

THE
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FCRA Disclosures and Authorization: I Can See Clearly Now...

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The Central District of California just issued a summary judgment ruling in case regarding how clear and conspicuous a FCRA disclosure form and authorization must be. In *Luna v. Hansen & Adkins Auto Transp., Inc.*, 313 F. Supp. 3d 1151 (C.D. Cal. 2018), a job applicant brought a putative FCRA class action against his employer. During the potential liability period, the defendant had approximately 3,000 job applicants. Both sides moved for summary judgment.

Under FCRA, job applicants must be notified in writing before an employer may obtain a consumer report for employment purposes, and this notice must be separate, clear, and conspicuous. The plaintiff alleged that his employer violated FCRA because the employer provided the FCRA disclosure with an application package containing six other documents. Plaintiff argued that this was not a clear and conspicuous disclosure that would satisfy FCRA's stand-alone document requirement. Conversely, the employer argued its disclosure form was FCRA compliant because the form was its own single-page document that did not contain anything else other than the disclosure.

The Court agreed with the employer, finding that there was nothing in the statutory language of FCRA that requires a "FCRA disclosure not only in a separate document, but also separate in time from any other documents." The Court noted that this sort of timing requirement would make it difficult for courts to determine how much time would be adequate. Score one for the employer.

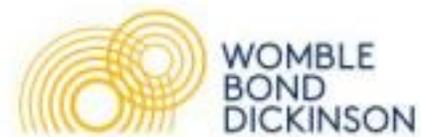
FCRA also requires that an employer obtain an applicant's written authorization before conducting a background check. The plaintiff argued that the employer's FCRA authorization was "buried" at the end of its job application and thus did not comply with FCRA. Defendant argued that unlike FCRA disclosures, there is no stand-alone document requirement at all for FCRA authorizations.

Again, the Court ruled in the employer's favor. The Court found that FCRA's authorization provision "sets forth no requirements about the form in which the authorization must be presented[.]" Accordingly, the Court found that plaintiff's argument that FCRA requires a stand-alone authorization form failed as a matter of law. Another point scored for the employer.

But, the saga continues. The plaintiff has filed a notice of appeal with the Ninth Circuit. So we'll have to wait and see whether this ruling remains on the books. Stay tuned...

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