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

11 MICHELLE COHN,
12 Plaintiff,

13 vs.

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15 KIA MOTORS FINANCE, EQUIFAX
16 INFORMATION SERVICES, LLC,
17 EXPERIAN INFORMATION
18 SOLUTIONS, INC. TRANS UNION
19 LLC,
20 Defendants.

Case No.: '21CV2078 L RBB

COMPLAINT FOR VIOLATIONS OF
THE:

FAIR CREDIT REPORTING ACT, 15
U.S.C. § 1681 ET SEQ.

CONSUMER CREDIT REPORTING
AGENCIES ACT, CAL. CIV. CODE §
1785 ET SEQ.

JURY TRIAL DEMANDED

INTRODUCTION

1. The United States Congress has found that the banking system is dependent upon fair and accurate credit reporting. Inaccurate consumer reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence, which is essential to the continued functioning of the banking system. As such, Congress enacted the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 et seq, to insure fair and accurate reporting, promote efficiency in the banking system and protect consumer privacy. The FCRA seeks to ensure consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer’s right to privacy because consumer reporting agencies have assumed such a vital role in assembling and evaluating consumer credit and other information on consumers. The FCRA also imposes duties on the sources that provide credit information to credit reporting agencies, called “furnishers.”
2. The California legislature also determined that accurate credit reporting is vital and enacted the California Consumer Credit Reporting Agencies Act (“CCRAA”), Cal. Civ. Code § 1785.1 et seq.
3. Michelle Cohn (“Plaintiff”) brings this action to challenge the conduct of Kia Motors Finance (“Kia”), Equifax Information Services LLC, (“Equifax”), Experian Information Solutions, Inc, (“Experian”), and Trans Union LLC, (“Trans Union”), collectively “Defendants” with regard to continued misrepresentations of Plaintiff’s personal liability for an inaccurate debt.
4. Plaintiff makes these allegations based on personal knowledge and investigation conducted by Plaintiff’s attorneys.
5. While many violations are described below with specificity, this Complaint alleges violations of the statute cited in its entirety.

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1 6. Any violations by Defendant were knowing, willful, and intentional, and
2 Defendant did not maintain procedures reasonably adapted to avoid any such
3 violations.

4 7. Unless otherwise indicated, the use of a Defendant's names in this Complaint
5 includes all agents, employees, officers, members, directors, heirs, successors,
6 assigns, principals, trustees, sureties, subrogees, representatives, and insurers of
7 Defendants named.

8 **JURISDICTION AND VENUE**

9 8. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1681p,
10 and 28 U.S.C. § 1367 for supplemental state claims.

11 9. The action arises out of Defendants' violations of the Fair Credit Reporting Act
12 (FCRA), 15 U.S.C. § 1681, et seq, and the California Consumer Credit Reporting
13 Agencies Act ("CCRAA"), Cal. Civ. Code § 1785.1 et seq.

14 10. Because Defendants conduct business in the State of California, personal
15 jurisdiction is established.

16 11. Venue is proper pursuant to 28 U.S.C. § 1391 for the following reasons: (i)
17 Plaintiff resides within this judicial district, (ii) the conduct complained of herein
18 occurred within this judicial district and (iii) Defendants conducted business
19 within this judicial district at all times relevant.

20 **PARTIES & DEFINITIONS**

21 12. Plaintiff is a natural person who resides in San Diego County and is a "consumer"
22 as that term is defined by 15 U.S.C. § 1681a(c) and Cal. Civ. Code § 1785.3 (b).

23 13. Kia is a finance company headquartered in California that conducts business in
24 San Diego County. Kia is a furnisher of information under 12 CFR § 1022.41(c)
25 because it regularly, and in the ordinary course of business, furnishes information
26 relating to consumers to one or more consumer reporting agencies for inclusion
27 in consumer reports. Kia also furnishes information to consumer reporting
28 agencies about consumer transactions or experiences with consumers like

1 Plaintiff and is bound by U.S.C. 1681s-2. Kia is a “person” as defined by 15
2 U.S.C. § 1681a(b) and Cal. Civ. Code § 1785.3(j).

3 14. Equifax is a LLC headquartered in Georgia that does business in San Diego
4 County. It is a “consumer reporting agency” as defined by 15 U.S.C. § 1681a(f).

5 15. Experian is a corporation headquartered in California that does business in San
6 Diego County. It is a “consumer reporting agency” as defined by 15 U.S.C. §
7 1681a(f).

8 16. Trans Union is a LLC headquartered in Illinois that does business in San Diego
9 County. It is a “consumer reporting agency” as defined by 15 U.S.C. § 1681a(f).

10 17. Defendants are “person[s]” as defined by 15 U.S.C. § 1681a(b) and Cal. Civ.
11 Code § 1785.3(j).

12 18. The causes of action herein pertain to Plaintiff’s “consumer report[s]” under 15
13 U.S. Code § 1681a(d) and Plaintiff’s “consumer credit report[s]” under Cal. Civ.
14 Code § 1785.3(c), in that inaccurate representations of Plaintiff’s credit
15 worthiness, credit standing and credit capacity were made via written, oral, or
16 other communications of information by consumer credit reporting agencies,
17 which was used or expected to be used, or collected in whole or in part, for the
18 purposes of serving as a factor in establishing Plaintiff’s eligibility for, among
19 other things, credit to be used primarily for personal, family, household and
20 employment purposes.

21 **FACTUAL ALLEGATIONS**

22 19. Plaintiff had a car lease through Kia and made all her payments on time.

23 20. In April 2021, Plaintiff was shocked and surprised, when the car was repossessed
24 by Kia.

25 21. The repossession of the car caused Plaintiff to suffer extreme stress because
26 Plaintiff initially believed the car was stolen.

27 22. After Plaintiff discovered the car was repossessed by Kia, Plaintiff was forced to
28 take an entire day off work to retrieve the car.

1 23. In order for Kia to release the car, Plaintiff was told she needed to visit the San
2 Diego Sheriff's station and pay a fee of \$15.00 and provide proof of payment to
3 the tow yard.

4 24. Once at the tow yard, Plaintiff was told the yard fee to release the car was
5 approximately \$1,000.00 and an additional \$600.00 was owed to Kia for alleged
6 missed payments.

7 25. Out of desperation to retrieve the car, Plaintiff paid over \$1,600.00 in fees and
8 alleged missed payments to Kia.

9 26. The wrongful repossession caused Plaintiff to pay a substantial amount of money,
10 take extensive time off work, and caused Plaintiff severe stress.

11 27. Although, Plaintiff believed this to be a costly mistake on the part of Kia, for
12 which Plaintiff had to pay, Plaintiff believed the issue was over.

13 28. Around July 2021, Plaintiff's Kia lease was set to expire so Plaintiff visited
14 Kearny Mesa Kia to trade in the originally leased car for a new lease.

15 29. When Kia pulled Plaintiff's consumer report(s), Plaintiff was shocked to discover
16 Kia was reporting that Plaintiff missed several lease payments.

17 30. Plaintiff discovered that Kia, having received and cashed all of Plaintiff's
18 payments, did not apply the payments to Plaintiff's account. Kia's errors caused
19 Kia to inaccurately report to the consumer reporting agencies that Plaintiff failed
20 to make several lease payments.

21 31. While at the Kia dealership, a Kia representative informed Plaintiff that Kia was
22 having a widespread issue of not applying payments to accounts. Kia disclosed
23 to Plaintiff that numerous Kia accounts were inaccurately reported as delinquent
24 because of Kia's own internal errors.

25 32. In emails between Plaintiff and Kia, Kia acknowledged the wrongful
26 repossession of Plaintiff's vehicle. In an email on July 30, 2021, Kia stated:

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1 “[D]ealer Kearny Mesa Kia has 3 requests regarding this repo that
2 happened in error. . . Please reimburse the customer her fees to get
3 the car back. . . Please remove all the lates and correct her credit
4 reporting to show . . . current/0 lates.”

5 33. In further emails, Kia explained Plaintiff’s checks were deposited but not applied
6 to Plaintiff’s account which caused the inaccurate credit reporting. Kia claimed
7 to be working on reimbursing fees, removing late fees, and fixing plaintiff’s
8 credit. Plaintiff trusted Kia to remedy the issues. But it never did.

9 34. Between July 2021 and September 2021, Kia continued to advise Plaintiff that it
10 would fix the issues, yet those same issues exist as of the date of this filing.

11 35. On September 30, 2021, Plaintiff accessed Plaintiff’s Equifax and Experian
12 consumer reports. Plaintiff was shocked to discover Kia had failed to correct
13 Plaintiff’s consumer reports.

14 36. Kia reported to Equifax that Plaintiff missed payments for the months of August
15 2020, October 2020, November 2020, December 2020, January 2021, and March
16 2021.

17 37. Kia reported to Experian that Plaintiff missed payments for the months of August
18 2020, October 2020, November 2020, December 2020, January 2021, and March
19 2021, and July 2021.

20 38. On October 13, 2021, Plaintiff mailed written dispute communications to Equifax
21 and Experian, pursuant to 15 U.S.C. 1681i(a).

22 39. Plaintiff’s disputes contained sufficient identifying information for Equifax,
23 Experian, and Kia to locate Plaintiff’s account. Such identifying information
24 included Plaintiff’s name, date of birth, phone number, last four digits of
25 Plaintiff’s social security number, California driver’s license number, address,
26 credit report number, the disputed tradelines, and Plaintiff signed the disputes.

27 40. Plaintiff’s written Equifax and Experian disputes outlined the facts that
28 demonstrated the inaccuracies on the consumer reports. The disputes included

1 information such as the Kia tradeline number and the basis for Plaintiff's belief
2 that any remarks regarding late or missed payments were inaccurate.

3 41. Further, Plaintiff's Equifax and Experian disputes included copies of Plaintiff's
4 lease payments that had posted to Plaintiff's bank account. Plaintiff's disputes
5 explained that the payments demonstrated Plaintiff paid on time and that Kia
6 received Plaintiff's payments during the periods Kia reported Plaintiff failed to
7 pay or was late.

8 42. Upon information and belief, Equifax and Experian timely notified Kia of
9 Plaintiff's dispute and included the documents provided therewithin.

10 43. Kia was required to conduct reasonable reinvestigations into its consumer
11 reporting on Plaintiff's consumer reports pursuant to 15 U.S.C. § 1681s-
12 2(b)(1)(A).

13 44. Plaintiff's Equifax and Experian disputes explicitly established the need for Kia
14 to conduct investigations into the Kia tradelines. On October 23, 2021, Equifax
15 responded to Plaintiff's dispute letter, and verified the Kia tradeline as accurate.

16 45. To date, Experian has not responded to Plaintiff's dispute letter and through this
17 conduct has violated 15 U.S.C. § 1681i(a)(6).

18 46. On November 10, 2021, Plaintiff accessed Plaintiff's Trans Union consumer
19 report. Plaintiff was distraught to discover Kia was continuing to inaccurately
20 report missed payments on Plaintiff's car lease.

21 47. Kia reported to Trans Union that Plaintiff missed payments for the months of
22 October 2020, November 2020, December 2020, January 2021, March 2021,
23 April 2021, July 2021, August 2021, September 2021, and October 2021.

24 48. On November 15, 2021, Plaintiff mailed written dispute communications to
25 Trans Union pursuant to 15 U.S.C. 1681i(a).

26 49. Plaintiff's Trans Union dispute contained sufficient identifying information for
27 Trans Union and Kia to locate Plaintiff's account. Such identifying information
28 included Plaintiff's name, date of birth, phone number, last four digits of

1 Plaintiff's social security number, California driver's license number, address,
2 credit report file number, the disputed tradelines, and Plaintiff signed the dispute.

3 50. Plaintiff's written Trans Union dispute outlined the facts that demonstrated the
4 inaccuracies on the consumer report. The dispute included information such as
5 the Kia tradeline number and the basis for Plaintiff's belief that nay remarks
6 regarding late of missed payments were inaccurate.

7 51. Plaintiff's Trans Union dispute included copies of Plaintiff's lease payments that
8 were posted to Plaintiff's bank account. Plaintiff's dispute explained that the
9 payments demonstrated Plaintiff paid on time and that Kia received Plaintiff's
10 payments during the periods Kia reported Plaintiff failed to pay or was late.

11 52. Upon information and belief, Trans Union timely notified Kia of Plaintiff's
12 dispute and included the documents provided therewithin as required by the
13 FCRA.

14 53. Plaintiff's Trans Union dispute explicitly established the need for Kia to conduct
15 an investigation into the Kia tradeline because Plaintiff's dispute included
16 payment documentation that would cause a reasonable person to have substantial
17 doubts about the accuracy of the information on Plaintiff's consumer reports.

18 54. On December 2, 2021, Trans Union responded to Plaintiff's dispute letter and
19 verified the tradeline as accurate.

20 55. Equifax, Experian, and Trans Union were required to conduct reasonable
21 reinvestigations into the specific tradelines on Plaintiff's consumer reports under
22 15 U.S.C. § 1681i.

23 56. Equifax, Experian, and Trans Union did not provide notice to Plaintiff that
24 Plaintiff's dispute was "frivolous or irrelevant" under 15 U.S.C. § 1681i(a)(3).

25 57. Kia failed to review all relevant information provided by Plaintiff in Plaintiff's
26 written disputes, as required by 15 U.S.C. § 1681s-2(b)(1)(B).

27 58. As a result of its faulty investigation, Kia failed to report accurate results to the
28 consumer reporting agencies in violation of 15 U.S.C. § 1681s-2(b)(1)(D).

1 59. Due to Kia's failure to conduct reasonable reinvestigations, Defendants failed to
2 correct and update Plaintiff's information as required by 15 U.S.C. § 1681s-
3 2(b)(1)(E).

4 60. Despite receipt of exculpatory information regarding inaccurate and misleading
5 information on Plaintiff's consumer reports, Defendants verified the inaccurate
6 information and credit reporting.

7 61. Through this conduct, Kia violated Cal. Civ. Code § 1785.25(a) by furnishing
8 information to consumer reporting agencies that Defendant knew or should have
9 known was inaccurate.

10 62. Kia's investigations, if any, were completely and totally ineffective and
11 unreasonable.

12 63. Plaintiff's disputes provided Defendants with at least 30 days of notice prior to
13 filing this action.

14 64. To date, the inaccurate information remains on Plaintiff's credit reports and Kia
15 continues to furnish negative information related to the tradelines every thirty
16 days.

17 65. Plaintiff's continued efforts to correct Defendants' erroneous and negative credit
18 reporting were fruitless.

19 66. Defendants' continued inaccurate and negative reporting on Plaintiff's consumer
20 reports, in light of Defendants' knowledge of the actual errors, was willful or at
21 a minimum, was reckless.

22 67. Accordingly, Defendants willfully failed to comply with Defendants' duty to
23 reasonably investigate Plaintiff's disputes.

24 68. Plaintiff has spent hours upon hours dealing with this inaccurate information and
25 provided all information needed for the reinvestigations.

26 69. While Plaintiff was thorough in Plaintiff's disputes, Defendants failed to consider
27 any of the specific information identified and included in Plaintiff's disputes.

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1 70. Defendants' inaccurate reporting has resulted in significant harm to Plaintiff.
2 Defendants' conduct caused the repossession of Plaintiff's car, caused Plaintiff's
3 credit score to decrease substantially, and mischaracterized Plaintiff as person
4 who avoids financial obligations.

5 71. Plaintiff's anxiety, frustration, fear, stress, lack of sleep, nervousness and
6 embarrassment continues to this day because the inaccurate information
7 mischaracterizes Plaintiff as a person who avoids financial obligations.

8 72. As a direct and proximate result of Defendants' willful action and inaction,
9 Plaintiff has suffered damages, including but not limited to, costs associated with
10 the repossession of Plaintiff's car, loss of wages, decrease in Plaintiff's credit
11 score and credit worthiness (Kia is the only negative remark on Plaintiff's
12 consumer reports), time spent reviewing consumer reports, preparing, and
13 mailing dispute letters, attorney fees, loss of credit and potential credit, mental
14 and emotional distress, anguish, humiliation, and embarrassment associated with
15 the wrongful repossession of Plaintiff's car. Plaintiff has spent countless hours
16 and suffered in attempting to correct Defendants' inaccurate, incorrect, and
17 derogatory information without success.

18 73. Since Plaintiff's dispute efforts to resolve the issues were unsuccessful, Plaintiff
19 was forced to bring this action to finally resolve the issues.

20 74. Based upon the facts above, Plaintiff contends that punitive damages are
21 appropriate here.

22 **CAUSES OF ACTION**

23 **COUNT I**

24 **THE FAIR CREDIT REPORTING ACT**

25 **15 U.S.C. § 1681 ET SEQ.**

26 **[AGAINST ALL DEFENDANTS]**

27 75. Plaintiff incorporates by reference all of the above paragraphs of this Complaint
28 as though fully stated herein.

1 76. The foregoing acts and omissions constitute numerous and multiple violations of
2 the FCRA.

3 77. As a result of each and every negligent violation of the FCRA, Plaintiff is entitled
4 to actual damages, pursuant to 15 U.S.C. § 1681o(a)(1) and reasonable attorney
5 fees and costs pursuant to 15 U.S.C. § 1681o(a)(2) from each Defendant.

6 78. As a result of each and every willful violation of the FCRA, Plaintiff is entitled
7 to actual damages and statutory damages of \$1,000 for each violation, including
8 each entry and each month of reporting, pursuant to 15 U.S.C. § 1681n(a)(1);
9 punitive damages as the court may allow, pursuant to 15 U.S.C. § 1681n(a)(2);
10 and reasonable attorney fees and costs pursuant to 15 U.S.C. § 1681n(a)(3) from
11 each Defendant.

12 **COUNT II**

13 **THE CONSUMER CREDIT REPORTING AGENCIES ACT**

14 **CAL. CIV. CODE § 1785.1, ET SEQ.**

15 **[AGAINST KIA]**

16 79. Plaintiff incorporates by reference all of the above paragraphs of this Complaint
17 as though fully stated herein.

18 80. The foregoing acts and omissions constitute numerous and multiple violations of
19 the California Consumer Credit Reporting Agencies Act.

20 81. In the regular course of its business operations, Kia routinely furnishes
21 information to credit reporting agencies pertaining to transactions between Kia
22 and its consumers, so as to provide information to a consumer's credit worthiness,
23 credit standing and credit capacity.

24 82. Kia is, and always was, obligated to not furnish information on specific
25 transactions or experiences to any consumer credit reporting agency if it knew or
26 should have known that the information was incomplete or inaccurate, as required
27 by Cal. Civ. Code § 1785.25(a).

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1 83. Since Kia received all information and documents required to determine the
2 inaccuracy of its furnishing, it should have known to update the information.

3 84. Kia should have determined that its reporting was inaccurate through review of
4 its own account notes and records and because of the information provided with
5 Plaintiff's disputes.

6 85. As a result of each and every willful violation of the CCRAA, Plaintiff is entitled
7 to actual damages, punitive damages and statutory damages of \$5,000 for each
8 violation, including each entry and each month of reporting, and reasonable
9 attorney fees and costs pursuant to Cal. Civ. Code § 1785.31.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays that judgment be entered against each Defendant for:

- 12 • FCRA - An award of actual damages, in an amount to be determined at trial
13 against all Defendants for each incident of willful noncompliance of the FCRA
14 pursuant to 15 U.S.C. § 1681n(a)(1)(A);
- 15 • FCRA - An award of \$1,000 statutory damages for each incident of willful
16 noncompliance of the FCRA against all Defendants pursuant to 15 U.S.C. §
17 1681n(a)(1)(A);
- 18 • FCRA - An award of punitive damages, as the Court may allow pursuant to 15
19 U.S.C. § 1681n(a)(2), against all Defendants for each incident of willful
20 noncompliance to the FCRA;
- 21 • FCRA - An award of actual damages in an amount to be determined at trial
22 pursuant to 15 U.S.C. § 1681o(a)(1) against all Defendants for each incident of
23 negligent noncompliance of the FCRA;
- 24 • FCRA - An award for costs and reasonable attorney fees, pursuant to 15 U.S.C.
25 § 1681n(a)(3) and 15 U.S.C. § 1681o(2) against all Defendants for each
26 incident of noncompliance of the FCRA;
- 27 • CCRAA - An award of any actual damages, in an amount to be determined at
28 trial, pursuant to Cal. Civ. Code § 1785.31(a)(1)&(2) against Kia;

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- CCRAA - An award of statutory damages of \$5,000 per willful violation of Cal. Civ. Code § 1785.25(a) pursuant to Cal. Civ. Code § 1785.31(a)(2)(B) against Kia;
- CCRAA - Award of attorney fees and costs pursuant to Cal. Civ. Code § 1785.31(a)(1) and Cal. Civ. Code § 1785.31(d) against Kia;
- General damages according to proof;
- Special damages according to proof;
- Punitive damages according to proof;
- For equitable and injunctive relief;
- Any other relief the Court deems just and proper.

Date: December 13, 2021

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