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8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**
10 **AT SEATTLE**

11 **GREGORY WILLIAMS, on behalf of**
12 **himself and all others similarly situated,**
13 Plaintiff,

14 v.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

15 **AMAZON.COM, INC.,**
16 **SMX, LLC, d/b/a “STAFF**
17 **MANAGEMENT | SMX”, and**
18 **STAFF MANAGEMENT**
19 **SOLUTIONS, LLC, d/b/a “STAFF**
20 **MANAGEMENT | SMX,”**
21 Defendants,

22 On behalf of himself and all others similarly situated, Plaintiff Gregory Williams
23 (“Plaintiff” or “Mr. Williams”), through his attorneys, the Law Offices of Christopher
24 Green and Francis & Mailman, P.C., respectfully alleges as follows:

25 / / /

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27 **COMPLAINT – CLASS ACTION - 1**

GREENLAWFIRM PS
CHRISTOPHER GREEN
601 Union Street, Suite 4200
Seattle, Washington 98101
(206) 686-4558
Fax: (206) 686-2558 Facsimile
WSBA NO. 19410

1 **NATURE OF THE ACTION**

2 1. This is a consumer class action under the Fair Credit Reporting Act, 15
3 U.S.C. §§ 1681, *et seq.* (“FCRA”), brought on behalf of applicants for employment with
4 Defendant Amazon.com, Inc. (“Amazon”) and employment placement services with
5 Defendants SMX, LLC and Staff Management Solutions, LLC, collectively doing
6 business as “Staff Management | SMX, a TrueBlue Company” (“SMX”), a national
7 employment staffing agency. Plaintiff contends that Defendants systematically violate
8 section 1681b(b)(3) of the FCRA by using consumer reports to make adverse
9 employment decisions without, beforehand, providing the person who is the subject of
10 the report sufficient and timely notification and a copy of the report and a summary of
11 rights under the FCRA, effectively leaving the person who is the subject of the report
12 without any opportunity to correct any errors on the report or to even know who prepared
13 the background report about him or her which formed a basis for the adverse action.
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16 2. The FCRA regulates “consumer reports” for employment purposes,
17 commonly called “background reports.” Congress included in the FCRA a series of due-
18 process-like protections that impose strict procedural rules on “users of consumer
19 reports,” such as Amazon and SMX. This action involves Defendants’ systematic
20 violations of those important rules.
21

22 3. Plaintiff was denied employment as a puller at Amazon based on a
23 standardized background report conducted by Sterling Infosystems, Inc. (“Sterling”)
24 pursuant to an agreement between Sterling and SMX. Sterling “scored” Plaintiff as not
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1 eligible for the job with Amazon based upon the purported existence of a felony
2 conviction.

3 4. In violation of the FCRA, Defendants failed to comply with the FCRA's
4 mandatory pre-adverse action notification requirement, and failed to provide a copy of
5 the inaccurate background report they obtained from Sterling, *before* taking adverse
6 action, as required by 15 U.S.C. § 1681b(b)(3). Every year, individuals who have applied
7 to Amazon and SMX for employment have been similarly aggrieved by the same
8 violation of 15 U.S.C. § 1681b(b)(3).
9

10 5. Pursuant to 15 U.S.C. §§ 1681n and 1681o, Plaintiff seeks monetary relief
11 for himself and a class of similarly situated employment applicants to whom Defendants
12 failed to comply with FCRA section 1681b(b)(3)'s pre-adverse action notification
13 requirements.
14

15 **PARTIES**

16 6. Plaintiff Gregory Williams is an adult individual residing in Irmo, South
17 Carolina.
18

19 7. Defendant Amazon regularly conducts business globally and in this
20 District. Amazon markets itself as "striv[ing] to be Earth's most customer-centric
21 company where people can find and discover virtually anything they want to buy online.
22 By giving customers more of what they want – low prices, vast selection, and
23 convenience – Amazon.com continues to grow and evolve as a world-class e-commerce
24 platform." <http://phx.corporateir.net/phoenix.zhtml?c=176060&p=irol-mediaKit>.
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1 Amazon has a principal place of business at 410 Terry Avenue North, Seattle, WA
2 98109.

3 8. At all relevant times, Defendant SMX placed seasonal and other
4 employees at Amazon. Upon information and belief, Amazon contracts with SMX for
5 assistance in hiring its employees. At all relevant times, SMX's actions were taken in
6 connection with its duties under its contract with Amazon to screen and place
7 employment candidates and temporary workers.
8

9 9. Defendant SMX conducts business globally and in this District. SMX
10 markets itself as "a recognized leader of comprehensive workforce solutions that deliver
11 best talent, drive compliance, yield tangible savings and build sustainable value," and is a
12 subsidiary of TrueBlue, Inc. <http://www.staffmanagement.com/staffing/company.aspx>.
13 SMX has a principal place of business at 860 West Evergreen Avenue, Chicago, IL
14 60642. TrueBlue, Inc. has a principal place of business at 1015 A Street, Tacoma, WA
15 98401.
16

17 **JURISDICTION AND VENUE**

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

22 11. Venue is proper in this District, pursuant to 28 U.S.C. § 1391(b) because
23 Defendants "reside" in this District as defined in 28 U.S.C. § 1391(c).
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1 **STATEMENT OF FACTS**

2 **Background: Defendants' Use of Sterling's Screening Activities**

3 12. Sterling is among the largest of the nation's employment background
4 screening companies, *i.e.*, those that provide "consumer reports," as defined by 15 U.S.C.
5 § 1681a(d)(1)(B), to prospective employers and employers.
6

7 13. From its files, Sterling sells consumer reports to potential employers (such
8 as Defendants) wishing to investigate the criminal record history, or lack thereof, with
9 regard to various job applicants or employees. According to its website, Sterling "is the
10 world's largest company focused entirely on background checks."
11 <http://www.sterlingbackcheck.com/About/Company-Profile.aspx>.
12

13 14. In addition to providing background reports, Sterling provides to its
14 employment screening customers an additional service what us called alternatively
15 "scoring" or "adjudication." Under this service Sterling will "score" an applicant eligible
16 or ineligible for employment based on an adjudication "matrix" that the customer
17 develops with Sterling. The background report itself indicates the scoring with key terms
18 such as "clear" when the employment candidate meets that employer's hiring criteria or
19 "possible record" and "needs review" when a disqualifying record is associated with the
20 employment candidate on the background report. This service is attractive to Sterling's
21 customers such as Amazon and SMX who are constantly hiring and promoting in very
22 large volumes because it provides the customer with a remote, outsourced tool to make
23 its employment decisions rapidly.
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1 15. Sterling offers its customers the possibility of using its screening service
2 in a “pre-employment” hiring environment, meaning as a preliminary screen of
3 applicants, or in a “post-employment” hiring environment, meaning as the final stage in
4 the hiring/promotion process. In a “post-employment” environment, Sterling customers
5 use the service to screen consumers who have already been selected for hire or
6 promotion, subject to the results of the background screen.
7

8 16. Upon information and belief, SMX uses Sterling’s screening services to
9 conduct credit checks, criminal background checks, and/or drug tests on applicants for
10 employment with its customers. The background reports resulting from these services,
11 including Sterling’s scoring services, are delivered directly to SMX.
12

13 17. Amazon also uses these same background reports to determine who will
14 be eligible to work at one of its facilities. Amazon shares certain hiring criteria with
15 SMX, and also advises SMX with the conditions that would disqualify a potential
16 employee from being placed for employment at one of Amazon’s facilities.
17

18 18. SMX and Amazon work closely together to provide staffing support at
19 distribution centers throughout the country. According to SMX’s website, “Each year,
20 we place thousands of people in seasonal positions at Amazon fulfillment centers across
21 the country.” See https://apply.smjobs.com/amazon/Jobs_withSMSMX.html.
22

23 19. SMX evaluates candidates to be placed with Amazon, and SMX must
24 comply with Amazon’s hiring criteria and policies during the screening process when it
25 will place employees or temporary workers at an Amazon facility.
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1 20. Defendants' collaboration in hiring staff for Amazon's fulfillment centers
2 is seasonal in nature. Many of these positions, such as the one that Plaintiff applied for,
3 are temporary and Defendants hurry to fill the positions during the holidays and other
4 busy seasons when Amazon needs to accommodate higher volumes of consumer
5 purchases.
6

7 21. Despite Defendants' goals of hiring many seasonal temporary workers
8 throughout the country in a short amount of time, and the nature of mistakes in
9 consumers reports and background checks, Defendants choose, but are not required, to
10 screen their job applicants through background reports.
11

12 22. Under the FCRA, any "person" using a consumer report, such as Amazon
13 and SMX, who intends to take an "adverse action" on a job application "based in whole
14 or in part" on information obtained from the consumer report must provide notice of that
15 fact to the consumer-applicant, and must include with the notice a copy of the consumer
16 report and a notice of the consumer's dispute rights under the FCRA, *before* taking the
17 adverse action. 15 U.S.C. § 1681b(b)(3)(A); *see also Goode v. LexisNexis Risk & Info.*
18 *Analytics* 848 F. Supp. 2d 532, 542 (E.D. Pa. 2012) (more than one business can be a user
19 of a single background report; "Under the FCRA, 'person' means any individual,
20 partnership, corporation, trust, estate, cooperative, association, government or
21 governmental subdivision or agency, or other entity. § 1681a(b). Thus, defendant is a
22 person and must comply with § 1681b(b)(3)(A).").
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1 23. There is longstanding regulatory guidance for employers making clear
2 their obligations and the protections afforded to job applicants under the FCRA. The
3 Federal Trade Commission (“FTC”) has long held that Section 604(b)(3)(a) [15 U.S.C. §
4 1681b(b)(3)(A)] “requires that all employers who use consumer reports provide a copy of
5 the report to the affected consumer before any adverse action is taken. Employers must
6 comply with this provision even where the information contained in the report (such as a
7 criminal record) would automatically disqualify the individual from employment or lead
8 to an adverse employment action. Indeed, this is precisely the situation where it is
9 important that the consumer be informed of the negative information in case the report is
10 inaccurate or incomplete.” *See* Federal Trade Commission letter dated June 9, 1998 to A.
11 Michael Rosen, Esq.
12

13
14 24. A primary reason that Congress required that a person intending to take an
15 adverse action based on information in a consumer report provide the report to the
16 consumer before taking the adverse action is so the consumer has time to review the
17 report and dispute information that may be inaccurate, or discuss the report with the
18 prospective employer before adverse action is taken. *See* Federal Trade Commission
19 letter dated December 18, 1997 to Harold R. Hawkey, Esq. (“[T]he clear purpose of the
20 provision to allow consumers to discuss reports with employers or otherwise respond
21 before adverse action is taken.”).

22
23 25. Numerous courts interpreting the FCRA have found FTC opinion letters
24 persuasive. *See, e.g., Owner-Operator Independent Drivers Ass’n, Inc. v. USIS*
25

1 *Commercial*, 537 F.3d 1184, 1192 (10th Cir. 2008); *Morris v. Equifax Info. Servs., LLC*,
2 457 F.3d 460, 468 (5th Cir. 2006). *See also Gager v. Dell Fin. Servs., LLC*, 727 F.3d
3 265, 271-72 n.5 (3d Cir. 2013) (affording some deference to Federal Communication
4 Commission analysis and finding it persuasive in interpreting Telephone Consumer
5 Protection Act).

6
7 26. Consistent with that purpose, federal courts have held that the prospective
8 employer must provide the report to the consumer “a sufficient amount of time before it
9 takes adverse action so that the consumer may rectify any inaccuracies in the report.”
10 *Williams v. Telespectrum, Inc.*, 2006 U.S. Dist. LEXIS 101162, at *18 (E.D. Va. Nov. 7,
11 2006); *Beverly v. Wal-Mart Stores, Inc.*, 2008 U.S. Dist. LEXIS 2266 (E.D. Va. Jan. 11,
12 2008) (quoting *Williams*). In *Reardon v. Closetmaid Corp.*, 2011 U.S. Dist. LEXIS
13 45373 (W.D. Pa. April 27, 2011), the court certified a class action for prospective
14 employees who did not receive a copy of their consumer report at least five days before
15 being notified that the employer might take adverse action.
16

17 27. The reasons for the “pre-adverse action notice” requirement with regard to
18 employment situations are to alert the job applicant that he is about to experience an
19 adverse action, such as a rejection, based on the content of a report, and to provide him an
20 opportunity to challenge the accuracy or relevancy of the information with the consumer
21 reporting agency or the user before that job prospect or job is lost. In a recent
22 presentation co-presented with its lawyers, Sterling counseled its customers that an
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1 individual should be given 5 days to contest the information in the report before adverse
2 action is taken.

3 28. Defendants typically do not provide job applicants with a copy of their
4 consumer reports or a statement of their FCRA rights before they take adverse action
5 against them based on the information in such reports, despite being required to do so by
6 section 1681b(b)(3)(A) of the FCRA.
7

8 29. The FCRA statutory text, the FTC opinions and the cases cited constitute
9 significant authority that existed during the time Defendants failed to comply with the
10 pre-adverse action requirements of 15 U.S.C. § 1681b(b)(3)(A).
11

12 **The Facts Pertaining to Class Representative Plaintiff Gregory Williams**

13 30. In November 2013, Plaintiff Gregory Williams sought employment with
14 Amazon through its staffing agency SMX. Plaintiff filled out an employment application
15 and a form authorizing SMX to obtain his consumer report for employment purposes.
16

17 31. The authorization included, *inter alia*, “In the event information from the
18 report is utilized in whole or in part in making an adverse decision with regard to your
19 potential employment, before making the adverse decision, we will provide you with a
20 copy of the consumer report and a description in writing of your rights under the Federal
21 Fair Credit Reporting Act.”

22 32. The authorization form further provides that a candidate may dispute with
23 Sterling if he or she disagrees with “the accuracy of the purported *disqualifying*
24 *information* in the Report.” The authorization form requires the candidate to “notify
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1 Company within five business days of my receipt of the Report that I am challenging the
2 accuracy of such information with Sterling.” No five-day notice limitation actually exists
3 in the FCRA.

4 33. Mr. Williams interviewed in-person for the puller position on or about
5 November 30, 2013. Mr. Williams was given to understand that the position for which
6 he was applying was a full-time temporary position lasting for at least a few months at
7 \$10.50 an hour, with the potential of it becoming a permanent position.

9 34. Following the interview, Mr. Williams was offered the job, which he
10 accepted.

11 35. Mr. Williams was advised that he needed to start as soon as possible
12 because Defendants had an opening that needed to be filled promptly.

14 36. On or about December 2, 2013, Mr. Williams had a second in-person
15 interview and orientation with Amazon, when he was informed his start date would be
16 December 5, 2013.

17 37. Upon information and belief, SMX requested Sterling to conduct a
18 background report (including a criminal background check) on Mr. Williams, and to
19 provide the results (including the pre-adjudication or score) to it so that it could
20 determine if Mr. Williams met Amazon’s hiring criteria.

22 38. On or around December 3, 2013, SMX received a background report from
23 Sterling concerning Mr. Williams which listed two criminal convictions – an old open
24

1 container misdemeanor that belonged to Mr. Williams, and a felony conviction for
2 cocaine possession, which did not belong to Plaintiff.

3 39. The December 3, 2013 background report classified the felony conviction
4 as "Possible Record * NEEDS REVIEW *" -- which disqualified Mr. Williams from
5 employment at Amazon.
6

7 40. Due to the felony conviction, the background report itself was scored as
8 "Needs Review." This was in effect the "disqualifying information" referenced in the
9 authorization form.

10 41. The misdemeanor conviction, by contrast, was not marked as "Needs
11 Review" and instead classified as "Clear * LOW RISK *" -- therefore it would not have
12 disqualified Mr. Williams from employment at Amazon.
13

14 42. As a result, Defendants stopped the onboarding process, and did not move
15 forward with the job that they had offered Mr. Williams and which he accepted. Mr.
16 Williams lost the job.

17 43. Also, on or about December 3 or 4, 2013, a representative from SMX left
18 a message on Mr. Williams' phone not to show up for work at Amazon on December 5,
19 2013 because of his background report. When Mr. Williams returned the call, SMX
20 informed him that his background check was not clean and contained a felony.
21

22 44. Mr. Williams informed SMX that the background check, which he had not
23 yet received a copy of, must have contained inaccurate information because he did not
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1 have any such criminal record, and was recently was cleared to obtain a permit to carry a
2 concealed weapon, so there must have been a mistake.

3 45. Pursuant to Defendants' regular procedures, Mr. Williams was never sent
4 by either SMX or Amazon a pre-adverse action notice, a copy of the background report
5 used in the hiring process, or a statement of his rights under the FCRA. Defendants thus
6 failed to comply with the FCRA's pre-adverse action notification requirements found at
7 FCRA section 1681b(b)(3).
8

9 46. As a direct result of Defendants' unlawful use of the background report
10 and Sterling's scoring of Mr. Williams' employment application, Mr. Williams lost the
11 job opportunity at Amazon through SMX.
12

13 47. On or about December 11, 2013, Mr. Williams received an email from
14 "SMX at Amazon," stating:

15 Hi, this is SMX at Amazon contacting you because we would like to thank
16 you for applying with us and inform you that our hiring season is over and
17 we are no longer hiring. Our hiring for next season will start in July 2014
18 and we hope you decide to apply with us again! If you have any questions
please call us at 803-939-9441. Thank you again for your interest and we
hope to meet you in a few months :)

19 The email did not include Plaintiff's Sterling background report or a statement of
20 his FCRA rights.
21

22 48. Although Defendants shared information with each other and with
23 Sterling online through electronic communications, and even though they had Mr.
24 Williams' email address, Defendants never emailed or otherwise communicated
25 in writing with Mr. Williams about their intent to take adverse action against him
26

1 based upon the Sterling report, and never sent his a copy of that report or a
2 statement of his FCRA rights.

3 **CLASS ACTION ALLEGATIONS**

4
5 49. Plaintiff brings this action pursuant to the Federal Rules of Civil
6 Procedure 23(a) and 23(b)(3) on behalf of the following Classes:

7 (a) All persons who sought or who are seeking employment at
8 Defendant Amazon residing in the United States (including all territories and
9 other political subdivisions of the United States) who were the subject of a
10 background report procured or caused to be procured from Sterling or any other
11 consumer reporting agency that was used by Amazon to make an adverse
12 employment decision regarding such employee or applicant for employment,
13 within five years prior to the filing of this action and extending through the
14 resolution of this case, and for whom Amazon failed to provide the applicant a
15 copy of his or her consumer report or a copy of the FCRA summary of rights
16 before it took such adverse action.
17

18
19 (b) All persons who sought or who are seeking to be placed for
20 employment through Defendant SMX residing in the United States (including all
21 territories and other political subdivisions of the United States) who were the
22 subject of a background report procured or caused to be procured from Sterling
23 or any other consumer reporting agency that was used by SMX to make an
24 adverse employment decision regarding such employee or applicant for
25 employment, within five years prior to the filing of this action and extending
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1 through the resolution of this case, and for whom SMX failed to provide the
2 applicant a copy of his or her consumer report or a copy of the FCRA summary
3 of rights before it took such adverse action

4 50. Plaintiff reserves the right to amend the definition of the Classes based on
5 discovery or legal developments.
6

7 51. **Numerosity. FED. R. CIV. P. 23(a)(1).** The Class members are so
8 numerous that joinder of all is impractical. Upon information and belief, Defendants
9 procure and use hundreds if not thousands of consumer reports on applicants for
10 employment each year, and those persons' names and addresses are identifiable through
11 documents maintained by Defendants.
12

13 52. **Existence and Predominance of Common Questions of Law and Fact.**
14 **FED. R. CIV. P. 23(a)(2).** Common questions of law and fact exist as to all members of
15 the Classes, and predominate over the questions affecting only individual members. The
16 common legal and factual questions include, among others:
17

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

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

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

5
6 53. **Typicality. FED. R. CIV. P. 23(a)(3).** Plaintiff's claims are typical of the
7 claims of each Class member. Plaintiff has the same claims for statutory and punitive
8 damages that he seeks for absent class members.

9
10 54. **Adequacy. FED. R. CIV. P. 23(a)(4).** Plaintiff is an adequate
11 representative of the Classes. His interests are aligned with, and are not antagonistic to,
12 the interests of the members of the Classes he seeks to represent, he has retained counsel
13 competent and experienced in such litigation, and he intends to prosecute this action
14 vigorously. Plaintiff and his counsel will fairly and adequately protect the interests of
15 members of the Classes.

16
17 55. **Predominance and Superiority. FED. R. CIV. P. 23(b)(3).** Questions of
18 law and fact common to the Class members predominate over questions affecting only
19 individual members, and a class action is superior to other available methods for fair and
20 efficient adjudication of the controversy. The statutory and punitive damages sought by
21 each member are such that individual prosecution would prove burdensome and
22 expensive given the complex and extensive litigation necessitated by Defendants'
23 conduct. It would be virtually impossible for the Class members individually to redress
24 effectively the wrongs done to them. Even if the Class members themselves could afford
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1 such individual litigation, it would be an unnecessary burden on the courts. Furthermore,
2 individualized litigation presents a potential for inconsistent or contradictory judgments
3 and increases the delay and expense to all parties and to the court system presented by the
4 complex legal and factual issues raised by Defendants' conduct. By contrast, the class
5 action device will result in substantial benefits to the litigants and the Court by allowing
6 the Court to resolve numerous individual claims based upon a single set of proof in a
7 unified proceeding.
8

9 **CAUSES OF ACTION**

10 **COUNT I**

11 **Fair Credit Reporting Act, 15 U.S.C. § 1681b(b)(3)** 12 **(Plaintiff and Classes v. Amazon and SMX)**

13 56. Plaintiff realleges and incorporates by reference all preceding paragraphs
14 as alleged above.

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

16 58. The Sterling background report ordered by Defendants is a "consumer
17 report" within the meaning of 15 U.S.C. § 1681a(d).
18

19 59. The FCRA provides that any person "using a consumer report for
20 employment purposes" who intends to take any "adverse action based in whole or in part
21 on the report," must provide the consumer with a copy of the report *and* a written
22 description of the consumer's rights under the FCRA, as prescribed by the Federal Trade
23 Commission, before taking such adverse action. 15 U.S.C. § 1681b(b)(3)(A).
24

1 60. For purposes of this requirement, an “adverse action” includes “any . . .
2 decision . . . that adversely affects any current or prospective employee.” 15 U.S.C. §
3 1681a(k)(1)(B)(ii).

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

6 62. The FCRA requires Defendants, as users of consumer reports for
7 employment purposes, before taking adverse action based in whole or in part on the
8 report, to provide to the consumer to whom the report relates, a copy of the report and a
9 written description of the consumer’s rights under the FCRA. 15 U.S.C. §§
10 1681b(b)(3)(A)(i) and (ii).

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

15
16
17 **PRAYER FOR RELIEF**

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

19 A. An order certifying the case as a class action on behalf of the proposed
20 Classes under Federal Rule of Civil Procedure 23 and appointing Plaintiff and the
21 undersigned counsel of record to represent same;

22 B. An award of actual, statutory and punitive damages for Plaintiff and the
23 Classes;
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- 1 C. An award of pre-judgment and post-judgment interest as provided by law;
2 D. An award of attorneys' fees and costs; and,
3 E. Such other relief as the Court deems just and proper.
4

5 **JURY DEMAND**

6 Plaintiff hereby demands a trial by jury.

7 Respectfully submitted,

8 GREENLAWFIRM PS

9 Dated this 7th Day of April 2015

10 BY:



11 CHRISTOPHER E. GREEN, ESQUIRE
12 GREENLAWFIRM PS
13 601 Union Street
14 Suite 4285
15 Seattle, WA 98101
16 (206) 686-4558
17 WSBA No. 19410

18 James A. Francis*
19 John Soumilas*
20 **FRANCIS & MAILMAN, P.C.**
21 Land Title Building, 19th Floor
22 100 South Broad Street
23 Philadelphia, PA 19110
24 Tel: (215) 735-8600
25 Fax: (215) 940-8000
26 jfrancis@consumerlawfirm.com
27 jsoumilas@consumerlawfirm.com

Attorneys for Plaintiff and the Class
*Pro hac vice applications forthcoming