

1 Shaun Setareh (SBN 204514)  
2 shaun@setarehlaw.com  
3 Thomas Segal (SBN 222791)  
4 thomas@setarehlaw.com  
5 SETAREH LAW GROUP  
6 9454 Wilshire Boulevard, Suite 907  
7 Beverly Hills, California 90212  
8 Telephone: (310) 888-7771  
9 Facsimile: (310) 888-0109

10 Attorneys for Plaintiff,  
11 MARCUS CHISM

12 **UNITED STATES DISTRICT COURT**  
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 MARCUS CHISM, on behalf of himself, all  
15 others similarly situated,

16 *Plaintiff,*

17 vs.

18 PEPSICO, INC., a North Carolina Corporation;  
19 FRITO-LAY, INC., a Delaware Corporation;  
20 FIRST ADVANTAGE BACKGROUND  
21 SERVICES CORP., a Florida Corporation; and  
22 DOES 1 to 100, Inclusive

23 *Defendants.*

Case No.: 3:17-cv-00152-VC

**CLASS ACTION**

**SECOND AMENDED COMPLAINT  
FOR:**

1. Violation of 15 U.S.C. §§ 1681b(b)(2)(A) (Fair Credit Reporting Act);
2. Violation of 15 U.S.C. §§ 1681d(a)(1) and 1681g(c) (Fair Credit Reporting Act);
3. Violation of California Civil Code § 1786 *et seq.* (Investigative Consumer Reporting Agencies Act)
4. Violation of California Civil Code § 1785 *et seq.* (Consumer Credit Reporting Agencies Act)
5. Violation of 15 U.S.C. 1681b(b)(1)(A) (Fair Credit Reporting Act.)

**JURY TRIAL DEMANDED**

1 Plaintiff, MARCUS CHISM (hereafter “Plaintiff”), on behalf of himself and all others  
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against defendant PEPSICO  
5 INC., a North Carolina corporation (“PEPSICO”), FRITO-LAY, INC., a Delaware corporation  
6 (“FRITO-LAY”); FIRST ADVANTAGE BACKGROUND SERVICES CORP, a Florida  
7 corporation (“FIRST ADVANTAGE”); and DOES 1-100, inclusively (collectively,  
8 “Defendants”) for alleged violations of the Fair Credit Reporting Act (“FCRA”) and similar  
9 California laws.

10 2. Plaintiff alleges that Defendants routinely acquire consumer, investigative  
11 consumer and/or consumer credit reports (referred to collectively as “credit and background  
12 reports”) to conduct background checks on Plaintiff and other prospective, current and former  
13 employees and use information from credit and background reports in connection with their  
14 hiring process without complying with the law. Defendant FIRST ADVANTAGE is a  
15 Consumer Reporting Agency and must comply with the requirements of the FCRA pertaining to  
16 Consumer Reporting Agencies. Plaintiff, individually and on behalf of all others similarly  
17 situated current, former, and prospective employees, seeks compensatory and punitive damages  
18 due to Defendants’ systematic and willful violations of the FCRA, 15 U.S.C. §§ 1681 *et seq.*,  
19 the California Investigative Consumer Reporting Agencies Act (“ICRAA”) (Cal. Civ. Code §  
20 1786, *et seq.*), and the California Consumer Credit Reporting Agencies Act (“CCRAA”) (Cal.  
21 Civ. Code § 1785, *et seq.*).

22 **PARTIES**

23 3. Plaintiff was employed by Defendant as an hourly, non-exempt employee  
24 working in the State of California from approximately October 2015 to September 2016.

25 4. Plaintiff alleges that the background check authorization used did not comply  
26 with the FCRA and other applicable laws. However, Plaintiff does not allege that he did not  
27 know a background check would be done. Plaintiff requests that any dismissal be without  
28 prejudice to re-filing in state court.

5. Defendant PEPSICO is a corporation organized and existing under the laws of  
North Carolina and also a citizen of California based on Plaintiff’s information and belief.

6. Defendant FRITO-LAY is a corporation organized and existing under the laws of

1 Delaware and also a citizen of California based on Plaintiff's information and belief.

2 7. Defendant FIRST ADVANTAGE is a corporation organized and existing under  
3 the laws of Florida and also a citizen of California based on Plaintiff's information and belief.

4 8. Plaintiff is ignorant of the true names, capacities, relationships, and extents of  
5 participation in the conduct alleged herein, of the defendants sued as DOES 1-100, inclusive,  
6 but is informed and believes and thereon alleges that said defendants are legally responsible for  
7 the wrongful conduct alleged herein and therefore sues these defendants by such fictitious  
8 names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE  
9 defendants when ascertained.

10 9. Plaintiff is informed and believes and thereon alleges that, at all relevant times  
11 herein, all Defendants were the agents, employees and/or servants, masters or employers of the  
12 remaining defendants, and in doing the things hereinafter alleged, were acting within the course  
13 and scope of such agency or employment, and with the approval and ratification of each of the  
14 other Defendants.

15 10. Plaintiff alleges that each and every one of the acts and omissions alleged herein  
16 were performed by, and/or attributable to, all Defendants, each acting as agents and/or  
17 employees, and/or under the direction and control of each of the other defendants, and that said  
18 acts and failures to act were within the course and scope of said agency, employment and/or  
19 direction and control.

20 **CLASS ALLEGATIONS**

21 11. This action has been brought and may be maintained as a class action pursuant to  
22 FRCP §23 because there is a well-defined community of interest among the persons who  
23 comprise the readily ascertainable classes defined below and because Plaintiff is unaware of any  
24 difficulties likely to be encountered in managing this case as a class action.

25 12. **Class Definitions:** The classes are defined as follows:

26 A. **FCRA Class:** All of Defendants' current, former and prospective  
27 applicants for employment in the United States who applied for a job with Defendants (or were  
28 issued a background check by First Advantage) at any time during the period beginning five  
years prior to the filing of this action and ending on the date that final judgment is entered in  
this action.

B. **ICRAA Class:** All of Defendant's current, former, and prospective

1 applicants for employment in California, at any time during the period beginning five years  
2 prior to the filing of this action and ending on the date that final judgment is entered into this  
3 action.

4 C. **CCRAA Class:** All of Defendant's current, former, and prospective  
5 applicants for employment in California, at any time during the period beginning seven years  
6 prior to the filing of this action and ending on the date that final judgment is entered in this  
7 action.

8 13. **Numerosity:** The class members are so numerous that the individual joinder of  
9 each individual class member is impractical. While Plaintiff does not currently know the exact  
10 number of class members, Plaintiff is informed and believes that the actual number exceeds the  
11 minimum required for numerosity under California law.

12 14. **Commonality and Predominance:** Common questions of law and fact exist as  
13 to all class members and predominate over any questions which affect only individual class  
14 members. These questions include, but are not limited to:

15 A. Wherein Defendants Pepsico and Frito Lay willfully failed to provide the  
16 class with stand-alone written disclosures and/or authorizations before obtaining a credit or  
17 background report in compliance with the statutory mandates?

18 B. Whether Defendants Pepsico and Frito Lay willfully failed to identify the  
19 name, address, telephone number, and/or website of the investigative consumer reporting  
20 agency conducting the investigation?

21 C. Whether Defendants Pepsico and Frito Lay willfully failed to identify the  
22 source of the credit report to be performed?

23 D. Whether Defendant First Advantage willfully failed to obtain a  
24 certification from Pepsico, Frito Lay and other employer customers that the employer before  
25 obtaining a background check had complied with the authorization and stand alone disclosure  
26 requirements of the FCRA?

27 E. Wherein Defendants willfully failed to comply with the FCRA, ICRAA  
28 and/or the CRAA?

15. **Typicality:** Plaintiff's claims are typical of the other class members' claims.  
Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice or  
a lack of a policy which resulted in Defendants failing to comply with the FCRA, ICRAA, and

1 CCRAA as alleged herein.

2 16. **Adequacy of Class Representative:** Plaintiff is an adequate class representative  
3 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of  
4 absent class members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of  
5 class members. Plaintiff will fairly and adequately represent and protect the interests of class  
6 members.

7 17. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in  
8 that they have no known conflicts of interest with Plaintiff or absent class members, are  
9 experienced in class action litigation and are dedicated to vigorously prosecuting this action on  
10 behalf of Plaintiff and absent class members.

11 18. **Superiority:** A class action is vastly superior to other available means for fair  
12 and efficient adjudication of class members' claims and would be beneficial to the parties and  
13 the Court. Class action treatment will allow a number of similarly situated persons to  
14 simultaneously and efficiently prosecute their common claims in a single forum without the  
15 unnecessary duplication of effort and expense that numerous individual actions would entail. In  
16 addition, the monetary amounts due to many individual class members are likely to be relatively  
17 small and would thus make it difficult, if not impossible, for individual class members to both  
18 seek and obtain relief. Moreover, a class action will serve an important public interest by  
19 permitting class members to effectively pursue the recovery of monies owed to them. Further, a  
20 class action will prevent the potential for inconsistent or contradictory judgments inherent in  
21 individual litigation.

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO MAKE PROPER DISCLOSURE OR OBTAIN AUTHORIZATION IN**

24 **VIOLATION OF THE FCRA**

25 **(15 U.S.C. §§ 1681b(b)(2)(A))**

26 **(By Plaintiff and the FCRA Class against Defendants Frito Lay and Pepsico)**

27 19. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

28 20. Defendants are "persons" as defined by Section 1681a(b) of the FCRA.

29 21. Plaintiff and class members are "consumers" within the meaning Section  
30 1681a(c) of the FCRA, because they are "individuals."

31 22. Section 1681a(d)(1) of the FCRA defines "consumer report" as

1 any oral, or other communication of any information by a consumer  
2 reporting agency bearing on a consumer's credit worthiness, credit  
3 standing, credit capacity, character, general reputation, personal  
4 characteristics, or mode of living which is used or expected to be used or  
5 collected in whole or in part for the purpose of serving as a factor in  
6 establishing the consumer's eligibility" for employment purposes.

7 Thus a credit and background report qualifies as a consumer report.

- 8 23. Section 1681a(e) of the FCRA defines "investigative consumer report" as:  
9 a consumer report or portion thereof in which information on a consumer's  
10 character, general reputation, personal characteristics, or mode of living is  
11 obtained through personal interviews with neighbors, friends, or associates  
12 of the consumer reported on or with whom he is acquainted or who may  
13 have knowledge concerning any such items of information.

14 Thus a credit and background report qualifies as an investigative consumer report.

- 15 24. Section 1681b(b) of the FCRA provides, in relevant part:  
16 Conditions for furnishing and using consumer reports for employment purposes

17 (2) Disclosure to consumer

18 (A) In general

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

- 22 i. **a clear and conspicuous** disclosure has been made in writing to  
23 the consumer at any time before the report is procured or caused  
24 to be procured, in a document that **consists solely of the**  
25 **disclosure**, that a consumer report may be obtained for  
26 employment purposes; and  
27 ii. the consumer has authorized in writing (which authorization may  
28 be made on the document referred to in clause (i)) the  
procurement of the report by that person. (Emphasis Added).

29 25. As described above, Plaintiff alleges, on information and belief, that in  
30 evaluating him and other class members for employment, Defendants procured or caused to be  
31 prepared credit and background reports (i.e., a consumer report and/or investigative consumer  
32 report, as defined by 15 U.S.C. § 1681a(d)(1)(B) and 15 U.S.C. § 1681a(e)).

33 26. When Plaintiff applied for employment with Defendants, Defendants did not  
34 provide Plaintiff with required Disclosures and Authorizations ("Disclosure").

1 27. Instead, Defendants only provided a Notice (“Notice”) which states in pertinent  
2 part:

3 IMPORTANT NOTICE UNDER CALIFORNIA LAW

4 First Advantage does not guarantee the accuracy or truthfulness of the information as the  
5 subject of the investigation, but only that it is accurately copied from public records.  
6 Information generated as a result of identity theft, including evidence of criminal  
7 activity, may be inaccurately associated with the consumer who is the subject of this  
8 report. In California, First Advantage shall provide a consumer seeking to obtain a copy  
9 of a report or making a request to review a file, a written notice in simple, plain English  
10 and Spanish setting forth the terms and conditions of his or her right to receive all  
11 disclosures.

12 28. Here, there is no disclosure stating that an investigative consumer report will be  
13 procured for employment purposes.

14 29. Moreover, the consumer has not authorized in writing the procurement of the  
15 report. Here, Plaintiff has not signed any authorization.

16 30. Because Defendants failed to provide Plaintiff with any Disclosures or  
17 Authorizations, Defendants do not meet the requirements under the law.

18 31. Under the FCRA, it is unlawful to procure or caused to be procured, a consumer  
19 report or investigative consumer report for employment purposes unless the disclosure is made  
20 in a document that consists solely of the disclosure and the consumer has authorized, in writing,  
21 the procurement of the report. 15 U.S.C. § 1681b(b)(2)(A)(i)-(ii).

22 32. Defendants’ conduct in violation of Section 1681b(b)(2)(A) of the FCRA was  
23 and is willful. Defendants acted in deliberate or reckless disregard of their obligations and the  
24 rights of applicants and employees, including Plaintiff and class members. Defendants’ willful  
25 conduct is reflected by, among other things, the following facts:

26 (a) Defendants are a large corporation with access to legal advice;

27 (b) Defendants required a purported authorization to perform credit and  
28 background checks in the process of employing the class members which, although defective,  
evidences Defendants’ awareness of and willful failure to follow the governing laws concerning  
such authorizations;

(c) The plain language of the statute unambiguously indicates that inclusion  
of a liability release and other extraneous information in a disclosure form violates the





**SECOND CAUSE OF ACTION**

**FAILURE TO GIVE PROPER SUMMARY OF RIGHTS IN VIOLATION OF FCRA**

**(15 U.S.C. § 1681d(a)(1) and 1681g(c))**

**(By Plaintiff and the FCRA Class against Defendants Frito Lay and Pepsico)**

38. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

39. Section 1681d(a)(1) provides:

Disclosure of fact of preparation

A person may not procure or cause to be prepared an investigative consumer report on any consumer unless—

(1) it is *clearly and accurately disclosed* to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure;

(2) is *made in a writing mailed, or otherwise delivered*, to the consumer, not later than three days after the date on which the report was first requested, and

(3) *includes a statement informing the consumer of his right to request the additional disclosures* provided for under subsection (b) of this section *and the written summary of the rights of the consumer prepared pursuant to section 1681g(c)* of this title; (Emphasis Added.)

(4) Subsection (b) of Section 1681d(a)(1) provides:  
Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (a)(1) of this section (a)(1) of this section, make a *complete and accurate disclosure of the nature and scope of the investigation requested*; (Emphasis Added). This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.

40. Defendant did not comply with Section 1681d(a)(1).

41. Section 1681g(c) further provides summary of rights to obtain and dispute information in consumer reports and to obtain credit scores as:

(A) Commission summary of rights required

The Commission shall prepare a *model summary of the rights* of consumers under this subchapter.

## (B) Content of summary

The summary of rights prepared under subparagraph (A) shall include a description of—

- (1) the ***right of a consumer to obtain a copy of a consumer report*** under subsection (a) of this section from each consumer reporting agency;
- (2) the ***frequency and circumstances under which a consumer is entitled to receive a consumer report without charge*** under section 1681j of this title;
- (3) the right of a consumer to ***dispute information*** in the file of the consumer under section 1681i of this title;
- (4) ***the right of a consumer to obtain a credit score*** from a consumer reporting agency, and a description of how to obtain a credit score;
- (5) the ***method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency without charge***, as provided in the regulations of the Bureau prescribed under section 211(c) of the Fair and Accurate Credit Transactions Act of 2003; and
- (6) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency described in section 1681a(w) of this title, as provided in the regulations of the Bureau prescribed under section 1681j(a)(1)(C) of this title; (Emphasis Added).

42. Defendant did not comply with 1681g(c)(1)(B)(ii) because the summary of rights did not include the right of a consumer to obtain a copy of a consumer report under section 1681j of this title.

43. Defendant did not comply with 1681g(c)(1)(B)(ii) because the summary of rights did not include the frequency and circumstances under which a consumer is entitled to receive a consumer report without charge under section 1681j of this title.

44. Defendant did not comply with 1681g(c)(1)(B)(iii) because the summary of rights did not include the right of the consumer to dispute information in the file of the consumer under section 1681i of this title.

45. Defendant did not comply with 1681g(c)(1)(B)(iv) because the summary of rights did not include the right of the consumer to obtain a credit score from a consumer reporting agency, and a description of how to obtain a credit score.

46. Defendant did not comply with 1681g(c)(1)(B)(v) because the summary of rights did not include the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency without charge, as provided in the regulations of the Bureau

1 prescribed under section 211(c) of the Fair and Accurate Credit Transactions Act of 2003

2 47. Defendant did not comply with 1681g(c)(1)(B)(vi) because the summary of  
3 rights did not include the method by which a consumer can contact, and obtain a consumer  
4 report from, a consumer reporting agency described in section 1681a(w) of this title, as  
5 provided in the regulations of the Bureau prescribed under section 1681j(a)(1)(C) of this title.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF ICRAA**

8 **(Cal. Civ. Code § 1786 et seq.)**

9 **(By Plaintiff and the ICRAA Class against Defendants Frito Lay and Pepsico)**

10 48. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

11 49. Defendants are “persons” as defined by Section 1786.2(a) of the Investigative  
Consumer Reporting Agencies Act (“ICRAA”).

12 50. Plaintiff and **ICRAA Class** members are “consumers” within the meaning  
13 Section 1786.2(b) of the ICRAA, because they are “individuals.”

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

17 52. Thus a background checks qualifies as an investigative consumer  
18 report under the ICRAA

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

20 If, at any time, an investigative consumer report is sought for employment  
21 purposes...the person seeking the investigative consumer report may procure the  
report, or cause the report to be made, only if all of the following apply:

22 (B) The person procuring or causing the report to be made provides a ***clear and***  
23 ***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 disclosure***, that:

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

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

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

27 (iv) Identifies the ***name, address, and telephone number of the investigative***  
28 ***consumer reporting agency*** conducting the investigation.

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

3 (vi) *Notifies the consumer of the Internet Web site address of the investigative*  
4 *consumer reporting agency* identified in clause (iv), or, *if the agency has no*  
5 *Internet Web site address, the telephone number of the agency*, where the  
6 consumer may find information about the investigative reporting agency's privacy  
7 practices, including whether the consumer's personal information will be sent  
8 outside the United States or its territories and information that complies with  
9 subdivision (d) of Section 1786.20. This clause shall become operative on January  
10 1, 2012.

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

13 54. As described above, Plaintiff alleges that in evaluating him and other class  
14 members for employment, Defendants procured or caused to be prepared investigative  
15 consumer report (e.g. background checks), as defined by Cal. Civ. Code § 1786.2(c).

16 55. When Plaintiff applied for employment with Defendants, Defendants did not  
17 provide Plaintiff with required Disclosures and Authorizations (“Disclosure”).

18 56. Instead, Defendants only provided a Notice (“Notice”) which states in pertinent  
19 part:

20 IMPORTANT NOTICE UNDER CALIFORNIA LAW

21 First Advantage does not guarantee the accuracy or truthfulness of the information as the  
22 subject of the investigation, but only that it is accurately copied from public records.  
23 Information generated as a result of identity theft, including evidence of criminal  
24 activity, may be inaccurately associated with the consumer who is the subject of this  
25 report. In California, First Advantage shall provide a consumer seeking to obtain a copy  
26 of a report or making a request to review a file, a written notice in simple, plain English  
27 and Spanish setting forth the terms and conditions of his or her right to receive all  
28 disclosures.

57. Here, there is no disclosure stating that an investigative consumer report will be  
procured for employment purposes.

58. Moreover, the consumer has not authorized in writing the procurement of the  
report. Here, Plaintiff has not signed any authorization.

59. Because Defendants failed to provide Plaintiff with any Disclosures or  
Authorizations, they do not meet the requirements under the law.

60. By including extraneous information, Defendants willfully violated §  
1786.16(a)(2)(B) of the ICRAA. Additionally, the inclusion of the extraneous provisions causes

1 the disclosure to fail to be “clear and conspicuous” and thus violates § 1786.16(a)(2)(B).

2 61. Based upon facts that are likely to have evidentiary support after a reasonable  
3 opportunity for investigation and discovery, Plaintiff alleges that Defendants have a policy and  
4 practice of failing to provide adequate written disclosures to applicants and employees, before  
5 procuring background checks or causing background checks to be procured, as described above.  
6 Pursuant to that policy and practice, Defendants procured background checks or caused  
7 background checks to be procured for Plaintiff and class members without first providing a  
8 written disclosure in compliance with § 1786.16(a)(2)(B) of the ICRAA, as described above.

9 62. Defendants’ conduct in violation of § 1786.16(a)(2)(B) of the ICRAA was and is  
10 willful and/or grossly negligent. Defendants acted in deliberate or reckless disregard of their  
11 obligations and the rights of applicants and employees, including Plaintiff and class members.  
12 Defendants’ willful conduct is reflected by, among other things, the following facts:

13 (e) Defendants are large corporations with access to legal advice;

14 (f) Defendants required a purported authorization to perform credit and  
15 background checks in the process of employing the class members which, although defective,  
16 evidences Defendants’ awareness of and willful failure to follow the governing laws concerning  
17 such authorizations; and

18 (g) The plain language of the statute unambiguously indicates that inclusion  
19 of a liability release and other extraneous information in a disclosure form violates the  
20 disclosure and authorization requirements, and that the disclosure form must contain the name,  
21 address, phone number, and/or website address of the investigative consumer reporting agency  
22 conducting the investigation.

23 63. As a result of Defendants’ illegal procurement of background reports by way of  
24 their inadequate disclosures, as set forth above, Plaintiff and class members have been injured  
25 including, but not limited to, having their privacy and statutory rights invaded in violation of the  
26 ICRAA.

27 64. Plaintiff, on behalf of himself and all class members, seeks all available remedies  
28 pursuant to Cal. Civ. Code § 1786.50, including statutory damages and/or actual damages,  
punitive damages, and attorneys’ fees and costs.

65. In the alternative to Plaintiff’s allegation that these violations were willful or  
grossly negligent, Plaintiff alleges that the violations were negligent and seeks the appropriate

1 remedy, if any, under Cal. Civ. Code § 1786.50(a), including actual damages and attorneys’ fees  
2 and costs.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF CCRAA**

5 **(Cal. Civ. Code § 1785 et seq.)**

6 **(By Plaintiff and the CCRAA Class against Defendants Frito Lay and PepsiCo)**

7 66. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

8 67. Defendants are “persons” as defined by Section 1785.3(j) of the Consumer  
9 Credit Reporting Agencies Act (“CCRAA”).

10 68. Plaintiff and **CCRAA Class** members are “consumers” within the meaning  
11 Section 1785.3(b) of the CCRAA, because they are “natural individuals.”

12 69. Section 1785.3(c) of the ICRAA defines “consumer credit report” as:

13 any written, oral, or other communication of any information by a consumer  
14 credit reporting agency bearing on a consumer’s credit worthiness, credit  
15 standing, or credit capacity, which is used or is expected to be used, or collected  
16 in whole or in part, for the purpose of serving as a factor in establishing the  
17 consumer’s eligibility for: ... (2) employment purposes...

18 70. Thus a credit report qualifies as a consumer credit report under  
19 the CCRAA.

20 71. Section 1785.20.5(a) of the CCRAA provides, in relevant part:

21 Prior to requesting a consumer credit report for employment purposes, the user of  
22 the report shall provide written notice to the person involved. The notice shall  
23 inform the person that a report will be used, and ***shall identify the specific basis***  
24 ***under subdivision (a) of Section 1024.5 of the Labor Code for use of the report.***  
25 ***The notice shall also inform the person of the source of the report ...***

26 (Emphasis added.)

27 72. As described above, Plaintiff alleges that in evaluating him and other class  
28 members for employment, Defendants procured or caused to be prepared consumer credit  
reports (e.g. credit reports), as defined by Cal. Civ. Code § 1785.3(c).

73. When Plaintiff applied for employment with Defendants, Defendants did not  
provide Plaintiff with required Disclosures and Authorizations (“Disclosure”).

74. Instead, Defendants only provided a Notice (“Notice”) which states in pertinent  
part:

1                    IMPORTANT NOTICE UNDER CALIFORNIA LAW

2                    First Advantage does not guarantee the accuracy or truthfulness of the information as the  
3                    subject of the investigation, but only that it is accurately copied from public records.  
4                    Information generated as a result of identity theft, including evidence of criminal  
5                    activity, may be inaccurately associated with the consumer who is the subject of this  
6                    report. In California, First Advantage shall provide a consumer seeking to obtain a copy  
7                    of a report or making a request to review a file, a written notice in simple, plain English  
8                    and Spanish setting forth the terms and conditions of his or her right to receive all  
9                    disclosures.

10                  75.        The Authorization does not identify the specific basis under subdivision (a) of  
11                  Section 1024.5 of the Labor Code for use of the credit report. Nor does the Authorization  
12                  identify the source of any credit report. Both of these omissions Authorization clearly violate §  
13                  1785.20.5(a) of the CCRAA, as delineated above.

14                  76.        Based upon facts that are likely to have evidentiary support after a reasonable  
15                  opportunity for investigation and discovery, Plaintiff alleges that Defendants have a policy and  
16                  practice of failing to provide adequate written disclosures to applicants and employees, before  
17                  procuring credit reports or causing credit reports to be procured, as described above. Pursuant  
18                  to that policy and practice, Defendants procured credit reports or caused credit reports to be  
19                  procured for Plaintiff and class members without first providing a written notice in compliance  
20                  with § 1785.20.5(a) of the CCRAA, as described above.

21                  77.        Defendants' conduct in violation of § 1785.20.5(a) of the CCRAA was and is  
22                  willful and/or grossly negligent. Defendants acted in deliberate or reckless disregard of their  
23                  obligations and the rights of applicants and employees, including Plaintiff and class members.  
24                  Defendants' willful conduct is reflected by, among other things, the following facts:

25                          (h)        Defendants are large corporations with access to legal advice;

26                          (i)        Defendants required a purported authorization to perform credit checks in  
27                          the process of employing the class members which, although defective, evidences Defendants'  
28                          awareness of and willful failure to follow the governing laws concerning such authorizations;  
29                          and

30                          (j)        The plain language of the statute unambiguously indicates that failure to  
31                          include the provisions identified above violates the CCRAA's notice requirements, and that the  
32                          notice must identify the specific basis under subdivision (a) of Section 1024.5 of the Labor

1 Code for use of the credit report and must identify the source of any credit report.

2 78. As a result of Defendants' illegal procurement of credit reports by way of their  
3 inadequate notice, as set forth above, Plaintiff and class members have been injured including,  
4 but not limited to, having their privacy and statutory rights invaded in violation of the CCRAA.

5 79. Plaintiff, on behalf of himself and all class members, seeks all available remedies  
6 pursuant to Cal. Civ. Code § 1785.31, including statutory damages and/or actual damages,  
7 punitive damages, injunctive relief, and attorneys' fees and costs.

8 80. In the alternative to Plaintiff's allegation that these violations were willful,  
9 Plaintiff alleges that the violations were negligent and seeks the appropriate remedy, if any,  
10 under Cal. Civ. Code § 1785.31(a)(1), including but not limited to actual damages and  
11 attorneys' fees and costs.

12 **FIFTH CAUSE OF ACTION**

13 **FAILURE TO OBTAIN CERTIFICATION IN VIOLATION OF FCRA**

14 **(15 U.S.C. § 1681b(b)(1))**

15 **(By Plaintiff and the FCRA Class against Defendant First Advantage)**

16 82. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged  
17 herein.

18 83. Pursuant to section 1681b(b)(1) a Consumer Reporting Agency can only  
19 furnish a background check report "if the person who obtains such report from the agency  
20 certifies to the agency that [they have complied with the stand alone disclosure and  
21 authorization requirements."

22 84. First Advantage is a Consumer Reporting Agency in that it regularly engages  
23 in assembling consumer information which it provides to third parties for a fee.

24 85. First Advantage issued a consumer report on Plaintiff when Plaintiff applied  
25 for employment with PepsiCo and Frito Lay.

26 86. Plaintiff is informed and believed and thereon alleges that First Advantage  
27 did not obtain the legally required certification. The source of Plaintiff's belief is as set forth  
28 below.

87. Plaintiff's employee file which Plaintiff obtained pursuant to Labor Code §  
1198.5 does not contain such a certification.





- E. Civil penalties;
- F. Punitive damages;
- G. Injunctive relief;
- H. Costs of suit;
- I. Interest;
- J. Reasonable attorneys’ fees; and
- K. Such other relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Dated: July 3, 2017

Respectfully submitted,

SETAREH LAW GROUP

By */s/Shaun Setareh* \_\_\_\_\_  
SHAUN SETAREH,  
THOMAS SEGAL  
Attorney for Plaintiff,  
MARCUS CHISM

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28