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12 Attorneys for Defendant
 13 **CARDINAL LOGISTICS MANAGEMENT**
 14 **CORPORATION**

15 **UNITED STATES DISTRICT COURT**
 16 **CENTRAL DISTRICT OF CALIFORNIA**

17 TONY NUNLEY, an individual and on
 18 behalf of all others similarly situated,

19 Plaintiff,

20 vs.

21 **CARDINAL LOGISTICS**
 22 **MANAGEMENT CORPORATION**, a
 23 North Carolina corporation; and
 24 **ROBERT SHEERIN**, an individual; and
 25 **DOES 1 through 100**, inclusive,

26 Defendants.

Case No: 22-1255

**NOTICE OF REMOVAL OF
 CLASS ACTION**

Date Action Filed: May 11, 2022

1 Pursuant to 28 U.S.C. §§ 1331, 1332, 1367, 1441, 1446, and 1453, Defendant
2 Cardinal Logistics Management Corporation (“Defendant” or “Cardinal”) hereby
3 timely removes Case No. CIVSB2210430 from the Superior Court of the State of
4 California, County of San Bernardino to the United States District Court for the
5 Central District of California, for further proceedings, reserving any and all
6 defenses. As grounds for removal, Defendant respectfully states as follows:

7 **I. STATEMENT OF THE CASE**

8 1. On or about May 11, 2022, Plaintiff Tony Nunley (“Plaintiff”) filed a
9 putative class action complaint in the Superior Court of the State of California,
10 County of San Bernardino, captioned “Tony Nunley, an individual and on behalf of
11 all others similarly situated vs. Cardinal Logistics Management Corporation, a
12 North Carolina corporation; Robert Sheerin, an individual; and DOES 1 through
13 100, inclusive” (the “Complaint”), which was assigned Case Number
14 CIVSB2210430 (the “State Court Action”). See Summons and Compl. attached as
15 **Exhibit 1** hereto.

16 2. On June 20, 2022, Plaintiff served the Complaint in the State Court
17 Action on Cardinal. See Notice of Service of Process for Compl. attached as **Exhibit**
18 **2** hereto. As of the date of filing, it is Cardinal’s understanding that Plaintiff has not
19 served Robert Sheerin (“Mr. Sheerin”).

20 3. In the Complaint, Plaintiff alleges, among other things, that Cardinal
21 violated (i) the Fair Credit Reporting Act (“FCRA”); (ii) the California
22 Investigative Consumer Reporting Agencies Act (“ICRAA”); and (iii) the
23 California Consumer Credit Reporting Agencies Act (“CCRAA”) by allegedly not
24 providing legally compliant disclosure and authorization forms to Plaintiff as part
25 of the employment application process.

26 4. Plaintiff includes Mr. Sheerin as a defendant, though the only factual
27 allegation made against him is that he is an Operations Manager for Cardinal.
28 Compl. ¶ 5. Plaintiff makes no allegation that Mr. Sheerin made any policy relevant

1 to the claims at issue or participated in Mr. Sheerin’s employment application
2 process with Cardinal in any way, let alone that he had anything to do with Cardinal
3 supposedly not providing legally compliant disclosure and authorization forms to
4 Plaintiff as part of the employment application process. Cardinal thus maintains that
5 Mr. Sheerin is a sham defendant.

6 5. Plaintiff also seeks to certify a putative class of “all current, former,
7 and prospective employees of Defendants who applied for a job with Defendants
8 and a background check was performed beginning five (5) years preceding the filing
9 of Plaintiff’s complaint up until the date that final judgment is entered in this
10 action.” *Id.* at ¶ 16.

11 6. Based on the claims alleged in the Complaint in the State Court Action,
12 Plaintiff seeks, on behalf of himself and the putative class, an assortment of alleged
13 damages, including, but not limited to, punitive damages, statutory penalties,
14 declaratory relief, interest, attorney fees, and costs. *Id.* at Prayer for Relief.

15 **II. ORIGINAL JURISDICTION**

16 7. This Court has jurisdiction over this case pursuant to both 28 U.S.C. §
17 1331 (i.e., federal question jurisdiction) and § 1332 (diversity jurisdiction) as
18 amended by the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C.
19 §§ 1332(d), 1453 and 1711-1715. As explained in greater detail below, removal to
20 this Court and jurisdiction in this Court are proper because the Complaint raises a
21 federal question. In addition, this action can be removed under CAFA because: (i)
22 at least one plaintiff and one defendant are citizens of different states; (ii) the
23 number of members of the proposed putative class is at least 100; and (iii) the
24 amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

25 **A. This Court Has Federal Question Jurisdiction Over Plaintiff’s**
26 **FCRA Claims and Supplemental Jurisdiction Over His State Law**
27 **Claims**

28 8. The case is removable pursuant to 28 U.S.C. §§ 1331, 1367 and

1 1441(b). Section 1441(b) provides in relevant part:

2 Any civil action of which the district courts have original
3 jurisdiction founded on a claim or right arising under the
4 Constitution, treaties or laws of the United States shall be
5 removable without regard to the citizenship or residence
of the parties.

6 9. A case “arises under” federal law if a plaintiff’s “well-pleaded
7 complaint establishes either that federal law creates the cause of action” or that the
8 plaintiff’s “right to relief under state law requires resolution of a substantial
9 question of federal law in dispute between the parties.” *Franchise Tax Bd. v. Constr.*
10 *Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 13 (1983).

11 10. This Court has jurisdiction over Plaintiff’s Complaint because it is
12 founded on claims arising under federal law, specifically the Fair Credit Reporting
13 Act (“FCRA”), 15 U.S.C. § 1681 *et seq.* The FCRA is a federal law that “provides
14 a private right of action against businesses that use consumer reports but fail to
15 comply” with the statute’s notice and authorization requirements. *Safeco Ins. Co.*
16 *of Am. v. Burr*, 551 U.S. 47, 53 (2007). Consequently, this Court has original
17 jurisdiction to address the federal questions raised by Plaintiff’s Complaint. 28
18 U.S.C. § 1331.

19 11. Moreover, this Court is authorized to exercise supplemental
20 jurisdiction over Plaintiff’s state law claims (i.e., his second and third causes of
21 action) under 28 U.S.C. § 1367. “[I]n any civil action of which the district courts
22 have original jurisdiction, the district courts shall have supplemental jurisdiction
23 over all other claims that are so related to claims in the action within such original
24 jurisdiction that they form part of the same case or controversy.” *Id.* at subs. (a).
25 Because Plaintiff’s state law claims for alleged violations of ICRAA and CCRAA
26 arise out of the same or virtually identical conduct as the FCRA claim, they clearly
27 form part of the same case or controversy. *See, e.g.*, Compl. ¶¶ 11-15, 29-32, 39-
28 42, and 51-53. In fact, in Paragraph 21 of the Complaint, Plaintiff alleges that there
are the same purported common questions regarding each of the three statutes (i.e.,

1 whether Defendants allegedly failed “to include the proper disclosures and
2 authorizations required by law”). *Id.* at ¶ 21(a)-(c). Consequently, the state law
3 claims are intrinsically related to the FCRA claim and provide the Court with
4 supplemental jurisdiction.¹

5 **B. Diversity Jurisdiction Exists Due to CAFA**

6 12. The United States Supreme Court clarified the standards for a notice
7 of removal under CAFA in 2014. Specifically, in *Dart Cherokee Basin Operating*
8 *Co. v. Owens*, 574 U.S. 81, 87 (2014), the Supreme Court held that courts must
9 apply the same liberal rules to removal allegations as to other matters of pleading.
10 The Supreme Court also held that no presumption against removal exists under
11 CAFA, which was enacted to facilitate adjudication of certain putative class actions
12 in federal court. *Id.*

13 1. The Diversity of Citizenship Requirement Is Satisfied

14 13. Plaintiff is and was at the time of the commencement of the State Court
15 Action, a citizen of California. *See* Compl. ¶ 2.

16 14. Cardinal was at the time of the commencement of the State Court
17 Action, and continues to this day to be, a North Carolina corporation with its
18 principal place of business in Concord, North Carolina. *See, e.g., Hertz Corp. v.*
19 *Friend*, 559 U.S. 77, 92-93 (2010) (“We conclude that ‘principal place of business’
20 is best read as referring to the place where a corporation’s officers direct, control,
21 and coordinate the corporation’s activities. It is the place that Courts of Appeals
22 have called the corporation’s ‘nerve center.’ And in practice it should normally be
23 the place where the corporation maintains its headquarters—provided that the
24 headquarters is the actual center of direction, control, and coordination”).

25 15. Plaintiff’s inclusion of Mr. Sheerin as a defendant is a sham and cannot
26 defeat removal. It is well-settled that “fraudulently joined defendants will not defeat
27

28 ¹ As discussed below, the Court also has original jurisdiction over Plaintiff’s state
law claims under 28 U.S.C. § 1332(d) (i.e., the CAFA).

1 removal on diversity grounds. *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318
2 (9th Cir. 1998). “If the plaintiff fails to state a cause of action against a resident
3 defendant, and the failure is obvious according to the settled rules of the state, the
4 joinder of the resident defendant is fraudulent.” *McCabe v. General Foods Corp.*,
5 811 F.2d 1336, 1339 (9th Cir.1987). In other words, a joinder is fraudulent if “there
6 [is] no real intention to get a joint judgment, and ... there [is] no colorable ground
7 for so claiming.” *Lewis v. Time Inc.*, 83 F.R.D. 455, 460 (E.D. Cal. 1979) (citing
8 *Parks v. New York Times Co.*, 308 F.2d 474, 478 (5th Cir. 1962). “The defendant
9 seeking removal to the federal court is entitled to present the facts showing the
10 joinder to be fraudulent.” *Id.*

11 16. There is no possibility that Plaintiff can prove a cause of action against
12 Mr. Sheerin. Although the caption page lists Mr. Sheerin as a defendant and
13 includes him in the definition of “Defendants”, the Complaint itself asserts only a
14 single factual allegation against him. *See generally*, Compl. Indeed, Mr. Sheerin is
15 referenced in the Complaint in only paragraphs detailing general factual
16 background. *Id.* at ¶¶ 1, 5, 7. The only factual allegation pertaining to Mr. Sheerin
17 is that he was an Operations Manager for Cardinal—an immaterial point based on
18 the causes of action asserted. *Id.* at ¶ 5. Accordingly, there are no substantive
19 allegations in the Complaint that support any cause of action against Mr. Sheerin.

20 17. Moreover, there is no way Mr. Sheerin could be personally liable under
21 FCRA, ICRAA, or CCRAA.

22 18. The complete lack of any factual allegations asserted against Mr.
23 Sheerin—together with the fact that Plaintiff has not bothered to serve him as far as
24 Cardinal is aware—demonstrate that Plaintiff has “no real intention” of making Mr.
25 Sheerin a part of the action, but has instead fraudulently included him merely as a
26 ploy to avoid removal. *See Brown v. Allstate Ins. Co.*, 17 F. Supp. 2d 1134, 1137
27 (S.D. Cal. 1998) (finding individual California-resident defendants were
28 fraudulently joined where individual defendants were named in the caption and in

1 the headings of the causes of action, but no material allegations against those
2 defendants were pled.)²

3 19. Because Plaintiff is a citizen of California, Cardinal is a citizen of
4 North Carolina, and Mr. Sheerin is fraudulently joined, the diversity requirement of
5 28 U.S.C. § 1332(d)(2)(A) is satisfied.

6 2. The Alleged Putative Class Includes At Least 100 Members

7 20. Plaintiff seeks to certify a class of “all current, former, and prospective
8 employees of Defendants who applied for a job with Defendants and a background
9 check was performed beginning five (5) years preceding the filing of Plaintiff’s
10 complaint up until the date that final judgment is entered in this action.” Compl. ¶
11 16.

12 21. Cardinal disputes Plaintiff’s allegations of wrongdoing and also
13 disputes that any class could ever be certified. Nevertheless, based on information
14 and belief and Cardinal’s review of its internal employment data, Cardinal asserts
15 that there are in excess of 5,000 individuals who fall within the class definition.

16 22. Thus, the number of members of Plaintiff’s alleged putative class is at
17 least 100.

18 3. The Amount In Controversy Exceeds \$5,000,000

19 23. The Supreme Court clarified in 2014 that a notice of removal need only
20 include a plausible allegation that the amount in controversy exceeds the
21 jurisdictional threshold and need not include evidentiary submissions. *Dart*

22

23 ² Additionally, for the purposes of removal based on diversity of citizenship, the
24 citizenship of defendants sued under fictitious names is disregarded. 28 U.S.C. §
25 1441(b)(1) (“In determining whether a civil action is removable on the basis of the
26 jurisdiction under [] [28 U.S.C. §] 1332(a), the citizenship of defendants sued under
27 fictitious names shall be disregarded”); *see, e.g., Kruso v. Int’l Tel. & Telegraph*
28 *Corp.*, 872 F. 2d 1416, 1424 (9th Cir. 1989) (holding that the naming of Doe
Doe defendants cannot defeat diversity jurisdiction). Thus, the citizenship of any alleged
Doe defendants is immaterial for purposes of determining whether complete
diversity exists under 28 U.S.C. § 1332(d).

1 *Cherokee*, 574 U.S. at 87 (“Congress, by borrowing the familiar ‘short and plain
2 statement’ standard from Rule 8(a), intended to ‘simplify the “pleading”
3 requirements for removal’ and to clarify that courts should ‘apply the same liberal
4 rules [to removal allegations] that are applied to other matters of pleading.”); *see*
5 also *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1195 (9th Cir. 2015)
6 (“[A] removing party must initially file a notice of removal that includes ‘a plausible
7 allegation that the amount in controversy exceeds the jurisdictional threshold.”)
8 (quoting *Dart Cherokee*). Thus, a defendant’s amount in controversy allegation
9 should be accepted when not contested by a plaintiff or questioned by the court.
10 *Dart Cherokee*, 574 U.S. at 87. If a plaintiff does contest the allegation, both sides
11 must submit proof and the court will decide, by a preponderance of the evidence,
12 whether the amount in controversy requirement has been satisfied. *Id.* at 88-89.

13 24. Defendant denies that this action is appropriate for class treatment or
14 that Defendant is liable for Plaintiff’s claims. Nevertheless, Defendant has
15 calculated the amount in controversy for purposes of this notice by taking Plaintiff’s
16 allegations in the Complaint at face value in aggregating claims of individual class
17 members pursuant to 28 U.S.C. § 1332(d)(6). The amount in controversy on
18 Plaintiff’s claims exceeds \$5,000,000, exclusive of interest and costs.

19 (a) *FCRA Statutory Damages*

20 25. Plaintiff alleges on information and belief that Cardinal “failed to
21 comply with the requirements under the FCRA because they, among other things,
22 included superfluous information within the disclosure ..., buried the disclosure
23 with small font ..., failed to obtain proper authorization before procuring a
24 consumer report..., included a liability waiver ..., included a purported
25 authorization for third parties to release information ..., and [] fail[ed] to include a
26 summary of ... rights.” Compl. ¶ 31.

27 26. Plaintiff further alleges on information and belief that Cardinal’s
28 “violation of the FCRA were willful.” *Id.* at ¶ 32.

1 27. 15 U.S.C. § 1681n(a) provides that civil liability under the FCRA
2 consists of (1) a consumer’s actual damages or statutory damages of “not less than
3 \$100 and not more than \$1,000, (2) punitive damages, and (3) attorneys’ fees.

4 28. The Ninth Circuit has in the past few years made it clear that “the
5 amount in controversy reflects the *maximum* recovery the plaintiff could reasonably
6 recover.” *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 927 (9th Cir. 2019)
7 (citing *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 417 (9th Cir. 2018)
8 (emphasis in original). For this reason, in assessing amounts in controversy based
9 on a range of statutory penalties, courts should employ the maximum penalty and
10 have consistently done so since *Arias* and *Chavez* were issued. *See, e.g., Gonzalez*
11 *v. Comenity Cap. Bank*, No. 119CV00342AWIEPG, 2019 WL 5304924, at *5 (E.D.
12 Cal. Oct. 21, 2019); *Faircloth v. AR Res., Inc.*, No. 19-CV-05830-JCS, 2020 WL
13 2747781, at *2-3 (N.D. Cal. May 27, 2020); *Stoff v. Wells Fargo Bank, N.A.*, No.
14 321CV00793BENKSC, 2021 WL 5449036, at *6 (S.D. Cal. Nov. 22, 2021); *see*
15 *also Rice v. Equifax Info. Servs., LLC*, No. 2:09-cv-07864-PSG-EX, 2010 WL
16 128369, at *2 (C.D. Cal. Jan. 11, 2010); *Saulic v. Symantec Corp.*, No. 07-0610,
17 2007 WL 5074883, at *9 (C.D. Cal. Dec. 26, 2007).

18 29. Based on information and belief and Cardinal’s review of its internal
19 employment data, Cardinal has had well in excess of 5,000 employees³ it hired
20 nationwide during the past five years (i.e., since May 10, 2017 through the
21 present).⁴ Plaintiff’s Complaint does not appear to make any allegation regarding
22 actual damages, but does seek an award of statutory damages. *See* Compl. ¶ 33,
23 Prayer for Relief. Accordingly, Plaintiff’s FCRA allegations put in controversy,
24

25 _____
26 ³ These numbers do not include prospective employees or applicants who were not
27 hired, which would only increase the total amount of individuals meeting the
28 definition of the proposed class.

⁴ While Cardinal maintains that FCRA’s two-year statute of limitations should govern, Plaintiff alleges that the longer five-year period for FCRA claims applies. Cardinal has thus gone back five years for its removal calculations.

1 \$1,000 for himself and at least 4,999 other individuals, for a total of at least
2 **\$5,000,000** in statutory damages under FCRA.

3 30. Additionally, FCRA authorizes Plaintiff to recover attorney’s fees and
4 punitive damages, which are discussed in subsections (c) and (d) below.

5 (b) *CCRAA Punitive Damages*

6 31. Plaintiff further alleges on information and belief that Cardinal “at
7 times, willfully violated the strict disclosure and authorization requirements under
8 the CCRAA.”⁵ Compl. ¶ 53.

9 32. California Civil Code § 1785.31(a)(2) provides that consumers
10 suffering violations of the CCRAA may seek to recover (1) the consumers’ actual
11 damages, (2) “[p]unitive damages of not less than one hundred dollars (\$100) nor
12 more than five thousand dollars (\$5,000) for each violation as the court deems
13 proper[,]” and (3) “[a]ny other relief the court deems proper.” California Civil Code
14 § 1785.31(d) likewise authorizes the recovery of attorney’s fees.

15 33. Plaintiff’s Complaint does not appear to allege any actual damages
16 under CCRAA. However, the punitive damages Plaintiff has placed in controversy
17 under CCRAA must be added to the \$5 million in alleged FCRA statutory damages
18 to properly calculate the amount in controversy. Specifically, based on information
19 and belief and Cardinal’s review of its internal employment data, Cardinal has hired
20 in excess of 250 employees⁶ who were California residents during the past two
21

22 _____
23 ⁵ Plaintiff also alleges on information and belief that Cardinal “at times, willfully
24 violated the strict disclosure and authorization requirements under [ICRAA].”
25 Compl. ¶ 44. California Civil Code § 1786.50 provides that civil liability for willful
26 violation of the ICRAA consists of (1) the consumers’ actual damages or \$10,000
27 unless a class action is alleged, (2) punitive damages, and (3) attorney’s fees. Yet,
28 Plaintiff does not appear to allege any actual damages under ICRAA and seeks to
bring a class action under that statute, which means the \$10,000 statutory damages
component of ICRAA has no application.

⁶ These numbers do not include prospective employees or applicants who were
California residents and not hired by Cardinal during the past two years.

1 years (i.e., since May 10, 2020 through the present).⁷ Plaintiff's CCRAA
2 allegations thus put in controversy, \$5,000 for himself and at least 249 other
3 individuals, for a total of **\$1,250,000** more in controversy. When this punitive
4 damage amount is combined with the FCRA statutory damages, there are at least
5 **\$6,250,000** in damages in controversy according to Plaintiff's Complaint.

6 34. Additionally, CCRAA authorizes attorney's fees, which are discussed
7 in subsection (c) below.

8 (c) *Attorney Fees Under FCRA and CCRAA*

9 35. Attorney fees are also included in the amount in controversy if the
10 underlying statute authorizes their award (which is the case here for at least two
11 reasons). *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998)
12 (attorney fees award may be included in the amount in controversy when an
13 underlying statute authorizes their award). Indeed, Plaintiff seeks to recover
14 attorney's fees in this case under both the FCRA and CCRAA. *See* Compl. at Prayer
15 for Relief.

16 36. In class action cases within California, prevailing plaintiffs generally
17 request, and courts in the Ninth Circuit tend to award, attorney's fees in the range
18 of 25% to 33% of the overall recovery. *See Vasquez v. Coast Valley Roofing, Inc.*,
19 266 F.R.D. 482, 491-92 (E.D. Cal. 2010) (citing to five recent wage and hour cases
20 where federal court judges approved fee awards that ranged from 30% to 33% and
21

22 ⁷ The number of current and former employees/prospective applicants at Cardinal
23 who could be subject to CCRAA as well as ICRAA (which are both California
24 statutes) is much smaller than Plaintiff's purported nationwide class for FCRA
25 because ICRAA and CCRAA only apply to California residents (i.e., they do not
26 apply nationwide). The statute of limitations for Plaintiff's state law claims is also
27 two years from the date of discovery. *See* Cal. Civ. Code § 1785.33 (stating that
28 the statute of limitations for CCRAA is limited to two years from the date the
plaintiff knew of, or should have known of, the violation of this title, but not more
than seven years unless the employer materially and willfully violated the statute);
see also Cal. Civ. Code § 1786.52 (stating that the statute of limitations for ICRAA
claims is limited to two years from the date of discovery).

1 similarly approving percentage of the fund award of 33% to class counsel); *Romero*
2 *v. Producers Dairy Foods, Inc.*, 2007 WL 3492841, at *1-4 (E.D. Cal. Nov. 14,
3 2007) (approving award of 33% of common fund); *McCrary v. Elations Company,*
4 *LLC*, 2016 WL 769703, at **10-11 (C.D. Cal., 2016) (approving award of 26.82%
5 of total settlement amount). It is therefore anticipated that Plaintiff's attorneys will
6 seek at least 25% of any amounts recovered as awardable attorney's fees.

7 37. Accordingly, it is anticipated that Plaintiff's attorneys may seek
8 **\$1,250,000** (i.e., 0.25 X \$5,000,000) or more in attorneys' fees in this action based
9 on the FCRA statutory damages, and **\$312,500** (i.e. 0.25 X \$1,250,000) or more in
10 attorneys' fees in this action based on the CCRA punitive damages. When these
11 figures are all added together (i.e., the \$5 million in FCRA statutory damages plus
12 \$1,250,000 in CCRAA punitive damages plus \$1,562,500 in attorney's fees), the
13 total amount in controversy in this case is at least **\$7,812,500**.

14 (d) *Punitive Damages Under FCRA*

15 38. In addition to the statutorily-set punitive damages already calculated
16 under CCRAA, FCRA also authorizes punitive damages in the court's discretion.
17 While such damages must be reasonable to any harm purportedly caused and not
18 excessive (*see, e.g., State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408
19 (2003); *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996)), Plaintiff has
20 sought additional discretionary punitive damages under FCRA as part of his
21 Complaint. "[T]he amount of punitive damages may be established based on jury
22 verdicts in cases involving analogous facts." *Rodriguez v. Home Depot U.S.A., Inc.*,
23 2016 WL 3902838 at *6 (N.D. Cal. July 19, 2016). "The fact that the cited cases
24 involve distinguishable facts is not dispositive, as long as the jury verdicts in the
25 cited cases amply demonstrate the potential for large punitive damage awards in
26 similar types of cases." *Id.*

27 39. The **\$7,812,500** figure calculated above is based solely on the amount
28 in controversy on the FCRA statutory damages and CCRAA punitive damages plus

1 attorneys' fees. It does not include the amounts in controversy on the discretionary
2 punitive damages potentially recoverable under FCRA. Therefore, the total amount
3 in controversy exceeds **\$7,812,500**.

4 **III. REMOVAL IS TIMELY AND PROPER**

5 40. This Notice of Removal is timely pursuant to 28 U.S.C. §§ 1446(b)
6 and 1453(b) as it has been filed within thirty (30) days of the date (i.e., June 20,
7 2022) on which service of the State Court Action on Cardinal was complete.
8 Indeed, under the applicable rules, Defendant has up to and including July 20, 2022
9 to timely remove this matter to federal court and it has satisfied that obligation.

10 41. Because Mr. Sheerin has not been served (and in any event is a sham
11 defendant) and Cardinal is the only other existing named defendant in this action,
12 no other party's consent to this removal is required.⁸ See 28 U.S.C. § 1446(b)(2)(A).

13 42. Pursuant to section 1446(a) of title 28, removal is also made to the
14 Central District of California, as the district court embracing the place where the
15 State Court Action is pending. See 28 U.S.C. § 84(d).

16 43. Copies of the docket sheet, and all process, pleadings, and orders filed
17 or served upon Cardinal are attached and incorporated by reference as **Exhibit 3**
18 (docket sheet) and **Exhibit 4** (process, pleadings, and orders) hereto.

19 44. Cardinal reserves the right to amend or supplement this Notice of
20 Removal, including the right to submit evidentiary declarations supporting and/or
21 buttressing the amount in controversy should Plaintiff attempt to remand the action
22 for any reason or if the Court has any questions. Cardinal further reserves all
23 defenses it has to Plaintiff's claims. Cardinal disputes Plaintiff's claims in their
24 entirety and contends only that the nature of Plaintiff's purported claims, as pled,
25 demonstrates that removal is proper.

26 45. Cardinal is providing Plaintiff, by and through their counsel, written
27

28 ⁸ If Mr. Sheerin were to be served, it is Cardinal's understanding that he would consent to the removal of this action to federal court.

1 notice of the filing of this Notice of Removal and all other papers as required by
2 section 1446(d) of title 28. Further, Cardinal is filing a copy of this Notice of
3 Removal and all related papers with the Clerk of the Superior Court of the State of
4 California, County of San Bernardino where the State Court Action is currently
5 pending.

6 **IV. PRAYER**

7 Wherefore, Cardinal, requests that the above-captioned action now pending
8 against it in the Superior Court of California, County of San Bernardino, be
9 removed to this Court.

10
11 Date: July 19, 2022

NOSSAMAN LLP
DREW R. HANSEN
PAVNEET S. MAC
J. RANDALL BOYER

12
13
14 By: /s/ J. Randall Boyer
15 J. Randall Boyer

16 Attorneys for Defendant
17 CARDINAL LOGISTICS
18 MANAGEMENT CORPORATION
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28

EXHIBIT 1

05/11/22 03:23PM PDT '3103 705' -> 9097088586

Pg17/20

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
JUN 06 2022
[Signature]

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

CARDINAL LOGISTICS MANAGEMENT CORPORATION, a North Carolina corporation; ROBERT SHEERIN, an individual; and DOES 1 through 100, Inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

TONY NUNLEY, an individual and on behalf of all others similarly situated.

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. (AVISO) Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desochar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of California
County of San Bernardino -- San Bernardino Justice Center
247 West Third Street, San Bernardino, California 92415

CASE NUMBER: (Número de Caso)
CV SB 2210430

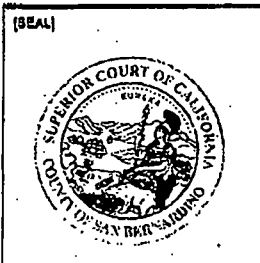
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Bibbyan Law Group, P.C., David D. Bibbyan, 8484 Wilshire Blvd, Suite 500, Beverly Hills, California, 90211, 310-438-5555

DATE: JUN 06 2022

Clerk, by: *[Signature]* Deputy (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): **CARDINAL LOGISTICS MANAGEMENT CORPORATION, NORTH CAROLINA CORPORATION**
under: CCP 416.10 (corporation) CCP 416.80 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date)

BY FAX

05/11/22 03:23PM PDT '3103 705' -> 9097088586

Pg 3/20

1 **BIBIYAN LAW GROUP, P.C.**
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 5 Beverly Hills, California 90211
 Tel: (310) 438-5555; Fax: (310) 300-1705
 6 Attorneys for Plaintiff, TONY NUNLEY,
 7 on behalf of himself and all others similarly situated

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

MAY 11 2022



Isabel Torres

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **FOR THE COUNTY OF SAN BERNARDINO**

CIV SB 2210430

11 TONY NUNLEY, an individual and on behalf
 12 of all others similarly situated,

CASE NO.:
 CLASS ACTION COMPLAINT FOR:

13 Plaintiff,

1. VIOLATION OF THE FAIR CREDIT REPORTING ACT;

14 v.

2. VIOLATION OF THE CALIFORNIA INVESTIGATIVE CONSUMER REPORTING AGENCIES ACT; and

15 CARDINAL LOGISTICS MANAGEMENT
 CORPORATION, a North Carolina
 16 corporation; ROBERT SHEERIN, an
 17 individual; and DOES 1 through 100,
 inclusive,

3. VIOLATION OF THE CONSUMER CREDIT REPORTING AGENCIES ACT.

18 Defendants.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000]

Law Office of
 BIBIYAN LAW GROUP
 A Professional Corporation
 8484 Wilshire Blvd., Suite 500
 Beverly Hills, California 90211
 (310) 438-5555

CLASS ACTION COMPLAINT

By Fax

1 Plaintiff Tony Nunley, on behalf of himself and all others similarly situated, alleges as
2 follows:

3 **GENERAL ALLEGATIONS**

4 **INTRODUCTION**

5 1. This is a Class Action pursuant to Code of Civil Procedure section 382 against
6 Cardinal Logistics Management Corporation, a North Carolina corporation, and any of its
7 respective subsidiaries or affiliated companies (“Cardinal”), and Robert Sheerin (“Sheerin” and
8 collectively with DOES 1 through 100, as further defined below, “Defendants”) on behalf of
9 Plaintiff and all other current, former, or prospective employees of Defendants (“Class Members”)
10 for, among other things, alleged violations of the Fair Credit Reporting Act (“FCRA”) and similar
11 California laws.

12 **PARTIES**

13 **A. Plaintiff**

14 2. Plaintiff is a resident of the State of California. At all relevant times herein,
15 Plaintiff is informed and believes, and based thereon alleges, that Defendants employed Plaintiff
16 with duties that included, but were not limited to, driving and delivering appliances. Plaintiff
17 applied for work with Defendants in or around February of 2021 and stopped working for
18 Defendants in or around October of 2021.

19 3. Plaintiff is a natural person, and at all times relevant to this Complaint was a
20 “consumer” as defined by the Fair Credit Reporting Act, at 15 U.S.C. § 1681a, the Investigative
21 Consumer Reporting Agencies Act (“ICRAA”), at Civ. Code § 1786.2(b) and the Consumer
22 Credit Reporting Agencies Act (“CCRAA”) at Civ. Code §1785.3(b).

23 **B. Defendants**

24 4. Plaintiff is informed and believes, and based thereon alleges, that Cardinal is, and
25 at all times relevant hereto was, a corporation organized and existing under and by virtue of the
26 laws of the State of North Carolina and doing business in the County of San Bernardino, State of
27 California. Plaintiff is further informed and believes and based thereon alleges that Cardinal
28 provided Plaintiff with a purported background check disclosure and authorization forms and/or

1 requested, among other things, Plaintiff and other Class Members' consumer reports.

2 5. Plaintiff is informed and believes and based thereon alleges that defendant Sheerin
3 is, and at all times relevant hereto was, an individual residing in California, as well as an
4 Operations Manager for Cardinal, and DOES 1 through 100, as further defined below

5 6. Plaintiff is informed and believes Defendants are "persons" as those terms are
6 defined under the FCRA at 15 U.S.C. § 1681a(b), under the ICRAA at Civ. Code § 1786.2(a) and
7 under the CCRAA at at Civ. Code § 1785.3(j).

8 7. The true names and capacities, whether individual, corporate, associate, or
9 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
10 Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure
11 section 474. Plaintiff is informed and believes and based thereon alleges that each of the
12 defendants designated herein as DOE is legally responsible in some manner for the unlawful acts
13 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
14 names and capacities of the defendants designated hereinafter as DOES when such identities
15 become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant
16 acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a
17 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
18 defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter,
19 reference is made to "Defendants," it shall include Cardinal and any of their parent, subsidiary, or
20 affiliated companies within the State of California, as well as Sheerin and DOES 1 through 100
21 identified herein.

22 **JOINT LIABILITY ALLEGATIONS**

23 8. All of the acts and conduct described herein of each and every corporate defendant
24 was duly authorized, ordered, and directed by the respective and collective defendant corporate
25 employers, and the officers and management-level employees of said corporate employers. In
26 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
27 their said employees, agents, and representatives, and each of them; and upon completion of the
28 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant

1 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
2 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
3 aforementioned corporate employees, agents and representatives.

4 9. Plaintiff is informed and believes that Defendants' policies regarding the
5 disclosures, authorizations, background checks, and consumer reports mentioned herein were done
6 for the benefit of all Defendants, and at times, expressly named such Defendants in said
7 disclosures, authorizations, background checks, and consumer reports. As a result of the
8 aforementioned facts, Plaintiff is informed and believes, and based thereon alleges, that
9 Defendants, and each of them, are jointly liable for the violations that form the basis of this
10 complaint.

11 **JURISDICTION AND VENUE**

12 10. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
13 of Civil Procedure section 410.10. On information and belief, the defendants or some of them
14 reside in San Bernardino County. Defendant Cardinal Logistics Management Corporation is, and
15 at all times mentioned in this complaint has been, a North Carolina corporation, authorized to do
16 business in California, with no designated principal place of business in California identified in its
17 statement filed with the Secretary of State. As such, venue is proper in San Bernadino County
18 pursuant to California Code of Civil Procedure section 395.

19 **FACTUAL BACKGROUND**

20 11. Plaintiff is informed and believes, and based thereon alleges that, without
21 limitation, in or about January of 2021 Defendants purported to provide consumer report
22 disclosures and requested from Plaintiff authorization(s) to procure consumer reports and
23 background checks for purposes of employment.

24 12. Plaintiff is informed and believes and based thereon alleges that, without limitation,
25 in approximately July of 2019 and again in or about February of 2020, Defendants procured a
26 consumer report about Plaintiff as part of an employment background screening without providing
27 Plaintiff with the proper disclosures and without proper authorization in compliance with the law.

28 ///

1 13. Plaintiff is informed and believes and based thereon alleges that Defendants did not
2 provide legally compliant disclosure and authorization forms to Plaintiff and Class Members as
3 they contained, without limitation, a “clear and conspicuous” disclosure, in a document that
4 consists solely of the disclosure, that “clearly and accurately” disclosed that a consumer report
5 may be obtained for employment purposes; that was authorized in writing the procurement of the
6 report, in violation of 15 U.S.C. §§ 1681b(b)(2)(A) and 1681d(a). Specifically, Plaintiff is
7 informed and believes the disclosures did not comply as a result of, without limitation: including
8 superfluous information within the disclosure, such as, among other things, identifying
9 information of a third party consumer reporting agency, which was not the reporting agency used
10 to obtain or procure the consumer report for Plaintiff and Class Members, and extraneous
11 information relating to various state disclosure requirements; burying the disclosures with small
12 font in a lengthy employment package with dense text that contains extraneous information;
13 failing to obtain proper authorization before procuring a consumer report, including by either
14 obtaining consumer reports without authorization or when such authorization had expired;
15 including a liability waiver in the same document as the disclosure before procuring a consumer
16 report; including a purported authorization for third parties to release information about Plaintiff
17 and other Class Members to Defendant, that is different from an authorization for the Defendant to
18 procure a consumer report; and by failing to provide, before a consumer report was obtained, a
19 summary of Plaintiff and Class Members’ rights under 15 U.S.C. § 1681m(a)(3), among other
20 things.

21 14. Plaintiff is informed and believes and based thereon alleges that Defendants did not
22 provide legally compliant disclosure and authorization forms to Plaintiff and Class Members as a
23 result of, without limitation, Defendants failing to make a “clear and conspicuous” disclosure in
24 writing to Plaintiff and Class Members at any time before the report is or was procured or caused
25 to be made in a document that consists solely of the disclosure, that: identified the name, address,
26 and telephone number of the investigative consumer reporting agency conducting the investigation
27 in violation of Civ. Code § 1786.16; notified Plaintiff and Class Members in writing of the nature
28 and scope of the investigation requested, including a summary of the provisions of Civ. Code §

1 1786.22; and notified Plaintiff and Class Members of the internet web site of the investigative
2 consumer reporting agency, or, if the agency had no internet web site address, the telephone
3 number of the agency where Plaintiff and Class Members may find information about the
4 investigative reporting agency's privacy practices, including whether Plaintiff and Class
5 Member's personal information will be sent outside of the United States or its territories and
6 information that complies with subdivision (d) of Section 1786.22, among other things.

7 15. Plaintiff is further informed and believes, and based thereon alleges, that
8 Defendants routinely acquire consumer, investigative and/or consumer credit reports (referred to
9 collectively as "background checks") to conduct background checks as described herein on
10 Plaintiff and other prospective, current and former employees and use information from the
11 background checks without providing proper disclosures and obtaining proper authorization in
12 compliance with the law, including Civil Code § 1785.1, *et seq.* (the "Consumer Credit Reporting
13 Agencies Act" or the "CCRAA").

14 **CLASS ACTION ALLEGATIONS**

15 16. Plaintiff brings this action on behalf of Plaintiff and all others similarly situated, as
16 a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class
17 of all current, former, and prospective employees of Defendants who applied for a job with
18 Defendants and a background check was performed beginning five (5) years preceding the filing
19 of Plaintiff's complaint up until the date that final judgment is entered in this action (collectively
20 referred to as "Class Members").

21 17. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision
22 (b) to amend or modify the class description with greater specificity or further division into
23 subclasses or limitation to particular issues.

24 18. This action has been brought and may properly be maintained as a class action
25 under the provisions of Code of Civil Procedure section 382 because there is a well-defined
26 community of interest in the litigation and the proposed Class is easily ascertainable.

27 ///

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1 A. Numerosity

2 19. The potential Class Members as defined are so numerous that joinder of all the
3 members of the Class is impracticable. While the precise number of Class Members has not been
4 determined yet, Plaintiff is informed and believes that there are at least seventy-five (75) Class
5 Members within the State of California alone.

6 20. Accounting for employee turnover during the relevant periods necessarily increases
7 this number substantially. Plaintiff alleges Defendants' employment records would provide
8 information as to the number and location of all Class Members. Joinder of all members of the
9 proposed Class is not practicable.

10 B. Commonality

11 21. There are questions of law and fact common to Class Members. These common
12 questions include, but are not limited to:

13 (a) Whether Defendants failed to comply with the requirements of the FCRA
14 under 15 U.S.C. § 1681, *et seq.*, including by failing to include the proper
15 disclosures and proper authorizations required by law?

16 (b) Whether Defendants failed to comply with the requirements of the ICRAA
17 under California Civil Code section 1786, *et seq.*, including by failing to
18 include the proper disclosures and proper authorizations required by law?

19 (c) Whether Defendants failed to comply with the requirements of the
20 Consumer Credit Reporting Agencies Act under California Civil Code
21 section 1785.1, *et seq.*, including by failing to include the proper disclosures
22 and proper authorizations required by law?

23 (d) Whether Defendants willfully failed to comply with the FCRA?

24 C. Typicality

25 22. The claims of Plaintiff herein alleged are typical of those claims which could be
26 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
27 by each Class Member in separate actions. Plaintiff is informed and believes and thereupon
28 alleges that Defendants had and/or have a policy or practice which resulted in Defendants failing

1 to comply with the FCRA, ICRAA, and the Consumer Credit Reporting Agencies Act as alleged
2 herein.

3 **D. Adequacy of Representation**

4 23. Plaintiff will fairly and adequately represent and protect the interest of Class
5 Members. Counsel who represents Plaintiff is competent and experienced in litigating class
6 actions and has no interests adverse to, or otherwise conflict with, the interests of the absent Class
7 Members.

8 **E. Superiority of Class Action**

9 24. A class action is superior to other available means for the fair and efficient
10 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
11 questions of law and fact common to Class Members predominate over any questions affecting
12 only individual Class Members. Class Members, as further described therein, have been subjected
13 to Defendants' illegal policy and/or practices as a result of Defendants' alleged improper
14 disclosures and authorizations.

15 25. Class action treatment will allow those similarly situated to litigate their claims in a
16 manner that is most efficient and economical for the parties and the judicial system. Plaintiff is
17 unaware of any difficulties that are likely to be encountered in the management of this action that
18 would preclude its maintenance as a class action.

19 **FIRST CAUSE OF ACTION**

20 **(Violation of the Fair Credit Reporting Act – Against All Defendants)**

21 26. Plaintiff realleges and incorporates by reference all of the allegations contained in
22 the preceding paragraphs of this Complaint as though fully set forth hereat.

23 27. Defendants are “persons” as defined by section 1681a(b) of the FCRA;

24 28. Plaintiff and Class Members are “consumers” within the meaning of Section
25 1681a(c) of the FCRA because they are “individuals.”

26 29. Pursuant to 15 U.S.C. section 1681b(b)(2)(A), an employer may not procure, or
27 cause to be procured, consumer reports for employment purposes without providing the
28 [employee] with “a clear and conspicuous disclosure... made in writing... in a document that

1 consists solely of the disclosure that a consumer report may be obtained for employment
2 purposes” and which the consumer has “authorized in writing” the procurement of the report by
3 that person.

4 30. 15 U.S.C. section 1681d(a)(1)(B) further provides that an employer may not
5 procure or cause to be prepared an investigative consumer report on any consumer unless it is
6 “clearly and accurately disclosed to the [employee] that an investigative consumer report... may
7 be made and such disclosure includes a statement informing the consumer of his right to request
8 the additional disclosures provided for under subsection (b) of this section and the written
9 summary of the rights of the consumer prepared pursuant to section 1681g(c) of this title.”

10 31. Plaintiff is informed and believes, and based thereon alleges, that during the
11 relevant time periods alleged herein, Defendants have, at times, obtained and used information in
12 consumer reports to conduct background checks on prospective and existing employees which
13 failed to comply with the requirements under the FCRA because they, among other things,
14 included superfluous information within the disclosure, such as, without limitation, identifying
15 information of a third party consumer reporting agency, which was not the reporting agency used
16 to obtain or procure the consumer report for Plaintiff and Class Members, and extraneous
17 information relating to various state disclosure requirements; buried the disclosures with small
18 font in a lengthy employment package with dense text that contains extraneous information; failed
19 to obtain proper authorization before procuring a consumer report, including by either obtaining
20 consumer reports without authorization or when such authorization had expired; included a
21 liability waiver in the same document as the disclosure before procuring a consumer report;
22 including a purported authorization for third parties to release information about Plaintiff and
23 other Class Members to Defendant, that is different from an authorization for the Defendant to
24 procure a consumer report; and by failing to, before a consumer report was obtained, include a
25 summary of Plaintiff and Class Members’ rights under 15 U.S.C. § 1681m(a)(3), among other
26 things.

27 ///

28 ///

1 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
2 violations of the FCRA were willful. Defendant knew or should have known about its obligations
3 under the FCRA as a result of the plain language of the statutes.

4 33. Plaintiff, on behalf of Plaintiff and Class Members, without limitation, seek some
5 of the statutory remedies available under the FCRA.

6 **SECOND CAUSE OF ACTION**

7 **(Viol. of the Cal. Investigative Consumer Reporting Agencies Act – Against All Defendants)**

8 34. Plaintiff realleges and incorporates by reference all of the allegations contained in
9 the preceding paragraphs as though fully set forth hereat.

10 35. At all relevant times, Plaintiff and Class Members were current, former, and
11 prospective employees of Defendants covered by the California Investigative Consumer Reporting
12 Agencies Act, California Civil Code section 1786 *et seq.* (“ICRAA”).

13 36. Plaintiff is informed and believes that Plaintiff and Class Members are
14 “consumers” within the meaning Section 1786.2(b) of the ICRAA, because they are “individuals.”

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

18 38. Plaintiff is informed and believes that Defendants obtained background checks
19 from Plaintiff and Class Members, which qualify as an “investigative consumer report” under the
20 ICRAA.

21 39. Section 1786.16(a)(2) of the ICRAA provides, in relevant part, that “[i]f, at any
22 time, an investigative consumer report is sought for employment purposes... the person seeking
23 the investigative consumer report may procure the report, or cause the report to be made, only if
24 all of the following apply:

25 “(A) The person procuring or causing the report to be made has a permissible
26 purpose, as defined in Section 1786.12.

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

1 disclosure...” that, among other things, an investigative report may be obtained;
2 identifies the name, address, and telephone number of the investigative consumer
3 reporting agency conducting the investigation; notifies the consumer in writing of
4 the nature of the scope of the investigation, including a summary of the provision
5 of section 1786.22; and notifies the consumer of the internet website address of
6 the investigative consumer reporting agency or the address, the telephone number
7 of the agency, where the consumer may find information about the investigative
8 reporting agency’s privacy practices, including whether the consumer’s personal
9 information will be sent outside of the United States or its territories and
10 information that complies with subdivision (d) of section 1786.20.

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

12 40. Plaintiff is informed and believes and based thereon alleges that the plain language
13 of the statute indicates that the inclusion of extraneous information in a disclosure form violates
14 the disclosure and authorization requirements of the ICRAA, because such a form would not
15 consist “solely” of the disclosure and that the notice provided be “clear and conspicuous.”
16 Additionally, section 1786.16 requires that the consumer authorize in writing the procurement of
17 the report.

18 41. Plaintiff is informed and believes that during the relevant time periods alleged
19 herein, Defendants have, at times, failed to make a “clear and conspicuous” disclosure in writing
20 to Plaintiff and Class Members at any time before the report is or was procured or caused to be
21 made in a document that consists solely of the disclosure, that: identified the name, address, and
22 telephone number of the investigative consumer reporting agency conducting the investigation;
23 notified Plaintiff and Class Members in writing of the nature and scope of the investigation
24 requested, including a summary of the provisions of Civ. Code § 1786.22; and notified Plaintiff
25 and Class Members of the internet web site of the investigative consumer reporting agency, or, if
26 the agency had no internet web site address, the telephone number of the agency where Plaintiff
27 and Class Members may find information about the investigative reporting agency’s privacy
28 practices, including whether Plaintiff and Class Member’s personal information will be sent
outside of the United States or its territories and information that complies with subdivision (d) of
Section 1786.22, among other things.

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1 42. Plaintiff is informed and believes that as a result of the above, Defendants have, at
2 times, willfully violated the strict disclosure and authorization requirements under the California
3 Investigative Consumer Reporting Agencies Act, California Civil Code section 1786, *et seq.*
4 (“ICRAA”).

5 43. As a result of Defendants’ unlawful procurement of background reports by way of
6 its inadequate disclosures and authorizations, as set forth above, Plaintiff and Class Members have
7 been deprived of their consumer rights and prevented from making informed decisions about
8 whether to permit Defendants to obtain their personal information.

9 44. Plaintiff is informed and believes that as a result of the above, Defendants have, at
10 times, willfully violated the strict disclosure and authorization requirements under the ICRAA.

11 45. Plaintiff is informed and believes Defendants’ conduct in violation of Section 1786,
12 *et seq.* of the ICRAA was and is willful and/or grossly negligent. Defendants acted in deliberate
13 or reckless disregard of their obligations and the rights of applicants and employees, including
14 Plaintiff and Class Members.

15 46. Plaintiff, on behalf of Plaintiff and Class Members, among other things, seek some
16 of the available remedies pursuant to, without limitation, California Civil Code section 1786.50.

17 **THIRD CAUSE OF ACTION**

18 **(Violation of the Consumer Credit Reporting Agencies Act – Against All Defendants)**

19 47. Plaintiff realleges and incorporates by reference all of the allegations contained in
20 the preceding paragraphs as though fully set forth hereat.

21 48. At all relevant times, Plaintiff and Class Members were employees or former
22 employees of Defendants covered by the Consumer Credit Reporting Agencies Act, California
23 Civil Code section 1785.1, *et seq.* (“CCRAA”).

24 49. Section 1785.3(c) of the ICRAA defines “consumer credit report” as “[a]ny written,
25 oral, or other communication or any information by a consumer credit reporting agency bearing on
26 a consumer's credit worthiness, credit standing, or credit capacity, which is used or is expected to
27 be used, or collected in whole or in part, for the purpose of serving as a factor in establishing the
28 consumer's eligibility for: ... (2) employment purposes...”

1 50. Plaintiff is informed and believes that the employment background checks procured
2 by Defendants on behalf of Plaintiff and Class Members qualify as consumer credit reports under
3 the CCRAA.

4 51. Section 1785.20.5(a) of the CCRAA provides, in relevant part, that “[p]rior to
5 requesting a consumer credit report for employment purposes, the user of the report shall provide
6 written notice to the person involved. The notice shall inform the person that a report will be
7 used, and shall identify the specific basis under subdivision (a) of Section 1024.5 of the Labor
8 Code for use of the report. The notice shall also inform the person of the source of the report...”

9 52. Plaintiff is informed and believes and based thereon alleges that for the relevant
10 time periods described herein, Defendants have, at times, obtained and used information in
11 consumer reports to conduct background checks on prospective and existing employees without
12 providing proper notice informing Plaintiff and Class Members of the source of the reports and
13 without supplying the name and address of the consumer credit reporting agency making the
14 report, as required by California Civil Code section 1785.20.5(b), among other things.

15 53. Plaintiff is informed and believes that as a result of the above, Defendants have, at
16 times, willfully violated the strict disclosure and authorization requirements under the CCRAA.

17 54. Plaintiff is informed and believes Defendants’ conduct in violation of Section
18 1785.1, *et seq.* of the CCRAA was and is willful and/or grossly negligent. Defendants acted in
19 deliberate or reckless disregard of their obligations and the rights of applicants and employees,
20 including Plaintiff and Class Members.

21 55. Plaintiff, on behalf of Plaintiff and Class Members, without limitation, seek some
22 of the available remedies pursuant to, without limitation, California Civil Code section 1785.31.

23 **DEMAND FOR JURY TRIAL**

24 56. Plaintiff demands a trial by jury on all causes of action contained herein.

25 **PRAYER**

26 WHEREFORE, on behalf of Plaintiff and all others similarly situated, Plaintiff prays for
27 judgment against Defendants as follows:

28 A. An order certifying this case as a Class Action;

- 1 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
- 2 counsel as class counsel;
- 3 C. Punitive damages;
- 4 D. Statutory penalties;
- 5 E. Declaratory relief;
- 6 F. Interest;
- 7 G. For an order awarding reasonable attorneys' fees and the costs of suit herein,
- 8 including but not limited to an award of attorneys' fees and costs ; and
- 9 H. For such other relief as the Court deems just and proper.

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Dated: May 11, 2022

BIBIYAN LAW GROUP, P.C.

BY: 

DAVID D. BIBIYAN
JEFFREY C. BILS
JOSHUA SHIRIAN
Attorneys for Plaintiff TONY NUNLEY,
on behalf of himself and all others similarly situated

EXHIBIT 2



Service of Process Transmittal Summary

TO: Martha Curtis
Cardinal Logistics Management Corporation
5333 Davidson Hwy
Concord, NC 28027-8478

RE: Process Served in California

FOR: Cardinal Logistics Management Corporation (Domestic State: NC)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Re: TONY NUNLEY, an individual and on behalf of all others similarly situated // To: Cardinal Logistics Management Corporation

CASE #: CIVSB2210430

NATURE OF ACTION: Employee Litigation

PROCESS SERVED ON: C T Corporation System, GLENDALE, CA

DATE/METHOD OF SERVICE: By Process Server on 06/20/2022 at 01:30

JURISDICTION SERVED: California

ACTION ITEMS: CT will retain the current log
Image SOP
Email Notification, Jeff Stupp jstupp@cardlog.com
Email Notification, Karla Eaves keaves@cardlog.com
Email Notification, Martha Curtis mcurtis@cardlog.com
Email Notification, Hayley Helms hhelms@cardlog.com

REGISTERED AGENT CONTACT: C T Corporation System
330 N BRAND BLVD
STE 700
GLENDALE, CA 91203
866-665-5799
SouthTeam2@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.



PROCESS SERVER DELIVERY DETAILS

Date: Mon, Jun 20, 2022
Server Name: Victor Mendez

Entity Served	CARDINAL LOGISTICS MANAGEMENT CORPORATION
Case Number	CIVSB2210430
Jurisdiction	CA

Inserts		



EXHIBIT 3

Court Access Portal

Superior Court of California - County of San Bernardino

Case Summary (CIVSB2210430)

07/19/2022 08:06:49

CIVSB2210430

Complex-Class ActionNunley v. Cardinal Logistics Management et al.

Case Information

Case Type:	Complex Civil Unlimited
Case Number:	CIVSB2210430
Citation Number:	
Filing Date:	5/11/2022
Case Status:	Active
Court Location:	San Bernardino
Judicial Officer:	David Cohn
Next Hearing:	9/2/2022 9:00AM Dept S26 - SBJC

Case Flags

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Demographic Information

Date of Birth	
Race:	
Sex:	
Height:	#Error
Weight:	
Hair Color:	
Eye Color:	
DL #:	
FBI #:	
State ID:	

Address

Street Name:	
City:	
State:	
Zip:	

Alias(s) / Nickname(s)

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Court Access Portal

Superior Court of California - County of San Bernardino

Case Summary (CIVSB2210430)

07/19/2022 08:06:49

Cross Reference

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Parties

Type	Name	Status
Plaintiff	Nunley, Tony <i>AN INDIVIDUAL AND ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED</i>	Active
Defendant	Cardinal Logistics Management Corporation <i>A NORTH CAROINA CORPORATION</i>	Active
Defendant	Sheerin, Robert	Active
Defendant	DOES 1-100	Active

Attorneys

Representing	Name
Tony Nunley	Bibiy Law Group, PC

Events

File Date	File Type	Filed By
6/30/2022	Fax Received	
Comment:	pos	
6/9/2022	Order Filed Re:	
Comment:	RE INITIAL COMPLEX CASE MANAGEMENT CONFERENCE.	
6/9/2022	Correspondence Coversheet Generated to Mail:	Bibiy Law Group, PC
Comment:	INITIAL COMPLEX ORDER AND GUIDELINES.	
6/6/2022	Summons Issued and Filed	
5/11/2022	Civil Case Cover Sheet Filed	
5/11/2022	Certificate of Assignment Received	
5/11/2022	Complaint Filed	Tony Nunley
5/11/2022	Filing Fee Paid by	Bibiy Law Group, PC, Tony Nunley
Comment:	\$1,455.80 credit card paid on 06.06.22 for first app. fees, complex and fax fees.	

Court Access Portal

Superior Court of California - County of San Bernardino

Case Summary (CIVSB2210430)

07/19/2022 08:06:49

Hearings

Department	Judge	Court Reporter	Type	Date	Time	Result
Department S26 - SBJC	Cohn, David		Complex Case Management Conference	9/2/2022	9:00AM	

Charges Disposition & PLEAS

Count	Date	Details	Citation #	Jurisdiction
	Plea:	-		

Financial Transactions

Total	\$1,455.80	Total Balance:	\$0.00
Date	Charges	Payments	Credits
6/6/2022	\$435.00	\$0.00	\$0.00
6/6/2022	\$20.80	\$0.00	\$0.00
6/6/2022	\$0.00	\$455.80	\$0.00
6/6/2022	\$1,000.00	\$0.00	\$0.00
6/6/2022	\$0.00	\$1,000.00	\$0.00
Total	\$1,455.80	\$1,455.80	\$0.00

Bonds

Type	Description	Posted Date	Set Date	Amount

Related Cases

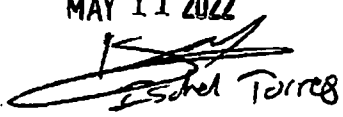
Case Number	Case Type	Case SubType	Description	Comments

EXHIBIT 4

05/11/22 03:23PM PDT '3103 705' -> 9097088586

Pg18/20

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): BIBIYAN LAW GROUP, P.C. David D. Bibiyan (Cal. Bar No. 287811) 8484 Wilshire Blvd, Suite 500, Beverly Hills, California 90211		FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO SAN BERNARDINO DISTRICT MAY 11 2022 
TELEPHONE NO.: 310-438-5555 FAX NO. (Optional): 310-300-1705 E-MAIL ADDRESS: david@tomorrowlaw.com ATTORNEY FOR (Name): Plaintiff: TONY NUNLEY		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 West Third Street MAILING ADDRESS: CITY AND ZIP CODE: San Bernardino, 92415 BRANCH NAME: San Bernardino Justice Center		
CASE NAME: NUNLEY v. CARDINAL LOGISTICS MANAGEMENT CORPORATION, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	CASE NUMBER: CIV SB 2210430
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		JUDGE: DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/PI/PD/WD (23) Non-P/PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (18) <input type="checkbox"/> Intellectual property (18) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (16)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (08) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Three (3)
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 11, 2022

Jeffrey C. Blis

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 3

BY FAX

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

<p>Auto Tort</p> <p>Auto (22)—Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) <i>(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)</i></p> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <p>Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability <i>(not asbestos or toxic/environmental)</i> (24) Medical Malpractice (45) Medical Malpractice—Physicians & Surgeons Other Professional Health Care Malpractice Other PI/PD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other PI/PD/WD</p> <p>Non-PI/PD/WD (Other) Tort</p> <p>Business Tort/Unfair Business Practice (07) Civil Rights (e.g., discrimination, false arrest) <i>(not civil harassment)</i> (08) Defamation (e.g., slander, libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice <i>(not medical or legal)</i> Other Non-PI/PD/WD Tort (35)</p> <p>Employment</p> <p>Wrongful Termination (36) Other Employment (15)</p>	<p>Contract</p> <p>Breach of Contract/Warranty (06) Breach of Rental/Lease Contract <i>(not unlawful detainer or wrongful eviction)</i> Contract/Warranty Breach—Seller Plaintiff <i>(not fraud or negligence)</i> Negligent Breach of Contract/Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case—Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage <i>(not provisionally complex)</i> (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute</p> <p>Real Property</p> <p>Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property <i>(not eminent domain, landlord/tenant, or foreclosure)</i></p> <p>Unlawful Detainer</p> <p>Commercial (31) Residential (32) Drugs (38) <i>(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)</i></p> <p>Judicial Review</p> <p>Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) Writ—Administrative Mandamus Writ—Mandamus on Limited Court Case Matter Writ—Other Limited Court Case Review Other Judicial Review (39) Review of Health Officer Order Notice of Appeal—Labor Commissioner Appeals</p>	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)</p> <p>Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims <i>(arising from provisionally complex case type listed above)</i> (41)</p> <p>Enforcement of Judgment</p> <p>Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment <i>(non-domestic relations)</i> Sister State Judgment Administrative Agency Award <i>(not unpaid taxes)</i> Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case</p> <p>Miscellaneous Civil Complaint</p> <p>RICO (27) Other Complaint <i>(not specified above)</i> (42) Declaratory Relief Only Injunctive Relief Only <i>(non-harassment)</i> Mechanics Lien Other Commercial Complaint Case <i>(non-tort/non-complex)</i> Other Civil Complaint <i>(non-tort/non-complex)</i></p> <p>Miscellaneous Civil Petition</p> <p>Partnership and Corporate Governance (21) Other Petition <i>(not specified above)</i> (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition</p>
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For your protection and privacy, please press the Clear button after you have printed the form.

Print this form

Save this form

Clear this form

RECEIVED
MAY 11 2022
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

CIV SB 2210430

Tony Nunley

Case No.:

vs.

CERTIFICATE OF ASSIGNMENT

Cardinal Logistics Management Corporation,

A civil action or proceeding presented for filing must be accompanied by this Certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the Central District of the Superior Court under Rule 131 and General Order of this court for the checked reason:

- General Nature of Action vs. Collection Ground. List of 21 categories with checkboxes and descriptions.

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designed district is:

Cardinal Logistics Management Corporation, et al.

13814 Santa Ana Ave

Fontana CITY

CA STATE

92337 ZIP CODE

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on May 11, 2022 at Beverly Hills California.

Handwritten signature of attorney.

Signature of Attorney/Party

BY FAX

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

MAY 11 2022

RECEIVED

05/11/22 03:23PM PDT '3103 705' -> 9097088586

Pg17/20

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

CARDINAL LOGISTICS MANAGEMENT CORPORATION, a North Carolina corporation; ROBERT SHEERIN, an individual; and DOES 1 through 100, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

TONY NUNLEY, an individual and on behalf of all others similarly situated.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
JUN 06 2022
[Signature]

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **(AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desochar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of California
County of San Bernardino -- San Bernardino Justice Center
247 West Third Street, San Bernardino, California 92415

CASE NUMBER: (Número de Caso)
CV SB 2210430

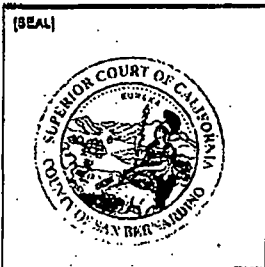
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Bibbyan Law Group, P.C., David D. Bibbyan, 8484 Wilshire Blvd, Suite 500, Beverly Hills, California, 90211, 310-438-5555

DATE: **JUN 06 2022**
(Fecha)

Clerk, by *[Signature]* Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): **CARDINAL LOGISTICS MANAGEMENT CORPORATION, NORTH CAROLINA CORPORATION**
under: CCP 416.10 (corporation) CCP 416.80 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date)

BY FAX

RECEIVED
MAY 11 2022
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

05/11/22 03:23PM PDT '3103 705' -> 9097088586

Pg 3/20

1 **BIBIYAN LAW GROUP, P.C.**
 David D. Bibiyan (SBN 287811)
 2 david@tomorrowlaw.com
 Jeffrey C. Bils (SBN 301629)
 3 jbils@tomorrowlaw.com
 Joshua Shirian (SBN 341909)
 4 josh@tomorrowlaw.com
 8484 Wilshire Boulevard, Suite 500
 5 Beverly Hills, California 90211
 Tel: (310) 438-5555; Fax: (310) 300-1705
 6 Attorneys for Plaintiff, TONY NUNLEY,
 7 on behalf of himself and all others similarly situated

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

MAY 11 2022



Isabel Torres

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **FOR THE COUNTY OF SAN BERNARDINO**

CIV SB 2210430

11 TONY NUNLEY, an individual and on behalf
 12 of all others similarly situated,

CASE NO.:

CLASS ACTION COMPLAINT FOR:

13 Plaintiff,

1. VIOLATION OF THE FAIR CREDIT
 REPORTING ACT;

14 v.

2. VIOLATION OF THE CALIFORNIA
 INVESTIGATIVE CONSUMER
 REPORTING AGENCIES ACT; and

15 CARDINAL LOGISTICS MANAGEMENT
 CORPORATION, a North Carolina
 16 corporation; ROBERT SHEERIN, an
 individual; and DOES 1 through 100,
 17 inclusive,

3. VIOLATION OF THE CONSUMER
 CREDIT REPORTING AGENCIES ACT.

18 Defendants.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000]

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 Law Office of
 BIBIYAN LAW GROUP
 A Professional Corporation
 8484 Wilshire Blvd., Suite 500
 Beverly Hills, California 90211
 (310) 438-5555

CLASS ACTION COMPLAINT

By Fax

1 Plaintiff Tony Nunley, on behalf of himself and all others similarly situated, alleges as
2 follows:

3 **GENERAL ALLEGATIONS**

4 **INTRODUCTION**

5 1. This is a Class Action pursuant to Code of Civil Procedure section 382 against
6 Cardinal Logistics Management Corporation, a North Carolina corporation, and any of its
7 respective subsidiaries or affiliated companies (“Cardinal”), and Robert Sheerin (“Sheerin” and
8 collectively with DOES 1 through 100, as further defined below, “Defendants”) on behalf of
9 Plaintiff and all other current, former, or prospective employees of Defendants (“Class Members”) for, among other things, alleged violations of the Fair Credit Reporting Act (“FCRA”) and similar
10 California laws.
11

12 **PARTIES**

13 **A. Plaintiff**

14 2. Plaintiff is a resident of the State of California. At all relevant times herein,
15 Plaintiff is informed and believes, and based thereon alleges, that Defendants employed Plaintiff
16 with duties that included, but were not limited to, driving and delivering appliances. Plaintiff
17 applied for work with Defendants in or around February of 2021 and stopped working for
18 Defendants in or around October of 2021.

19 3. Plaintiff is a natural person, and at all times relevant to this Complaint was a
20 “consumer” as defined by the Fair Credit Reporting Act, at 15 U.S.C. § 1681a, the Investigative
21 Consumer Reporting Agencies Act (“ICRAA”), at Civ. Code § 1786.2(b) and the Consumer
22 Credit Reporting Agencies Act (“CCRAA”) at Civ. Code §1785.3(b).

23 **B. Defendants**

24 4. Plaintiff is informed and believes, and based thereon alleges, that Cardinal is, and
25 at all times relevant hereto was, a corporation organized and existing under and by virtue of the
26 laws of the State of North Carolina and doing business in the County of San Bernardino, State of
27 California. Plaintiff is further informed and believes and based thereon alleges that Cardinal
28 provided Plaintiff with a purported background check disclosure and authorization forms and/or

1 requested, among other things, Plaintiff and other Class Members' consumer reports.

2 5. Plaintiff is informed and believes and based thereon alleges that defendant Sheerin
3 is, and at all times relevant hereto was, an individual residing in California, as well as an
4 Operations Manager for Cardinal, and DOES 1 through 100, as further defined below

5 6. Plaintiff is informed and believes Defendants are "persons" as those terms are
6 defined under the FCRA at 15 U.S.C. § 1681a(b), under the ICRAA at Civ. Code § 1786.2(a) and
7 under the CCRAA at at Civ. Code § 1785.3(j).

8 7. The true names and capacities, whether individual, corporate, associate, or
9 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
10 Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure
11 section 474. Plaintiff is informed and believes and based thereon alleges that each of the
12 defendants designated herein as DOE is legally responsible in some manner for the unlawful acts
13 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
14 names and capacities of the defendants designated hereinafter as DOES when such identities
15 become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant
16 acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a
17 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
18 defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter,
19 reference is made to "Defendants," it shall include Cardinal and any of their parent, subsidiary, or
20 affiliated companies within the State of California, as well as Sheerin and DOES 1 through 100
21 identified herein.

22 **JOINT LIABILITY ALLEGATIONS**

23 8. All of the acts and conduct described herein of each and every corporate defendant
24 was duly authorized, ordered, and directed by the respective and collective defendant corporate
25 employers, and the officers and management-level employees of said corporate employers. In
26 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
27 their said employees, agents, and representatives, and each of them; and upon completion of the
28 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant

1 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
2 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
3 aforementioned corporate employees, agents and representatives.

4 9. Plaintiff is informed and believes that Defendants' policies regarding the
5 disclosures, authorizations, background checks, and consumer reports mentioned herein were done
6 for the benefit of all Defendants, and at times, expressly named such Defendants in said
7 disclosures, authorizations, background checks, and consumer reports. As a result of the
8 aforementioned facts, Plaintiff is informed and believes, and based thereon alleges, that
9 Defendants, and each of them, are jointly liable for the violations that form the basis of this
10 complaint.

11 **JURISDICTION AND VENUE**

12 10. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
13 of Civil Procedure section 410.10. On information and belief, the defendants or some of them
14 reside in San Bernardino County. Defendant Cardinal Logistics Management Corporation is, and
15 at all times mentioned in this complaint has been, a North Carolina corporation, authorized to do
16 business in California, with no designated principal place of business in California identified in its
17 statement filed with the Secretary of State. As such, venue is proper in San Bernadino County
18 pursuant to California Code of Civil Procedure section 395.

19 **FACTUAL BACKGROUND**

20 11. Plaintiff is informed and believes, and based thereon alleges that, without
21 limitation, in or about January of 2021 Defendants purported to provide consumer report
22 disclosures and requested from Plaintiff authorization(s) to procure consumer reports and
23 background checks for purposes of employment.

24 12. Plaintiff is informed and believes and based thereon alleges that, without limitation,
25 in approximately July of 2019 and again in or about February of 2020, Defendants procured a
26 consumer report about Plaintiff as part of an employment background screening without providing
27 Plaintiff with the proper disclosures and without proper authorization in compliance with the law.

28 ///

1 13. Plaintiff is informed and believes and based thereon alleges that Defendants did not
2 provide legally compliant disclosure and authorization forms to Plaintiff and Class Members as
3 they contained, without limitation, a “clear and conspicuous” disclosure, in a document that
4 consists solely of the disclosure, that “clearly and accurately” disclosed that a consumer report
5 may be obtained for employment purposes; that was authorized in writing the procurement of the
6 report, in violation of 15 U.S.C. §§ 1681b(b)(2)(A) and 1681d(a). Specifically, Plaintiff is
7 informed and believes the disclosures did not comply as a result of, without limitation: including
8 superfluous information within the disclosure, such as, among other things, identifying
9 information of a third party consumer reporting agency, which was not the reporting agency used
10 to obtain or procure the consumer report for Plaintiff and Class Members, and extraneous
11 information relating to various state disclosure requirements; burying the disclosures with small
12 font in a lengthy employment package with dense text that contains extraneous information;
13 failing to obtain proper authorization before procuring a consumer report, including by either
14 obtaining consumer reports without authorization or when such authorization had expired;
15 including a liability waiver in the same document as the disclosure before procuring a consumer
16 report; including a purported authorization for third parties to release information about Plaintiff
17 and other Class Members to Defendant, that is different from an authorization for the Defendant to
18 procure a consumer report; and by failing to provide, before a consumer report was obtained, a
19 summary of Plaintiff and Class Members’ rights under 15 U.S.C. § 1681m(a)(3), among other
20 things.

21 14. Plaintiff is informed and believes and based thereon alleges that Defendants did not
22 provide legally compliant disclosure and authorization forms to Plaintiff and Class Members as a
23 result of, without limitation, Defendants failing to make a “clear and conspicuous” disclosure in
24 writing to Plaintiff and Class Members at any time before the report is or was procured or caused
25 to be made in a document that consists solely of the disclosure, that: identified the name, address,
26 and telephone number of the investigative consumer reporting agency conducting the investigation
27 in violation of Civ. Code § 1786.16; notified Plaintiff and Class Members in writing of the nature
28 and scope of the investigation requested, including a summary of the provisions of Civ. Code §

1 1786.22; and notified Plaintiff and Class Members of the internet web site of the investigative
2 consumer reporting agency, or, if the agency had no internet web site address, the telephone
3 number of the agency where Plaintiff and Class Members may find information about the
4 investigative reporting agency's privacy practices, including whether Plaintiff and Class
5 Member's personal information will be sent outside of the United States or its territories and
6 information that complies with subdivision (d) of Section 1786.22, among other things.

7 15. Plaintiff is further informed and believes, and based thereon alleges, that
8 Defendants routinely acquire consumer, investigative and/or consumer credit reports (referred to
9 collectively as "background checks") to conduct background checks as described herein on
10 Plaintiff and other prospective, current and former employees and use information from the
11 background checks without providing proper disclosures and obtaining proper authorization in
12 compliance with the law, including Civil Code § 1785.1, *et seq.* (the "Consumer Credit Reporting
13 Agencies Act" or the "CCRAA").

14 **CLASS ACTION ALLEGATIONS**

15 16. Plaintiff brings this action on behalf of Plaintiff and all others similarly situated, as
16 a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class
17 of all current, former, and prospective employees of Defendants who applied for a job with
18 Defendants and a background check was performed beginning five (5) years preceding the filing
19 of Plaintiff's complaint up until the date that final judgment is entered in this action (collectively
20 referred to as "Class Members").

21 17. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision
22 (b) to amend or modify the class description with greater specificity or further division into
23 subclasses or limitation to particular issues.

24 18. This action has been brought and may properly be maintained as a class action
25 under the provisions of Code of Civil Procedure section 382 because there is a well-defined
26 community of interest in the litigation and the proposed Class is easily ascertainable.

27 ///

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1 A. Numerosity

2 19. The potential Class Members as defined are so numerous that joinder of all the
3 members of the Class is impracticable. While the precise number of Class Members has not been
4 determined yet, Plaintiff is informed and believes that there are at least seventy-five (75) Class
5 Members within the State of California alone.

6 20. Accounting for employee turnover during the relevant periods necessarily increases
7 this number substantially. Plaintiff alleges Defendants' employment records would provide
8 information as to the number and location of all Class Members. Joinder of all members of the
9 proposed Class is not practicable.

10 B. Commonality

11 21. There are questions of law and fact common to Class Members. These common
12 questions include, but are not limited to:

13 (a) Whether Defendants failed to comply with the requirements of the FCRA
14 under 15 U.S.C. § 1681, *et seq.*, including by failing to include the proper
15 disclosures and proper authorizations required by law?

16 (b) Whether Defendants failed to comply with the requirements of the ICRAA
17 under California Civil Code section 1786, *et seq.*, including by failing to
18 include the proper disclosures and proper authorizations required by law?

19 (c) Whether Defendants failed to comply with the requirements of the
20 Consumer Credit Reporting Agencies Act under California Civil Code
21 section 1785.1, *et seq.*, including by failing to include the proper disclosures
22 and proper authorizations required by law?

23 (d) Whether Defendants willfully failed to comply with the FCRA?

24 C. Typicality

25 22. The claims of Plaintiff herein alleged are typical of those claims which could be
26 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
27 by each Class Member in separate actions. Plaintiff is informed and believes and thereupon
28 alleges that Defendants had and/or have a policy or practice which resulted in Defendants failing

1 to comply with the FCRA, ICRAA, and the Consumer Credit Reporting Agencies Act as alleged
2 herein.

3 **D. Adequacy of Representation**

4 23. Plaintiff will fairly and adequately represent and protect the interest of Class
5 Members. Counsel who represents Plaintiff is competent and experienced in litigating class
6 actions and has no interests adverse to, or otherwise conflict with, the interests of the absent Class
7 Members.

8 **E. Superiority of Class Action**

9 24. A class action is superior to other available means for the fair and efficient
10 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
11 questions of law and fact common to Class Members predominate over any questions affecting
12 only individual Class Members. Class Members, as further described therein, have been subjected
13 to Defendants' illegal policy and/or practices as a result of Defendants' alleged improper
14 disclosures and authorizations.

15 25. Class action treatment will allow those similarly situated to litigate their claims in a
16 manner that is most efficient and economical for the parties and the judicial system. Plaintiff is
17 unaware of any difficulties that are likely to be encountered in the management of this action that
18 would preclude its maintenance as a class action.

19 **FIRST CAUSE OF ACTION**

20 **(Violation of the Fair Credit Reporting Act – Against All Defendants)**

21 26. Plaintiff realleges and incorporates by reference all of the allegations contained in
22 the preceding paragraphs of this Complaint as though fully set forth hereat.

23 27. Defendants are “persons” as defined by section 1681a(b) of the FCRA;

24 28. Plaintiff and Class Members are “consumers” within the meaning of Section
25 1681a(c) of the FCRA because they are “individuals.”

26 29. Pursuant to 15 U.S.C. section 1681b(b)(2)(A), an employer may not procure, or
27 cause to be procured, consumer reports for employment purposes without providing the
28 [employee] with “a clear and conspicuous disclosure... made in writing... in a document that

1 consists solely of the disclosure that a consumer report may be obtained for employment
2 purposes” and which the consumer has “authorized in writing” the procurement of the report by
3 that person.

4 30. 15 U.S.C. section 1681d(a)(1)(B) further provides that an employer may not
5 procure or cause to be prepared an investigative consumer report on any consumer unless it is
6 “clearly and accurately disclosed to the [employee] that an investigative consumer report... may
7 be made and such disclosure includes a statement informing the consumer of his right to request
8 the additional disclosures provided for under subsection (b) of this section and the written
9 summary of the rights of the consumer prepared pursuant to section 1681g(c) of this title.”

10 31. Plaintiff is informed and believes, and based thereon alleges, that during the
11 relevant time periods alleged herein, Defendants have, at times, obtained and used information in
12 consumer reports to conduct background checks on prospective and existing employees which
13 failed to comply with the requirements under the FCRA because they, among other things,
14 included superfluous information within the disclosure, such as, without limitation, identifying
15 information of a third party consumer reporting agency, which was not the reporting agency used
16 to obtain or procure the consumer report for Plaintiff and Class Members, and extraneous
17 information relating to various state disclosure requirements; buried the disclosures with small
18 font in a lengthy employment package with dense text that contains extraneous information; failed
19 to obtain proper authorization before procuring a consumer report, including by either obtaining
20 consumer reports without authorization or when such authorization had expired; included a
21 liability waiver in the same document as the disclosure before procuring a consumer report;
22 including a purported authorization for third parties to release information about Plaintiff and
23 other Class Members to Defendant, that is different from an authorization for the Defendant to
24 procure a consumer report; and by failing to, before a consumer report was obtained, include a
25 summary of Plaintiff and Class Members’ rights under 15 U.S.C. § 1681m(a)(3), among other
26 things.

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1 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
2 violations of the FCRA were willful. Defendant knew or should have known about its obligations
3 under the FCRA as a result of the plain language of the statutes.

4 33. Plaintiff, on behalf of Plaintiff and Class Members, without limitation, seek some
5 of the statutory remedies available under the FCRA.

6 **SECOND CAUSE OF ACTION**

7 **(Viol. of the Cal. Investigative Consumer Reporting Agencies Act – Against All Defendants)**

8 34. Plaintiff realleges and incorporates by reference all of the allegations contained in
9 the preceding paragraphs as though fully set forth hereat.

10 35. At all relevant times, Plaintiff and Class Members were current, former, and
11 prospective employees of Defendants covered by the California Investigative Consumer Reporting
12 Agencies Act, California Civil Code section 1786 *et seq.* (“ICRAA”).

13 36. Plaintiff is informed and believes that Plaintiff and Class Members are
14 “consumers” within the meaning Section 1786.2(b) of the ICRAA, because they are “individuals.”

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

18 38. Plaintiff is informed and believes that Defendants obtained background checks
19 from Plaintiff and Class Members, which qualify as an “investigative consumer report” under the
20 ICRAA.

21 39. Section 1786.16(a)(2) of the ICRAA provides, in relevant part, that “[i]f, at any
22 time, an investigative consumer report is sought for employment purposes... the person seeking
23 the investigative consumer report may procure the report, or cause the report to be made, only if
24 all of the following apply:

25 “(A) The person procuring or causing the report to be made has a permissible
26 purpose, as defined in Section 1786.12.

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

1 disclosure...” that, among other things, an investigative report may be obtained;
2 identifies the name, address, and telephone number of the investigative consumer
3 reporting agency conducting the investigation; notifies the consumer in writing of
4 the nature of the scope of the investigation, including a summary of the provision
5 of section 1786.22; and notifies the consumer of the internet website address of
6 the investigative consumer reporting agency or the address, the telephone number
7 of the agency, where the consumer may find information about the investigative
8 reporting agency’s privacy practices, including whether the consumer’s personal
9 information will be sent outside of the United States or its territories and
10 information that complies with subdivision (d) of section 1786.20.

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

12 40. Plaintiff is informed and believes and based thereon alleges that the plain language
13 of the statute indicates that the inclusion of extraneous information in a disclosure form violates
14 the disclosure and authorization requirements of the ICRAA, because such a form would not
15 consist “solely” of the disclosure and that the notice provided be “clear and conspicuous.”
16 Additionally, section 1786.16 requires that the consumer authorize in writing the procurement of
17 the report.

18 41. Plaintiff is informed and believes that during the relevant time periods alleged
19 herein, Defendants have, at times, failed to make a “clear and conspicuous” disclosure in writing
20 to Plaintiff and Class Members at any time before the report is or was procured or caused to be
21 made in a document that consists solely of the disclosure, that: identified the name, address, and
22 telephone number of the investigative consumer reporting agency conducting the investigation;
23 notified Plaintiff and Class Members in writing of the nature and scope of the investigation
24 requested, including a summary of the provisions of Civ. Code § 1786.22; and notified Plaintiff
25 and Class Members of the internet web site of the investigative consumer reporting agency, or, if
26 the agency had no internet web site address, the telephone number of the agency where Plaintiff
27 and Class Members may find information about the investigative reporting agency’s privacy
28 practices, including whether Plaintiff and Class Member’s personal information will be sent
outside of the United States or its territories and information that complies with subdivision (d) of
Section 1786.22, among other things.

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1 42. Plaintiff is informed and believes that as a result of the above, Defendants have, at
2 times, willfully violated the strict disclosure and authorization requirements under the California
3 Investigative Consumer Reporting Agencies Act, California Civil Code section 1786, *et seq.*
4 (“ICRAA”).

5 43. As a result of Defendants’ unlawful procurement of background reports by way of
6 its inadequate disclosures and authorizations, as set forth above, Plaintiff and Class Members have
7 been deprived of their consumer rights and prevented from making informed decisions about
8 whether to permit Defendants to obtain their personal information.

9 44. Plaintiff is informed and believes that as a result of the above, Defendants have, at
10 times, willfully violated the strict disclosure and authorization requirements under the ICRAA.

11 45. Plaintiff is informed and believes Defendants’ conduct in violation of Section 1786,
12 *et seq.* of the ICRAA was and is willful and/or grossly negligent. Defendants acted in deliberate
13 or reckless disregard of their obligations and the rights of applicants and employees, including
14 Plaintiff and Class Members.

15 46. Plaintiff, on behalf of Plaintiff and Class Members, among other things, seek some
16 of the available remedies pursuant to, without limitation, California Civil Code section 1786.50.

17 **THIRD CAUSE OF ACTION**

18 **(Violation of the Consumer Credit Reporting Agencies Act – Against All Defendants)**

19 47. Plaintiff realleges and incorporates by reference all of the allegations contained in
20 the preceding paragraphs as though fully set forth hereat.

21 48. At all relevant times, Plaintiff and Class Members were employees or former
22 employees of Defendants covered by the Consumer Credit Reporting Agencies Act, California
23 Civil Code section 1785.1, *et seq.* (“CCRAA”).

24 49. Section 1785.3(c) of the ICRAA defines “consumer credit report” as “[a]ny written,
25 oral, or other communication or any information by a consumer credit reporting agency bearing on
26 a consumer's credit worthiness, credit standing, or credit capacity, which is used or is expected to
27 be used, or collected in whole or in part, for the purpose of serving as a factor in establishing the
28 consumer's eligibility for: ... (2) employment purposes...”

1 50. Plaintiff is informed and believes that the employment background checks procured
2 by Defendants on behalf of Plaintiff and Class Members qualify as consumer credit reports under
3 the CCRAA.

4 51. Section 1785.20.5(a) of the CCRAA provides, in relevant part, that “[p]rior to
5 requesting a consumer credit report for employment purposes, the user of the report shall provide
6 written notice to the person involved. The notice shall inform the person that a report will be
7 used, and shall identify the specific basis under subdivision (a) of Section 1024.5 of the Labor
8 Code for use of the report. The notice shall also inform the person of the source of the report...”

9 52. Plaintiff is informed and believes and based thereon alleges that for the relevant
10 time periods described herein, Defendants have, at times, obtained and used information in
11 consumer reports to conduct background checks on prospective and existing employees without
12 providing proper notice informing Plaintiff and Class Members of the source of the reports and
13 without supplying the name and address of the consumer credit reporting agency making the
14 report, as required by California Civil Code section 1785.20.5(b), among other things.

15 53. Plaintiff is informed and believes that as a result of the above, Defendants have, at
16 times, willfully violated the strict disclosure and authorization requirements under the CCRAA.

17 54. Plaintiff is informed and believes Defendants’ conduct in violation of Section
18 1785.1, *et seq.* of the CCRAA was and is willful and/or grossly negligent. Defendants acted in
19 deliberate or reckless disregard of their obligations and the rights of applicants and employees,
20 including Plaintiff and Class Members.

21 55. Plaintiff, on behalf of Plaintiff and Class Members, without limitation, seek some
22 of the available remedies pursuant to, without limitation, California Civil Code section 1785.31.

23 **DEMAND FOR JURY TRIAL**

24 56. Plaintiff demands a trial by jury on all causes of action contained herein.

25 **PRAYER**

26 WHEREFORE, on behalf of Plaintiff and all others similarly situated, Plaintiff prays for
27 judgment against Defendants as follows:

28 A. An order certifying this case as a Class Action;

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- B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's counsel as class counsel;
- C. Punitive damages;
- D. Statutory penalties;
- E. Declaratory relief;
- F. Interest;
- G. For an order awarding reasonable attorneys' fees and the costs of suit herein, including but not limited to an award of attorneys' fees and costs ; and
- H. For such other relief as the Court deems just and proper.

Dated: May 11, 2022

BIBIYAN LAW GROUP, P.C.

BY: 

DAVID D. BIBIYAN
 JEFFREY C. BILS
 JOSHUA SHIRIAN
 Attorneys for Plaintiff TONY NUNLEY,
 on behalf of himself and all others similarly situated



**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN BERNARDINO**

San Bernardino District
247 West 3rd St
San Bernardino CA 92415
www.sb-court.org
909-708-8678

****complex-class Action**nunley V. Cardinal Logistics Management Et Al.**

IMPORTANT CORRESPONDENCE

Case Number

CIVSB2210430

Bibiyon Law Group, Pc
8484 Wilshire Blvd
Suite 500
Beverly Hills CA 90211

From the above entitled court, enclosed you will find:

INITIAL COMPLEX ORDER AND GUIDELINES.

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San Bernardino at the above listed address. I am not a party to this action and on the date and place shown below, I served a copy of the above listed notice:

- Enclosed in a sealed envelope mailed to the interested party addressed above for collection and mailing this date, following standard Court practices.
- Enclosed in a sealed envelope, first class postage prepaid in the U.S. mail at the location shown above, mailed to the interested party and addressed as shown above or as shown on the attached listing.
- A copy of this notice was given to the filing party at the counter.
- A copy of this notice was placed in the bin located at this office and identified as the location for the above law firm's collection of file stamped documents.

Date of Mailing: 6/14/2022

I declare under penalty of perjury that the foregoing is true and correct. Executed on 6/14/2022 at San Bernardino.

By: Alfie Cervantes

1 Superior Court of California
2 County of San Bernardino
247 W. Third Street, Dept. S-26
3 San Bernardino, CA 92415-0210

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 09 2022

4
5 BY Alfie Cervantes
ALFIE CERVANTES, DEPUTY

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7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT

10
11 TONY NULEY

Case No.: CIV SB 2210430

12
13 vs.

14
15 CARDINAL LOGISTICS MANAGEMENT
16 CORPORATION

INITIAL CASE MANAGEMENT
CONFERENCE ORDER

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22 This case is assigned for all purposes to Judge David Cohn in the Complex
23 Litigation Program, Department S-26, located at the San Bernardino Justice Center, 247
24 West Third Street, San Bernardino, California, 92415-0210. Telephone numbers for
25 Department S-26 are (909) 521-3519 (Judicial Assistant) and (909) 708-8866 (Court
26 Attendant).
27
28

SERVICE OF THIS ORDER

1
2 Plaintiffs' counsel is ordered to serve this Order on counsel for each defendant,
3 or, if counsel is not known, on each defendant within five days of the date of this Order.
4 If the complaint has not been served as the date of this Order, counsel for plaintiff is to
5 serve the summons and complaint along with this Order within ten days of the date of
6 this Order. Failure to serve this order may result in the imposition of monetary
7 sanctions.
8

9 **THE INITIAL CASE MANAGEMENT CONFERENCE**

10 An initial Case Management Conference (CMC) is scheduled for SEP 02 2022
11 at 9:00 a.m. Counsel may attend the initial CMC either in person or remotely, via
12 CourtCall. Contact CourtCall at (888) 882-6878 (www.CourtCall.com) to schedule your
13 appearance. Audio or video appearances are available. CourtCall may be used for all
14 CMCs, motions, and other hearings. In person attendance is not required at the initial
15 CMC or at subsequent conferences or motions unless specifically ordered by the court.
16
17

18 Counsel for all parties are ordered to attend the initial CMC. If there are
19 defendants who have not yet made a general or special appearance, those parties who
20 are presently before the court may jointly request a continuance of the initial CMC to
21 allow additional time for such non-appearing defendants to make their general or
22 special appearances. Such a request should be made by submitting a Stipulation and
23 Proposed Order to the Court, filed directly in Department S-26 (not in the clerk's office),
24 no later than five court days before the scheduled hearing.
25

26 **RESPONSIVE PLEADINGS**

27 Unless otherwise agreed by the parties, responsive pleadings are due as
28 provided by statute There is no stay on the pleadings or motions pending the initial

1 CMC. If, however, counsel agree to stay formal proceedings to facilitate settlement
2 discussions or for other reasons, each defendant is directed to file either a Notice of
3 General Appearance or a Notice of Special Appearance (if counsel intends to challenge
4 personal jurisdiction). The notices are for purposes of identification of counsel and
5 preparation of a service list. The filing of a Notice of General Appearance is without
6 prejudice to any substantive or procedural challenges to the complaint (including subject
7 matter jurisdiction), without prejudice to any denial or affirmative defense, and without
8 prejudice to the filing of any cross-complaint. The filing of a Notice of Special
9 Appearance is without prejudice to any challenge to the court's exercise of personal
10 jurisdiction.
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13 DISCOVERY

14 Unless all counsel agree otherwise, discovery is stayed pending the initial CMC.
15 If the parties agree to conduct discovery in advance of the initial CMC, commencement
16 of discovery is governed by statute.
17

18 AGENDA FOR THE INITIAL CASE MANAGEMENT CONFERENCE

19 Counsel for all parties are ordered to meet and confer in person no *later* than
20 fourteen days before the initial CMC to discuss the subjects listed below. Counsel
21 must be fully prepared to discuss these subjects with the court:
22

- 23 1. Any issues of recusal or disqualification;
- 24 2. Any potentially dispositive or important threshold issues of law or fact that, if
25 considered by the court, may simplify or further resolution of the case;
- 26 3. Appropriate mechanisms for Alternative Dispute Resolution;
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4. A plan for the preservation of evidence and a uniform system for the identification of documents to be used throughout the course of this litigation, including discovery and trial;
5. A discovery plan for the disclosure and production of documents and other discovery, including whether the court should order automatic disclosures, patterned on Federal Rule of Civil Procedure 26(a) or otherwise;
6. Whether it is advisable to conduct discovery in phases so that information needed to conduct meaningful ADR is obtained early in the case;
7. Any issues involving the protection of evidence and confidentiality;
8. The use and selection of an electronic service provider;
9. The handling of any potential publicity issues;
10. Any other issues counsel deem appropriate to address with the court.

THE JOINT REPORT

Counsel are ordered to meet and confer, in person or by telephone or video conference, and to prepare a joint report for the initial cmc, to be filed directly in department s-26 (not in the clerk's office), no later than four court days before the conference date. Separate reports from each party are not allowed. Judicial council form CMC statements are not allowed.

The joint report must include the following:

1. Whether the case should or should not be treated as complex;
2. Whether additional parties are likely to be added and a proposed date by which all parties must be served;

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3. A service list (the service list should identify all primary and secondary counsel, firm names, addresses, telephone numbers, email addresses, and fax numbers for all counsel.)
4. Whether the court should issue an order requiring electronic service. Counsel should advise the court regarding any preferred web-based electronic service provider;
5. Whether any issues of jurisdiction or venue exist that might affect this court's ability to proceed with this case.
6. Whether there are applicable arbitration agreements, and the parties' views on their enforceability;
7. A list of all related litigation pending in this or other courts (state and federal), a brief description of any such litigation, including the name of the judge assigned to the case, and a statement whether any additional related litigation is anticipated;
8. A description of the major factual and legal issues in the case. The parties should address any contracts, statutes, or regulations on which claims or defenses are based, or which will require interpretation in adjudicating the claims and defenses;
9. The parties' tentative views on an ADR mechanism and how such mechanism might be integrated into the course of the litigation;
10. A discovery plan, including the time needed to conduct discovery and whether discovery should be conducted in phases or limited (and, if so, the order of phasing or types of limitations). With respect to the discovery of electronically stored information (ESI), the plan should include:

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- a. Identification of the Information Management Systems used by the parties;
 - b. The location and custodians of information that is likely to be subject to production (including the identification of network and email servers and hard-drives maintained by custodians);
 - c. The types of ESI that will be requested and produced, e.g. data files, emails, etc.;
 - d. The format in which ESI will be produced;
 - e. Appropriate search criteria for focused requests.
 - f. A statement whether the parties will allow their respective IT consultants or employees to participate directly in the meet and confer process.
11. Whether the parties will stipulate that discovery stays or other stays entered by the court for case management purposes will be excluded in determining the statutory period for bringing the case to trial under Code of Civil Procedure Section 583.310 (the Five Year Rule).
12. Recommended dates and times for the following:
- a. The next CMC (absent special circumstances, the court typically schedules the next CMC approximately six to eight months out);
 - b. A schedule for any contemplated ADR;
 - c. A filing deadline (and proposed briefing schedule) for any anticipated non-discovery motions.
 - d. With respect to class actions, the parties' tentative views on an appropriate deadline for a class certification motion to be filed.

1 To the extent the parties are unable to agree on any matter to be addressed in
2 the Joint Report, the positions of each party or of various parties should be set forth
3 separately. The parties are encouraged to propose, either jointly or separately, any
4 approaches to case management that they believe will promote the fair and efficient
5 handling of this case.
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7 Any stipulations to continue conferences or other hearings throughout this
8 litigation must be filed with the court directly in Department S-26 (not in the Clerk's
9 office), no later than five court days before the conference or hearing date.

10 **JOINT REPORTS FOR SUBSEQUENT CONFERENCES**

11 Counsel must submit a joint report for each conference after the initial CMC. The
12 report should address how the case has moved forward since the last conference, what
13 needs to be accomplished in the future, and how the court can assist the parties move
14 the case towards resolution. As with the initial report, subsequent reports are to be filed
15 directly in department S-26 (not in the clerk's office), no later than four court days before
16 the conference date.
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18 **INFORMAL DISCOVERY CONFERENCES**

19 Motions concerning discovery cannot be filed without first requesting an informal
20 discovery conference (IDC) with the court. Making a request for an IDC automatically
21 stays the deadline for filing any such motion. IDCs are conducted by remote video
22 conference, using Zoom. If counsel's computer (or other device) does not have
23 camera capability, an audio-only option is available. Video appearance at the IDC,
24 however, is encouraged. In-person attendance at the IDC is permissible only if all
25 counsel are appearing in person. The Court will provide a link to join the remote
26 conference at the appointed time. Please provide Department S-26's Judicial Assistant
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1 ((909) 521-3519) or Court Attendant ((909) 708-8866) with an e-mail address. No
2 briefing is allowed for the IDC, but counsel (either jointly or separately) should lodge
3 (not file) a one page statement of the issues in dispute in Department S-26 no later than
4 the day before the IDC.

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Dated: 6/9, 2022.



David Cohn,
Judge of the Superior Court

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Cardinal Logistics Management Hit with Class Action Over Employee Background Checks](#)
