FCRA stand-alone disclosure requirement ensures that employees and
13 job applicants know when reports about them are being generated. This notice is one of
14 many elements of the FCRA that combine to ensure that consumers are aware that
15 consumer reports are generated about them, that they know their rights, and that they have
16 the opportunity to dispute errors in their reports. *See* 15 U.S.C. § 1681b(b)(3)(A) (pre-
17 adverse employment action notice requirement); 15 U.S.C. § 1681b(4)(B) (notification of
18 national security investigation); 15 U.S.C. § 1681c(h) (notification of address
19 discrepancy); 1681d(a) (disclosure of investigative report); 15 U.S.C. § 1681g (full file
20 disclosure to consumers); 15 U.S.C. § 1681k(a)(1) (disclosure regarding the use of public
21 record information); 15 U.S.C. § 1681h (form and conditions of disclosure); 15 U.S.C. §
22 1681m(a) (notice of adverse action).

23 12. As discussed below, Defendant routinely violates the FCRA by failing to
24 provide the required stand-alone disclosure to employees and job applicants.

25 **ALLEGATIONS RELATING TO PLAINTIFF HILLSON**

26 13. On October 18, 2012, Ms. Hillson applied for an administrative assistant
27 position with Kelly Services in San Mateo, California.

1 14. Ms. Hillson received an application packet from Kelly Services. Included
2 in the application packet was a document entitled “Background Screening Notice,
3 Disclosure, and Authorization.” (“Disclosure Form,” attached as Exhibit A.)

4 15. In addition to providing information about Kelly Services’ background
5 checks, the Disclosure Form contains a liability waiver that purports to release Kelly
6 Services from liability. Specifically, the Disclosure Form states:

7 To the fullest extent permitted by law, I release Kelly, its employees,
8 agents, successor and assigns, from any and all claims, actions or liability
9 whatsoever that are in any way related to the procurement of a consumer
10 report about me, or any subsequent investigation(s) of my background or
personal history.

11 16. The Disclosure Form also contains a statement disclaiming that the form
12 creates an employment contract: “I understand that this Authorization is not a contract for
13 continued employment and does not alter the at-will nature of my employment or offered
14 employment.”

15 17. After Hillson applied for the position, Kelly Services procured a consumer
16 report on her from consumer reporting agency Verifications, Inc. (“Verifications”).

17 18. Because the Disclosure Form contains a liability waiver and an extraneous
18 disclaimer regarding its status as a contract, the Disclosure Form does not constitute a
19 stand-alone disclosure as required by 15 U.S.C. § 1681b(b)(2).

20 **ALLEGATIONS RELATING TO PLAINTIFF BOHLER**

21 19. On January 15, 2013, Mr. Bohler applied for a position offered by Kelly
22 Services in Mound, Minnesota.

23 20. Mr. Bohler received an application packet from Kelly Services. Included
24 in the application packet was a document entitled “Background Screening Notice,
25 Disclosure, and Authorization.” (“Disclosure Form,” attached as Exhibit B.)

26 21. The Disclosure Form received by Mr. Bohler was identical in all material
27 respects to the Disclosure Form received by Ms. Hillson. In other words, the Disclosure
28

1 Form received by Mr. Bohler also contained the purported liability waiver and statement
2 regarding at-will employment as described in paragraphs 15-16 above.

3 22. After Mr. Bohler applied for the position, Kelly Services procured a
4 consumer report on him from Verifications.

5 23. Because the Disclosure Form contains a liability waiver and an extraneous
6 disclaimer regarding its status as a contract, the Disclosure Form does not constitute a
7 stand-alone disclosure as required by 15 U.S.C. § 1681b(b)(2).

8 **ALLEGATIONS RELATING TO PLAINTIFF SCHMIDT**

9 24. In December 2013, Plaintiff Ashley Schmidt applied for a job offered by
10 Kelly Services in Davenport, Iowa.

11 25. Included within the application packet was a form entitled “Background
12 Screening Notice, Disclosure, and Authorization.” (“Disclosure Form,” attached as
13 Exhibit C.)

14 26. The Disclosure Form received by Ms. Schmidt was identical in all material
15 respects to the Disclosure Form received by Ms. Hillson. In other words, the Disclosure
16 Form received by Ms. Schmidt also contained the purported liability waiver and statement
17 regarding at-will employment as described in paragraphs 15-16 above.

18 27. After Schmidt applied for the position, Kelly Services procured a consumer
19 report on her from Verifications.

20 28. Because the Disclosure Form contains a liability waiver and an extraneous
21 disclaimer regarding its status as a contract, the Disclosure Form does not constitute a
22 stand-alone disclosure as required by 15 U.S.C. § 1681b(b)(2).

23 **ALLEGATIONS RELATING TO DEFENDANT’S PRACTICES**

24 29. More than fifteen years ago, the Federal Trade Commission emphasized
25 that including a liability waiver in the disclosure form, as Defendant did here, is a
26 violation of the FCRA. *Letter from William Haynes, Fed. Trade Comm’n, to Richard W.*
27 *Hauxwell, CEO Accufax Div.* (June 12, 1998), available at 1998 WL 34323756
28 (explaining that “inclusion of a . . . waiver in a disclosure form will violate Section

1 [1681b(b)(2)(A)] of the FRCA, which requires that a disclosure consist ‘solely of the
2 disclosure that a consumer report may be obtained for employment purposes’’).

3 30. Courts that have addressed liability waivers placed in disclosure forms
4 have agreed with the FTC that including such a waiver violates the FCRA’s stand-alone
5 disclosure requirement. *Dunford v. American Databank, Inc.*, No. C 13-03829, 2014 WL
6 39567744 at *6 (N.D. Cal. Aug. 12, 2014) (finding document that contained a liability
7 release to “not consist solely of the disclosure because it added a paragraph exonerating
8 [the defendant]”); *Avila v. NOW Health Grp., Inc.*, No. 14 C 1551, 2014 WL 3537825 at
9 *2 (N.D. Ill. July 17, 2014) (finding inclusion of liability waivers to be “contrary to the
10 express language of the FCRA, which requires a disclosure ‘in a document that consists
11 solely of the disclosure’’); *Singleton v. Domino’s Pizza*, No. 11-1823, 2012 WL 245965 at
12 *9 (D. Md. Jan. 25, 2012) (“[B]oth the statutory text and FTC advisory opinions indicate
13 that an employer violates the FCRA by including a liability release in a disclosure
14 document.”); *Reardon v. Closetmaid Corp.*, No. 2:-8-cv-01730, 2013 WL 6231606 at *10-
15 11 (W.D. Pa. Dec. 2, 2013) (finding disclosure with liability waiver to be “facially
16 contrary to the statute at hand, and all of the administrative guidance”).

17 31. In accordance with Verifications’ standard procedures, Verifications
18 required Defendant to certify that it would comply with the stand-alone disclosure
19 provisions of the FCRA.

20 32. In a February 2012 publication, Verifications warned its customers that
21 “nothing else (including a release of liability) should be a part of the [disclosure and
22 authorization] form.” Verifications, Inc., “Court Advises: ‘Solely’ Means Solely
23 Regarding Disclosure and Authorization” (Feb. 10, 2012), at
24 <https://www.verificationsinc.com/eng/whatwevelearned/complianceprofile.cfm?szID=104>
25 (last visited July 18, 2014), attached as Exhibit D.

26 33. As part of its service agreement with Verifications, Kelly Services
27 acknowledged that the reports it obtains from Verifications are consumer reports.
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1 41. Typicality: Plaintiffs' claims are typical of the Class members' claims.
2 The FCRA violations committed by Defendant were committed pursuant to uniform
3 policies and procedures, and Defendant treated Plaintiffs in the same manner as other
4 Class members in accordance with its standard policies and practices.

5 42. Adequacy: Plaintiffs will fairly and adequately protect the interests of the
6 class, and have retained counsel experienced in complex class action litigation.

7 43. Commonality: Common questions of law and fact exist as to all members
8 of the class and predominate over any questions solely affecting individual members of
9 the Class.

10 44. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) because
11 questions of law and fact common to the Class predominate over any questions affecting
12 only individual members of the Class, and because a class action is superior to other
13 available methods for the fair and efficient adjudication of this litigation. Defendant's
14 conduct described in this Complaint stems from common and uniform policies and
15 practices, resulting in common violations of the FCRA. Members of the Class do not
16 have an interest in pursuing separate actions against Defendant, as the amount of each
17 Class member's individual claim is small compared to the expense and burden of
18 individual prosecution, and Plaintiffs are unaware of any similar claims brought against
19 Defendant by any members of the Class on an individual basis. Class certification also
20 will obviate the need for unduly duplicative litigation that might result in inconsistent
21 judgments concerning Defendant's practices. Moreover, management of this action as a
22 class action will not present any likely difficulties. In the interests of justice and judicial
23 efficiency, it would be desirable to concentrate the litigation of all Class members' claims
24 in a single forum.

CLAIM FOR RELIEF

Failure to Provide Stand-Alone Disclosure

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2 45. Defendant violated the FCRA by procuring consumer reports on Plaintiffs
3 and Class members without making the stand alone disclosure required by the FCRA. *See*
4 15 U.S.C. §§ 1681b(b)(2).

5 46. Defendant acted willfully and in knowing or reckless disregard of its
6 obligations and the rights of Plaintiffs and the other Class members. Defendant's willful
7 conduct is reflected by, among other things, the fact that it violated a clear statutory
8 mandate set forth in 15 U.S.C. § 1681b(b)(2), and that Defendant certified that it would
9 comply with 15 U.S.C. § 1681b(b)(2). Further:

- 10 (a) The FCRA was enacted in 1970; Defendant has had over 40 years
11 to become compliant;
- 12 (b) Defendant's conduct is inconsistent with the FTC's longstanding
13 regulatory guidance, judicial interpretation, and the plain language
14 of the statute;
- 15 (c) Defendant knew or had reason to know from its communications
16 with Verifications that Defendant's conduct violated the FCRA;
- 17 (d) Defendant certified to Verifications that it would comply with the
18 disclosure requirements of the FCRA;
- 19 (e) Defendant repeatedly and routinely uses the disclosure it used with
20 Plaintiffs to procure consumer reports;
- 21 (f) Despite the pellucid statutory text and there being a depth of
22 guidance, Defendant systematically procured consumer reports
23 without first disclosing in writing to the consumer *in a document*
24 *that consists solely of the disclosure*, that a consumer report may be
25 obtained for employment purposes; and
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1 (g) By adopting such a policy, Defendant voluntarily ran a risk of
2 violating the law substantially greater than the risk associated with
3 a reading that was merely careless.

4 47. Plaintiffs and the Class are entitled to statutory damages of not less than
5 \$100 and not more than \$1,000 for each and every one of these violations, pursuant to 15
6 U.S.C. § 1681n(a)(1)(A). Plaintiffs and the Class members are also entitled to punitive
7 damages for these violations, pursuant to 15 U.S.C. § 1681n(a)(2). Plaintiffs and the
8 Class members are further entitled to recover their costs and attorneys' fees, pursuant to
9 15 U.S.C. § 1681n(a)(3).

10 **PRAYER FOR RELIEF**

11 48. WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray for
12 relief as follows:

- 13 a. Determining that this action may proceed as a class action under Rule
14 23(b)(3) of the Federal Rules of Civil Procedure;
- 15 b. Designating Plaintiffs as Class Representatives and designating Plaintiffs'
16 counsel as counsel for the Class;
- 17 c. Issuing proper notice to the Class at Defendant's expense;
- 18 d. Declaring that Defendant violated the FCRA;
- 19 e. Declaring that Defendant acted willfully, in knowing or reckless disregard
20 of Plaintiffs' rights and its obligations under the FCRA;
- 21 f. Awarding statutory damages as provided by the FCRA;
- 22 g. Awarding reasonable attorneys' fees and costs as provided by the FCRA;
- 23 h. Granting other and further relief, in law or equity, as this Court may deem
24 appropriate and just.

25 **DEMAND FOR JURY TRIAL**

26 49. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs
27 and the Class demand a trial by jury.

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Dated: August 19, 2014

Respectfully submitted,
NICHOLS KASTER, PLLP

By: /s/Daniel C. Bryden
Daniel C. Bryden (*pro hac vice*)

ATTORNEY FOR INDIVIDUAL AND
REPRESENTATIVE PLAINTIFFS