

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DONOVAN HARGRETT,

Plaintiff,

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

v.

AMAZON.COM.DEDC, LLC,

Defendant.

and

MICHAEL AUSTIN and
DEOLINDA S.M. BONDE,
*on behalf of himself and themselves
and of all otherse similarly situated,*

Plaintiffs,

Case No.: 8:15-cv-02588-T-26JSS

v.

AMAZON.COM.DEDC, LLC,

Defendant.

_____/

**DEFENDANT'S ANSWER TO PLAINTIFFS' CONSOLIDATED CLASS ACTION
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 Plaintiffs' Consolidated Class Action Complaint ("CCAC"). Defendant denies all allegations in the CCAC not specifically admitted in this Answer.

RESPONSE TO PRELIMINARY STATEMENT

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

2. Defendant admits that it is a Delaware limited liability corporation presently 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 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 in 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. In response to Paragraph 6, Defendant admits that Plaintiffs completed a version of one of Defendant's online job applications. Defendant denies the remaining allegations in Paragraph 6, as stated.

7. Defendant admits that Plaintiffs purport to bring a first class claim under 15 U.S.C. § 1681(b)(2)(A)(i) of the Fair Credit Reporting Act ("FCRA"). Defendant denies the remaining allegations in Paragraph 7.

8. Defendant denies the allegations in Paragraph 8.

9. Defendant denies the allegations in Paragraph 9.

10. Defendant denies the allegations in Paragraph 10.

11. Defendant denies the allegations in Paragraph 11.

12. Defendant admits that Plaintiffs purport to bring a second class claim under 15 U.S.C. § 1681(b)(2)(A)(ii) of the FCRA. Defendant denies the remaining allegations in Paragraph 12.

13. Defendant admits that Plaintiffs purport to bring claims on behalf of a class and that the class Plaintiffs purport to define in Paragraph 13 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 Plaintiffs’ claims can be maintained as a class, and denies the remaining allegations in Paragraph 13.

RESPONSE TO PLAINTIFF HARGRETT’S NON-CLASS CLAIM FOR VIOLATION OF 15 U.S.C. § 1681(B)(3)(A)

14. Defendant admits that Plaintiff Hargrett 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 Hargrett. Defendant denies the remaining allegations in Paragraph 14.

RESPONSE TO THE PARTIES

15. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegation in Paragraph 15 that Plaintiffs live within this Judicial District and applied to work within this Judicial District, and denies those

allegations on that basis. The remaining allegations in Paragraph 15 contain legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the remaining allegations in Paragraph 15 on that basis.

16. Defendant admits that it operates within counties included in the Middle District of Florida. Defendant denies the remaining allegations in Paragraph 16.

RESPONSE TO JURISDICTION AND VENUE

17. Paragraph 17 alleges legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 17 on that basis, except that it admits Plaintiffs allege the Court has federal question jurisdiction under 28 U.S.C. § 1331 and 15 U.S.C. §§ 1681n and 1681p.

18. Paragraph 18 alleges legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 18 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

19. Defendant admits that it procures screening reports for certain purposes from vendors with respect to some applicants and employees. Defendant denies the remaining allegations in Paragraph 19, as stated.

20. Defendant admits that it procures screening reports for certain purposes from vendors, including Accurate Background, Inc., with respect to some applicants and employees. Defendant denies the remaining allegations in Paragraph 20.

21. Paragraph 21 alleges legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 21 on that basis.

RESPONSE TO FCRA VIOLATIONS RELATING TO BACKGROUND CHECK CLASS

22. Defendant denies the allegations in Paragraph 22.

23. Paragraph 23 alleges legal conclusions to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 23 on that basis.

24. Defendant denies the allegations in Paragraph 24.

25. Defendant denies the allegations in Paragraph 25.

26. Defendant denies the allegations in Paragraph 26.

RESPONSE TO THE PLAINTIFFS' APPLICATION PROCESS AND DATES

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

28. Defendant admits that in or about June 2015, Plaintiff Austin completed a version of one of its online applications to work for Defendant at its service center in Ruskin, Florida.

29. Defendant admits that in or about September 2015, Plaintiff Bonde completed a version of one of its online applications to work for Defendant at its service center in Ruskin, Florida.

30. Defendant admits that it procured a screening report on each of the Plaintiffs from Accurate Background, Inc. The allegations in Paragraph 30 that the screening reports were consumer reports and that Accurate Background, Inc. is a consumer reporting agency are legal conclusions to which no response is required. To the extent that a response is required, Defendant denies those allegations on that basis.

RESPONSE TO CLASS ACTION ALLEGATIONS

31. Defendant admits that Plaintiffs purport to bring claims on behalf of a class and that the class Plaintiffs purport to define in Paragraph 31 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 Plaintiffs’ claims can be maintained as a class, and denies the remaining allegations in Paragraph 31.

32. Defendant admits that it procures screening reports for certain purposes from vendors with respect to some applicants and employees. Defendant denies the remaining allegations in Paragraph 32.

33. Defendant admits that it procures screening reports for certain purposes from vendors with respect to some applicants and employees. Defendant denies the remaining allegations in Paragraph 33.

34. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 34 regarding Plaintiffs' counsel, and denies those allegations on that basis. Defendant denies the remaining allegations in Paragraph 34.

35. Defendant denies the allegations in Paragraph 35.

36. Defendant denies the allegations in Paragraph 36.

37. Defendant denies the allegations in Paragraph 37.

38. Defendant denies the 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.

RESPONSE TO COUNT I – FIRST CLASS CLAIM FOR RELIEF

40. In response to Paragraph 40, Defendant incorporates, by reference, its responses set forth in Paragraphs 1 through 39, above.

41. Defendant denies the allegations in Paragraph 41.

42. Defendant denies the allegations in Paragraph 42.

43. Defendant admits 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 for each Plaintiff from Accurate Background, Inc. Defendant denies the remaining allegations in Paragraph 43.

44. Defendant is without knowledge regarding everything presently on Accurate Background, Inc.'s website relating to the FCRA and is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 44. Defendant denies those allegations on that basis.

45. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 45 regarding what Accurate Background, Inc. has provided to its clients, and denies those allegations on that basis. Defendant denies the remaining allegations in Paragraph 45, as stated.

46. Defendant denies the allegations in Paragraph 46, as stated.

47. Defendant denies the allegations in Paragraph 47, as stated.

48. Defendant denies the allegations in Paragraph 48.

49. Defendant denies the allegations in Paragraph 49.

50. Defendant denies the allegations in Paragraph 50.

51. In response to Paragraph 51, Defendant denies that Plaintiffs are entitled to any of the relief requested in the CCAC and in their Prayer for Relief.

RESPONSE TO COUNT II – SECOND CLASS CLAIM FOR RELIEF

52. In response to Paragraph 52, Defendant incorporates, by reference, its responses set forth in Paragraphs 1 through 51, above.

53. Defendant denies the allegations in Paragraph 53.

54. Defendant admits 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

for each Plaintiff from Accurate Background, Inc. Defendant denies the remaining allegations in Paragraph 54.

55. Defendant is without knowledge regarding everything presently on Accurate Background, Inc.'s website relating to the FCRA and is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 55. Defendant denies those allegations on that basis.

56. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 56 regarding what Accurate Background, Inc. has provided to its clients, and denies those allegations on that basis. Defendant denies the remaining allegations in Paragraph 56, as stated.

57. Defendant denies the allegations in Paragraph 57, as stated.

58. Defendant denies the allegations in Paragraph 58, as stated.

59. Defendant denies the allegations in Paragraph 59.

60. Defendant denies the allegations in Paragraph 60.

61. Defendant denies the allegations in Paragraph 61.

62. In response to Paragraph 62, Defendant denies that Plaintiffs are entitled to any of the relief requested in the CCAC and in their Prayer for Relief.

RESPONSE TO COUNT III – INDIVIDUAL CLAIM FOR RELIEF

63. Defendant admits that it procured a screening report on Plaintiff Hargrett from Accurate Background, Inc.

64. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 64, and denies those allegations on that basis.

65. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 65, and denies those allegations on that basis.

66. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 66, and denies those allegations on that basis.

67. Defendant denies the allegations in Paragraph 67.

68. Defendant denies the allegations in Paragraph 68.

69. Defendant denies the allegations in Paragraph 69.

70. Defendant denies the allegations in Paragraph 70.

71. Defendant denies the allegations in Paragraph 71.

72. Defendant denies the allegations in Paragraph 72.

73. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 73, and denies those allegations on that basis.

74. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 74 regarding what Accurate Background, Inc. has provided to its clients, and denies those allegations on that basis. Defendant denies the remaining allegations in Paragraph 74, as stated.

75. Defendant denies the allegations in Paragraph 75.

76. Defendant denies the allegations in Paragraph 76.

77. Defendant denies the allegations in Paragraph 77.

78. Defendant denies the allegations in Paragraph 78.

79. Defendant denies the allegations in Paragraph 79.

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

RESPONSE TO JURY TRIAL DEMAND

Defendant admits that Plaintiffs demand a jury trial on all issues triable. Defendant denies any liability or wrongdoing or that Plaintiffs are entitled to any relief whatsoever.

GENERAL DENIAL

Defendant denies each and every allegation of Plaintiffs' Complaint not specifically admitted herein.

ADDITIONAL DEFENSES

Without admitting any of the allegations of the CCAC 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 CCAC fails to state a claim upon which relief may be granted.
2. The statutory damages that Plaintiffs seek would be disproportionate to the harm alleged or suffered by Plaintiffs (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. Plaintiffs' claims are barred, in whole, or in part, by the equitable theories of estoppel, waiver and unclean hands.
6. Plaintiffs' claims on behalf of absent putative class members fail because Plaintiffs 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. Plaintiffs' 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 CCAC.

8. Plaintiffs' 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 Plaintiffs' substantive claims and their claims 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 CCAC, and in particular Plaintiffs' 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 Hargrett's claims are barred, in whole or in part, because they are moot or otherwise barred given that Plaintiff Hargrett was offered complete relief.

12. Plaintiffs' 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.

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

14. Plaintiffs' 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)).

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 Plaintiffs as follows:

1. That the CCAC be dismissed with prejudice;
2. That Plaintiffs take nothing by way of the CCAC;
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: June 20, 2016.

Respectfully submitted,

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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 this 20th day of June, 2016 to:

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