

Jahan C. Sagafi (SBN 224887)  
Allison Aaronson (SBN 354643)  
OUTTEN & GOLDEN LLP  
One California Street, 12th Floor  
San Francisco, CA 94111  
Telephone: (415) 638-8800  
Facsimile: (415) 638-8810  
E-Mail: [jsagafi@outtengolden.com](mailto:jsagafi@outtengolden.com)  
E-Mail: [aaaronson@outtengolden.com](mailto:aaaronson@outtengolden.com)

Christopher M. McNerney\*  
OUTTEN & GOLDEN LLP  
685 Third Avenue, 25th Floor  
New York, NY 10017  
Telephone: (212) 245-1000  
Facsimile: (646) 509-2060  
E-Mail: [cmcnerney@outtengolden.com](mailto:cmcnerney@outtengolden.com)

Jenny Yang\*  
OUTTEN & GOLDEN LLP  
1225 New York Ave NW, Suite 1200B  
Washington, DC 20005  
Telephone: (202) 847-4400  
Facsimile: (202) 847-4410  
E-mail: [jyang@outtengolden.com](mailto:jyang@outtengolden.com)

Rachel Dempsey (Bar No. 310424)  
David Seligman\*  
Juno Turner\*  
Seth Frotman\*  
TOWARDS JUSTICE  
1580 N Logan Street  
Ste 660 PMB 44465  
Denver, CO, 80203-1994  
Telephone: (720) 441-2236  
E-Mail: [rachel@towardsjustice.org](mailto:rachel@towardsjustice.org)  
E-Mail: [david@towardsjustice.org](mailto:david@towardsjustice.org)  
E-Mail: [juno@towardsjustice.org](mailto:juno@towardsjustice.org)  
E-Mail: [seth@towardsjustice.org](mailto:seth@towardsjustice.org)

\* *pro hac vice motions forthcoming*

*Counsel for Plaintiffs and the Proposed Class*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA**

ERIN KISTLER and SRUTI BHAUMIK, on behalf of themselves and all those similarly situated.

## Plaintiffs.

V.

## EIGHTFOLD AI INC.

Defendant.

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FAIR CREDIT  
REPORTING ACT, CALIFORNIA  
INVESTIGATIVE CONSUMER  
REPORTING AGENCIES ACT, AND  
UNFAIR COMPETITION LAW**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Erin Kistler and Sruti Bhaumik (“Plaintiffs”), on behalf of themselves and all  
2 others similarly situated, allege as follows:

3 **SUMMARY OF CLAIMS**

4 1. This case is about how Defendant Eightfold AI Inc. (“Eightfold”) uses hidden  
5 Artificial Intelligence (“AI”) technology to collect sensitive and often inaccurate information  
6 about unsuspecting job applicants and to score them from 0 to 5 for potential employers based on  
7 their supposed “likelihood of success” on the job. Eightfold’s technology lurks in the  
8 background of job applications for thousands of applicants who may not even know Eightfold  
9 exists, let alone that Eightfold is collecting personal data, such as social media profiles, location  
10 data, internet and device activity, cookies and other tracking, to create a profile about the  
11 candidate’s behavior, attitudes, intelligence, aptitudes and other characteristics that applicants  
12 never included in their job application. These job applicants have no meaningful opportunity to  
13 review or dispute Eightfold’s AI-generated report before it informs a decision about one of the  
14 most important aspects of their lives—whether or not they get a job.

15 2. The technology may be new, but the practice violates laws that have been on the  
16 books since the 1970s because it creates consumer reports to evaluate job applicants without  
17 complying with longstanding federal and California requirements. There is no AI-exemption to  
18 these laws, which have for decades been an essential tool in protecting job applicants from  
19 abuses by third parties—like background check companies—that profit by collecting information  
20 about and evaluating job applicants.

21 3. Specifically, this class action arises from Eightfold’s unlawful practice of  
22 gathering, assembling, and evaluating information about job applicants through opaque machine  
23 learning processes and closely-guarded algorithms, producing unreviewable reports that a  
24 growing number of employers rely on for employment decisions such as hiring. Eightfold  
25 generates these reports using AI-powered tools that assemble and evaluate information about  
26 prospective employees to determine their “suitability” that are purportedly based on factors like  
27 work history, projected future career trajectory, culture fit, and other personal characteristics

1 (“Evaluation Tools”). Eightfold then sells these reports to employers for use in making  
2 employment decisions, which can have profound consequences for thousands of people across  
3 the country.

4. For the affected job applicants, this process is often largely invisible. They  
5 submit their resume and job application to a prospective employer online and wait for a response.  
6 Behind the scenes, Eightfold’s hiring platform uses its Evaluation Tools to assemble information  
7 from the job applicant, the prospective employer, and third-party online sources. Job applicants  
8 have no opportunity to view any of the third-party data or to correct inaccuracies in these reports.

5. Eightfold runs this information through its proprietary Large Language Model  
6 (“LLM”), which according to Eightfold, incorporates “more than 1.5 billion global data points,”<sup>1</sup>  
7 including “more [than] 1 million job titles, 1 million skills, and the profiles of more than 1 billion  
8 people working in every job, profession, [and] industry,” making it the “world’s largest, self-  
9 refreshing source of talent data.”<sup>2</sup> According to Eightfold, this “deep learning AI”<sup>3</sup> platform  
10 “delivers rich talent insights” by “analyzing data” from “public sources like career sites, job  
11 boards, and resume databases (LinkedIn, Hoovers, Crunchbase, GitHub, etc.),” in addition to  
12 other sources of information such as Eightfold’s own database of job descriptions and job  
13 applicant data.<sup>4</sup>

6. Using its Evaluation Tools, Eightfold provides prospective employers with  
7 consumer reports that assess job applicants not only as individuals—by purporting to identify  
8 applicants’ likely skills, experience and characteristics—but also relative to one another, ranking  
9 applicants by “likelihood of success” from 0 to 5 based on the conclusions, inferences, and  
10 assumptions of Eightfold’s proprietary AI. Employers then use these reports to sift through  
11 applications, typically only reviewing highly ranked candidates.<sup>5</sup> Lower-ranked candidates are  
12 often discarded before a human being ever looks at their application.

---

25 <sup>1</sup> [https://eightfold.ai/wp-content/uploads/Eightfold\\_Talent\\_Acquisition\\_data\\_sheet.pdf](https://eightfold.ai/wp-content/uploads/Eightfold_Talent_Acquisition_data_sheet.pdf)

26 <sup>2</sup> [https://eightfold.ai/wp-content/uploads/Power\\_Talent\\_Transformation\\_with\\_SAP\\_Eightfold.pdf](https://eightfold.ai/wp-content/uploads/Power_Talent_Transformation_with_SAP_Eightfold.pdf)

27 <sup>3</sup> [https://eightfold.ai/wp-content/uploads/Eightfold\\_Talent\\_Acquisition\\_data\\_sheet.pdf](https://eightfold.ai/wp-content/uploads/Eightfold_Talent_Acquisition_data_sheet.pdf)

<sup>4</sup> [https://eightfold.ai/wp-content/uploads/Power\\_Talent\\_Transformation\\_with\\_SAP\\_Eightfold.pdf](https://eightfold.ai/wp-content/uploads/Power_Talent_Transformation_with_SAP_Eightfold.pdf)

<sup>5</sup> <https://eightfold.ai/engineering-blog/ai-powered-talent-matching-the-tech-behind-smarter-and-fairer-hiring/>

1       7. Eightfold plays a leading role in a growing industry of AI-powered recruitment  
2 platforms that use vast, unknown, untested data sets combined with machine learning to score  
3 and rank job applicants based on predicted skills and career trajectories. According to recent  
4 reports, nearly two-thirds of large companies (those with more than 5,000 employees) now use  
5 AI technology like Eightfold’s to screen out candidates that the platform deems likely to be  
6 unqualified, while 38 percent deploy AI software to match and rank applicants.<sup>6</sup>

7       8. With a growing list of over 100 customers—including Microsoft, Morgan  
8 Stanley, Starbucks, BNY, Paypal, Chevron and Bayer<sup>7</sup>—Eightfold boasts “unparalleled”  
9 capabilities that “screen[] millions” of candidates<sup>8</sup> and “surface best fits by match scores with  
10 enhanced context,”<sup>9</sup> allowing recruiters focus on “final decisions” rather than resumes or even  
11 first-round interviews.<sup>10</sup>

12       9. The problem of employers relying on secretive and unreliable third-party reports  
13 (or “dossiers”) when making employment decisions was a core concern Congress sought to  
14 address in passing the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.*, in 1970.  
15 Based on these concerns, FCRA includes a broad definition of consumer reports as “any written,  
16 oral, or other communication of any information by a consumer reporting agency bearing on a  
17 consumer’s credit worthiness, credit standing, credit capacity, character, general reputation,  
18 personal characteristics, or mode of living which is used or expected to be used or collected in  
19 whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility  
20 for” access to credit, insurance, or for “employment purposes.” 15 U.S.C. § 1681a(d)(1). In  
21 other words, this definition covers not only what we now commonly recognize as credit reports,  
22 such as those from TransUnion or Equifax that detail consumer debt history, but also reports  
23 containing information about a person’s habits, morals, and life experiences. These are the  
24 kinds of reports that can have devastating consequences for people’s jobs.

25       <sup>6</sup> <https://www.nytimes.com/2023/03/13/business/ai-hiring-jobs.html>

26       <sup>7</sup> <https://www.nytimes.com/2023/03/13/business/ai-hiring-jobs.html>

27       <sup>8</sup> <https://eightfold.ai/>

28       <sup>9</sup> <https://eightfold.ai/use-cases/eightfold-agentic-ai/>

29       <sup>10</sup> <https://eightfold.ai/products/ai-interviewer/>

1       10.    Although automated screening technology did not yet exist when the FCRA was  
2 passed, large-scale decision-making based on opaque information is exactly the kind of harm the  
3 statute was designed to address. Even in 1970, Congress expressed concern about the “growing  
4 accessibility” of consumer information made possible “through computer- and data-transmission  
5 techniques,”<sup>11</sup> and the increasing likelihood that “impersonal ‘blips’ . . . in a stolid and  
6 unthinking machine”<sup>12</sup> could unfairly bar people from employment opportunities based on  
7 inaccurate data entering the program or the program producing an incorrect analysis.

8       11.    In order to protect against the harms of such reports, the FCRA requires consumer  
9 reporting agencies like Eightfold to make certain disclosures, obtain certain certifications, and  
10 ensure that consumers (here, job applicants) have a mechanism to review and correct reports that  
11 are provided to prospective employers for purposes of determining eligibility for employment.

12       12.    The FCRA was designed to apply as technology evolves. For example, in 2013  
13 the Federal Trade Commission explained that “[t]he mobile app angle offers a 21st century twist,  
14 but the message remains the same: Companies offering background screening products for  
15 employment or other FCRA purposes—and the businesses that use them—have to stay in line  
16 with the law.”<sup>13</sup>

17       13.    In 2024, the Consumer Financial Protection Bureau, the federal agency that  
18 administers the FCRA, published a guidance document in the Federal Register titled  
19 “Background Dossiers and Algorithmic Scores for Hiring, Promotion, and Other Employment  
20 Decisions.”<sup>14</sup> This guidance documented how longstanding protections for job applicants and  
21 employees under the FCRA applied to new AI employment technologies. The Agency noted  
22 that “an entity could ‘assemble’ or ‘evaluate’ consumer information within the meaning of the  
23 term ‘consumer reporting agency’ if the entity collects consumer data in order to train an

24  
25       <sup>11</sup> 115 Cong. Rec. S2413 (daily ed. Jan. 31, 1969) (statement of Sen. William Proxmire).

26       <sup>12</sup> 116 Cong. Rec. 36570 (1970).

27       <sup>13</sup> <https://www.ftc.gov/business-guidance/blog/2013/01/background-screening-reports-fcra-just-saying-youre-not-consumer-reporting-agency-isnt-enough>

28       <sup>14</sup> <https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2024-06-background-dossiers-and-algorithmic-scores-for-hiring-promotion-and-other-employment-decisions/>

1 algorithm that produces scores or other assessments about workers for employers.”<sup>15</sup> It  
2 also noted how a third party that “provides [ ] scores to companies for employment purposes  
3 could ‘assemble’ or ‘evaluate’ consumer information if the developer obtains or uses data from  
4 sources other than an employer receiving the report, including from other employer-customers or  
5 public data sources, to generate the scores.”<sup>16</sup>

6 14. When the California legislature enacted the California Investigative Consumer  
7 Reporting Agencies Act (“ICRAA”), Cal. Civ. Code § 1786 *et seq.*, in 1975, it echoed the policy  
8 concerns that animated the FCRA and adopted similar, and in some respects heightened,  
9 certification and disclosure requirements for consumer reporting agencies.

10 15. Although these well-established protections have been on the books for as long as  
11 half a century, Eightfold does not comply with them, leaving job applicants uninformed of their  
12 rights and unable to dispute or correct inaccurate information in their job application reports, or  
13 even to know that such information exists in the first place, in violation of the FCRA and  
14 ICRAA.

15 16. Congress and the California legislature understood as early as the 1970s that  
16 access to employment and credit are the building blocks of the American Dream, and that using  
17 unreliable and unreviewable information to determine that access violates basic principles of  
18 fairness and reason. The FCRA and ICRAA were passed to remedy these harms and to ensure  
19 that individuals understand how companies use their data to make decisions that impact their  
20 livelihoods, including their access to employment, and to have the right to correct that data when  
21 the companies get it wrong. As companies find ways to expand beyond the information and  
22 evaluation provided by credit reports, seeking new and different ways to determine access to  
23 economic opportunity, these core principles are more important than ever.

24  
25  
26 <sup>15</sup> <https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2024-06-background-dossiers-and-algorithmic-scores-for-hiring-promotion-and-other-employment-decisions/>

27 <sup>16</sup> <https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2024-06-background-dossiers-and-algorithmic-scores-for-hiring-promotion-and-other-employment-decisions/>

## **JURISDICTION AND VENUE**

17. The Court has general jurisdiction over Plaintiffs' claims under the FCRA, ICRAA and the UCL.

18. The Court has personal jurisdiction over this matter because Eightfold is a citizen of California, conducts substantial business activity in this state, and engaged in the unlawful acts described herein in this state, as part of a common course of conduct.

19. Venue is proper in this county under California Code of Civil Procedure § 395.5 because Plaintiff Bhaumik lives in, applied from, and was denied employment while living in Contra Costa County, California.

## THE PARTIES

20. Eightfold is a Delaware corporation with its headquarters and primary place of business in Santa Clara, California.

21. Eightfold is a Consumer Reporting Agency (“CRA”) for FCRA purposes because it is in the business of assembling and evaluating information on consumers for the purpose of furnishing consumer reports (including information bearing on job applicants’ character, general reputation, personal characteristics, or mode of living, which is expected to be used as a factor in establishing the consumer’s eligibility for employment purposes) to third parties, including Microsoft, Paypal and many more. Employers, including Microsoft and Paypal, among others, rely on these reports to make employment-related decisions about applicants and employees.

22. Eightfold uses the means of interstate commerce in preparing or furnishing consumer reports.

23. As such, Eightfold is regulated by federal law, including the FCRA.

24. Eightfold is also an investigative CRA under California law because it is in the business of collecting, assembling, evaluating, compiling, reporting, transmitting, transferring, or communicating consumer information regarding consumers' character, general reputation, personal characteristics, or mode of living (consumer reports), including for employment purposes, to companies, including prospective employers.

1 25. As such, Eightfold is regulated by California law, including ICRAA.

2 26. Plaintiff Kistler is a resident of Los Angeles, California.

3 27. Plaintiff Bhaumik is a resident of Walnut Creek, California.

4 **FACTUAL BACKGROUND**

5 **Background to the FCRA and its Enactment**

6 28. Congress enacted the federal FCRA in 1970 to regulate the growing business of  
7 CRAs, companies that assemble information into reports used by businesses making decisions  
8 about access to credit and employment. Specifically, Congress recognized the need to “ensure  
9 fair and accurate credit reporting, promote efficiency in the banking system, and protect  
10 consumer privacy.” *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 52 (2007).

11 29. In introducing the bill enacting the FCRA before the Senate, sponsor Senator  
12 William Proxmire described how such consumer reporting was both pervasive and invasive. For  
13 example, Senator Proxmire described a retail credit reporting company with dossiers on 45  
14 million people that contained information on “drinking, marital discords, adulterous behavior, as  
15 well as a person’s general reputation, habits and morals,” collected largely from conversations  
16 with neighbors. Another credit reporting company he identified specialized in maintaining  
17 information on “deadbeats.”<sup>17</sup>

18 30. The legislative history of the FCRA shows that its drafters were deeply concerned  
19 with the potential impacts of credit reporting information on employment opportunities. For  
20 example, the Senate Report noted that the FCRA was intended to apply where “a consumer’s  
21 future employment career could be jeopardized because of an incomplete credit report.”<sup>18</sup>  
22 Elsewhere, the Congressional Record reflects the FCRA drafters’ belief that people should have  
23 access “to all information in any form which would be relayed to a prospective employer, insurer  
24 or creditor in making a judgment as to the worthiness of the individual’s application.”<sup>19</sup>

---

25  
26 <sup>17</sup> <https://www.congress.gov/91/crecb/1969/01/31/GPO-CRECB-1969-pt2-8-1.pdf>

27 <sup>18</sup> <https://www.cia.gov/readingroom/docs/CIA-RDP72-00337R000400050003-7.pdf>

28 <sup>19</sup> 116 Cong Rec. 36572 (1970).

1       31. The type of computerized data gathering, analysis, and decision making that  
2 forms the core of Eightfold's business was of particular concern:

3       [W]ith the trend toward computerization of billings and the establishment of all  
4 sorts of computerized data banks, the individual is in great danger of having his  
5 life and character reduced to impersonal "blips" and keypunch holes in a stolid  
6 and unthinking machine which can literally ruin his reputation without cause, and  
7 make him unemployable or uninsurable, as well as deny him the opportunity to  
8 obtain a mortgage to buy a home. We are not nearly as much concerned over the  
9 possible mistaken turndown of a consumer for a luxury item as we are over the  
10 possible destruction of his good name without his knowledge and without reason.  
11 The loss of a credit card can, of course, be expensive, but, as Shakespeare said, the  
12 loss of one's good name is beyond price and makes one poor indeed. This bill's  
13 title VI deals with that problem.<sup>20</sup>

14       32. In particular, Congress sought to ensure that inaccurate or incomplete reports  
15 would not cost people business or employment opportunities without first giving them the  
16 opportunity to inspect and correct those reports. As the Senate Report that accompanied the bill  
17 noted, "[u]nless a person knows he is being rejected for credit or insurance or employment  
18 because of a credit report, he has no opportunity to be confronted with the charges against him  
19 and tell his side of the story."<sup>21</sup>

20       33. When Congress amended the FCRA in the Consumer Credit Reporting Reform  
21 Act of 1996, Pub. L. 104-208, § 2403, 110 Stat. 3009-426, 3009-431, it once again specifically  
22 identified the use of consumer reports in employment decisions as an animating consideration.  
23 Specifically, the committee report for the amended statute expressed concern that "the ability of  
24 employers to obtain consumer reports on current and prospective employees may unreasonably  
25 harm employees if there are errors in their reports."<sup>22</sup>

26       34. The FCRA defines a "consumer report" as:

27       Any written, oral, or other communication of any information by a consumer  
28 reporting agency bearing on a consumer's credit worthiness, credit standing, credit  
capacity, character, general reputation, personal characteristics or mode of living which is

---

<sup>20</sup> 16 Cong. Rec. 36570 (1970).

<sup>21</sup> <https://www.cia.gov/readingroom/docs/CIA-RDP72-00337R000400050003-7.pdf>; S. Rep. No. 517, at 3 (1969).

<sup>22</sup> S. Rep. No. 104-185, at 35 (1995).

1 used or expected to be used or collected in whole or in part for the purpose of serving as a  
2 factor in establishing the consumer's eligibility for—(A) credit or insurance to be used  
3 primarily for personal, family, or household purposes; (B) employment purposes; or (C)  
4 any other [authorized] purpose . . . .

5 15 U.S.C. § 1681a(d)(1).

6 35. A “consumer reporting agency” or CRA, in turn, is “any person which, for  
7 monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in  
8 the practice of assembling or evaluating consumer credit information or other information on  
9 consumers for the purpose of furnishing consumer reports to third parties . . . .” 15 U.S.C. §  
10 1681a(f).

11 36. “[E]mployment purposes’ when used in connection with a consumer report  
12 means a report used for the purpose of evaluating a consumer for employment, promotion,  
13 reassignment or retention as an employee.” 15 U.S.C. § 1681a(h).

14 37. The Federal Trade Commission and the Consumer Financial Protection Bureau,  
15 two federal agencies with authority to enforce the FCRA, have both reiterated that the FCRA  
16 covers employment-related decision making and related harms to workers, in addition to  
17 decisions concerning the extension of credit.<sup>23</sup>

18 **A. The FCRA’s General Protections**

19 38. In enacting the FCRA, Congress imposed critical obligations on CRAs as the  
20 gatekeepers and purveyors of consumers’ personal data. For example, CRAs may only furnish  
21 consumer reports under limited, statutorily defined permissible purposes, *id.* § 1681b(a), and  
22 CRAs must take reasonable steps to verify the identity and purposes of consumer report users,  
23 ensure that consumer reports do not contain excludable types of information, and confirm that  
24 consumer reports are not being used in violation of the statute, *id.* § 1681e(a).

25  
26  
27 <sup>23</sup> <https://www.eeoc.gov/meetings/meeting-october-20-2010-employer-use-credit-history-screening-tool/mithal>;  
28 [https://files.consumerfinance.gov/f/documents/cfpb\\_ymyg\\_reentry\\_background-screening-report-checklist.pdf](https://files.consumerfinance.gov/f/documents/cfpb_ymyg_reentry_background-screening-report-checklist.pdf)

39. The statute also limits the types of information that CRAs can disclose in consumer reports, including “adverse item[s] of information” other than criminal convictions that are more than seven years old, *id.* § 1681c, and requires CRAs to follow strict procedures when reporting public record information for employment purposes, *id.* § 1681k.

40. The FCRA further requires CRAs to follow reasonable procedures to assure maximum possible accuracy of the information contained in consumer reports. *Id.* § 1681e(b).

41. In order to ensure that consumers have the ability to review and correct any inaccurate or incomplete information, the statute further requires CRAs to make consumer report information available to consumers upon request, including the sources of information relied upon, *id.* § 1681g, and to investigate and correct, as appropriate, any information the consumer claims to be inaccurate or incomplete, with notice to the prospective employer, *id.* § 1681i.

42. The FCRA provides for actual and statutory damages of between \$100.00 and \$1,000.00 for each violation under 15 U.S.C. § 1681n(a)(1)(A), in addition to punitive damages under 15 U.S.C. § 1681n(a)(2).

## **B. The FCRA's Employment-Specific Protections**

43. Reflecting Congress's particular focus on the employment context and the severity of harms to workers who are unable to gain employment due to inaccurate data, the FCRA imposes specific obligations that apply *only* when consumer reports are used for employment purposes. 15 U.S.C. § 1681b(b).

44. These employment-specific provisions are in addition to the general rules described above that the statute establishes for all consumer reports.

45. In amending the FCRA in 1996, Congress specifically recognized the importance of job applicants' privacy rights, the significant risks associated with the reporting of inaccurate information, and the difficulties job applicants and other consumers face in correcting such errors.<sup>24</sup> As a result, the FCRA requires that job applicants receive a clear, conspicuous,

<sup>24</sup> S. Rep. No. 108-166 at 5-6 (2003) (describing 1996 amendments), S. Rep. No. 104-185 at 35 (1995).

1 standalone disclosure that a consumer report will be procured for employment purposes, and that  
2 they authorize the collection of their consumer reporting information for employment purposes,  
3 *before* an employer can procure such report. *Id.* § 1681b(b)(2). This provision implies that job  
4 applicants have a right to withhold authorization.

5       46.     Congress further enacted a dispute and error-correction mechanism under which  
6 job applicants must have an opportunity to review and correct the information in their consumer  
7 reports before an employer denies employment based on that information. *Id.* § 1681b(b)(3).  
8 Thus, employers violate the FCRA when they use consumer reports to make adverse  
9 employment decisions without first providing the applicant and/or employee who is the subject  
10 of the report with sufficient and timely notification of its intent to take an adverse action and a  
11 copy of the report. *Id.* § 1681b(b)(3)(A)(i).

12       47.     The FCRA further provides that CRAs may furnish a consumer report for  
13 employment purposes only after receiving certification from the employer that: (i) the employer  
14 has complied with the FCRA's standalone disclosure and authorization requirements under §  
15 1681b(b)(2); (ii) the employer will comply with the FCRA's notice, dispute, and error-correction  
16 requirements under § 1681b(b)(3); and (iii) the employer will not use consumer report  
17 information in violation of any applicable federal or state equal employment opportunity law or  
18 regulation. *Id.* § 1681b(b)(1). The FCRA further requires CRAs to provide employers with a  
19 summary of the consumer's rights under the FCRA, *id.* and to notify employers of their  
20 responsibilities under the statute, *id.* § 1681e(d).

21 **Background to the ICRAA and its Enactment**

22       48.     In the wake of the FCRA, California enacted a robust statutory framework to  
23 protect individuals from improper disclosure of their consumer information, including the  
24 ICRAA. Cal. Civ. Code § 1786 *et seq.* The ICRAA was enacted in 1975 to ensure that CRAs  
25 exercise their "grave responsibilities [in consumer reporting] with fairness, impartiality, and a  
26 respect for the consumer's right to privacy." Cal. Civ. Code § 1786(b).

27  
28

1       49. The ICRAA governs “investigative consumer reporting agencies” (hereinafter,  
2 also referred to as “CRAs”) that compile, sell, and furnish investigative consumer reports  
3 (including “information on a consumer’s character, general reputation, personal characteristics,  
4 or mode of living”). Cal. Civ. Code § 1786.2(c).

5       50. Like the FCRA, the ICRAA imposes important obligations on CRAs, including  
6 requiring CRAs to ensure that report recipients are permitted users and are using the report for a  
7 permissible purpose, and to obtain various certifications from prospective employers (and other  
8 users of consumer information) before preparing or furnishing consumer reports. Cal. Civ. Code  
9 §§ 1786.12, 1786.16, 1786.20.

10      51. These certifications, in turn, require employers and other users to provide  
11 consumers (including job applicants) with standalone disclosures and to obtain their prior written  
12 consent to the use of their consumer information, including that an investigative consumer report  
13 may be obtained containing information bearing on the consumer’s character, general reputation,  
14 personal characteristics, and mode of living; the nature and scope of the investigation and the  
15 purpose for such report; the identification of the CRA providing the consumer report, together  
16 with the CRA’s contact, website information and privacy practices, and further require that  
17 consumers be able to obtain a copy of their consumer report. Cal. Civ. Code § 1786.16(a)-(b);  
18 *id.* § 1786.20.

19      52. The ICRAA also provides important limitations on the information that can be  
20 included in consumer reports, including adverse information that predates the report by more  
21 than seven years. *Id.* § 1786.18.

22      53. The ICRAA further requires CRAs to follow reasonable procedures to assure the  
23 “maximum possible accuracy of the information” contained in consumer reports, *id.* §  
24 1786.20(b), particularly with respect to matters of public record likely to have an adverse impact  
25 on employment, *id.* § 1786.28.

26      54. The ICRAA also requires CRAs and users of consumer reports to provide notice  
27 and dispute procedures so that job applicants and other consumers can review and address  
28

1 inaccurate information if they are subject to an adverse action, including the denial of  
2 employment, based on such information. *Id.* §§ 1786.20, 1786.24, 1786.40.

3       55.     The statute further requires CRAs to publicly post specific information regarding  
4 their privacy practices and to provide consumer reporting information to consumers upon  
5 request. *Id.* §§ 1786.20, 1786.22.

6       56.     A CRA that fails to comply with any requirement of the ICRAA is liable for the  
7 greater of “actual damages sustained by the [individual] . . . or \$10,000,” reasonable attorney’s  
8 fees and costs, and punitive damages for “grossly negligent or willful” violations. Cal. Civ.  
9 Code §1786.50(a), (b).

10 **Eightfold’s Evaluation Tools**

11       57.     Eightfold provides employers with an AI tool<sup>25</sup> that assembles and evaluates  
12 information about employees and job applicants, creating credit reports for use in, *inter alia*,  
13 hiring, promotion, and retention decisions.

14       58.     With respect to hiring, Eightfold’s “Talent Intelligence Program” enables  
15 employers to create job profiles, assemble internal and external data for job applicants, and  
16 generate web pages where applicants can apply to jobs. Eightfold’s Evaluation Tools then  
17 evaluate and rank job applicants using the data gathered from job applicants during the  
18 application process, the employer’s internal data, external data, and Eightfold’s proprietary  
19 LLM, which is trained on billions of data points for the specific purpose of creating a report that  
20 Eightfold provides to employers for use in employment decisions.

21       59.     The report that the Talent Intelligence Program produces on candidates includes  
22 what Eightfold calls the “Match Score.”

23       60.     The Match Score is an AI model that “predicts the match between a candidate  
24 profile and a job position, and displays candidates for a given job position in a rank-list manner.

25     26     27     28     <sup>25</sup> Agentic AI is a form of artificial intelligence that mimics human decision-making and problem-solving skills with limited human oversight.

1 It is not a stand-alone score for a candidate. Rather it is the match of the candidate to job  
2 requirements as specified by the calibration of the job position.”<sup>26</sup>

3 61. One of Eightfold’s main marketing features is the wealth of data points that it uses  
4 to train its AI model: Eightfold touts having “10 years of aggregated, anonymized talent and data  
5 learnings”; “1.6B+ [1.6 billion data points on employee] career trajectories,” “1.6M+ [1.6  
6 million data points on employee] skills,” and “50+ variables driving fair, accurate scoring and  
7 matching.”<sup>27</sup>

8 62. Elsewhere, Eightfold advertises that “[o]nly Eightfold offers a patented AI  
9 platform that learns from more than 1.5 billion global data points and every talent decision.”<sup>28</sup>

10 63. Much like a credit report used in consumer lending decisions, this data is  
11 assembled from a variety of sources, including the specific organization’s human resources data,  
12 public data sources, and Eightfold’s own proprietary data, as illustrated in the following figure  
13 from Eightfold’s patent application for a “System, Method, and Computer Program for  
14 Automatically Predicting the Job Candidates Most Likely to be Hired And Successful In A  
15 Job”:<sup>29</sup>

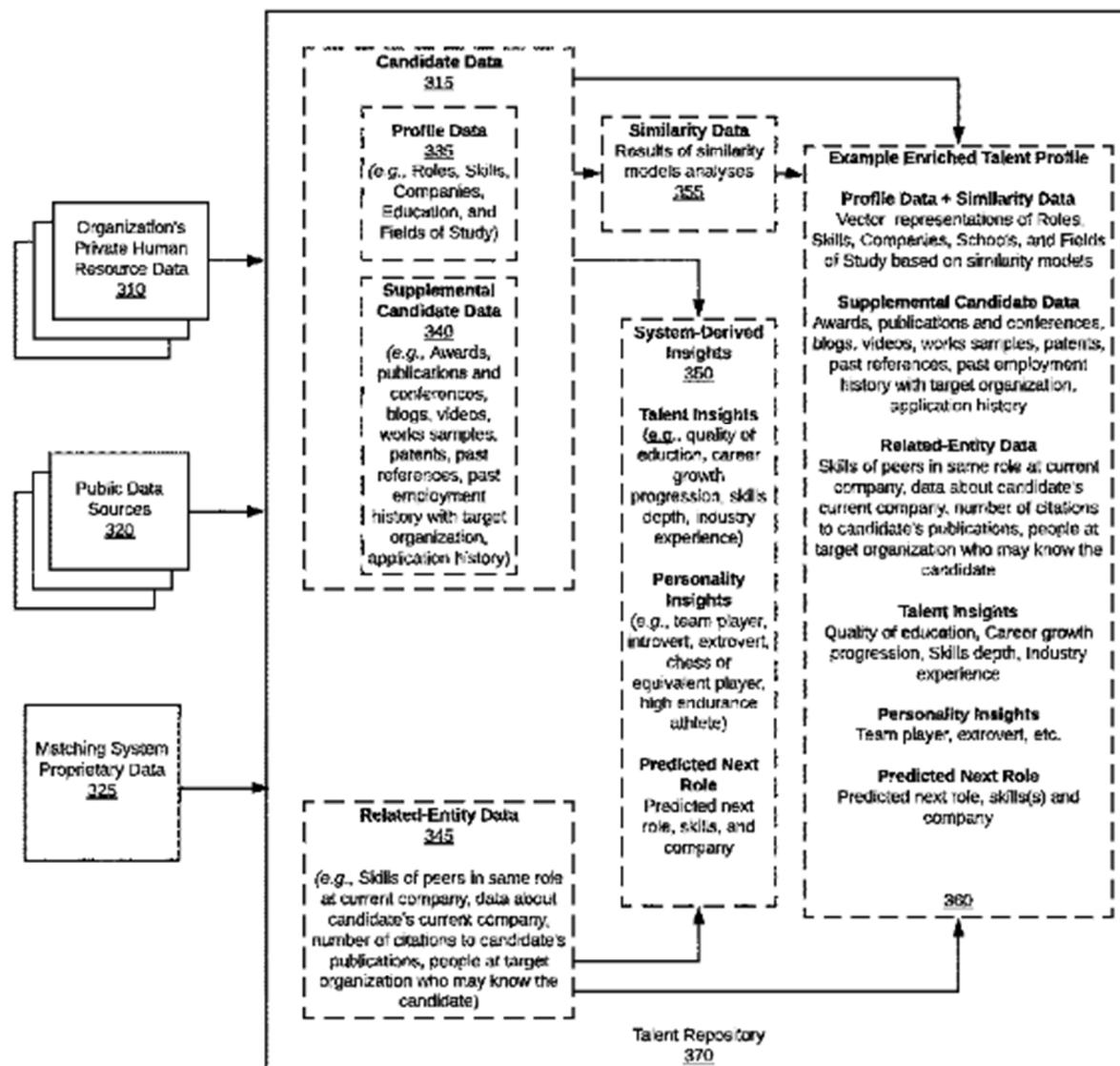
26 [https://eightfold.ai/wp-content/uploads/Responsible\\_AI\\_at\\_Eightfold.pdf](https://eightfold.ai/wp-content/uploads/Responsible_AI_at_Eightfold.pdf)

27 <https://eightfold.ai/>

28 [https://eightfold.ai/wp-content/uploads/Eightfold\\_Talent\\_Acquisition\\_data\\_sheet.pdf](https://eightfold.ai/wp-content/uploads/Eightfold_Talent_Acquisition_data_sheet.pdf)

29 <https://eightfold.ai/wp-content/uploads/Patent-12141757.pdf>

1  
2  
3  
4 **Creating an Enriched Talent Profile for a Candidate**



29 FIG. 3

1       64. Specifically, data Eightfold assembles and evaluates includes, among other inputs,  
2 (1) the candidate’s hiring profile and resume, (2) supplemental candidate data gathered from  
3 public sources about the candidate’s professional history (such as blogs, publications,  
4 conferences, job application history, etc.), (3) data pertaining to comparable employees at other  
5 companies, (4) predictions and inferences about the candidate’s personality and future, and (5)  
6 data used to train Eightfold’s AI. This data goes far beyond the data provided by the applicant to  
7 include data that Eightfold gathers from third-party online sources and data that Eightfold’s AI  
8 creates itself.

9       65. Eightfold’s privacy policy confirms that its platform ingests professional data  
10 from third-party sources such as LinkedIn, Stack Overflow, and GitHub to build candidate  
11 profiles, as well as data inputs from the employer and from Eightfold’s own trove of data on job  
12 applicants.

13       66. This means that once an applicant applies to a job for an employer using  
14 Eightfold, Eightfold will thereafter retain and be able to use that applicant’s data for its own  
15 purposes, including for evaluating other applicants for unrelated positions, or for that same job  
16 applicant for other positions in the future.<sup>30</sup> Eightfold’s policy also makes clear that the  
17 “personal data” it collects and uses for evaluating employment includes “[i]nferences drawn  
18 from any of [the various sources of information it collects] to create a profile about [the job  
19 applicant] reflecting the [applicant’s] preferences, characteristics, predispositions, behavior,  
20 attitudes, intelligence, abilities, and aptitudes.”<sup>31</sup>

21       67. Eightfold then uses the assembled data to evaluate and rank applicants using its  
22 Evaluation Tools, for the employers with whom it contracts.

23       68. Eightfold trains the Match Score model “specifically for candidate—job fit using  
24 supervised learning on hiring data” that is external to the specific candidate’s job application.<sup>32</sup>

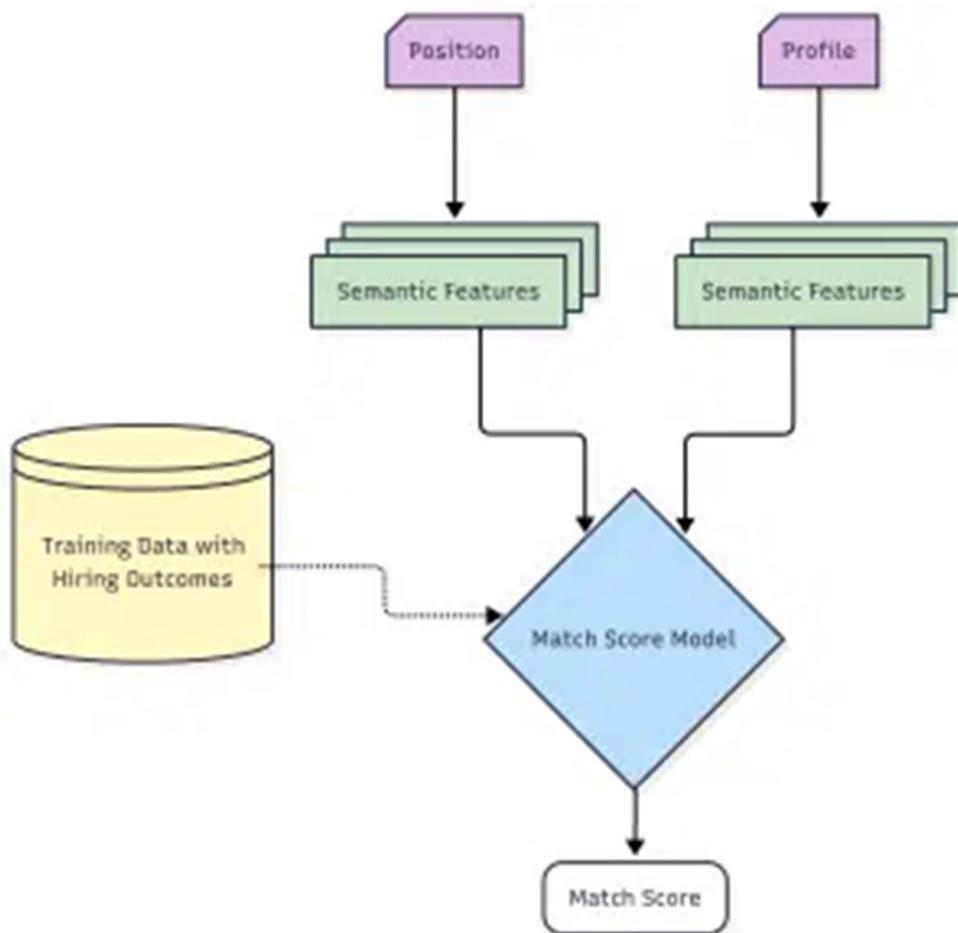
26       <sup>30</sup> <https://eightfold.ai/privacy-policy/>

27       <sup>31</sup> <https://eightfold.ai/privacy-policy/>

28       <sup>32</sup> <https://arxiv.org/pdf/2507.02087v1>

69. In a post on Eightfold’s website, an engineer on Eightfold’s AI platform team describes the Match Score algorithm as involving three basic steps: “Step 1: Extract deep semantic embeddings from unstructured data. Step 2: Add interpretable features from deep structured extraction. Step 3: Perform fast explainable inference of match scores.”<sup>33</sup>

70. The post illustrates the process with the following chart:



71. At Step 1 (“Position” and “Profile” in the above chart), the AI uses a large language model (“LLM”) to evaluate similarities between job descriptions and skills required for

<sup>33</sup> <https://eightfold.ai/engineering-blog/ai-powered-talent-matching-the-tech-behind-smarter-and-fairer-hiring/>

1 the job opening and job descriptions and skills presented in the applicant’s resume.<sup>34</sup> As the  
2 engineer’s Eightfold post explains: “[W]e can detect that ‘Machine Learning Engineer at a  
3 fintech company’ profile and ‘Data Scientist at an insurance firm’ profile may have similar  
4 functional capabilities, even if the titles, experiences and industries differ.”<sup>35</sup>

5 72. At Step 2 (“Semantic Features” in the above chart), the AI extracts additional  
6 information from profiles and jobs to calculate factors such as “skill overlap, title progression  
7 and seniority fit, industry and company similarity, [and] context of ideal candidates and hiring  
8 manager.”<sup>36</sup> The calculation uses models derived from “hundreds of millions of internal profile  
9 and job-text” data sets.<sup>37</sup> The resulting scoring considerations are as follows:

- 10 a. Skill overlap: This calculates the similarities between the skills identified  
11 as required for the job and the skills that the candidate possesses.
- 12 b. Title progression and seniority fit: This calculates 1) the similarities  
13 between the job title that the employer is seeking candidates for and the  
14 candidate’s recent job titles, 2) the candidate’s *future* job titles, 3) the  
15 similarity in “look and feel” between the hiring company and the  
16 candidate’s past companies, and 4) hireability, i.e. the likelihood that the  
17 job candidate will join a company like the hiring company.
- 18 c. Match with ideal candidates and the hiring manager: This compares the  
19 candidate against job profiles of hiring managers and high-performing  
20 employees who hold or have held the job being hired for.

21 73. At Step 3, the AI takes the features extracted in Step 2 and “blend[s] them into a  
22 calibrated prediction” that “rank[s] candidates by likelihood of success” based on “tens of  
23 millions of historical candidate-position pairs with known outcomes, using features extracted at  
24 the time of the original interaction.”<sup>38</sup>

25 <sup>34</sup> <https://eightfold.ai/engineering-blog/ai-powered-talent-matching-the-tech-behind-smarter-and-fairer-hiring/>

26 <sup>35</sup> *Id.*

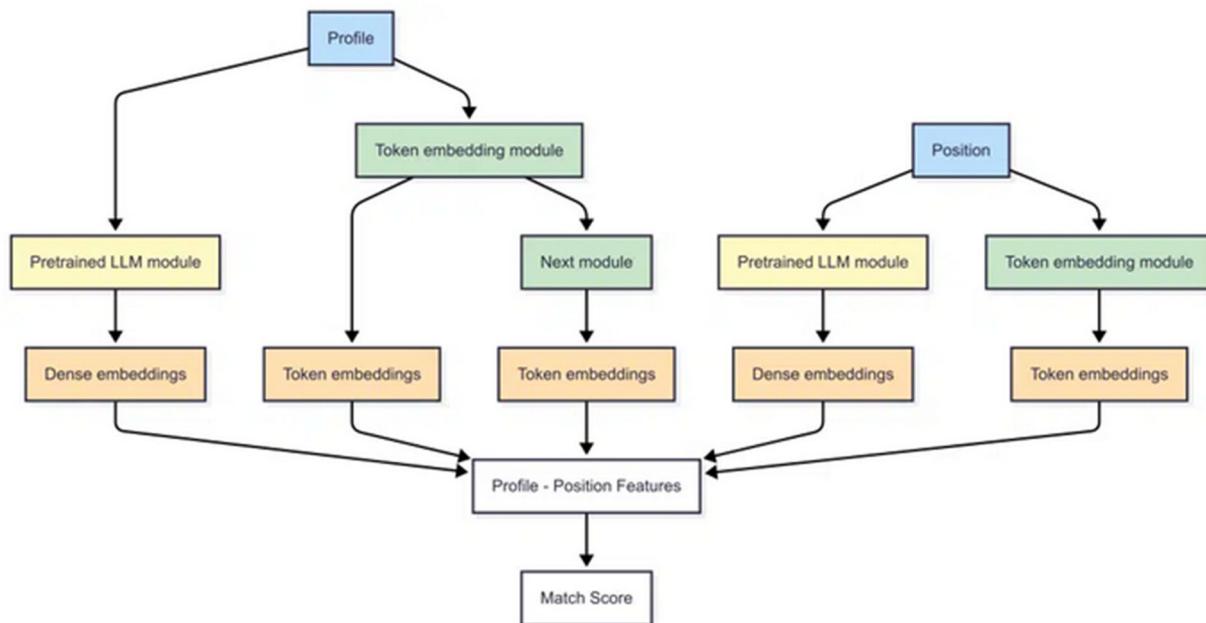
27 <sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> <https://eightfold.ai/engineering-blog/ai-powered-talent-matching-the-tech-behind-smarter-and-fairer-hiring/>

1       74. This results in a Match Score, which ranges from 0 through 5 in increments of  
2       0.5, which can then be sorted into a ranked list.<sup>39</sup>

3       75. This chart shows an illustration of how the Evaluation Tools work:



15       76. Eightfold's marketing materials tout that Match Score is superior to other LLMs  
16 because it is trained on: "Real résumés with verified skills, experiences, and qualifications[, r]eal  
17 job descriptions reflecting actual role requirements across industries[, and r]eal outcomes, such  
18 as data indicating which candidates got interviews, offers, or hires."<sup>40</sup>

## 19       Plaintiff Kistler's Experience

20       77. Plaintiff Erin Kistler ("Kistler") has submitted online applications for various  
21 positions with companies that use Eightfold's Evaluation Tools for recruitment and hiring  
22 services, including collecting, assembling, and evaluating applicant data gathered from third-  
23 party sources for purposes of evaluating Ms. Kistler for employment.

24       78. Ms. Kistler holds a Bachelor of Science in Computer Science from Ohio State  
25 University and has approximately 19 years' experience working in product management and

26  
27       <sup>39</sup> <https://eightfold.ai/nyc-eightfold-matching-model/>

<sup>40</sup> <https://eightfold.ai/blog/fair-accurate-hiring/>

1 project management, including in AI, deploying data, technology and marketing to improve user  
2 experience and drive results across a variety of sectors including government services, business,  
3 media, and entertainment.

4 79. Since 2022 and continuing to today, Ms. Kistler has applied for various positions  
5 for which she is qualified with Paypal, Microsoft, Netflix, and other employers with whom  
6 Eightfold contracts for AI-based recruiting and hiring services.

7 80. In December 2025, Ms. Kistler applied for several jobs with Paypal for which  
8 Paypal uses Eightfold's Evaluation Tools to assemble and evaluate consumer data within the  
9 scope of FCRA and ICRAA.

10 81. On or around December 17, Ms. Kistler applied online via Paypal's website for  
11 the position of "Sr Product Manager-Venmo."

12 82. On or around December 17, Ms. Kistler also applied online via Paypal's website  
13 for a position of "Sr Product Manager 2."

14 83. For each of these applications, Ms. Kistler was required to submit her application  
15 information via a link that included "eightfold.ai/careers" in the website address (URL).

16 84. During the online application process, Ms. Kistler did not consent to waive her  
17 privacy and consumer protection rights under state and federal law.

18 85. In accordance with its company-wide practices both before and after Ms. Kistler  
19 applied to Paypal, given Ms. Kistler's experience of a lack of FCRA compliance, Eightfold  
20 failed to obtain certification from prospective employers, including Paypal, stating that the  
21 employer had complied or would comply with applicable federal and state laws requiring, *inter*  
22 *alia*: written approval from the consumer based on clear and conspicuous notice in a standalone  
23 document before obtaining any consumer report; written notice to the consumer of their rights  
24 under applicable federal and state law; an opportunity for the consumer to receive a copy, and to  
25 dispute the contents, of such consumer reporting information before taking any adverse action  
26 (including a lower ranking score or rejection from employment) based on such information; and  
27  
28

1 the employer's certification that consumer report information will not be used in violation of any  
2 applicable equal employment opportunity law or regulation.

3 86. In accordance with its company-wide practices both before and after Ms. Kistler  
4 applied to Paypal, given Ms. Kistler's experience of a lack of FCRA compliance, Eightfold also  
5 failed to provide employers, including Paypal, with a summary of consumers' rights under  
6 federal and state law together with its consumer reports including personal information and data  
7 gleaned from third-party sources.

8 87. Consequently, during the application process, Ms. Kistler did not receive a  
9 standalone disclosure providing clear and conspicuous notice that a consumer report based on  
10 her personal data would be obtained for purposes of evaluating her employment application, nor  
11 did she receive a summary of her consumer protection rights, or information regarding  
12 Eightfold's name, address, telephone number, website address and privacy practices, and other  
13 required information under federal and state law.

14 88. Nevertheless, Ms. Kistler was subject to Eightfold's Evaluation Tools.

15 89. Through its proprietary AI-powered technology, upon information and belief,  
16 Eightfold gathered Ms. Kistler's consumer report information including personal data,  
17 information regarding her education and work experience, social media profiles, location data,  
18 internet and device activity, cookies and other tracking data, other third-party data, and  
19 comparator applicant data drawn from millions of other individuals' resumes and profiles, and  
20 used this information to evaluate and make determinations regarding Ms. Kistler's purported  
21 suitability for the positions to which she applied in the form of a consumer report furnished to  
22 her prospective employers.

23 90. During the application process, Ms. Kistler did not have the opportunity to opt out  
24 of having her consumer data collected and evaluated for purposes of employment without  
25 compromising validity or competitiveness of her application.

26 91. In accordance with its company-wide practices, upon information and belief,  
27 Eightfold used the consumer report information it collected, through its Evaluation Tools, to  
28

1 score, rank or grade Ms. Kistler's application against other applicants' data for purposes of  
2 evaluating her purported suitability for employment.

3 92. Eightfold ultimately profits by contracting with Paypal (and other employers) for  
4 the service of assembling and evaluating this type of consumer information from individuals like  
5 Ms. Kistler.

6 93. Ms. Kistler was not asked to interview and was not given a job offer for any of the  
7 positions to which she applied through Eightfold.

8 94. Before evaluating her ranking through Eightfold's Evaluation Tools, and choosing  
9 not to proceed with her applications, Paypal (and other employers to whom Ms. Kistler applied  
10 using Eightfold) did not provide her with a copy of her consumer report information and a  
11 description of her rights under applicable law, including the right to dispute the completeness  
12 and accuracy of, and to ultimately correct, any such consumer information.

13 **Plaintiff Bhaumik's Experience**

14 95. Plaintiff Sruti Bhaumik ("Bhaumik") has submitted online applications for  
15 various positions with companies that use Eightfold's Evaluation Tools for recruitment and  
16 hiring services, including collecting, assembling, and evaluating applicant data gathered from  
17 third-party sources for purposes of evaluating and ranking applicants.

18 96. Ms. Bhaumik holds a Bachelor of Arts in Chemistry from Bryn Mawr College  
19 and a Master of Science degree from the University of Pittsburgh. Ms. Bhaumik has over 10  
20 years of experience working in project management, with a focus on improving website and  
21 product experience for users, including through the use of data and AI.

22 97. Since 2023 and continuing to today, Ms. Bhaumik has applied for various  
23 positions for which she was qualified with Microsoft and other employers with whom Eightfold  
24 contracts to assemble and evaluate third-party applicant data.

25 98. In or around July 2025, Ms. Bhaumik applied online via Microsoft's website for  
26 the position of "Senior Technical Program Manager-Responsible AI (Job number:1841390)," for  
27  
28

1 which Microsoft uses Eightfold’s Evaluation Tools to assemble and evaluate applicant data  
2 within the scope of FCRA and ICRAA.

3 99. On or around December 16, 2025, Ms. Bhaumik applied online via Microsoft’s  
4 website for the position of “Senior Technical Program Manager (Job number: 200002243)” for  
5 which Microsoft uses Eightfold’s Evaluation Tools to assemble and evaluate applicant data  
6 within the scope of FCRA and ICRAA.

7 100. During the online application process, Ms. Bhaumik was required to sign in with  
8 an email account that linked to a website controlled by “eightfold.ai.”

9 101. During the online application process, Ms. Bhaumik did not consent to waive her  
10 privacy and consumer protection rights under state and federal law.

11 102. In accordance with its company-wide practices both before and after Ms.  
12 Bhaumik applied to Microsoft, given Ms. Bhaumik’s experience of a lack of FCRA compliance,  
13 Eightfold failed to obtain certification from prospective employers, including Microsoft, stating  
14 that the employer had or would comply with applicable federal and state laws requiring, *inter*  
15 *alia*: written approval from the consumer based on clear and conspicuous notice in a standalone  
16 document before obtaining any consumer report; written notice to the consumer of their rights  
17 under applicable federal and state law; an opportunity for the consumer to receive a copy, and to  
18 dispute the contents, of such consumer reporting information before taking any adverse action  
19 (including a lower ranking score or rejection from employment) based on such information; and  
20 the employer’s certification that consumer report information will not be used in violation of any  
21 applicable equal employment opportunity law or regulation.

22 103. In accordance with its company-wide practices both before and after Ms.  
23 Bhaumik applied to Microsoft, given Ms. Bhaumik’s experience of a lack of FCRA compliance,  
24 Eightfold also failed to provide employers, including Microsoft, with a summary of consumers’  
25 rights under federal and state law together with its consumer reports including personal  
26 information and data gleaned from third-party sources.

1           104. Consequently, during the application process, Ms. Bhaumik did not receive a  
2 standalone disclosure providing clear and conspicuous notice that a consumer report based on  
3 her personal data would be obtained for purposes of evaluating her employment application, nor  
4 did she receive a summary of her consumer protection rights, or information regarding  
5 Eightfold's identity as a consumer reporting agency or other required information under federal  
6 and state law.

7           105. Nevertheless, Ms. Bhaumik was subject to Eightfold's Evaluation Tools.

8           106. Through its proprietary AI-powered technology, upon information and belief,  
9 Eightfold gathered Ms. Bhaumik's consumer report information, including personal data,  
10 information regarding her education and work experience, social media profiles, location data,  
11 internet and device activity, cookies and other tracking data, other third-party data, and  
12 comparator applicant data drawn from millions of other individuals' resumes and profiles, and  
13 used this information to evaluate and make determinations regarding Ms. Bhaumik's purported  
14 suitability for the positions to which she applied in the form of a consumer report furnished to  
15 her prospective employers.

16           107. During the application process, Ms. Bhaumik did not have the opportunity to opt  
17 out of having her consumer data collected and evaluated for purposes of employment without  
18 compromising validity or competitiveness of her application.

19           108. In accordance with its company-wide practices, upon information and belief,  
20 Eightfold used the consumer report information it collected, through its Evaluation Tools, to  
21 score, rank or grade Ms. Bhaumik's application against other applicants' data for purposes of  
22 evaluating her purported suitability for employment.

23           109. Eightfold ultimately profits by contracting with Microsoft (and other employers)  
24 for the service of assembling and evaluating this type of consumer information.

25           110. Ms. Bhaumik received an automated rejection for the Senior Technical Program  
26 Manager-Responsible AI position two days after she applied, without being invited to interview.  
27  
28

1           111. Ms. Bhaumik was not asked to interview and was not given a job offer for any of  
2 the positions to which she applied through Eightfold.

3           112. Before evaluating her ranking through Eightfold's Evaluation Tools and choosing  
4 not to proceed with her applications, Microsoft (and other employers to whom she applied using  
5 Eightfold) did not provide her with a copy of her consumer report information and a description  
6 of her rights under applicable federal and state law, including the right to dispute the  
7 completeness and accuracy of, and to ultimately correct, any such consumer information.

8           113. As a result of Eightfold's violations, Plaintiffs and other class members have been  
9 deprived of their rights under the FCRA and ICRAA to have reasonably accurate information  
10 reported about them, to know what information is being used to evaluate their suitability for  
11 employment, and to dispute and correct any such information that is inaccurate or incomplete  
12 (which information might otherwise be used to disadvantage their employment prospects), and to  
13 otherwise be informed of their legal rights, thereby precluding them from a fair application  
14 process.

15           114. Plaintiff and class members are likely to experience future harm as a result of  
16 Eightfold's conduct to the extent Eightfold retains their consumer information (including  
17 incomplete or inaccurate information), uses their consumer information as data points in its  
18 proprietary LLM model, and continues to employ its current practices with respect to Plaintiffs'  
19 and class members' future job applications.

20           **CLASS ACTION ALLEGATIONS**

21           115. Plaintiff brings the First Claim for Relief pursuant to C.C.P. § 382 on behalf of  
22 the following Class: All United States residents who, within applicable statutes of limitations,  
23 applied to jobs in the United States and were subjected to Eightfold's Evaluation Tools as part of  
24 their applications for employment (the "Nationwide Class").

25           116. Plaintiff brings the Second and Third Claims for Relief pursuant to C.C.P. § 382  
26 on behalf of the following Class: All California residents who, within applicable statutes of  
27  
28

1 limitations, applied to jobs and were subjected to Eightfold's Evaluation Tools as part of their  
2 applications for employment (the "California Class").

3 117. Numerosity – Upon information and belief, there are more than 100 members of  
4 each class. Although the precise number of such applicants is unknown, the facts on which the  
5 calculation of that number depends are presently within Eightfold's sole control.

6 118. Ascertainability – The identity of class members is ascertainable through  
7 Eightfold's business records.

8 119. Commonality and Predominance – Common questions of law and fact exist as to  
9 the Class and predominate over any questions solely affecting individual members of each class,  
10 including but not limited to:

- 11 a. Whether Eightfold is a CRA;
- 12 b. Whether Eightfold improperly provided Plaintiffs' and other applicants'  
13 personal consumer reports to prospective employers for purposes of  
14 evaluating applicants' eligibility for employment without complying with  
15 applicable legal requirements;
- 16 c. Whether Eightfold's conduct, as alleged herein, violated the FCRA;
- 17 d. Whether Eightfold's conduct, as alleged herein, violated the ICRAA;
- 18 e. Whether Eightfold's conduct, as alleged herein, constituted an unfair  
19 business act or practice in violation of the UCL;
- 20 f. Whether declaratory and/or injunctive relief is warranted; and
- 21 g. The nature and extent of the classwide injury and the appropriate measure  
22 of damages for each class.

23 120. Typicality – Plaintiffs' claims are typical of the claims of the classes they seek to  
24 represent. Plaintiffs' claims arise from the same practice and course of conduct that give rise to  
25 each class member's claims. Plaintiffs and the class members sustained similar injuries arising  
26 out of Eightfold's violations of the law. There is no apparent conflict of interest between  
27 Plaintiffs and class members.

121. Adequacy – Plaintiffs will fairly and adequately represent and protect the interests of all class members. Plaintiffs’ counsel are experienced in employment class actions and consumer reporting actions and will fairly and adequately protect the interests of Plaintiffs and each class.

122. Plaintiffs seek class certification for the purposes of obtaining damages for each class. Class certification is appropriate because each class is sufficiently numerous, common questions of fact and law predominate over any questions affecting only individual class members, Plaintiffs are adequate and typical of each class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation since joinder of all members is impracticable. The class members have been damaged and are entitled to recovery of damages and/or statutory penalties. Damages are capable of measurement on a classwide basis.

123. In the alternative, Plaintiffs seek class certification for purposes of liability, followed by individual damages hearings.

124. Plaintiffs also seek class certification for the purposes of obtaining injunctive and declaratory relief for each class because Eightfold has acted on grounds generally applicable to each class, making appropriate declaratory, equitable, and injunctive relief with respect to Plaintiffs and each class as a whole. The class members are entitled to declaratory, equitable, and injunctive relief to end Eightfold's unlawful policies.

## **CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF**  
**Violation of the FCRA (15 U.S.C. § 1681 *et seq.*)**  
**(Plaintiffs, individually, and on behalf of the Nationwide Class)**

125. Plaintiffs, on behalf of themselves and the Nationwide Class, reallege and incorporate all previous paragraphs as if they were set forth again herein.

126. Eightfold is, and at all times herein mentioned was, a CRA engaged in the practice of making, assembling and evaluating information on consumers for the purpose of

1 furnishing consumer reports to third parties, including for employment purposes, using its  
2 Evaluation Tools.

3 127. Upon information and belief, Eightfold made and furnished consumer reports  
4 pertaining to Plaintiffs and the Nationwide Class.

5 128. Eightfold willfully violated 15 U.S.C. § 1681b(b)(1) because it used its Evaluation  
6 Tools to provide consumer reports about Plaintiffs and class members, which were used for  
7 employment purposes without the employer's or other user's certification of compliance with the  
8 disclosure, authorization, notification and dispute requirements set forth in 15 U.S.C. §  
9 1681b(b)(2) and § 1681b(b)(3).

10 129. Eightfold further willfully violated 15 U.S.C. § 1681b(e) because it provided  
11 consumer reports about Plaintiffs and class members without notifying prospective employers  
12 and other users of their responsibilities under FCRA and without taking reasonable steps to  
13 ensure that such reports only contained permissible information and were only used by permitted  
14 users for permissible purposes in accordance with FCRA's requirements.

15 130. Eightfold invaded Plaintiffs' and class members' privacy by compiling their  
16 personal, private, and sensitive information into a consumer report for employment purposes and  
17 furnishing said consumer reports without a permissible purpose because Eightfold did not have  
18 the employer's or user's certification.

19 131. Eightfold intruded upon Plaintiffs' seclusion by compiling Plaintiffs' and class  
20 members' personal, private, and sensitive information into a consumer report for employment  
21 purposes and furnishing said consumer reports without a permissible purpose because Eightfold  
22 did not have the employer's or user's certification.

23 132. Plaintiffs and class members were harmed and suffered damages as a direct legal,  
24 proximate, and foreseeable result of Eightfold's conduct.

25 133. Eightfold caused Plaintiffs' and class members' injuries because Eightfold  
26 permitted users of their consumer reports to circumvent the disclosure, authorization, notification  
27 and dispute requirements of the FCRA when using consumer reports for employment purposes

1 by failing to require prospective employers, including Paypal, Microsoft, and others to certify  
2 compliance therewith.

3 134. Eightfold caused Plaintiffs' and class members' injuries because it provided their  
4 consumer reports to users or recipients who Plaintiffs and class members had not authorized to  
5 receive those reports in accordance with FCRA's requirements.

6 135. Eightfold caused Plaintiffs' and class members' injuries because the reports  
7 Eightfold furnished were used, in whole or in part, as the basis for an adverse employment  
8 action, including the scoring, ranking or evaluation of Plaintiffs' and class members' applications  
9 based on information that Plaintiffs and class members did not have a chance to review and  
10 correct in accordance with FCRA, and the ultimate denial of employment.

11 136. The foregoing violations were willful. At the time Eightfold violated 15 U.S.C. §  
12 1681b(b)(1)(A) and § 1681e, Eightfold knew it was required to comply with § 1681e and to  
13 obtain certification of compliance with 15 U.S.C. § 1681b(b)(2) and § 1681b(b)(3), if applicable,  
14 before furnishing consumer reports used for employment purposes. Eightfold's willful conduct  
15 is also reflected by, among other things, the following facts:

- 16 a. Eightfold knew or had reason to know of potential FCRA liability;
- 17 b. Eightfold is a consumer reporting agency with access to legal advice  
18 through their own general counsel's office and outside employment  
19 counsel, and there is no contemporaneous evidence that Eightfold  
20 determined that its conduct was lawful;
- 21 c. The FCRA's certification requirement is clearly spelled out in the plain  
22 language of the statute;
- 23 d. Eightfold knew or had reason to know that their conduct was  
24 inconsistent with published guidance interpreting the FCRA and the  
25 plain language of the statute to encompass the provision of consumer  
26 information regarding education and work experience for purposes of

1 hiring and other employment decisions;<sup>41</sup> and

2 e. Eightfold voluntarily ran a risk of violating the law substantially  
3 greater than the risk associated with a reading that was merely careless.

4 **SECOND CLAIM FOR RELIEF**

5 **Violation of the ICRAA (California Civil Code § 1786 *et seq.*)**  
**(Plaintiffs, individually, and on behalf of the California Class)**

6 137. Plaintiffs, on behalf of themselves and the California Class, reallege and  
7 incorporate all previous paragraphs as if they were set forth again herein.

8 138. Eightfold is, and at all times herein mentioned was, a CRA engaged in the  
9 practice of making, assembling and evaluating information on consumers for the purpose of  
10 furnishing investigative consumer reports to third parties, using its Evaluation Tools.

11 139. Upon information and belief, Eightfold made and furnished investigative  
12 consumer reports pertaining to Plaintiff and the California Class.

13 140. Eightfold willfully violated Cal. Civ. Code § 1786 because it used its Evaluation  
14 Tools to provide consumer reports about Plaintiffs and class members without ensuring that the  
15 reports would be provided only to permitted users for a permissible purpose, and without  
16 obtaining required certifications from prospective employers (and other users of consumer  
17 information) before preparing or furnishing consumer reports. Cal. Civ. Code §§ 1786.12,  
18 1786.16, 1786.20.

19 141. With respect to certifications, Eightfold failed to require users to certify that they  
20 would obtain Plaintiffs' and class members' advance written consent based on standalone  
21 disclosures including required information prior to providing users with Plaintiff's and class  
22 members' consumer reports. Cal. Civ. Code § 1786.16(a)-(b); *id.* § 1786.20.

23 142. Eightfold also improperly provided Plaintiffs' and class members' consumer  
24 reports to employers and other users without notifying such users of their responsibilities or  
25

26  
27 <sup>41</sup> <https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2024-06-background-dossiers-and-algorithmic-scores-for-hiring-promotion-and-other-employment-decisions/>

1 otherwise complying, and ensuring compliance, with ICRAA's notice and dispute procedures.

2 *Id.* §§ 1786.20, 1786.24, 1786.40.

3 143. Eightfold invaded Plaintiffs' and class members' privacy by compiling their  
4 personal, private, and sensitive information into a consumer report for employment purposes and  
5 furnishing said consumer reports without a permissible purpose because it did not have the  
6 employer's or user's certification.

7 144. Eightfold intruded upon Plaintiffs' and class members' seclusion by compiling  
8 Plaintiffs' and class members' personal, private, and sensitive information into a consumer report  
9 for employment purposes and furnishing said consumer reports without a permissible purpose  
10 because it did not have the employer's or user's certification.

11 145. Plaintiffs and class members were harmed and suffered damages as a direct legal,  
12 proximate, and foreseeable result of Eightfold's conduct.

13 146. Eightfold caused Plaintiffs' and class members' injuries because Eightfold  
14 permitted users of their consumer reports to circumvent the disclosure, authorization, notification  
15 and dispute requirements of the FCRA when using consumer reports for employment purposes  
16 by failing to require prospective employers, including Paypal, Microsoft, and others, to certify  
17 compliance therewith.

18 147. Eightfold caused Plaintiffs' and class members' injuries because it provided their  
19 consumer reports to users or recipients who Plaintiffs and class members had not authorized to  
20 receive it in accordance with FCRA's requirements.

21 148. Eightfold further caused Plaintiffs' and class members' injuries because the  
22 reports Eightfold furnished were used, in whole or in part, as the basis for an adverse  
23 employment action, including the scoring, ranking or evaluation of Plaintiffs' and class  
24 members' applications based on information that Plaintiffs and class members did not have a  
25 chance to review and correct in accordance with FCRA, and the ultimate denial of employment.

26 149. Eightfold's violations were grossly negligent and/or willful because Defendant  
27 was aware of its obligations under the ICRAA (and related obligations under the FCRA),

1 including through the plain meaning of the statute and regulatory guidance, but nonetheless  
2 consciously elected to disregard its obligations.

3 **THIRD CLAIM FOR RELIEF**

4 **Violation of the UCL (Business and Professions Code, § 17200, *et seq.*)**  
5 **(Plaintiffs, individually, and on behalf of the California Class)**

6 150. Plaintiffs, on behalf of themselves and the California Class, reallege and  
incorporate all previous paragraphs as if they were set forth again herein.

7 151. Eightfold engaged and continues to engage in unfair business practices by  
8 practicing, employing and utilizing the unlawful practices described above with respect to its use  
9 of Evaluation Tools in the furnishing of consumer reports in violation of the ICRAA (and the  
10 FCRA). This constitutes an unlawful and unfair business practice within the meaning of  
11 Business & Professions Code § 17200, *et seq.*

12 152. As a result of Eightfold's conduct, Plaintiffs and the California Class have been  
13 harmed as described in the allegations set forth above.

14 153. The actions described above, constitute false, unfair, fraudulent and/or deceptive  
15 business practices within the meaning of Business & Professions Code § 17200, *et seq.*

16 154. Eightfold has been unjustly enriched by the policies and practices described  
17 herein, and those policies and practices conferred an unfair business advantage on Eightfold over  
18 other businesses providing similar services which routinely comply with the requirements of  
19 California law.

20 155. Plaintiffs and the California Class members seek all available legal and equitable  
21 remedies, including injunctive and/or declaratory relief.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs, on behalf of themselves and the proposed Classes, pray for the  
24 following relief:

25 A. Certification of the proposed Classes;  
26 B. Designation of Plaintiffs as the Representatives of the proposed Classes;

- C. Appointment of Outten & Golden LLP and Towards Justice as Class Counsel;
- D. An award of actual and/or statutory damages as provided under applicable law;
- E. An award of nominal and/or exemplary damages;
- F. An award of punitive damages as provided under applicable law;
- G. A declaratory judgment that the practices complained of herein are unlawful;
- H. An injunction against Defendant and its officers, agents, successors, employees, representatives, and any and all persons acting in concert with it, as provided by law, from engaging in the unlawful practices, policies, and patterns set forth herein;
- I. Such other injunctive and/or declaratory relief as necessary to correct and eradicate the effects of Eightfold’s past and present unlawful practices;
- J. Pre-judgment and post-judgment interest, as provided by law;
- K. Attorneys’ fees pursuant to California Civil Code § 1786.5, California Civil Code § 1021.5, and all other bases for attorneys’ fees under applicable law;
- L. Costs of suit, including expert fees and costs;
- M. Reasonable incentive payments for Plaintiffs; and
- N. Such other and further legal and equitable relief as the Court deems just and proper.

Respectfully submitted,

Dated: January 20, 2026

By: /s/ Jahan C. Sagafi  
Jahan C. Sagafi (SBN 224887)  
Allison Aaronson (SBN 354643)  
**OUTTEN & GOLDEN LLP**  
One California Street, 12th Floor  
San Francisco, CA 94111  
Telephone: (415) 638-8800  
Facsimile: (415) 638-8810  
E-Mail: [jsagafi@outtengolden.com](mailto:jsagafi@outtengolden.com)  
E-Mail: [aaaronson@outtengolden.com](mailto:aaaronson@outtengolden.com)

Christopher M. McNerney\*  
**OUTTEN & GOLDEN LLP**  
685 Third Avenue, 25th Floor  
New York, NY 10017

1 Telephone: (212) 245-1000  
2 Facsimile: (646) 509-2060  
3 E-Mail: cmcnerney@outtengolden.com

4 Jenny Yang\*  
5 **OUTTEN & GOLDEN LLP**  
6 1225 New York Ave NW, Suite 1200B  
7 Washington, DC 20005  
8 Telephone: (202) 847-4400  
9 Facsimile: (202) 847-4410  
10 E-mail: jyang@outtengolden.com

11 Rachel Dempsey (Bar No. 310424)  
12 David Seligman\*  
13 Juno Turner\*  
14 Seth Frotman\*  
15 **TOWARDS JUSTICE**  
16 1580 N Logan Street  
17 Ste 660 PMB 44465  
18 Denver, CO, 80203-1994  
19 Telephone: (720) 441-2236  
20 E-Mail: rachel@towardsjustice.org  
21 E-Mail: david@towardsjustice.org  
22 E-Mail: juno@towardsjustice.org

23 \* *pro hac vice motions forthcoming*

24 *Counsel for Plaintiffs and the Proposed Classes*