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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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THEO FELDSTEIN,  
on behalf of himself and all others  
similarly situated,

Plaintiff,

v.

AMAZON.COM LLC, and  
AMAZON.COMDEDC, LLC,

Defendants.

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Civil Action No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

On behalf of himself and all others similarly situated, Plaintiff Theo Feldstein (“Plaintiff” or “Mr. Feldstein”), through his attorneys, Francis & Mailman, P.C., respectfully alleges as follows:

**NATURE OF THE ACTION**

1. This is a consumer class action under the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.* (“FCRA”), brought on behalf of applicants for employment with Defendants Amazon.com LLC and Amazon.com.dedc, LLC (collectively “Amazon”). Plaintiff contends that Defendants systematically violate section 1681b(b)(3) of the FCRA by using consumer reports to make adverse employment decisions without, beforehand, providing the person who is

the subject of the report sufficient and timely notification and a copy of the report and a summary of rights under the FCRA, effectively leaving the person who is the subject of the report without any opportunity to correct any errors on the report or to even know who prepared the background report about him or her which formed a basis for the adverse action.

2. The FCRA regulates “consumer reports” for employment purposes, commonly called “background reports.” Congress included in the FCRA a series of due-process-like protections that impose strict procedural rules on “users of consumer reports,” such as Amazon. This action involves Defendants’ systematic violations of those important rules.

3. Plaintiff was denied employment as a Fulfillment Associate at Amazon based on a standardized background report conducted by Accurate Background, Inc. (“ABI”) pursuant to an agreement between Amazon and ABI.

4. In violation of the FCRA, Defendants failed to comply with the FCRA’s mandatory pre-adverse action notification requirement, and failed to provide a copy of the inaccurate background report they obtained from ABI, *before* taking adverse action, as required by 15 U.S.C. § 1681b(b)(3). Every year, individuals who have applied to Amazon for employment have been similarly aggrieved by the same violation of 15 U.S.C. § 1681b(b)(3).

5. Pursuant to 15 U.S.C. §§ 1681n and 1681o, Plaintiff seeks monetary relief for himself and a class of similarly situated employment applicants to whom Defendants failed to comply with FCRA section 1681b(b)(3)’s pre-adverse action notification requirements.

### **PARTIES**

6. Plaintiff Theo Feldstein is an adult individual who at all relevant times resided in Clarksburg, New Jersey.

7. Defendants Amazon regularly conduct business globally and in this District. Amazon markets itself as “striv[ing] to be Earth’s most customer-centric company where people can find and discover virtually anything they want to buy online. By giving customers more of what they want – low prices, vast selection, and convenience – Amazon.com continues to grow and evolve as a world-class e-commerce platform.” <http://phx.corporateir.net/phoenix.zhtml?c=176060&p=irol-mediaKit>. Amazon has a principal place of business at 410 Terry Avenue North, Seattle, WA 98109.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over this matter based upon 28 U.S.C. § 1331 and 15 U.S.C. § 1681p in that all claims brought arise under the federal Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.*

9. Venue lies proper in this District pursuant to 28 U.S.C. § 1391(b).

### **STATEMENT OF FACTS**

#### **Background: Defendants’ Use of ABI’s Screening Activities**

10. ABI is a nationwide employment background screening company, *i.e.*, those companies that provide “consumer reports,” as defined by 15 U.S.C. § 1681a(d)(1)(B), to prospective employers and employers.

11. From its files, ABI sells consumer reports to potential employers (such as Defendants) wishing to review the criminal record history, or lack thereof, related to various job applicants or employees. According to its website, ABI is “a leading provider of comprehensive employee screening and human resource support services, including international background screening, drug testing and health screening, electronic I-9 and E-Verify, and ATS integration services.” See <http://accuratebackground.com/about/>.

12. ABI offers customizable background screening for its customers, providing “easy-to-read online reports” with information from a variety of sources: “Criminal Searches, National SSN / Address Locator, Sex Offender Registry Services, Fingerprinting, Employment Verifications, Education Verifications, Professional License Verifications, Professional References, Credit Reports, Civil Searches, Motor Vehicle Reports, International Searches, Office of Foreign Assets Control (OFAC), Global Watch (formerly Terrorist Search), Fraud & Abuse Control Information System (FACIS®), Financial Industry Regulatory Authority FINRA (formerly NASD), Vendor Management Program, and Accurate I-9.” See <http://accuratebackground.com/products/background-screening/background-screening/>.

13. Upon information and belief, Amazon uses ABI’s background screening services to conduct credit checks, criminal background checks, and/or drug tests on applicants for employment. The background reports resulting from these services are delivered directly to Amazon.

14. Amazon’s hiring of staff for its fulfillment centers can be seasonal in nature. Many of these positions are temporary and Defendants hurry to fill the positions during the holidays and other busy seasons when Amazon needs to accommodate higher volumes of consumer purchases.

15. Despite Defendants’ goals of hiring many seasonal workers throughout the country in a short amount of time, and the nature of mistakes in consumers reports and background checks, Defendants choose, but are not required, to screen their job applicants through background reports.

16. Under the FCRA, any “person” using a consumer report, such as Amazon, who intends to take an “adverse action” on a job application “based in whole or in part” on

information obtained from the consumer report must provide notice of that fact to the consumer-applicant, and must include with the notice a copy of the consumer report and a notice of the consumer's dispute rights under the FCRA, *before* taking the adverse action. 15 U.S.C. § 1681b(b)(3)(A); *see also Goode v. LexisNexis Risk & Info. Analytics* 848 F. Supp. 2d 532, 542 (E.D. Pa. 2012) (more than one business can be a user of a single background report; "Under the FCRA, 'person' means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity. § 1681a(b). Thus, defendant is a person and must comply with § 1681b(b)(3)(A).").

17. There is longstanding regulatory guidance for employers making clear their obligations and the protections afforded to job applicants under the FCRA. The Federal Trade Commission ("FTC") has long held that Section 604(b)(3)(a) [15 U.S.C. § 1681b(b)(3)(A)] "requires that all employers who use consumer reports provide a copy of the report to the affected consumer before any adverse action is taken. Employers must comply with this provision even where the information contained in the report (such as a criminal record) would automatically disqualify the individual from employment or lead to an adverse employment action. Indeed, this is precisely the situation where it is important that the consumer be informed of the negative information in case the report is inaccurate or incomplete." *See* Federal Trade Commission letter dated June 9, 1998 to A. Michael Rosen, Esq.

18. A primary reason that Congress required that a person intending to take an adverse action based on information in a consumer report provide the report to the consumer before taking the adverse action is so the consumer has time to review the report and dispute information that may be inaccurate, or discuss the report with the prospective employer before adverse action is taken. *See* Federal Trade Commission letter dated December 18, 1997 to

Harold R. Hawkey, Esq. (“[T]he clear purpose of the provision to allow consumers to discuss reports with employers or otherwise respond before adverse action is taken.”).

19. Numerous courts interpreting the FCRA have found FTC opinion letters persuasive. *See, e.g., Owner-Operator Independent Drivers Ass’n, Inc. v. USIS Commercial*, 537 F.3d 1184, 1192 (10th Cir. 2008); *Morris v. Equifax Info. Servs., LLC*, 457 F.3d 460, 468 (5th Cir. 2006). *See also Gager v. Dell Fin. Servs., LLC*, 727 F.3d 265, 271-72 n.5 (3d Cir. 2013) (affording some deference to Federal Communication Commission analysis and finding it persuasive in interpreting Telephone Consumer Protection Act).

20. Consistent with that purpose, federal courts have held that the prospective employer must provide the report to the consumer “a sufficient amount of time before it takes adverse action so that the consumer may rectify any inaccuracies in the report.” *Williams v. Telespectrum, Inc.*, 2006 U.S. Dist. LEXIS 101162, at \*18 (E.D. Va. Nov. 7, 2006); *Beverly v. Wal-Mart Stores, Inc.*, 2008 U.S. Dist. LEXIS 2266 (E.D. Va. Jan. 11, 2008) (quoting *Williams*). In *Reardon v. Closetmaid Corp.*, 2011 U.S. Dist. LEXIS 45373 (W.D. Pa. April 27, 2011), the court certified a class action for prospective employees who did not receive a copy of their consumer report at least five days before being notified that the employer might take adverse action.

21. The reasons for the “pre-adverse action notice” requirement with regard to employment situations are to alert the job applicant that he is about to experience an adverse action, such as a rejection, based on the content of a report, and to provide him an opportunity to challenge the accuracy or relevancy of the information with the consumer reporting agency or the user before that job prospect or job is lost. In a recent presentation co-presented with its

lawyers, Sterling counseled its customers that an individual should be given 5 days to contest the information in the report before adverse action is taken.

22. Defendants typically do not provide job applicants with a copy of their consumer reports or a statement of their FCRA rights before they take adverse action against them based on the information in such reports, despite being required to do so by section 1681b(b)(3)(A) of the FCRA.

23. The FCRA statutory text, the FTC opinions and the cases cited constitute significant authority that existed during the time Defendants failed to comply with the pre-adverse action requirements of 15 U.S.C. § 1681b(b)(3)(A).

**The Facts Pertaining to Class Representative Plaintiff Theo Feldstein**

24. In April 2015, Plaintiff Theo Feldstein sought employment with Amazon for a Fulfillment Associate position in New Jersey. Plaintiff filled out an employment application through Amazon's online interface.

25. On or about April 22, 2015, Amazon confirmed that Mr. Feldstein's application for Fulfillment Associate – EWR4 was complete and currently under review. On or about April 23, 2015, Amazon invited Mr. Feldstein to schedule an in-person appointment to continue the application process.

26. On or about April 24, 2015, Amazon confirmed Mr. Feldstein would attend a welcome event at Amazon's Robbinsville, New Jersey facility with an opportunity to learn about Amazon's culture, review key aspects of the Fulfillment Associate position, and that he would receive a contingent offer of employment for the position.

27. Mr. Feldstein received the contingent offer of employment for the position, and was given to understand that it would be getting paid \$14.00 per hour.

28. On or about April 30, 2015, Amazon confirmed Mr. Feldstein was scheduled for a hiring event on May 8, 2015 at 4:00 pm to accept the contingent offer of employment in-person, view a presentation on job specifics, and tour the facility. Following the presentation, Mr. Feldstein accepted the contingent offer of employment.

29. Upon information and belief, Amazon requested ABI to conduct a background report (including a criminal background check) on Mr. Feldstein, and to provide the results to it so that it could determine if Mr. Feldstein met Amazon's hiring criteria.

30. On or about May 7, 2015, Amazon emailed Mr. Feldstein to confirm the results of his background check were being reviewed by Amazon's background check team.

31. Indeed, on or around May 7, 2015, Amazon received a background report from ABI concerning Mr. Feldstein which listed certain criminal convictions, when in fact Plaintiff was not convicted of those offenses and instead had said adjudication withheld.

32. As a result, Amazon stopped the onboarding process, and did not move forward with the job that it had offered Mr. Feldstein and which he accepted. Mr. Feldstein lost the job.

33. Sometime in May 2015, Mr. Feldstein logged into Amazon's online Job Portal to review the status of his application. He had not received prior notification from Amazon, but saw that the online status indicated he had "failed a contingency."

34. On or about May 25, 2015, Mr. Feldstein contacted Amazon to request more information about what it meant that he "failed a contingency."

35. On or about May 25, 2015, Mr. Feldstein received an email back from Amazon, stating:

I checked and see that your Drug test results has met requirements. However, your Background Check results did not meet Amazon's requirements. In order to work at Amazon all candidates must pass a background check. As a result, you are no longer being considered for employment at this time.



The hiring decision was based on the contents of the report from our background check vendor, Accurate Background, Inc.

Due to confidentiality reasons, we do not have the details of your background check.

Please feel free to contact our background check vendor, Accurate Background Inc., at 1-800-784-3911 to discuss further.

If the results of the background check are updated, Accurate will notify Amazon of the update and the results will be re-evaluated in relation to your hiring decision at that time.

We appreciate your interest in Amazon and the time you have invested in the application process.

The email did not include Plaintiff's ABI background report or a statement of his FCRA rights. Although Defendants shared information with ABI online through electronic communications, and even though they had Mr. Feldstein's email address, Defendants never emailed or otherwise communicated in writing with Mr. Feldstein about their intent to take adverse action against him based upon the ABI report, and never sent him a copy of that report or a statement of his FCRA rights.

36. Pursuant to Defendants' regular procedures, Mr. Feldstein was never sent a pre-adverse action notice, a copy of the background report used in the hiring process, or a statement of his rights under the FCRA. Defendants thus failed to comply with the FCRA's pre-adverse action notification requirements found at FCRA section 1681b(b)(3).

37. As a direct result of Defendants' unlawful use of the background report, Mr. Feldstein lost the job opportunity at Amazon.

38. On or about July 28, 2015, Mr. Feldstein disputed the inaccurate information with ABI directly. On or about August 11, 2015, Plaintiff received confirmation from ABI that the information was updated and corrected.

39. In this timeframe, Mr. Feldstein used an online "chat" function to communicate with an Amazon representative to inform Defendants that he received confirmation the

background screening company corrected the error on his report. He contacted Amazon to learn whether that was sufficient for him to retain the job and begin working. Amazon's representative confirmed that his application had expired, and if he was still interested in pursuing the position he would need to reapply as HR is unable to move forward with expired applications. Thus, despite correcting the inaccuracy on the background report, Mr. Feldstein still lost the job opportunity at Amazon.

40. And despite its promises to "re-evaluate" Plaintiff's application after any corrections to the background report by ABI, Amazon never even re-evaluated its decision to remove Plaintiff from consideration for employment because of his background report.

### **CLASS ACTION ALLEGATIONS**

41. Plaintiff brings this action pursuant to the Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of the following Classes:

(a) All employees or applicants for employment with Amazon residing in the United States (including all territories and other political subdivisions of the United States) who were the subject of a background report procured or caused to be procured from ABI or any other consumer reporting agency that was used by Amazon to make an adverse employment decision regarding such employee or applicant for employment, within five years prior to the filing of this action and extending through the resolution of this case, and for whom Amazon failed to provide the applicant a copy of his or her consumer report or a copy of the FCRA summary of rights before it took such adverse action.

(b) All employees or applicants for employment with Amazon residing in the United States (including all territories and other political subdivisions of the United

States) who were the subject of a background report procured or caused to be procured from ABI or any other consumer reporting agency that was used by Amazon to make an adverse employment decision regarding such employee or applicant for employment, within two years prior to the filing of this action and extending through the resolution of this case, and for whom Amazon failed to provide the applicant a copy of his or her consumer report or a copy of the FCRA summary of rights before it took such adverse action.

(c) All employees or applicants for employment with Amazon residing in the United States (including all territories and other political subdivisions of the United States) who were the subject of a background report procured or caused to be procured from ABI or any other consumer reporting agency that was used by Amazon where the background check results did not meet Amazon's requirements, within five years prior to the filing of this action and extending through the resolution of this case, and for whom Amazon failed to provide the applicant a copy of his or her consumer report or a copy of the FCRA summary of rights before it took such adverse action.

(d) All employees or applicants for employment with Amazon residing in the United States (including all territories and other political subdivisions of the United States) who were the subject of a background report procured or caused to be procured from ABI or any other consumer reporting agency that was used by Amazon where the background check results did not meet Amazon's requirements, within two years prior to the filing of this action and extending through the resolution of this case, and for whom Amazon failed to provide the applicant a copy of his or her consumer report or a copy of the FCRA summary of rights before it took such adverse action.

(e) All employees or applicants for employment with Amazon residing in the United States (including all territories and other political subdivisions of the United States) who were the subject of a background report procured or caused to be procured from ABI or any other consumer reporting agency that was used by Amazon to make an adverse employment decision regarding such employee or applicant for employment, within five years prior to the filing of this action and extending through the resolution of this case, and to whom Amazon sent an email or other notice that due to confidentiality reasons, it would not provide details of the background check to the consumer.

(f) All employees or applicants for employment with Amazon residing in the United States (including all territories and other political subdivisions of the United States) who were the subject of a background report procured or caused to be procured from ABI or any other consumer reporting agency that was used by Amazon where the background check results did not meet Amazon's requirements, within two years prior to the filing of this action and extending through the resolution of this case, and to whom Amazon sent an email or other notice that due to confidentiality reasons, it would not provide details of the background check to the consumer.

42. Plaintiff reserves the right to amend the definition of the Classes based on discovery or legal developments.

43. **Numerosity. FED. R. CIV. P. 23(a)(1).** The Class members are so numerous that joinder of all is impractical. Upon information and belief, Defendants procure and use hundreds if not thousands of consumer reports on applicants for employment each year, and those persons' names and addresses are identifiable through documents maintained by Defendants.

44. **Existence and Predominance of Common Questions of Law and Fact. FED.**

**R. CIV. P. 23(a)(2).** Common questions of law and fact exist as to all members of the Classes, and predominate over the questions affecting only individual members. The common legal and factual questions include, among others:

(a) Whether Defendants failed to provide each applicant for employment a copy of their consumer report before Defendants took adverse action based upon a disqualifying or adversely scored consumer report;

(b) Whether Defendants failed to provide each applicant for employment a copy of their written notice of FCRA rights before Defendants took adverse action based upon the consumer report;

(c) Whether Defendants acted willfully or negligently in disregard of the rights of employment applicants in their failure to permit their employees and automated systems to send employment applicants their full consumer report and a written statement of their FCRA rights before taking adverse action based on the consumer report.

45. **Typicality. FED. R. CIV. P. 23(a)(3).** Plaintiff's claims are typical of the claims of each Class member. Plaintiff has the same claims for statutory and punitive damages that he seeks for absent class members.

46. **Adequacy. FED. R. CIV. P. 23(a)(4).** Plaintiff is an adequate representative of the Classes. His interests are aligned with, and are not antagonistic to, the interests of the members of the Classes he seeks to represent, he has retained counsel competent and experienced in such litigation, and he intends to prosecute this action vigorously. Plaintiff and his counsel will fairly and adequately protect the interests of members of the Classes.

47. **Predominance and Superiority. FED. R. CIV. P. 23(b)(3).** Questions of law and fact common to the Class members predominate over questions affecting only individual

members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy. The statutory and punitive damages sought by each member are such that individual prosecution would prove burdensome and expensive given the complex and extensive litigation necessitated by Defendants' conduct. It would be virtually impossible for the Class members individually to redress effectively the wrongs done to them. Even if the Class members themselves could afford such individual litigation, it would be an unnecessary burden on the courts. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the complex legal and factual issues raised by Defendants' conduct. By contrast, the class action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in a unified proceeding.

## **CAUSES OF ACTION**

### **COUNT I**

#### **Fair Credit Reporting Act, 15 U.S.C. § 1681b(b)(3) (Plaintiff and Classes v. Amazon)**

48. Plaintiff realleges and incorporates by reference all preceding paragraphs as alleged above.

49. Plaintiff is a "consumer," as defined by the FCRA, 15 U.S.C. § 1681a(c).

50. The ABI background report ordered by Defendants is a "consumer report" within the meaning of 15 U.S.C. § 1681a(d).

51. The FCRA provides that any person "using a consumer report for employment purposes" who intends to take any "adverse action based in whole or in part on the report," must provide the consumer with a copy of the report *and* a written description of the consumer's rights

under the FCRA, as prescribed by the Federal Trade Commission, before taking such adverse action. 15 U.S.C. § 1681b(b)(3)(A).

52. For purposes of this requirement, an “adverse action” includes “any . . . decision . . . that adversely affects any current or prospective employee.” 15 U.S.C. § 1681a(k)(1)(B)(ii).

53. Defendants Amazon are each a “person” and each regularly uses background reports for employment purposes. 15 U.S.C. § 1681a(b).

54. The FCRA requires Defendants, as users of consumer reports for employment purposes, before taking adverse action based in whole or in part on the report, to provide to the consumer to whom the report relates, a copy of the report and a written description of the consumer’s rights under the FCRA. 15 U.S.C. §§ 1681b(b)(3)(A)(i) and (ii).

55. Defendants willfully and negligently violated section 1681b(b)(3) of the FCRA by failing to provide Plaintiff and the members of the Classes the following before using such reports: (a) the required Pre-Adverse Action Notice; (b) a copy of the consumer report; and, (c) a written description of the consumer’s rights under the FCRA.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff and the Classes pray for relief as follows:

- A. An order certifying the case as a class action on behalf of the proposed Classes under Federal Rule of Civil Procedure 23 and appointing Plaintiff and the undersigned counsel of record to represent same;
- B. An award of actual, statutory and punitive damages for Plaintiff and the Classes;
- C. An award of pre-judgment and post-judgment interest as provided by law;
- D. An award of attorneys’ fees and costs; and,
- E. Such other relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

**DESIGNATION OF TRIAL**

Plaintiff hereby designates James A. Francis and John Soumilas as trial counsel in the above-captioned matter. Plaintiff reserves the right to amend this designation as necessary.

**ARBITRATION CERTIFICATION**

I, John Soumilas, counsel of record, do hereby certify pursuant to Local Civil Rule 201.1(d) that relief other than monetary damages is sought and that the damages sought are in excess of \$150,000. I further certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court.

Respectfully submitted,

**FRANCIS & MAILMAN, P.C.,**

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