

1 DESAI LAW FIRM, P.C.
 2 Aashish Y. Desai, Esq. (SBN 187394)
 3 Adrienne De Castro, Esq. (SBN 238930)
 4 3200 Bristol St., Suite 650
 5 Costa Mesa, CA 92626
 Telephone: (949) 614-5830
 Facsimile: (949) 271-4190
aashish@desai-law.com
adrienne@desai-law.com

6 Attorneys for Plaintiffs

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 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**

10 BRANDON BEBAULT, STEVEN
 11 ARNOLD, on behalf of himself and all
 12 others similarly situated,

13 Plaintiffs,

14 v.

15 DMG MORI USA, INC, an Illinois
 Corporation, and DOES 1-10, inclusive,

16 Defendants.

CASE NO.: 18-CV-02373-JD

SECOND AMENDED CLASS ACTION
COMPLAINT

- 1) Violation of the Fair Credit Reporting Act of 1970, as amended (“FCRA”), 15 U.S.C. § 1681 *et seq.*

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1 Plaintiffs Brandon Bebault and Steven Arnold, on behalf of themselves and
2 all others similarly situated (“Plaintiffs”), hereby file this nationwide Class Action
3 Complaint against Defendant DMG MORI USA, INC. (“DMG” or “Defendant”)
4 and DOES 1-10 (hereinafter collectively referred to as “Defendants”) under the Fair
5 Credit Reporting Act of 1970, as amended (“FCRA”), 15 U.S.C. § 1681, *et seq.*
6 Plaintiffs are informed and believe, and on that basis, allege as follows:

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8 **INTRODUCTION**

9 1. Defendant routinely obtains and uses information in consumer reports
10 to conduct background checks on prospective employees and existing employees.

11 2. Defendant is, or should be, aware that the Fair Credit Reporting Act,
12 15 U.S.C. § 1681 *et seq.* (“FCRA”), sets forth strict disclosure and authorization
13 requirements where employers use consumer reports for employment purposes.

14 3. Defendant has willfully violated these requirements in systematic
15 violation of the rights of Plaintiffs and the other putative Class Members.

16 4. 15 U.S.C. § 1681b(b)(2)(A)(i) provides that an employer “may not
17 procure a consumer report, or cause a consumer report to be procured, for
18 employment purposes with respect to any consumer, unless –

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

23 (ii) the consumer has authorized in writing (which authorization
24 may be made on the document referred to in clause (i)) the
25 procurement of the report by that person.” (emphasis supplied).

26 5. Defendant violated these sections when it did not provide Plaintiffs or
27 other putative Class Members with a clear and conspicuous disclosure in writing in
28 a document that consists solely of the disclosure that a consumer report may be

1 obtained for employment purposes. In fact, Defendant’s FCRA Authorization and
2 Disclosure’s Second Page is itself extraneous. Furthermore, the form is embedded
3 in multi-page employment application that also contains extraneous information.

4 6. Failure to provide a clear and conspicuous disclosure consisting solely
5 of the disclosure that a consumer report may be obtained for employment purposes
6 has been held as a violation of the FCRA by nearly every court to consider the
7 issue. *EEOC v. Video Only, Inc.*, 2008 WL 2433841 (D. Ore. June 11, 2008)
8 (granting summary judgment where employer failed to provide “disclosure in a
9 document that consists solely of the disclosure that a consumer report may be
10 obtained for employment purposes”); *Singleton v. Domino’s Pizza, LLC.*, 2013 WL
11 5506027 (D. Md. Oct. 2, 2013) (holding extraneous information in disclosure
12 violates requirement that disclosure consist solely of the disclosure); *Reardon v.*
13 *Closetmaid Corp.*, 2011 WL 1628041 (W.D. Pa. April 27, 2011) (certifying class of
14 employees and prospective employees presented with FCRA disclosure forms that
15 were not standalone documents).

16 7. The Federal Trade Commission (“FTC”) has warned that the form
17 should not include any extraneous information or be part of another document. The
18 plain language also indicates that the inclusion of the Second Page of the
19 Defendant’s FCRA Disclosure and Authorization form violates the disclosure and
20 authorization because such a form would not consist of “solely” of the disclosure.

21 8. Based on the foregoing, Plaintiffs assert FCRA claims against
22 Defendant on behalf of themselves and a nationwide class of Defendant’s
23 employees and prospective employees.

24 THE PARTIES

25 9. Plaintiffs are “consumers” as protected and governed by the FCRA
26 and are members of the Putative Class defined below. Plaintiff Brandon Bebault
27 worked for DMG Mori, Inc. from 2015 – 2018. Plaintiff Steven Arnold worked for
28 DMG Mori, Inc. from January 28, 2018 to September 15, 2018.

1 10. Defendant is an Illinois Corporation with its principal place of
2 business in Hoffman Estates, Illinois. According to its website, DMG is a leading
3 producer worldwide of cutting machine tools. It claims to have “more than 7,400
4 employees” who are available to assist its customers. www.us.dmgmore.com (last
5 visited April 19, 2018). At all times relevant, Defendant was a “user” of the
6 consumer report of Plaintiffs, as governed by the FCRA.

7 11. Plaintiffs sue Defendants DOES 1 through 10 under fictitious names.
8 Their true names and capacities, whether individual, corporate, associate or
9 otherwise, are unknown to Plaintiffs. When Plaintiffs ascertain their true names
10 and capacities, he will seek permission from this Court to amend the Complaint to
11 insert the true names and capacities of each fictitiously named defendant. Plaintiffs
12 are informed and believe that each of these fictitiously named defendants is
13 responsible in some manner for the occurrences alleged herein, and that these
14 defendants directly and proximately caused Plaintiffs’ damages.

15 12. On information and belief, at all times relevant to this Complaint,
16 Defendants, including the fictitiously named defendants, were the servants,
17 employees, joint employers, integrated employers, alter egos, successors-in-interest,
18 subsidiaries, affiliated companies or corporations, and joint venturers of the other
19 Defendants, and were, as such, acting within the course, scope and authority of each
20 other Defendant. Plaintiffs further allege on information and belief that each of the
21 Defendants acted in concert with, and with the consent of, each of the other
22 Defendants, and that each of the Defendants ratified or agreed to accept the benefit
23 of the conduct of each of the Defendants.

24 **JURISDICTION AND VENUE**

25 13. This Court has federal question jurisdiction over Plaintiffs’ FCRA
26 claims pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1681p.

27 14. Venue is proper in this Court under 28 U.S.C. § 1391(b) as Defendant
28 regularly conducts business in this district and division, including contracting to

1 supply goods and services in California.

2 **FACTUAL BACKGROUND**

3 15. Plaintiffs Brandon Bebault and Steven Arnold applied for a job with
4 Defendant within the last five (5) years. As part of the application process,
5 Defendant obtained Plaintiffs' authorization to submit to a pre-employment
6 background check. *See Exhibit "1"* – FCRA Disclosure and Authorization
7 Example. Plaintiff Bebault and Plaintiff Arnold were confused by the extraneous
8 information request and would not have signed the FCRA Authorization and
9 Disclosure form had they known it was asking for illegal information. Defendant,
10 upon information and belief, and consistent with its usual practice, conducted a
11 background check on Plaintiffs.

12 16. The background check disclosure and authorization forms include
13 extraneous information and, therefore, are not a standalone document under the
14 FCRA. For example, the Disclosure and Authorization form mandates a **second**
15 **page** of extraneous information. The Second Page asks for all kinds of
16 information – i.e., (i) prior alias used, (ii) prior residences, (iii) Social Security
17 Number, (iv) State Driver's License Number, (v) present phone number, (vi)
18 gender, (vii) age/birthday information, and (viii) various date change information.
19 At the bottom of Page One of the Disclosure and Authorization in bold, all-capital
20 letters: "**NOTE: YOU MUST RETURN PAGES 1 and 2.**" The same language
21 appears at the bottom of Page Two.

22 17. Defendant routinely conducts background checks on all of its job
23 applicants as part of a standard screening process. Defendant also conducts
24 background checks on existing employees from time-to-time.

25 18. Under the FCRA, it is unlawful to procure a consumer report or cause
26 a consumer report to be procured for employment purposes unless a clear and
27 conspicuous disclose has been made in writing that consists "solely of the
28 disclosure."

1 19. By including extraneous information in its background check
2 disclosure and authorization form, Defendant willfully disregarded the FTC's
3 regulatory guidance and violated 15 U.S.C. § 1681b(b)(2)(A).

4 20. Thus, and to the extent equitable, tolling operates to toll the claims by
5 the Class, the Class Period should be adjusted accordingly.

6 **CLASS ACTION ALLEGATIONS**

7 21. Plaintiffs asserts their claims on behalf of a nationwide putative class
8 defined as follows:

9 **STANDALONE DOCUMENT CLASS:** All natural persons residing
10 in the United States (including all territories and other political
11 subdivisions of the United States) who were the subject of a consumer
12 report that was procured by Defendant (or that Defendant caused to be
13 procured) within five years of the filing of this Complaint through the
14 date of final judgment in this action under FCRA, 15 U.S.C. § 1681p.¹

15 22. This action has been brought and may properly be maintained as a
16 class action under Federal Rules of Civil Procedure Rule 23 because there is a well-
17 defined community of interest in the litigation and the proposed class is easily
18 ascertainable:

19 a. *Numerosity:* The potential members of the Class as defined are
20 so numerous that joinder of all the members of the Class is impracticable.
21 Defendant regularly conducts background checks on prospective and existing
22 employees. Plaintiffs believe that hundreds or even thousands of Defendant's
23 employees or prospective employees satisfy the definition of the Putative Class.

24 b. *Commonality:* There are questions of law and fact common to
25 the Plaintiffs and the Class that predominate over any questions affecting only

26 ¹ Plaintiffs may find it appropriate and/or necessary to amend the definition of the
27 Class and/or create Subclasses as additional facts are discovered. Plaintiffs will
28 formally define and designate a class definition at such time when Plaintiffs seek to
certify the Class.

1 individual members of the Class. These common questions of law and fact include
2 without limitation:

- 3 i. Whether Defendant provides employees and prospective
4 employees with a clear and conspicuous disclosure in
5 writing in a document that consists solely of the
6 disclosure that a consumer report may be obtained for
7 employment purposes before procuring (or causing to be
8 procured) a consumer report;
- 9 ii. Whether Defendant uses consumer reports to conduct
10 background checks on employees and prospective
11 employees;
- 12 iii. Whether Defendant's violations were willful as defined
13 under the FCRA; and
- 14 iv. The proper measure of statutory damages.

15 c. *Typicality*: Plaintiffs' claims are typical of the claims of the
16 Class. Plaintiffs and all members of the Class sustained injuries and damages
17 arising out of and caused by Defendant's common course of conduct in violation of
18 law as alleged herein. The FCRA violations suffered by the Plaintiffs are typical as
19 Defendant treated all employees and prospective employees with its standard
20 policies and practices.

21 d. *Adequacy of Representation*: Plaintiffs will fairly and
22 adequately represent and protect the interests of the Class Members. Counsel is
23 competent and experienced in litigating complex employment and consumer class
24 actions.

25 e. *Superiority of Class Action*: A class action is superior to other
26 available means for the fair and efficient adjudication of this controversy.
27 Individual joinder of all Class Members is not practicable, and questions of law and
28 fact common to the Class predominate over any questions affecting only individual
members of the Class. Plaintiffs anticipate no difficulty in the management of this

1 action as a class action since the unlawful conduct at issue is the same with respect
2 to all Class Members.

3 23. The prosecution of separate actions by individual Class Members may
4 create a risk of adjudications with respect to them that would, as a practical matter,
5 be dispositive of the interests of other Class Members not parties to such
6 adjudication or that would substantially impair or impede the ability of such non-
7 party Class Members to protect their interests.

8 24. The prosecution of individual actions by Class Members could
9 establish inconsistent standards of conduct for Defendant.

10 25. Defendant has acted, or refused to act, in respects generally applicable
11 to the Class as a whole, thereby making appropriate final and injunctive relief or
12 corresponding declaratory relief with regard to members of the class as a whole, as
13 requested herein. Likewise, Defendant's conduct as described above is unlawful,
14 continuing, and capable of repetition and will continue unless restrained and
15 enjoined by the Court.

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18 **FIRST CAUSE OF ACTION**

19 **(15 U.S.C. § 1681b(b)(2)(A)(i) - FCRA)**

20 26. Plaintiffs repeat and reallege each and every allegation set forth in all
21 of the foregoing paragraphs as if fully set forth herein.

22 27. Defendant violated the FCRA by procuring (or causing to be procured)
23 consumer reports for employment purposes without first providing Class Members
24 with a clear and conspicuous disclosure in writing in a document that consists
25 solely of the disclosure that a consumer report may be obtained for employment
26 purposes. Plaintiffs and the putative Class suffered uniform concrete harm in the
27 form of (a) informational injuries and (ii) privacy injuries as discussed by the Ninth
28 Circuit in *Syed v. M-1, LLC*. Although *Syed* involved a liability release, the Ninth

1 Circuit drew a hard-line approach: that the inclusion of any extraneous language in
2 a background check disclosure would be a willful violation of the FCRA.

3 28. The foregoing violations were willful. Defendant knew or should have
4 known about its obligations under the FCRA. These obligations are well
5 established in the (i) plan language of the FCRA, (ii) in the promulgations of the
6 Federal Trade Commission, and (iii) in well-established case law. Defendant acted
7 in deliberate and reckless disregard of its obligations to the rights of Plaintiffs and
8 other Class Members under 15 U.S.C. § 1681b(b)(2)(A)(i). Defendant's willful
9 conduct is reflected by, *inter alia*, the following facts:

- 10 a. Defendant is a large corporation with access to the legal advice
11 through its own general counsel's office and outside
12 employment counsel, and there is not (upon information and
13 belief) contemporaneous evidence that it determined that its
14 conduct was lawful;
- 15 b. Defendant knew or had reason to know that its conduct was
16 inconsistent with the FTC guidance and case law interpreting the
17 FCRA and the plain language of the statute;
- 18 c. Defendant voluntarily ran a risk of violating the law
19 substantially greater than the risk associated with a reading that
20 it was merely careless;
- 21 d. Many class action cases have been filed and resolved on very
22 similar issues thereby providing additional notice for Defendant
23 and its legal/HR team(s).

24 29. Plaintiffs and the Class Members are entitled to statutory damages of
25 not less than \$100 and not more than \$1,000 for each and every one of these
26 violations, pursuant to 15 U.S.C. § 1681n.

27 30. Plaintiffs and the Class Members are also entitled to recover their costs
28 and attorney's fees, pursuant to 15 U.S.C. § 1681n(a)(3).

PRAYER FOR RELIEF

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WHEREFORE, Plaintiffs request the following relief:

1. Class Certification appointing the proposed Class Representatives and Class Counsel under FRCP Rule 23 or other similar provision;
2. Issuing proper notice to the Putative Class at Defendant’s expense;
3. Declaring that Defendant acted willfully in deliberate or reckless disregard of Plaintiffs’ rights and its obligations under the FCRA;
4. Awarding statutory damages as provided by the FCRA;
5. Awarding reasonable attorneys’ fees and costs pursuant to the FCRA and/or other applicable law; and
6. Such other and further relief as this Court may deem appropriate.

Dated: September 17, 2019

DESAI LAW FIRM, P.C.

By: /s/ Aashish Y. Desai
Aashish Y. Desai
Adrienne DeCastro
Attorneys for Plaintiffs

Plaintiffs demand trial by jury on all issues so triable.

Dated: September 17, 2019

DESAI LAW FIRM, P.C.

By: /s/ Aashish Y. Desai
Aashish Y. Desai
Adrienne DeCastro
Attorneys for Plaintiffs