

SULLIVAN V SAFEWAY EXHIBIT 6

1 J. Nelson Thomas (admitted *pro hac vice*)
 2 Michael J. Lingle (admitted *pro hac vice*)
 3 Jessica L. Lukasiewicz (admitted *pro hac vice*)
 4 Jonathan W. Ferris (admitted *pro hac vice*)
 THOMAS & SOLOMON LLP
 693 East Avenue
 Rochester, New York 14607
 Telephone: (585) 272-0540
 jlukasiewicz@theemploymentattorneys.com

7 Steven Tindall (SBN 187862)
 8 Jeffrey Kosbie (SBN 305424)
 GIBBS LAW GROUP LLP
 505 14th Street, Suite 1110
 Oakland, CA 94612
 Telephone: (510) 350-9700
 Facsimile: (510) 350-9701
 smt@classlawgroup.com

11 Additional Counsel Listed on Following Page

12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**
 14 **SAN FRANCISCO DIVISION**

16 **KENDRA SULLIVAN, MARIANNA WILLIAMS,**
 17 **JOHANNA MATHEWS, SHARMARRAY ROSS,**
 18 **KYSHA DREW, JEANNIE JONES, AND STACI**
GILMAN,
individually and as representatives of the class,

Plaintiffs,

v.

24 **SAFEWAY INC., THE VONS COMPANIES, INC.,**
 25 **VONS SHERMAN OAKS, LLC, SAFEWAY**
 26 **SOUTHERN CALIFORNIA, INC., AND SAFEWAY**
LEASING, INC.,

Defendants.

SECOND CONSOLIDATED
AMENDED CLASS ACTION
COMPLAINT AND
DEMAND FOR A JURY TRIAL

Civil Action No. 3:19-CV-03187-MMC

- (1) Violation of 15 U.S.C. § 1681b(b)(2)(A)(i) (Fair Credit Reporting Act);
- (2) Violation of California Civil Code § 1786 *et seq.* (Investigative Consumer Reporting Agencies Act); and
- (3) Violation of California Labor Code § 1198.5 (Failure to Provide Employment Records)

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

Rosa Vigil-Gallenberg (SBN 251872)
GALLENBERG PC
800 S. Victory Blvd Suite 203
Burbank, CA 91502
Telephone: (818) 237-5267
Facsimile: (818) 330-5266
Rosa@GallenbergLaw.com

1 Plaintiffs Kendra Sullivan, Marianna Williams, Johanna Mathews, Sharmarray Ross, Kysha
2 Drew, Jeannie Jones, and Staci Gilman, on behalf of themselves and the proposed class set forth below
3 (“Plaintiffs”), by and through their attorneys, Gallenberg PC, Gibbs Law Group LLP, and Thomas &
4 Solomon LLP, bring this class action complaint against Safeway Inc., The Vons Companies, Inc., Vons
5 Sherman Oaks, LLLC, Safeway Southern California, Inc., and Safeway Leasing, Inc. (collectively
6 “Defendants”).
7

8 INTRODUCTION

9 1. This putative class action is brought pursuant to the Fair Credit Reporting Act (“FCRA”)
10 and applicable California laws. Defendants routinely violated the FCRA’s core protections by procuring
11 or causing to be procured consumer and/or investigative consumer reports, as those terms are defined by
12 the FCRA (herein referred to collectively as “background report(s)” or “consumer report(s)”), on
13 employees and job applicants without making a legally required stand-alone disclosure.
14

15 2. Using the services of a third party, Defendants routinely obtain and rely on the
16 information in the consumer report to evaluate prospective and current employees.

17 3. Given the determinative role that consumer reports can play regarding an applicant’s
18 employment prospects, employers are required to ensure that all applicants are aware of the employer’s
19 intention to procure a background check.
20

21 4. Specifically, the FCRA provides that an employer or prospective employer cannot
22 “procure, or cause a consumer report to be procured, for employment purposes with respect to any
23 consumer, unless . . . a clear and conspicuous disclosure has been made in writing to the consumer at
24 any time before the report is procured or caused to be procured, *in a document that consists solely of the*
25 *disclosure*, that a consumer report may be obtained for employment purposes.” 15 U.S.C. §
26 1681b(b)(2)(A)(i) (emphasis added).
27
28

1 5. Courts have held that the FCRA contains a narrow exception allowing only for an
2 authorization for the procurement of the consumer report. Inclusion of any additional information is a
3 willful violation of the FCRA. *See Syed v. M-I, LLC*, 853 F.3d 492, 501 (9th Cir. 2017).

4 **JURISDICTION AND VENUE**

5
6 6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this
7 action involves a federal question.

8 7. Under 28 U.S.C. § 1367, this Court has supplemental jurisdiction over Plaintiffs' state
9 law claims because the state law claims are so related to the FCRA claims that they form part of the
10 same case or controversy.

11 8. Venue is proper in this District because Defendants transact business in this district;
12 Plaintiffs Sullivan, Mathews, and Ross applied for jobs in this District; a substantial part of the events
13 or omissions giving rise to the claims took place in this District (and specifically, completing Defendants'
14 employment applications in this District); and Plaintiffs Sullivan, Mathews, and Ross lived and worked
15 for Defendants in this District.
16

17 9. Additionally, venue is proper in this District because Defendant Safeway Inc. maintains
18 its corporate headquarters in Pleasanton, California which is in Alameda County, California, and part of
19 this District.
20

21 **PARTIES**

22 ***Plaintiffs***

23 ***Kendra Sullivan***

24 10. Plaintiff Kendra Sullivan is a resident of Pittsburg, California, which is part of Contra
25 Costa County within the Northern District of California.

26 11. In or about October 2018, Ms. Sullivan applied to work for Defendants at one of their
27 Safeway stores.
28

1 12. Shortly thereafter, Ms. Sullivan began working as a cashier for Defendants.

2 13. Ms. Sullivan completed Defendants' job application process within this District.

3 14. Ms. Sullivan was not aware that she was signing an authorization for Defendants to
4 procure consumer reports. Ms. Sullivan did not understand and/or was confused by Defendants'
5 disclosure form.
6

7 15. Ms. Sullivan worked for Safeway in Pleasant Hill, California which is located in
8 Contra Costa county in the Northern District of California.

9 ***Mariana Williams***

10 16. Plaintiff Mariana Williams is a resident of California.

11 17. In or about November 2018, Ms. Williams applied to work for Defendants at one of their
12 Safeway stores.
13

14 18. Shortly thereafter, Ms. Williams began working for Defendants as a courtesy clerk.

15 19. Ms. Williams completed Defendants' job application process.

16 20. Ms. Williams was not aware that she was signing an authorization for Defendants to
17 procure consumer reports. Ms. Williams did not understand and/or was confused by Defendant's
18 disclosure form.
19

20 ***Johanna Mathews***

21 21. Plaintiff Johanna Mathews is currently a resident of Sacramento, California, which is part
22 of Sacramento County within the Northern District of California. When she applied to Defendants, Ms.
23 Mathews was a resident of Fremont, California, which is part of Alameda County within the Northern
24 District of California.

25 22. In or about June 2015, Ms. Mathews applied to work for Defendants at one of their
26 Safeway stores.
27

28 23. Shortly thereafter, Ms. Mathews began working as a Bakery Clerk for Defendants.

1 24. Ms. Mathews completed Defendants' job application process within this District.

2 25. Ms. Mathews was not aware that she was signing an authorization for Defendants to
3 procure consumer reports. Ms. Mathews did not understand and/or was confused by Defendant's
4 disclosure form.

5 26. Indeed, Ms. Mathews did not discover Defendants' violation(s) until approximately
6 October 2018, when she requested and obtained her file from Asurint and discovered that Defendants
7 had procured a consumer report regarding her for employment purposes based on the illegal disclosure
8 and authorization form.

9 27. Ms. Mathews worked for Safeway in Fremont, California, which is located in Alameda
10 County in the Northern District of California.

11 ***Sharmarray Ross***

12 28. Plaintiff Sharmarray Ross is a resident of Oakland, California, which is part of Alameda
13 County within the Northern District of California.

14 29. In or about June 2017, Ms. Ross applied to work for Defendants at one of their Safeway
15 stores.

16 30. Shortly thereafter, Ms. Ross began working as a Deli Clerk for Defendants.

17 31. Ms. Ross completed Defendants' job application process within this District.

18 32. Ms. Ross was not aware that she was signing an authorization for Defendants to procure
19 consumer reports. Ms. Ross did not understand and/or was confused by Defendants' disclosure form.

20 33. Ms. Ross worked for Defendants in Berkeley, California, which is located in Alameda
21 County in the Northern District of California.

22 ***Kysha Drew***

23 34. Plaintiff Kysha Drew is a resident of Irvine, California.

1 35. In or about August 2018, Ms. Drew applied to work for Defendants at one of their Vons
2 stores.

3 36. Shortly thereafter, Ms. Drew began working for Defendants as a deli clerk.

4 37. Ms. Drew completed Defendants' job application process.

5 38. Ms. Drew was not aware that she was signing an authorization for Defendants to procure
6 consumer reports.

7 39. Ms. Drew did not understand and/or was confused by Defendants' disclosure form.

8
9 ***Jeannie Jones***

10 40. Plaintiff Jeannie Jones is a resident of California.

11 41. In or about March 2019, Ms. Jones applied to work for Defendants at one of their Vons
12 stores.

13 42. Shortly thereafter, Ms. Jones began working for Defendants as a deli clerk.

14 43. Ms. Jones completed Defendants' job application process.

15 44. Ms. Jones was not aware that she was signing an authorization for Defendants to procure
16 consumer reports.

17 45. Ms. Jones did not understand and/or was confused by Defendants' disclosure form.

18
19 ***Staci Gilman***

20 46. Plaintiff Staci Gilman is a resident of San Diego, California.

21 47. In or about August 2019, Ms. Gilman applied to work for Defendants at one of their Vons
22 stores.

23 48. Shortly thereafter, Ms. Gilman began working as a Pharmacy Technician for Defendants.

24 49. Ms. Gilman completed Defendants' job application process.

25 50. Ms. Gilman was not aware that she was signing an authorization for Defendants to
26 procure consumer reports.
27
28

1 51. Ms. Gilman did not understand and/or was confused by Defendants' disclosure form.

2 *Defendants*

3 *Safeway Inc.*

4 52. Defendant Safeway Inc. is a leading food and drug retailer with 240 locations in
5 California.

6 53. Safeway Inc. is a Delaware corporation with its headquarters located in Pleasanton,
7 California.

8 *The Vons Companies, Inc.*

9 54. Defendant The Vons Companies, Inc., is a leading food and drug retailer with
10 approximately 200 locations in California.

11 *Vons Sherman Oaks, LLC*

12 55. Defendant Vons Sherman Oaks, LLC is an Oregon limited liability company and is a
13 subsidiary of The Vons Companies, Inc. Vons Sherman Oaks, LLC has its principal place of business in
14 Fullerton, California.

15 *Safeway Southern California, Inc.*

16 56. Defendant Safeway Southern California, Inc. is a Delaware corporation and is the parent
17 company of The Vons Companies, Inc.

18 *Safeway Leasing, Inc.*

19 57. Defendant Safeway Leasing, Inc. is a Delaware corporation and is the parent company of
20 Safeway Southern California, Inc.

21 58. Defendants oversee the hiring process of all of their locations and requests background
22 checks on behalf of potential employees, including Plaintiffs Sullivan, Williams, Mathews, Ross, Drew,
23 Jones, and Gilman.

24 **FACTS**

1 ***Defendants’ Failure To Make A Proper Disclosure In Violation Of The FCRA***

2 59. Plaintiffs Sullivan, Williams, Mathews, Ross, Drew, Jones, and Gilman completed
3 Defendants’ standard documents relating to their anticipated employment, which included an
4 authorization to conduct a background check.
5

6 60. Defendants’ authorization causes a background check to be procured by a third-party
7 company.
8

9 61. Prior to the Notice and Disclosure section, the application packet includes a “Certification
10 and Release Statement” section which includes a release of liability waiver. The applicant’s certification
11 of agreement with the Certification and Release Statement section appears on the same page as the Notice
12 and Disclosure section.
13

14 62. The inclusion of the liability release provisions in connection with the background
15 disclosure violates the FCRA.
16

17 63. Plaintiffs Sullivan, Williams, Mathews, Ross, Drew, Jones, and Gilman completed and
18 executed Defendants’ hiring documents containing the unlawful background check
19 disclosure/authorization.
20

21 64. Defendants’ documentation and authorization fails to include a clear and conspicuous
22 disclosure, in a document consisting solely of the disclosure, that Defendants would cause a consumer
23 report to be procured.
24

25 65. By including a release with the disclosure, Defendants willfully disregarded this
26 regulatory guidance and violated 15 U.S.C. § 1681b(b)(2)(A)(i).
27

28 66. As such, Plaintiffs Sullivan, Williams, Mathews, Ross, Drew, Jones, and Gilman were
misled as to the nature and purpose of their consent and their rights.

67. Defendants’ background check authorization disclosure contains numerous extraneous
provisions.

1 68. For example, the disclosure contains several additional paragraphs of information
2 regarding various state laws and use of public records pending an investigation of suspicion of
3 wrongdoing.

4 69. Despite their failure to provide applicants, including Plaintiffs Sullivan, Williams,
5 Mathews, Ross, Drew, Jones, and Gilman, with the required stand-alone disclosure, Defendants
6 subsequently procured a consumer report, or caused a consumer report to be procured on Plaintiffs and
7 the Class.

8 70. Plaintiffs Sullivan, Williams, Mathews, Ross, Drew, Jones, and Gilman were not aware
9 that they were signing an authorization for Defendants to procure consumer reports. Plaintiffs did not
10 understand and/or were confused by Defendants' disclosure forms.

11 71. Plaintiffs were deprived of their ability to meaningfully authorize Defendants to procure
12 consumer reports.

13 72. By procuring consumer reports containing Plaintiffs' private information without first
14 complying with the FCRA's disclosure requirements, Defendants violated Plaintiffs' rights to
15 information and privacy. *See Syed*, 853 f.3d at 499.

16 ***Facts Relating to Defendants' Willful, Systematic and Repeated FCRA Disclosure Violation***

17 73. Similar to how it treated Plaintiffs Sullivan, Williams, Mathews, Ross, Drew, Jones, and
18 Gilman, Defendants, through the services of a third party, conducts background checks on other job
19 applicants as part of its standard screening process.

20 74. Defendants rely on consumer reporting agencies to obtain this information and report it.
21 These reports constitute "consumer reports" for purposes of the FCRA.

22 75. The application documentation completed by applicants does not contain a clear and
23 conspicuous written disclosure to the consumer, in a document that consists solely of the disclosure, that
24

1 a consumer report may be obtained by Defendants for employment purposes, but Defendants routinely
2 request and procure reports from a third party about applicants and employees in spite of this fact.

3 76. For example, the documentation includes a liability waiver in the disclosure form.

4 77. The language of the FCRA with respect to the stand-alone disclosure requirement is clear.
5
6 *See* 15 U.S.C. § 1681b(b)(2)(A)(i).

7 78. The Federal Trade Commission (“FTC”) confirms that “[t]he inclusion of such a
8 [liability] waiver in a disclosure form will violate [the FCRA], which requires that a disclosure consist
9 ‘solely’ of the disclosure that a consumer report may be obtained for employment purposes.” *See* Exhibit
10 A.

11 79. Further, courts have routinely confirmed that the failure to include the stand-alone
12 disclosure is a violation of the protection afforded to employees under the FCRA. *See Syed*, 853 F.3d at
13 496, 500 (holding the inclusion of a liability waiver on the same document as the FCRA disclosure
14 violates the statute “in light of the clear statutory language that the disclosure document must consist
15 ‘solely’ of the disclosure”); *Gilberg v. Cal. Check Cashing Stores, LLC*, 913 F.3d 1169, 1175 (9th Cir.
16 2019) (holding the inclusion of state specific disclosures on the same document as the FCRA disclosure
17 violates the statute).

18 80. By systematically inserting a liability release, Defendants willfully violated 15 U.S.C. §
19
20 1681b(b)(2)(A).

21
22 ***Defendants’ Failure to Make A Proper Disclosure In Violation Of The ICRAA***

23 81. Defendants are a "person" as defined by § 1786.2(a) of the Investigative Consumer
24 Reporting Agencies Act ("ICRAA").

25 82. Plaintiffs are "consumers" within the meaning § 1786.2(b) of the ICRAA, because they
26 are “individuals.”
27
28

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

4 84. Thus a background checks qualifies as an investigative consumer report under the
5 ICRAA.
6

7 85. Section 1786.16(a)(2) of the ICRAA provides, in relevant part:

8 If, at any time, an investigative consumer report is sought for employment purposes . . .
9 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:

10 * * * *

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

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

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

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

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

20 (v) Notifies the consumer in writing of the nature and scope of the
21 investigation requested, including the provisions of Section 1786.22.

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

27 (C) The consumer has authorized in writing the procurement of the report.
28

1 86. In evaluating Plaintiffs for employment, Defendants procured or caused to be procured
2 investigative consumer reports (*e.g.* background checks), as defined by Cal. Civ. Code § 1786.2(c).

3 87. Because the purported disclosures are embedded with extraneous information, and are
4 not clear and unambiguous disclosures in stand-alone documents, they do not meet the requirements
5 under the law.
6

7 ***Defendants Failed to Timely Provide Plaintiffs Sullivan and Williams with their Employment Records***
8 ***Pursuant to § 1198.5 of the California Labor Code***

9 88. On or about May 3, 2019, Plaintiffs Sullivan and Williams requested their employment
10 records from Defendants.

11 89. Plaintiffs Sullivan and Williams made this request by sending a letter request to
12 Defendants via first class mail.

13 90. Section 1198.5 of the California Labor Code provides:

14 (a) Every current and former employee, or his or her representative, has the
15 right to inspect and receive a copy of the personnel records that the
16 employer maintains relating to the employee's performance or to any
grievance concerning the employee.

17 (b) (1) The employer shall make the contents of those personnel records
18 available for inspection to the current or former employee, or his or her
19 representative, at reasonable intervals and at reasonable times, but not later
than 30 calendar days from the date the employer receives a written request.

20 91. Despite Plaintiffs' requests for their employment records, Defendants have not provided
21 complete records within the time periods required by § 1198.5(b)(1).

22 **CLASS ACTION ALLEGATIONS**

23 92. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23 ("Rule 23").

24 93. The class is defined as follows:
25

26 All of Defendants' current, former, and prospective applicants for employment in
27 the United States who were the subject of a consumer report that was procured or
28 caused to be procured by Defendants without proper disclosure, during the period
beginning five years prior to the filing of this action and ending on the date that
final judgment is entered in this action.

1 94. Plaintiff reserves the right to amend or modify the class definition with greater
2 specificity, by further division into subclasses and/or by limitation to particular issues.

3 95. The class action is maintainable under subsections (1), (2), (3) and (4) of Rule 23(a).

4 96. Numerosity is met because each Class size is believed to be over 40 members.
5 Defendants regularly have consumer reports procured by a third party in order to evaluate employees
6 and job applicants. Further, Defendants use the information in the consumer reports to evaluate
7 employees and job applicants. The size and scale of Defendants' operations ensures that the number of
8 members in the class will be in the tens of thousands. The names and addresses of the Class members
9 are available from Defendants' records.
10

11 97. Common issues of law and fact exist as to all members of the Classes. The Plaintiffs and
12 the Class members were all individuals who applied to work for Defendants and a background check
13 was procured by a third party at the request of Defendants. The common issues of law and fact also
14 include the following:
15

- 16 • Whether Defendants procured or caused to be procured background checks on employees
17 and job applicants;
- 18 • Whether Defendants violated the FCRA by causing consumer reports to be procured
19 without providing the proper disclosure;
- 20 • Whether Defendants' violations of the FCRA were willful;
- 21 • The proper measure of statutory and punitive damages; and
- 22 • The proper form of declaratory relief.

23 98. These common questions of law and fact also predominate over any questions affecting
24 only individual members.

25 99. Plaintiffs' claims are typical of the claims of other members of the Class because the
26 FCRA violations suffered by Plaintiffs Sullivan, Williams, Mathews, Ross, Drew, Jones, and Gilman
27 are typical of that suffered by other Class members, and Defendants treated Plaintiffs Sullivan, Williams,
28

1 Mathews, Ross, Drew, Jones, and Gilman consistent with other Class members in accordance with their
2 standard policies and procedures.

3 100. Plaintiffs Sullivan, Williams, Mathews, Ross, Drew, Jones, and Gilman are able to fairly
4 and adequately represent the interests of the Class and have no interest antagonistic to the Class.
5

6 101. Class Counsel, Gallenberg PC, Gibbs Law Group LLP, and Thomas & Solomon LLP, are
7 qualified and able to litigate the Plaintiffs' and Class members' claims.

8 102. Class Counsel is well experienced in both employment and class action cases.

9 103. This class action is also maintainable under subsection (3) of Rule 23(b) because
10 questions of law or fact common to Class members (*see supra* ¶ 97) predominate over any questions
11 affecting only individual members, and a class action is superior to other available methods for fairly
12 and efficiently adjudicating this controversy.
13

14 104. Alternatively, the questions of law and fact common to the class may be certified for class
15 action treatment separately from any questions affecting only individual members under Rule 23(c)(4)
16 because resolution of those common questions will significantly advance the litigation.

17 **FIRST CAUSE OF ACTION**

18 ***Defendants Violated the FCRA by Causing Consumer Reports to be Procured Without First Making***
19 ***a Proper Disclosure***

20 **15 U.S.C. § 1681b(b)(2)(A)(i)**

21 **(On behalf of Plaintiffs individually and the Class)**

22 105. Plaintiffs Sullivan, Williams, Mathews, Ross, Drew, Jones, and Gilman hereby re-allege
23 and incorporate the allegations set forth above.

24 106. Defendants violated the FCRA by procuring or causing consumer reports to be procured
25 on Plaintiffs Sullivan, Williams, Mathews, Ross, Drew, Jones, and Gilman and other Class members
26 without providing a clear and conspicuous disclosure in a document consisting solely of the disclosure.
27 *See* 15 U.S.C. § 1681b(b)(2)(A)(i).

28 107. Defendants' conduct in violation of §1681(b)(2)(A) of the FCRA was and is willful.

1 108. Defendants' willful conduct is reflected by the above paragraphs as well as the following:

- 2 a. Defendants are large corporations with access to legal advice;
- 3 b. Defendants were founded before the FCRA was enacted in 1970 and they have
- 4 therefore had more than 40 years to become compliant;
- 5 c. Defendants' conduct is inconsistent with the Federal Trade Commission's
- 6 longstanding regulatory guidance, judicial interpretation, and the plain language
- 7 of the statute. *See Exhibit A; see also Syed*, 853 F.3d at 500–01; *Gilberg*, 913
- 8 F.3d at 1175–76.
- 9 d. Despite the plain statutory text and there being a depth of guidance, Defendants
- 10 adopted a policy of having consumer reports procured on their employees and job
- 11 applicants without properly disclosing to them that the reports will be procured
- 12 on them.

13 109. Plaintiffs Sullivan, Williams, Mathews, Ross, Drew, Jones, and Gilman, and Class

14 members are entitled to statutory damages of not less than \$100 and not more than \$1,000 for each and

15 every one of these violations, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

16 110. Plaintiffs Sullivan, Williams, Mathews, Ross, Drew, Jones, and Gilman, and Class

17 members are entitled to punitive damages of not less than \$100 and not more than \$1,000 for each and

18 every one of these violations, pursuant to 15 U.S.C. § 1681n(a)(2).

19 111. Plaintiffs Sullivan, Williams, Mathews, Ross, Drew, Jones, and Gilman, and Class

20 members are further entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C. §

21 1681n(a)(3).

22 **SECOND CAUSE OF ACTION**
Defendants Failed to Make Proper Disclosures Under the ICRAA
Cal. Civ. Code § 1786 et seq.
(On behalf of Plaintiffs individually)

23

24 112. Plaintiffs Sullivan, Williams, Mathews, Ross, Drew, Jones, and Gilman hereby re-allege

25 and incorporate the allegations set forth above.

26 113. Under the ICRAA, it is unlawful to procure or cause to be procured, a consumer report

27 or investigative consumer report for employment purposes unless the disclosure is made in a document

28

1 that consists solely of the disclosure and the consumer has authorized, in writing, the procurement of the
2 report. Cal. Civ. Code § 1786.16(a)(2)(B)-(C). The inclusion of the release and other extraneous
3 information, therefore, violates § 1786.16(a)(2)(B) of the ICRAA.

4 114. The plain language of the statute clearly indicates that the inclusion of extraneous
5 information or a liability release in a disclosure form violates the disclosure and authorization
6 requirements of the ICRAA, because such a form would not consist "solely" of the disclosure.

7 115. As alleged above with respect to the FCRA, Defendants' violation of the ICRAA was and
8 is willful. Defendants are large corporations with access to legal advice, and the application included a
9 purported authorization to perform investigative consumer reports which evidences Defendants'
10 awareness of and willful failure to follow the governing laws.

11 116. Alternatively, Defendants' violation of the ICRAA was grossly negligent or negligent.

12 117. Defendants' conduct in violation of § 1786.16(a)(2)(B) of the ICRAA was and is willful
13 and/or grossly negligent.

14 118. Defendants acted in deliberate or reckless disregard of their obligations and the rights of
15 Plaintiffs.

16 119. As a result of Defendants' illegal procurement of background reports by way of their
17 inadequate disclosures, as set forth above, Plaintiffs have been injured including, but not limited to,
18 having their privacy and statutory rights invaded in violation of the ICRAA.

19 120. Plaintiffs, on behalf of themselves individually, seek all available remedies pursuant to
20 Cal. Civ. Code § 1786.50, including but not limited to statutory damages attorneys' fees and costs.

21 121. In the alternative to Plaintiffs' allegation that these violations were willful or grossly
22 negligent, Plaintiffs allege that the violations were negligent and seeks the appropriate remedy, if any,
23 under Cal. Civ. Code § 1786.50(a), including but not limited to statutory damages and attorneys' fees
24 and costs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

THIRD CAUSE OF ACTION
Failure to Provide Employment Records Upon Request
Cal. Lab. Code § 1198.5
(On behalf of Plaintiffs Sullivan and Williams individually)

122. Plaintiffs Sullivan and Williams hereby re-allege and incorporate the allegations set forth above.

123. Pursuant to Labor Code § 1198.5, an employer shall afford current and former employees the right to inspect or copy the records pertaining to that current or former employee, upon reasonable request to the employer.

124. Plaintiffs requested that Defendants permit inspection or copying of their employment records pursuant to Labor Code § 1198.5.

125. Defendants failed to provide Plaintiffs with their employment records.

126. Pursuant to Labor Code § 1198.5, Plaintiffs are entitled, and hereby seek to recover from Defendants a seven-hundred-fifty (750) dollar penalty for each violation, reasonable attorney's fees, and the costs of bringing this cause of action.

WHEREFORE, Plaintiffs Sullivan, Williams, Mathews, Ross, Drew, Jones, and Gilman, on behalf of themselves and the Class, pray for relief as follows:

- 19 (a) Determining that this action may proceed as a class action under Rule 23 of the Federal
20 Rules of Civil Procedure;
- 21 (b) Designating Sullivan, Williams, Mathews, Ross, Drew, Jones, and Gilman as class
22 representatives;
- 23 (c) Awarding class representatives Sullivan, Williams, Mathews, Ross, Drew, Jones, and
24 Gilman service payments;
- 25 (d) Designating Gallenberg PC, Gibbs Law Group LLP, and Thomas & Solomon LLP as
26 Plaintiffs' and Class members' counsel;
- 27 (e) Declaring that Defendants violated the FCRA and ICRAA;
- 28 (f) Issuing proper notice of the class at Defendants' expense;

- 1 (g) Declaring that Defendants acted willfully in deliberate or reckless disregard of Plaintiffs’
2 rights and Defendants’ obligations under the FCRA and ICRAA;
- 3 (h) Awarding statutory damages as provided by the FCRA;
- 4 (i) In the event that the case is not certified as a class action, awarding all available relief
5 provided by the ICRAA;
- 6 (j) Awarding reasonable attorneys’ fees and costs as provided by the FCRA and ICRAA;
- 7 (k) Awarding Plaintiffs Sullivan and Williams applicable penalties and reasonable attorneys’
8 fees and costs pursuant to California Labor Code § 1198.5; and
- 9 (k) Such other and further legal or equitable relief as this Court deems to be just and
appropriate.

10 **JURY DEMAND**

11 Plaintiffs demand a jury to hear and decide all issues of fact in accordance with Federal Rule of
12 Civil Procedure 38(b).

13
14 Dated: December 30, 2020

/s/ Steven M. Tindall _____

15
16 Steven Tindall (SBN 187862)
Jeffrey Kosbie (SBN 305424)
GIBBS LAW GROUP LLP
17 505 14th Street, Suite 1110
Oakland, CA 94612
18 (510) 350-9700 (tel.)
(510) 350-9701 (fax)
19 smt@classlawgroup.com
20 jbk@classlawgroup.com

1 Dated: December 30, 2020

/s/ Rosa Vigil-Gallenberg

2 Rosa Vigil-Gallenberg (SBN 251872)
3 **GALLENBERG PC**
4 800 S. Victory Blvd., Suite 203
5 Burbank, CA 91502
6 (818) 237-5267 (tel.)
7 (818) 330-5266 (fax)
8 Rosa@GallenbergLaw.com

8 Dated: December 30, 2020

/s/ Jonathan W. Ferris

9 J. Nelson Thomas (admitted *pro hac vice*)
10 Michael J. Lingle (admitted *pro hac vice*)
11 Jessica L. Lukasiewicz (admitted *pro hac vice*)
12 Jonathan W. Ferris (admitted *pro hac vice*)
13 **THOMAS & SOLOMON LLP**
14 693 East Avenue
15 Rochester, NY 14607
16 585-272-0540 (tel.)
17 jlukasiewicz@theemploymentattorneys.com

18 *Attorneys for Plaintiffs Kendra Sullivan,*
19 *Marianna Williams, Johanna Mathews,*
20 *Sharmarray Ross, Kysha Drew, Jeannie Jones,*
21 *and Staci Gilman*