

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**DONOVAN HARGRETT, on behalf of
himself and all others similarly situated,**

Plaintiff,

Case No.: 8:15-cv-02456-RAL-EAJ

v.

AMAZON.COM.DEDC, LLC,

Defendant.

**DEFENDANT'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT
AND AFFIRMATIVE AND OTHER DEFENSES AND DEMAND FOR JURY
TRIAL**

Defendant **AMAZON.COM.DEDC, LLC** ("Defendant") hereby files and serves its Answer and Affirmative and Other Defenses to the Second Amended Complaint ("SAC") of Plaintiff Donovan Hargrett. Defendant denies all allegations in the SAC not specifically admitted in this Answer.

RESPONSE TO PRELIMINARY STATEMENT

1. In response to Paragraph 1, Defendant admits only that it is a retailer and employs a large workforce. Defendant denies the remaining allegations in Paragraph 1 as stated.

2. Defendant admits only that presently it is headquartered in Washington and does business in Ruskin, Florida, which is located in Hillsborough County. Defendant denies the remaining allegations in Paragraph

2.

3. In response to Paragraph 3, Defendant admits only that it procures employment screening reports in the ordinary course of its business. Defendant denies the remaining allegations in Paragraph 3, as stated.

4. Paragraph 4 alleges legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations of Paragraph 4 on that basis.

5. Defendant denies the allegations in Paragraph 5.

Response to Class Claims for violations of 15 U.S.C. § 1681(b)(2)(A)(i) and (ii)

6. Defendant denies the allegations in Paragraph 6.

7. Defendant denies the allegations in Paragraph 7.

8. Defendant denies the allegations in Paragraph 8.

9. Defendant denies the allegations in Paragraph 9.

10. Defendant admits only that Plaintiff purports to bring a second class claim under 15 U.S.C. § 1681(b)(2)(A)(ii) of the Fair Credit Reporting Act (“FCRA”). Defendant denies the remaining allegations in Paragraph 10.

11. Defendant admits that Plaintiff purports to bring claims on behalf of a class and that the class Plaintiff purports to define in Paragraph 11 what is referred to as the “Improper Disclosure Class.” Defendant denies that the purported class of referenced individuals is appropriate for treatment as a class, denies that Plaintiff’s claims can be maintained as a class, and denies the remaining allegations in Paragraph 11.

Response to Non-Class Claim for violation of 15 U.S.C. § 1681(b)(3)(A)

12. Defendant admits only that Plaintiff purports to bring an individual claim under 15 U.S.C. § 1681(b)(3)(A) of the FCRA and that Accurate Background, Inc. provided Defendant with an employment screening report on Plaintiff. Defendant denies the remaining allegations in Paragraph 12.

RESPONSE TO THE PARTIES

13. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegation in Paragraph 13 that Plaintiff lives within this Judicial District and applied to work within this Judicial District, and denies those allegations on that basis. The remaining allegations in Paragraph 13 contain legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the remaining allegations of Paragraph 13 on that basis.

14. Defendant admits only that it operates within counties included in the Middle District of Florida. Defendant denies the remaining allegations in Paragraph 14.

RESPONSE TO JURISDICTION AND VENUE

15. Paragraph 15 alleges legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations of Paragraph 15 on that basis, except that it admits Plaintiff alleges the Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 15 U.S.C. §§ 1681n and 1681p, provided Plaintiff can establish injury-in-fact as to each of

his claims and those of each member of each of the putative classes and that the action is not moot or otherwise barred given that Plaintiff has been offered complete relief.

16. Paragraph 16 alleges legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations of Paragraph 16 on that basis, except Defendant admits that it does business in Ruskin, Florida, which is located in Hillsborough County.

RESPONSE TO ALLEGATIONS REGARDING DEFENDANT'S BUSINESS PRACTICES

17. Defendant admits only that it procures screening reports for certain purposes from vendors with respect to some applicants and employees. Defendant denies the remaining allegations in Paragraph 17, as stated.

18. Defendant admits only that it procures screening reports for certain purposes from vendors, including Accurate Background, Inc., with respect to some applicants and employees. The allegation in Paragraph 18 that Accurate Background, Inc. is a consumer reporting agency is a legal conclusion to which no response is required. To the extent that a response is required, Defendant denies that allegation on that basis. Defendant denies the remaining allegations in Paragraph 17.

19. Paragraph 19 alleges legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations of Paragraph 19 on that basis.

Response to FCRA Violations Relating to Background Check Class

20. Defendant denies the allegations in Paragraph 20.

21. Paragraph 21, including subparts (i) and (ii), alleges legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations of Paragraph 21 on that basis.

22. Defendant denies the allegations in Paragraph 22.

23. Defendant denies the allegations in Paragraph 23.

24. Defendant denies the allegations in Paragraph 24.

RESPONSE TO ALLEGATIONS SPECIFIC TO PLAINTIFF

25. Defendant admits that in or about July 2015, Plaintiff completed a version of its online application to work for Defendant at its service center in Ruskin, Florida.

26. Defendant admits that it procured a screening report regarding Plaintiff from Accurate Background, Inc.

27. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 27, and denies those allegations on that basis.

28. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 28, and denies those allegations on that basis.

29. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 29, and denies those allegations on that basis.

30. Defendant denies the allegations in Paragraph 30.

31. Defendant denies the allegations in Paragraph 31.

32. Defendant denies the allegations in Paragraph 32.

33. Defendant denies the allegations in Paragraph 33.

34. Defendant denies the allegations in Paragraph 34.

RESPONSE TO FIRST CLASS CLAIM FOR RELIEF

35. In response to Paragraph 35, Defendant incorporates, by reference, its responses set forth in Paragraphs 1 through 34, above.

36. Defendant denies the allegations in Paragraph 36.

37. Defendant denies the allegations in Paragraph 37.

38. Defendant admits only that it procures screening reports for certain purposes from vendors, including Accurate Background, Inc., with respect to some applicants and employees and that Defendant procured a screening report regarding Plaintiff from Accurate Background, Inc. Defendant denies the remaining allegations in Paragraph 38.

39. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 39, and denies those allegations on that basis.

40. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 40 regarding what Accurate Background, Inc. has provided to its clients, and denies those allegations on that basis. Defendant denies the remaining allegations in Paragraph 40, as stated.

41. Defendant denies the allegations in Paragraph 41.

42. Defendant denies the allegations in Paragraph 42.

43. Defendant denies the allegations in Paragraph 43.

44. Defendant denies the allegations in Paragraph 44.

RESPONSE TO PRAYER FOR RELIEF ON CLASS CLAIM ONE

45. In response to Paragraph 45, Defendant denies that Plaintiff is entitled to any of the relief requested in the SAC and in his Prayer for Relief.

RESPONSE TO SECOND CLASS CLAIM FOR RELIEF

46. In response to Paragraph 46, Defendant incorporates, by reference, its responses set forth in Paragraphs 1 through 45, above.

47. Defendant denies the allegations in Paragraph 47.

48. Defendant admits only that it procures screening reports for certain purposes from vendors, including Accurate Background, Inc., with respect to some applicants and employees and that Defendant procured a screening report regarding Plaintiff from Accurate Background, Inc. Defendant denies the remaining allegations in Paragraph 48.

49. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 49, and denies those allegations on that basis.

50. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 50 regarding what Accurate Background, Inc. has provided to its clients, and denies those allegations on that basis. Defendant denies the remaining allegations in Paragraph 50, as stated.

51. Defendant denies the allegations in Paragraph 51.

52. Defendant denies the allegations in Paragraph 52.

53. Defendant denies the allegations in Paragraph 53.

54. Defendant denies the allegations in Paragraph 54.

RESPONSE TO PRAYER FOR RELIEF ON CLASS CLAIM TWO

55. In response to Paragraph 55, Defendant denies that Plaintiff is entitled to any of the relief requested in the SAC and in his Prayer for Relief.

RESPONSE TO INDIVIDUAL CLAIM FOR RELIEF

56. In response to Paragraph 56, Defendant incorporates, by reference, its responses set forth in Paragraphs 25 through 33, above.

57. Paragraph 57 alleges legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations of Paragraph 57 on that basis.

58. Defendant denies the allegations in Paragraph 58.

59. Defendant denies the allegations in Paragraph 59.

60. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 60, and denies those allegations on that basis.

61. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 61 regarding what Accurate Background, Inc. has provided to its clients, and denies those allegations on that basis. Defendant denies the remaining allegations in Paragraph 61, as stated.

62. Defendant denies the allegations in Paragraph 62.

63. Defendant denies the allegations in Paragraph 63.

64. Defendant denies the allegations in Paragraph 64.

65. Defendant denies the allegations in Paragraph 65.

66. Defendant denies the allegations in Paragraph 66.

67. Defendant denies each and every allegation set forth in the SAC not specifically admitted herein as true.

ADDITIONAL DEFENSES

Without admitting any of the allegations of the SAC and without admitting or acknowledging that Defendant bears any burden of proof as to any of them, Defendant asserts the following additional defenses. Defendant intends to rely upon any additional defenses that become available or apparent during pretrial proceedings and discovery in this action and hereby reserves the right to amend this Answer to assert all such further defenses. These defenses also apply to the claims of some or all of the classes of allegedly similarly situated persons.

1. The SAC fails to state a claim upon which relief may be granted.
2. The statutory damages that Plaintiff seeks would be disproportionate to the harm alleged or suffered by Plaintiff (or the putative class) and would be unconstitutionally excessive and/or an excessive fine.
3. The claims of the putative class are barred, in whole or in part, by the applicable statutes of limitations and/or repose, including, but not limited to 15 U.S.C. § 1681p.
4. Adjudication of this action on a class-wide basis, as applied to the facts and circumstances of this case, would constitute a denial of Defendant's rights to trial by jury and to substantive and procedural due process, in violation of the Fourteenth Amendment of the United States Constitution. *See, e.g., Wal-Mart v. Dukes*, 131 S. Ct. 2541 (2011).
5. Plaintiff's claims are barred, in whole, or in part, by the equitable theories of estoppel, waiver and unclean hands.
6. Plaintiff's claims on behalf of absent putative class members fail because Plaintiff cannot meet his burden of demonstrating by substantial admissible evidence that each requirement of Federal Rule of Civil Procedure 23, including but not limited to ascertainability, adequacy, typicality, commonality, predominance, and superiority, is met here, and because certifying a class in the circumstances of this case would violate Defendant's rights to due process under the law. To the extent that class certification is nonetheless granted at a future

date, Defendant alleges and asserts each of the defenses previously stated herein against each and every putative class member.

7. Plaintiff's claims are barred, in whole or in part, because Defendant has maintained reasonable procedures to comply with applicable law at all times relevant to the SAC.

8. Plaintiff's claims are barred, in whole or in part, because Section 604 of the FCRA (15 U.S.C. § 1681b) is in whole or in part unconstitutionally vague, arbitrary and unenforceable. Defendant specifically alleges that § 1681b(b)(2)(ii) is unenforceable as indicated by, among other things, the many divergent court opinions and inconsistent administrative advisory guidance.

9. Both Plaintiff's substantive claims and his claim for damages, which seek to recover, among other things, penalties and punitive damages, violate the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution. Defendant specifically alleges that Section 616 of the FCRA (15 U.S.C. § 1681n) is unconstitutionally vague and ambiguous and unjustifiably arbitrary.

10. The SAC, and in particular Plaintiff's request for statutory and punitive damages, are barred in whole or in part because, at all material times, Defendant acted reasonably, in good faith and without malice based upon all relevant facts and circumstances known by Defendant at the time, and did not at any time willfully or even negligently fail to comply with the FCRA.

11. Plaintiff's claims, and those of putative class members, are barred, in whole or in part, to the extent that Plaintiff and putative class members did not

suffer any cognizable injury nor damages and they have no standing pursuant to Article III of the United States Constitution. There is no jurisdiction without injury-in-fact.

12. Plaintiff's claims are barred, in whole or in part, because they are moot or otherwise barred given that Plaintiff was offered complete relief.

13. Plaintiff's claims for statutory damages and punitive damages violate the U.S. Constitution because: (a) the punitive damages claimed are vastly disproportionate to the statutory and/or actual damages claimed or available; (b) the award of punitive and/or statutory damages would constitute an arbitrary and capricious taking of Defendant's property which is unjustified by any rational governmental interest; (c) the award of punitive damages with wholly standardless discretion is inconsistent with due process; and/or (d) the statutes, including, but not limited to, the FCRA, are unconstitutionally vague and unjustifiably arbitrary.

14. Defendant has complied with the FCRA in the handling of Plaintiff's alleged consumer report and is therefore entitled to each and every defense stated in and available under the FCRA and to all limitations of liability.

15. The SAC, and each and every cause of action contained therein, are barred in whole or in part because Plaintiff failed to comply fully or at all with procedures available and/or required under the FCRA to address Plaintiff's concerns and/or otherwise failed to take reasonable steps to avoid harm.

16. Plaintiff's individual and class-wide claims are excluded from coverage by Section 604 of the FCRA (15 U.S.C. § 1681b) to the extent that Defendant obtained any background reports in connection with an investigation of compliance with federal, state or local laws and regulations, the rules of self-regulatory organization or any of Defendant's pre-existing policies (15 U.S.C. § 1681a(y)).

17. The SAC is barred in whole or in part because Plaintiff did not suffer any cognizable damage or other harm as a proximate result of any alleged act or omission of Defendant or its agents or employees.

18. Assuming that Plaintiff suffered or sustained any loss, damage or injury, which Defendant specifically denies, such loss, damage or injury was proximately caused or contributed to by the negligence or wrongful conduct of other parties, persons or entities, and that their negligence or wrongful conduct was an intervening and superseding cause of the purported loss, damage or injury of which Plaintiff complains.

19. Plaintiff's damages, if any, were caused by the negligence and/or acts or omissions of third parties other than Defendant, whether or not parties to this action. By reason thereof, Plaintiff's damages, if any, as against Defendant, must be reduced by the proportion of fault attributable to such third parties, and to the extent that this is necessary, Defendant may be entitled to partial indemnity from such third parties on a comparative fault basis.

20. To the extent that Plaintiff is entitled to recover from Defendant, Defendant is entitled to equitable or contractual indemnity from other persons and/or parties causing or contributing to such damages.

21. If Plaintiff suffered injuries or damages as alleged, which Defendant denies, his claims for relief are barred because such damages are the result of Plaintiff's own conduct.

Defendant reserves the right to amend this Answer should it later discover facts demonstrating the existence of new and/or additional defenses and/or should a change in the law support the inclusion of new and/or additional defenses.

WHEREFORE, Defendant prays for judgment in its favor and against Plaintiff as follows:

1. That the SAC be dismissed with prejudice;
2. That Plaintiff takes nothing by way of the SAC;
3. That Defendant recover its attorney's fees, costs and disbursements in this action; and
4. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Defendant demands a trial by jury on all issues triable by jury.

Dated: November 17, 2015.

Respectfully submitted,

BY: /s/ Alison S. Hightower, Esq.

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CERTIFICATE OF SERVICE

I electronically filed the foregoing with the Clerk of the Court by using the E-File system and a correct copy of the foregoing has been furnished by the court via electronic mail to:

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