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13 Attorneys for Plaintiff Edwardo Munoz  
and the Class and Subclass

14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

17 **Edwardo Munoz**, individually and on  
18 behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 **7-Eleven, Inc.**, a Texas corporation,

22 Defendant.

Case No. 2:18-cv-03893-RGK-AGR

**FIRST AMENDED  
CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

23  
24 Plaintiff Edwardo Munoz (“Plaintiff” or “Munoz”) brings this first amended  
25 class action complaint against Defendant 7-Eleven, Inc. (“Defendant” or “7-Eleven”)  
26 to obtain redress for, and put an end to, Defendant’s serial violations of the Fair  
27 Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* (“FCRA” or “Act”), specifically its  
28

**FIRST AMENDED  
CLASS ACTION COMPLAINT**

1 failure to provide lawful notices and disclosures to its job applicants and employees  
2 as well as such other relief as this Court deems necessary and just. Plaintiff, for his  
3 First Amended Class Action Complaint, alleges as follows upon personal knowledge  
4 as to himself and his own acts and experiences, and, as to all other matters, upon  
5 information and belief, including investigation conducted by his attorneys.

6 **NATURE OF THE ACTION**

7 1. Enacted to promote the accuracy, fairness, and privacy of consumer  
8 information contained in the files of consumer reporting agencies, the FCRA  
9 explicitly protects job applicants and existing employees from adverse employment  
10 action taken as a result of potentially inaccurate or immaterial information. To that  
11 end, employers who obtain and use consumer reports regarding their applicants and  
12 employees are required to provide: (1) clear and conspicuous disclosures, in a  
13 document consisting solely of the disclosure (*i.e.*, that stands alone), prior to  
14 obtaining consumer reports in the first place, and (2) copies of the reports they  
15 obtain, together with a written summary of rights under the Act, prior to taking any  
16 adverse employment action against the applicants/employees based on information  
17 contained in such reports.

18 2. Defendant willfully violates the FCRA by failing to provide a clear and  
19 conspicuous or standalone upfront disclosure that Defendant may procure consumer  
20 reports about its applicants and employees prior to procuring consumer reports about  
21 them.

22 3. Consumer reports and investigative consumer reports, while both being  
23 types of consumer reports, are not one in the same. They are subject to distinct  
24 disclosure requirements. When an employer procures a standard "consumer report"  
25 regarding an applicant, it must provide a clear and conspicuous disclosure that stands  
26 alone pursuant to Section 1681b(b)(2); however, when an employer procures an  
27 investigative consumer report (an invasive type of consumer report that features  
28 interviews with a multitude of potential sources) regarding an applicant it must

1 comply with the disclosure requirements of *both* Section 1681b(b)(2) and Section  
2 1681d(a)-(b). (*See, e.g.*, Advisory Opinion to Beaudette, available at  
3 <https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-beaudette-06-09-98>.)

4 4. To comply with both provisions, the FTC has made clear that an  
5 employer cannot include the required Section 1681d(b) disclosures with the Section  
6 1681b(b)(2)(A) disclosure because doing so overshadows the latter disclosure and,  
7 thus, violates Section 1681b(b)(2)(A)'s requirement that the disclosure be clear and  
8 conspicuous and "in a document that consists solely of the disclosure." (*See, e.g.*,  
9 FTC Advisory Opinion to Willner, available at [https://www.ftc.gov/policy/advisory-](https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-willner-03-25-99)  
10 [opinions/advisory-opinion-willner-03-25-99](https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-willner-03-25-99).)

11 5. In 7-Eleven's case, 7-Eleven fails to provide its applicants or employees  
12 with a standalone disclosure and authorization that clearly and conspicuously  
13 indicates in a document consisting solely of the disclosure that Defendant may  
14 obtain a consumer report about them for employment purposes. First, Defendant  
15 provides a single disclosure combining both the disclosure required for a standard  
16 consumer report as well as disclosures required for an investigative consumer report,  
17 including details regarding the nature and scope of any investigation such that the  
18 disclosure overwhelms the consumer report disclosure. The disclosure and  
19 authorization also contain additional extraneous information about Sterling Talent  
20 Solutions and summaries of FCRA rights, as well as additional language purporting  
21 to authorize the preparation of reports by Sterling Talent Solutions. The  
22 authorization also purports to give consent to any party or agency contacted by 7-  
23 Eleven, Inc. to furnish information to it, and contains acknowledgements that the  
24 consumer has read and understood the disclosure and that they may have any  
25 employment offer revoked if "unacceptable information is found in an investigative  
26 background inquiry or consumer report. (See Disclosure & Authorization, a true and  
27 accurate copy of which is attached hereto as Ex. A.) The disclosure cannot be  
28 considered standalone.



1           11. This Court has personal jurisdiction over Defendant because it conducts  
2 substantial business in this District and the unlawful conduct alleged in the  
3 Complaint emanated from this District.

4           12. Venue is proper in this District under 28 U.S.C. § 1391 because a  
5 substantial part of the events and omissions giving rise to the claims occurred in the  
6 District. Plaintiff was hired at a 7-Eleven location in Los Angeles, California and  
7 worked there for a month prior to being terminated based on information contained  
8 in a background check obtained about him in relation to his employment.

9                           **FACTS COMMON TO PLAINTIFF AND ALL COUNTS**

10           13. 7-Eleven is a corporation based in Irving, Texas.

11           14. In or around January 2018, Plaintiff applied for a job with 7-Eleven at a  
12 store in Los Angeles, California.

13           15. In or around January 2018, Plaintiff was required to complete various  
14 acknowledgments of company disclosures including a disclosure regarding  
15 Plaintiff’s background and criminal history.

16           16. Rather than provide a standalone disclosure—as the FCRA requires—  
17 Plaintiff was presented with a document entitled “Disclosure Regarding Background  
18 Investigation,” which included the disclosures for both a consumer report and an  
19 investigative consumer report, including details regarding the nature and scope of  
20 any investigation, together with other extraneous information, including details about  
21 Sterling Talent Solutions and its privacy policy, acknowledgements that documents  
22 have been received and reviewed and that the signer understands that by signing they  
23 may have an offer revoked, and an authorization purporting to grant “any party or  
24 agency contacted by 7-Eleven, Inc.” to furnish whatever information 7-Eleven  
25 requests. (*See Ex. A.*)

26           17. The unnecessary inclusion of such extraneous information rendered the  
27 document confusing to Plaintiff and the average consumer. That is, because 7-Eleven  
28 fails to provide a clear and conspicuous disclosure in a document consisting solely of

1 the disclosure as required by the FCRA, Plaintiff was unable to meaningfully  
2 authorize the report, or reports, that 7-Eleven intended to procure about him. Plaintiff  
3 would not have authorized the background check had a lawful disclosure been  
4 provided.

5 18. Plaintiff was employed by 7-Eleven for approximately one month,  
6 starting January 26, 2018.

7 19. On or around February 21, 2018, 7-Eleven terminated Plaintiff based on  
8 information contained in the background check it had procured regarding Plaintiff.

9 20. Defendant—by failing to provide lawful disclosures to applicants and  
10 employees, including Plaintiff—has willfully denied Plaintiff the rights guaranteed  
11 to him by the FCRA. Such violations entitle him, and other similarly situated, to  
12 statutory damages of not less than \$100 and not more than \$1,000 per violation.

### 13 CLASS ACTION ALLEGATIONS

14 21. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure  
15 23(b)(2) and Rule 23(b)(3) on behalf of himself, a nationwide Class, and a California  
16 Subclass defined as follows:

17 **Disclosure Class:** All persons in the United States who (1) from a date  
18 two years prior to the filing of the initial complaint in this action to the  
19 date notice is sent to the Disclosure Class; (2) applied for employment  
20 with Defendant; (3) about whom Defendant procured a consumer  
21 report; and (4) who were provided the same form FCRA disclosure and  
authorization as the disclosure and authorization form Defendant  
provided to Plaintiff.

22 **California Subclass:** All members of the Disclosure Class who reside  
23 in California.

24 22. Excluded from the Class and Subclass are (1) Defendant, Defendant's  
25 agents, subsidiaries, parents, successors, predecessors, and any entity in which  
26 Defendant or its parents have a controlling interest, and those entities' officers and  
27 directors, (2) the Judge or Magistrate Judge to whom this case is assigned and the  
28 Judge's or Magistrate Judge's immediate family, (3) persons who execute and file a

1 timely request for exclusion, (4) persons who have had their claims in this matter  
2 finally adjudicated and/or otherwise released, and (5) the legal representatives,  
3 successors, and assigns of any such excluded person. Plaintiff anticipates the need to  
4 amend the Complaint following a reasonable period for class discovery.

5       23. **Numerosity:** The exact numbers of the members of the Class and  
6 Subclass are unknown to Plaintiff at this time, but it is clear that individual joinder is  
7 impracticable. Defendant has thousands of employees and potentially an even greater  
8 number of job applicants. Further, the Class and Subclass members can readily be  
9 ascertained through Defendant's records and the records of Sterling Talent Solutions.

10       24. **Commonality:** Common questions of law and fact exist as to all  
11 members of the Class and Subclass for which this proceeding will provide common  
12 answers in a single stroke based upon common evidence, including:

- 13       (a) Whether Defendant's conduct described herein violated the FCRA;
- 14       (b) Whether Defendant has procured or caused to be procured consumer  
15 reports about job applicants and employees;
- 16       (c) Whether Defendant's disclosure violates the FCRA's requirement that  
17 the pre-report disclosure be clear and conspicuous in a document  
18 consisting solely of the disclosure;
- 19       (d) Whether Defendant has acted willfully;
- 20       (e) And for the Subclass the proper measure of statutory damages and the  
21 availability and appropriateness of declaratory and injunctive relief.

22       25. **Typicality:** As a result of Defendant's uniform disclosures and conduct,  
23 Plaintiff and the Class and Subclass members suffered the same injury and similar  
24 damages. If the disclosure violated the FCRA as to Plaintiff, then it violated the  
25 FCRA as to all job applicants and employees. Thus, Plaintiff's claims are typical of  
26 the claims of the other Class and Subclass members.

27       26. **Adequate Representation:** Plaintiff is a member of the Class and  
28 Subclass and both he and his counsel will fairly and adequately represent and protect

1 the interests of the Class and Subclass, as neither has interests adverse to those of the  
2 Class and Subclass members and Defendant has no defenses unique to Plaintiff. In  
3 addition, Plaintiff has retained counsel competent and experienced in complex  
4 litigation and class actions. Further, Plaintiff and his counsel are committed to  
5 vigorously prosecuting this action on behalf of the members of the Class and  
6 Subclass, and they have the financial resources to do so.

7       **27. Conduct Similar Towards Class Members:** In using uniform  
8 disclosures that violate the FCRA, Defendant has acted or refused to act on grounds  
9 generally applicable to Subclass so as to render injunctive and declaratory relief  
10 appropriate under the California Unfair Competition Law ("UCL") Cal. Bus. & Prof.  
11 Code § 17200 *et seq.* For the Subclass members, Defendant's uniform conduct  
12 requires the Court's imposition of uniform relief to ensure compatible standards of  
13 conduct toward the Subclass members, thus, making final injunctive and/or  
14 declaratory relief appropriate with respect to the Subclass as a whole. Further,  
15 because Defendant's uniform practices result in similar, if not identical, injuries for  
16 all Subclass members, Plaintiff's challenge of those practices hinges on Defendant's  
17 conduct with respect to the Subclass, not on facts or law applicable only to Plaintiff.

18       **28. Predominance:** The common questions of law and fact set forth above  
19 go to the very heart of the controversy and predominate over any supposed  
20 individualized questions. Irrespective of any given Class or Subclass member's  
21 situation, the answer to whether Defendant's pre-report disclosure is unlawful is the  
22 same for everyone—a resounding “yes” to that question—and it will be proven using  
23 common evidence.

24       **29. Superiority and Manageability:** A class action is superior to all other  
25 methods of adjudicating the controversy. Joinder of all class members is impractical,  
26 and the damages suffered by/available to the individual Class and Subclass members  
27 will likely be small relative to the cost associated with prosecuting an action. Thus,  
28 the expense of litigating an individual action will likely prohibit the Class and



1 Subclass members from obtaining effective relief for Defendant’s misconduct. In  
2 addition, there are numerous common factual and legal questions that could result in  
3 inconsistent verdicts should there be several successive trials. In contrast, a class  
4 action will present far fewer management difficulties, as it will increase efficiency  
5 and decrease expense. Further, class-wide adjudication will also ensure a uniform  
6 decision for the Class and Subclass members.

7 30. Plaintiff reserves the right to revise the definition of the Class and  
8 Subclass as necessary based upon information obtained in discovery.

9 **COUNT I**  
10 **Violation of 15 U.S.C. § 1681b(b)(2)(A)(i)**  
11 **(On Behalf of Plaintiff and the Disclosure Class)**

12 31. Plaintiff incorporates by reference the foregoing allegations as if fully  
13 set forth herein.

14 32. The FCRA declares that:

15 Except as provided in subparagraph (B), a person may not procure a  
16 consumer report, or cause a consumer report to be procured, for  
17 employment purposes with respect to any consumer, unless—

18 (i) a clear and conspicuous disclosure has been made in writing to the  
19 consumer at any time before the report is procured or caused to be  
20 procured, in a document that consists solely of the disclosure, that a  
21 consumer report may be obtained for employment purposes . . . .

22 15 U.S.C. § 1681b(b)(2)(A) (emphasis added).

23 33. The FCRA defines a consumer report as:

24 . . . any written, oral, or other communication of any information by a  
25 consumer reporting agency bearing on a consumers’ credit worthiness,  
26 credit standing, cred-it capacity, character, general reputation, personal  
27 characteristics, or mode of living which is used or excepted to be used  
28 or collected in whole or in part for the purpose of serving as a factor  
establishing the consumer’s eligibility for . . .

(B) employment purposes . . .

15 U.S.C. § 1681a(d)(1).

1           34. Defendant's background checks are consumer reports.

2           35. The pre-report disclosure that 7-Eleven provided to applicants and  
3 employees combines disclosures required for consumer reports with disclosures  
4 required for investigative consumer reports. That is, Defendant provides a single  
5 disclosure combining both the disclosure required for a standard consumer report as  
6 well as disclosures required for an investigative consumer report, including details  
7 regarding the nature and scope of any investigation such that the disclosure  
8 overwhelms the consumer report disclosure.

9           36. The disclosure and authorization also contain additional extraneous  
10 information about Sterling Talent Solutions and summaries of FCRA rights, as well  
11 as additional language purporting to authorize the preparation of reports by Sterling  
12 Talent Solutions. The authorization also purports to give consent to any party or  
13 agency contacted by 7-Eleven, Inc. to furnish information to it, and contains  
14 acknowledgements that the consumer has read and understood the disclosure and  
15 that they may have any employment offer revoked if unacceptable information is  
16 found in an investigative background inquiry or consumer report.

17           37. The disclosure and authorization that Defendant provided to Plaintiff  
18 and the Disclosure Class members willfully violated the FCRA by not being clear  
19 and conspicuous, by being unnecessarily duplicative, and by including extraneous  
20 information such that the disclosure cannot be said to "stand alone" in a document  
21 that consists solely of the disclosure. Plaintiff and the other class members wouldn't  
22 have authorized the reports had appropriate disclosures been provided.

23           38. Defendant procured consumer reports with respect to Plaintiff and the  
24 Disclosure Class members. The disclosures provided to Plaintiff were the same or  
25 substantially the same as the one provided to all Disclosure Class members. Thus,  
26 Defendant uniformly violated the FCRA rights of all Class members in the same way  
27 and, in the process, violated their right to information and their privacy rights as  
28 delineated by Congress.



1 43. Defendant's failure to provide a clear and conspicuous disclosure and  
2 authorization under the FCRA that "stands alone" violated the unlawful prong of the  
3 UCL.

4 44. Defendant's violations are ongoing and continuing and will likely occur  
5 in the future absent an order from this Court enjoining 7-Eleven from continuing to  
6 violate the FCRA with respect to California residents.

7 45. As such, Plaintiff and the California Subclass members are entitled  
8 under the UCL to an Order enjoining 7-Eleven's further violations of the FCRA and  
9 for corresponding declaratory relief.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff Edwardo Munoz, individually and on behalf of the  
12 Class and Subclass, respectfully requests that this Court issue an order:

- 13 A. Certifying this case as a class action on behalf of the Class and Subclass  
14 defined above, appointing Edwardo Munoz as class representative and  
15 appointing his counsel as class counsel;
- 16 B. Declaring that Defendant's actions, as set out above, constitute  
17 violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681b;
- 18 C. Awarding damages, including statutory and treble damages where  
19 applicable, to Plaintiff and the Class in amounts to be determined at  
20 trial;
- 21 D. Awarding injunctive and other equitable relief as is necessary to protect  
22 the interests of the Subclass, *inter alia*: (i) an order prohibiting  
23 Defendant from engaging in the wrongful and unlawful actions  
24 described herein; and (ii) requiring Defendant to provide proper  
25 disclosures;
- 26 E. Awarding Plaintiff and the Class and Subclass their reasonable  
27 litigation expenses and attorneys' fees;
- 28

- 1 F. Awarding Plaintiff and the Class and Subclass pre- and post- judgment
- 2 interest, to the extent allowable;
- 3 G. Providing such other injunctive and/or declaratory relief as necessary to
- 4 protect the interests of Plaintiff and the Class and Subclass; and
- 5 H. Such further and other relief as the Court deems reasonable and just.

**JURY DEMAND**

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted,

Dated: July 9, 2018

**Edwardo Munoz**, individually and on behalf of all others similarly situated,

By: /s/ Patrick H. Peluso  
One of Plaintiff's Attorneys

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