UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DONOVAN HARGRETT and
MICHAEL A. MATHIS,

Plaintiffs,

v. CASE NO.: 8:15-cv-2456-T-26EAJ

AMAZON.com DEDC LLC.,
a foreign Delaware corp.,

Defendant.

and

MICHAEL AUSTIN,

on behalf of himself and on themselves and of all others similarly situated,

Plaintiffs,

v. CASE NO.: 8:15-cv-2588-T-26JSS

AMAZON.com DEDC LLC,
a foreign Delaware corp.,

Defendant.
_____/

SECOND AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, DONOVAN HARGRETT, MICHAEL MATHIS, and MICHAEL AUSTIN, in accordance with this Court's grant of the Parties' Stipulation, file the following Second Amended Consolidated Class Action Complaint against Defendant,

AMAZON.COM.DEDC, LLC ("Defendant") under the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681a–x.

PRELIMINARY STATEMENT

1. Defendant is the largest Internet-based retailer in the United States, employing thousands of individuals across the country.

2. At all times material hereto, Defendant was a foreign Delaware corporation headquartered in Washington State, and doing business in Ruskin, Florida, which lies within Hillsborough County.

3. Defendant routinely obtains and uses information in consumer reports to conduct background checks on prospective and existing employees, and frequently relies on such information, in whole or in part, as a basis for adverse employment action, such as termination, reduction of hours, change in position, failure to hire, and failure to promote.

4. While the use of consumer report information for employment purposes is not per se unlawful, it is subject to strict disclosure and authorization requirements under the FCRA.

5. Defendant willfully violated these requirements in multiple ways, thereby systematically violating Plaintiffs' rights.

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

6. All Plaintiffs completed Defendant's online job application, using a software application called Salesforce. Lumped into the very last page of Defendant's online job application is Defendant's purported FCRA disclosure form. The form includes,

among other extraneous information, two waivers purporting to release Defendant of any liability. These waivers are in direct violation of the FCRA stand-alone disclosure requirement. (*See* ECF No. 119-8.)

7. For example, the Disclosure Form contains an entire paragraph consisting of a blanket authorization that violates the FCRA. In fact, it seeks the following unlimited release of information from every applicant, including blanket authorizations for: credit reports, social security number verification, criminal records checks, public court records checks, driving records checks, educational records checks, verification of employment positions held, personal and professional references checks, licensing and certification checks, etc….the information contained in the report will be obtained from private and/or public record sources, including sources identified by you in your job application or through interviews or correspondence with your past or present coworkers, associates, current or former employers, educational institutions or other acquaintances." (*See* ECF No. 119-8 at 1).

8. A second blanket release, contained on the third page of the disclosure, purports to go even further: "I authorize without reservation any party or agency acting on the behalf of the Company to furnish the above-mentioned information to the Company from the following private and public sector entities: past and present employers; learning institutions, including colleges and universities; law enforcement agencies; federal, state and local courts; ***the military***; credit bureaus; and, motor vehicle records agencies." (ECF No. 119-8 at 3 (emphasis added).)

9. Because the Disclosure Form includes a vast and limitless release of information that applies to third parties' provision of information, it violates the FCRA. Defendant's inclusion of this extraneous information allowed Defendant and its consumer reporting agency to procure information on applicants and employees, and purported to operate as a functional waiver of employees and applicants' privacy rights. In other words, this type of extraneous information precludes the form from merely acting as a "disclosure" of information, as mandated by the FCRA.

10. In fact, state and federal agencies, schools, financial institutions, health care providers, and other entities, all of which fall within the broad release language included in the Disclosure Form, are subject to specific privacy laws which regulate nonpublic information. For example, the Family Educational Rights & Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99, protects school records from disclosure absent consent from the student. Similarly, the Gramm-Leach-Bliley Act requires financial institutions to safeguard nonpublic information at 15 U.S.C. §§ 6801-6809, and the Health Insurance Portability and Accountability Act, which sets forth its Privacy Rule at 45 C.F.R. Part 160, and Subparts A and E of Part 164, requires covered institutions. Defendant's Form, however, purports to waive these carefully promulgated protections that protect the privacy of personal information held by the government and others.

11. Additionally, Defendant's Disclosure Form includes, *inter alia*, in no less than **five-pages** of "eye-straining tiny typeface writing" the following additional extraneous information:

a) A statement that Accurate Background, Inc., will perform the background check but, then, confusingly, applicants must agree that "any other consumer reporting agency acting on behalf of the company" may also conduct the report;"

b) At least ***five*** different state law notices informing consumers of their additional rights under California, Maine, Massachusetts, New York, and Washington (none of which impact the named Plaintiffs here);

c) A statement indicating that if applicants "revoke" their consent to allow Defendant to procure a background check on them through Accurate or some other unnamed consumer reporting agency, that such revocation may "affect my continued employment and/or eligibility for transfer or promotion." Or, put simply, either consent to the terms or the applicant would not be hired.

14. As explained by the Court in *Halstead*, "all of those extraneous additions to the form stretched what should be a simple disclosure form to [five] full pages of eye-straining tiny typeface writing." *Jones v. Halstead Mgmt. Co*., LLC, 81 F. Supp. 3d 324, 333 (S.D.N.Y. 2015).

15. Defendant's Disclosure Form does not constitute a document consisting solely of a disclosure that a background check will be procured for employment purposes. Because this was the only Disclosure Form Defendant provided to Plaintiffs prior to

procuring a report on them which related in any way to consumer reports, Defendant violated 15 U.S.C. § 1681b(b)(2)(A)(i).

16. In terms of Plaintiffs' **first class claim**, Defendant violated 15 U.S.C. § 1681b(b)(2)(A)(i) by procuring consumer reports on Plaintiffs and other putative class members for employment purposes without first making proper disclosures in the format required by the statute.

17. Under this subsection of the FCRA, Defendant is required to disclose to its employees – in a document that consists solely of the disclosure – that it may obtain a consumer report on them for employment purposes, prior to obtaining a copy of their consumer report. Defendant willfully violated this requirement by failing to provide Plaintiffs and other putative class members with a copy of a document solely consisting of Defendant's disclosure that it may obtain a consumer report on any person for employment purposes, and also by failing to provide this disclosure prior to obtaining a copy of the person's consumer report.

18. Defendant's FCRA disclosure violates the FCRA for many reasons. First, "[t]he disclosure may not be part of an employment application." Advisory Opinion to Leathers (Sept. 9, 1998), available at https://www.ftc.gov/policy/advisoryopinions/advisory-opinion-leathers-09-09-98. By itself, this renders Defendant's purported FCRA disclosure unlawful, as it was included within Plaintiffs' online job application.

19. Second, Defendant's purported FCRA disclosure form is violative for the reasons set forth above. Simply put, the Disclosure Form includes, *inter alia*, in no less

than **five-pages** of "eye-straining tiny typeface writing" extraneous information, including a limitless blanket release allowing Defendant to collect basically any information it wants; unnecessary state law notices, a statement requiring Plaintiffs to agree that Accurate – or any other unnamed consumer reporting agency – could procure the consumer reports on Plaintiffs, and a warning that if applicants revoke their consent to allow the proposed background check to occur, it "may" affect their continued employment and/or eligibility for hire. All of this extraneous information, crammed into tiny five-pages of tiny font, simply cannot be considered a stand-alone compliant FCRA disclosure.

Plaintiffs' First Concrete Injury under § 1681b(b)(2)(A)(i): Informational Injury

21. **First**, as to the § 1681b(b)(2)(A)(i) claim, in accordance with the Eleventh Circuit's recent decision in *Church v. Accretive Health, Inc.*, 2016 U.S. App. LEXIS 12414, *1 (11th Cir. July 6, 2016), Plaintiffs suffered a concrete **informational injury** because Defendant failed to provide Plaintiffs with information to which they were entitled to by statute, namely a stand-alone FCRA disclosure form. Through the FCRA, Congress has created a new right—the right to receive the required disclosure as set out in the FCRA—and a new injury—not receiving a stand-alone disclosure. The Plaintiff's "inability to obtain [that] information" is therefore, standing alone, "a sufficient injury in fact to satisfy Article III." *Spokeo,* 136 S. Ct. at 1549.

22. Pursuant to § 1681b(b)(2), Plaintiffs were entitled to receive certain information at a specific time, namely a disclosure that a consumer report may be procured for employment purposes in a document consisting solely of the disclosure. Such a disclosure was required to be provided to Plaintiffs before the consumer reports were to be procured. By depriving Plaintiffs of this information, Defendant injured Plaintiff and the putative class

members they seek to represent. *Public Citizen v. U.S. Dept. of Justice*, 491 U.S. 440, 449 (1989); *Fed. Election Comm'n v. Akins*, 524 U.S. 11 (1998).

23. Defendant violated the FCRA by procuring consumer reports on Plaintiffs and other Background Check Class members without first making proper disclosures in the format required by 15 U.S.C. § 1681b(b)(2)(A)(i). Namely, these disclosures had to be made: (1) before Defendant actually procured consumer reports, and (2) in a stand-alone document, clearly informing Plaintiffs and other Background Check Class members that Defendant might procure a consumer report on each of them for purposes of employment. The required disclosures were not made, causing Plaintiffs an informational injury. *See Church v. Accretive Health, Inc.*, 2016 U.S. App. LEXIS 12414, *1 (11th Cir. July 6, 2016).

Plaintiffs' Second Concrete Injury under § 1681b(b)(2)(A)(i): Invasion of Privacy

24. **Second**, as to the § 1681b(b)(2)(A)(i) claim, Defendant invaded Plaintiffs' right to privacy. Under the FCRA, "a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless" it complies with the statutory requirements (*i.e.*, disclosure and authorization) set forth in the following subsections: 15 U.S.C. § 1681b(b)(2). As one court put it, "[t]he FCRA makes it unlawful to 'procure' a report without first providing the proper disclosure and receiving the consumer's written authorization." *Harris v. Home Depot U.S.A., Inc.*, 114 F. Supp. 3d 868, 869 (N.D. Cal. 2015). Plaintiffs' consumer reports contained a wealth of extremely private information which Defendant had no right to access absent a specific Congressional license to do so. The consumer reports Defendant obtained on Plaintiffs and the putative class members included, *inter alia*, Plaintiffs' dates of birth, partial social Security Number, address history, phone number, e-mail address, and information about their respective criminal backgrounds.

By procuring reports containing this private information without complying with first complying with the FCRA's disclosure requirements, Defendant illegally invaded Plaintiffs' rights to privacy.

25. **Third**, as to the § 1681b(b)(2)(A)(i) claim, Defendant's above violations created a risk of harm that Plaintiffs would be harmed in precisely the way Congress was attempting to prevent when it mandated what disclosures employers must make to applicants. Without accurate source information as to what to do if the information in their reports was inaccurate, a consumer would be left confused as to where to go to correct erroneous data contained in a report and be unable to know whether any erroneous data would find its way into future consumer reports.

26. Furthermore, Plaintiffs **would not** have agreed to provide Defendant with access to their consumer reports had they known Defendant's FCRA Disclosure Form was non-compliant. To compound the problem, Defendant has created confusion about which alleged "forms" Defendant claims it had Plaintiffs sign allowing Defendant to actually access their information.

27. As detailed above, *Spokeo* expressly recognized that "the risk of real harm" can be enough, on its own, to satisfy the concreteness requirement. 136 S. Ct. at 1549. In particular, where Congress has found that a violation of a statutory right poses a "material risk of harm," a plaintiff "need not allege any *additional* harm beyond the one Congress has identified." *Id.* at 1549–50; *see also id.* at 1553 (Thomas, J., concurring) ("A plaintiff seeking to vindicate a statutorily created private right need not allege actual harm beyond the invasion of that private right.").

28. **Fourth**, as to the § 1681b(b)(2)(A)(i) claim, the harm created by Defendant is also concrete in the sense that it involves a clear *de facto* injury, *i.e.*, the unlawful disclosure of legally protected information. Insofar as *Spokeo* directs us to consider whether an alleged injury-in-fact "has traditionally been regarded as providing a basis for a lawsuit," Congress has long provided plaintiffs with the right to seek redress for unauthorized disclosures of information that, in Congress's judgment, ought to remain private. *In re Google Inc. Cookie Placement Consumer Privacy Litig.*, 806 F.3d 125, 134 (3d Cir. 2015). Congress's reasons for enacting the FCRA show that it intended that the law be construed to promote the credit industry's responsible dissemination of accurate and relevant information, and afford consumers the substantive right to receive certain specified information, including a stand-alone disclosure *before* their consumer reports are obtained by prospective employers. Thus, Plaintiffs have alleged an injury-in-fact based on Congress's having created a substantive legal right, the invasion of which creates standing.

Plaintiffs' Second Concrete Injury under § 1681b(b)(2)(A)(ii): Invasion of Privacy

29. **First**, in terms of Plaintiff's claims under § 1681b(b)(2)(A)(ii), the authorization requirement under 15 U.S.C. § 1681b(b)(2)(A)(ii) follows the disclosure requirement of § 1681b(b)(2)(A)(i) and presupposes that the authorization is based upon a valid disclosure. Thus, by violating §1681b(b)(2)(A)(i) Defendant invaded Plaintiffs' right to privacy under § 1681b(b)(2)(A)(ii). Under the FCRA, "a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless" it complies with the statutory requirements (*i.e.*, disclosure and authorization) set forth in the following subsections: 15 U.S.C. § 1681b(b)(2). As one court put it, "[t]he FCRA makes it unlawful to 'procure' a report without first providing the proper

disclosure and receiving the consumer's written authorization." *Harris v. Home Depot U.S.A., Inc.*, 114 F. Supp. 3d 868, 869 (N.D. Cal. 2015).

30. Plaintiffs' consumer reports contained a wealth of extremely private information which Defendant had no right to access absent a specific Congressional license to do so. The consumer reports Defendant obtained on Plaintiffs and the putative class members included, *inter alia*, Plaintiffs' dates of birth, partial social Security Number, address history, phone number, e-mail address, and information about their respective criminal backgrounds. By procuring reports containing this private information without complying with first complying with the FCRA's disclosure requirements, Defendant illegally invaded Plaintiffs' rights to privacy.

31. **Second**, in terms of Plaintiff's claims under § 1681b(b)(2)(A)(ii), Defendant's above violations created a risk of harm that Plaintiffs would be harmed in precisely the way Congress was attempting to prevent when it mandated what disclosures employers must make to applicants. Without accurate source information as to what to do if the information in their reports was inaccurate, a consumer would be left confused as to where to go to correct erroneous data contained in a report and be unable to know whether any erroneous data would find its way into future consumer reports. Furthermore, Plaintiffs would not have agreed to provide Defendant with access to their consumer reports had they known Defendant's FCRA forms were non-FCRA compliant. To compound the problem, Defendant has created confusion about which alleged "forms" Defendant claims it had Plaintiffs sign allowing Defendant to actually access their information.

32. As detailed above, *Spokeo* expressly recognized that "the risk of real harm" can be enough, on its own, to satisfy the concreteness requirement. 136 S. Ct. at 1549.In particular,

where Congress has found that a violation of a statutory right poses a "material risk of harm," a plaintiff "need not allege any *additional* harm beyond the one Congress has identified." *Id.* at 1549–50; *see also id.* at 1553 (Thomas, J., concurring) ("A plaintiff seeking to vindicate a statutorily created private right need not allege actual harm beyond the invasion of that private right.").

33. **Third**, in terms of Plaintiffs' in terms of Plaintiff's claims under § 1681b(b)(2)(A)(ii), the harm created by Defendant is also concrete in the sense that it involves a clear *de facto* injury, i.e., the unlawful disclosure of legally protected information. Insofar as *Spokeo* directs us to consider whether an alleged injury-in-fact "has traditionally been regarded as providing a basis for a lawsuit," Congress has long provided plaintiffs with the right to seek redress for unauthorized disclosures of information that, in Congress's judgment, ought to remain private. *In re Google Inc. Cookie Placement Consumer Privacy Litig*., 806 F.3d 125, 134 (3d Cir. 2015). Congress's reasons for enacting the FCRA show that it intended that the law be construed to promote the credit industry's responsible dissemination of accurate and relevant information, and afford consumers the substantive right to receive certain specified information, including a stand-alone disclosure *before* their consumer reports are obtained by prospective employers. Thus, Plaintiffs have alleged an injury-in-fact based on Congress's having created a substantive legal right, the invasion of which creates standing.

34. For these reasons, and as stated below, Plaintiffs have sufficiently alleged that they suffered a concrete and particularized "injury-in-fact" in connection with their claims for violations of § 1681b(b)(2)(A)(i) and (ii) in accordance with the standards set forth in *Spokeo*. Based on these two class claims, Plaintiffs seek to represent the following putative classes defined below.

Class Claims for Violation of 15 U.S.C. § 1681b(b)(3)(A)

35. Plaintiffs Hargrett and Mathis also bring a separate class claim against Defendant for violation of 15 U.S.C. § 1681b(b)(3)(A). Defendant violated 15 U.S.C. § 1681b(b)(3)(A) by taking adverse employment action that could have been based on undisclosed consumer report information against Plaintiff Hargrett without first providing him with a copy of the pertinent consumer report, and without providing him a reasonable opportunity to respond to the information in the report. Defendant utilized "Accurate Background, Inc." to perform its background check on Plaintiffs Hargrett and Mathis.

36. When using criminal background reports for employment purposes, employers must, before declining, withdrawing, or terminating employment based in whole or in part on the contents of the report, provide job applicants like Plaintiffs Hargrett and Mathis with a copy of their respective background reports as well as a written summary of their rights under the FCRA.

37. Providing a copy of the criminal background report as well as a statement of consumer rights before making an adverse employment decision arms the nation's millions of job applicants with the knowledge and information needed to challenge inaccurate, incomplete, and misleading public-records-based reports. The FCRA is designed to permit individuals whose reports are inaccurate with ample time to identify the inaccuracies and correct them before the employer has made an employment decision. Even where reports are accurate, the FCRA still demands that notice be given so applicants have an opportunity to address any derogatory information with employers before a hiring decision is made.

38. In this case, Plaintiffs Hargrett and Mathis were deprived of this information. Each had their Amazon background check results graded as "failed" because the results did not meem Amazon's hiring criteria. This process, which is largely automated, then caused the notice letters required by 15 U.S.C. § 1681b(b)(3) to be automatically dispatched by Accurate without any further input or communication from Amazon.

39. Accurate completed Plaintiff Hargrett and Mathis's background reports and, as part of its regular practice with applicants for Amazon, "adjudicated" their reports, meaning Accurate compared the report results against hiring criteria Amazon provided to Accurate.

40. Based on this comparison, Accurate graded these Plaintiffs' report as "failed," meaning they were not eligible for employment with Amazon. Accurate then communicated these grades to Amazon through Salesforce, which Amazon representatives then viewed.

41. After viewing the failed grade applied to Plaintiffs' reports by Accurate, Amazon's representative assigned a grade of "does not meet requirements" and communicated those grades back to Accurate through Salesforce. This communication then triggered the sending by Accurate of a letter intended to comply with Section 1681b(b)(3), commonly known as a "pre-adverse-action" notice. Accurate sends this notice letter on Amazon's behalf and automatically after Amazon parrots back the "does not meet requirements" grade to Accurate.

42. If the applicant does not dispute the results of his or her Accurate report within a certain number of business days, Accurate sends the applicant that purports to be the final adverse-action letter denying the applicant employment.

THE PARTIES

43. Individual and representative Plaintiffs Donovan Hargrett, Michael Mathis, and Michael Austin are "consumers" as protected and governed by the FCRA. Hargrett and Austin live within this Judicial District, and applied to work for Defendant in this Judicial District. Plaintiffs are each members of the Putative Disclosure Class defined herein, and Plaintiffs Hargrett and Mathis are members of the Adverse-Action Class.

44. Defendant is a Delaware corporation that operates within this District and Division.

JURISDICTION AND VENUE

45. This Court has federal question jurisdiction over Plaintiffs' FCRA claims pursuant to 28 U.S.C. § 1331. The Court has also jurisdiction under the FCRA, 15 U.S.C. §1681n and 1681p.

46. Venue is proper in the United States District Court, Middle District of Florida, pursuant to 28 U.S.C. § 1391. Plaintiffs reside in this District, applied to work for Defendant in this District, and their claims arise, in substantial part, in this District. Defendant regularly conducts business in this District and is subject to personal jurisdiction in this district

ALLEGATIONS REGARDING DEFENDANT'S BUSINESS PRACTICES

47. Defendant conducts background checks on the majority of its job applicants as part of a standard screening process. In addition, Defendant also conducts background checks on existing employees from time to time during the course of their employment.

48. Defendant does not perform these background checks in-house. Rather, Defendant relies on an outside consumer reporting agency, Accurate Background, Inc., to obtain this information and send the resulting reports back to Defendant.

49. These reports constitute "consumer reports" within the meaning of the FCRA.

50. Defendant procured consumer report information on Plaintiffs in violation of the FCRA.

51. Under the FCRA, it is unlawful to procure a consumer report or cause a consumer report to be procured for employment purposes, unless:

> (i) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, ***in a document that consists solely of the disclosure*** that a consumer report may be obtained for employment purposes; and
>
> (ii) the consumer has authorized the procurement of the consumer report in writing (which authorization may be made on the document referred to in clause (i)).

15 U.S.C. §§ 1681b(b)(2)(A)(i)-(ii) (emphasis added).

52. Defendant failed to satisfy these disclosure and authorization requirements.

Defendant does not have a stand-alone FCRA disclosure or authorization form. Defendant's FCRA disclosure violates the FCRA for three specific -- and different -- reasons. First, the disclosure may not be part of an employment application. Defendant's "First FCRA disclosure Form" is unlawful because it was included within and as part of Plaintiffs' online job application. Second, Defendant's purported FCRA disclosure contains a liability release. Finally, in addition to a liability release, the FCRA disclosure includes extraneous information, including references to "at will" employment, and a statement by Defendant requiring Plaintiffs and the putative class members to acknowledge that nothing contained within the disclosure created a "contract."

53. This practice violates the plain language of the FCRA, and flies in the face of unambiguous case law and regulatory guidance from the FTC. *See, e.g., Speer v. Whole Food Market Group., Inc.,* No. 8:14-CV-3035-T-26TBM, 2015 WL 1456981, *3 (M.D. Fla. Mar. 30, 2015); *Lengel v. HomeAdvisor, Inc.,* 2015 U.S. Dist. LEXIS 59017, *19-24 (D. Kan. May 5, 2015); *Milbourne v. JRK Residential Amer., LLC*, 2015 U.S. Dist. LEXIS 29905, *14-19 (E.D. Va. Mar. 11, 2015); *Avila v. NOW Health Group, Inc.*, 2014 U.S. Dist. LEXIS 99178, *6-8 (N.D. Ill. July 17, 2014); *Reardon v. Closetmaid Corp.*, 2013 U.S. Dist. LEXIS 169821, *14-27 (W.D.Pa. Dec. 2, 2013); *Singleton v. Domino's Pizza, LLC*, 2012 U.S. Dist. LEXIS 8626, *27-34 (D. Md. Jan. 25, 2012); and *EEOC v. Video Only, Inc.*, 2008 U.S. Dist. LEXIS 46094 (D. Or. June 11, 2008).

54. The Disclosure Form is, as explained above, is equally unlawful because it includes, *inter alia*, in no less than **five-pages** of "eye-straining tiny typeface writing" extraneous information, including a limitless blanket release allowing Defendant to collect

basically any information it wants, state law notices, a statement requiring Plaintiffs to agree that Accurate *or any other unnamed consumer reporting agency* could procure the consumer reports at issue, and an agreement in which applicants basically say that if they disagree with Defendant's proposed background check process for any reason that it "may" affect their continued employment and/or eligibility for hire. All of this extraneous information, crammed into tiny font, simply cannot be considered a stand-alone compliant FCRA disclosure.

55. Defendant willfully disregarded long-established FCRA case law and regulatory guidance, and willfully violated 15 U.S.C. §§ 1681b(b)(2)(A) by procuring consumer report information on employees without complying with the disclosure and authorization requirements of the FCRA.

THE PLAINTIFFS' APPLICATION PROCESS AND DATES

56. In mid-July 2015, Plaintiff Donovan Hargrett applied online, through Defendant's website, to work for Defendant at its service center in Ruskin, Florida.

57. Also in July 2015, Plaintiff Michael Austin applied online, through Defendant's website, to work for Defendant at its service center in Ruskin, Florida.

58. Plaintiff Mathis applied to work at an Amazon location in Florida in November 2015, using Defendant's online application process.

59. After Plaintiffs completed Defendant's online application, Defendant procured a consumer report on Plaintiffs by using the services of a third-party vendor, a consumer reporting agency called "Accurate Background, Inc."

CLASS ACTION ALLEGATIONS

60. Plaintiffs assert claims in Counts 1 and 2 on behalf of a putative Disclosure Form Class defined as:

> **DISCLOSURE FORM CLASS: All individuals in the United States who (a) applied online for work at Amazon or its affiliates using the Salesforce platform; (b) were the subject of a consumer report that was procured by Amazon (or caused to be procured by Amazon); (c) to whom Amazon presented the Disclosure Form filed as ECF No. 119-8; (d) from August 22, 2015 through the date of preliminary approval.**

61. Plaintiffs Hargrett and Mathis assert claims in Count 3 on behalf of the Putative Adverse Action Class defined as:

> **ADVERSE ACTION CLASS: All Disclosure Form Class Members (a) as to whom Amazon took an adverse employment action; (b) based in whole or in part on the contents of any consumer report; (c) from August 22, 2015 through the date of preliminary approval.**

62. Numerosity: The Putative Classes are numerous that joinder of all Class members is impracticable. Defendant regularly obtains and uses information in consumer reports to conduct background checks on prospective employees and existing employees, and frequently relies on such information in the hiring process. Plaintiffs are informed and believe that during the relevant time period, thousands of Defendant's employees and prospective employees satisfy the definition of the Putative Classes.

63. Typicality: Plaintiffs' claims are typical of the members of the Putative Classes. Defendant typically uses consumer reports to conduct background checks on employees and prospective employees. The FCRA violations suffered by Plaintiffs are typical of those suffered by other Putative Class Members, and Defendant treated Plaintiffs consistent with other Putative Class Members in accordance with its standard policies and practices.

64. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Putative Classes, and have retained counsel experienced in complex class action litigation.

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

a. Whether Defendant's background check practices and/or procedures comply with the FCRA, including as to its "release" of liability;

b. Whether Defendant violated the FCRA by procuring consumer report information without making proper disclosures in the format required by the statute;

c. Whether Defendant violated the FCRA by procuring consumer report information based on invalid authorizations;

d. Whether the adjudication of reports as "does not meet requirements" is an adverse action under Section 1681b(b)(3);

e. Whether Defendant took adverse actions against Plaintiffs and similar applicants when it adjudicated their reports as "does not meet requirements" and communicated those results to Accurate;

f. Whether Defendant's violations of the FCRA were willful;

g. The proper measure of statutory damages; and

h. The proper form of injunctive and declaratory relief.

66. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because prosecution of actions by or against individual members of the Putative Classes would result in inconsistent or varying adjudications and create the risk of incompatible standards of conduct for Defendant. Further, adjudication of each individual Class

Member's claim as separate action would potentially be dispositive of the interest of other individuals not a party to such action, impeding their ability to protect their interests.

67. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(2) because Defendant acted or refused to act on grounds that apply generally to the Putative Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Classes as a whole.

68. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the Putative Classes predominate over any questions affecting only individual members of the Putative Classes, 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 Putative Classes do not have an interest in pursuing separate actions against Defendant, as the amount of each Class Member's individual claims 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 Putative Class Members' claims in a single forum.

69. Plaintiffs intend to send notice to all members of the Putative Classes to the extent required by Rule 23. The names and addresses of the Putative Class Members are available from Defendant's records.

COUNT I - FIRST CLASS CLAIM FOR RELIEF
Failure to Make Proper Disclosure in Violation of 15 U.S.C. § 1681b(b)(2)(A)(i)
(Plaintiffs and the Putative Disclosure Form Class)

70. Plaintiffs, on behalf of the putative Disclosure Form Class they seek to represent herein, allege and incorporate by reference the allegations in the preceding paragraphs.

71. In violation of the FCRA, the background checks that Defendant required the Disclosure Form Class to complete as a condition of their employment with Defendant does not satisfy the disclosure requirements of 15 U.S.C. § 1681b(b)(2)(A)(i), because Defendant failed to provide a stand-alone document pertaining to how the consumer report information would be obtained and utilized.

72. Defendant violated the FCRA by procuring consumer reports on Plaintiffs and other Disclosure Form Class Members without first making proper disclosures in the format required by 15 U.S.C. § 1681b(b)(2)(A)(i). Namely, these disclosures had to be made: (1) before Defendant actually procured consumer reports, and (2) in a stand-alone document, clearly informing Plaintiffs and other Disclosure Form Class Members that Defendant might procure a consumer report on each of them for purposes of employment.

73. The foregoing violations were willful. Defendant knew it was required to provide a stand-alone form (separate from the employment application) prior to

obtaining and then utilizing a consumer report on Plaintiffs and the Putative Class. In fact, Defendant hired Accurate Background, Inc., a well-respected national consumer reporting agency, to procure its consumer reports on Plaintiffs and the Putative Class.

74. Importantly, Accurate Background, Inc. made readily available to Defendant the FCRA's requirements, including as to stand-alone documents. In fact, the Accurate Background, Inc. website, available at http://accuratebackground.com/resources/fcra/, provides a model FCRA disclosure and a plethora of FCRA-related materials and guidance for its customers, "white papers" discussing the FCRA and FCRA compliance, legislative updates, including links to the FTC website, and model forms.

75. Accurate Background, Inc. also provided Defendant and all of its clients with access to newsletter and "case studies" with updates on the FCRA. Thus, Defendant was clearly aware of its obligations under the FCRA, including with respect to keeping itself informed of the FCRA's obligations and as to its potential exposure for willful violations.

76. Simply put, at the time that Plaintiffs completed and executed the online job application for Defendant, Defendant had access to a plethora of authority on FCRA and compliance, including the plain language of the FCRA, at least four FTC staff opinions, and multiple federal court decisions.

77. At the time Plaintiffs applied to work for Defendant it was being represented by experienced FCRA counsel but, nevertheless, Defendant continued to operate in violation of the FCRA's stand-alone disclosure requirement.

78. In fact, there is little doubt that Defendant should have been on high alert in terms of FCRA compliance, due to another FCRA class action lawsuit filed against, styled *Williams et al. v. Amazon.Com, Inc*., et al., Case No.: 2:15-cv-00542 (N.D. Ill), originally filed in April of 2015. While this case and the *Williams* case involve different putative FCRA classes (bb2 here versus bb3 there), as explained in this Court's Order denying the Defendant's attempt to have this case transferred to the Williams Court, they certainly both involve the FCRA, both consist of putative classes involving thousands of employees across the nation, and also happen to both involve some of the country's top FCRA defenses lawyers working for Defendant. Thus, Defendant cannot logically state that it was unaware of its obligations under the FCRA as it has been involved in high-stakes FCRA class litigation for nearly an entire year, litigation that started long before the filing of this lawsuit

79. Defendant's willful conduct is also reflected by, among other things, the following facts:

a. Due to Defendant's placement of a release of liability within the FCRA disclosure in its job application, Defendant knew of its potential FCRA liability (which is precisely why it tried to avoid it);

b. Defendant is a large corporation with access to legal advice through its own general counsel's office and outside employment counsel, and there is no contemporaneous evidence that it determined that its conduct was lawful;

c. Defendant knew or had reason to know that its conduct was inconsistent with published FTC guidance interpreting the FCRA and the plain language of the statute;

d. Defendant voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless; and

e. The consumer reporting agency that provided Plaintiffs' consumer report information to Defendant (Accurate Background, Inc.) has published numerous FCRA-related articles and compliance self-help materials and provided them to Defendant.

80. Plaintiffs and the Disclosure Form 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 under 15 U.S.C. § 1681n(a)(1)(A), in addition to punitive damages under 15 U.S.C. § 1681n(a)(2).

81. Plaintiffs and the Disclosure Form Class are further entitled to recover their costs and attorneys' fees, in accordance with 15 U.S.C. § 1681n(a)(3).

82. ***WHEREFORE***, Plaintiffs, on behalf of themselves and the Disclosure Form Class, pray for relief as follows:

A. Determining that this action may proceed as a class action;

B. Designating Plaintiffs as class representatives and designating Plaintiffs' counsel as counsel for the Putative Classes;

C. Issuing proper notice to the Putative 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 Plaintiff's rights and its obligations under the FCRA;

F. Awarding statutory damages as provided by the FCRA, including punitive damages; and

G. Awarding reasonable attorneys' fees and costs as provided by the FCRA.

COUNT II - SECOND CLASS CLAIM FOR RELIEF
Failure to Obtain Proper Authorization in Violation of 15 U.S.C. § 1681b(b)(2)(A)(ii)
(Plaintiff and the Putative Disclosure Form Class)

83. Plaintiffs, on behalf of himself and the Disclosure Form Class, allege and incorporate by reference the allegations in the preceding paragraphs.

84. Defendant violated the FCRA by procuring consumer reports relating to Plaintiffs and other Disclosure Form Class members without proper authorization. *See* 15 U.S.C. § 1681b(b)(2)(A)(ii).

85. The foregoing violations were willful. Defendant knew it was required to provide a stand-alone form (separate from the employment application) prior to obtaining and then utilizing a consumer report on Plaintiffs and the Putative Class. In fact, Defendant hired Accurate Background, Inc., a well-respected national consumer reporting agency, to procure its consumer reports on Plaintiffs and the Putative Class.

86. Importantly, Accurate Background, Inc. made readily available to Defendant the FCRA's requirements, including as to stand-alone documents. In fact, the Accurate Background, Inc. website, available at http://accuratebackground.com/resources/fcra/, provides a model FCRA disclosure and a plethora of FCRA-related materials and guidance for its customers, "white papers" discussing the FCRA and FCRA compliance, legislative updates, including links to the FTC website, and model forms.

87. Accurate Background, Inc. also provided Defendant and all of its clients with access to newsletter and "case studies" with updates on the FCRA. Thus, Defendant

was clearly aware of its obligations under the FCRA, including with respect to keeping itself informed of the FCRA's obligations and as to its potential exposure for willful violations.

88. Simply put, at the time that Plaintiffs completed their respective online job applications for Defendant, Defendant had access to a plethora of authority on FCRA and compliance, including the plain language of the FCRA, at least four FTC staff opinions, and multiple federal court decisions.

89. At the time Plaintiffs applied to work for Defendant it was being represented by experienced FCRA counsel but, nevertheless, Defendant continued to operate in violation of the FCRA's stand-alone disclosure requirement.

90. In fact, there is little doubt that Defendant should have been on high alert in terms of FCRA compliance, due to another FCRA class action lawsuit filed against, styled *Williams et al. v. Amazon.Com, Inc*., et al., Case No.: 2:15-cv-00542 (N.D. Ill), originally filed in April of 2015. While this case and the *Williams* case involve different putative FCRA classes (bb2 here versus bb3 there), as explained in this Court's Order denying the Defendant's attempt to have this case transferred to the Williams Court, they certainly both involve the FCRA, both consist of putative classes involving thousands of employees across the nation, and also happen to both involve some of the country's top FCRA defenses lawyers working for Defendant. Thus, Defendant cannot logically state that it was unaware of its obligations under the FCRA as it has been involved in high-stakes FCRA class litigation for nearly an entire year, litigation that started long before the filing of this lawsuit

91. Defendant's willful conduct is also reflected by, among other things, the following facts:

a. Due to Defendant's placement of a release of liability within the FCRA disclosure in its job application, Defendant knew of its potential FCRA liability (which is precisely why it tried to avoid it);

b. Defendant is a large corporation with access to legal advice through its own general counsel's office and outside employment counsel, and there is no contemporaneous evidence that it determined that its conduct was lawful;

c. Defendant knew or had reason to know that its conduct was inconsistent with published FTC guidance interpreting the FCRA and the plain language of the statute;

d. Defendant voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless; and

e. The consumer reporting agency that provided Plaintiffs' consumer report information to Defendant (Accurate Background, Inc.) has published numerous FCRA-related articles and compliance self-help materials and provided them to Defendant.

92. Plaintiffs and the Disclosure Form 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 under 15 U.S.C. § 1681n(a)(1)(A), in addition to punitive damages under 15 U.S.C. § 1681n(a)(2).

93. Plaintiffs and the Disclosure Form Class are further entitled to recover their costs and attorneys' fees, in accordance with 15 U.S.C. § 1681n(a)(3).

94. ***WHEREFORE***, Plaintiffs, on behalf of themselves and the Disclosure Form Class, pray for relief as follows:

A. Determining that this action may proceed as a class action;

B. Designating Plaintiffs as class representatives and designating Plaintiffs' counsel as counsel for the Putative Classes;

C. Issuing proper notice to the Putative 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 Plaintiff's rights and its obligations under the FCRA;

F. Awarding statutory damages as provided by the FCRA, including punitive damages; and

G. Awarding reasonable attorneys' fees and costs as provided by the FCRA.

COUNT III – THIRD CLASS CLAIM FOR RELIEF
Violation of 15 U.S.C. § 1681b(b)(3)(A)
(Plaintiffs Hargrett and Mathis and the Putative Adverse Action Class)

95. After Plaintiffs Hargrett and Mathis completed Defendant's online application, Defendant procured a consumer reports on them by using the services of a third-party vendor, Accurate Background, Inc.

96. Plaintiff Hargrett did not hear back from Defendant on the status of his employment application for weeks. In early August 2015, Plaintiff Hargrett learned through his employment account on Defendant's website that his application had failed due to the results found in the background investigation.

97. Plaintiff Hargrett called Defendant's corporate offices to discuss its rejection of Plaintiff Hargrett's employment application, but he received no assistance.

98. Eventually, Plaintiff Hargrett contacted the consumer reporting agency, Accurate Background, Inc., used by Defendant to get a copy of the consumer report that was provided to Defendant.

99. Plaintiff Hargrett was given no pre-adverse notice whatsoever of the information contained in the consumer report upon which Defendant based its decision.

100. Amazon obtained a consumer report about Plaintiff Mathis from Accurate, which included a charge for possession of cocaine that does not belong to Plaintiff Mathis. Accurate adjudicated Plaintiff Mathis as "fail," and communicated that grade to Defendant.

101. Based on Accurate's grade of fail, Amazon adjudicated Plaintiff Mathis as "does not meet requirements" and communicated that adjudication to Accurate. Accurate, without any further prompting or communication from Defendant, mailed Plaintiff notices intended to comply with 15 U.S.C. § 1681b(b)(3).

102. Defendant provided that notice after it had taken an adverse action against Plaintiff Mathis, that action being Defendant's communication of the "does not meet requirements" adjudication to Accurate that then triggered the sending of the notices.

103. Defendant did not provide Plaintiffs Hargrett or Mathis with a copy of the consumer reports that it relied upon prior to Defendant's adverse employment actions. As a result, in violation of the FCRA, 15 U.S.C. § 1681b(b)(3), Plaintiffs Hargrett and Mathis were deprived of any opportunity to review the information in the report and discuss them with Defendant before they were denied employment.

104. It was unlawful for Defendant to deny Plaintiffs Hargrett and Mathis employment on the basis of information contained in a consumer report that was never

shared with Plaintiffs Hargrett and Mathis or that was shared after the adverse decision was made.

105. It was unlawful for Defendant to terminate Plaintiffs Hargrett and Mathis's employment and deny on the basis of information contained in a consumer report that was never shared with them.

106. Specifically, Defendant violated the FCRA by failing to provide Plaintiffs Hargrett and Mathis with a copy of the consumer report that it used to take adverse employment action against them, before it took those adverse actions, in violation of 15 U.S.C. § 1681b(b)(3)(A).

107. The foregoing violations were willful. Defendant knew it was required to provide a pre-adverse notice prior to taking any adverse employment actions against Plaintiffs and the putative Adverse-Action Class members, but failed to do so. In fact, Defendant hired a well-respected national consumer reporting agency to procure its consumer reports on Plaintiffs Hargrett and Mathis to assist in administering pre-adverse notice (albeit incorrectly and in violation of the FCRA).

108. Importantly, Accurate Background, Inc. made readily available to Defendant the FCRA's requirements, including as to the required pre-adverse notice. In fact, the Accurate Background, Inc. website provides model FCRA pre-adverse notice documents as well as a plethora of FCRA-related materials and guidance for its customers.

109. Accurate Background, Inc. also provided Defendant and all of its clients with access to newsletter and "case studies" with updates on the FCRA. Thus, Defendant

was clearly aware of its obligations under the FCRA, including with respect to the FCRA's pre-adverse notice requirements.

110. Simply put, at the time that it decided to take adverse action against Plaintiffs Hargrett and Mathis, Defendant had access to a plethora of authority on FCRA and compliance, including the plain language of the FCRA, at least four FTC staff opinions, and multiple federal court decisions.

111. Defendant's willful conduct is also reflected by, among other things, the following facts:

a. Defendant is a large corporation with access to legal advice through its own general counsel's office and outside employment counsel, and there is no contemporaneous evidence that it determined that its conduct was lawful;

b. Defendant knew or had reason to know that its conduct was inconsistent with published FTC guidance interpreting the FCRA and the plain language of the statute;

c. Defendant voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless; and

d. The consumer reporting agency that provided Plaintiff Hargrett's consumer report information to Defendant (Accurate Background, Inc.) has published numerous FCRA-related articles and compliance self-help materials and provided them to Defendant, including as to pre-adverse notice.

112. As to Count III, Plaintiffs Hargrett and Mathis, as well as all putative 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 under 15 U.S.C. § 1681n(a)(1)(A), in addition to punitive damages under 15 U.S.C. § 1681n(a)(2).

113. Alternatively, and at a minimum, Defendant's actions were negligent.

114. Plaintiffs Hargrett and Mathis are further entitled to recover their costs and attorneys' fees, in accordance with 15 U.S.C. § 1681n(a)(3).

115. ***WHEREFORE***, Plaintiffs Hargrett and Mathis, on behalf of themselves and the Disclosure Form Class, pray for relief as follows:

A. Determining that this action may proceed as a class action;

B. Designating Plaintiffs as class representatives and designating Plaintiffs' counsel as counsel for the Putative Classes;

C. Issuing proper notice to the Putative 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 Plaintiff's rights and its obligations under the FCRA;

F. Awarding statutory damages as provided by the FCRA, including punitive damages; and

G. Awarding reasonable attorneys' fees and costs as provided by the FCRA.

DEMAND FOR JURY TRIAL

Plaintiffs and the Putative Classes demand a trial by jury on all issues triable.

DATED this 8th day of June, 2018.

Respectfully submitted,

/s/ Brandon J. Hill

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of June, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a copy of the foregoing to:

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