

1. California Reports

A significant legal issue has developed in the State of California regarding the enforceability of their mini FCRA laws. Once upon a time, §1785 and §1786 of the California Civil Code addressed credit reports and investigative consumer reports respectively. There was a hole in state coverage: the ordinary background screening report was not covered. Then the legislature in 2001 amended §1786 to bring in all reports relating to a consumers' character regardless of how the information was obtained and no longer was it limited to personal interviews. §1785 continued to cover reports about a consumer's credit worthiness. The legal problem is that most pieces of information relate both of these characteristics: character and credit worthiness. The courts in a series of three cases^[1] dealing with tenant screening held that the laws in §1785 and §1786 were unconstitutional because it was impossible for the CRA to know which law applied to a report. On March 19, 2013 a federal court held the statutes unconstitutional in the context of an employment background screening report. *Roe v. LexisNexis*, United States District Court for the Central District of California, Case No. CV-12-6284 GAF (EX). This makes the fourth court decision ruling the statutes are unconstitutional.

While these decisions are not necessarily binding upon other courts, this does create very strong precedence on this issue, and it is most likely that other courts in California would agree with this position. If the statutes are unconstitutional, as ruled by the courts, then the courts need not address the federal issue of whether the statutes are pre-empted by the FCRA.

At this point it is still wise, as an administrative matter and to avoid litigation expense, to follow the California law as best as you can, but plaintiff's lawyers will be getting the word out that only the FCRA applies in California. This means that the California civil penalty of \$10,000 per violation no longer applies. There are lawyers who use this penalty to essentially "greenmail" CRAs into settling claims. One of the most active lawyers in this area was the consumer's lawyer in *Roe*. This may be the beginning of the end of the reporting nightmare in California.

[1] *Moran v. Screening Pros, LLC*, U.S. District Court for the Central District of California, Case No. 2:12-cv-05808 SVW-AGR (2012); *Ortiz v. Lyon Management Group, Inc.*, 69 Cal. Rptr.3d 66 (Ct. App. 2007); *Trujillo v. First American Registry, Inc.*, 68 Cal. Rptr.3d 732 (Ct. App. 2007).

2. New I-9 Forms

Beginning May 7, 2013, employers must begin using a new I-9 form. It basically adds additional information for the individual's telephone number and email addresses. The new form may be downloaded at www.uscis.gov/files/form-i-9.pdf.

Sincerely,
Larry Henry