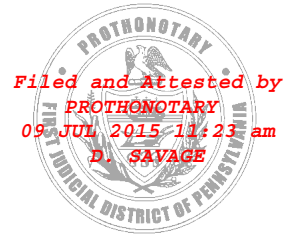


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<b>JOHN SMITH, individually and as a representative of the Classes,</b>	<b>COURT OF COMMON PLEAS PHILADELPHIA, PENNSYLVANIA</b>
<b>PLAINTIFF,</b>	<b>JULY TERM, 2015</b>
<b>v.</b>	<b>NO.</b>
<b>A-CHECK GLOBAL and RICOH AMERICAS CORPORATION,</b>	<b>JURY TRIAL DEMANDED</b>
<b>DEFENDANTS.</b>	<b>CLASS ACTION COMPLAINT</b>

John Smith (“Plaintiff”), by and through his attorneys, on behalf of himself and the consumer Classes set forth below, brings the following Class Action Complaint against A-Check Global (“A-Check”) and RICOH Americas Corporation (“Ricoh”) (together, “Defendants”).

### **INTRODUCTION**

1. This is an action under the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* (“FCRA”), against A-Check, a consumer reporting agency that routinely prepares background reports that contain dismissed charges that pre-date the report by more than seven years—a blatant violation of one of the FCRA’s core employment screening restrictions.

2. This is also an action against A-Check's client, Ricoh, an employer that routinely fails to adequately disclose to job applicants that it is going to procure a background report on them. Further, when using background reports as a basis for adverse action, such as refusal to hire, Ricoh fails to provide applicants with legally required pre-adverse action notice, including a copy of the report and a summary of rights under the FCRA. These also constitute violations of the basic protections the FCRA affords to applicants and employees.

3. Both Defendants committed these violations pursuant to standard policies. This action therefore asserts claims on behalf of similarly situated job applicants and employees, and seeks statutory damages, punitive damages, attorneys' fees, expenses, and all other available relief.

### **PARTIES**

4. Plaintiff John Smith is a natural person and a resident of Lawrenceville, Georgia.

5. Defendant A-Check is a California corporation headquartered at 1501 Research Park Drive, Riverside, California, 92507.

6. A-Check is a consumer reporting agency within the meaning of the FCRA: for monetary fees, it assembles information on consumers for the purpose of furnishing consumer reports to third parties, and it uses interstate commerce to prepare and furnish its reports. A-Check provides these reports to employers for employment purposes, including for use in taking adverse employment action against employees, such as employment termination, withdrawing employment offers, not making employment offers, or not promoting employees.

7. A-Check regularly conducts business in Philadelphia, and employs a Regional Director whose office is located just outside Philadelphia in Delaware County.

8. A-Check has also purchased internet advertising on Google so that A-Check appears as a sponsored (paid) result when a search is performed for “Philadelphia Background Check.”

9. Defendant Ricoh is a Delaware corporation with its corporate headquarters at 70 Valley Stream Parkway, Malvern, Pennsylvania, 19355. According to its website, [www.ricoh-usa.com](http://www.ricoh-usa.com), Ricoh specializes in office imaging equipment, production point solutions, document management systems and IT services. Ricoh is the North and South American Sales and Marketing unit of Ricoh Company, Ltd., which is a Japanese multi-national corporation that operates in over 200 countries.

10. Ricoh regularly does business in Philadelphia County and maintains offices at both 1700 Market St # 28, Philadelphia, PA and at 2727 Commerce Way # 1, Philadelphia, PA.

### **JURISDICTION AND VENUE**

11. This Court has jurisdiction over Plaintiff’s claims pursuant to 15 U.S.C. § 1681p, which allows claims under the FCRA to be brought in any appropriate court of competent jurisdiction.

12. The Courts of Common Pleas of this Commonwealth are endowed with full authority as provided by law, which extends to causes of action arising under federal law. 42 Pa. C.S.A. § 931.

13. Venue is proper in this Court pursuant to Pa. R. C. P. 2179 because both Defendants regularly conduct business in Philadelphia County.

## **STATUTORY BACKGROUND**

14. The FCRA was enacted to ensure that consumer reporting agencies report information in a manner that is “fair and equitable to the consumer,” and “with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information.” 15 U.S.C. §§ 1681a, 1681b. Among a number of substantive restrictions on what information may appear in a consumer report, the FCRA prohibits the reporting of arrest and other law enforcement records that predate the report by more than seven years, unless those records are a record of conviction. Specifically, a consumer reporting agency may not report:

(2) Civil suits, civil judgments, and records of arrest that from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period...

(5) Any other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years.

15 U.S.C. § 1681c(a).

15. The FCRA also requires consumer reporting agencies to “follow reasonable procedures to assure maximum possible accuracy of the information” contained in consumer reports. *See* 15 U.S.C. § 1681e(b).

16. Reports that contain factually correct information but nonetheless mislead their readers are neither maximally accurate nor fair to the consumers who are the subjects of such reports. *See Smith v. HireRight Solutions, Inc.*, 711 F. Supp. 2d 426 (E.D. Pa. 2010).

17. In addition to the above provisions that regulate the content of consumer reports, the FCRA also regulates how employers disclose to job applicants and employees that they are going to conduct a background check, and how they obtain authorization from employees to conduct the background check. In particular, the FCRA makes it illegal to “procure, or cause a

consumer report to be procured, for employment purposes with respect to any consumer, unless... 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.” 15 U.S.C. § 1681b(b)(2)(A)(i) (emphasis added). This requirement is often referred to as the “stand-alone disclosure” requirement.

18. This requirement is important because job applicants and employees need to know when they are going to be evaluated for employment purposes based on a consumer report. It is critical that consumers are aware that a report is being procured for employment purposes because *up to twenty-six percent of reports contain material errors*.<sup>1</sup> Moreover, even if a report does not contain errors, job applicants and employees may need to address and provide context for any reported information.

19. As set forth in greater detail below, Ricoh has negligently, willfully and systematically violated 15 U.S.C. § 1681b(b)(2)(A)(i) by procuring consumer reports on Plaintiff and other class members for employment purposes, without first making the required stand-alone disclosure.

20. The FCRA further requires that employers who rely on consumer reports, in whole or in part, to take adverse action, must provide the subjects of those reports with pre-adverse action

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<sup>1</sup> U.S. Fed. Trade Comm’n, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003* (Dec. 2012), available online at: <http://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf> (last accessed July 6, 2015).

notice, consisting of a copy of the report and a summary of rights, before taking adverse action against them. 15 U.S.C. §1681b(b)(3).

21. Ricoh willfully and negligently failed to comply with the FCRA's mandatory pre-adverse action notification requirement, and failed to provide Plaintiff with a copy of the background report it obtained from A-Check, *before* terminating Plaintiff, as required by 15 U.S.C. § 1681b(b)(3). Other individuals who have applied to Ricoh for employment have been similarly aggrieved by the same violation of 15 U.S.C. § 1681b(b)(3).

### **FACTS RELATING TO PLAINTIFF**

#### **A. Plaintiff's Application to Ricoh.**

22. In the summer of 2014, Plaintiff was in the job market for a position as a warehouse manager, which is a line of work he had been engaged in for approximately ten years.

23. Plaintiff applied to Ricoh and was invited to interview for a position as a warehouse manager near Atlanta, Georgia.

24. Ricoh subsequently offered Plaintiff a job, and Plaintiff was provided with a start date.

25. As part of the application process, Plaintiff was required to sign a document entitled "Authorization for Background Investigation," a true and correct copy of which is attached hereto as Exhibit A (the "Authorization Form").

26. After requiring Plaintiff to sign the Authorization Form, Ricoh obtained a confidential background report regarding Plaintiff from A-Check, a redacted copy of which is attached hereto as Exhibit B (the "Background Report").

27. Ricoh procured the report on Plaintiff as part of its standard hiring process. Ricoh did not procure Plaintiff's report or the reports of other class members in connection with any investigation of suspected misconduct relating to employment, or compliance with federal, state, or local laws and regulations, the rules of a self-regulatory organization, or any suspected violation of preexisting written policies of the employer.

28. After receiving Plaintiff's background report, and only one day before Plaintiff was supposed to begin working for Ricoh, a Ricoh employee contacted Plaintiff by telephone and told him that he should not report for work on his start date because of information contained in his background report.

29. Plaintiff asked the Ricoh employee for a copy of the report she was referring to, and she refused to provide it.

30. Plaintiff ultimately obtained a copy of his report from A-Check only after he requested it directly from them.

**B. Ricoh Procured Plaintiff's Report in Violation of § 1681b(b)(2).**

31. The Authorization Form is not a "stand alone disclosure" that Ricoh is going to obtain a background report. To the contrary, the Authorization Form contains numerous items of extraneous information, such as:

- A purported authorization for present and former employers, government offices, state departments of motor vehicles, credit bureaus, schools, police departments, court records, financial institutions, and "all others" possessing information to provide such information to A-Check;
- a purported waiver by the applicant of the need to receive "a written notice for

disclosure of information” from previous or current employers;

- a representation that a photocopy of the Authorization shall be accepted “with the same authority as the original”;
- a representation that the information provided by the applicant is “true and correct” and that the applicant has provided their “true and complete legal name”;
- a “notice” that the form “is the property of A-Check” and that “no alterations to its content may be made without the prior written consent of its author” and that any “changes made without A-Check’s authorization are considered a breach of contract.”

32. Ricoh’s inclusion of the extraneous information set forth in the Authorization Form was self-interested. In particular, the inclusion of the release of information set forth in the first bullet point of Paragraph 31 above made it easier for Ricoh and A-Check to procure information on applicants and employees, and operated as a functional waiver of employees’ and applicants’ legally established informational privacy rights.

33. Absent the authorization for third parties to release information, Ricoh and A-Check would have had a more difficult time procuring information on class members to include in their reports. The third party authorization purports to authorize a variety of institutions, such as schools and financial institutions, to provide information on the applicant to A-Check and Ricoh. Information retained by those institutions is subject to a variety of already extant privacy laws, and absent this purported authorization A-Check and Ricoh would have had a much more difficult time obtaining information on Plaintiff and the class members.



34. School records, financial records, health records and public records, all of which fall within the broad language included in the Authorization Form, are all legally protected from disclosure. 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 CFR Part 160, and Subparts A and E of Part 164, requires certain entities to keep medical records private. Most states also protect certain types of information relating to individuals from public disclosure. For example, Pennsylvania's "Right to Know" Law sets forth numerous exceptions to what information is available to the public at 65 P.S. § 67.708. Most states' government data laws are even more restrictive, and prohibit the disclosure of information on individuals held by many state agencies. The Authorization Form, however, purports to waive these rights and would therefore operate to release these third parties from any liability for violating these privacy laws.

35. By including this broad release of information in its forms, Ricoh made it easier to gather information about employees and applicants, and attempted to release itself and third parties from potential liability for acquiring such information.

36. Ricoh's failure to provide a stand-alone disclosure violates a fundamental protection afforded to employees under the FCRA, is contrary to the unambiguous language of the Act, and is counter to FTC guidance and case law. The FTC has stated that disclosure forms must not be "encumbered by any other information ... [in order] to prevent consumers from being distracted by other information side-by-side with the disclosure." *See* Exhibit C, Letter from

Clarke W. Brinckerhoff, Fed. Trade Comm’n, to H. Roman Leathers, Manier & Herod (Sept. 9, 1998) (emphasis added).

37. The FTC has also opined that it is inappropriate to include waivers in disclosure forms. See Exhibit D, *Advisory Opinion to Hauxwell* (June 12, 1998), 1998 WL 34323756 (“[T]he [disclosure] form should not contain any extraneous information . . . The inclusion of such a waiver in a disclosure form will violate Section 604(b)(2)(A) of the FCRA, which requires that a disclosure consist ‘solely’ of the disclosure that a consumer report may be obtained for employment purposes.”).

38. Numerous courts have agreed with the FTC. See *Martin v. Fair Collections & Outsourcing, Inc.*, No. GJH-14-3191, 2015 WL 4064970 at \*3-4 (D. Md. June 30, 2015) (denying motion to dismiss section 1681b(b)(2) claim); *Moore v. Rite Aid Hdqtrs Corp.*, No. CIV.A. 13-1515, 2015 WL 3444227, at \*12 (E.D. Pa. May 29, 2015) (“[T]he text of the statute and the available agency guidance demonstrate[] that the inclusion of information on the form apart from the disclosure and related authorization violates § 1681b(b)(2)(A).”); *Lengel v. HomeAdvisor, Inc.*, No. 15-2198-RDR, \_\_\_ F. Supp. 3d \_\_\_, 2015 WL 2088933, at \*8 (D. Kan. May 6, 2015) (“[I]t may be plausibly asserted that the standalone disclosure provision was recklessly violated by the use of the Release form because it did not consist solely of the disclosure that a consumer report may be obtained for employment purposes.”); *Speer v. Whole Food Mkt. Grp., Inc.*, No. 8:14-CV-3035-T-26TBM, 2015 WL 1456981, at \*3 (M.D. Fla. Mar. 30, 2015) (finding that plaintiff had stated a claim wherein plaintiff alleged that “the inclusion of the waiver along with the disclosure violated the FCRA”); *Milbourne v. JRK Residential Am., LLC*, \_\_\_ F. Supp. 3d \_\_\_, No. 3:12-cv-861, 2015 WL 1120284, at \*6 (E.D. Va. Mar. 10, 2015) (“Thus, judging by the text of the statute

alone, inclusion of a waiver within the document containing the disclosure would violate [the FCRA].”); *Jones v. Halstead Mgmt. Co., LLC*, \_\_\_ F. Supp. 3d \_\_\_, No. 14-CV-3125 VEC, 2015 WL 366244, at \*5 (S.D.N.Y. Jan. 27, 2015) (finding disclosure to not stand-alone when it included “information regarding time frames within which the applicant must challenge the accuracy of any report; an acknowledgement that ‘all employment decisions are based on legitimate non-discriminatory reasons;’ . . . and all sorts of state-specific disclosures”); *Miller v. Quest Diagnostics*, No. 2:14-cv-4278, \_\_\_ F. Supp. 3d \_\_\_, 2015 WL 545506, at \*3 (W.D. Mo. Jan. 28, 2015) (finding “inclusion of the state-mandated consumer report information, administrative sections, **and** release language in the disclosure violates 15 U.S.C. § 1681b(b)(2)”) (emphasis in original); *Dunford v. American Databank, Inc.*, No. C 13-03829, \_\_\_ F. Supp. 3d \_\_\_, 2014 WL 3956774, at \*6 (N.D. Cal. Aug. 12, 2014) (finding document that contained a liability release to “not consist solely of the disclosure because it added a paragraph exonerating [the defendant]”); *Avila v. NOW Health Grp., Inc.*, No. 14 C 1551, 2014 WL 3537825, at \*2 (N.D. Ill. July 17, 2014) (finding inclusion of liability waivers to be “contrary to the express language of the FCRA, which requires a disclosure ‘in a document that consists solely of the disclosure’”); *Reardon v. ClosetMaid Corp.*, No. 2:-8-cv-01730, 2013 WL 6231606, at \*10-11 (W.D. Pa. Dec. 2, 2013) (finding disclosure with liability waiver to be “facially contrary to the statute at hand, and all of the administrative guidance”); *Singleton v. Domino’s Pizza, LLC*, No. 12-cv-823, 2012 WL 245965, at \*9 (D. Md. Jan. 25, 2012) (“[B]oth the statutory text and FTC advisory opinions indicate that an employer violates the FCRA by including a liability release in a disclosure document.”); *see also E.E.O.C. v. Video Only, Inc.*, No. CIV. 06-1362-KI, 2008 WL 2433841, at \*11 (D. Or. June 11, 2008) (granting summary judgment against the defendant-employer who

made disclosure “as part of its job application which is not a document consisting solely of the disclosure.”).

39. By systematically failing to provide the stand-alone disclosure required by the FCRA when procuring consumer reports for employment purposes, Ricoh willfully violated 15 U.S.C. § 1681b(b)(2)(A)(i).

40. As a result of Defendants’ conduct, job applicants, such as Plaintiff, suffer a concrete injury in the form of deprivation of a disclosure to which they are legally entitled, and the invasion of privacy rights which are otherwise protected by statutory and common law.

**C. Ricoh Failed to Provide Pre-Adverse Action Notice in Violation of § 1681b(b)(3).**

41. Any “person” using a consumer report, such as Ricoh, who intends to take any “adverse action” against a job applicant “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 Group, Inc.*, 848 F. Supp. 2d 532, 542 (E.D. Pa. 2012) (more than one business can be a user of a single background report; “[u]nder the FCRA, ‘person’ means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity. § 1681a(b). Thus, defendants are persons and must comply with § 1681b(b)(3)(A).”).

42. There is longstanding regulatory guidance for employers making clear their obligations and the protections afforded to job applicants under the FCRA. The 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 Exhibit E, Federal Trade Commission letter dated June 9, 1998 to A. Michael Rosen, Esq.

43. 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 Exhibit F, 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.”).

44. 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 deference to Federal Communication Commission analysis and finding it persuasive in interpreting Telephone Consumer Protection Act).

45. 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 WL 7067107, at \*5 (E.D. Va. Nov. 7, 2006); *Beverly v. Wal-Mart Stores, Inc.*, 2008 WL 149032 (E.D. Va. Jan. 11, 2008) (quoting *Williams*). In *Reardon v. ClosetMaid Corp.*, 2011 WL 1628041 (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.

46. The reasons for the pre-adverse action notice requirement with regard to employment situations are to alert the consumer employee and/or job applicant that he or she is about to experience an adverse action, such as a rejection, based on a report’s contents, and to provide him or her an opportunity to challenge the accuracy, completeness or relevancy of the information with the consumer reporting agency or the user *before* that job prospect or job is lost.

47. Ricoh knew that it had an obligation to provide pre-adverse action notice to applicants, such as Plaintiff, who it rejected based on information in a consumer report.

48. Pursuant to § 1681b(b)(1), Ricoh was required to certify to A-Check that it would comply with its obligation to provide pre-adverse action notice.

49. A-Check also posted a bulletin for its customers in February of 2013 advising them of the consequences of failing to provide pre-adverse action notice. *See* [http://www.acheckglobal.com/a-checkobserver/posts/2013/february/25/national-retailer-settles-\\$3-million-class-action-for-alleged-deficiencies-in-fcra-compliance.aspx](http://www.acheckglobal.com/a-checkobserver/posts/2013/february/25/national-retailer-settles-$3-million-class-action-for-alleged-deficiencies-in-fcra-compliance.aspx) (site last visited June 12, 2015).

50. Moreover, the face of the Background Report states, “pre- and post-notification requirements under the FCRA are required. If any information contained within the report is used

for making an adverse action, please discuss the report with the subject prior to taking action. If the applicant disputes information within this report, have the applicant contact A-Check America within 60 days.” *See* Exhibit B.

51. Ricoh typically does not provide job applicants with a copy of their consumer reports or a statement of their FCRA rights before it takes adverse action against them based upon the information in such reports, despite being required to do so by § 1681b(b)(3)(A) of the FCRA.

52. 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).

53. As a result of Defendants’ conduct, job applicants such as Plaintiff, suffer concrete injury in the form of being deprived of their statutorily guaranteed opportunity to correct or explain problems with their background reports, as well as wage loss, loss of benefits, delay in employment and/or other adverse employment action.

54. In this particular case, Plaintiff’s report was misleading and included unlawful information. The inclusion of this information made Plaintiff appear to be a worse candidate for employment than he in fact was, and Plaintiff lost a job as a result of the background report at issue.

**D. A-Check Included Illegal Information in Plaintiff’s Report.**

55. In violation of § 1681c, the Background Report generated by A-Check regarding Plaintiff includes information relating to dismissed charges that predate the report by more than seven years.

56. For example, in 1996, when Plaintiff was 18 years old, A-Check's report indicates he was charged with a single felony count of Break or Enter a Motor Vehicle. This count, however, was dismissed and the charge was amended to Tampering With Vehicle, which is a misdemeanor. Nonetheless, A-Check reported the dismissed felony count from 19 years ago on the report, and it reported it in a manner that suggests Plaintiff was found guilty of the felony charge.

57. Similarly, A-Check's report indicates that in 1997—when the Plaintiff was 19 years old—he was charged with a single felony count of Financial Card Fraud. The report indicates that the disposition was “guilty” but also indicates that the charge was amended to a single misdemeanor count of Financial Card Fraud. Nonetheless, A-Check's report includes the original felony charge, even though that charge was dismissed, and includes it on the same line as the “guilty” disposition, potentially giving the false impression that Plaintiff was convicted of this dismissed felony count.

58. Other sections of the Background Report similarly indicate that A-Check routinely includes charges that are later dismissed, even where those charges pre-date the report by more than seven years. For example, in 2000, Plaintiff was charged with speeding, a misdemeanor. That charge, however, was amended to Improper Equipment: Speedometer, which is merely an “infraction” for which Plaintiff paid a \$115 fine. Nonetheless, A-Check included the dismissed misdemeanor charge on the report, and included it in on the same line as the “guilty” disposition, again giving the false impression that Plaintiff was convicted of the misdemeanor charge.

59. A-Check routinely fails to remove dismissed charge information from its reports, including where the dismissed charges predate the report by more than seven years.



60. A-Check's report also failed to reflect that several criminal actions against Plaintiff were consolidated for sentencing, such as Case Nos. 97CRS071568 and 97CRS071571. While these actions were consolidated, the report sets them forth as separate actions, and then sets forth duplicative and redundant charge and sentencing information. Similarly, 97CRS071568 and 97CRS071570 were consolidated, yet A-Check's report on Plaintiff sets forth both as separate matters, and then sets forth duplicative and redundant charge and sentencing information. This failure gives the reader an impression of a much longer criminal history relating to Plaintiff than is accurate.

61. Consumer reporting agencies are clearly permitted to report records of "convictions" beyond seven years. 15 U.S.C. § 1681c. But it is equally clear from the face of the same statutory provision that "arrests" and any "other adverse item of information" cannot be reported beyond seven years. *See* 15 U.S.C. §§ 1681c(a)(2) and 1681c(a)(5); *see also Avila v. NOW Health Grp., Inc.*, No. 14 C 1551, 2014 WL 3537825, at \*3-\*4 (N.D. Ill. July 17, 2014) (holding that the "express language of the FCRA" mandates that "a consumer reporting agency may not include any adverse item of information other than a 'record of conviction' not a 'record of dismissed charges'"); *Haley v. Talentwise, Inc.*, --- F. Supp. 2d ---, 2014 WL 1304007, at \*3-5 (W.D. Wash., April 2, 2014) (finding that under the "plain language" of the FCRA, a "dismissed charge from over seven years ago is both a 'record of arrest' and 'adverse' information that [a consumer reporting agency] is prohibited from including in [a] consumer report") (citing *Serrano v. Sterling Testing Syst.*, 557 F. Supp. 2d 688, 693 (E.D. Pa. 2008)); *Dunford v. Am. DataBank, LLC*, No. C 13-03829 WHA, 2014 WL 3956774, at \*14 (N.D. Cal. Aug. 12, 2014) ("In light of the remedial purpose of the Act, this order now holds that only the actual convictions may be

reported and stale dismissed counts must be combed out and go unreported.”); *King v. Gen. Info. Servs., Inc.*, 903 F.Supp.2d 303 (E.D. Pa. 2012) (FCRA’s requirement excluding obsolete records of arrest comported with commercial speech doctrine); *Dowell v. Gen. Info. Servs., Inc.*, 13-CV-02581-L-BGS, Memorandum of the United States of America in Support of the Constitutionality of § 1681c of the Fair Credit Reporting Act, at 17 (S.D. Cal. Feb. 20, 2014) (stating that dismissed charges, even if associated with a conviction, may not be reported under the FCRA). Notwithstanding this clear statutory directive, A-Check routinely reports dismissed charges that antedate the report by more than seven years.

62. A-Check’s practices violate a fundamental protection afforded to consumers under the FCRA, are contrary to the unambiguous language of the statute, and are counter to longstanding judicial and regulatory guidance. *See, e.g.*, Exhibit G, excerpt from FTC, Forty Years of Experience with the Fair Credit Reporting Act, An FTC Staff Report with Summary of Interpretations, July 2011, at 55 (“Even if no specific adverse item is reported, a CRA may not furnish a consumer report referencing the existence of adverse information that predates the times set forth in this subsection.”); *Serrano v. Sterling Testing Sys., Inc.*, 557 F. Supp. 2d 688 (E.D. Pa. 2008) (holding FCRA prohibits even alluding to existence of unreportable adverse information).

63. As part of the process of assembling consumer reports, A-Check utilizes a variety of algorithms and filters to aggregate and consolidate information from a variety of sources.

64. It is standard practice for consumer reporting agencies to write filters and algorithms “to filter out obsolete credit information.” *See* [www.naca.net/issues/credit-reporting-problems](http://www.naca.net/issues/credit-reporting-problems).

65. A-Check, consistent with standard industry practices, could have written an algorithm or filter to ensure that all of its reports would exclude non-conviction criminal dispositions older than seven years.

66. It is also standard in the consumer reporting industry for consumer reporting agencies to have a purge date for information in their system that has become outdated. *See Gillespie v. Trans Union Corp.*, 482 F.3d 907, 908 (7th Cir. 2007). By failing to utilize a purge date for outdated information, A-Check's practices and procedures fall far below industry standards and constitute recklessness.

67. A-Check failed to implement these algorithms, in spite of the fact that it easily could have done so and that these types of algorithms are standard in the credit reporting industry.

68. A-Check also failed to have the report properly reviewed by an individual who was trained in the FCRA, and specifically, in the requirements of 15 U.S.C. § 1681c(a). Had A-Check had a properly trained individual review this report, this problem would have been easily detected.

69. A-Check knew its conduct was illegal. Its website states, "Generally speaking, *arrest* records not resulting in a conviction can be reported for up to 7 years." (Emphasis in original). *See* <http://www.acheckglobal.com/resources/employer-resources.aspx>, attached hereto as Exhibit H (site last visited July 6, 2015).

70. A-Check has negligently and willfully violated 15 U.S.C. § 1681c(a) by routinely including all charges in the background reports it generates, even where those charges are more than seven years old and were dismissed.

71. As a result of Defendants' conduct, job applicants such as Plaintiff, appear to be worse job candidates than they would be if A-Check only reported information it is allowed to

report under the law. A-Check's inclusion of this illegal information has caused Plaintiff and members of the Classes to suffer concrete injuries in the form of wage loss, loss of benefits, delay in employment, emotional distress and/or other adverse employment action.

### **CLASS ACTION ALLEGATIONS**

72. Plaintiff asserts his claims on behalf of the following proposed Classes:

**Ricoh Inadequate Disclosure Class:** All individuals on whom Ricoh procured a consumer report for employment purposes on or after the date two years prior to the filing of the Complaint in this matter.

**Ricoh Pre-Adverse Action Notice Class:** All employees or applicants for employment with Ricoh residing in the United States and its Territories who were the subject of a background report that Ricoh used 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 action, and to whom Ricoh failed to provide the employee or applicant a copy of his or her consumer report or a copy of the FCRA summary of rights before it took such adverse action.

**A-Check Obsolete Information Class:** All individuals about whom A-Check generated a consumer report for employment purposes on or after the date falling two years prior to the filing of this Complaint, and whose report included dismissed charges that predate the report by more than seven years.

73. The Classes satisfy the requirements of Pa. R. C. P. 1702.

74. Numerosity: The Classes are so numerous that joinder of all class members is impracticable. Ricoh regularly procures consumer reports for employment purposes, and has obtained thousands of such reports for employment purposes. Many of those reports were the basis for adverse employment actions. Similarly, A-Check is a major consumer reporting agency and routinely generates reports that include dismissed charges that predate the report by more than seven years. A-Check has produced hundreds if not thousands of such reports.

75. Typicality: Plaintiff's claims are typical of the members of the Classes. It is typical for Ricoh to procure consumer reports for employment purposes, and Ricoh typically does not provide the stand-alone disclosure required by the FCRA when obtaining consumer reports for employment purposes. Nor does Ricoh typically provide the required pre-adverse action notice. The FCRA violations suffered by Plaintiff are typical of those suffered by other class members, and Ricoh treated Plaintiff consistently with other class members in accordance with its standard policies and practices. Similarly, it is typical for A-Check to include dismissed charges in its reports, even where the dismissed charges predate the report by more than seven years, and Plaintiff's report is typical of the reports generated by A-Check that include dismissed charges that predate the report by more than seven years.

76. Adequacy: Plaintiff meets the criteria of fair and adequate representation under Rule 1709. Plaintiff has no conflict of interest in maintaining this class action and will fairly and adequately protect the interests of the Classes. Plaintiff has retained counsel experienced in complex class action litigation, including litigation involving the FCRA, and has adequate financial resources to assure that the interests of the Classes will not be harmed.

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

- a. Whether Ricoh uses consumer report information to conduct background checks for employment purposes;
- b. Whether the Authorization Form satisfies the stand-alone disclosure requirements of 15 U.S.C. § 1681b(b)(2)(A)(i);

- c. Whether Ricoh violated the FCRA by procuring consumer report information without making proper disclosures in the format required by the Act;
- d. Whether Ricoh failed to provide the pre-adverse action notice required by the FCRA;
- e. Whether Ricoh was on notice of the stand-alone disclosure and pre-adverse action notice requirements of the FCRA;
- f. Whether Ricoh's violations of the FCRA were negligent, knowing, and/or willful;
- g. Whether A-Check routinely includes dismissed charges in its consumer reports that predate the report by more than seven years in violation of 15 U.S.C. § 1681c(a);
- h. Whether A-Check was on notice of the requirements of 15 U.S.C. § 1681c(a);
- i. Whether A-Check's violations of the FCRA were negligent, knowing, and/or willful; and
- j. The proper measure of damages against Ricoh and A-Check.

78. The Classes satisfy the requirements of Pa. R. C. P. 1708.

79. Class certification is appropriate under Rule 1708 because questions of law and fact common to the Classes predominate over any questions affecting only individual members of the Classes, and because a class action is a fair and efficient method for adjudicating this controversy. Defendants' conduct described in this Complaint stems from common and uniform policies and practices, resulting in common violations of the FCRA. Class certification also will obviate the need for unduly duplicative litigation that might result in inconsistent judgments concerning Defendants' practices. Moreover, management of this action as a class action will not present any likely difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all class members' claims in a single forum.

80. This forum is appropriate for the litigation of the claims of the Classes because the proposed Classes are national in nature and both Defendants do business in this forum.

81. In view of the complexities of the issues and the expenses of litigation, the separate claims of individual class members are insufficient in amount to support separate actions. Yet, the amount which may be recovered by individual class members will be large enough in relation to the expense and effort of administering the action to justify a class action. The administration of this action can be handled by class counsel or a third party administrator, and the costs of administration will represent only a small fraction of the ultimate recovery to be achieved.

82. Defendants have acted or refused to act on grounds generally applicable to the Classes, thereby making declaratory relief appropriate with respect to the Classes.

83. Plaintiff intends to send notice to all members of the Classes to the extent required by Rule 1712. The names and addresses of the class members are available from Defendants' records.

### **CLAIMS FOR RELIEF**

#### **Count I**

#### **Violation of 15 U.S.C. § 1681b(b)(2)(A)(i) (Against Ricoh)**

84. Plaintiff re-alleges and incorporates by reference the allegations in the preceding paragraphs.

85. Ricoh procured a "consumer report," as defined by the FCRA, on Plaintiff and all class members.

86. These consumer reports were obtained for employment purposes.

87. Prior to obtaining these consumer reports, Ricoh did not provide Plaintiff and other class members with a clear and conspicuous disclosure in writing, in a document that consisted solely of the disclosure, that a consumer report may be obtained for employment purposes.

88. The Authorization Form does not satisfy the stand-alone disclosure requirements of 15 U.S.C. § 1681b(b)(2)(A)(i) because it contains extraneous statements and information.

89. Ricoh violated the FCRA by procuring consumer reports relating to Plaintiff and other class members without first making proper disclosures in the format required by 15 U.S.C. § 1681b(b)(2)(A)(i).

90. The foregoing violations were willful. Ricoh acted in knowing or reckless disregard of its obligations and the rights of Plaintiff and other class members under 15 U.S.C. § 1681b(b)(2)(A)(i). Ricoh's willful conduct is reflected by, *inter alia*, the following:

a. The FCRA was enacted in 1970; Ricoh, which was founded in 1999, has had 16 years to become compliant;

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

c. Ricoh knew or had reason to know that its conduct was inconsistent with FTC guidance, case law, and the plain language of the Act;

d. As required by § 1681b(b)(1), Ricoh certified to A-Check that it would provide the required disclosure prior to procuring consumer reports on consumers, but Ricoh failed to do so;



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

91. Ricoh's violations of the FCRA were negligent, and/or willful, and were repeated and systematic.

**Count II**  
**Violation of 15 U.S.C. § 1681b(b)(3)**  
**(Against Ricoh)**

92. Plaintiff re-alleges and incorporates by reference the allegations in the preceding paragraphs.

93. Ricoh procured a "consumer report," as defined by the FCRA, on Plaintiff and all class members.

94. Prior to taking adverse action based on these reports, Ricoh did not provide Plaintiff and other class members with a copy of the report relied on or a summary of rights under the FCRA.

95. The foregoing violations were willful. Ricoh acted in deliberate or reckless disregard of its obligations and the rights of Plaintiff and other class members under 15 U.S.C. § 1681b(b)(2)(A)(i). Ricoh's willful conduct is reflected by, *inter alia*, the following:

a. The FCRA was enacted in 1970; Ricoh has had 45 years to become compliant;

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

c. Ricoh knew or had reason to know that its conduct was inconsistent with FTC guidance, case law, and the plain language of the Act;

d. As required by § 1681b(b)(1), Ricoh certified to A-Check that it would provide the required pre-adverse action notice, but Ricoh failed to do so; and

e. Ricoh voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless.

96. Ricoh's violations of the FCRA were negligent, and/or knowing or reckless, and were repeated and systematic.

**Count III**  
**Violation of 15 U.S.C. § 1681c(a)**  
**(Against A-Check)**

97. Plaintiff re-alleges and incorporates by reference the allegations in the preceding paragraphs.

98. A-Check is a consumer reporting agency as defined by the FCRA, and the employment-related background reports it generates are subject to the restrictions set forth in 15 U.S.C. § 1681c(a).

99. A-Check routinely and systematically violated 15 U.S.C. § 1681c(a) by including dismissed charges that predate the report by more than seven years in its reports.

100. The foregoing violations were negligent and/or willful. A-Check acted in deliberate or reckless disregard of its obligations and the rights of Plaintiff and other class members under 15 U.S.C. § 1681c. A-Check's willful conduct is reflected by, *inter alia*, the following:

a. The FCRA was enacted in 1970; A-Check, which was founded in 1998, has had 17 years to become compliant;

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

c. A-Check knew or had reason to know that its conduct was inconsistent with FTC guidance, case law, and the plain language of the Act;

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

e. A-Check's violations of the FCRA were repeated and systematic.

101. Plaintiff and the Classes are entitled to actual damages or statutory damages of not less than \$100 and not more than \$1,000 for each and every one of these violations, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

102. Plaintiff and the Classes are further entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and the Classes, prays for relief as follows:

A. Determining that this action may proceed as a class action under Rule 1710 of the Pennsylvania Rules of Civil Procedure;

B. Designating Plaintiff as the class representative for the Classes;

C. Designating Plaintiff's Counsel as counsel for the Classes;

D. Issuing proper notice to the Class at Defendants' expense;

E. Declaring that Defendants committed multiple, separate violations of the FCRA;

F. Declaring that Defendant acted negligently, willfully in deliberate or reckless disregard of the rights of Plaintiff and the Classes under the FCRA;

G. Awarding actual and/or statutory damages as provided by the FCRA;

H. Awarding punitive damages;

I. Awarding reasonable attorneys' fees and costs and expenses, as provided by the FCRA;

J. Granting other and further relief, in law or equity, as this Court may deem appropriate and just.

**DEMAND FOR JURY TRIAL**

Plaintiff and the Classes demand a trial by jury.

Dated: July 9, 2015

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