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8 *Attorney for Plaintiff*
9 **David Garza, Naser Alzer,**
10 **Margarita Hernandez, Kimberly Kennedy,**
11 **Amandeep Singh, Samah Haider**
12 and the class

13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**

15 **David Garza, Naser Alzer, Margarita) Case No. 2:18-at-1198**
16 **Hernandez, Kimberly Kennedy,)**
17 **Amandeep Singh, Samah Haider, on)**
18 behalf of themselves and of others)
19 similarly situated,)

20 Plaintiffs,)

21 v.)

22 **CLASS ACTION COMPLAINT**
23 **JURY TRIAL DEMANDED**

24 **Confir-Chek, Inc., a holding company)**
25 for **Confir-Chek Investigations,)**
26 **Peoplefinders.com, Enformion, Inc.,)**
27 **PublicRecordsNOW.com,)**
28 **PrivateEye.com, Veromi.net, and)**
29 **Advanced Background Checks,)**

30 Defendants.)

1 1. Plaintiffs **David Garza, Naser Alzer, Margarita Hernandez, Kimberly**
2 **Kennedy, Amandeep Singh, and Samah Haider** (hereinafter “Plaintiffs”),
3
4 individually and on behalf of others similarly situated, brings this class action
5 lawsuit against **Confı-Chek, Inc.** and its subsidiaries **Confı-Chek Investigations,**
6 **Peoplefinders.com, Enformion, Inc., PublicRecordsNOW.com,**
7 **PrivateEye.com, Veromi.net, and Advanced Background Checks** (collectively,
8 all of these entities will be referred to as the “Defendants”).
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I. PRELIMINARY STATEMENT

2. Plaintiffs David Garza, Naser Alzer, Margarita Hernandez, Kimberly Kennedy, Amandeep Singh, and Samah Haider, on behalf of themselves and all others similarly situated, complain of Defendants Confi-Chek, Inc., the parent or holding company, and its following subsidiaries: Peoplefinders.com, Enformium, Inc., PublicRecordsNOW.com, PrivateEye.com, and Advanced Background Checks, Inc.

3. This class action arises from the Defendants' willful publication and/or sale of consumers' expunged, expuncted and/or sealed criminal records in violation of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq. (the "FCRA") and Texas Business and Commerce Code §§ 109.001–.007. Plaintiffs bring this action on behalf of consumers throughout the country who have been the subject of prejudicial, misleading and inaccurate background reports published and/or sold by the Defendants and anticipate adding other relevant state-law causes of action, similar to the Texas statute cited, as appropriate. The Defendants adopted and maintained a policy and practice of failing or refusing to timely update such consumers' criminal record histories to eliminate expunged, expuncted, or sealed cases, thus not accurately reflecting the final disposition.

II. JURISDICTION AND VENUE

4. This Court has subject-matter jurisdiction under 15 U.S.C. § 1681p, which allows any FCRA claim to "be brought in any appropriate United States

1 district court, without regard to the amount in controversy” Plaintiffs are
2 bringing claims under the FCRA in this case.

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4 5. This Court also has subject-matter jurisdiction under 28 U.S.C. § 1331,
5 which gives federal district courts original jurisdiction of all civil actions arising
6 under the Constitution, laws, or treaties of the United States. Plaintiffs are bringing
7 claims under the FCRA in this case.

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9 6. This Court also has subject-matter jurisdiction under 28 U.S.C. § 1367
10 for supplemental state-law claims. Plaintiffs also are bringing supplemental Texas
11 statutory claims under TEX. BUS. & COM. CODE ANN. §§ 109.001–.007.

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13 7. This Court also has subject-matter jurisdiction under 28 U.S.C. § 1332(a)
14 as there is complete diversity between the parties and the matter in controversy is
15 more than \$75,000.

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17 8. This Court also has subject-matter jurisdiction under 28 U.S.C. §
18 1332(d)(2) because this is a class action case where the matter in controversy,
19 exclusive of interest and costs, exceeds \$5 million and a member of a class of
20 plaintiffs is a citizen of a state different from any defendant.

21
22 9. This Court has general-and specific-personal jurisdiction over the
23 Defendants under California Code of Civil Procedure § 410.10 because they are
24 residents of California,

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26 10. Venue lies properly in this district pursuant to 28 U.S.C. § 1391(b)
27 as the Defendants all are from Sacramento, California.
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III. PARTIES

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2 11. Plaintiff David Garza is an adult individual and citizen of the State
3 of Texas who resides in Houston, Texas.
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5 12. Plaintiff Naser Alzer is an adult individual and citizen of the State of
6 Texas who lives in Cedar Park, Texas.
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8 13. Plaintiff Margarita Hernandez is an adult individual and citizen of the
9 State of Texas who lives in Waxahachie, Texas.

10 14. Plaintiff Kimberly Kennedy is an adult individual and citizen of the
11 State of Texas who lives in Houston, Texas.
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13 15. Plaintiff Amandeep Singh is an adult individual and citizen of the
14 State of Texas who lives in San Antonio, Texas.
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16 16. Plaintiff Samah Haider is an adult individual and citizen of the State
17 of Texas who lives in Houston, Texas.

18 17. Defendant Confi-Chek, Inc. is a California corporation with its
19 principal place of business in Sacramento, California. Defendant Confi-Chek, Inc.
20 is the parent or holding company for the other named Defendants, and shares office
21 space, customer service, personnel, data acquisition and management both with and
22 across its named subsidiaries. As such, it provides or controls background
23 screening services, decision-making intelligence, public record reports and
24 operates as a consumer reporting agency. Defendant and its subsidiaries regularly
25 conduct business in the State of Texas, and it operates a principal place of business
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1 at 1821 Q St. Sacramento, CA 95811-6718, an address shared by all the subsidiary
2 Defendants as well. Defendant and its subsidiaries are a “consumer credit reporting
3 agency,” as defined by 15 U.S.C. § 1681a(f), regularly engaged in the business of
4 assembling, evaluating, and dispersing information concerning consumers for the
5 purpose of furnishing “consumer reports,” as defined in 15 U.S.C. § 1681a(d), to
6 third parties. Defendant Confi-Chek, Inc. can be served with process by serving its
7 agent for the service of process Robert S. Miller at 1821 Q St. Sacramento, CA
8 95811-6718, or wherever he may be found.
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12 18. Defendant Enformion, Inc. is a California corporation with its
13 principal place of business in Sacramento, California. Defendant provides or
14 controls background screening services, decision-making intelligence, public
15 record reports and operates as a consumer reporting agency. Defendant regularly
16 conduct business in the State of Texas, and it operates a principal place of business
17 at 1821 Q St. Sacramento, CA 95811-6718. Defendant is a “consumer credit
18 reporting agency,” as defined by 15 U.S.C. § 1681a(f), and regularly engaged in
19 the business of assembling, evaluating, and dispersing information concerning
20 consumers for the purpose of furnishing “consumer reports,” as defined in 15
21 U.S.C. § 1681a(d), to third parties. Defendant Enformion, Inc. can be served with
22 process by serving its agent for the service of process Robert S. Miller at 1821 Q
23 St. Sacramento, CA 95811-6718, or wherever he may be found.
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1 19. Defendants Confi-Chek Investigations, Peoplefinders.com,
2 Enformion, Inc., PublicRecordsNOW.com, PrivateEye.com, Veromi.net, and
3 Advanced Background Checks are subsidiary business entities that act as alter egos
4 for Confi-Chek, Inc., and each other, as described above, and they provide
5 background screening services, decision-making intelligence, public record reports
6 and operate as consumer reporting agencies. These subsidiary Defendants all
7 operate a principal place of business at 1821 Q Street Sacramento, CA 95811-6718.
8 The Defendants are “consumer credit reporting agency,” as defined by 15 U.S.C.
9 § 1681a(f) of the Act, regularly engaged in the business of assembling, evaluating,
10 and dispersing information concerning consumers for the purpose of furnishing
11 “consumer reports,” as defined in § 1681a(d) of the Act, to third parties.
12 Defendants Confi-Chek Investigations, Peoplefinders.com,
13 PublicRecordsNOW.com, PrivateEye.com, Veromi.net, and Advanced
14 Background Checks, can be served with process by serving Confi-Chek, Inc.’s
15 agent for the service of process Robert S. Miller at 1821 Q St. Sacramento, CA
16 95811-6718, or wherever he may be found.
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22 20. Subject to permission by the Court, Plaintiffs reserve the right to amend
23 this Complaint to include any additional subsidiaries or affiliates uncovered during
24 discovery in this case, which appears likely, given the Plaintiffs’ pre-filing
25 difficulty in mapping out the Defendants ownership structure, much less
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1 ascertaining whomever else may have purchased, subscribed to, or been given the
2 Confi-Chek, Inc., inaccurate database as their source of background information.

3 4 **IV. FACTUAL ALLEGATIONS**

5 21. About one in three Americans has a criminal record of some kind.
6 Eighty-seven percent of employers, 80 percent of landlords, and 66 percent of
7 colleges screen for criminal records. Background checking has become an
8 intractable barrier to the fundamental needs of life for huge numbers of people with
9 criminal records and has become a significant cause of poverty in this country, a
10 phenomenon known as collateral consequences.

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13 22. To alleviate this burden, most states expanded their expungement or
14 sealing laws between 2009 and the present. For instance, Texas passed its own such
15 protective provisions in 2013, which is today codified in Texas Business and
16 Commerce Code §§ 109.001–.007. These state laws, of course, provide additional
17 remedies and protections to those found in the federal Fair Credit Reporting Act
18 (15 U.S.C. § 1681 et seq), which has long forbidden the publication and reporting
19 of expunged or sealed records. Despite the efforts of Congress and various state
20 legislatures, however, the commercial screening industry’s continued publication
21 and reporting of expunged cases threatens to undermine the whole strategy of
22 broadening expungement as a remedy for the harm of collateral consequences.
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26 23. Moreover, the proliferation of background check companies,
27 numbering in the hundreds and all charging subscription or access fees, creates
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1 insurmountable logistical and financial obstacles to anyone wanting to insure his
2 or her expunged criminal record was, in fact, removed from publication by the
3 universe of online businesses operating in this field. First, someone would need to
4 locate every reporting site, which is practically impossible and, second, pay to join
5 every site and then negotiate the removal of any wrongful publication of expunged
6 or sealed records found, on a site-by-site basis. More difficult still, a number of
7 background reporting companies, such as the Defendants in this case, employ
8 multiple online “storefronts,” each branded with a different name but all using the
9 same employees and database. By this method, they attempt to confuse clients and
10 avoid any and all regulation by disclaiming that they are governed by the FCRA at
11 all. Needless to say, but the only reason not to operate openly as a legitimate,
12 regulated background reporting company is to save the expense and effort required
13 to provide accurate and legally permissible background information. As a result of
14 this “Wild West” situation in the background screening industry, expunged records
15 can be, and are, available for anyone to view for months or even years while,
16 simulatneously, remaining unknown and undiscoverable to the individuals reported
17 upon.
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24 ***A. The Defendants Practice as a Consumer Reporting Agency and Furnisher***
25 ***of Consumer Reports for Employment Purposes.***

26 24. The Defendants operate background investigation websites that allow
27 users to search for consumers based on several categories, including name, date of
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1 birth, and state of residence. Such reports may contain numerous items of
2 information, including but not limited to age, employer, current and previous
3 addresses, phone numbers, email addresses, arrest and conviction records, the
4 identity of relatives, property records, marriage and divorce records, social media
5 accounts, and lawsuit records.
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8 25. The Defendants allow consumers nationwide to request, for a fee, a
9 background report on virtually any person in the United States. In response to a
10 request, the Defendants obtain information from various sources and assemble it
11 into detailed reports they provide to users. These reports contain private, sensitive
12 and often erroneous data, including but not limited to residential history, birth dates,
13 criminal records, tax records, DMV records, professional license records, civil
14 suits, and social media information.
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17 26. The Defendants maintain inadequate policy or procedures to insure
18 they accurately assemble and provide consumer reports in compliance with the
19 FCRA, especially in the matter of eliminating expunged, expuncted, or sealed
20 criminal records from their websites and reports. All of the Defendants' terms of
21 service pages expressly disclaim any and all responsibility for inaccuracies in their
22 respective data bases and reports, including criminal records, by purporting to foist
23 this duty on the government agencies and third party data providers who create or
24 provide this information to the Defendants.
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1 27. Instead, the Defendants seek to shield their non-compliant reporting
2 behind a self-serving claim that none of them are consumer reporting agencies, that
3 they do not sell consumer reports, and that they are not subject to the FCRA.
4

5 28. But what the Defendants really provide is highly sensitive personal,
6 legal and financial information regarding individuals. The information is the same
7 information that is provided in consumer reports by recognized consumer reporting
8 agencies and the information in the Defendants' reports are compiled using the
9 same data sources as the major consumer reporting agencies reports.
10

11 29. Moreover, the Defendants' customers are in no way prevented from
12 using these reports for the same purposes as users of other consumer reports — to
13 make decisions regarding employment, housing, and credit worthiness, among
14 other things.
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17 30. For the reasons above, and at all times pertinent hereto, the
18 Defendants were consumer reporting agencies ("CRA"), defined by section
19 1681a(f) of the FCRA as follows: "The term "consumer reporting agency" means
20 any person which, for monetary fees, dues, or on a cooperative nonprofit basis,
21 regularly engages in whole or in part in the practice of assembling or evaluating
22 consumer credit information or other information on consumers for the purpose of
23 furnishing consumer reports to third parties, and which uses any means or facility
24 of interstate commerce for the purpose of preparing or furnishing consumer."
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1 31. The Defendants obtain distilled and incomplete public record
2 information, including criminal record history, from third party databases and
3 courthouses and maintain such data in consumer files that they create and assemble.
4 As a CRA, the Defendants are also required to follow reasonable procedures to
5 assure maximum possible accuracy of the information concerning the individual
6 about whom the report relates, per 15 U.S.C. § 1681e(b).
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9 32. The Defendants do not, however, maintain strict procedures designed
10 to ensure that such information is complete and up to date, nor do they utilize
11 reasonable procedures designed to assure maximum possible accuracy. Based upon
12 a common policy and practice, the Defendants regularly and illegally publish and
13 report criminal records that have been expunged, expuncted or sealed by court
14 order.
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17 33. The Defendants' practices not only violate the FCRA as a matter of
18 law, the practices exact serious consequences on consumer job applicants and
19 interstate commerce. Consumers who have attempted to obtain the deletion of
20 negative background history are prejudiced in their ability to adequately determine
21 whether the information is being accurately published or reported.
22

23
24 34. Despite their duties to maintain strict procedures to assure that
25 criminal record information is complete and up to date, and to utilize procedures
26 designed to assure maximum possible accuracy of the criminal record information
27 that they publish and/or sell to the public, the Defendants have nonetheless
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1 deliberately, willfully, intentionally, recklessly and negligently adopted a policy
2 and practice that disregards these duties, in violation of the FCRA.

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4 **B. *The Defendants Published Criminal Records Under Texas Law***

5 35. Based on the same facts that triggered the FCRA compliance
6 requirements above, the Defendants also fall squarely within the ambit of Chapter
7 109 of the Texas Business and Commerce Code.

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9 36. In Texas, when an order of expunction is final, “the release,
10 maintenance, dissemination, or use of the expunged records for any purpose is
11 prohibited,” and “the person arrested may deny the occurrence of the arrest and the
12 existence of the expunction order.” TEX. CODE CRIM. PROC. art. 55.03.

13
14 37. Chapter 109 of the Texas Business and Commerce Code governs
15 business entities that are engaged in publication of certain criminal record
16 information. Tex. Bus. & Comm. Code §§ 109.001–.007. Chapter 109 applies to a
17 business entity that “publishes” criminal record information and that charges “a fee
18 or other consideration to correct or modify criminal record information.” TEX. BUS.
19 & COMM. CODE § 109.002(a)(1).

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21
22 38. By posting the information on their websites, the Defendants made
23 Plaintiffs’ criminal record information available for inspection by anyone with
24 access to the website; thus, “publishing” such records under Texas law, which
25 defines “publishing” very broadly, requiring only that a background investigation
26 website or company “communicate or make information available to another
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1 person in writing or by means of telecommunications and includes communicating
2 information on a computer bulletin board or similar system.” TEX. BUS. & COMM.
3 CODE § 109.001(4).
4

5 39. By charging, for example, \$29.95 for a single report or \$19.95 per
6 month for a subscription (and these prices vary between the Defendants depending
7 on special offers, etc.) — and by making these fees or consideration mandatory for
8 anyone wanting to access their own personal criminal records as part of the
9 correction or modification process — the Defendants charge “a fee or other
10 consideration to correct or modify criminal record information” under Texas law.
11

12 40. Moreover, the Defendants’ websites all contain a trap that ironically
13 also constitutes “other consideration” under the law. Before anyone may pay for
14 and create an account with the Defendants to ascertain whether or not their
15 expunged or sealed records are being unlawfully published, they must agree to
16 waive any right to pursue a trial by jury or class action. Foregoing these valuable
17 rights also constitutes a form of consideration in this case.
18

19 41. Next, a business entity may not publish criminal records if it has
20 knowledge or has received notice that an order of expunction has been issued under
21 article 55.03 Texas Code of Criminal Procedure. The Defendants received notice
22 of expunction for each Plaintiff from both the Texas Department of Public Safety
23 and from Plaintiffs themselves.
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1 42. A business entity that publishes information in violation of section
2 109.005 is liable to the individual who is the subject of the information in an amount
3 not to exceed \$500 for each separate violation, and in the case of a continuing
4 violation, an amount not to exceed \$500 for each subsequent day on which the
5 violation occurs. An individual who prevails in an action under section 109.005 is
6 also entitled to recover court costs and reasonable attorney's fees. TEX. BUS. &
7 COMM. CODE § 109.005(d).

10 **C. *The Experience Of Representative Plaintiffs***

11 43. The Representative Plaintiffs share nearly identical underlying
12 damages in this case. Much like the vast majority of Americans employ a criminal
13 defense attorney to handle an expungement, for approximately \$500 each, Plaintiffs
14 all hired the same online legal assistance service to expunge certain criminal
15 records related to past offenses qualifying for expungement or sealing under Texas
16 law. In each case, Plaintiffs — much like anyone nationwide seeking to expunge,
17 expunct, or seal criminal records in an American court or tribunal — also paid
18 several hundred dollars in court costs, fees, and related expenses to successfully
19 expunge or seal their records and received an Expungement Order from state court.

20 44. Similarly, Plaintiffs all paid an additional \$100 to personally notify
21 the universe of background check companies, including Defendants, that they must
22 remove the expunged, expuncted or sealed records from their database. In other
23 words, all Plaintiffs suffered similar, if not identical, economic damages when the
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1 Defendants both deprived them of the benefit of what they paid to obtain and what
2 they paid to make sure the Defendants were aware of their duty under law.

3
4 45. Next, copies of the Plaintiffs' Expungement Orders were served on
5 appropriate state agencies and law enforcement offices who promptly removed and
6 expunged all records and related files from state-run databases. These expunged
7 Texas criminal charges were eliminated from the Texas Department of Public
8 Safety database that was provided to bulk purchasers, including the Defendants.

9
10 46. According to the Texas DPS website, the Defendants have not
11 purchased a new criminal history database since September 6, 2010, although they
12 continue to pay to receive the monthly files containing all of the expunction and
13 nondisclosures granted each month in Texas. By regularly purchasing this database
14 a company can ensure they stay in compliance because the Texas DPS removes all
15 criminal records that have been sealed or expunged when providing the criminal
16 records database. Almost all other background reporting company on the Texas
17 DPS purchaser list bought updated data sets in 2018 and none are anywhere near
18 eight years out-of-date, like the Defendants.

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22 47. Moreover, Texas DPS records show that the Defendants did receive
23 proper notice from Texas DPS that Plaintiffs' relevant criminal records had been
24 expunged and requiring the Defendants to cease any and all publication of those
25 records.
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1 48. Likewise, Plaintiffs, through their legal assistance service, provided
2 proper notice to over a hundred commercial background reporting services,
3 including the Defendants (*See* sample notice, attached as Exhibit A to this
4 Complaint). The online mailing service used on behalf of Plaintiffs shows
5 significant receipt of this notice by the Defendants.
6

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8 49. Despite the repeated efforts of both the Plaintiffs and the State of
9 Texas, however, the expunged criminal records for each and every Plaintiff
10 continue to be published and available to the public on the Defendants' websites,
11 at least as of the filing date for this Original Complaint.
12

13 50. As for the removal from public view of the expunged charges from
14 state-run databases, any preparer of a background check that maintained strict
15 procedures designed to insure complete and up to date information would have been
16 aware that it was no longer appropriate to report the expunged charges. Frankly,
17 even a preparer using less than strict procedures would have caught these
18 publication and reporting problems, but the Defendants clearly were not and are
19 not even doing minimal verification or record cleanup.
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22 51. Thus, the Defendants published and possibly reported Plaintiffs'
23 expunged criminal records long after they had been hidden from public view and
24 then eliminated from relevant state-run databases. Clearly, the Defendants failed or
25 refused to search for updated public record information on Plaintiffs' expunged
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1 criminal charges or employ other best practices to avoid publication of erroneous
2 consumer data.

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4 52. At all times pertinent hereto, the Defendants were acting by and
5 through their agents, servants and/or employees who were acting within the course
6 and scope of their agency or employment, and under the direct supervision and
7 control of the Defendants herein.

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9 53. At all times pertinent hereto, the conduct of the Defendants, as well
10 as that of their agents, servants and/or employees, was intentional, willful, reckless,
11 and in grossly negligent disregard for federal and state laws and the rights of the
12 Plaintiffs herein. The Defendants knowingly carry out a business practice of
13 publishing and reporting criminal record information that is not current or up to
14 date, and without assuring that such information has not been expunged or had its
15 status changed. There is no reading or interpretation of section 1681e(b) of the
16 FCRA, Chapter 109 of the Texas Business and Commerce Code, or any provision
17 for that matter, which would justify, sanction, excuse or condone such a practice.

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21 **V. CLASS ACTION ALLEGATIONS**

22 54. Plaintiffs bring this action individually and as a class action for the
23 Defendants' violations of sections 1681(e)(b) of the FCRA and of Chapter 109 of
24 the Texas Business and Commerce Code, pursuant to Rules 23(a) and 23(b) of the
25 Federal Rules of Civil Procedure, on behalf of the following Classes:
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1 i) **FCRA CLASS:** *All natural persons residing in the United*
2 *States whose expunged, expuncted, or sealed criminal records*
3 *were published after the Defendants received notice that they*
4 *were so expunged, expuncted or sealed within 2 years of the*
5 *filing of this complaint; and,*

6
7 ii) **TEXAS BUSINESS and COMMERCE CODE CLASS:** *All*
8 *natural persons who received an expunction from a Texas*
9 *court or whose criminal records were sealed by a Texas court*
10 *and whose expunged, expuncted, or sealed criminal records*
11 *were published after the Defendants received notice that they*
12 *were so expunged, expuncted, or sealed within 4 years of the*
13 *filing of this complaint.*

14
15 55. Each Class is so numerous that joinder of all members is
16 impracticable. Although the precise number of Class members is known only to the
17 Defendants, Plaintiffs aver upon information and belief that each Class numbers in
18 the thousands. The Defendants publish and sell standardized criminal history
19 record information to thousands of individuals and businesses throughout the
20 country.
21

22
23 56. There are questions of law and fact common to the Classes that
24 predominate over any questions affecting only individual Class members. The
25 principal questions include (a) whether the Defendants, by employing a policy and
26 practice of publishing and disclosing expunged criminal record histories, willfully
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1 and negligently violated FCRA section 1681e(b) by failing to follow reasonable
2 procedures to assure maximum possible accuracy of the information concerning the
3 individual about whom the report relates; and (b) whether the Defendants violated
4 Chapter 109 of the Texas Business and Commerce Code for the same reasons.
5

6 57. Plaintiffs' claims are typical of the claims of each Class, which all
7 arise from the same operative facts and are based on the same legal theories.
8

9 58. Plaintiffs will fairly and adequately protect the interests of each Class.
10 Plaintiffs are committed to vigorously litigating this matter. Plaintiffs have secured
11 counsel experienced in handling consumer class actions. Neither Plaintiffs nor their
12 counsel have any interests which might cause them not to vigorously pursue this
13 claim.
14

15 59. This action should be maintained as a class action because the
16 prosecution of separate actions by individual members of the Classes would create
17 a risk of inconsistent or varying adjudications with respect to individual members
18 which would establish incompatible standards of conduct for the parties opposing
19 the Classes, as well as a risk of adjudications with respect to individual members
20 which would as a practical matter be dispositive of the interests of other members
21 not parties to the adjudications or substantially impair or impede their ability to
22 protect their interests.
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26 60. A class action is a superior method for the fair and efficient
27 adjudication of this controversy. The interest of Class members in individually
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1 controlling the prosecution of separate claims against Defendant is small as each
2 cause of action is subject to a statutory damages cap and there is no reason to award
3 different amounts per day among the Plaintiffs of those statutory damages that
4 accrue daily. Management of the Class claims is likely to present significantly
5 fewer difficulties than those presented in many individual claims. The identities of
6 the Class members may be obtained from the Defendants' records.
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9 VI. CAUSES OF ACTION

10 COUNT ONE – FCRA § 1681e(b)

11
12 61. Plaintiff incorporates the foregoing paragraphs as though the same
13 were set forth at length herein.

14
15 62. Pursuant to sections 1681n and 1681o, each of the Defendants is liable
16 for negligently and/or willfully violating the FCRA by failing to follow reasonable
17 procedures to assure maximum possible accuracy of the information concerning the
18 individual about whom a consumer report relates, in violation of section 1681e(b).

19
20 63. As a result of Defendants' conduct Plaintiffs suffered actual damages
21 in the form of out of pocket loss in the funds paid to complete the expungement,
22 expunction, or sealing of criminal records process only to have Defendants
23 continue to report obsolete and impermissible criminal information about them.

24
25 64. Plaintiffs seek actual, statutory and punitive damages in addition to
26 their costs and attorney fees pursuant to 15 U.S.C. §1681n.
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1 **COUNT TWO – TEX. BUS. & COM. CODE ANN. §§ 109.001–.007**

2 65. Plaintiffs incorporate the foregoing paragraphs as though the same
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4 were set forth at length herein.

5 66. Pursuant to sections 109.001—.007, each of the Defendants are liable
6
7 for failing to remove Plaintiffs’ expunged criminal records from their websites and
8 reports after being provided notice.

9 67. The Plaintiffs are entitled to a penalty of up to \$500 for each separate
10
11 violation. Each of the Defendants has engaged, and is engaging, in a continuing
12 violation, so a separate penalty of up to \$500 per violation is owed for each day on
13 which the violation occurred TEX. BUS. & COMM. CODE § 109.005(b).

14 68. The Plaintiffs are entitled to their attorneys’ fees and costs related to
15
16 their claim for penalties under Texas Business and Commerce Code Chapter 109.
17 TEX. BUS. & COMM. CODE § 109.005(d).

18 **COUNT THREE - INJUNCTIVE RELIEF UNDER TEXAS LAW**

19 69. The Plaintiffs request that the Court enter a temporary and permanent
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21 injunction ordering the Defendants to comply with Texas Business and Commerce
22 Code Chapter 109 by (1) immediately removing all information regarding any
23 criminal record information related to the Plaintiffs or any class members that has
24 been expunged by a Texas court from their databases, and (2) not publishing any
25 criminal record information that has been expunged by a Texas court. TEX. BUS.
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1 & COMM. CODE § 109.005(c) (“In an action brought under this section, the court
2 may grant injunctive relief to prevent or restrain a violation of this section.”).

3
4 70. The Plaintiffs are entitled to their attorneys’ fees and costs related to
5 seeking and obtaining injunctive relief. TEX. BUS. & COMM. CODE § 109.005(d).

6 **VII. JURY TRIAL DEMAND**

7
8 71. Plaintiffs demand trial by jury on all issues so triable.

9 **VIII. PRAYER FOR RELIEF**

10 72. WHEREFORE, Plaintiffs seek relief against the Defendants as
11 follows:

12
13
14 (a) That an order be entered certifying the proposed Classes under Rule 23 of
15 the Federal Rules of Civil Procedure and appointing Plaintiffs and their counsel
16 to represent the Classes;

17 (b) That judgment be entered against the Defendants for statutory damages in
18 the amount of not less than \$100 and not more than \$1,000 per violation per
19 Class member, pursuant to 15 U.S.C. § 1681n(a);

20 (c) That judgment be entered against the Defendants for punitive damages
21 pursuant to 15 U.S.C. § 1681n(a)(2);

22 (d) That judgement be entered against the Defendants for statutory damages in
23 the amount of not more than \$500 per violation per Class member and, in the
24 case of a continuing violation, an amount not to exceed \$500 for each
25 subsequent day on which such violation(s) occurred, pursuant to Chapter 109
26 of the Texas Business and Commerce Code;

27 (e) That the Court enter a temporary injunction, and on final judgment a
28 permanent injunction, prohibiting the Defendants from publishing criminal
record information that has been expunged by a Texas court.

- 1 (f) That judgment be entered in favor of Plaintiffs for actual damages related to
- 2 obtaining the expungement, expunction or sealing of criminal records;
- 3 (g) That the Court award costs and reasonable attorney’s fees pursuant to 15
- 4 U.S.C. §1681n and §1681o; and
- 5 (h) That the Court grant such other and further relief as may be just and proper.

6 Dated this 16th day of July, 2018.

7 Respectfully Submitted,

8 By: /s/Stephanie Tatar

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ATTORNEYS FOR PLAINTIFFS

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

David Garza, Naser Alzer, Margarita Hernandez, Kimberly Kennedy, Amandeep Singh, Samah Haider, on behalf of themselves and all others similarly situated

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Stephanie R. Tatar, Esq., Tatar Law Firm APC, 3500 West Olive Ave., Suite 300, Burbank, CA 91505, 323-744-1146, stephanie@thetatarlawfirm.com

DEFENDANTS

Confli-Chek, Inc., a holding company for Confi Chek Investigations, Peoplefinders.com, Enformion, Inc., PublicRecordsNOW.com, PrivateEye.com, Veromi.net, and ADvanced Background Checks

County of Residence of First Listed Defendant Sacramento (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. § 1681 et seq

Brief description of cause: Violation of the Fair Credit Reporting Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 07/16/2018 SIGNATURE OF ATTORNEY OF RECORD s/Stephanie R. Tatar

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Case 2:18-cv-01968-KJM-EFB Document 1-1 Filed 07/16/18 Page 2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Confi-Check, Subsidiaries Unlawfully Publish Consumers' Sealed Criminal Records](#)
