

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division**

JOHN SMITH, STEPHEN BYNUM and)
EUGENE FLOWERS, individually)
and as representatives of the Classes,)

Plaintiff,)

Case No. _____

v.)

INNOVATIVE ENTERPRISES, INC.,)

Defendant.)

CLASS ACTION COMPLAINT

Plaintiffs John Smith, Stephen Bynum and Eugene Flowers (“Plaintiffs”), by and through their attorneys, and on behalf of themselves and the consumer Class set forth below, bring the following class action Complaint against Innovative Enterprises, Inc. (“Innovative” or “Defendant”), pursuant to the federal Fair Credit Reporting Act (“FCRA”).

INTRODUCTION

1. This action is brought under the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681a–x. The FCRA imposes several important requirements for credit reporting agencies (“CRAs”), like Defendant, that sell employee and job applicant background checks and consumer reports.

2. Defendant is a CRA that sells reports to other CRAs, who in turn sell that information to employers. Defendant sold reports on Plaintiff Bynum to non-party CRA Checkr, Inc., who in turn sold reports to his prospective employer, Uber, Inc. Defendant sold a report on Plaintiff Smith to non-party CRA A-Check, Inc., who in turn sold a report to Plaintiff Smith’s prospective employer, Ricoh Logistics Corporation. Uber, Ricoh Logistics Corporation, and

other employers refused to hire Plaintiffs and other individuals based in whole or in part on the contents of Defendant's consumer reports.

3. As part of their hiring processes, Plaintiffs' prospective employers use background reports which include information sourced from Defendant to make employment decisions. The reports Defendant sells to CRAs who in turn sell reports to employers, fall under the FCRA's umbrella, and impose upon Defendant multiple, easy-to-follow requirements when it provides reports for employment purposes.

4. In the employment context, providers of consumer background reports like Defendant must abide by specific mandates. For example, in the employment context, the FCRA limits the information that can be included in reports for jobs, like the ones for which Plaintiffs applied, that will pay less than \$75,000 per year. Those reports may contain entries of criminal information that predate the report by more than seven years, but only criminal convictions. All other criminal history, such as arrests, dismissed charges, and expungements, must be excluded.

5. Defendant is informed of the necessary rigors FCRA compliance imposes, as there are numerous sources from which companies can obtain guidance on the workings of the FCRA in the employment context.

6. Plaintiffs bring nationwide class claims against Defendant under 15 U.S.C. § 1681c(a) because Defendant's reports included dismissed criminal charges that predate the reports by more than seven years. That information should have been excluded from Plaintiffs' reports because the FCRA prohibits including information about criminal records other than convictions which are older than seven years.

7. Finally, Plaintiffs bring nationwide class claims against Defendant under 15 U.S.C. § 1681g, because it fails to provide consumers with copies of their reports upon request.

That Defendant refuses to provide consumers with their files makes it more difficult for consumers to ensure that information reported about them is accurate, and makes problems like the ones described above more likely to occur.

THE PARTIES

8. Plaintiff John Smith is an adult resident of Lawrenceville, Georgia.

9. Plaintiff Stephen Bynum is an adult resident of Delaware, Ohio.

10. Plaintiff Eugene Flowers is an adult resident of Santa Maria, California.

11. Defendant Innovative is a Virginia corporation with its principal place of business located at 11824 Fishing Point Dr, Suite B, Newport News, VA.

12. Innovative is a CRA 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, including the Internet and phones, to prepare and furnish its reports. Innovative provides these reports to other CRAs, who in turn provide them 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.

JURISDICTION AND VENUE

13. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1681p.

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b). Defendant resides and is headquartered in this District.

STATUTORY BACKGROUND

15. The FCRA was enacted to ensure that CRAs 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.

16. 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 CRA 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).

17. Additionally, 15 U.S.C. § 1681e(b) requires CRAs to follow reasonable procedures to ensure the maximum possible accuracy of the information they report. As discussed below, Defendant routinely violates the FCRA by failing to follow reasonable procedures to ensure the maximum possible accuracy of the information it reports.

18. 15 U.S.C. § 1681g requires CRAs to, upon request, provide consumers with copies of their files. Defendant violates this section by never responding to requests made pursuant to 15 U.S.C. § 1681g.

DEFENDANT IS A CONSUMER REPORTING AGENCY

19. The FCRA defines a “Consumer Reporting Agency” as “any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any

means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.” 15 U.S.C. § 1681a(f).

20. In turn, the FCRA defines a “consumer report” as “any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for...employment purposes.” 15 U.S.C. § 1681a(d)

21. Defendant is a consumer reporting agency because, in exchange for monetary fees, it assembles information on consumers which it compiles into reports which it sells to third parties. Specifically, it aggregates criminal and driving records of consumers into consumer reports which it sells to other consumer reporting agencies, knowing that those consumer reporting agencies will include this information on consumer reports which are being used for employment purposes. Defendant uses interstate commerce, including the internet, in providing these reports.

22. It is not simply the final report provided by a consumer reporting agency to a potential employer that is subject to the FCRA. The reports provided by Defendant to other consumer reporting agencies are themselves consumer reports, and Defendant is therefore subject to all of the provisions of the FCRA, including the provisions at issue in this case.

ALLEGATIONS RELATING TO PLAINTIFF SMITH

23. In the summer of 2014, Plaintiff Smith was seeking employment as a warehouse manager, which is a line of work he had been engaged in for approximately ten years.

24. Plaintiff Smith applied to Ricoh Logistics Corporation (“RicoH”) and was invited to interview for a position as a warehouse manager near Atlanta, Georgia. Plaintiff Smith would have made less than \$75,000 per year.

25. RicoH subsequently offered Plaintiff Smith a job, and Plaintiff Smith was provided with a start date.

26. As part of the application process, RicoH obtained a confidential background report regarding Plaintiff Smith (“Smith Background Report”) from a consumer reporting agency called A-Check.

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

28. The Smith Background Report includes information relating to dismissed charges that predate the report by more than seven years.

29. For example, twenty-one years ago, in 1996, when Plaintiff Smith was 18 years old, the Smith Background 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, the Smith Background Report included the dismissed felony count from 19 years ago on the report, and it included it in a manner that suggests Plaintiff Smith was found guilty of the felony charge.

30. Similarly, the Smith Background Report indicates that twenty years ago, in 1997, when Plaintiff Smith 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, the Smith Background Report includes the original felony charge, even though that charge was dismissed, and includes it on the same line as the “guilty” disposition, giving the false impression that Plaintiff Smith was convicted of this dismissed felony count.

31. Other sections of the Smith Background Report similarly include charges that were later dismissed, even where those charges pre-date the report by more than seven years. For example, seventeen years ago, in 2000, when Plaintiff Smith was 22 years old, he was charged with speeding, a misdemeanor. That charge, however, was amended to Improper Equipment: Speedometer, which is merely an “infraction” for which Plaintiff Smith paid a \$115 fine. Nonetheless, the Smith Background Report 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 Smith was convicted of the misdemeanor charge.

32. Based on the Smith Background Report, Plaintiff Smith brought suit against A-Check in December 2015. *See Smith v. A-Check*, Case No.5:16-cv-00174 (C.D. Cal).

33. In the course of discovery in that case, Plaintiff Smith learned in 2016 that A-Check received the outdated criminal information at issue in a report from Innovative. Prior to that time, Plaintiff Smith did not and could not have known that A-Check’s source of information was Innovative.

34. The inclusion of the outdated adverse information on Innovative’s report to A-Check was a textbook violation of 15 U.S.C § 1681c.

ALLEGATIONS RELATING TO PLAINTIFF BYNUM

35. In February 2016, Plaintiff Bynum applied to drive for Uber. Plaintiff Bynum would have made less than \$75,000 per year.

36. In connection with that application, Uber obtained a consumer report regarding Plaintiff Bynum from a consumer reporting agency called Checkr on March 1, 2016.

37. Checkr, in the course of its investigation of Plaintiff Bynum, purchased a consumer report regarding Plaintiff Bynum from Defendant on February 23, 2016.

38. Defendant's report on Plaintiff Bynum, like its report on Plaintiff Smith, includes adverse non-conviction information older than seven years.

39. Specifically, Defendant's report contained one criminal case from 1996 with no disposition, a dismissed felony charge from 2008, a dismissed traffic violation from 2008, and two infractions from 2008 with no dispositions.

40. The inclusion of all of this information was in violation of 15 U.S.C. § 1681c because it was more than seven years old and was not about a conviction for a crime.

41. On April 7, 2016, Plaintiff Bynum sent Defendant a request for his consumer file pursuant to 15 U.S.C. § 1681g. Defendant did not provide Plaintiff Bynum with a copy of his file.

42. Defendant never provides consumers with a copy of their consumer file upon request, in violation of 15 U.S.C. § 1681g.

ALLEGATIONS RELATING TO PLAINTIFF FLOWERS

43. In November 2015, Plaintiff Flowers applied to drive for Uber. Plaintiff Flowers would have made less than \$75,000 per year.

44. In connection with that application, Uber obtained a consumer report from Checkr regarding Plaintiff Flowers on November 17, 2015.

45. Checkr, in the course of its investigation of Plaintiff Flowers, purchased a consumer report regarding Plaintiff Flowers from Defendant on November 8, 2015.

46. Defendant, in its report to Checkr, included seventeen criminal records belonging to a Eugene Flores in New Mexico.

47. These seventeen records were the entirety of Defendant's report.

48. Plaintiff Flower's name is Eugene Flowers, not Eugene Flores. He has never been known as Eugene Flores, and has never resided in New Mexico. None of the criminal records reported by Defendant belong to Plaintiff Flowers.

49. The procedure that allowed this misreporting is evident from the face of the report. On page one, when listing the parameters used in compiling the report, "Exact Name Match Only" is listed as "FALSE."

50. Reporting criminal records belonging to an individual with a different name than Plaintiff Flowers is manifestly unreasonable, and a violation of 15 U.S.C. § 1681e(b).

51. Many of the records reported, in addition to not belonging to Plaintiff Flowers, were also outdated adverse information.

52. The report includes two dismissed charges from 1998, a dismissed charge from 1991, numerous dismissed charges from 1993, and numerous charges older than seven years where the disposition is listed as "deferred" or "not provided by source."

53. The inclusion of all of this information was in violation of 15 U.S.C. § 1681c.

54. In April 2017, Plaintiff Flowers sent Defendant a letter informing it of its misreporting.

55. In response, Defendant sent a letter to Plaintiff Flowers dated April 12, 2017, in which Defendant denied it was a consumer reporting agency and stated it was forwarding Flowers' dispute to Checkr, but made no representation that it had fixed its misreporting.

ALLEGATIONS RELATING TO DEFENDANT'S PRACTICES

56. 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.*, 9 F. Supp. 3d 1188, 1192 (W.D. Wash. 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, Defendant routinely reports dismissed charges that antedate the report by more than seven years.

57. Defendant's practice of reporting dismissed charges older than seven years violates a fundamental protection afforded to consumers under the FCRA, is contrary to the unambiguous language of the statute, and is counter to longstanding judicial and regulatory guidance. *See, e.g.*, 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*, 557 F. Supp. 2d at 688 (holding FCRA prohibits even alluding to existence of unreportable adverse information).

58. As part of the process of assembling consumer reports, Defendant utilizes a variety of algorithms and filters to aggregate and consolidate information from a variety of sources.

59. 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.

60. Defendant, 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. *See In the Matter of General Information Services, Inc.*, No. 2015-CFPB-0028, ¶ 26-27 (Oct. 29, 2015) (noting that a CRA "possess[ed] certain proprietary software that identifies discrepancies in data across multiple traditional criminal history reports. For example, this software could identify a record that was previously suppressed from a report because it had been dismissed or expunged and prevent it from appearing on a future report").

61. 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, Defendant's practices and procedures fall far below industry standards and constitute recklessness.

62. Defendant 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.

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

64. Defendant knows that it is subject to the FCRA, and knows or should have known that its conduct violates the FCRA. It employs a "Chief Compliance Officer" who holds various certifications in FCRA compliance.¹

65. Defendant also knows that its conduct is illegal through its involvement in the National Association for Background Screening Professionals ("NAPBS"). At a NAPBS conference in 2012, presenters discussed that reporting dismissed charges was a FCRA compliance issue and discussed the lawsuit against General Information Services cited above for reporting dismissed charges. Members of Defendant's leadership team have longstanding involvement in and membership of NAPBS.²

66. Defendant knew its conduct was illegal but chose to continue to violate the law in order to avoid the costs of compliance.

¹ See <http://www.prnewswire.com/news-releases/innovative-enterprises-appoints-dean-carras-as-chief-compliance-officer-101353554.html>, accessed Dec. 6, 2016.

² See <http://www.knowthefacts.com/team>, accessed Dec. 6, 2016.

67. Defendant 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 or otherwise resolved in a way that did not result in a conviction.

68. As a result of Defendant's conduct, job applicants, such as Plaintiffs, appear to be worse job candidates than they would be if Defendant only reported information it is allowed to report under the law.

69. Defendant is also required to follow reasonable procedures to ensure maximum possible accuracy of its reports. 15 U.S.C. § 1681e(b).

70. In producing reports without requiring exact name matches, and in reporting Mr. Flores' records as if they belonged to Plaintiff Flowers, Defendant did not follow reasonable procedures to ensure maximum possible accuracy.

71. Defendant easily could have determined that the New Mexico records it reported as associated with Plaintiff Flowers did not, in fact, belong to him, because they plainly belong to someone with a different last name. Moreover, by purchasing access to an address history database, Defendant could have determined that Plaintiff Flowers had never resided in New Mexico.

72. Defendant is also required to provide consumers with copies of their files upon request. 15 U.S.C. § 1681g.

73. In adopting a policy of never responding to, much less complying with, valid requests pursuant to 15 U.S.C. § 1681g, Defendant is flouting the law and thwarting the ability of individuals to ensure that the information Defendant reports about them is accurate.

CLASS ACTION ALLEGATIONS

74. Plaintiffs assert Court I on behalf of the Outdated Information Class defined as follows:

All persons who were the subject of a background report prepared by Defendant and whose report contains one or more items of criminal information which are non-convictions, where such information antedates the report by more than seven years. The Class includes all individuals whose report was issued at any time dating from five years prior to the filing of this matter through the date of final judgment in this action.

75. Plaintiffs assert Court III on behalf of the 1681g Class defined as follows:

All persons who have sent Defendant requests for their consumer report or their consumer file. The Class includes all individuals whose requests were made at any time dating from five years prior to the filing of this matter through the date of final judgment in this action.

76. The Classes satisfy the requirements of Fed. R. Civ. P. 23(b)(3).

77. Numerosity: The Classes are so numerous that joinder of all class members is impracticable. Defendant is a large company that has run thousands of consumer reports for employment purposes in the past five years. It is impracticable to personally join hundreds or thousands of individuals throughout the United States into a single proceeding.

78. The Classes can be identified. Defendant maintains copies of consumer reports for at least two years after they are provided to end-users. The reports are maintained in text which can be electronically and/or manually searched to identify class members.

79. Typicality: Plaintiffs' claims are typical of the class members' claims. The FCRA violations committed by Defendant were committed pursuant to uniform policies and procedures, and Defendant treated Plaintiffs in the same manner as other class members in accordance with its standard policies and practices.

80. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Classes, and have retained counsel experienced in complex class action litigation. Counsel's biographies and experience are available at www.bergermontague.com and www.kellyandcrandall.com.

81. 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 without limitation:

- (a) Whether Defendant is a consumer reporting agency subject to the requirements of the FCRA;
- (b) Whether Defendant violated 15 U.S.C. § 1681g by refusing to provide consumers with copies of their files;
- (c) Whether Defendant violated the FCRA's prohibition on reporting dismissed charges that antedate the date the background report was prepared by more than seven years;
- (d) Whether Defendant's conduct was willful under FCRA; and
- (e) The appropriateness and proper measure of statutory damages.

82. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) 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 superior to other available methods for the fair and efficient adjudication of this litigation. Defendant's conduct described in this Complaint stems from common and uniform policies and practices, resulting in common violations of the FCRA. Members of the Classes do not have an interest in pursuing separate actions against Defendant, as the amount of each class member's individual claim is small compared to the expense and burden of individual prosecution, and Plaintiffs are unaware of any similar claims brought against Defendant by any members of the Classes on an individual basis. Class

certification will also obviate the need for unduly duplicative litigation that might result in inconsistent judgments concerning Defendant's practices. Moreover, management of this action as a class action will not present any likely difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all class members' claims in a single forum.

83. After a class has been certified, Plaintiffs will send notice to all members of the class by U.S. Mail, in a manner which complies with Fed. R. Civ. P. 23(c)(2). The notice will be provided to this Court for review and approval before being disseminated to the class members.

COUNT I

Violation of 15 U.S.C. § 1681c(a)

On behalf of all Plaintiffs and the Outdated Information Class

84. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

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

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

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

- a) The FCRA was enacted in 1970; Defendant has had decades to become compliant;

- b) Defendant is a 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) Defendant knew or had reason to know that its conduct was inconsistent with FTC guidance, case law, and the plain language of the Act;
- d) Defendant voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless; and
- e) Defendant's violations of the FCRA were repeated and systematic.

88. Plaintiffs and the Outdated Information Class 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 and punitive damages, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

89. Plaintiffs and the Outdated Information Class are further entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).

COUNT II
15 U.S.C. § 1681e(b)
On Behalf of Plaintiff Flowers Individually

90. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

91. Defendant failed to comply with 15 U.S.C. § 1681e(b) by failing to follow reasonable procedures to assure maximum possible accuracy of the criminal information it included in Defendant's reports to Checkr, including by reporting information without an exact name match.

- 92. The foregoing violations were negligent.
- 93. The foregoing violations were willful.

94. Defendant acted in negligent, deliberate and reckless disregard of its obligations and the rights of Plaintiff Flowers under 15 U.S.C. § 1681e(b). Defendant's negligent and willful conduct is reflected by, *inter alia*, the following:

- a. Defendant's report on Plaintiff Flowers was wrong on its face – it included records for someone with a different name, in a different state;
- b. The FCRA was enacted in 1970; Defendant has had over 40 years to become compliant;
- c. Defendant's conduct is inconsistent with the FTC's longstanding regulatory guidance, judicial interpretation, and the plain language of the statute;
- d. Defendant knew or had reason to know that Defendant's conduct violated the FCRA;
- e. By adopting such a policy, Defendant voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless.

95. Plaintiff Flowers is entitled to actual damages and statutory damages of not less than \$100 and not more than \$1,000 and punitive damages, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

96. Plaintiff Flowers is further entitled to recover his costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).

COUNT III
15 U.S.C. § 1681g
On Behalf of Plaintiff Bynum and the 1681g Class

97. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

98. Defendant failed to produce Plaintiff Bynum's file, despite Plaintiff Bynum's valid request pursuant to § 1681g.

99. Defendant acted in negligent, deliberate and reckless disregard of its obligations and the rights of Plaintiff and class members under 15 U.S.C. § 1681g. Defendant's negligent and willful conduct is reflected by, *inter alia*, the following:

- a) Section 1681g is very simple – Defendant must provide copies of the files it has on consumers upon request. Defendant's complete and systematic failure to do so must be willful;
- b) The FCRA was enacted in 1970; Defendant has had over 40 years to become compliant;
- c) Defendant's conduct is inconsistent with the FTC's longstanding regulatory guidance, judicial interpretation, and the plain language of the statute;
- d) Defendant knew or had reason to know that Defendant's conduct violated the FCRA;
- e) By adopting such a policy, Defendant voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless.

100. Plaintiff Bynum and the 1681g Class 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, and punitive damages pursuant to 15 U.S.C. § 1681n(a)(1)(A).

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

PRAYER FOR RELIEF

102. WHEREFORE, Plaintiffs, on behalf of themselves and the Classes, pray for relief as follows:

- (a) Determining that this action may proceed as a class action under Fed. R. Civ. P. 23;
- (b) Designating Plaintiffs as Class Representatives and designating Plaintiffs' counsel as counsel for the Classes;
- (c) Issuing proper notice to the Classes at Defendant's expense;
- (d) Declaring that Defendant violated the FCRA;
- (e) Declaring that Defendant acted willfully, in knowing or reckless disregard of Plaintiffs' rights and its obligations under the FCRA;
- (f) Awarding statutory damages and punitive damages as provided by the FCRA;
- (g) Awarding reasonable attorneys' fees and costs as provided by the FCRA;
- (h) Granting other and further relief, in law or equity, as this Court may deem appropriate and just.

TRIAL BY JURY IS DEMANDED.

Respectfully submitted,

JOHN SMITH, STEPHEN BYNUM and
EUGENE FLOWERS, Individually and as a
Representative of the Classes

By: /s/ Kristi C. Kelly
Counsel

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Counsel for Plaintiffs and the Class

JS 44 (Rev. 12/12)

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

John Smith, Stephen Bynum and Eugene Flowers, individually and as a representative of the classes

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Kristi C. Kelly & Andrew J. Guzzo/ Kelly & Crandall, PLC
3925 Chain Bridge Road, Ste. 202, Fairfax, VA 22030
(703) 424-7570

DEFENDANTS

Innovative Enterprises, Inc.

County of Residence of First Listed Defendant Newport News
(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
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	TORFETURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS--Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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
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 6/30/17

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Innovative Enterprises Taking Heat for Allegedly Inaccurate Background Reports](#)
