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Attorneys for Defendant
STONE BREWING CO., LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JESSE DOMINGUEZ, individually, and on behalf of other members of the general public similarly situated;)	CASE NO. 3:20-cv-00251-WQH-BLM
)	
Plaintiff,)	DEFENDANT STONE BREWING
)	CO., LLC'S NOTICE OF MOTION
)	AND MOTION TO DISMISS
vs.)	Date: April 20, 2020
)	
STONE BREWING CO., LLC, a California limited liability company; and)	NO ORAL ARGUMENT UNLESS
DOES 1 through 100, inclusive;)	REQUESTED BY THE COURT
)	Complaint filed: December 23, 2019
Defendants.)	
)	Judge: Hon. William Q. Hayes
)	Room: 14B
)	
)	Magistrate: Hon. Barbara Lynn Major
)	Room: Suite 1110
)	
)	Trial Date: Not Set

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PLEASE TAKE NOTICE that on April 20, 2020, or as soon thereafter as this matter may be heard, in Courtroom 14B of the United States District Court for the Southern District of California, located at 333 West Broadway, San Diego, California 92101, before the Honorable William Q. Hayes, Defendant STONE BREWING CO., LLC (“Stone”) will and hereby does move the Court pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) for an order dismissing with prejudice each and every cause of action in Plaintiff JESSE DOMINGUEZ’s Complaint on the basis that Plaintiff lacks standing and fails to state a plausible claim upon which relief can be granted. Specifically, the Complaint, and each cause of action therein, should be dismissed on the following grounds:

- All of Plaintiff’s claims must be dismissed because they are barred by the applicable statutes of limitation. Claims under the Fair Credit Reporting Act (FCRA), California Investigative Consumer Reporting Agencies Act (ICRAA), and California Consumer Credit Reporting Agencies Act (CCRAA) all must be brought within two years after the date of discovery of the alleged violation. Claims under the California Unfair Competition Law (UCL) must be brought within four years. Plaintiff’s employment was conditioned on the successful completion of a background check, and therefore he had at least constructive notice that Stone had conducted a background check by no later than the start of his employment on May 11, 2015, commencing the statute of limitations. Plaintiff did not file this action until over four and a half years later, after all statutes of limitation had run.
- Plaintiff’s First Cause of Action for Violation of FCRA must be dismissed because Stone’s “Disclosure Regarding Background Investigation” and “Acknowledgment and Authorization” (the Disclosure) is clear and conspicuous and complies in all respects with FCRA. Stone provided Plaintiff with all information required by FCRA and did not improperly combine any “extraneous” material in the Disclosure.

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- 1 • Plaintiff's Second Cause of Action for Violation of ICRAA must be
- 2 dismissed because the Disclosure is clear and conspicuous and complies in
- 3 all respects with ICRAA. Stone provided Plaintiff with all information
- 4 required by ICRAA and did not improperly combine any "extraneous"
- 5 material in the Disclosure.
- 6 • Plaintiff's Third Cause of Action for Violation of CCRAA must be
- 7 dismissed because Plaintiff does not plausibly allege that Stone ever
- 8 procured his consumer credit report.
- 9 • Plaintiff's First, Second, and Third Causes of Action must be dismissed
- 10 because Plaintiff does not allege actual damages or willful violations.
- 11 Except for "willful" FCRA claims, the FCRA, ICRAA, and CCRAA all
- 12 require a showing of actual damages that Plaintiff fails to allege. And even
- 13 if the Disclosure does not comply with FCRA, Stone did not know it was
- 14 violating the statute and it was not reckless for Stone to have believed that
- 15 the Disclosure was compliant.
- 16 • Plaintiff's Fourth Cause of Action for Violation of the UCL must be
- 17 dismissed because Plaintiff does not plausibly allege that he lost any money
- 18 or property as a result of the alleged background check. Plaintiff therefore
- 19 lacks statutory standing. The claim also fails because injunctive relief—the
- 20 only relief Plaintiff seeks on his UCL claim—is unavailable. Finally,
- 21 Plaintiff's UCL claim must be dismissed because it does not allege any
- 22 predicate unlawful, unfair, or fraudulent conduct, and it is derivative of
- 23 Plaintiff's other claims that fail as a matter of law.

24 This Motion to Dismiss is based upon this Notice of Motion and Motion, the

25 Memorandum of Points and Authorities filed herewith, the Declaration of Vickie

26 Motte filed herewith, all pleadings and other documents on file or deemed to be on

27 file at the time of the hearing on this Motion, and such further evidence and

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1 argument as the Court may permit or require at or prior to the time of the hearing
2 on this Motion.

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4 Dated: March 17, 2020

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5 By: *s/ Brian D. Martin* _____

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10 STONE BREWING CO., LLC
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