

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

GEORGE BOSKIE, HADEL TOMA and  
TERRY KELLER,

Plaintiffs,

v.

BACKGROUNDCHECKS.COM, LLC

Defendant.

No. 3:17-cv-0782-M

**FIRST AMENDED COMPLAINT**

CLASS ACTION

JURY TRIAL DEMANDED

George Boskie (“Boskie”), Hadel Toma (“Toma”) and Terry Keller (“Keller”) (collectively, “Plaintiffs”), on behalf of themselves and the Classes set forth below, and in the public interest, bring this Class Action Complaint against Backgroundchecks.com, LLC (“Defendant” or “Backgroundchecks.com”), and allege as follows:

**INTRODUCTION**

1. This is a case about Defendant willfully violating the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* (“FCRA”).
2. Specifically, Defendant has failed to abide by the FCRA’s explicit prohibition on including adverse information that is older than seven years in its consumer reports.
3. Defendant also publishes reports containing duplicative and misleading information, in violation of the FCRA’s mandate that consumer reporting agencies must prepare their reports in a way so as to ensure maximum possible accuracy.

4. The FCRA was enacted based on Congress's finding that there is a "need to ensure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy." 15 U.S.C. § 1681(a)(4).

5. Based on that finding, the FCRA imposes certain obligations on consumer reporting agencies which are designed to prevent consumer reporting agencies from including incomplete, inaccurate, or old or outdated information in consumer reports. *See* 15 U.S.C. § 1681c(a)(5) (prohibiting inclusion of "any other adverse item of information, other than records of convictions of crimes, which antedates the report by more than seven years"); 15 U.S.C. § 1681e(b) (requiring consumer reporting agencies to "follow reasonable procedures to ensure maximum possible accuracy").

6. For public records that are used for employment purposes and which could have an adverse effect on a consumer's ability to obtain employment, the FCRA has an additional protection. Pursuant to § 1681k, the consumer reporting agency must either send notice to the consumer at the time the information is reported to the user, or the agency must maintain "strict procedures" designed to ensure that the public record information reported is complete and up to date.

7. Despite Backgroundchecks.com's long history of operating as a consumer reporting agency, and the fact that Defendant is well aware of its legal obligations under both federal and state law, Defendant places its business interests ahead of the legal rights of the consumers about whom it issues reports.

8. Defendant willfully disregards consumers' rights pursuant to the FCRA, choosing instead to report obsolete and duplicative information. Defendant does not maintain strict

procedures to ensure the information it reports is complete or up to date, nor does it send the contemporaneous notices required by § 1681k.

9. *First*, Defendant violates the FCRA by including adverse information older than seven years in its reports. Defendant reports records of arrest, indictment, or other non-convictions of crimes which predate the consumer report by more than seven years.

10. *Second*, Defendant fails to maintain reasonable procedures to ensure the maximum possible accuracy of the information included in its reports. Specifically, Defendant reports the same items of criminal information multiple times in the same report, making it appear as though the subject of the report has had more criminal charges than they have in fact had.

11. Duplicative reporting is a well-established FCRA violation. The FTC has prosecuted consumer reporting agencies under the FCRA for failing “to follow reasonable procedures to prevent the inclusion of multiple entries for the same criminal offense in the same report.” *See* Exhibit 1. The FTC’s efforts in this regard were well publicized and led to one of the FTC’s largest settlements ever with a consumer reporting agency. *See* Exhibit 2.

12. *Third*, Defendant fails to maintain strict procedures to ensure the information it reports is complete and up to date. Defendant’s report neglects to include basic information about some of the charges it reports, such as whether they are felonies or misdemeanors, and also includes obsolete information about the status of the disposition of the charges, including contradictory disposition information in its reports. Further, for records from Pennsylvania, such as Boskie’s, Defendant fails to include the “Offense Tracking Number” (“OTN”) for each of the entries that it reports. In Pennsylvania, an OTN is a unique number assigned by the court to a particular arrest at the time of arraignment in order to enable easy tracking of an individual through

the criminal justice system. Yet, Defendant systematically fails to include an OTN and offense levels for each entry in its reports.

13. Each of the above-outlined practices benefits Defendant to the detriment of consumers.

14. Including inaccurate, old, incomplete, and duplicative information in consumer reports allows Defendant to avoid the costs associated with verifying or culling information in its reports. It also allows Defendant to produce voluminous reports to their customers, thereby creating the illusion that Defendant has unearthed a wealth of information and provided their customers with something of value. By being over-inclusive, Defendant also avoids the risk that a customer will be displeased because the customer subsequently learns that the information Defendant provided was not fully comprehensive.

15. Defendant's failure to comply with the FCRA was routine and systematic.

16. Accordingly, Plaintiff asserts claims on behalf of proposed Classes defined below, and seeks statutory damages, punitive damages, attorneys' fees, costs, and all other relief available under the FCRA.

#### **THE PARTIES**

17. Plaintiff George Boskie is a resident of Philadelphia, Pennsylvania.

18. Plaintiff Hadel Toma is a resident of Eastpointe, Michigan.

19. Plaintiff Terry Keller is a resident of Plainfield, New Jersey.

20. Defendant Backgroundchecks.com is a consumer reporting agency which provides background and employment screening services, risk-management services and products, information management products and services, and decisions-making intelligence. Defendant regularly conducts business in Philadelphia County, including by providing consumer reports to

employers seeking to evaluate potential employees in Philadelphia County, such as Plaintiffs. Defendant's principal place of business is at 12770 Coit Road, Suite 1150, Dallas TX, 75251.

21. Backgroundchecks.com is a consumer reporting agency as defined in the FCRA, as defined by 15 U.S.C. § 1681a(f), because it regularly engages wholly or partly in the practice of assembling or evaluating consumer credit information or other information on consumers to furnish consumer reports to third parties for monetary fees.

22. Backgroundchecks.com uses interstate means and facilities of interstate commerce for the purpose of preparing and furnishing consumer reports.

23. Backgroundchecks.com has been engaged in the provision of consumer reports since at least 1999. According to its website, it maintains a database containing 550 million criminal records and more than 13 million photos. See <http://www.backgroundchecks.com/aboutus> (last visited August 30, 2016) (attached hereto as Exhibit 3).

### **JURISDICTION AND VENUE**

24. This action was originally filed in the Court of Common Pleas of Philadelphia County, Pennsylvania.

25. Defendant removed this action to the District Court for the Eastern District of Pennsylvania on October 17, 2016.

26. On February 14, 2017, this case was transferred to this Court.

27. The Court of Common Pleas of Philadelphia County Pennsylvania is endowed with full authority as provided by law, which extends to causes of action arising under federal law. 42 Pa. C.S.A. § 931. That court had jurisdiction over this matter pursuant to 15 U.S.C. § 1681p.

28. Venue in the Court of Common Pleas of Philadelphia County was and remains proper because Defendant regularly conducts business in Philadelphia County.

### **STATUTORY BACKGROUND**

29. Enacted in 1970, the FCRA's passage was driven in part by two related concerns: first, that consumer reports were playing a central role in people's lives at crucial moments, such as when they applied for a job or credit, and when they applied for housing. Second, despite their importance, consumer reports were unregulated and had widespread errors and inaccuracies. Despite the structure put in place by the FCRA, serious problems persist: by some measures, there are material errors in twenty-six percent of consumers' reports.<sup>1</sup>

30. While recognizing that consumer reports play an important role in the economy, Congress wanted consumer reports to be "fair and equitable to the consumer" and to ensure "the confidentiality, accuracy, relevancy, and proper utilization" of consumer reports. 15 U.S.C. § 1681.

31. Congress passed the prohibitions on including obsolete information in reports in order to preserve consumers' privacy. According to the federal government, "Section 1681c's restrictions on disclosing older adverse information serve the governmental interest in protecting individuals' privacy."<sup>2</sup> "By limiting the disclosure of potentially embarrassing, harmful, and irrelevant information, the provision necessarily and automatically protects individuals' interests in keeping that information private." *Id.* at 11. Even though many records which find their way into background reports are public, gathering and compiling older records requires significant effort. By preventing their dissemination, the FCRA protects consumers' interests "in maintaining the [records'] 'practical obscurity.'" *See King v. Gen. Info. Servs., Inc.*, 903 F. Supp. 2d 303, 311-

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<sup>1</sup> U.S. Federal Trade Commission, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003* (December 2012), available at [www.ftc.gov/os/2013/02/130211factareport.pdf](http://www.ftc.gov/os/2013/02/130211factareport.pdf) (last accessed August 30, 2016).

<sup>2</sup> Mem. of the U.S. in Supp. of the Constitutionality of § 1681c of the FCRA, *King v. Gen. Info. Servs., Inc.*, No. 2:10-cv-6850, ECF No. 52 at 10 (E.D. Pa. May 3, 2012).

12 (E.D. Pa. 2012). In the context of outdated non-conviction information, one of the FCRA's sponsors pointed out the harm that can be done by indefinitely reporting old adverse information: "One of the common irrelevancies perpetuated by credit reporting agencies is furnishing information on minor offenses committed many years ago." 115 Cong. Rec. 2412 (1969) (Statement of bill sponsor Sen. Proxmire). The restriction of access to information, even information that is otherwise publicly available, has been recognized by the Supreme Court as implicating privacy concerns and as being grounded in common law. *See U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749 (1989).<sup>3</sup>

32. Numerous academics have also noted that the FCRA enshrines privacy by recognizing the link between protecting individual privacy and forbidding the disclosure of old information. *See* Steven C. Bennett, The "Right to Be Forgotten": Reconciling EU and US Perspectives, 30 Berkeley J. Int'l L. 161, 167 (2012) (citing the FCRA's bar on reporting outdated information as an example of "'data minimization' (a form of the right to be forgotten)" which "has long been a central element of 'fair information practices'"); Meg Leta Ambrose, It's About Time: Privacy, Information Life Cycles, and the Right to Be Forgotten, 16 Stan. Tech. L. Rev.

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<sup>3</sup> In this case, the Court considered whether "rap sheets" were private within the meaning of the Freedom of Information Act. The Court rejected the idea that privacy interests implicated in the disclosure of otherwise public records were minimal, noting that even at common law such information was viewed as implicating privacy concerns, particularly where the information was old. The Court noted "the extent of the protection accorded a privacy right at common law rested in part on the degree of dissemination of the allegedly private fact and the extent to which the passage of time rendered it private." *Id.* at 764. The Court continued, noting that there is a "vast difference between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information." *Id.* As the Court pointed out, the fact that "funds have been spent to prepare, index, and maintain these criminal-history files demonstrates that the individual items of information in the summaries would not otherwise be 'freely available' either to the officials who have access to the underlying files or to the general public." *Id.*

369, 378–79 (2013) (“the Fair Credit Reporting Act generally disallows the use of information older than seven years that may cast the consumer in negative or unfavorable light...the hope is that the information no longer represents the individual and would limit her opportunities if it were attached to her name as she moves through life”). As one legislator explained, the FCRA’s protections represented “new safeguards to protect the privacy of employees and job applicants;” the Act as a whole, he continued, was “an important step to restore employee privacy rights.” 140 Cong. Rec. H9797-05 (1994) (Statement of Congressman Vento); *see also* 138 Cong. Rec. H9370-03 (1992) (Statement of Congressman Wylie) (stating that the FCRA “would limit the use of credit reports for employment purposes, while providing current and prospective employees additional rights and privacy protections”).

33. In addition to being concerned about privacy, Congress was also concerned about inaccuracies in consumer reports. Accordingly, Congress required consumer reporting agencies to follow “reasonable procedures to ensure maximum possible accuracy” in consumer reports. 15 U.S.C. § 1681e(b).

34. In an effort to ensure that employment reports containing public records information were accurate, and to enable consumers to protect themselves from inaccuracies stemming from reports containing incorrect or incomplete information derived from public records, Congress passed § 1681k, which required the agencies to either maintain strict procedures to ensure the information reported was complete and up to date, or to send the consumer a contemporaneous notice.

35. As set forth below, Defendant systematically violated the FCRA’s prohibition on including old non-convictions in consumer reports, as well as the statute’s requirement that consumer reporting agencies utilize reasonable procedures to ensure maximum possible accuracy.

Defendant failed to maintain strict procedures to ensure the information it reported was complete and up to date, and also did not send the required contemporaneous notice.

**ALLEGATIONS RELATING TO PLAINTIFF BOSKIE**

36. On or about April 4, 2015 Defendant provided the consumer report attached hereto as Exhibit 4 (“Boskie Consumer Report” or “Report”) to Plaintiff’s prospective employer, Homeadvisor.

37. The Report includes obsolete information in violation of the FCRA.

38. Specifically, the Report contains thirteen purported charges against Plaintiff between 2006 and 2011 relating to three separate incidents.

39. *First*, the Report includes three charges arising out of a July 25, 2006 incident: (1) possession of an instrument of crime with intent; (2) intent to possess controlled substance by person not registered; and (3) possession with intent to deliver. The disposition for these charges is “nolle prossed”. The charges arising from this incident, having been nolle prossed and having occurred more than seven years prior to the date of the Report, were prohibited from being disclosed to a potential employer by the FCRA. *See* 15 U.S.C. § 1681c(a)(2).

40. *Second*, the Report includes one charge arising out of an April 15, 2007 incident for intent to possess a controlled substance. The disposition for the charge is “dismissed” with a “Disposition Date” of August 22, 2007. The charge arising from this incident, having been dismissed and having occurred more than seven years prior to the date of the Report, was prohibited from being disclosed to a potential employer by the FCRA. *See* 15 U.S.C. § 1681c(a)(2).

41. *Third*, the Report includes nine charges arising out of an April 9, 2011 incident. However, only three unique charges arose out of the April 9, 2011 incident. Despite only three

charges being filed, the Report lists each charge three times for a total of nine reported charges. The Report lists each of the following charges three times: (1) access device issued to another person who has not authorized its use; (2) forgery – unauthorized act in writing; and (3) identity theft. As a result of reporting the three charges three times each, the Report is misleading because it makes Plaintiff’s criminal history appear far more extensive than it actually is.

42. In addition to the duplicative charges reported, the method of reporting the duplicative charges is misleading. Specifically, each charge is reported separately, with different information including, without limitation, different dispositions, disposition dates, “Charge Sequences” or “Sequence Numbers,” and Docket Numbers as follows:

- a. For the charge of access device issued to another person who has not authorized its use, the Report includes three different dispositions, three different disposition dates, two different charge sequence or sequence numbers, and two different case numbers;
- b. For the charge of forgery – unauthorized act in writing, the Report includes three different dispositions, three different disposition dates, two different charge sequence or sequence numbers, and two different case numbers; and
- c. For the charge of identity theft, the Report includes three different dispositions, three different disposition dates, and two different case numbers.

43. Given the duplicative reporting, and Defendant’s inclusion of inconsistent docket numbers, disposition dates, dispositions, and charge sequences, Defendant’s Report made it appear as though Plaintiff had been charged with nine separate criminal incidents when, in reality, he was only charged with three counts in connection with a single arrest.

44. Defendant's duplicative reporting was exacerbated by Defendant's failure to include an Offense Tracking Number ("OTN") for each of the nine entries.

45. In Pennsylvania, an OTN is a unique number assigned by the court to a particular arrest at the time of arraignment in order to enable easy tracking of an individual through the criminal justice system. Accordingly, the OTN would have shown that the duplicative charges all stemmed from a single arrest. While one set of the three charges associated with the April 9, 2011 incident listed on the Report contained this number, none of the other charges on the Report (including the duplicative entries associated with these same charges) contained the OTN. Had Defendant searched the original public records, and included the OTN for each record, Defendant could have avoided the harm and the risk of harm associated with duplicative reporting.

46. Subsequent to the publication of Defendant's Report, all three of the charges which were duplicatively reported were expunged. The dismissed drug charge with an offense date in 2007 was also expunged.

47. Boskie was not hired for the position for which he applied as a result of Defendant's Report.

#### **ALLEGATIONS RELATING TO PLAINTIFF TOMA**

48. On or about November 13, 2014, Defendant provided the consumer report attached hereto as Exhibit 5 ("Toma November 2014 Consumer Report") to another consumer reporting agency, Choice Screening.

49. Choice Screening is a consumer reporting agency headquartered in Englewood Colorado. Choice Screening assembles information it has received from other entities, including Defendant, and sells consumer reports to employers. Those reports contain information about job

applicants' backgrounds, including their criminal histories. *See* generally [www.choicescreening.com](http://www.choicescreening.com) (site last visited May 8, 2017).

50. Prior to providing the Toma November 2014 Consumer Report to Choice Screening, Choice Screening informed Defendant that Choice Screening was going to provide a report on Toma to an end-user who intended to use the report for employment purposes.

51. On or about October 19, 2016, Defendant provided a second report, attached hereto as Exhibit 6 ("Toma October 2016 Consumer Report"), to Choice Screening

52. Prior to providing the Toma October 2016 Consumer Report to Choice Screening, Choice Screening informed Defendant that Choice Screening was going to provide a report to an end-user who intended to use the report for employment purposes.

53. Both the Toma November 2014 Consumer Report and the Toma October 2016 Consumer Report include obsolete information in violation of the FCRA.

54. Both the Toma November 2014 Consumer Report and the Toma October 2016 Consumer Report state that they contain information about two criminal charges which were filed, and subsequently dismissed, in 1999. This information far exceeds the FCRA's seven-year limitation, as the information included on the reports predates the reports by fifteen and seventeen years, respectively.

55. Further, both reports contain duplicative, and internally inconsistent, information.

56. The Toma November 2014 Consumer Report contains ten separate entries, creating the misimpression that Toma has had ten separate contacts with the criminal justice system.

57. In reality, Toma has had three contacts with the criminal justice system, and one speeding ticket.

58. The information presented about Toma's criminal background in the Toma November 2014 Consumer Report is internally inconsistent. For example, there are two entries which (in reality) pertain to a single charge of assault with a dangerous weapon. One of the entries states that the charge was dismissed. Another states that Toma was sentenced to probation with a "maximum sentence" of four years. These entries contain different arrest dates and different disposition dates, making it appear that these two entries pertain to two separate incidents with two different outcomes.

59. There are three entries which (in reality) pertain to a single charge receiving stolen property. They also contain three different dispositions. One says that Toma was sentenced to probation with a "maximum sentence" of four years. Another states that he received twenty-four months of probation. Another states that he received twenty-four months of probation with nine months of time to be served in jail. These three entries contain two different arrest dates and two different disposition dates, making it appear as though they pertain to three separate incidents with three separate outcomes.

60. The report is misleading because it makes Plaintiff's criminal history appear far more extensive than it actually is.

61. Given the duplicative reporting, and Defendant's inclusion of inconsistent information about each charge, Defendant's Toma November 2014 Consumer Report made it appear as though Plaintiff had been charged with ten separate criminal incidents when, in reality, he only had three contacts with the criminal justice system, plus a traffic ticket.

62. The Toma October 2016 Consumer Report contained the same outdated information regarding non-conviction dispositions older than seven years, but was even more egregious with respect to containing duplicative and misleading reporting.

63. Despite the fact that Toma had not had any additional contacts with the criminal justice system, the Toma October 2016 Consumer Report contained *thirteen* separate entries regarding Toma's contacts with the criminal justice system. In other words, even though there was no information on the report about any new incidents occurring between November 2014 and October 2016, Toma's report contained three additional entries.

64. Again, the entries were duplicative and inconsistent. The misinformation about the assault with a dangerous weapon charge persisted in the same way as detailed in Paragraph 58, except the Toma October 2016 Consumer Report added yet another entry for the charge, this time stating that Toma had been sentenced to 24 months' probation, adding yet a third disposition which was inconsistent with the other two (previously reported as both dismissal and probation with a maximum term of four years).

65. The misinformation regarding a charge for receiving stolen property also persisted in the Toma October 2016 Consumer Report as detailed in Paragraph 59.

66. The Toma October 2016 Consumer Report also contains four separate, and internally inconsistent, entries for what was (in reality) a single charge of breaking and entering a vehicle. The entries contain different arrest and disposition dates, as well as different dispositions, with one reporting a probationary sentence with a four-year maximum, another reporting twenty-four months' probation, and another reporting twenty-four months' probation with nine months' jail time.

67. Choice Screening took the information it received from Defendant and communicated it to Toma's prospective employer.

68. The report Choice Screening prepared and furnished to Toma's prospective employer included information about the two dismissed charges older than seven years.

69. The report Choice Screening prepared and furnished to Toma's prospective employer also included duplicative and internally inconsistent information about his criminal background.

70. Toma made a request to Defendant for his full consumer file on or about March 21, 2016. In his request, Toma specifically asked Defendant to identify all end-users of this report.

71. Pursuant to 15 U.S.C. § 1681g, Defendant was required to identify all end-users of reports that Defendant furnished, i.e., the identity of all employers to whom reports were going to be provided.

72. Defendant responded to Toma's file disclosure request on or about May 3, 2016. The cover letter to Defendant's May 3, 2016 response to Toma's file disclosure request is attached hereto as Exhibit 7 ("Toma May 3, 2016 File Disclosure Response Cover Letter").

73. Defendant's Toma May 3, 2016 File Disclosure Response Cover Letter contains a box marked "End-User of Report." However, this box is marked "N/A" and does not contain any information about who the end user of Toma's report was. *See* Exhibit 7.

74. Toma was not hired for the position for which he applied as a result of the consumer report his employer received.

75. Toma did not know Defendant was the source of the outdated information in his November 2014 Choice Screening report until Toma received his file disclosure response from Defendant in May of 2016.

**ALLEGATIONS RELATING TO PLAINTIFF KELLER**

76. On or about January 29, 2015, Defendant provided the consumer report attached hereto as Exhibit 8 (“Keller Consumer Report”) to another consumer reporting agency, Reliasearch.

77. Reliasearch is a consumer reporting agency headquartered in Marietta, Georgia. Reliasearch assembles information it has received from other entities, including Defendant, and sells consumer reports to employers. Those reports contain information about job applicants’ backgrounds, including their criminal histories.

78. Prior to providing the Keller Consumer Report to Reliasearch, Reliasearch told Defendant that Reliasearch was going to provide a report to an end-user who intended to use the report for employment purposes.

79. The Keller Consumer Report includes obsolete information in violation of the FCRA.

80. The Keller Consumer Report contains a total of thirteen separate entries, making it appear as though Keller has had thirteen separate contacts with the criminal justice system.

81. Despite Keller’s report including thirteen separate entries, Keller has only ever been convicted of a single count of reckless endangerment. This conviction is over eleven years old, was for a misdemeanor, and resulted in Keller receiving eighteen months’ probation.

82. Seven of the thirteen entries on Keller’s report pertain to charges that pre-date the report by more than seven years and which were subsequently either dismissed or withdrawn. These charges never should have appeared on Keller’s report, as their inclusion is forbidden by 15 U.S.C. § 1681c.

83. The report also contains two entries pertaining to what was in reality a single reckless endangerment charge from 2006. Neither record contains any information about Keller's sentence. The records contain different case numbers, creating the impression that Keller was charged with two separate incidents when he was actually only charged with one. Further, the two entries contain different disposition dates, furthering the inaccuracies about Keller's actual criminal background. As with Boskie, Defendant failed to include an OTN in its report. The inclusion of the OTN would have made the duplicative nature of the information reported more clear.

84. Similarly, the report contains two entries each for two separate 2008 arrests for possession of a controlled substance. These four entries pertain to what were, in reality, two separate incidents. As to both incidents, the charges were subsequently withdrawn. These duplicative entries made it appear as though Keller was charged on four separate occasions when in reality he was only charged twice, and all charges were subsequently withdrawn.

85. Reliasearch included information about Keller's dismissed charges that were older than seven years on the report it provided to Keller's prospective employer.

86. Keller made a request to Defendant for his full consumer file on or about July 21, 2016. Keller requested that Defendant identify all end-users of reports it had provided about him.

87. Pursuant to 15 U.S.C. § 1681g, Defendant was required to identify all end-users of reports that Defendant furnished, i.e., the identity of all employers to whom reports were going to be provided.

88. Defendant responded to Keller's file disclosure request on or about August 17, 2016. Defendant's response contains a box marked "End-User of Report." However, this box is

marked “N/A” and does not contain any information about who the end user of Keller’s report was. *See* Exhibit 9.

89. Keller’s manager expressed concern over the outdated dismissed charges and began to treat him differently after the background report was returned.

90. Keller did not know that Defendant was the source of the outdated information in his Reliasearch report until he received Defendant’s response to his file disclosure request in August of 2016.

### **PLAINTIFFS’ CONCRETE HARMS**

91. Defendant inflicted concrete harms on Plaintiffs and other Class members.

92. By duplicatively and inconsistently reporting Plaintiffs’ criminal records, Defendant exaggerated the extent of Plaintiffs’ criminal history and falsely caused Plaintiffs to be portrayed to their prospective employers as having a longer criminal history than existed in reality.

93. Defendant’s inaccurate and misleading reporting regarding Plaintiffs’ criminal history put Plaintiffs’ employment prospects at risk and damaged their reputations.

94. By reporting information which Congress had deemed too old to report, specifically non-convictions for which the date of entry pre-dates the report by more than seven years, Defendant invaded Plaintiffs’ privacy. Congress made a policy determination that adverse information older than seven years, other than criminal convictions, should not be included on consumer reports. 15 U.S.C. § 1681c(a). By failing to provide Plaintiffs with the “fresh start” mandated by Congress, Defendant did concrete harm to them.

95. By failing to report the complete public record on Plaintiffs Boskie and Keller, including the OTN number, Defendant made it more difficult to appear as though Plaintiffs

Boskie's and Keller's criminal involvement was more extensive than it was, and made them appear less attractive to prospective employers.

### **CLASS ACTION ALLEGATIONS**

96. Plaintiffs brings Counts 1-4 as class actions.

97. All Plaintiffs assert Count 1 on behalf of the "Obsolete Information Class," defined as follows:

**Obsolete Information Class:** All persons residing in the United States (including all territories and other political subdivisions of the United States) who were the subject of a consumer report furnished to a third party by backgroundchecks.com which includes an entry for an "offense" where the date of the earlier of the "arrest date," "file date," "offense date," or "charge date," antedates the date of the report by more than seven years and where the disposition is one of those listed on Exhibit 10. The Obsolete Information Class consists of all persons who satisfy this criterion and who were the subject of a consumer report furnished by backgroundchecks.com at any time which occurred between the date which is five years prior to the filing of the initial Complaint in this action and the date of final judgment in this action, or such earlier class end date as shall be established by the Court.

98. All Plaintiffs assert Count 2 on behalf of the "Duplicative Reporting Class" defined as follows:

**Duplicative Reporting Class:** All individuals in the United States who were the subject of a consumer report furnished by backgroundchecks.com which includes more than one non-identical notation regarding the same incident. The Duplicative Reporting Class consists of all persons who satisfy this criterion who were the subject of a consumer report furnished by backgroundchecks.com at any time which occurred between the date which is five years prior to the filing of the initial Complaint in this action and the date of final judgment in this action, or such earlier class end date as shall be established by the Court.

99. Plaintiffs Boskie and Keller assert Count 3 on behalf of the "Strict Procedures Class," defined as follows:

**Strict Procedures Class:** All persons residing in the United States (including all territories and other political subdivisions of the United States) who were the subject of a consumer report furnished to a third party by backgroundchecks.com, that was furnished for an employment purpose, that contained at least one criminal

public from Pennsylvania but which failed to include an Offense Tracking Number and to whom backgroundchecks.com did not provide contemporaneous written notice that it was furnishing the subject report containing the name and address of the person that was to receive the report. The Strict Procedures Class consists of all persons who satisfy this criterion who were the subject of a consumer report furnished by backgroundchecks.com at any time which occurred between the date which is five years prior to the filing of the initial Complaint in this action and the date of final judgment in this action, or such earlier class end date as shall be established by the Court.

100. Plaintiffs Toma and Keller assert Count 4 on behalf of the File Disclosure Class defined as follows:

**File Disclosure Class:** All persons residing in the United States (including all territories and other political subdivisions of the United States) who were the subject of a consumer report furnished to a third party by backgroundchecks.com and who made a request to backgroundchecks.com for a disclosure and to whom backgroundchecks.com sent a response that failed to identify the end-user of the report. The File Disclosure Class consists of all persons who satisfy this criterion who requested such a disclosure at any time between the date which is five years prior to the filing of the initial Complaint in this action and the date of final judgment in this action, or such earlier class end date as shall be established by the Court.

101. Each of the proposed Classes satisfies the requirements for class certification.

102. Numerosity: The Classes are so numerous that joinder of all Class members is impracticable. Each of the proposed Classes consists of over 100 individuals.

103. Typicality: Plaintiffs' claims are typical of the Class members' claims. Defendant uses highly automated procedures to prepare consumer reports, and the flaws in their procedures which led to the violations alleged herein are systematic.

104. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Class pursuant to Pa. R. Civ. P. 1709 because they and their experienced counsel are free of any conflicts of interest and are prepared to vigorously litigate this action on behalf of the Class.

105. Commonality: Common questions of law and fact exist as to all Class members and predominate over any questions solely affecting individual Class members, including but not limited to:

- a. Whether defendant violated the FCRA by including information which is adverse to the consumer and antedates the report by more than seven years;
- b. Whether defendant violated the FCRA by failing to follow reasonable procedures to ensure maximum possible accuracy;
- c. Whether defendant violated the FCRA by failing to employ strict procedures to ensure public record information is complete and up to date or to send the required contemporaneous notice;
- d. Whether Defendant's FCRA violations were willful;
- e. The proper measure of statutory and punitive damages; and
- f. The proper form of declaratory relief.

106. Class certification is appropriate because, *inter alia*, questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendant's conduct described in this Complaint stems from common and uniform policies and practices, resulting in common violations of the FCRA. Members of the Class do not have an interest in pursuing separate actions against Defendant, as the amount of each Class member's individual claim is small compared to the expense and burden of individual prosecution. Class certification also will obviate the need for unduly duplicative litigation that might result in inconsistent judgments concerning Defendant's practices. Moreover, management of this action as a class action will not present any likely difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all Class members' claims in a single forum.

107. In view of the complexities of the issues and the expenses of litigation, the separate claims of individual Class members are insufficient in amount to support separate actions.

108. Yet, the amount which may be recovered by individual Class members will be large enough in relation to the expense and effort of administering the action to justify a class action. The administration of this action can be handled by class counsel or a third-party administrator, and the costs of administration will represent only a small fraction of the ultimate recovery to be achieved.

109. Plaintiffs intend to send notice to all members of the Class to the extent required. The names and addresses of the Class members are available from Defendant's records.

**ALLEGATIONS ESTABLISHING DEFENDANT'S CONDUCT WAS WILLFUL**

108. Defendant is aware of the fact that its consumer reports are inaccurate and incomplete. Plaintiff Boskie's Report, for example, contains the following disclaimer:

All criminal history information reflected should not be considered as 100% complete of [sic] an accurate history of any individual.

109. Plaintiffs Keller's and Toma's reports state that the report does not guarantee the accuracy or truthfulness of the information contained therein.

110. Keller's and Boskie's records from Pennsylvania caution the end-user to consult the original court record which, discovery will show, Defendant did not do.

111. As set forth herein, there were numerous ways that Defendant could have increased the accuracy and completeness of its criminal history reporting. Instead of complying with the obligations imposed by the FCRA to ensure the accuracy of this information, Defendant opted to use these disclaimers.

112. That Defendant knew it was reporting inaccurate and incomplete criminal histories in its consumer reports and admitted as much in each report is evidence that its conduct was willful.

113. Defendant is aware of its obligations under the FCRA, but chooses not to comply, because the costs of compliance would harm its bottom line and impair its business model.

114. Defendant is a member of the National Association of Professional Background Screeners (“NAPBS”). NAPBS frequently undertakes efforts to educate its membership regarding their statutory obligations under the FCRA, including with respect to the specific provisions Defendant was and is routinely violating.

115. When it collected the data it sold to Reliasearch and Choice Screening, Defendant collected the data knowing it would be used for employment purposes by Reliasearch, Choice Screening, and the employer-end-users.

116. Even when Defendant sells to other CRAs, as opposed to end-users, Defendant is still a consumer reporting agency subject to the FCRA.

117. In an advisory opinion issued nearly 20 years ago, the Federal Trade Commission (“FTC”) concluded that entities that provide public record reports to other background check companies are consumer reporting agencies within the definition set forth in the FCRA. FTC Advisory Opinion to LeBlanc, available at <http://www.ftc.gov/policy/advisory-opinions/advisory-opinion-leblanc-06-09-98>.

118. The opinion states:

From your description of its activities, it appears that, at the very least, your company “assembles” information as this term is commonly understood (dictionary definitions include “to gather” or “to collect”). Your company’s record searchers go to local courthouses and review the records to find information. If they find information on an individual, they forward either a brief abstract or copies of the docket information. At your headquarters, a report is prepared consisting of all the information reported by your agents from around the country. We believe that the activities you describe are sufficient to meet the definitional requirement of a CRA.

119. Further, Defendant is very aware of the allegations made against its competitors in the wholesale reporting niche and decisions of courts finding those reporting agencies governed

by the FCRA provisions alleged in this case. *See, e.g. Henderson v. Corelogic Nat'l Background Data, LLC*, 161 F. Supp. 3d 389, 398 (E.D. Va. 2016).

120. The requirements of 15 U.S.C. §§ 1681c, 1681e(b) and 1681(k) are well established, pellucid, and objectively clear.

121. Defendant knew or should have known about its legal obligations under the FCRA. These obligations are well established in the plain language of the FCRA and in the promulgations of the Federal Trade Commission and the Consumer Financial Protection Bureau.

122. Defendant obtained and had available substantial written materials that apprised it of its duties under the FCRA. Despite knowing of these legal obligations, Defendant acted consciously in breaching its known duties and deprived Plaintiffs and other members of the Classes of their rights under the FCRA.

123. Plaintiffs allege that Defendant's conduct as alleged herein was consistent with its established and systematically executed procedures and policies for compliance with the FCRA.

124. When Defendant undertook its business model, it considered and understood that it would be later challenged by consumers as governed and regulated as a FCRA consumer reporting agency.

125. Nevertheless, Defendant made an economic decision that it would accept the risks of harming consumers in order to avoid greater expenses necessary to obtain complete and current public records and maximize profit.

126. Defendant could have instituted a procedure of verifying the records it reports at the original source before reporting them, as some CRAs do, but it chose not to do so, despite the fact that this created FCRA liability. Defendant's decision not to verify its reports by consulting the actual court file was based on Defendant's profit motive.

127. Defendant also could have instituted a procedure or computer algorithm to avoid reporting non-conviction information older than seven years, as almost all CRAs do, but it chose not to do so, despite the fact that it knew that reporting this outdated information was in violation of the FCRA.

**Reporting Obsolete information**

128. When a consumer reporting agency furnishes a consumer report to the consumer or a third party, the agency is required to exclude adverse items of information which antedate the consumer report by more than seven years. 15 U.S.C. § 1681c(a)(5).

129. This prohibition includes the reporting of non-conviction information that antedates the report by more than seven years, such as dismissed charges. *See* 15 U.S.C. §§ 1681c(a)(2), (a)(5); *see also Avila v. NOW Health Grp., Inc.*, No. 14 C 1551, 2014 WL 3537825, at \*3-\*4 (N.D. Ill. July 17, 2014) (holding that the “express language of the FCRA” mandates that “a consumer reporting agency may not include any adverse item of information other than a ‘record of conviction’ not a ‘record of dismissed charges’”); *Haley v. Talentwise, Inc.*, 9 F. Supp. 3d 1188, 1192-95 (W.D. Wash. 2014) (finding that under the “plain language” of the FCRA, a “dismissed charge from over seven years ago is both a ‘record of arrest’ and ‘adverse’ information that [a consumer reporting agency] is prohibited from including in [a] consumer report”) (citing *Serrano v. Sterling Testing Syst.*, 557 F. Supp. 2d 688, 693 (E.D. Penn. 2008)); *Dunford v. Am. DataBank, LLC*, 64 F. Supp. 3d 1378, 1394 (N.D. Cal. 2014) (“In light of the remedial purpose of the Act, this order now holds that only the actual convictions may be reported and stale dismissed counts must be combed out and go unreported.”); Memorandum of the United States of America in Support of the Constitutionality of § 1681c of the Fair Credit Reporting Act in *Dowell v. Gen. Info. Servs., Inc.*, 13-CV-02581-L-BGS, at 17 (S.D. Cal. Feb. 20,

2014) (stating that dismissed charges, even if associated with a conviction, may not be reported under the FCRA).

130. Notwithstanding this clear statutory directive, Defendant routinely reports obsolete, adverse non-criminal information that antedates the report by more than seven years.

131. Defendant is well aware of the FCRA's prohibition on reporting obsolete information. Defendant has adopted such a practice despite knowing that its practices do not comply with the FCRA.

132. It is standard in the consumer reporting industry for consumer reporting agencies to have a purge date for information in their system that has become obsolete. *See Gillespie v. Trans Union Corp.*, 482 F.3d 907, 908 (7th Cir. 2007). Yet, Defendant failed to implement a purge date in its systems.

133. Defendant has been sued multiple times for failing to employ strict procedures to assure that public records information included in its reports for employment purposes is complete and up to date in violation of the FCRA, and eventually settled a class action for \$18 million. *See Settlement Agreement in Thomas v. Backgroundchecks.com*, Case No. 3:13-cv-00029-REP, ECF No. 88-1 (E.D. Va. May 12, 2015). As part of the settlement agreement, Defendant agreed to make substantial changes to ensure that reports have maximum possible accuracy and that the reported information was complete and up-to-date. Further, Defendant settled the following individual cases, which alleged that the Defendant violated the FCRA for reporting convictions more than seven years, failing to maintain reasonable procedures, and failing to provide proper notice. *See Jane Doe v. Backgroundscreening.com et al.*, Case No. 1:15-cv-00949-RP (W.D. Tx. 2015); *Ahmed Ali v. Backgroundscreening.com et al.* Case No. 2:13-cv-01838-RAJ (W.D. Wa. 2013); *Eric Lawrence v. Backgroundscreening.com*, Case No.

3:15-cv-00279-BSM (E.D. of Ar. 2015); *James Williams v. Backgroundscreening.com*, Case No. 1:12-cv-00190-CRN (N.D. Ill. 2012); *Doyle Elliott v. Backgroundscreening.com*, Case No. 5:11-cv-00204-R (W.D. Ok. 2011); and *James Wesley Carter v. Backgroundscreening.com*, Case No. 5:15-vc-01531-MWF-JC and 5:15-cv-05728 (C.D. Ca. 2015).

134. Defendant is an affiliate of General Information Systems (“GIS”), another consumer reporting agency. GIS has been sued multiple times for reporting obsolete non-conviction information in violation of the FCRA, and eventually settled the two consolidated class action lawsuits for \$3.4 million. See Settlement Agreement in *King v. Gen. Info. Servs., Inc.*, Case No. 2:10-cv-06850-PBT, ECF No. 105-2 (E.D. Pa. June 24, 2014). As part of the settlement agreement, Defendant agreed to “modify its policies and procedures so as to not report Non-Conviction Count Information in employment-purposes consumer reports.” *Id.* at 7.

135. Despite its affiliate’s specific promise to make practice changes to better comply with § 1681c(a), Defendant still does not comply with the FCRA’s prohibition on reporting obsolete, non-conviction information.

136. Defendant’s practices violate a fundamental protection afforded to employees under the FCRA, are contrary to the unambiguous language of the statute, and are counter to longstanding judicial and regulatory guidance. See, e.g., FTC, *Forty Years of Experience with the Fair Credit Reporting Act, An FTC Staff Report with Summary of Interpretations*, July 2011, at 55 (“Even if no specific adverse item is reported, a CRA may not furnish a consumer report referencing the existence of adverse information that predates the times set forth in this subsection.”); *Serrano*, 557 F. Supp. 2d 688 (holding FCRA prohibits even alluding to existence of unreportable adverse information).

137. Defendant is a founding member of the National Association of Professional Background Screeners (“NAPBS”). The NAPBS has warned its members not to report outdated non-conviction information.

**Duplicative Reporting**

138. The Federal Trade Commission (FTC) has sued at least one consumer reporting agency for reporting criminal incidents more than once in a report, and other consumer reporting agencies already make efforts to identify and delete reporting. *See, e.g.*, Stipulated Final Judgment in *U.S. v. HireRight Sols., Inc.*, No. 12-cv-1313, ECF No. 3 at 4 (D.D.C. Aug. 29, 2012) (stating that HireRight is enjoined from “failing to follow reasonable procedures to prevent the inclusion of multiple entries for the same criminal offense in a single report”).

139. Numerous courts have also found duplicative reporting to be illegal. *See, e.g.*, *Smith v. HireRight Sols., Inc.*, 711 F. Supp. 2d 426 (E.D. Pa. 2010); *Hawkins v. S2Verify LLC*, No. C 15-03502 WHA, 2016 WL 107197 (N.D. Cal. Jan. 11, 2016); *Haley v. TalentWise, Inc.*, 9 F. Supp. 3d 1188 (W.D. Wash. 2014); *Dougherty v. Quicksius, LLC*, No. CV 15-6432, 2016 WL 3757056, at \*6 (E.D. Pa. July 14, 2016).

140. As a founding member of NAPBS, Defendant is aware that the NAPBS has informed its members of the FTC's case against HireRight and the dangers in including multiple entries for the same charges.

141. Defendant's consumer reports are produced in an automated fashion from electronic databases.

142. As part of the process of assembling consumer reports, these databases utilize a variety of algorithms to ensure that information reported “matches” the consumer who is the

subject of the report. (See Exhibit 11, [http://files.consumerfinance.gov/f/201212\\_cfpb\\_creditreporting-white-paper.pdf](http://files.consumerfinance.gov/f/201212_cfpb_creditreporting-white-paper.pdf), at 22.)

143. In the same way that Defendant uses algorithms to ensure that personally identifying information in a report matches the subject of the report's information, Defendant could have easily written an algorithm to ensure that all of its reports would not include duplicative entries, or to flag potentially duplicative entries for further human review.

144. Defendant reports duplicative information because it wants to maximize the automation of its report-creation process, thereby saving the costs associated with conducting the additional review necessary to remove the inaccurate entries.

**Incomplete and Not up to Date Reporting**

145. Defendant was on notice that the sources of information it consulted, which did not include docket sheets, were not accurate, complete, and up to date. This is demonstrated by Defendant's inclusion of the below disclaimer on each and every one of the criminal entries on Plaintiffs' reports:

**The data or information provided is based upon information received by the Administrative Office of Pennsylvania Courts ("AOPC"). AOPC makes no representation as to the accuracy, completeness or utility, for any general or specific purpose, of the information provided and as such, assumes no liability for inaccurate or delayed data, errors or omission. Use of this information is at your own risk. AOPC makes no representations regarding the identity of any persons whose names appear in the records. User should verify that the information is accurate and current by personally consulting the official record reposing in the court wherein the record is maintained.**

146. Despite being advised to personally consult the official court record, Defendant failed to do so. Had Defendant done so, it would have realized that its records were duplicative, inaccurate, incomplete, and out of date.

147. The AOPC requires requestors of recurring bulk distribution of electronic case files to execute an “Agreement Concerning Bulk Distribution of Electronic Case Record Information on Recurring Basis” (“Agreement”). The Agreement requires the “Subscriber” to “...retrieve and access the appropriate LifeCycle file(s) created by the AOPC on a weekly basis and update their data accordingly.” “Each file will contain a list of CPMS or MDJS cases that must be removed from subscriber data in order for the same to remain current and up to date.” Defendant could have easily contracted with the AOPC to receive updated data on a weekly basis in order to ensure that its data remained accurate and up to date.

148. Moreover, Defendant easily could have reported the OTN for each of its offenses and written an algorithm to identify instances of duplicative reporting.

149. In addition to failing to implement automated procedures to avoid statutory violations, Defendant also failed to have its reports properly reviewed by an individual who was trained in criminal records and the requirements of the FCRA. Had Defendant had a properly trained individual review this report, the incomplete and not up-to-date nature of Defendant’s report could have been easily detected.

150. Backgroundchecks.com’s procedures with respect to the reporting of criminal convictions are unreasonable and not “strict.” The procedures ensure that reports will achieve neither maximum possible accuracy nor contain complete, up-to-date records because, among other things, Backgroundchecks.com:

- a. Failed to reasonably screen results to ensure that each charge was only reported once by failing to remove duplicative entries, even when some of those entries contained some overlapping fields (such as the same offense date and the same charges);

- b. Failed to present information reported in an intelligible format that would allow the reader to identify duplicate entries;
- c. Failed to routinely include OTNs;
- d. Failed to obtain copies of the actual criminal records at issue, including docket sheets, from the courts of record, which would have made manifestly clear what the current public record status of each offense was and that the offenses were duplicative of one another; and
- e. Failed to employ an algorithm or any other method to identify reports containing dismissed or other non-conviction charges for which the date of entry preceded the report by more than seven years.

151. In addition to the allegations set forth above, Plaintiffs sets forth below additional reasons why each specific violation was committed willfully:

- a. The FCRA was enacted in 1970; Defendant has had over four decades to become compliant;
- b. Backgroundchecks.com is a large corporation with access to legal advice through its own general counsel's office and outside counsel;
- c. Defendant is a consumer reporting agency, and its primary business is the provision of consumer reports, which are strictly regulated by the FCRA, and as such, Defendant is familiar with these statutes, and with what it must do to comply with them; and
- d. Defendant's conduct is inconsistent with the FTC's longstanding regulatory guidance, judicial interpretation, and the plain language of the FCRA.

**COUNT I**

**Defendant Reports Obsolete Information**

**15 U.S.C. § 1681c(a)**

***Asserted on Behalf of Plaintiffs and the Obsolete Information Class***

152. Defendant has violated the FCRA by reporting records of arrests and criminal charges other than convictions of crimes that antedate the reports by more than seven years. *See* 15 U.S.C. § 1681c(a)(2).

153. The foregoing violations were willful. Defendant acted in deliberate or reckless disregard of their obligations and the rights of Plaintiffs and the other Obsolete Information Class members.

154. Plaintiffs and the Obsolete Information Class members are entitled to statutory damages of not less than \$100 and not more than \$1,000 for each and every one of these violations, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

155. Plaintiffs and the Obsolete Information Class members are also entitled to punitive damages for these violations, pursuant to 15 U.S.C. § 1681n(a)(2).

156. Plaintiffs and the Obsolete Information Class members are further entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).

**COUNT II**

**Defendant Reports Duplicate Criminal Convictions**

**15 U.S.C. § 1681e(b)**

***Asserted on Behalf of Plaintiffs and the Duplicative Reporting Class***

157. Defendant has violated the FCRA by failing to follow reasonable procedures to assure maximum possible accuracy of criminal record information. *See* 15 U.S.C. § 1681e(b). This failure has led to Defendant reporting criminal charges against members of the Duplicative Reporting Class multiple times in the same report.

158. The foregoing violations were willful. Defendant acted in deliberate or reckless disregard of its obligations and the rights of Plaintiffs and the other Duplicative Reporting Class members.

159. Plaintiffs and the Duplicative Reporting Class are entitled to statutory damages of not less than \$100 and not more than \$1,000 for each and every one of these violations, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

160. Plaintiffs and the Duplicative Reporting Class are also entitled to punitive damages for these violations, pursuant to 15 U.S.C. § 1681n(a)(2).

161. Plaintiffs and the Duplicative Reporting Class are further entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).

### **COUNT III**

#### **Failure to Maintain Strict Procedures**

#### **15 U.S.C. § 1681k**

#### ***Asserted on Behalf of Plaintiffs Boskie and Keller and the Strict Procedures Class***

162. Defendant has violated the FCRA by failing to employ strict procedures to assure that public records information included in its reports for employment purposes is complete and up to date. *See* 15 U.S.C. § 1681k. Defendant also does not send contemporaneous notice indicating it is reporting such records.

163. This failure has led to Defendant reporting incomplete and not up-to-date information about consumers.

164. The foregoing violations were willful. Defendant acted in deliberate or reckless disregard of its obligations and the rights of Plaintiffs and the other Duplicative Reporting Class members.

165. Plaintiffs and the Duplicative Reporting Class are entitled to statutory damages of not less than \$100 and not more than \$1,000 for each and every one of these violations, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

166. Plaintiffs and the Duplicative Reporting Class are also entitled to punitive damages for these violations, pursuant to 15 U.S.C. § 1681n(a)(2).

167. Plaintiffs and the Strict Procedures Class are further entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).

**COUNT IV**  
**Failure to Identify End-Users**  
**15 U.S.C. § 1681g**

*Asserted on Behalf of Plaintiffs Toma and Keller and the File Disclosure Class*

168. Defendant has violated the FCRA by failing to identify end users in response to consumers' requests for their full files. *See* 15 U.S.C. § 1681g(a)(3).

169. The foregoing violations were willful. Defendant acted in deliberate or reckless disregard of its obligations and the rights of Plaintiffs and the other File Disclosure Class members.

170. Plaintiffs and the File Disclosure Class are entitled to statutory damages of not less than \$100 and not more than \$1,000 for each and every one of these violations, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

171. Plaintiffs and the File Disclosure Class are also entitled to punitive damages for these violations, pursuant to 15 U.S.C. § 1681n(a)(2).

172. Plaintiffs and the File Disclosure Class are further entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).

**PRAYER FOR RELIEF**

173. WHEREFORE, Plaintiffs, on behalf of themselves and the Classes, pray for relief as follows:

- A. Determining that this action may proceed as a class action;
- B. Designating Plaintiffs as class representatives and designating undersigned counsel as counsel for the Classes;
- C. Issuing proper notice to the Classes at Defendant's expense;
- D. Declaring that Defendant committed multiple, separate violations of the FCRA;
- E. Declaring that Defendant acted willfully in deliberate or reckless disregard of Plaintiffs' and the Classes' rights and their obligations under the FCRA;
- F. Awarding statutory damages and punitive damages as provided by the FCRA;
- G. Awarding reasonable attorneys' fees and costs as provided by the FCRA; and
- H. Granting other and further relief, in law or equity, as this Court may deem appropriate and just.

**JURY TRIAL**

174. Plaintiffs and the Classes hereby request a trial by jury of all issues triable by jury.

Respectfully submitted,

Dated: June 21, 2017

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Members*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of June, 2017, I filed a copy of the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send notice of such filing to all counsel of record.

/s/ E. Michelle Drake  
E. Michelle Drake