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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 **CARLA FLANNERY, on behalf of**
14 **herself and all others similarly**
15 **situated,**

16 **Plaintiff,**

17 **-against-**

18 **AMERICAN EXPRESS COMPANY,**

19 **Defendant.**

Civil Case No.:

20 **CIVIL ACTION**

21 **CLASS ACTION COMPLAINT**

- 22 (1) Violations of the Fair Credit
23 Reporting Act, 15 U.S.C. § 1681q;
24 (2) Violations of the Fair Credit
25 Reporting Act, 15 U.S.C. § 1681b(f);
26 (3) Violations of Cal. Civ. Code §
27 1785.19;
28 (4) Violations of Cal. Civ. Code §
1785.31;
(5) Violations of the California
Unfair Competition Law (Business
and Professional Code § 17200, et
seq.)

JURY TRIAL DEMANDED

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

7
8 **INTRODUCTION**
9

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

16
17 2. Specifically, American Express falsely represents to prospective
18 customers that it will only do a soft inquiry into the prospective customer’s credit,
19 and will not do a hard inquiry unless the prospective customer’s credit application
20 is approved and the offered product is accepted. American Express further
21 represents that the inquiry American Express will do will not affect the prospective
22 borrower’s credit score. In reality, American Express does a hard credit pull that
23 adversely affects the potential borrower’s credit score, even when the prospective
24 customer’s credit application is denied.
25
26
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1 3. American Express's misleading conduct violates federal and
2 California law.

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

7
8 **PARTIES**

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

11
12 6. Defendant American Express is a corporation incorporated in the State
13 of New York, with its principal offices located at 200 Vesey Street, New York, NY
14 10285.

15
16 **JURISDICTION AND VENUE**

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

21
22 8. Jurisdiction is also proper pursuant to 28 U.S.C. § 1332(d)(2) as at
23 least one member of the putative class and Defendant are citizens of different states
24 and the amount in controversy exceeds \$5,000,000.
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1 9. Venue is proper in this Court because Defendant regularly does
2 business in this District and a substantial part of the events or omissions giving rise
3 to this claim occurred in this District.
4

5 **THE FCRA'S PRIVACY PROTECTIONS**

6 10. Congress enacted the FCRA in 1970 to ensure fair and accurate credit
7 reporting, promote efficiency in the banking system, and protect consumer privacy.
8

9 11. In order to protect consumer privacy, the FCRA prohibits users
10 from obtaining consumer reports unless the user has a permissible purpose for
11 procuring the report, as defined in the statute. Specifically, the FCRA, 15 U.S.C. §
12 1681b(f), provides:
13

14
15 A person shall not use or obtain a consumer report for any purpose
16 unless (1) the consumer report is obtained for a purpose for which the
17 consumer report is authorized to be furnished under this section; and
18 (2) the purpose is certified in accordance with section 1681e of this
19 title by a prospective user of the report through a general or specific
20 certification.

21 12. The FCRA also prohibits users from obtaining “information on a
22 consumer from a consumer reporting agency under false pretenses.” 15 U.S.C. §
23 1681q.

24 13. Similarly, the CCRAA prohibits users who lack a permissible purpose
25 from “knowingly and willfully obtain[ing] access to a file” or “knowingly and
26 willfully obtain[ing] data from a file.” Cal. Civil Code § 1785.19. The statute also
27
28

1 prevents credit reports from being obtained under false pretenses. Cal. Civil Code
2 § 1785.31(a)(3).

3
4 14. One permissible purpose for obtaining a credit report is for use in
5 connection with a credit transaction involving a consumer. See 15 U.S.C. §
6 1681a(3)(A).

7
8 15. However, in order to balance consumer privacy against the public
9 interest in creditors being able to make intelligent offers to extend credit, the FCRA
10 differentiates between credit reports that are obtained for the purpose of being used
11 in a credit transaction that was initiated by the consumer and credit reports that are
12 obtained for the purpose of being used in a credit transaction where the credit
13 transaction was not initiated by the consumer.
14

15
16 16. One example of a situation where an entity might procure a credit
17 report in connection with a credit transaction not initiated by the consumer is in a
18 situation where the entity procuring the report intends to make a firm offer of credit
19 to the consumer. See 15 U.S.C. § 1681b(c)(1)(B).
20
21

22 17. In all circumstances relating to reports procured in connection with
23 credit transactions, if the consumer has neither initiated a transaction nor authorized
24 the provision of a full report, the entity procuring the report can see only limited
25 information about the consumer. See 15 U.S.C. §§ 1681b(a)(3)(A) and 1681b(c).
26
27
28

1 18. Specifically, pursuant to § 1681b(c) a user of consumer reports who
2 is pulling a report for the purpose of using the information in “in connection with
3 a credit transaction involving the consumer on whom the information is to be
4 furnished and involving the extension of credit to, or review or collection of an
5 account of, the consumer” in a situation where no transaction was initiated may not
6 procure an entire credit report.
7

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

- 10 (A) the name and address of a consumer;
11 (B) an identifier that is not unique to the consumer and that is used by
12 the person solely for the purpose of verifying the identity of the
13 consumer; and
14 (C) other information pertaining to a consumer that does not identify
15 the relationship or experience of the consumer with respect to a
16 particular creditor or other entity

17 15 U.S.C. § 1681b(c)(2).

18 20. Moreover, the inquiries from entities in circumstances where the
19 consumer neither initiated the transaction nor provided consent for a full report to
20 be procured cannot adversely affect a consumer’s credit score or impact the
21 consumer’s ability to procure future credit, because such inquiries are viewable
22 only by the consumer. See 15 U.S.C. § 1681b(c)(3) (“a consumer reporting agency
23 shall not furnish to any person a record of inquiries in connection with a credit or
24 insurance transaction that is not initiated by a consumer.”).
25
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1 **RECEIVING GENERAL INFORMATION ABOUT PRICES AND**
2 **PRODUCTS IS NOT INITIATING A TRANSACTION**

3
4 21. It is well established that merely inquiring about the possibility of a
5 future transaction, or shopping for rates, is insufficient to satisfy the requirement
6 of the FCRA for a creditor to initiate the kind of full credit inquiry that is allowed
7 when a consumer has initiated a transaction.
8

9 22. Over fifteen years ago, the FTC opined that a customer who “comes
10 to an automobile dealership and requests information’ from a salesman about one
11 or more automobiles” had not initiated a transaction sufficient to allow the
12 dealership to pull a credit report. FTC Letter to Coffey (Feb. 11, 1998), available
13 at <http://www.ftc.gov/policy/advisory-opinions/advisory-opinion-coffey-02-11-98>
14 (last visited May 10, 2023).
15
16

17 23. The FTC reasoned that more than a mere inquiry, or “shopping”
18 behavior, was required for a transaction to have been initiated. Specifically, the
19 FTC stated that “a request for general information about products and prices offered
20 does not involve a business transaction initiated by the consumer.” *Id.*
21
22

23 24. Instead, the FTC opined that a user “may obtain a [consumer] report
24 only in those circumstances in which the consumer clearly understands that he or
25 she is initiating the purchase or lease of a vehicle and the seller has a legitimate
26
27
28

1 business need for the consumer report information in order to complete the
2 transaction.” *Id.*

3
4 25. The FTC continued: “Only in those circumstances where it is clear
5 both to the consumer and to the dealer that the consumer is actually initiating the
6 purchase or lease of a specific vehicle and, in addition, the dealer has a legitimate
7 business need for consumer report information may the dealer obtain a report
8 without written permission.” *Id.*

9
10
11 **HARD AND SOFT CREDIT PULLS**

12 26. Colloquially speaking, inquiries related to those transactions initiated
13 by the consumer are known as “hard inquiries” or “hard pulls.” Inquiries not related
14 to transactions initiated by the consumer are known as “soft inquiries” or “soft
15 pulls.”
16

17
18 27. Hard pulls are visible to third parties who obtain a consumer credit
19 report.

20
21 28. Each hard pull can result in a reduction of a credit score by five points
22 or more.

23
24 29. Creditors often use the number of hard inquiries on a consumer’s
25 credit report as a basis to deny an extension of credit.

26
27 30. A “soft pull,” by contrast, is a credit inquiry that is not visible to
28 anyone other than the consumer, and which does not affect the consumer’s credit

1 score. Soft inquiries include inquiries made when a consumer checks his or her own
2 credit report, inquiries made by businesses with which the consumer already does
3 business, such as a mortgage servicer reviewing the status of the consumer's
4 account and, as discussed above, and inquiries made by credit card companies or
5 insurance companies to make firm offers of credit even when no *transaction* has
6 been *initiated* by a consumer. "Credit Report Q&A"
7 [https://www.myfico.com/credit-education/credit-reports/credit-checks-and-](https://www.myfico.com/credit-education/credit-reports/credit-checks-and-inquiries)
8 inquiries (last visited May 10, 2023).
9
10
11

12 31. A soft pull inquiry is not visible to other users and does not affect a
13 consumer's credit score. *See* "Hard and Soft Credit Inquiries, and How One Hurts
14 Your Credit Score." (Dec. 6, 2008) [http://consumerist.com/2008/12/06/hard-and-](http://consumerist.com/2008/12/06/hard-and-soft-credit-inquiries-and-how-one-hurts-your-credit-score/)
15 [soft-credit-inquiries-and-how-one-hurts-your-credit-score/](http://consumerist.com/2008/12/06/hard-and-soft-credit-inquiries-and-how-one-hurts-your-credit-score/) (last visited May 10,
16 2023).
17
18

19 32. As described in further detail below, Defendant encouraged potential
20 customers like Plaintiff to see if they would qualify for the Defendant's offerings
21 without any inquiry or impact to their credit or their credit scores.
22

23 33. In order to encourage such shopping behavior, Defendant represented
24 that consumers could find out if they would be approved for a credit card without
25 any impact to the consumers credit score.
26
27
28

1 34. Deceitfully, and in direct contradiction to its own representations,
2 however, Defendant did a hard pull, viewing more data than it was allowed to view
3 under the law, viewing more data than it told Plaintiff it would view, and, in the
4 process, negatively affecting Plaintiff’s credit score and ability to access future
5 credit.
6

7
8 **DEFENDANT’S REPRESENTATIONS ABOUT ITS CREDIT**

9 **APPLICATION PROCESS**

10 35. American Express decided to embark on a new campaign to drum up
11 business, telling consumers consumers “New: Apply With Confidence. Know If
12 You’re Approved With No Impact To Your Credit Score.” American Express
13 explains this process on its website, explaining that “After you submit you’re
14 application, we’ll let you know if you’re approved first – without any impact to
15 your credit score.” See e.g., [https://www.americanexpress.com/us/credit-](https://www.americanexpress.com/us/credit-cards/card-application/apply/blue-cash-everyday-credit-card/28009-10-0#/)
16 [cards/card-application/apply/blue-cash-everyday-credit-card/28009-10-0#/](https://www.americanexpress.com/us/credit-cards/card-application/apply/blue-cash-everyday-credit-card/28009-10-0#/), last
17 visited on September 19, 2023.
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21

22 36. At all times relevant to this action, American Express thus has
23 affirmatively represented to prospective borrowers that American Express will not
24 perform a hard credit pull that will affect the prospective borrower’s credit score
25 before the potential borrower can first know if they would be approved or not.
26
27
28

1 37. American Express thus markets itself in part based on the fact that it
2 allows potential borrowers to see if they are eligible for a credit card without
3 completing a full hard pull credit inquiry.
4

5 38. In a news release posted on its website, American Express states that
6 “We know that consumers value transparency and certainty” and that “With our
7 new application experience, prospective Card Members can apply for a specific
8 Card — and know if they are approved — without having to worry about whether
9 their application will change their credit score until they accept the Card. We hope
10 this new, more transparent application experience encourages anyone with an
11 interest in American Express membership to apply.”
12
13

14 [https://about.americanexpress.com/newsroom/press-releases/news-
17 details/2022/Find-Out-if-You-Are-Approved-for-an-American-Express-Personal-
18 Card-Before-Impacting-Your-Credit-Score/default.aspx](https://about.americanexpress.com/newsroom/press-releases/news-
15 details/2022/Find-Out-if-You-Are-Approved-for-an-American-Express-Personal-
16 Card-Before-Impacting-Your-Credit-Score/default.aspx) (last visited September
19 19, 2023).

20 39. American Express claims that it will only perform a hard credit after
21 the potential customer has been confirmed as approved and elects to accept the
22 offered card: “Consumers who are interested in applying for a U.S. Personal
23 American Express Card can visit [AmericanExpress.com/us/credit-card](https://www.americanexpress.com/us/credit-card) to see Card
24 offers. Upon applying for a chosen Card, a soft inquiry will be made on an
25 applicant’s credit report and applicants will be told with 100% certainty if they are
26
27
28

1 approved – without any impact to their credit score. **If** the approved applicant then
2 **accepts** the Card, a hard inquiry will be made on their credit report, which may
3 impact their credit score.” *See id.*
4

5 40. Despite its representations that it will only do a hard pull if a customer
6 is approved for the credit card and only after the customer agrees to accept the card,
7 in order to gain as much information about consumers as possible, American
8 Express actually does a hard pull full credit inquiry before any application has been
9 made.
10

11
12 41. American Express thus does a full credit inquiry without the
13 consumer's consent, because, at most, the consumer has only consented to a soft
14 pull inquiry, which will not affect the consumer's credit score.
15

16 42. American Express further lacks a legitimate business purpose for
17 performing a full credit inquiry, because it affirmatively represented to consumers
18 that they could ascertain their eligibility without a hard credit pull, and that
19 American Express would only perform a hard credit pull if the consumer actually
20 qualified for the credit card and elected to accept it.
21

22
23 43. In adopting these practices, American Express obtains more
24 information than it told the consumer it would obtain, thereby falsely inducing
25 consumers to provide American Express with the personally identifying
26 information American Express needed in order to do the pull in the first instance.
27
28

1 44. In putting its business interests ahead of consumers' rights to privacy
2 and to protect their credit scores, American Express thus breaks the law and violates
3 the rights of consumers.
4

5 **PLAINTIFF FLANNERY’S EXPERIENCE WITH DEFENDANT**

6 45. In September of 2022, Plaintiff began to shop around for a suitable
7 credit card.
8

9 46. Plaintiff then came across American Express “Apply With
10 Confidence” program and elected to see if she would be qualified for an American
11 Express card with no impact to her credit score.
12

13 47. On or around September 22, 2022, Plaintiff filled in the information
14 requested by American Express.
15

16 48. On or about September 30, 2022, Plaintiff then received a letter from
17 American Express, telling her that she was being denied the requested credit card
18 based on information American Express had obtained from Experian.
19

20 49. Plaintiff was then shocked, annoyed and frustrated to find out that
21 American Express was now reporting a September 22, 2022 hard inquiry on her
22 Experian and Transunion credit reports, which lowered her credit scores, in direct
23 contravention of American Express’s assurances.
24
25

26 50. On September 27, 2022, Plaintiff then filed a complaint with the
27 CFPB regarding this issue.
28

1 51. On October 12, 2022, American Express then wrote a letter to the
2 Plaintiff, which admitted that “We received your online application for the Blue
3 Cash Everyday® Card on September 30, 2022¹ and determined that this application
4 was submitted via the ‘No credit score impact until applicant accepts’ journey” and
5 that “We found in our review that an inquiry was generated when you submitted
6 the application. Rest assured feedback was issued to the appropriate team, and we
7 have taken the necessary steps to suppress the inquiry related to this application
8 from your credit report.”
9

10
11
12 52. However, this saga did not end there **because this inquiry was never**
13 **removed**, as American Express promised it would. Instead, as of Plaintiff’s recent
14 August 2023 credit reports from both Experian and Transunion, that inquiry still
15 remains.
16

17
18 53. In an effort to get this inquiry off of her credit reports, Plaintiff then
19 submitted four separate credit disputes to the credit bureaus (Experian and
20 Transunion), all to no avail. Instead, this inquiry continues to remain on the
21 Plaintiff’s credit reports.
22

23 54. To this date, American Express has refused to remove the hard inquiry
24 from Plaintiff’s credit reports.
25
26

27
28 ¹ As stated above, the application was submitted on September 22, 202 – the date the inquiry appears on the Plaintiff’s credit reports. This September 30, 2022 date is an apparent error, and appears correlated to the date that American Express issued the credit denial letter.

1 55. American Express continues to misleadingly represent to customers
2 that they are able to shop for rates without impacting their credit.

3
4 56. Plaintiff's credit score has decreased as a result of American Express's
5 unauthorized hard inquiry into Plaintiff's credit.

6 57. Plaintiff has refrained from applying for other loans and rates because
7 she is concerned that those lenders will see her reduced credit score.
8

9 58. Plaintiff has suffered emotional distress as a result of American
10 Express's unauthorized and deceitful hard inquiry and the continued effect of
11 American Express's hard pull on her credit score is a constant source of stress,
12 worry, and frustration for Plaintiff.
13
14

15 **DEFENDANT'S CONDUCT WAS WILLFUL**

16 59. Defendant acted knowingly and willfully.
17

18 60. The FCRA was enacted in 1970; Defendant has had over 40 years to
19 become compliant.

20 61. Defendant violated a clear statutory mandate set forth in 15 U.S.C §
21 1681q and 1681b.
22

23 62. Defendant knew the difference between a hard credit inquiry and a
24 soft credit inquiry, and knew that a hard pull would require express consent from
25 Plaintiff.
26
27
28

1 63. Defendant knew that a hard credit inquiry reduces a consumer's credit
2 score and that consumers would be hesitant to apply for a credit card on Defendant's
3 website if the consumers believed taking such a step might lead to a hard inquiry
4 and thereby affect their credit scores.
5

6 64. Defendant and/or its agents falsely represented to prospective
7 customers that it would not do a hard inquiry in order to induce such prospective
8 customers to begin the application process.
9

10 65. In sharp contrast to the kind of clearly initiated transaction described
11 by the FTC in *Coffey* described above, American Express's business model is
12 intentionally designed to mislead the consumer about what American Express will
13 do in response to the customer seeing if they qualified for an American Express
14 credit card.
15
16

17 66. Defendant knows that a hard credit pull will decrease a borrower's
18 credit score.
19

20 67. Defendant also knows, however, that consumers are very concerned
21 about protecting their credit scores, and therefore entices consumers to apply for
22 credit products by falsely representing that the borrower can explore their eligibility
23 without authorizing a hard credit pull.
24
25

26 68. Yet, without respect to its representations, American Express pulls full
27 hard credit reports on consumers who choose only to see if they would qualify for
28

1 a credit card, but do not qualify or who do not accept American Express's offered
2 product.

3
4 69. Despite the pellucid statutory text and there being a depth of guidance,
5 Defendant systematically procured consumer information without consent and
6 under the false pretense that it would not affect consumers' credit scores.

7
8 70. By adopting such a policy of making such misleading representations,
9 Defendant voluntarily ran the risk of violating the law substantially greater than
10 any risk associated with a statutory reading that was merely careless.

11
12 71. By making hard inquiries into the credit reports of Plaintiff and the
13 class members without consent, Defendant has damaged these borrowers' credit
14 scores and creditworthiness.

15
16 **CLASS ACTION ALLEGATIONS**

17
18 72. Plaintiff asserts her claims individually and behalf of all others
19 similarly situated under Fed. R. Civ. P. Rule 23(b)(3) as follows:

20
21 All individuals on whom (a) Defendant made a hard
22 credit inquiry in the two years predating the filing of this
23 complaint and continuing through the date of class
24 certification, (b) where Defendant's records reflect that
25 the individual applied for an American Express product
26 via a "No credit score impact until applicant accepts
27 journey", and (c) where the individual was not
28 subsequently approved for an American Express product,
or did not accept the American Express product that was
offered after their application.

1 73. Plaintiff reserves the right to amend the definition of the Class based
2 on discovery or legal developments.

3
4 74. Specifically excluded from the Class are: (a) all federal court judges
5 who preside over this case and their spouses; (b) all persons who elect to exclude
6 themselves from the Class; and (c) Defendant's employees, officers, directors,
7 agents, and representatives and their family members.
8

9 75. **Numerosity**: The Classes are so numerous that joinder of all
10 class members is impracticable. Defendant is one of the nation's largest providers
11 of mortgage financing and has done hard credit pulls on thousands of consumers
12 falling within the class definitions.
13
14

15 76. **Typicality**: Plaintiff's claims are typical of the class members' claims.
16 The FCRA, CCRAA, and UCL violations committed by Defendant were
17 committed pursuant to uniform policies and procedures, and Defendant treated
18 Plaintiff in the same manner as other class members in accordance with its standard
19 policies and practices.
20
21

22 77. **Adequacy**: Plaintiff will fairly and adequately protect the interests of
23 the Class, and has retained counsel experienced in complex class action litigation.
24

25 78. **Commonality**: Common questions of law and fact exist as to all
26 members of the Classes and predominate over any questions solely affecting
27 individual members of the Class, including without limitation:
28

- 1 a. Whether Defendant procured credit reports under false
- 2 pretenses;
- 3 b. Whether Defendant procured credit reports without a
- 4 permissible purpose under the FCRA;
- 5 c. Whether Defendant's conduct was willful under the FCRA;
- 6 d. Whether Defendant accessed or obtained data from consumer
- 7 files in violation of the CCRAA;
- 8 e. Whether Defendant's conduct was unlawful, unfair, or
- 9 fraudulent under the UCL;
- 10 f. The appropriateness and proper measure of statutory damages;
- 11 and
- 12 g. The appropriate scope of injunctive relief.
- 13
- 14
- 15
- 16
- 17

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

22
23 80. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3)
24 because questions of law and fact common to the Classes predominate over any
25 questions affecting only individual members of the Class, and because a class
26 action is superior to other available methods for the fair and efficient adjudication
27
28

1 of this litigation. Defendant's conduct described in this Complaint stems from
2 common and uniform policies and practices, resulting in common violations of the
3 FCRA and the CCRAA. Members of the Class do not have an interest in pursuing
4 separate actions against Defendant, as the amount of each class member's
5 individual claim is small compared to the expense and burden of individual
6 prosecution, and Plaintiff is unaware of any similar claims brought against
7 Defendant by any members of the Class on an individual basis. Class certification
8 also will obviate the need for unduly duplicative litigation that might result in
9 inconsistent judgments concerning Defendant's practices. Moreover, management
10 of this action as a class action will not present any likely difficulties. In the interests
11 of justice and judicial efficiency, it would be desirable to concentrate the litigation
12 of all class members' claims in a single forum.
13
14
15
16
17

18 **CAUSES OF ACTION**

19 **COUNT I: 15 U.S.C. §1681q**

20 **Obtaining Consumer Information Under False Pretenses**

- 21 81. Plaintiff repeats and realleges all preceding paragraphs.
- 22 82. Plaintiff brings this claim individually and on behalf of the Class.
- 23 83. Defendant represented to Plaintiff and the Class that it would not
24 perform a hard inquiry into Plaintiff and the Class members' credit, unless the
25 application was approved and the applicant elected to accept the offered American
26
27
28

1 Express product. Defendant further represented that the inquiry it would do would
2 not affect the Class members' credit scores. These representations were false.

3
4 84. Defendant violated the FCRA by knowingly and willfully procuring
5 information on Plaintiff and the Class members under false pretenses. *See* 15
6 U.S.C. § 1681q.

7
8 85. Defendant acted knowingly and willfully. Defendant's knowing and
9 willful conduct is reflected by, among other things:

- 10
11 a. The FCRA was enacted in 1970; Defendant has had over 40
12 years to become compliant;
- 13
14 b. Defendant violated a clear statutory mandate set forth in 15
15 U.S.C. § 1681q;
- 16
17 c. Defendant knew the difference between a hard credit inquiry
18 and a soft credit inquiry;
- 19
20 d. Defendant knew that a hard credit inquiry reduces a consumers'
21 credit score;
- 22
23 e. Defendant falsely represented to borrowers that it would only
24 do a hard credit inquiry if they qualified for the offered
25 American Express product and if they agreed to accept the
26 offered American Express product;
- 27
28

1 f. Despite the pellucid statutory text and their being a depth of
2 guidance, Defendant systematically procured consumer
3 information under false pretenses; and
4

5 g. By adopting such a policy, Defendant voluntarily ran a risk of
6 violating the law substantially greater than the risk associated
7 with a reading that was merely careless.
8

9 86. Plaintiff and the Class are entitled to actual damages, plus statutory
10 damages of not less than \$100 and not more than \$1,000 for each and every one of
11 these violations, pursuant to 15 U.S.C. § 1681n(a)(1)(A). Plaintiff and the Class
12 members are also entitled to punitive damages for these violations, pursuant to 15
13 U.S.C. § 1681n(a)(2). Plaintiff and the Class members are further entitled to
14 recover their costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).
15
16
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18

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

21 87. Plaintiff repeats and realleges all preceding paragraphs.

22 88. Plaintiff brings this claim individually and on behalf of the Class.
23

24 89. Defendant represented to Plaintiff and the Class that it would not
25 perform a hard inquiry into Plaintiff and the Class members' credit, unless the
26 application was approved and the applicant elected to accept the offered American
27
28

1 Express product. Defendant further represented that the inquiry it would do would
2 not affect the Class members' credit scores.

3
4 90. Plaintiff and members of the Class did not authorize Defendant to do
5 a hard pull of their credit reports.

6
7 91. It was an explicit term of Plaintiff and members of the Class's
8 interactions with Defendant that Defendant would not perform a hard pull of
9 Plaintiff and the Class members' credit reports, unless the application was approved
10 and the applicant elected to accept the offered American Express product.
11

12 92. Plaintiff and members of the Class did not initiate any credit
13 transaction because it was a material term of any transaction that Defendant would
14 not initiate a hard pull of Plaintiff and the Damages Class members' credit reports.
15
16 *See Scott v. Real Estate Fin. Grp.*, 183 F.3d 97, 99-100 (2d Cir. 1999).
17

18 93. In light of Defendant's representations and Plaintiff's responses
19 thereto, Defendant lacked a permissible purpose to obtain full credit reports on
20 Plaintiff and the Class.
21

22 94. Defendant violated the FCRA by willfully procuring consumer reports
23 on Plaintiff and Class members without a permissible purpose. See 15 U.S.C. §
24 1681b(f).
25

26 95. Defendant acted knowingly and willfully. Defendant's knowing and
27 willful conduct is reflected by, among other things:
28

- 1 a. The FCRA was enacted in 1970; Defendant has had over 40
- 2 years to become compliant;
- 3 b. Defendant violated a clear statutory mandate set forth in 15
- 4 U.S.C. § 1681b(f);
- 5
- 6 c. Defendant knew the difference between a hard credit inquiry
- 7 and a soft credit inquiry;
- 8
- 9 d. Defendant knew that a hard credit inquiry reduces a consumers'
- 10 credit score;
- 11
- 12 e. Defendant falsely represented to borrowers that it would only
- 13 do a hard credit inquiry if they qualified for the offered
- 14 American Express product and if they agreed to accept the
- 15 offered American Express product;
- 16
- 17 f. Defendant knew or should have known it lacked a permissible
- 18 purpose to do a hard credit pull;
- 19
- 20 g. Despite the pellucid statutory text and their being a depth of
- 21 guidance, Defendant systematically procured consumer
- 22 information without a permissible purpose; and
- 23
- 24
- 25 h. By adopting such a policy, Defendant voluntarily ran a risk of
- 26 violating the law substantially greater than the risk associated
- 27 with a reading that was merely careless.
- 28

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

9 97. Additionally, Defendant acted negligently, Plaintiff and the Class are
10 entitled to actual damages and statutory damages pursuant to 15 U.S.C. §
11 1681o(a)(1). Plaintiff and the Damages Class members are further entitled to
12 recover their costs and attorneys' fees, pursuant to 15 U.S.C. § 1681o(a)(2).
13
14

15
16 **COUNT III: Cal. Civil Code § 1785.19**
17 **Unlawfully Accessing or Obtaining Data From Consumer Files**
18

19 98. Plaintiff repeats and realleges all preceding paragraphs.

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

22 100. Defendant falsely represented to Plaintiff and the Class that it would
23 only do a hard credit inquiry if they qualified for the offered American Express
24 product and if they agreed to accept the offered American Express product.
25

26 101. Plaintiff and class members did not authorize Defendant to do a hard
27 pull of their credit reports.
28

1 102. It was an explicit term of Plaintiff and class members' interactions
2 with Defendant that Defendant would not perform a hard pull of Plaintiff and the
3 class members' credit reports.
4

5 103. Defendant lacked any permissible purpose to obtain the credit reports
6 under Cal. Civil Code § 1785.11.
7

8 104. Defendant knowingly and willfully access or obtained data from the
9 consumer files of Plaintiff and the class members in violation of Cal. Civil Code §
10 1785.19.
11

12 105. Defendant acted knowingly and willfully. Defendant's knowing
13 willful conduct is reflected by, among other things:
14

- 15 a. Cal. Civil Code § 1785.19 was enacted in 1990; Defendant has
16 had over 20 years to become compliant;
- 17 b. Defendant violated a clear statutory mandate set forth in Cal.
18 Civil Code § 1785.19;
- 19 c. Defendant knew the difference between a hard credit inquiry
20 and a soft credit inquiry;
- 21 d. Defendant knew that a hard credit inquiry reduces a consumer's
22 credit score;
- 23 e. Defendant falsely represented to prospective customers that it
24 would not do a soft credit inquiry in order to induce prospective
25
26
27
28

1 customers to begin the application process while still enabling
2 Defendant to gain access to information that would allow it to
3 calibrate its rates based on detailed information about the
4 consumer's credit history;

5
6 f. Defendant falsely represented to its prospective customers that
7 it would not do a hard credit inquiry in order to reduce its own
8 costs in connection with procuring reports;

9
10 g. Consumer complaints to Defendant put Defendant on notice
11 about it lacked a permissible purpose to do a hard credit pull;
12
13 and

14
15 h. Despite the pellucid statutory text and there being a depth of
16 guidance, Defendant systematically procured consumer
17 information without a permissible purpose.
18

19 106. Plaintiff and the Damages Class are entitled to civil penalties of not
20 more than \$2,500 for each and every one of these violations pursuant to Cal. Civil
21 Code § 1785.19. Plaintiff and the Class are further entitled to actual damages and
22 punitive damages of not less than \$100 and not more than \$5,000 for each violation.
23 Plaintiff and the Class are entitled also to injunctive relief, and to recover their costs
24 and attorneys' fees, pursuant to Cal. Civil Code § 1785.31.
25
26
27
28

1 **COUNT IV: Cal. Civil Code § 1785.31**
2 **Obtaining Consumer Report Under False Pretenses**

3 107. Plaintiff repeats and realleges all preceding paragraphs.

4 108. Plaintiff brings this claim individually and on behalf of the Class.

5 109. Defendant obtained Plaintiff's and the Class members' credit reports
6 under false pretenses or knowingly without a permissible purpose in violation of
7 Cal. Civil Code § 1785.31(a)(3).
8

9
10 110. Defendant's numerous representations - that it would only do a hard
11 credit inquiry if they qualified for the offered American Express product and if they
12 agreed to accept the offered American Express product - were false. Defendant
13 performed a hard credit pull before the Plaintiff ever qualified for the offered
14 American Express product, and indeed, before she was even denied.
15
16

17 111. Defendant acted knowingly or recklessly. Defendant's willful conduct
18 is reflected by, among other things:
19

- 20 a. This provision of the CCRAA was enacted in 1993; Defendant
21 has had over 20 years to become compliant;
22 b. Defendant violated a clear statutory mandate set forth in Cal.
23 Civil Code § 1785.31;
24 c. Defendant knew the difference between a hard credit inquiry
25 and a soft credit inquiry;
26
27
28

- 1 d. Defendant knew that a hard credit inquiry reduces a consumer's
2 credit score;
- 3 e. Defendant falsely represented to borrowers that it would only
4 do a hard credit inquiry if they qualified for the offered
5 American Express product, and if they agreed to accept the
6 offered American Express product process, while still enabling
7 Defendant to gain access to information that would allow it to
8 calibrate its rates based on detailed information about the
9 consumer's credit history;
- 10 f. Defendant falsely represented to borrowers that it would not do
11 a hard credit inquiry in order to reduce its own costs in
12 connection with procuring reports;
- 13 g. Consumer complaints to Defendant put Defendant on notice
14 about it lacked a permissible purpose to do a hard credit pull;
- 15 h. Despite the pellucid statutory text and there being a depth of
16 guidance, Defendant systematically procured consumer
17 information without a permissible purpose; and
- 18 i. By adopting such a policy, Defendant voluntarily ran a risk of
19 violating the law substantially greater than the risk associated
20 with a reading that was merely careless.
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1 112. For these violations, Plaintiff and the Class members are entitled to
2 actual damages and punitive damages of not less than \$100 and not more than
3 \$5,000 for each and every violation. Plaintiff and the Class are further entitled to
4 injunctive relief, and to recover their costs and attorneys' fees, pursuant to Cal. Civil
5 Code § 1785.31.
6

7
8 113. Alternatively, Defendant negligently obtained Plaintiff's and the Class
9 members credit reports under false pretenses. For these violations, Plaintiff and the
10 Class members actual damages, attorneys' fees, and costs.
11

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

14 114. Plaintiff repeats and realleges all preceding paragraphs.

15 115. Plaintiff brings this claim individually and on behalf of the Class.

16 116. Defendant was required to adhere to the requirements of the UCL.
17

18 117. By making hard pulls of Plaintiff and the Class's credit reports,
19 Defendant diminished Plaintiff's and the Class members' credit scores. *See King v.*
20 *Bank of Am., N.A.*, No. C-12-04168 JCS, 2012 WL 4685993, at *8 (N.D. Cal. Oct.
21 1, 2012) ("Allegations of a diminished credit score have been found to satisfy the
22 UCL's standing requirement.").
23
24

25 118. Defendant's hard credit pulls constituted unlawful, unfair, and
26 fraudulent business practices.
27
28

1 119. Defendant's practices were unlawful because they violate the FCRA
2 and/or the CCRAA.

3
4 120. Defendant's practices were unfair because it is unethical, immoral,
5 unscrupulous, oppressive, and substantially injurious to consumers to falsely
6 represent that Defendant would not be performing a hard inquiry of Plaintiff's and
7 the Class members' credit reports.
8

9 121. Defendant's practices were fraudulent because Plaintiff and the Class
10 were deceived and/or were likely to be deceived by Defendant's false
11 representations that it would not do a hard inquiry into a potential borrower's credit.
12

13 122. The harm caused by these business practices vastly outweighs any
14 legitimate utility they possible could have.
15

16 123. Plaintiff and members of the Class are entitled to injunctive relief and
17 to the recovery of attorney's fees and costs.
18

19 **PRAYER FOR RELIEF**

20 124. WHEREFORE, Plaintiff, on behalf of herself and the Class, prays for
21 relief as follows:
22

- 23 a. Determining that this action may proceed as a class action
24 under Rule 23(b)(2) and 23(b)(3) of the Federal Rules of Civil
25 Procedure;
26
27 b. Designating Plaintiff as Class Representative and
28

1 designating Plaintiff's counsel as counsel for the Class;

2 c. Issuing proper notice to the Classes at Defendant's expense;

3 d. Declaring that Defendant violated the FCRA;

4 e. Declaring that Defendant acted willfully, in knowing or
5 reckless disregard of Plaintiff's rights and its obligations under
6 the FCRA;

7 f. Awarding actual damages, statutory damages, and punitive
8 damages as provided by the FCRA;

9 g. Awarding reasonable attorneys' fees and costs as provided by
10 the FCRA;

11 h. Declaring that Defendant violated the CCRAA;

12 i. Awarding actual damages, punitive damages, civil
13 penalties, costs, and attorney's fees as provided under the
14 CCRAA;

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

16 k. Awarding attorney's fees and costs as provided under the
17 UCL;

18 l. Awarding appropriate injunctive relief under the UCL
19 and CCRAA, including an injunction requiring that
20 Defendant cease its unlawful practices and ensure that
21
22
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28

1 consumer reporting agencies remove Defendant's
2 unauthorized credit inquiries from Plaintiff's and the Class
3 members' credit reports;
4

5 m. Granting other and further relief, in law or equity, as this
6 Court may deem appropriate and just.
7

8 **DEMAND FOR JURY TRIAL**
9

10 125. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure,
11 Plaintiff and the Class demand a trial by jury.
12

13
14 Dated: September 22, 2023
15

16 MARCUS & ZELMAN, LLC
17

18 /s/ Yitzchak Zelman
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