

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DWAYNE BALLARD,
On behalf of himself and all others
similarly situated,

Plaintiff,

vs.

THE KENAN ADVANTAGE GROUP,
et al.,

Defendants.

CASE NO. 5:20-cv-1042

Magistrate Judge Kathleen Burke

AMENDED CLASS ACTION COMPLAINT
(Jury Demand Endorsed Hereon)

Now comes the Plaintiff, Dwayne Ballard (“Ballard”), and on behalf of himself and all other similarly situated individuals complains of Defendant Kenan Advantage Group, Inc., a Delaware corporation, and Does 1-50, inclusive (together “KAG”), as follows:

PRELIMINARY STATEMENT

1. This is a class action on behalf of consumers who were the subject of consumer reports obtained by the Kenan Advantage Group, Inc. and/or its subsidiaries (“KAG”) as a precondition of employment during the five-year period preceding the filing of this action, as established by 15 U.S.C. § 1681p (the “Class Period”), seeking remedies under the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681, *et seq.*, and California’s Investigative Consumer Reporting Agencies Act (“ICRAA”), Cal. Civ. Code § 1681, *et seq.*

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JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1681p. This Court has supplemental jurisdiction over state-law claims under 28 U.S.C. § 1367.

3. Venue is proper in the Northern District of Ohio because KAG is headquartered in and maintains its principal place of business in this District and Division.

PARTIES

4. Ballard is a California resident and at all times relevant herein was a “consumer” as defined by 15 U.S.C. § 1681a and Cal. Civ. Code § 1786.2.

5. KAG is a for-profit corporation conducting business and hiring employees in the State of Ohio and nationwide.

6. At all times relevant hereto, KAG was a “person” using “consumer reports” to make “employment decisions” and take “adverse action” against “consumers,” as those terms are defined by 15 U.S.C. § 1681a.

7. At all times relevant hereto, KAG was a “person” using “investigative consumer reports” for “employment purposes” and take “adverse action” against “consumers,” as those terms are defined and used by Cal. Civ. Code § 1786, *et seq.*

BALLARD’S EXPERIENCE

8. In or around late-September 2017, Ballard applied online for a commercial truck driving position with KAG.

9. As part of its applicant screening process, KAG purchases consumer reports from consumer reporting agencies to investigate an applicant’s criminal background and driving history.

10. However, KAG fails to provide the mandatory disclosures required under the FCRA prior to obtaining consumer reports on remote trucking applicants. *See* 15 U.S.C. §

1681b(b)(2)(B).

11. As a remote applicant for a position over which the Department of Transportation has authority to establish maximum hours, KAG was legally obligated to tell Ballard in writing, verbally, or electronically not only that the company intended to obtain his consumer report, but also that he specifically had the right to request a *free* copy of the report *within 60 days* and could dispute any inaccurate or misleading information directly with the consumer reporting agency. 15 U.S.C. § 1681b(b)(2)(B) and (C).

12. Instead, KAG's online application materials include a dizzying array of forms that include conflicting and misleading statements regarding KAG's use of consumer reports for employment purposes and an applicant's rights regarding these reports.

13. KAG's "Disclosure and Release" form, attached as Exhibit A, did not inform Ballard of his rights under 15 U.S.C. § 1681b(b)(2)(B).

14. Worse, this "Disclosure and Release" form misrepresented that Ballard would be *charged* if he attempted to obtain a copy of his report. (*See* Ex. A) ("A copy of your file will be made available to you *for a fee...*") (emphasis added).

15. The "Disclosure and Release" form also identifies a laundry list of consumer reporting agencies ("CRAs") that may or may not be utilized by KAG. By representing to applicants that they will have to pay to obtain their consumer reports and failing to identify the actual CRAs used, KAG's application materials discourage applicants from understanding their rights under the FCRA.

16. KAG's "Disclosure and Release" form also contradicts information contained in the "Summary of Your Rights Under the Fair Credit Reporting Act" form included in KAG's application materials. By providing contradictory and misleading information related to

applicants' FCRA rights, KAG does not provide valid FCRA disclosures prior to obtaining applicants' consumer reports in violation of 15 U.S.C. § 1681b(b)(2)(B).

17. Accordingly, Ballard could not provide lawful consent to the procurement of his consumer report pursuant to 15 U.S.C. § 1681b(b)(2)(B)(ii).

18. On information and belief, KAG used a consumer report about Ballard to deny him employment in October 2017.

19. KAG did not provide Ballard verbal, electronic, or written notice within three business days of taking this adverse employment action (i) that adverse action had been taken based in whole or in part on a consumer report; (ii) the name, address, and telephone number of the consumer reporting agency; (iii) that the consumer reporting agency did not make the decision to take adverse action and is unable to provide Ballard with specific reasons why the adverse action was taken; and (iv) that Ballard could request a free copy of the report and may dispute the accuracy and completeness of the report with the CRA.

20. KAG never disclosed to Ballard that his denial was based on a consumer report.

21. KAG's actions also constitute a violation of California's Investigative Consumer Reporting Agencies Act ("ICRAA"). Under ICRAA an "investigative consumer report" is "a consumer report in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through any means." Cal. Civ. Code § 1786.2(c). ICRAA requires anyone procuring an investigative consumer report for employment purposes to provide the consumer with *a clear and conspicuous disclosure* in writing before procuring the report *in a document that consists solely of the disclosure* that (i) states that an investigative consumer report may be obtained, (ii) identifies the permissible purpose for the report, (iii) states that the report may include information on the consumer's character, general reputation, personal

characteristics, and mode of living, (iv) identifies the name, address, and telephone number of the investigative consumer reporting agency conducting the investigation, (v) notifies the consumer of the nature and scope of the investigation requested, including a summary of the provisions of Cal. Civ. Code § 1786.22, and (vi) notifies the consumer of the internet website address of the investigative consumer reporting agency that prepared the report or, if the agency has no internet website address, the telephone number of the agency, where the consumer may find information about the investigative reporting 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 Cal. Civ. Code § 1786.20.

22. Even with its myriad of forms, KAG failed to provide Ballard and other California applicants with these specific disclosures. KAG does not identify the investigative consumer reporting agency that actually prepared the report, nor does KAG provide its internet website where consumer can obtain more information. KAG's overloaded general "Disclosure and Release" Form instead contains confusing and misleading information related to "consumer credit reports" and "investigative consumer credit reports" without providing all the statutorily required disclosures. Because KAG fails to provide the ICRAA-specific notices in a clear and conspicuous standalone disclosure, KAG has violated the ICRAA and had no lawful right to obtain applicants' investigative consumer reports.

23. Furthermore, KAG denied employment to Ballard and other California applicants when an investigative consumer report was obtained without lawfully advising them and without supplying the name and address of the investigative consumer reporting agency making the report.

24. At all relevant times, and despite being made aware of its obligations under the FCRA and ICRAA by the CRAs and investigative consumer reporting agencies ("ICRAs") that

KAG contracts with, KAG's conduct was intentional, willful, and in reckless disregard of federal and state laws and the rights of Ballard and the other putative class members.

ALLEGATIONS AS TO COMMON QUESTIONS

25. Among other things, the FCRA regulates the collection, maintenance, and disclosure of consumer report information by CRAs, including public record information.

26. The FCRA also mandates conditions, procedures, and limitations on the use of consumer reports for employment purposes by prospective employers and other individuals.

27. During the Class Period, KAG purchased consumer reports regarding job applicants, which were used as a basis for evaluating and taking adverse employment action against said applicants.

28. For applicants applying remotely for positions regulated by the Department of Transportation (i.e., commercial truck drivers), the FCRA mandates that an employer, before procuring a consumer report, first advise the applicant orally, in writing, or by electronic means of his or her right to a free copy of the report within 60 days, and his or her right to dispute the accuracy or completeness of the report directly with the consumer reporting agency. 15 U.S.C. § 1681b(b)(2)(B).

29. Only after the consumer has received this notice and provided lawful consent may an employer properly procure such reports.

30. By providing conflicting and misleading information in its application materials, KAG does not properly provide these disclosures and does not obtain valid authorization before procuring consumer reports as required by 15 U.S.C. § 1681b(b)(2)(B).

31. And for remote truck driving applicants like Ballard, KAG does not provide the adverse action notices required by 15 U.S.C. § 1681b(b)(3)(B), leaving the applicant without any

knowledge of the real reason for the denial and without any means to address the information included in his consumer report.

32. The mandatory rights afforded under § 1681b(b)(3)(B) take on added importance given the Equal Employment Opportunity Commission's increased focus on the potential discriminatory effects caused by the use of consumer reports for employment purposes.

33. KAG's failure to comply with 15 U.S.C. §§ 1681b(b)(2)(B) and (3)(B) was systemic. More specifically, KAG adopted a uniform policy and procedure to suppress an applicant's FCRA rights and conceal the basis for denying employment when the adverse decision was based on a consumer report.

34. KAG's violations of the FCRA have been willful, wanton, and reckless as KAG knowingly or recklessly disregarded its statutory duty to comply with the requirements of the FCRA.

35. Indeed, the FCRA's requirements have been the subject of many federal circuit court decisions and have been described in several widely publicized interpretative decisions by the Federal Trade Commission.

36. Further, KAG's contracts with its chosen CRAs explicitly set forth the FCRA's disclosure requirements and require KAG to certify that the company will comply with these federal laws.

37. KAG knowingly or recklessly failed to avail itself of these and other easily accessible resources, and instead, willfully violated the requirements of the FCRA.

38. The FCRA permits a consumer to recover statutory and punitive damages, along with attorney fees and costs, for willful violations. 15 U.S.C. § 1681n(a).

39. California's ICRAA similarly prescribes the conditions, procedures, and limitations on the use of investigative consumer reports for employment purposes by prospective employers and other individuals.

40. During the relevant time period, KAG purchased investigative consumer reports on job applicants, which KAG used as a basis for evaluating them for employment and taking adverse employment action against them.

41. ICRAA requires anyone procuring an investigative consumer report for employment purposes to provide a clear and conspicuous standalone disclosure in writing that includes statutorily required information and to obtain the consumer's written authorization before procuring the report.

42. KAG systematically violated ICRAA by failing to provide clear and conspicuous standalone disclosures to job applicants such as Ballard. KAG's standardized "Disclosure and Release" forms are a tangle of extraneous information, much of it confusing and contradictory, that does not include the statutorily required information. As a result, applicants do not properly authorize the procurement of such reports.

43. Moreover, KAG is required to advise applicants when it takes adverse action under circumstances where an investigative consumer report is procured, but KAG fails to do so and instead conceals the basis for the denial of employment.

44. KAG's violations of the ICRAA were grossly negligent or willful. The statutory mandates are clear from the plain language of the statute, judicial opinions pre-dating KAG's conduct, and, upon information and belief, KAG's communications with ICRAAs, to whom KAG was required to certify compliance with its obligations under ICRAA. *See* Cal. Civ. Code § 1786.16(a)(4).

45. The ICRAA permits a consumer to seek actual and statutory damages, along with attorney's fees and costs, for violations of the law, and punitive damages for grossly negligent or willful violations.

CLASS ACTION ALLEGATIONS

46. Pursuant to Fed. R. Civ. P. 23, Ballard brings this action on behalf of the following class and subclasses:

Nationwide Disclosure Class

All persons residing in the United States who applied for a position with KAG described by 15 U.S.C. § 1681b(b)(2)(C), within the five years immediately preceding the filing of this lawsuit and continuing through the date of class certification, and on whom KAG procured one or more consumer reports.

California Disclosure Subclass

All persons residing in California who applied for employment with KAG within the longest possible applicable limitations period and on whom KAG procured one or more investigative consumer reports.

Nationwide Adverse Action Subclass

All persons residing in the United States who applied for a position with KAG described by 15 U.S.C. § 1681b(b)(2)(C), within the five years immediately preceding the filing of this lawsuit and continuing through the date of class certification, and against whom KAG took adverse employment action based in whole or in part on information contained in a consumer report.

California Adverse Action Subclass

All persons residing in California who applied for employment with KAG within the longest applicable limitations period and against whom KAG took adverse employment action based in whole or in part on information contained in an investigative consumer report.

47. **Numerosity.** Ballard alleges that the Class and Subclass members are so numerous that joinder of all members is impracticable. KAG is "North America's largest tank truck transporter and logistics provider" and "operates out of approximately 300 terminal and satellite

locations throughout North America.” See <https://www.thekag.com/about-us/> (last visited March 2, 2020). On information and belief, the class and subclasses collectively exceed 10,000 members. The names and address of the Class and Subclass members are identifiable through documents maintained by KAG and its chosen CRAs or ICRAAs, and class members may be notified of the pendency of this action by published and/or mailed notice.

48. Existence and Predominance of Common Questions of Law and Fact.

Common questions of law and fact exist as to all class members and predominate over any questions solely affecting individual class members including, *inter alia*:

- a. Whether KAG’s online application materials violated the FCRA by failing to provide the consumer with all requisite disclosures under 15 U.S.C. § 1681b(b)(2)(B);
- b. Whether KAG violated 15 U.S.C. § 1681b(b)(2)(B)(ii) by failing to obtain valid consent from the consumer before procuring a consumer report for employment purposes;
- c. Whether KAG, within three business days of taking adverse action, provided notification to applicants that adverse action had been taken based in whole or in part on a consumer report;
- d. Whether KAG, within three business days of taking adverse action, provided notification to applicants of the name, address, and telephone number of the consumer reporting agency that furnished the consumer report relied on to take adverse action;
- e. Whether KAG, within three business days of taking adverse action, provided notification to applicants of their right to request a free copy of the consumer report and to dispute with the consumer reporting agency the accuracy and completeness of any information contained in the consumer report;
- f. Whether KAG’s failure to comply with the FCRA was willful as to Ballard and the class members.
- g. Whether KAG violated ICRAA by failing to provide applicants with a clear and conspicuous standalone disclosure in writing containing the information required under Cal. Civ. Code § 1786.16(a)(2)(B) before procuring investigative consumer reports for employment purposes;

- h. Whether KAG violated Cal. Civ. Code § 1786.16(a)(2)(C) by failing to obtain valid authorizations from consumers before procuring investigative consumer reports for employment purposes;
- i. Whether KAG violated ICRAA by denying applicants employment under circumstances in which investigative consumer reports were obtained without so advising applicants and without providing applicants with the name and address of the investigative consumer reporting agency making the report; and
- j. Whether KAG's failure to comply with the ICRAA was grossly negligent or willful as to Ballard and the California class members.

49. **Typicality.** Ballard's claims are typical of the claims of the other class members as all class members were similarly affected by KAG's unlawful conduct in violation of the FCRA and ICRAA. On information and belief, KAG's employment application materials are standardized and used for all remote applicants during the Class Period. Additionally, it is KAG's standard hiring practice to obtain and rely on consumer reports and investigative consumer reports for employment purposes and to refuse to advise rejected applicants that the adverse employment action was based in whole or in part on a consumer report. Ballard is entitled to the same relief under the same causes of action as the other members of the Class and Subclasses.

50. **Adequacy.** Ballard will fairly and adequately protect the interest of the class members and has retained counsel competent and experienced in handling actions involving unlawful practices against consumers as well as complex class-action litigation. Ballard is a member of the Class and Subclasses, and neither Ballard nor his counsel have any interest antagonistic to or in conflict with the members of the Class and Subclasses he seeks to represent. Ballard is aware of his responsibilities to the putative class and has accepted such responsibilities.

51. Certification of the Class and Subclasses under Fed. R. Civ. P. 23(b)(3) is also appropriate in that:

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- a. As alleged above, the questions of law and fact common to the members of the classes predominate over any questions affecting an individual member. Each of the common facts and legal questions in the case overwhelm any modest individual issues. The statutory and punitive damages sought by each member are such that individual prosecution would prove burdensome and expensive given the complex and extensive litigation necessitated by KAG's conduct. Further, those individual issues that do exist can be effectively streamlined and resolved in a manner that minimizes the individual complexities and differences in proof in this case.
- b. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Consumer claims generally are ideal for class treatment as they involve many, if not most, consumers who are otherwise disempowered and unable to afford and bring such claims individually. Further, most consumers whom KAG refused to hire or whose employment KAG terminated based on a consumer report or investigative consumer report without complying with the requirements of the FCRA or ICRAA are likely unaware of their rights under the law or of who they could find to represent them in federal litigation. Individual litigation of the uniform issues in this case would be a waste of judicial resources as well. The issues at the core of this case are class wide and should be resolved at one time.

COUNT ONE: VIOLATION OF 15 U.S.C. § 1681b(b)(2)(B)
CLASS CLAIM

52. Ballard restates each of the allegations in the preceding paragraphs as if set forth at length herein.

53. The deprivation of statutorily mandated disclosures constitutes an informational injury recognized by the United States Supreme Court, for which Ballard and the Nationwide Disclosure Class Members have standing to sue.

54. KAG willfully violated 15 U.S.C. § 1681b(b)(2)(B) by failing to tell Ballard and the other class members in writing, verbally, or electronically not only that the company intended to obtain his consumer report, but also that he specifically had the right to request a *free* copy of the report *within 60 days* and could dispute any inaccurate or misleading information directly with the consumer reporting agency.

55. KAG also violated 15 U.S.C. § 1681b(b)(2)(B) by failing to obtain proper authorization from Ballard and the other class members prior to procuring a consumer report.

56. KAG's unlawful invasion of privacy is also an injury for which Ballard and the other class members have standing to sue.

57. Ballard and the Nationwide Disclosure Class seek statutory and punitive damages and attorney fees and costs pursuant to 15 U.S.C. § 1681n.

58. Alternatively, KAG's conduct was negligent under 15 U.S.C. § 1681o, and Ballard and the Nationwide Disclosure Class seek issue certification of such negligence under Fed. R. Civ. P. 23(c)(4).

COUNT TWO – VIOLATION OF 15 U.S.C. § 1681b(b)(3)(B)
CLASS CLAIM

59. Ballard restates each of the allegations in the preceding paragraphs as if set forth at length herein.

60. The deprivation of statutorily mandated notices constitutes an informational injury recognized by the United States Supreme Court, for which Ballard and the Nationwide Adverse Action Subclass Members have standing to sue.

61. KAG willfully violated 15 U.S.C. § 1681b(b)(3)(B) by taking adverse action against remote applicants based in whole or in part upon consumer reports without providing verbal, electronic, or written notice to such applicants within three business days of taking the adverse action (i) that adverse has been taken based in whole or in part on the consumer report, (ii) the name, address and telephone number of the consumer reporting agency, (iii) that the consumer reporting agency did not make the decision to take adverse action and is unable to provide the consumer with specific reasons why the adverse action was taken, and (iv) that the consumer may request a free copy of the report and may dispute with the consumer reporting

agency the accuracy or completeness of the report.

62. Instead, KAG willfully concealed from applicants the actual reason for their denial or termination of employment.

63. Ballard and the Nationwide Adverse Action Subclass seek statutory and punitive damages and attorney fees and costs pursuant to 15 U.S.C. § 1681n.

64. Alternatively, KAG's conduct was negligent under 15 U.S.C. § 1681o, and Ballard and the Nationwide Disclosure Class seek issue certification of such negligence under Fed. R. Civ. P. 23(c)(4).

COUNT THREE – VIOLATION OF CALIFORNIA CIVIL CODE § 1786.16
CLASS CLAIM

65. Ballard restates each of the allegations in the preceding paragraphs as if set forth at length herein.

66. The deprivation of statutorily mandated disclosures constitutes an informational injury recognized by the United States Supreme Court, for which Ballard and the California Disclosure Subclass Members have standing to sue.

67. KAG violated Cal. Civ. Code § 1786.16(a)(2)(B) by failing to provide Ballard and other California Disclosure Subclass Members with a clear and conspicuous disclosure in writing before procuring an investigative consumer report in a document that consists solely of the disclosure that (i) states that an investigative consumer report may be obtained, (ii) identifies the permissible purpose for the report, (iii) states that the report may include information on the consumer's character, general reputation, personal characteristics, and mode of living, (iv) identifies the name, address, and telephone number of the investigative consumer reporting agency conducting the investigation, (v) notifies the consumer of the nature and scope of the investigation requested, including a summary of the provisions of Cal. Civ. Code § 1786.22, and (vi) and notifies

the consumer of the internet website address of the investigative consumer reporting agency that prepared the report or, if the agency has no internet website address, the telephone number of the agency, where the consumer may find information about the investigative reporting 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 Cal. Civ. Code § 1786.20.

68. In particular, KAG lists eight investigative consumer reporting agencies that KAG states that it "presently" uses to procure investigative consumer reports, though KAG does not procure reports on applicants from each entity listed and does not disclose to applicants the specific investigative consumer reporting agency used to procure their reports. Moreover, KAG's disclosure does not notify applicants of the internet website of the investigative consumer reporting agency where consumers can find the information required to be provided under Cal. Civ. Code § 1786.20(d).

69. KAG also violated Cal. Civ. Code § 1786.16(a)(2)(C) by failing to obtain proper authorization in writing from Ballard and the other California Disclosure Subclass Members prior to procuring investigative consumer reports on them.

70. KAG's unlawful invasion of privacy is also an injury for which Ballard and the other California Disclosure Subclass Members have standing to sue.

71. Ballard, on behalf of himself and all California Disclosure Subclass Members, seeks all available remedies pursuant to Cal. Civ. Code § 1786.50, including actual damages, statutory damages, punitive damages, injunctive and equitable relief, and attorney's fees and costs.

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COUNT FOUR – VIOLATION OF CALIFORNIA CIVIL CODE § 1786.40
CLASS CLAIM

72. Ballard restates each of the allegations in the preceding paragraphs as if set forth at length herein.

73. The deprivation of statutorily mandated notices constitutes an informational injury recognized by the United States Supreme Court, for which Ballard and the California Adverse Action Subclass Members have standing to sue.

74. KAG violated Cal. Civ. Code § 1786.40 by denying employment to Ballard and other California Adverse Action Subclass Members under circumstances in which an investigative consumer report was obtained but without so advising these applicants and without supplying the name and address of the investigative consumer reporting agency making the report.

75. Instead, as alleged above, KAG willfully concealed from applicants the actual reason for their denial of employment.

76. Ballard, on behalf of himself and all California Adverse Action Subclass Members, seeks all available remedies pursuant to Cal. Civ. Code § 1786.50, including actual damages, statutory damages, punitive damages, injunctive and equitable relief, and attorney's fees and costs.

COUNT FIVE – VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS CODE §§ 17200, *et seq.*
CLASS CLAIM

77. Ballard restates each of the allegations in the preceding paragraphs as if set forth at length herein.

78. California's Unfair Competition Law ("UCL"), California Bus. & Prof. Code §§ 17200, *et seq.*, protects both consumers and competitors by promoting fair competition in commercial markets for goods and services. The UCL prohibits any unlawful, unfair, or fraudulent business act or practice. A business practice need only meet one of the three criteria to be

considered unfair competition. An unlawful business practice is anything that can properly be called a business practice and that at the same time is forbidden by law.

79. KAG violated the unlawful prong of the UCL with regard to California Disclosure and Adverse Action Subclass Members in that KAG's conduct violated numerous provisions of the FCRA and ICRAA, as alleged above.

80. KAG also violated the unfair prong of the UCL. KAG gained an unfair business advantage over competitors by failing to comply with state and federal mandates in conducting background checks and by failing to take the necessary steps to adhere to the FCRA and ICRAA. Further, any utility for KAG's conduct is outweighed by the gravity of the consequences to Ballard and California Disclosure and Adverse Action Subclass Members because the conduct offends public policy. As alleged above, KAG violated the privacy and informational rights of Ballard and other California applicants by not providing the required disclosures and notices relating to procuring consumer reports or investigative consumer reports for employment purposes and taking adverse action, and by not obtaining proper consent. As a result, Ballard and other California applicants lost out on employment opportunities or were denied employment, thereby also diminishing their employment prospects.

81. Finally, KAG violated the fraudulent prong of the UCL by willfully or recklessly obscuring its intent to procure consumer reports and investigative consumer reports for employment purposes, confusing or misleading consumers about their rights, and concealing the basis for the denial of employment.

82. As a result of KAG's conduct and its willful, reckless, and/or grossly negligent violations of California Business & Professions Code § 17203, KAG and California Disclosure and Adverse Action Subclass Members have lost money and suffered harm as described herein.

83. Pursuant to California Business & Professions Code § 17203, Ballard seeks an order enjoining KAG from continuing to engage in the unfair and unlawful conduct described herein.

WHEREFORE, Dwayne Ballard and the putative class and subclasses respectfully pray for the following relief:

- A. An order certifying the proposed class and subclasses herein pursuant to Fed. R. Civ. P. 23(b)(3) and appointing the undersigned counsel to represent same;
- B. An order declaring that KAG's actions as described above violate the FCRA and ICRAA;
- C. Judgment against KAG for statutory damages in an amount of not less than \$100.00 and not more than \$1,000.00 per violation per class member, pursuant to 15 U.S.C. § 1681n(a);
- D. Judgment against KAG for punitive damages pursuant to 15 U.S.C. § 1681n(a)(2) and Cal. Civ. Code § 1786.50(b);
- E. Alternatively, an order certifying the issue of KAG's conduct as negligent pursuant to Fed. R. Civ. P. 23(c)(4);
- F. Pursuant to Fed. R. Civ. P. 23(c)(4), an order certifying the issue of whether KAG's conduct violates ICRAA;
- G. An award of appropriate equitable relief, including but not limited to an injunction forbidding KAG from engaging in further unlawful conduct in violation of the ICRAA and UCL;
- H. Pre- and post-judgment interest as appropriate; and

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- I. Costs and reasonable attorney fees pursuant to 15 U.S.C. § 1681n and Cal. Civ. Code § 1786.50, or pursuant to § 1681o in the event the Court certifies KAG's conduct as negligent under Fed. R. Civ. P. 23(c)(4).

Respectfully submitted,

O'TOOLE, McLAUGHLIN, DOOLEY
& PECORA CO., LPA.

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**Pro hac vice applications to be filed*

*Counsel for Dwayne Ballard and the putative
classes*

JURY DEMAND

Plaintiff Dwayne Ballard and the putative class members demand a trial by a jury as to all issues presented herein.

By: /s/ Matthew A. Dooley

EXHIBIT A



DISCLOSURE AND RELEASE

KENAN ADVANTAGE GROUP, INC. (the "Company"), through an outside agency, will conduct an investigation of your background, including all or some of the following: your criminal conviction history, consumer credit history, driving/motor vehicle history, employment history, military service, civil litigation history, educational background and achievement history, character, general reputation, personal characteristics and mode of living. This information will be collected from a variety of sources, including individuals such as your current and former employers, co-workers, managers and supervisors; personal and professional references; corporations, partnerships, associations, institutions, schools, governmental agencies and departments; courts, law enforcement and licensing agencies; consumer reporting agencies and other entities and persons who may have such information about you.

This information, once collected and compiled, will constitute a "consumer credit report" and/or an "investigative consumer credit report" under applicable law. The outside agency the Company presently uses to collect and compile such information (the "Agency") is:

AISS, a Sterling Infosystems Company, 6111 Oak Tree Blvd., Independence, Ohio 44131

IIX, 1716 Briarcrest, Suite 200, Bryan, TX 77802, (866) 560-7015

HireRight 14002 E. 21st Street, Suite 1200, Tulsa, OK 74134, (866) 521-6995

American Driving Records, Inc. 2860 Gold Tailings Court, Rancho Cordova, CA 95670

Sterling InfoSystems dba Sterling Talent Solutions, 6111 Oak Tree Blvd. Independence, OH 44131, (888) 889-5248

Equifax Verification Services (the Work Number), 11432 Lackland, St. Louis, MO 63146, (866) 604-6570

SambaSafety, 8814 Horizon Boulevard NE, Suite 100, Albuquerque, NM 87113, (888) 947-2622

DriverFacts, 5051 E. Orangethorpe Ave. Suite E265, Anaheim, CA 92807, (888) 844-4730

This information and resulting report(s) will be delivered to and used by the Company for "employment purposes," specifically, for evaluating you for employment with the Company and, if hired by the Company, for later promotion, reassignment, retention or termination of employment. Upon your request, after a "consumer credit report" and/or an "investigative consumer credit report" is prepared and provided by the Agency, the Agency is required to make available to you the files and the information (with some legal exceptions) that it maintains on you. You may have access to such files and information (with some legal exceptions) during normal business hours and after reasonable advance notice, as follows:

- (1) In person, if you appear in person and furnish proper identification. A copy of your file also will be made available to you for a fee that will not exceed the actual costs of duplication services provided.
- (2) By certified mail, if you make a written request, with proper identification, for copies to be sent to a specified addressee. Note that compliance with such a request by the Agency will shield the Agency from liability in the event that your files are disclosed to unauthorized third parties as a result of the mishandling of such mail after the Agency has been deposited such mail with the U.S. Postal Service.
- (3) A summary of information contained in files on you (with some legal exceptions) will be provided to you by telephone, if you have made a written request, with proper identification for a telephone summary, and the toll charge (if any) for the telephone call is prepaid by you or charged directly to you.

You may be accompanied by one other person of your choosing, provided that such person furnishes reasonable identification to the Agency and, if

requested, you give the Agency written permission to discuss/disclose the files and information it maintains on you in such person's presence. "Proper identification" means information generally deemed sufficient to identify a person such as a valid driver's license, social security account number, military identification card and credit cards. The Agency can require additional information from you concerning your employment and personal or family history in order to verify your identity only if you are unable to reasonably identify yourself from a valid driver's license, social security account number, military identification card and credit cards. The Agency will provide trained personnel to explain information it provides to you, and will provide a written explanation of any coded information contained in the files it maintains on you if such files are provided to you for your visual inspection.

Employer / Contractor / Educational Institution:
Flower Perfect

Printed Name:
Dwayne Ballard, Jr.

Social Security #:

Signed Date: 09-27-2017



Dwayne Ballard, Jr.
6900 Langdon Ave.
Van Nuys, CA 91406
818-430-7049
Gender: