UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

FOR THE EASTERN DISTRICT OF WISCONSIN					
JENNIFER	NELSON, Plaintiff, v.) Case No.: 2:23-cv-1565)			
11	ORPORATION and CAPITAL NCIAL CORPORATION, Defendants.)))))			
COMPLAINT JENNIFER NELSON ("Plaintiff" or "Nelson"), by and through her attorneys, Kimmel					
& Silverman, P.C., alleges the following against KOHL'S CORPORATION ("Kohl's") and CAPITAL ONE FINANCIAL CORPORATION ("Capital One") (hereinafter collectively					
	s "Defendants"):				
	INTROI	DUCTION			
1.	Plaintiff's Complaint is based	on Defendants' violations of the Fair Credit			
Reporting A	act, 15 U.S.C. § 1681, et seq. (")	FCRA") and Kohl's violation of the Wisconsin			
Consumer A	Act, Wis. Stat. § 427, et seq. ("	WCA"). The factual and legal basis for those			
violations is set forth below:					

JURISDICTION AND VENUE

2. This Court's jurisdiction arises under 15 U.S.C. § 1681, which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28 U.S.C. § 1331, which grants this Court original jurisdiction of all civil actions arising under the laws of the United States.

- 3. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367, as the state law claims stem from the same nucleus of common facts as Plaintiff's federal claims.
 - 4. Defendant Kohl's is headquarters in the state of Wisconsin.
- 5. Capital One agreed to underwrite and finance Kohl's credit cards, and therefore purposefully and knowingly availed itself to the State of Wisconsin.
 - 6. Defendants regularly conduct business in the state of Wisconsin.
- 7. Kohl's is headquartered within this District and a substantial portion of the acts and omissions described herein occurred within this District.
- 8. For those reasons, personal jurisdiction exists and venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

PARTIES

- 9. Plaintiff is a natural person who at all times relevant hereto, resided in Prescott Valley, Arizona, 86314.
- 10. Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1681a(c) of the FCRA and 15 U.S.C. § 1692a(3) of the FDCPA.
- 11. Defendant Kohl's is a retail chain business that is headquartered and regularly conducts business in the state of Wisconsin.
- 12. Kohl's maintains its headquarters at 17000 Ridgewood Drive, Menomonee Falls, Wisconsin 53051
- 13. Defendant Capital One is a business entity that regularly conducts business within this District.

14. Defendants acted through their agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

- 15. Nelson has been Defendant Kohl's customer and credit card holder since early 2017.
 - 16. The Kohl's credit card issued to Plaintiff was through Defendant Capital One.
- 17. Sometime in or around spring of 2023, Kohl's and Capital One printed a new physical card intended to be delivered to Plaintiff.
- 18. However, that card was not delivered to Plaintiff, but to another person named Jennifer Nelson who also resided in or around Prescott Valley, Arizona.
- 19. On or around July 25, 2023 Plaintiff went to shop at Kohls with the hope she could shop using her store account, even without her replacement card.
- 20. However, Plaintiff was surprised when the Kohl's cashier advised that her account was on hold due to a "fraud alert."
- 21. Plaintiff went home feeling uneasy about the situation. She then looked at her account statement online and saw unfamiliar transactions from stores and business at which she did not shop or do business.
- 22. Shortly thereafter, the situation escalated from a disturbing inconvenience to a personal disaster.
- 23. Due to what Plaintiff now knows was the result of Kohl's and Capital One issuing Plaintiff's credit card to another person named Jennifer Nelson, all three major consumer reporting agencies (Trans Union, Equifax and Experian) misattributed all of the other Jennifer Nelson's credit history to Plaintiff on her consumer reports.

- 24. When Plaintiff looked at her Trans Union, Experian and Equifax credit reports, she could see only financial history of a person other than her.
- 25. Plaintiff also saw the other Jennifer Nelson's address and other personal information.
- 26. Plaintiff felt completely powerless, as her creditworthiness appeared to be completely dictated by the acts and omissions of a complete stranger.
- 27. Plaintiff reported the (then) apparent fraud and identity theft to the Prescott Valley Police Department. After investigation, the Police Department were able to locate and contact the person who used Plaintiff's Kohl's card.
- 28. Plaintiff then learned this was *not* the result of an identity theft, but an error by Capital One and Kohl's, who issued Plaintiff's credit card to another person with the same name but different social security number, date of birth and address.
- 29. Plaintiff was shocked that such large financial institutions would issue a credit card to another individual with a different social security number and birthday and report the incorrect identity and personal identifying information to the major consumer reporting agencies.
- 30. Kohl's failure to maintain Plaintiff's information properly and mistakenly associating Plaintiff's account information with another proposed Kohl's customer caused Plaintiff to devote substantial time over the next several weeks to rectifying the situation.
- 31. Plaintiff devoted countless hours dealing with the fallout of Defendants' reckless failure to exercise oversight. Plaintiff spent hours speaking with Kohl's, Capital One, Trans Union, Equifax, Experian and her local police department, as well as the Social Security Administration (to assure the federal government's records were not also misattributed).

- 32. Also ,as a direct and proximate result of Defendants' acts and omissions, Plaintiff suffered from stress, anxiety, frustration, sleep loss, loss of opportunity cost, wasted time and loss of enjoyment.
- 33. Defendants' acts were knowing, intentional, willful, wanton, and in reckless disregard for Plaintiff's rights and well-being.

COUNT I DEFENDANTS VIOLATED § 1681s-2(a) OF THE FCRA (Plaintiff v Capital One and Kohl's)

- 34. Plaintiff incorporates the foregoing paragraphs as though the same were set forth at length herein.
- 35. At all times pertinent hereto, Kohl's and Capital One were "persons" and "furnishers" of credit information, as that term is defined by 15 U.S.C. § 1681a(b).
- 36. Defendants violated sections 1681n and 1681o of the FCRA by negligently, recklessly and willfully failing to comply with the requirements imposed on furnishers of information pursuant to 15 U.S.C. §1681s-2(b).
- 37. Defendants' conduct was a direct and proximate cause, as well as a substantial factor, in causing the serious injuries, damages and harm to the Plaintiff that are outlined more fully above, and as a result, Defendants are liable to compensate Plaintiff for the full amount of statutory, actual and punitive damages, along with attorneys' fees and costs, as well as such other relief, permitted by law.

COUNT II

KOHL'S VIOLATED THE

WISCONSIN CONSUMER ACT W.S.A. 421.101 et seq. (Plaintiff v Kohl's)

(Plaintiff v Kohl's)

- 38. Plaintiff incorporates the foregoing paragraphs as though the same were set forth at length herein.
- 39. At all times pertinent hereto, Kohl's was a "person" as that term is defined by 15 U.S.C. § 1681a(b).
- 40. Pursuant to section 421.102 (2)(b), (C) and (d) Kohl's is liable for negligently violating the WCA by failing to protect Plaintiff against unfair, deceptive, false, misleading and unconscionable practices. More specifically Kohl's engaged in the following conduct:
 - (a) Associated Plaintiff's personal account and sensitive information with another person due to failure to verify such sensitive information;
 - (b) Failed to investigate the cause of unsuccessful delivery of Plaintiff's Kohl's card; and
 - (c) Furnished false information relating to Plaintiff to consumer reporting agencies.
- 41. Kohl's conduct was a direct and proximate cause, as well as a substantial factor, in causing the serious injuries, damages and harm to the Plaintiff that are outlined more fully above, and as a result, Kohl's is liable to compensate Plaintiff for the full amount of statutory, actual and punitive damages, along with attorneys' fees and costs, as well as such other relief, permitted by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, JENNIFER NELSON respectfully prays for judgment as follows:

1	a.	All actual damages	suffered pursuant to 15 U.S.C. § 1681 et seq. and W.S.A.
2		421.101 et seq.	
3	b.	Treble damages pur	rsuant to W.S.A. 421.101 et seq.
4	c.	Statutory damages o § 1681n;	of \$1,000.00 per violation of the FCRA pursuant to 15 U.S.C
5	d.	Punitive damages p	ursuant to 15 U.S.C. § 1681n(a);
6	e.		rneys' fees, witness fees, court costs and other litigation costs C. § 1681n; and W.S.A. 421.101 <i>et seq</i> ; and
7	f.	Any other relief dee	emed fair and proper by this Honorable Court.
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9		DE	MAND EOD HIDV TOLAL
10	<u>DEMAND FOR JURY TRIAL</u>		
11	PLEASE TAKE NOTICE that Plaintiff, JENNIFER NELSON, demands a jury trial in		
12	this case.		
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14			Respectfully submitted,
15			Kimmel & Silverman, P.C.
16			
17	Dated: November 21, 2023 /s/ Jacob U. Ginsburg Jacob I. Ginsburg Lacob I. Ginsburg		/s/ Jacob U. Ginsburg Jacob U. Ginsburg, Esq.,
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