

**UNITED STATE DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**JOSH TWARDOSKY, on behalf of
himself and all similarly-situated
individuals,**

Plaintiff,

v.

**WASTE MANAGEMENT, INC. OF
FLORIDA and WASTE
MANAGEMENT, INC.,**

Defendants.

CASE NO.: _____

NOTICE OF REMOVAL

Defendants Waste Management, Inc. of Florida and Waste Management Inc.¹ (“Defendants”) respectfully file this Notice of Removal of the above-captioned case from the Circuit Court of the Fifth Judicial Circuit in and for Hernando County, Florida (hereinafter “State Court”) to the United States Court of the Middle District of Florida, Tampa Division, pursuant to 28 U.S.C. §§ 1331, 1332(d), 1441(a) and (b), and 1446. In connection with this Notice of Removal, Defendants state as follows:

I. PLAINTIFF’S LAWSUIT

1. On August 26, 2019, Plaintiff Josh Twardosky (“Plaintiff”) initiated this action in the State Court by filing a Complaint against Defendant Waste Management Inc. of Florida. The State Court designated Plaintiff’s lawsuit as Case No. 2019-CA-971 (hereinafter “State

¹ Defendant Waste Management Inc. of Florida has no comma in its name.

Court Action”). On or about August 30, 2019, Plaintiff filed his First Amended Class Action Complaint and Demand for Jury Trial, adding Defendant Waste Management, Inc.

2. Pursuant to 28 U.S.C. § 1446(a), attached as **Exhibit A** are true and correct copies of “all process, pleadings and orders” that have been served upon Defendants in the State Court Action.

3. This lawsuit purports to arise out of the background check forms Defendants allegedly provided to Plaintiff and putative class members. The Amended Complaint purports to raise claims under the Fair Credit Reporting Act of 1970, as amended (“FCRA”), 15 U.S.C. § 1681 *et seq.* (See Exhibit A, First Amended Complaint.)

II. PROCEDURAL PREREQUISITES FOR REMOVAL

4. The Complaint, First Amended Class Action Complaint, and Summons were served on Defendants on September 6, 2019. Therefore, pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely filed “within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief....” 28 U.S.C. § 1446(b).

5. As required by 28 U.S.C. § 1446(d), a “Notice to State Court of Filing Notice of Removal” and a copy of this Notice of Removal, will be promptly filed with the State Court (and served on Plaintiff’s counsel) after the filing of this Notice of Removal. Attached as **Exhibit B** is a true and exact copy of the “Notice to State Court of Filing Notice of Removal” (without exhibits).

6. The State Court in which this action was commenced is within this Court's judicial district and division; therefore venue is proper for this removal. *See* 28 U.S.C. § 123(a)(1).

III. REMOVAL JURISDICTION

A. This Court Has Federal Question Jurisdiction

7. A district court's federal question jurisdiction extends to those cases in which a "well-plead complaint established either (1) that a federal law creates a cause of action or (2) that the plaintiff's right to relief necessarily depends on the resolution of a substantial question of federal law." *Franchise Tax Bd. v. Construction Laborers*, 463 U.S. 1, 27-28 (1983). The question of whether a claim arises under federal law must be determined by reference to the "well-pleaded complaint." *Id.* at 9-10.

8. Plaintiff presents federal questions to the Court by alleging violations of the FCRA, 15 U.S.C. § 1681b(b)(2), in his two causes of action (*See* Exhibit A, First Amended Complaint, ¶¶ 54-58 and 60-64.)

9. Therefore, this Court has original jurisdiction of this matter under the provisions of 28 U.S.C. § 1331 because the FCRA is a federal law, and Plaintiff's Amended Complaint contains no other causes of action.

B. This Court Has Jurisdiction Pursuant To the Class Action Fairness Act

10. This Court also has original jurisdiction over this action pursuant to the Class Action Fairness Act ("CAFA"). CAFA grants federal district courts original jurisdiction over class action lawsuits filed under federal or state law in which there are greater than 100 members of the class, and any member of a class of plaintiffs is a citizen of a state different

from any defendant, and the matter in controversy exceeds five million dollars (\$5,000,000), exclusive of interest and costs. 28 U.S.C. § 1332(d). CAFA authorizes removal of qualifying actions in accordance with 28 U.S.C. § 1446. This case meets each of CAFA's requirements for removal because, as is set forth more particularly below: (1) the proposed class contains at least 100 members; (2) there is diversity between at least one putative class member and one defendant; (3) the total amount in controversy exceeds \$5,000,000; and (4) the defendant is not a state official or other governmental entity.

1. Plaintiff's First Amended Complaint Is Pled as a Class Action With Over 100 Members.

11. Under CAFA, a "class action" means any civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by one or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B).

12. Plaintiff's Amended Complaint asserts that Plaintiff is attempting to represent employees and prospective employees subject to background check reports obtained by Defendants over the five years preceding the filing of the Complaint. (*See* Exhibit A, First Amended Complaint ¶ 44.)

13. CAFA provides that "the number of members of all proposed plaintiff classes in the aggregate [not be] less than 100." 28 U.S.C. § 1332(d)(5)(B). CAFA defines "class members" as those "persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action." 28 U.S.C. § 1332(d)(1)(D).

14. Here, Plaintiff specifically pleads that the proposed class "is comprised of at least thousands of members." (*See* Exhibit A, First Amended Complaint ¶ 45.)

15. Because Plaintiff pleads that his proposed class significantly exceeds one hundred (100) members, CAFA's numerosity requirement is satisfied for purposes of removal at this time. *See* 28 U.S.C. § 1332(d)(5)(B).

2. Plaintiff and Defendant Waste Management, Inc. Are Citizens Of Different States.

16. CAFA diversity jurisdiction exists if "any member of a class of plaintiffs is a citizen of a state different from any defendant." 28 U.S.C. § 1332(d)(2)(A).

17. For diversity purposes, a corporation "shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business." 28 U.S.C. §1332(c)(1). Plaintiff alleges that Defendant Waste Management, Inc. is a Delaware Corporation with a principal place of business located in Texas. (*See* Exhibit A, First Amended Complaint ¶ 14.) Defendant Waste Management, Inc. is thus not a governmental entity for CAFA purposes and is not a citizen of Florida.

18. Upon information and belief, Plaintiff is a citizen of Florida. (*See* Exhibit A, First Amended Complaint ¶ 12.)

19. For these reasons, the CAFA requirements for diversity jurisdiction are met because Plaintiff and Defendant Waste Management, Inc. are citizens of different states.

3. More Than \$5 Million Is Alleged To Be In Controversy.

20. CAFA requires the "matter in controversy" to exceed "the sum or value of \$5,000,000, exclusive of interest and costs." 28 U.S.C. § 1332(d)(2). The claims of the individual class members "shall be aggregated" to determine whether the matter in controversy exceeds this amount. *Id.*

21. Plaintiff has not alleged a specific amount in controversy in his Amended Complaint. In this circumstance, the defendant need only plead a “short and plain statement of the grounds for removal” and “the defendant's amount-in-controversy allegation should be accepted when not contested by the plaintiff or questioned by the court.” *Dart Cherokee Basin Op. Co., LLC v. Owens*, 574 U.S. 81, 135 S. Ct. 547, 553 (2014).

22. Here, Plaintiff seeks the certification of a nationwide class, covering employees and prospective employees who were the subject of a background check report obtained by Defendants in the five years preceding the filing of the Complaint. (*See* Exhibit A, First Amended Complaint ¶ 44.) Plaintiff pleads that the number of class members is “at least thousands of members.” (*Id.* ¶ 45.) Plaintiff also asserts that Defendant Waste Management, Inc. employs “approximately 43,000 individuals across the United States.” (*Id.* ¶ 2.) Plaintiff seeks statutory damages of up to \$1,000 per class member. (*Id.* ¶¶ 57, 63.) Plaintiff also seeks punitive damages and attorneys’ fees. (*Id.*) Punitive damages of four times the amount of statutory damages have been upheld as constitutional, depending on the circumstances. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003) (noting same). Although Plaintiff’s class definition will require intensive class member-by-class member individualized inquiries in order to determine membership (which Defendants further contend will ultimately not be feasible in this action), if Plaintiff’s proposed class only numbered 1,000 members (instead of *thousands*, or over *43,000*, the potential size alleged in the Amended Complaint), over five million dollars would be in controversy (*e.g.*, 1,000 putative class members x \$1,000

statutory damages per class member + quadruple multiple of punitive damages + at least \$1 in attorneys' fees = over \$5,000,000).²

23. Therefore, while Defendants deny Plaintiff's claims of wrongdoing and his request for relief, and further denies that class certification is appropriate, proper or allowable in this matter, and further contends that the certification of any class action would, among other things, violate Defendants' due process and other rights, the facial allegations in Plaintiff's Amended Complaint, when viewed in the light most favorable to Plaintiff, plead an amount in controversy in excess of the \$5 million jurisdictional minimum.

24. By filing the Notice of Removal, Defendants do not waive any objections they may have as to service, jurisdiction, venue, or any other defenses available at law, in equity or otherwise. Defendants intend no admission of fact or law by this Notice and expressly reserve all defenses and motions. Without limiting any of the foregoing, Defendants specifically further reserve the right to argue all available defenses and arguments as to Plaintiff's ability to sustain his claims in this Court, and all defenses and arguments with respect to the ascertainability of any putative class members, the impropriety of Plaintiff's proposed class definition, the impropriety of class certification and the amount and availability of the damages claimed.

IV. CONCLUSION

25. This action is removable to this Court because: (a) this Court has original jurisdiction over this case under 28 U.S.C. § 1331 ("federal question jurisdiction") and in the

² Defendants in no way concede that there is a certain number of members in the proposed class, nor that it is administratively feasible to identify such putative class members, nor that there are actually issues common to the putative class.

alternative jurisdiction under CAFA; (b) this Notice of Removal is filed within thirty days (30) after Defendants were served with the Complaint and Amended Complaint and (c) the State Court in which this action was commenced is within this Court's district and division.

WHEREFORE, Defendants respectfully remove this action from the State Court to this honorable Court.

Dated this 4th day of October, 2019.

Respectfully submitted,

LITTLER MENDELSON, P.C.
111 N. Orange Avenue, Suite 1750
Orlando, Florida 32801-2366
Telephone: (407) 393-2900
Facsimile: (407) 393-2929

BY: /s/ Nancy A. Johnson
Nancy A. Johnson
Fla. Bar No.: 597562
Email: najohnson@littler.com

William J. Simmons (*pro hac vice* application forthcoming)
PA #206860
Email: wsimmons@littler.com
LITTLER MENDELSON, P.C.
Three Parkway
1601 Cherry Street, Suite 1400
Philadelphia, PA 19102.1321
(t) 267.402.3047

Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of October, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and a correct copy of the foregoing has been furnished electronic mail to: Brandon J. Hill, Esq., WENZEL FENTON CABASSA, P.A., 1110 North Florida Ave., Suite 300, Tampa, Florida 33602, email: bhill@wfclaw.com; jcornell@wfclaw.com rcooke@wfclaw.com.

/s/ Nancy A. Johnson

Nancy A. Johnson

EXHIBIT A



New Search Collapse All


Case Number	Filed Date	County	Case Type	Status	Contested	Jury Trial
272019CA000971CAAXMX [19000971CAAXMX]	08/26/2019	HERNANDO	Circuit Civil 3-D	OPEN	No	Yes

Filing Date	Description	Active	Contested	Judgment Date
08/26/2019	DISCRIM EMPLOYMENT OR OTHER	YES	NO	-

Party Name	Party Type	Attorney	Bar ID
ANGELIADIS, GEORGE	JUDGE		
TWARDOSKY, JOSH	PLAINTIFF	HILL, BRANDON J	37061
WASTE MANAGEMENT INC OF FLORID	DEFENDANT		

Dockets

Page : 1					ALL
Image	Doc #	Action Date	Description	Pages	
	16	09/04/2019	SUMMONS ISSUED FOR: REGISTERED AGENT C/O WASTE MANAGEMENT INC	2	
	14	09/04/2019	Payment received: \$10.00 Receipt Number H 644377		
	13	09/04/2019	Assessment 2 Total Assessed \$10.00 Balance Remaining \$0.00		
	15	09/03/2019	SUMMONS ISSUED FOR: REGISTERED AGENT C/O WASTE MANAGEMENT INC (BLANK)	2	
	12	09/03/2019	Assessment 2 assessed at sum \$10.00		
	11	08/30/2019	AMENDED COMPLAINT/PETITION AND DEMAND FOR JURY TRIAL	14	
	10	08/28/2019	SUMMONS ISSUED FOR: REGISTERED AGENT C/O WASTE MANAGEMENT, INC. OF FLORIDA CT CORPORATION SYSTEM	2	
	5	08/27/2019	Payment received: \$410.00 Receipt Number H 643125		
	4	08/27/2019	Assessment 1 Total Assessed \$410.00 Balance Remaining \$0.00		
	2	08/27/2019	Judge: Assigned		
	9	08/26/2019	SUMMONS ISSUED REGISTERED AGENT C/O WASTE MANAGEMENT, INC. OF FLORIDA CT CORPORATION SYSTEM (BLANK)	2	
	8	08/26/2019	CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL	13	
	7	08/26/2019	COVER SHEET	3	

Image	Doc #	Action Date	Description	Pages
	6	08/26/2019	COVER SHEET	2
	3	08/26/2019	Assessment 1 assessed at sum \$410.00	
	1	08/26/2019	Case 272019CA000971CAAXMX Filed with Clerk on 8/26/2019	

Judge Assignment History ☐

Assigned Date	Withdraw Date	Judicial Officer	Type
08/27/2019	-	ANGELIADIS, GEORGE	

Court Events ☐

Event Date	Judge	Docket Type	Location	Prosecutor	Defendant Attorney
No records found.					

Financial Summary ☐

Financial Summary			
Assessment	Total: \$420.00	Paid to Date: \$420.00	Balance Due: \$0.00
Restitution	Total: \$0.00	Paid to Date: \$0.00	Balance Due: \$0.00

Financial Details					
Count	Assessment Due	Assessment Paid to Date	Restitution Due	Restitution Paid to Date	Last Payment Date
	\$420.00	\$420.00	\$0.00	\$0.00	-

Reopen History ☐

Reopen Date	Reopen Close Date	Reopen Reason
No records found.		



Doug Chorvat, Jr.

Hernando County Clerk of Court & Comptroller

UCN	FILE DATE	COUNTY	CASE TYPE	STATUS
272019CA000971CAAXMX [19000971CAAXMX]	08/26/2019	HERNANDO	Circuit Civil 3-D	OPEN

Name	Type	Name	Type
ANGELIADIS, GEORGE	JUDGE	WASTE MANAGEMENT INC OF FLORID	DEFENDANT
TWARDOSKY, JOSH	PLAINTIFF		

[New Search](#)

FORM 1.997. CIVIL COVER SHEET

The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

I. CASE STYLE

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR HERNANDO COUNTY, FLORIDA

Case No.: _____

Judge: _____

Josh Twardosky

Plaintiff

vs.

Waste Management Inc of Florida

Defendant

II. TYPE OF CASE

- | | |
|--|---|
| <ul style="list-style-type: none"><input type="checkbox"/> Condominium<input type="checkbox"/> Contracts and indebtedness<input type="checkbox"/> Eminent domain<input type="checkbox"/> Auto negligence<input type="checkbox"/> Negligence – other<ul style="list-style-type: none"><input type="checkbox"/> Business governance<input type="checkbox"/> Business torts<input type="checkbox"/> Environmental/Toxic tort<input type="checkbox"/> Third party indemnification<input type="checkbox"/> Construction defect<input type="checkbox"/> Mass tort<input type="checkbox"/> Negligent security<input type="checkbox"/> Nursing home negligence<input type="checkbox"/> Premises liability – commercial<input type="checkbox"/> Premises liability – residential<input type="checkbox"/> Products liability<input type="checkbox"/> Real Property/Mortgage foreclosure<ul style="list-style-type: none"><input type="checkbox"/> Commercial foreclosure \$0 - \$50,000<input type="checkbox"/> Commercial foreclosure \$50,001 - \$249,999<input type="checkbox"/> Commercial foreclosure \$250,000 or more<input type="checkbox"/> Homestead residential foreclosure \$0 – 50,000<input type="checkbox"/> Homestead residential foreclosure \$50,001 - \$249,999<input type="checkbox"/> Homestead residential foreclosure \$250,000 or more<input type="checkbox"/> Non-homestead residential foreclosure \$0 - \$50,000<input type="checkbox"/> Non-homestead residential foreclosure \$50,001 - \$249,999 | <ul style="list-style-type: none"><input type="checkbox"/> Non-homestead residential foreclosure \$250,00 or more<input type="checkbox"/> Other real property actions \$0 - \$50,000<input type="checkbox"/> Other real property actions \$50,001 - \$249,999<input type="checkbox"/> Other real property actions \$250,000 or more<input type="checkbox"/> Professional malpractice<ul style="list-style-type: none"><input type="checkbox"/> Malpractice – business<input type="checkbox"/> Malpractice – medical<input type="checkbox"/> Malpractice – other professional<input checked="" type="checkbox"/> Other<ul style="list-style-type: none"><input type="checkbox"/> Antitrust/Trade Regulation<input type="checkbox"/> Business Transaction<input type="checkbox"/> Circuit Civil - Not Applicable<input type="checkbox"/> Constitutional challenge-statute or ordinance<input type="checkbox"/> Constitutional challenge-proposed amendment<input type="checkbox"/> Corporate Trusts<input checked="" type="checkbox"/> Discrimination-employment or other<input type="checkbox"/> Insurance claims<input type="checkbox"/> Intellectual property<input type="checkbox"/> Libel/Slander<input type="checkbox"/> Shareholder derivative action<input type="checkbox"/> Securities litigation<input type="checkbox"/> Trade secrets<input type="checkbox"/> Trust litigation |
|--|---|

COMPLEX BUSINESS COURT

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes ☐ No ☒

III. REMEDIES SOUGHT (check all that apply):

- ☒ Monetary;
- ☒ Non-monetary declaratory or injunctive relief;
- ☒ Punitive

IV. NUMBER OF CAUSES OF ACTION: ()
(Specify)

2

V. IS THIS CASE A CLASS ACTION LAWSUIT?

- ☒ Yes
- ☐ No

VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- ☒ No
- ☐ Yes – If "yes" list all related cases by name, case number and court:

VII. IS JURY TRIAL DEMANDED IN COMPLAINT?

- ☒ Yes
- ☐ No

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature s/ Brandon J Hill FL Bar No.: 37061
Attorney or party

(Bar number, if attorney)

Brandon J Hill 08/26/2019
(Type or print name)

Date

CIVIL COVER SHEET

Form 1.997 The civil cover sheet and the information contained herein neither replaces nor supplement the filing and service of pleadings or other papers as required by law. This form shall be filed by the plaintiff or petitioner for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statute section 25.075. (See instructions for completion.)

I. CASE STYLE

In the Circuit Court of the Fifth Judicial Circuit for Hernando County, Florida

**JOSH TWARDOSKY, on behalf
of himself and all similarly situated
individuals,
Plaintiff,**

Case No.:

**v.
WASTE MANAGMENT, INC. OF
FLORIDA,
Defendant.**

- II. TYPE OF CASE (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an X in both the main category and subcategory boxes.

<input type="checkbox"/> Condominium	<input type="checkbox"/> Nonhomestead residential
<input type="checkbox"/> Contracts and indebtedness	Foreclosure \$50,001 - \$249,999
<input type="checkbox"/> Eminent domain	<input type="checkbox"/> Nonhomestead residential
<input type="checkbox"/> Auto negligence	Foreclosure \$250,000 or more
<input type="checkbox"/> Negligence – other	<input type="checkbox"/> Other real property actions \$0 –
<input type="checkbox"/> Business governance	\$50,000
<input type="checkbox"/> Business torts	<input type="checkbox"/> Other real property actions \$50,001 –
<input type="checkbox"/> Environmental/Toxic tort	\$249,999
<input type="checkbox"/> Third party indemnification	<input type="checkbox"/> Other real property actions \$250,000
<input type="checkbox"/> Construction defect	or more
<input type="checkbox"/> Mass tort	<input type="checkbox"/> Professional malpractice
<input type="checkbox"/> Negligent security	<input type="checkbox"/> Malpractice – business
<input type="checkbox"/> Nursing home negligence	<input type="checkbox"/> Malpractice – medical
<input type="checkbox"/> Premises liability – commercial	<input type="checkbox"/> Malpractice – other professional
<input type="checkbox"/> Premises liability – residential	<input type="checkbox"/> Other
<input type="checkbox"/> Products liability	<input type="checkbox"/> Antitrust / trade regulation
<input type="checkbox"/> Real property / Mortgage foreclosure	<input type="checkbox"/> Business transactions
<input type="checkbox"/> Commercial foreclosure \$0-	<input type="checkbox"/> Constitutional challenge – statute or
\$50,000	ordinance
<input type="checkbox"/> Commercial foreclosure \$50,001 -	<input type="checkbox"/> Constitutional challenge – proposed
\$249,999	amendment
<input type="checkbox"/> Commercial foreclosure	<input type="checkbox"/> Corporate trusts
\$250,000 or more	<input checked="" type="checkbox"/> Discrimination – employment or
<input type="checkbox"/> Homestead residential foreclosure	other
\$0 - \$50,000	<input type="checkbox"/> Insurance claims
<input type="checkbox"/> Homestead residential foreclosure	<input type="checkbox"/> Intellectual property
\$50,001 - \$249,999	<input type="checkbox"/> Libel / Slander
<input type="checkbox"/> Homestead residential foreclosure	<input type="checkbox"/> Shareholder derivative action
\$250,000 or more	<input type="checkbox"/> Securities litigation
<input type="checkbox"/> Nonhomestead residential	<input type="checkbox"/> Trade secrets
Foreclosure \$0 - \$50,000	<input type="checkbox"/> Trust litigation

☐ THIS CASE IS APPROPRIATE FOR ASSIGNMENT TO THE COMPLEX LITIGATION BUSINESS DIVISION. PLEASE SEE ATTACHED COMPLEX BUSINESS LITIGATION DIVISION ADDENDUM FORM.

III. REMEDIES SOUGHT (Check all that apply):

- ☒ Monetary;
☒ Non-monetary declaratory or injunctive relief;
☒ Punitive

IV. NUMBER OF CAUSES OF ACTION: [2]

(Specify) Violation of 15 U.S.C. § 1681b(b)(2)(A)(i) Failure to Make Proper Disclosure in Violation of FCRA and Failure to Obtain Proper Authorization in Violation of FCRA U/S/C/ § 1681b(b)(2)(A)(ii)

V. IS THIS CASE A CLASS ACTION LAWSUIT?

- ☒ Yes
☐ No

VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- ☒ No
☐ Yes If "yes", list all related cases by name, case number and court.

VII. IS JURY TRIAL DEMANDED IN COMPLAINT?

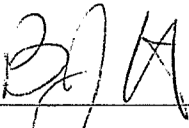
- ☒ Yes
☐ No

VIII. IS TRIAL EXPECTED TO LAST MORE THAN TEN (10) TRIAL DAYS (2 WEEKS)?

- ☐ Yes
☒ No

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief.

Signature



Attorney or Party

Brandon J. Hill

Type or Print Name

FL Bar # 0037061

(Bar # if attorney)

August 26, 2019

Date

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR HERNANDO COUNTY, FLORIDA
CIVIL DIVISION

JOSH TWARDOSKY, on behalf
of himself and all similarly situated
individuals,

Plaintiff,

Case No.:

v.

WASTE MANAGMENT, INC. OF
FLORIDA,

Defendant.

SUMMONS

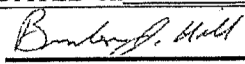
THE STATE OF FLORIDA:
To Each Sheriff of the State:

YOU ARE HEREBY COMMANDED to serve this Summons, a copy of the Complaint, in this
action on defendant:

Registered Agent
c/o Waste Management, Inc. of Florida
CT CORPORATION SYSTEM
1200 SOUTH PINE ISLAND ROAD
PLANTATION, FL 33324

Each defendant is required to serve written defenses to the complaint or petition on Brandon J. Hill, plaintiff's attorney, whose address is Wenzel Fenton Cabassa 1110 N. Florida Avenue, Suite 300, Tampa, Florida 33602 within 20¹ days after the service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

DATED on _____, 2019.

 Printed: Brandon J. Hill Attorney for Plaintiff Wenzel Fenton Cabassa 1110 N. Florida Avenue, Suite 300 Tampa, Florida 33602 Florida Bar No.:0037061	Doug Chorvat, Jr. As Clerk of the Court By: _____ As Deputy Clerk (352) 754-4201
--	--

¹ Except when suit is brought pursuant to section 768.28, Florida Statutes, if the State of Florida, one of its agencies, or one of its officials or employees sued in his or her official capacity is a defendant, the time to be inserted as to it is 40 days. When suit is brought pursuant to section 768.28, Florida Statutes, the time to be inserted is 30 days.

If you are a person with a disability who needs an accommodation, you are entitled, at no cost to you, to the provision of certain assistance. To request such an accommodation please contact the Office of Human Rights, by written or oral request, within seven days of the date but at least three (3) business days prior to the date the service is needed, at: 20 North Main Street, Brooksville, Florida 34601, Phone: (352) 754-4970, TDD: (352) 754-4120; if you are hearing or voice impaired, call 711.

IMPORTANT

A lawsuit has been filed against you. You have 20 calendar days after this summons is served on you to file a written response to the attached complaint with the clerk of this court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book). If you choose to file a written response yourself, at the same time you file your written response to the court you must also mail or take a copy of your written response to the "Plaintiff/Plaintiff's Attorney" named in the documents.

IMPORTANTE

Usted ha sido demandado legalmente. Tiene 20 días, contados a partir del recibo de esta notificación, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefónica no lo protegerá. Si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el número del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podría ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guía telefónica. Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, deberá usted enviar por correo o entregar una copia de su respuesta a la persona denominada abajo como "Plaintiff/Plaintiff's Attorney" (Demandante o Abogado del Demandante).

IMPORTANT

Des poursuites judiciaires ont été entreprises contre vous. Vous avez 20 jours consécutifs à partir de la date de l'assignation de cette citation pour déposer une réponse écrite à la plainte ci-jointe auprès de ce tribunal. Un simple coup de téléphone est insuffisant pour vous protéger. Vous êtes obligés de déposer votre réponse écrite, avec mention du numéro de dossier ci-dessus et du nom des parties nommées ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne déposez pas votre réponse écrite dans le délai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent être saisis par la suite, sans aucun préavis ultérieur du tribunal. Il y a d'autres obligations juridiques et vous pouvez requérir les services immédiats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez téléphoner à un service de référence d'avocats ou à un bureau d'assistance juridique (figurant à l'annuaire de téléphones). Si vous choisissez de déposer vous-même une réponse écrite, il vous faudra également, en même temps que cette formalité, faire parvenir ou expédier une copie de votre réponse écrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou à son avocat) nommé ci-dessous.

Filing # 94769528 E-Filed 08/26/2019 02:31:54 PM

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR HERNANDO COUNTY, FLORIDA
CIVIL DIVISION

JOSH TWARDOSKY, on behalf
of himself and all similarly situated
individuals,

Plaintiff,

Case No.: 2019-CA-971

v.

WASTE MANAGEMENT, INC. OF
FLORIDA,

Defendant.

SUMMONS

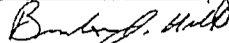
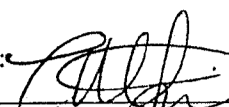
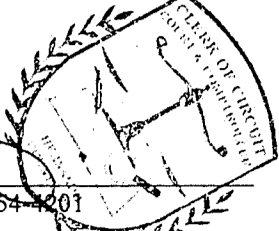
THE STATE OF FLORIDA:
To Each Sheriff of the State:

YOU ARE HEREBY COMMANDED to serve this Summons, a copy of the Complaint, in this action on defendant:

Registered Agent
c/o Waste Management, Inc. of Florida
CT CORPORATION SYSTEM
1200 SOUTH PINE ISLAND ROAD
PLANTATION, FL 33324

Each defendant is required to serve written defenses to the complaint or petition on Brandon J. Hill, plaintiff's attorney, whose address is Wenzel Fenton Cabassa 1110 N. Florida Avenue, Suite 300, Tampa, Florida 33602 within 20¹ days after the service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

DATED on August 28, 2019.

 Printed: Brandon J. Hill Attorney for Plaintiff Wenzel Fenton Cabassa 1110 N. Florida Avenue, Suite 300 Tampa, Florida 33602 Florida Bar No.:0037061	Doug Chorvat, Jr. As Clerk of the Court By:  As Deputy Clerk (352) 754-4201 
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¹ Except when suit is brought pursuant to section 768.28, Florida Statutes, if the State of Florida, one of its agencies, or one of its officials or employees sued in his or her official capacity is a defendant, the time to be inserted as to it is 40 days. When suit is brought pursuant to section 768.28, Florida Statutes, the time to be inserted is 30 days.

If you are a person with a disability who needs an accommodation, you are entitled, at no cost to you, to the provision of certain assistance. To request such an accommodation please contact the Office of Human Rights, by written or oral request, within seven days of the date but at least three (3) business days prior to the date the service is needed, at: 20 North Main Street, Brooksville, Florida 34601, Phone: (352) 754-4970, TDD: (352) 754-4120; if you are hearing or voice impaired, call 711.

IMPORTANT

A lawsuit has been filed against you. You have 20 calendar days after this summons is served on you to file a written response to the attached complaint with the clerk of this court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book). If you choose to file a written response yourself, at the same time you file your written response to the court you must also mail or take a copy of your written response to the "Plaintiff/Plaintiff's Attorney" named in the documents.

IMPORTANTE

Usted ha sido demandado legalmente. Tiene 20 días, contados a partir del recibo de esta notificación, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefónica no lo protegerá. Si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el número del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podría ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guía telefónica. Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, deberá usted enviar por correo o entregar una copia de su respuesta a la persona denominada abajo como "Plaintiff/Plaintiff's Attorney" (Demandante o Abogado del Demandante).

IMPORTANT

Des poursuites judiciaires ont été entreprises contre vous. Vous avez 20 jours consécutifs à partir de la date de l'assignation de cette citation pour déposer une réponse écrite à la plainte ci-jointe auprès de ce tribunal. Un simple coup de téléphone est insuffisant pour vous protéger. Vous êtes obligés de déposer votre réponse écrite, avec mention du numéro de dossier ci-dessus et du nom des parties nommées ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne déposez pas votre réponse écrite dans le délai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent être saisis par la suite, sans aucun préavis ultérieur du tribunal. Il y a d'autres obligations juridiques et vous pouvez requérir les services immédiats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez téléphoner à un service de référence d'avocats ou à un bureau d'assistance juridique (figurant à l'annuaire de téléphones). Si vous choisissez de déposer vous-même une réponse écrite, il vous faudra également, en même temps que cette formalité, faire parvenir ou expédier une copie de votre réponse écrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou à son avocat) nommé ci-dessous.

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IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR HERNANDO COUNTY, FLORIDA
CIVIL DIVISION

JOSH TWARDOSKY, on behalf
of himself and all similarly situated
individuals,

Plaintiff,

Case No.:

v.

WASTE MANAGMENT, INC. OF
FLORIDA,

Defendant.

_____ /

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff JOSH TWARDOSKY ("Plaintiff"), by and through undersigned counsel, and on behalf of the Putative Class set forth herein, as well as in the public interest, brings the following Class Action as of right against Defendant, WASTE MANAGEMENT INC OF FLORIDA, ("Defendant") under the Fair Credit Reporting Act of 1970, as amended ("FCRA"). 15 U.S.C. § 1681 *et seq.*

NATURE OF THE CASE

1. Plaintiff brings this action against Defendant for violations of the Fair Credit Reporting Act ("FCRA"). 15 U.S.C. §§ 1681a–1681x. The FCRA imposes several important requirements on employers that use a background checks as part of their hiring processes, which are designed to protect consumers like Plaintiff.

2. As part of its hiring processes, Defendant uses consumer reports (commonly known as background checks) to make employment decisions.

3. While the use of consumer report information for employment purposes is not per se unlawful, it is subject to strict disclosure and authorization requirements under the FCRA.

4. Defendant willfully violated these requirements in multiple ways, thereby systematically violating Plaintiff's rights and the rights of other Putative Class members.

5. Defendant violated 15 U.S.C. § 1681b(b)(2)(A)(i) by procuring consumer reports on Plaintiff and other Putative Class members for employment purposes, without first making the statutorily-mandated disclosures to them in the format required by the statute. Under this subsection of the FCRA, Defendant is required to disclose to its employees—in a document that consists solely of the disclosure—that it may obtain a consumer report on them for employment purposes. This disclosure must be made by employers prior to obtaining copies of employees', or prospective employees', consumers reports. *Id.* Defendant willfully violated this requirement by failing to provide Plaintiff and other Putative Class members with a copy of a separate document consisting solely of Defendant's disclosure, stating that Defendant may obtain a consumer report on any person for employment purposes. Defendant also violated this requirement by failing to provide this disclosure to Plaintiff and other Putative Class members *prior* to obtaining a copy of the person's consumer report. (Emphasis added). This practice violates long-standing regulatory guidance from the Federal Trade Commission ("FTC").

6. Further, Defendant violated 15 U.S.C. § 1681b(b)(2)(A)(ii) by obtaining consumer reports for Plaintiff and other Putative Class members without proper authorization, due to the fact that its disclosure forms fail to comply with the requirements of the FCRA.

7. In response to Defendant's willful violations of the FCRA, Plaintiff asserts two class claims under 15 U.S.C. §§ 1681b(b)(2)(A)(i)-(ii), on behalf of a "Improper Disclosure and Authorization Class," consisting of all of Defendant's employees and prospective employees in

the United States who were the subject of a consumer report that was procured by Defendant within five years of the filing of this complaint through the date of final judgment in this action, and who did not receive a clear, conspicuous, separate form disclosure in writing, and did not authorize the procurement of the report in writing, as required under 15 U.S.C. § 1681b(b)(2)(A).

8. On behalf of and the Putative Class identified herein, Plaintiff seeks statutory damages, costs and attorneys' fees, equitable relief, and other appropriate relief under the FCRA.

THE PARTIES

9. Plaintiff is a resident of Pasco County, Florida. Plaintiff is a former employee of Defendant, and is also a member of the Putative Class defined below.

10. Plaintiff is a "consumer" as defined by the FCRA.

11. Defendant is a Texas corporation licensed to conduct business in Florida.

12. Defendant employed Plaintiff within this District.

JURISDICTION AND VENUE

13. This is an action for damages in excess of \$15,000, exclusive of interest, fees, and costs, for violations of the FCRA.

14. Venue is proper in Hernando County, Florida because the majority of the events giving rise to these claims occurred in this judicial circuit. Plaintiff worked for Defendant in in this judicial circuit where Defendant regularly conducts business.

15. This Court has personal jurisdiction over Defendants under the Florida Long Arm Jurisdiction Act, Fla Stat. Section 48.193.

16. Furthermore, this Court's exercise of personal jurisdiction is constitutionally sound. Through its operations throughout Florida, including in this county, Defendants have established sufficient minimum contacts with the State of Florida. Defendants will suffer no unfair prejudice

from the exercise of this Court's personal jurisdiction, which serves the interests of justice in this case.

ALLEGATIONS REGARDING DEFENDANT'S BUSINESS PRACTICES

Background Checks

17. Defendant conducts background checks on the majority of its prospective employees as part of a standard screening process. In addition, Defendant also conducts background checks on its current employees from time to time during the course of their employment.

18. Defendant does not perform these background checks in-house. Rather, Defendant relies on various outside consumer reporting firms to obtain this information, and return the corresponding reports to Defendant. These reports are "consumer reports" within the meaning of the FCRA.

FCRA Violations Relating to Background Check Class

19. Defendant procured consumer report information on Plaintiff in violation of the FCRA.

20. Under the FCRA, it is unlawful to procure a consumer report or cause a consumer report to be procured for employment purposes, unless:

- (i) a *clear and conspicuous disclosure* has been made in writing to the consumer at any time before the report is procured or caused to be procured, *in a document that consists solely of the disclosure* that a consumer report may be obtained for employment purposes; and
- (ii) the consumer has authorized the procurement of the consumer report in writing (which authorization may be made on the document referred to in clause (i)).

15 U.S.C. §§ 1681b(b)(2)(A)(i)-(ii) (emphasis added).

21. Defendant failed to satisfy these unambiguous disclosure and authorization

requirements.

22. Defendant does not have a stand-alone FCRA disclosure or authorization form that clearly and conspicuously states that a consumer report may be procured on prospective or current employees for employment purposes.

23. This practice violates the plain language of the FCRA, and also flies in the face of unambiguous case law and regulatory guidance from the FTC. *See EEOC v. Video Only, Inc.*, No. 06-1362, 2008 WL 2433841, at *11 (D. Or. June 11, 2008) (King, J., granting summary judgment to Plaintiffs on their FCRA claim on the grounds that:

Video Only violated . . . 15 § 1681b(b)(2)(A)(I). This section provides that at any time before the report is procured, a disclosure is made in a document that consists solely of the disclosure that a consumer report may be obtained for employment purposes. Video Only disclosed this possibility as part of its job application, which is not a document consisting solely of the disclosure.

24. Defendant willfully disregarded this unambiguous case law and regulatory guidance, and it willfully violated 15 U.S.C. § 1681b(b)(2)(A) by procuring consumer report information on prospective or current employees and failing to comply with the disclosure and authorization requirements of the FCRA.

FACTUAL ALLEGATIONS

25. On or about September 6, 2017 Plaintiff applied for a position with Defendant in Hernando County, Florida.

26. After reviewing Plaintiff's qualifications, Defendant offered Plaintiff the position for which he had applied for.

27. Defendant told Plaintiff that its offer of employment was subject to the completion of a background check.

28. On or about September 6, 2017, Defendant procured a consumer report on Plaintiff

by using the services of a third-party vendor.

29. Pursuant to the FCRA, Defendant is required to disclose to its employees in a document that consists solely of the disclosure that it may obtain a consumer report on them for employment purposes, prior to obtaining a copy of their consumer report.

30. Defendant disclosure and authorization form failed to follow the requirements of the FCRA.

31. The document contained a plethora of extraneous information in disregard of the FCRA's stand-alone disclosure mandate.

32. Defendant's violation was willful. Defendant willfully violated this requirement by failing to comply with both the plain language of the FCRA, well-established case law, and the unambiguous regulatory guidance provided by the FTC.

33. In fact, Defendant was required to first certify that it would comply with the requirements of the FCRA. To ensure knowing compliance with the FCRA, Congress requires that the employer must first certify to the consumer reporting agency that the employer shall comply with the disclosure, authorization, and if applicable, the adverse action requirements pursuant to 15 U.S.C. § 1681b(b)(1)(A). The consumer reporting agency may not procure a consumer report before this certification has been executed by the employer.

34. Upon information and belief, Defendant knowingly executed a certification providing that it would comply with the disclosure and authorization provisions provided by the FCRA.

35. Despite its certification, Defendant knowingly violated the FCRA by failing to comply with the Disclosure and Authorization requirements.

36. Further, Defendant knew or should have known about its legal obligations under

the FCRA. These obligations are well established in the plain language of the FCRA and in the promulgations of the Federal Trade Commission and Consumer Financial Protection Bureau. Defendant obtained or had available substantial written materials, which apprised it of its duties under the FCRA.

37. Plaintiff was confused and distracted by the extraneous material contained in Defendant's disclosure. More specifically, Plaintiff was confused about his rights due to the presence of the additional language contained in Defendant's disclosure form.

38. Plaintiff values his privacy rights. If Plaintiff was aware Defendant had presented him with an unlawful disclosure form, Plaintiff would not have authorized Defendant to procure a consumer report and dig deep into his personal, private and confidential information.

39. Defendant knowingly violated 15 U.S.C. § 1681b(b)(2)(A)(i-ii) by failing to provide Plaintiff and the Putative Class with a copy of a document consisting solely of a disclosure stating that Defendant may obtain a consumer report on Plaintiff and the Putative Class for employment purposes, prior to obtaining a copy of their consumer reports.

CLASS ACTION ALLEGATIONS

40. Plaintiff asserts claims pursuant to 15 U.S.C. §§ 1681b(b)(2)(A)(i)-(ii) in Count I and II of this Complaint on behalf of a ("Improper Disclosure and Authorization Class"). defined as:

Improper Disclosure and Authorization Class: All employees and prospective employees of Defendant's in the United States who were the subject of a consumer report that was procured by Defendant within five years of the filing of this complaint through the date of final judgment in this action, and who did not receive a clear, conspicuous, separate form disclosure in writing, and did not authorize the procurement of the report in writing, as required under 15 U.S.C. § 1681b(b)(2)(A).

41. **Numerosity:** The Class is so numerous that joinder of all members is impracticable. Defendant regularly obtains and uses information in consumer reports to conduct

background checks on prospective employees and current employees. Based on information and belief, the Class is comprised of at least thousands of members who are geographically dispersed throughout the country so as to render joinder of all Class Members impracticable. The names and addresses of the Class Members are identifiable through documents maintained by the Defendant, and the Class Members may be notified of the pendency of this action by published and/or mailed notice.

42. **Typicality:** Plaintiff's claims are typical of those of the members of the putative Class. Defendant typically uses consumer reports to conduct background checks on employees and prospective employees. The FCRA violations suffered by Plaintiff are typical of those suffered by other Putative Class members, and Defendant treated Plaintiff in a manner consistent with its treatment of other Putative Class members under its standard policies and practices.

43. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the Putative Class. Plaintiff's interests coincide with, and are not antagonistic to, other class members' interests. Plaintiff has retained counsel experienced in complex class action litigation.

44. **Commonality:** Common questions of law and fact exist as to all members of the Putative Class, and predominate over any questions solely affecting individual members of the Putative Class. These common questions include, but are not limited to:

- (a) Whether Defendant uses consumer report information to conduct background checks on employees and prospective employees;
- (b) Whether Defendant's background check practices and/or procedures comply with the FCRA;
- (c) Whether Defendant violated the FCRA by procuring consumer report information without making proper disclosures in the format required by the statute;
- (d) Whether Defendant violated the FCRA by procuring consumer report information based on invalid authorizations;

- (c) Whether Defendant's violations of the FCRA were willful;
- (f) The proper measure of statutory damages; and
- (g) The proper form of injunctive and declaratory relief.

45. This case is maintainable as a class action under Fla. R. Civ. P. 1.220(b)(1), because prosecution of actions by or against individual members of the Putative Class would result in inconsistent or varying adjudications and create the risk of incompatible standards of conduct for Defendant. Further, adjudication of each individual class member's claim as separate action would potentially be dispositive of the interest of other individuals not a party to such action, thereby impeding their ability to protect their interests.

46. This case is also maintainable as a class action under Fla. R. Civ. P. 1.220(b)(2), because Defendant has acted or refused to act on grounds that apply generally to the Putative Class, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole.

47. Class certification is also appropriate under Fla. R. Civ. P. 1.220(b)(3), because questions of law and fact common to the Putative Class predominate over any questions affecting only individual members of the Putative Class, and also because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendant's conduct, which is described in this Complaint, stems from common and uniform policies and practices, resulting in common violations of the FCRA. Members of the Putative Class do not have an interest in pursuing separate actions against Defendant, as the amount of each class members' individual claim for damages is small in comparison to the expense and burden of individual prosecution. 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 foreseeable difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all Putative Class members' claims in a single action, brought in a single forum.

48. Plaintiff intends to send notice to all members of the Putative Class to the extent required by Fla. R. Civ. P. 1.220. The names and addresses of the Putative Class members are readily available from Defendant's records.

COUNT I – VIOLATION OF 15 U.S.C. § 1681b(b)(2)(A)(i)
Failure to Make Proper Disclosure in Violation of FCRA
15 U.S.C. § 1681b(b)(2)(A)(i)

49. Plaintiff alleges and incorporates by reference the allegations of paragraphs 1 through 47 of this Complaint as though fully set forth herein.

50. In violation of the FCRA, the background check that Defendant required the Plaintiff and the Putative Class to complete as a condition of their employment with Defendant does not satisfy the disclosure requirements of 15 U.S.C. § 1681b(b)(2)(A)(i), because Defendant failed to provide a stand-alone document pertaining to how the consumer report information would be obtained and utilized.

51. Defendant violated the FCRA by procuring consumer reports on Plaintiff and other Background Check Class members without first making proper disclosures in the format required by 15 U.S.C. § 1681b(b)(2)(A)(i). Namely, these disclosures had to be made: (1) before Defendant actually procured consumer reports, and (2) in a stand-alone document, clearly informing Plaintiff and other Background Check Class members that Defendant might procure a consumer report on each of them for purposes of employment.

52. The foregoing violations were willful. Defendant knew that it was required to provide a stand-alone form prior to obtaining and then utilizing a consumer report on any of the

Background Check Class members. By failing to do so, Defendant acted in deliberate or reckless disregard of its obligations and the rights of Plaintiff and other Background Check Class members under 15 U.S.C. § 1681b(b)(2)(A)(i). Defendant knew or should have known of its legal obligations under the FCRA. These obligations are well established in both the plain language of the FCRA and in the promulgations of the Federal Trade Commission. Defendant obtained, or had available to it, substantial written materials that apprised it of its duties under the FCRA. Any reasonable employer would know of, or could easily discover, the FCRA's mandates.

53. Plaintiff and the Background Check Class are entitled to statutory damages of not less than one hundred Dollars (\$100) and not more than one thousand Dollars (\$1,000) for each and every one of these violations under 15 U.S.C. § 1681n(a)(1)(A), in addition to punitive damages under 15 U.S.C. § 1681n(a)(2).

54. Plaintiff and the Background Check Class are further entitled to recover their costs and attorneys' fees, in accordance with 15 U.S.C. § 1681n(a)(3).

COUNT II – VIOLATION OF 15 U.S.C. § 1681b(b)(2)(A)(ii)
Failure to Obtain Proper Authorization in Violation of FCRA
15 U.S.C. § 1681b(b)(2)(A)(ii)

55. Plaintiff alleges and incorporates by reference the allegations of paragraphs 1 through 47 of this Complaint as though fully set forth herein.

56. Defendant violated the FCRA by procuring consumer reports relating to Plaintiff and other Background Check Class members without proper authorization. *See* 15 U.S.C. § 1681b(b)(2)(A)(ii).

57. The authorization requirement under 15 U.S.C. § 1681b(b)(2)(A)(ii) follows the disclosure requirement of § 1681b(b)(2)(A)(i) and presupposes that the authorization is based upon a valid disclosure. "After all, one cannot meaningfully authorize his employer to take an action if

she does not grasp what that action entails.” *Burghy v. Dayton Racquet Club, Inc.*, 695 F. Supp. 2d 689, 699 (S.D. Ohio 2010); *see also United States v. DeFries*, 129 F.3d 1293, 1307 (D.C. Cir. 1997) (“[A]uthorization secured ‘without disclosure of . . . material information’ is a nullity.”)

58. The foregoing violations were willful. Defendant acted in deliberate or reckless disregard of its obligations and the rights of Plaintiff and other Improper Disclosure and Authorization class members under 15 U.S.C. § 1681b(b)(2)(A)(ii). Defendant knew or should have known of its legal obligations under the FCRA. These obligations are well established in both the plain language of the FCRA and in the promulgations of the Federal Trade Commission. Defendant obtained, or had available to it, substantial written materials that apprised it of its duties under the FCRA. Any reasonable employer would know of, or could easily discover, the FCRA’s mandates.

59. Plaintiff and the Background Check Class are entitled to statutory damages of not less than one hundred Dollars (\$100) and not more than one thousand Dollars (\$1,000) for each and every one of these violations under 15 U.S.C. § 1681n(a)(1)(A), in addition to punitive damages under 15 U.S.C. § 1681n(a)(2).

60. Plaintiff and the Background Check Class are further entitled to recover their costs and attorneys’ fees, in accordance with 15 U.S.C. § 1681n(a)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of and the Putative Class, prays for relief as follows:

- (a) Determining that this action may proceed as a class action under Rule 1.220(b)(1), and (2) and (3) of the Florida Rules of Civil Procedure;
- (b) Designating Plaintiff as class representative and designating Plaintiff’s counsel as counsel for the Putative Class;

- (c) Issuing proper notice to the Putative Class at Defendant's expense;
- (d) Declaring that Defendant committed multiple, separate violations of the FCRA;
- (e) Declaring that Defendant acted willfully in deliberate or reckless disregard of Plaintiff's rights and its obligations under the FCRA;
- (f) Awarding statutory damages as provided by the FCRA, including punitive damages;
- (g) Awarding reasonable attorneys' fees and costs as provided by the FCRA; and
- (h) Granting other and further relief, in law or equity, as this Court may deem appropriate and just.

DEMAND FOR JURY TRIAL

Plaintiff and the Putative Class demand a trial by jury for all issues so triable.

Dated this 26th day of August, 2019.

Respectfully submitted,

/s/ Brandon J. Hill

BRANDON J. HILL

Florida Bar Number: 0037061

WENZEL FENTON CABASSA, P.A.

1110 N. Florida Avenue, Suite 300

Tampa, Florida 33602

Main Number: (813) 224-0431

Direct Dial: (813) 379-2565

Facsimile: (813) 229-8712

Email: bhill@wfcslaw.com

Email: jcornell@wfcslaw.com

Email: rcooke@wfcslaw.com

Attorney for Plaintiff



**Service of Process
Transmittal**

09/06/2019

CT Log Number 536200260

TO: Ashley Harper
Waste Management
1001 Fannin St
Houston, TX 77002-6717

RE: Process Served in Florida

FOR: Waste Management Inc. of Florida (Domestic State: FL)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: JOSH TWARDOSKY, on behalf of himself and all similarly situated individuals, Pltf. vs. WASTE MANAGMENT, INC. OF FLORIDA and WASTE MANAGEMENT, INC., Dfts.

DOCUMENT(S) SERVED: Summons, First Amended Complaint, Class action Complaint

COURT/AGENCY: Hernando County Circuit Court, FL
Case # 2019CA971

NATURE OF ACTION: Plaintiffs First Amended Class Action Complaint And Demand for Jury Trial

ON WHOM PROCESS WAS SERVED: C T Corporation System, Plantation, FL

DATE AND HOUR OF SERVICE: By Process Server on 09/06/2019 at 17:33

JURISDICTION SERVED : Florida

APPEARANCE OR ANSWER DUE: within 20 days after the service of this summons on that defendant, exclusive of the day of service

ATTORNEY(S) / SENDER(S): Brandon J. Hill
Wenzel Fenton Cabassa, P.A.
1110 N. Florida Avenue, Suite 300
Tampa, FL 33602
813-224-0431

ACTION ITEMS: CT has retained the current log, Retain Date: 09/06/2019, Expected Purge Date: 09/16/2019

Image SOP

Email Notification, Nancy Shoebotham nshoebot@wm.com

Email Notification, LILLIAN DRAKE ldrake@wm.com

SIGNED: C T Corporation System
ADDRESS: 1200 South Pine Island Road
Plantation, FL 33324

For Questions: 954-473-5503

Filing # 94769528 E-Filed 08/26/2019 02:31:54 PM

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR HERNANDO COUNTY, FLORIDA
CIVIL DIVISION

JOSH TWARDOSKY, on behalf
of himself and all similarly situated
individuals,

Plaintiff,

Case No.: 2019-CA-971

v.

WASTE MANAGEMENT, INC. OF
FLORIDA,

Defendant.

Date: 8-6-19 Time: 4:56 PM

SUMMONS

Eric Deal

S.P.S. 336

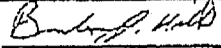
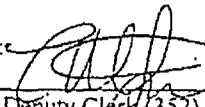
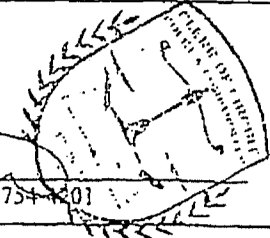
THE STATE OF FLORIDA:
To Each Sheriff of the State:

YOU ARE HEREBY COMMANDED to serve this Summons, a copy of the Complaint, in this
action on defendant:

Registered Agent
c/o Waste Management, Inc. of Florida
CT CORPORATION SYSTEM
1200 SOUTH PINE ISLAND ROAD
PLANTATION, FL 33324

Each defendant is required to serve written defenses to the complaint or petition on Brandon J. Hill, plaintiff's attorney, whose address is Wenzel Fenton Cabassa 1110 N. Florida Avenue, Suite 300, Tampa, Florida 33602 within 20¹ days after the service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

DATED on August 28, 2019.

 Printed: Brandon J. Hill Attorney for Plaintiff Wenzel Fenton Cabassa 1110 N. Florida Avenue, Suite 300 Tampa, Florida 33602 Florida Bar No.: 0037061	Doug Chorvat, Jr. As Clerk of the Court By:  As Deputy Clerk (352) 754-4201 
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¹ Except when suit is brought pursuant to section 768.28, Florida Statutes, if the State of Florida, one of its agencies, or one of its officials or employees sued in his or her official capacity is a defendant, the time to be inserted as to it is 40 days. When suit is brought pursuant to section 768.28, Florida Statutes, the time to be inserted is 30 days.

If you are a person with a disability who needs an accommodation, you are entitled, at no cost to you, to the provision of certain assistance. To request such an accommodation please contact the Office of Human Rights, by written or oral request, within seven days of the date but at least three (3) business days prior to the date the service is needed, at: 20 North Main Street, Brooksville, Florida 34601, Phone: (352) 754-4970, TDD: (352) 754-4120; if you are hearing or voice impaired, call 711.

IMPORTANT

A lawsuit has been filed against you. You have 20 calendar days after this summons is served on you to file a written response to the attached complaint with the clerk of this court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book). If you choose to file a written response yourself, at the same time you file your written response to the court you must also mail or take a copy of your written response to the "Plaintiff/Plaintiff's Attorney" named in the documents.

IMPORTANTE

Usted ha sido demandado legalmente. Tiene 20 días, contados a partir del recibo de esta notificación, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefónica no lo protegerá. Si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el número del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podría ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guía telefónica. Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, deberá usted enviar por correo o entregar una copia de su respuesta a la persona denominada abajo como "Plaintiff/Plaintiff's Attorney" (Demandante o Abogado del Demandante).

IMPORTANT

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IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR HERNANDO COUNTY, FLORIDA
CIVIL DIVISION

JOSH TWARDOSKY, on behalf
of himself and all similarly situated
individuals,

Plaintiff,

Case No.: 2019-CA-971

v.

WASTE MANAGEMENT, INC. OF
FLORIDA and WASTE MANAGEMENT,
INC.,

Defendant.

SUMMONS


THE STATE OF FLORIDA:
To Each Sheriff of the State:

YOU ARE HEREBY COMMANDED to serve this Summons, a copy of the Amended
Complaint, in this action on defendant:

Registered Agent
c/o Waste Management, Inc.
CT Corporation System
1200 South Pine Island Road
Plantation, FL 33324

Each defendant is required to serve written defenses to the complaint or petition on Brandon J. Hill, plaintiff's attorney, whose address is Wenzel Fenton Cabassa 1110 N. Florida Avenue, Suite 300, Tampa, Florida 33602 within 20¹ days after the service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

DATED on _____, 2019.

 Printed: Brandon J. Hill, Attorney for Plaintiff Wenzel Fenton Cabassa, 1110 N. Florida Avenue, Suite 300, Tampa, Florida 33602 Florida Bar No.:0037061	Doug Chorvat, Jr. As Clerk of the Court By: _____ As Deputy Clerk (352) 754-4201
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Filing # 95114355 E-Filed 09/03/2019 04:19:20 PM

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR HERNANDO COUNTY, FLORIDA
CIVIL DIVISION

JOSH TWARDOSKY, on behalf
of himself and all similarly situated
individuals,

Plaintiff,

Case No.: 2019-CA-971

v.

WASTE MANAGEMENT, INC. OF
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INC.,

Defendant.

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DATED on Sept 4, 2019.

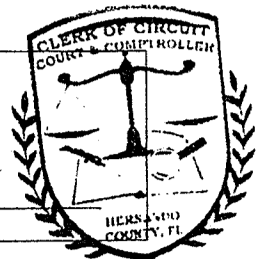
Brandon J. Hill

Printed: Brandon J. Hill, Attorney for Plaintiff
Wenzel Fenton Cabassa, 1110 N. Florida Avenue,
Suite 300, Tampa, Florida 33602
Florida Bar No.:0037061

Doug Chorvat, Jr.
As Clerk of the Court

By: [Signature]

As Deputy Clerk (352) 754-4201



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IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR HERNANDO COUNTY, FLORIDA
CIVIL DIVISION

JOSH TWARDOSKY, on behalf
of himself and all similarly situated
individuals,

Plaintiff,

Case No.:2019-CA-971

v.

WASTE MANAGMENT, INC. OF
FLORIDA, and WASTE MANAGEMENT, INC.,

Defendants.

PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT
AND DEMAND FOR JURY TRIAL

Plaintiff, JOSH TWARDOSKY ("Plaintiff"), by and through undersigned counsel, and on behalf of the Putative Class set forth herein, as well as in the public interest, brings the following Class Action as of right against Defendants, WASTE MANAGEMENT INC OF FLORIDA ("WMF") and WASTE MANAGEMENT, INC. ("WMI"), (collectively as "Defendants") under the Fair Credit Reporting Act of 1970, as amended ("FCRA"), 15 U.S.C. § 1681 *et seq.*

NATURE OF THE CASE

1. Plaintiff brings this action against Defendants for violations of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681a-1681x. The FCRA imposes several important requirements on employers that use a background checks as part of their hiring processes, which are designed to protect consumers like Plaintiff.

2. WMI is one of the largest environmental services provider in North America¹, which employs approximately 43,000 individuals across the United States. WMF is a subsidiary of WMI and has locations located in and around the state of Florida, including in Hernando County, Florida.

3. Defendants are “joint employers” under the FCRA by virtue of the rigorous control Waste Management, Inc., exercises over all of its subsidiaries.

4. WMI exercises control over almost all aspects of a subsidiaries’ operations, including, but not limited to, the job application process, job screening process, job qualification requirements, employment policies, pricing, uniforms, food quality and preparation, store design, etc.

5. As part of its hiring processes, Defendants use consumer reports (commonly known as background checks) to make employment decisions.

6. While the use of consumer report information for employment purposes is not per se unlawful, it is subject to strict disclosure and authorization requirements under the FCRA.

7. Defendants willfully violated these requirements in multiple ways, thereby systematically violating Plaintiff’s rights and the rights of other Putative Class members.

8. Defendants violated 15 U.S.C. § 1681b(b)(2)(A)(i) by procuring consumer reports on Plaintiff and other Putative Class members for employment purposes, without first making the statutorily-mandated disclosures to them in the format required by the statute. Under this subsection of the FCRA, Defendants are required to disclose to its employees—in a document that consists solely of the disclosure—that it may obtain a consumer report on them for employment purposes. This disclosure must be made by employers prior to obtaining copies of employees’, or

¹ <https://www.wm.com/us/en/about-us>

prospective employees', consumers reports. *Id.* Defendants willfully violated this requirement by failing to provide Plaintiff and other Putative Class members with a copy of a separate document consisting solely of Defendants' disclosure, stating that Defendants may obtain a consumer report on any person for employment purposes. Defendants also violated this requirement by failing to provide this disclosure to Plaintiff and other Putative Class members *prior* to obtaining a copy of the person's consumer report. (Emphasis added). This practice violates long standing regulatory guidance from the Federal Trade Commission ("FTC").

9. Further, Defendants violated 15 U.S.C. § 1681b(b)(2)(A)(ii) by obtaining consumer reports for Plaintiff and other Putative Class members without proper authorization, due to the fact that its disclosure forms fail to comply with the requirements of the FCRA.

10. In response to Defendants' willful violations of the FCRA, Plaintiff asserts two class claims under 15 U.S.C. §§ 1681b(b)(2)(A)(i) (ii), on behalf of a "Improper Disclosure and Authorization Class," consisting of all of Defendants' employees and prospective employees in the United States who were the subject of a consumer report that was procured by Defendants within five years of the filing of this complaint through the date of final judgment in this action, and who did not receive a clear, conspicuous, separate form disclosure in writing, and did not authorize the procurement of the report in writing, as required under 15 U.S.C. § 1681b(b)(2)(A).

11. On behalf of and the Putative Class identified herein, Plaintiff seeks statutory damages, costs and attorneys' fees, equitable relief, and other appropriate relief under the FCRA.

THE PARTIES

12. Plaintiff is a resident of Pasco County, Florida. Plaintiff is a former employee of Defendants, and is also a member of the Putative Class defined below.

13. Plaintiff is a "consumer" as defined by the FCRA.

14. WMI is incorporated in Delaware with its principal place of business in Texas and is licensed to conduct business in Florida.

15. WMF is licensed to conduct business in Florida.

16. Defendants employed Plaintiff within this County and regularly conduct business in Hernando County, Florida.

JURISDICTION AND VENUE

17. This is an action for damages in excess of \$15,000, exclusive of interest, fees, and costs, for violations of the FCRA.

18. Venue is proper in Hernando County, Florida because the majority of the events giving rise to these claims occurred in this judicial circuit. Plaintiff worked for Defendants in in this judicial circuit where Defendants regularly conducts business.

19. This Court has personal jurisdiction over Defendants under the Florida Long Arm Jurisdiction Act, Fla Stat. Section 48.193.

20. Furthermore, this Court's exercise of personal jurisdiction is constitutionally sound. Through its operations throughout Florida, including in this county, Defendants have established sufficient minimum contacts with the State of Florida. Defendants will suffer no unfair prejudice from the exercise of this Court's personal jurisdiction, which serves the interests of justice in this case.

ALLEGATIONS REGARDING DEFENDANTS' BUSINESS PRACTICES

Background Checks

21. Defendants conduct background checks on the majority of its prospective employees as part of a standard screening process. In addition, Defendants also conduct background checks on its current employees from time to time during the course of their

employment.

22. Defendants do not perform these background checks in-house. Rather, Defendants rely on various outside consumer reporting firms to obtain this information, and return the corresponding reports to Defendants. These reports are "consumer reports" within the meaning of the FCRA.

FCRA Violations Relating to Background Check Class

23. Defendants procured consumer report information on Plaintiff in violation of the FCRA.

24. Under the FCRA, it is unlawful to procure a consumer report or cause a consumer report to be procured for employment purposes, unless:

- (i) a *clear and conspicuous disclosure* has been made in writing to the consumer at any time before the report is procured or caused to be procured, *in a document that consists solely of the disclosure* that a consumer report may be obtained for employment purposes; and
- (ii) the consumer has authorized the procurement of the consumer report in writing (which authorization may be made on the document referred to in clause (i)).

15 U.S.C. §§ 1681b(b)(2)(A)(i)-(ii) (emphasis added).

25. Defendants failed to satisfy these unambiguous disclosure and authorization requirements.

26. Defendants do not have a stand-alone FCRA disclosure or authorization form that clearly and conspicuously states that a consumer report may be procured on prospective or current employees for employment purposes.

27. This practice violates the plain language of the FCRA, and also flies in the face of unambiguous case law and regulatory guidance from the FTC. *See EEOC v. Video Only, Inc.*, No. 06-1362, 2008 WL 2433841, at *11 (D. Or. June 11, 2008) (King, J., granting summary

judgment to Plaintiffs on their FCRA claim on the grounds that:

Video Only violated . . . 15 § 1681b(b)(2)(A)(I). This section provides that at any time before the report is procured, a disclosure is made in a document that consists solely of the disclosure that a consumer report may be obtained for employment purposes. Video Only disclosed this possibility as part of its job application, which is not a document consisting solely of the disclosure.

28. Defendants willfully disregarded this unambiguous case law and regulatory guidance, and it willfully violated 15 U.S.C. § 1681b(b)(2)(A) by procuring consumer report information on prospective or current employees and failing to comply with the disclosure and authorization requirements of the FCRA.

FACTUAL ALLEGATIONS

29. On or about September 6, 2017 Plaintiff applied for a position with Defendants in Hernando County, Florida.

30. After reviewing Plaintiff's qualifications, Defendants offered Plaintiff the position for which he had applied for.

31. Defendants told Plaintiff that its offer of employment was subject to the completion of a background check.

32. On or about September 6, 2017, Defendants procured a consumer report on Plaintiff by using the services of a third-party vendor.

33. Pursuant to the FCRA, Defendants are required to disclose to its employees—in a document that consists solely of the disclosure—that it may obtain a consumer report on them for employment purposes, prior to obtaining a copy of their consumer report.

34. Defendants' disclosure and authorization form failed to follow the requirements of the FCRA.

35. The document contained a plethora of extraneous information in disregard of the

FCRA's stand-alone disclosure mandate.

36. Defendants' violation was willful. Defendants willfully violated this requirement by failing to comply with both the plain language of the FCRA, well-established case law, and the unambiguous regulatory guidance provided by the FTC.

37. In fact, Defendants were required to first certify that it would comply with the requirements of the FCRA. To ensure knowing compliance with the FCRA, Congress requires that the employer must first certify to the consumer reporting agency that the employer shall comply with the disclosure, authorization, and if applicable, the adverse action requirements pursuant to 15 U.S.C. § 1681b(b)(1)(A). The consumer reporting agency may not procure a consumer report before this certification has been executed by the employer.

38. Upon information and belief, Defendants knowingly executed a certification providing that it would comply with the disclosure and authorization provisions provided by the FCRA.

39. Despite its certification, Defendants knowingly violated the FCRA by failing to comply with the Disclosure and Authorization requirements.

40. Further, Defendants knew or should have known about its legal obligations under the FCRA. These obligations are well established in the plain language of the FCRA and in the promulgations of the Federal Trade Commission and Consumer Financial Protection Bureau. Defendants obtained or had available substantial written materials, which apprised it of its duties under the FCRA.

41. Plaintiff was confused and distracted by the extraneous material contained in Defendants' disclosure. More specifically, Plaintiff was confused about his rights due to the presence of the additional language contained in Defendants' disclosure form.

42. Plaintiff values his privacy rights. If Plaintiff was aware Defendants had presented him with an unlawful disclosure form, Plaintiff would not have authorized Defendants to procure a consumer report and dig deep into his personal, private and confidential information.

43. Defendants knowingly violated 15 U.S.C. § 1681b(b)(2)(A)(i-ii) by failing to provide Plaintiff and the Putative Class with a copy of a document consisting solely of a disclosure stating that Defendants may obtain a consumer report on Plaintiff and the Putative Class for employment purposes, prior to obtaining a copy of their consumer reports.

CLASS ACTION ALLEGATIONS

44. Plaintiff asserts claims pursuant to 15 U.S.C. §§ 1681b(b)(2)(A)(i)-(ii) in Count I and II of this Complaint on behalf of a ("Improper Disclosure and Authorization Class"), defined as:

Improper Disclosure and Authorization Class: All employees and prospective employees of Defendants' in the United States who were the subject of a consumer report that was procured by Defendants within five years of the filing of this complaint through the date of final judgment in this action, and who did not receive a clear, conspicuous, separate form disclosure in writing, and did not authorize the procurement of the report in writing, as required under 15 U.S.C. § 1681b(b)(2)(A).

45. **Numerosity:** The Class is so numerous that joinder of all members is impracticable. Defendants regularly obtained and used information in consumer reports to conduct background checks on prospective employees and current employees. Based on information and belief, the Class is comprised of at least thousands of members who are geographically dispersed throughout the country so as to render joinder of all Class Members impracticable. The names and addresses of the Class Members are identifiable through documents maintained by the Defendants, and the Class Members may be notified of the pendency of this action by published and/or mailed notice.

46. **Typicality:** Plaintiff's claims are typical of those of the members of the putative

Class. Defendants typically use consumer reports to conduct background checks on employees and prospective employees. The FCRA violations suffered by Plaintiff are typical of those suffered by other Putative Class members, and Defendants treated Plaintiff in a manner consistent with its treatment of other Putative Class members under its standard policies and practices.

47. **Adequacy**: Plaintiff will fairly and adequately protect the interests of the Putative Class. Plaintiff's interests coincide with, and are not antagonistic to, other class members' interests. Plaintiff has retained counsel experienced in complex class action litigation.

48. **Commonality**: Common questions of law and fact exist as to all members of the Putative Class, and predominate over any questions solely affecting individual members of the Putative Class. These common questions include, but are not limited to:

- (a) Whether Defendants use consumer report information to conduct background checks on employees and prospective employees;
- (b) Whether Defendants' background check practices and/or procedures comply with the FCRA;
- (c) Whether Defendants violated the FCRA by procuring consumer report information without making proper disclosures in the format required by the statute;
- (d) Whether Defendants violated the FCRA by procuring consumer report information based on invalid authorizations;
- (e) Whether Defendants' violations of the FCRA were willful;
- (f) The proper measure of statutory damages; and
- (g) The proper form of injunctive and declaratory relief.

49. This case is maintainable as a class action under Fla. R. Civ. P. 1.220(b)(1), because prosecution of actions by or against individual members of the Putative Class would result in inconsistent or varying adjudications and create the risk of incompatible standards of conduct for Defendants. Further, adjudication of each individual class member's claim as separate

action would potentially be dispositive of the interest of other individuals not a party to such action, thereby impeding their ability to protect their interests.

50. This case is also maintainable as a class action under Fla. R. Civ. P. 1.220(b)(2), because Defendants have acted or refused to act on grounds that apply generally to the Putative Class, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole.

51. Class certification is also appropriate under Fla. R. Civ. P. 1.220(b)(3), because questions of law and fact common to the Putative Class predominate over any questions affecting only individual members of the Putative Class, and also because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendants' conduct, which is described in this Complaint, stems from common and uniform policies and practices, resulting in common violations of the FCRA. Members of the Putative Class do not have an interest in pursuing separate actions against Defendants, as the amount of each class members' individual claim for damages is small in comparison to the expense and burden of individual prosecution. Class certification will also obviate the need for unduly duplicative litigation that might result in inconsistent judgments concerning Defendants' practices. Moreover, management of this action as a class action will not present any foreseeable difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all Putative Class members' claims in a single action, brought in a single forum.

52. Plaintiff intends to send notice to all members of the Putative Class to the extent required by Fla. R. Civ. P. 1.220. The names and addresses of the Putative Class members are readily available from Defendants' records.

COUNT I – VIOLATION OF 15 U.S.C. § 1681b(b)(2)(A)(i)
Failure to Make Proper Disclosure in Violation of FCRA
15 U.S.C. § 1681b(b)(2)(A)(i)

53. Plaintiff alleges and incorporates by reference the allegations of paragraphs 1 through 47 of this Complaint as though fully set forth herein.

54. In violation of the FCRA, the background check that Defendants required the Plaintiff and the Putative Class to complete as a condition of their employment with Defendants does not satisfy the disclosure requirements of 15 U.S.C. § 1681b(b)(2)(A)(i), because Defendants failed to provide a stand-alone document pertaining to how the consumer report information would be obtained and utilized.

55. Defendants violated the FCRA by procuring consumer reports on Plaintiff and other Background Check Class members without first making proper disclosures in the format required by 15 U.S.C. § 1681b(b)(2)(A)(i). Namely, these disclosures had to be made: (1) before Defendants actually procured consumer reports, and (2) in a stand-alone document, clearly informing Plaintiff and other Background Check Class members that Defendants might procure a consumer report on each of them for purposes of employment.

56. The foregoing violations were willful. Defendants knew that it was required to provide a stand-alone form prior to obtaining and then utilizing a consumer report on any of the Background Check Class members. By failing to do so, Defendants acted in deliberate or reckless disregard of its obligations and the rights of Plaintiff and other Background Check Class members under 15 U.S.C. § 1681b(b)(2)(A)(i). Defendants knew or should have known of its legal obligations under the FCRA. These obligations are well established in both the plain language of the FCRA and in the promulgations of the Federal Trade Commission. Defendants obtained, or had available to it, substantial written materials that apprised it of its duties under the FCRA. Any

reasonable employer would know of, or could easily discover, the FCRA's mandates.

57. Plaintiff and the Background Check Class are entitled to statutory damages of not less than one hundred Dollars (\$100) and not more than one thousand Dollars (\$1,000) for each and every one of these violations under 15 U.S.C. § 1681n(a)(1)(A), in addition to punitive damages under 15 U.S.C. § 1681n(a)(2).

58. Plaintiff and the Background Check Class are further entitled to recover their costs and attorneys' fees, in accordance with 15 U.S.C. § 1681n(a)(3).

COUNT II – VIOLATION OF 15 U.S.C. § 1681b(b)(2)(A)(ii)
Failure to Obtain Proper Authorization in Violation of FCRA
15 U.S.C. § 1681b(b)(2)(A)(ii)

59. Plaintiff alleges and incorporates by reference the allegations of paragraphs 1 through 47 of this Complaint as though fully set forth herein.

60. Defendants violated the FCRA by procuring consumer reports relating to Plaintiff and other Background Check Class members without proper authorization. See 15 U.S.C. § 1681b(b)(2)(A)(ii).

61. The authorization requirement under 15 U.S.C. § 1681b(b)(2)(A)(ii) follows the disclosure requirement of § 1681b(b)(2)(A)(i) and presupposes that the authorization is based upon a valid disclosure. "After all, one cannot meaningfully authorize his employer to take an action if she does not grasp what that action entails." *Burghy v. Dayton Racquet Club, Inc.*, 695 F. Supp. 2d 689, 699 (S.D. Ohio 2010), *see also United States v. DeFries*, 129 F.3d 1293, 1307 (D.C. Cir. 1997) ("[A]uthorization secured 'without disclosure of' . . . material information' is a nullity.")

62. The foregoing violations were willful. Defendants acted in deliberate or reckless disregard of its obligations and the rights of Plaintiff and other Improper Disclosure and Authorization class members under 15 U.S.C. § 1681b(b)(2)(A)(ii). Defendants knew or should

have known of its legal obligations under the FCRA. These obligations are well established in both the plain language of the FCRA and in the promulgations of the Federal Trade Commission. Defendants obtained, or had available to it, substantial written materials that apprised it of its duties under the FCRA. Any reasonable employer would know of, or could easily discover, the FCRA's mandates.

63. Plaintiff and the Background Check Class are entitled to statutory damages of not less than one hundred Dollars (\$100) and not more than one thousand Dollars (\$1,000) for each and every one of these violations under 15 U.S.C. § 1681n(a)(1)(A), in addition to punitive damages under 15 U.S.C. § 1681n(a)(2).

64. Plaintiff and the Background Check Class are further entitled to recover their costs and attorneys' fees, in accordance with 15 U.S.C. § 1681n(a)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of and the Putative Class, prays for relief as follows:

- (a) Determining that this action may proceed as a class action under Rule 1.220(b)(1), and (2) and (3) of the Florida Rules of Civil Procedure;
- (b) Designating Plaintiff as class representative and designating Plaintiff's counsel as counsel for the Putative Class;
- (c) Issuing proper notice to the Putative Class at Defendants' expense;
- (d) Declaring that Defendants committed multiple, separate violations of the FCRA;
- (e) Declaring that Defendants acted willfully in deliberate or reckless disregard of Plaintiff's rights and its obligations under the FCRA;
- (f) Awarding statutory damages as provided by the FCRA, including punitive damages;

- (g) Awarding reasonable attorneys' fees and costs as provided by the FCRA; and
- (h) Granting other and further relief, in law or equity, as this Court may deem appropriate and just.

DEMAND FOR JURY TRIAL

Plaintiff and the Putative Class demand a trial by jury for all issues so triable.

Dated this 30th day of August, 2019.

Respectfully submitted,

/s/ Brandon J. Hill

BRANDON J. HILL

Florida Bar Number: 0037061

WENZEL FENTON CABASSA, P.A.

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Attorney for Plaintiff

EXHIBIT B

**IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT
IN AND FOR HERNANDO COUNTY, FLORIDA
CIVIL DIVISION**

**JOSH TWARDOSKY, on behalf of himself
and all similarly-situated individuals,**

Plaintiff,

v.

CASE NO.: 2019-CA-971

**WASTE MANAGEMENT, INC. OF
FLORIDA, and WASTE MANAGEMENT,
INC.,**

Defendants.

NOTICE OF FILING NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1446(d), you are hereby notified that Defendants Waste Management, Inc. of Florida and Waste Management Inc.¹ (“Waste Management or “Defendants”), filed a notice of removal of this case from the Circuit Court of the Fifth Judicial Circuit in and for Hernando County, Florida to the United States District Court for the Middle District of Florida, Tampa Division. In support of their Notice, Defendants state as follows:

1. On August 26, 2019, Plaintiff Josh Twardosky, on behalf of himself and all similarly-situated individuals filed a two-count Complaint alleging violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(b)(2)(A)(i) & (ii).

2. A copy of the above-referenced notice of removal, filed in the United States District Court for the Middle District of Florida (without exhibits), is attached hereto as **Exhibit “A”** and incorporated herein by reference.

3. Pursuant to the provisions of 28 U.S.C. § 1446, the filing of the Notice of Removal by Defendants in the United States District Court for the Middle District of Florida

affects the removal of this action from the Circuit Court's jurisdiction, and the Circuit Court "shall proceed no further unless and until the case is remanded" by the federal court. 28 U.S.C. § 1446.

Dated this 4th day of October, 2019.

Respectfully submitted,

LITTLER MENDELSON, P.C.
111 N. Orange Avenue, Suite 1750
Orlando, Florida 32801-2366
Telephone: (407) 393-2900
Facsimile: (407) 393-2929

BY: /s/ Nancy A. Johnson
Nancy A. Johnson
Fla. Bar No.: 597562
Email: najohnson@littler.com

Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of October, 2019, I electronically filed the foregoing with the Clerk of the Court by using the Florida E-Portal system and a correct copy of the foregoing has been furnished electronic mail to: Brandon J. Hill, Esq., WENZEL FENTON CABASSA, P.A., 1110 North Florida Ave., Suite 300, Tampa, Florida 33602, emails: bhill@wfclaw.com; jcornell@wfclaw.com; and rcooke@wfclaw.com.

/s/ Nancy A. Johnson
Nancy A. Johnson

¹ Defendant Waste Management Inc. of Florida has no comma in its name.

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR HERNANDO COUNTY, FLORIDA
CIVIL DIVISION

JOSH TWARDOSKY, on behalf
of himself and all similarly situated
individuals,

Plaintiff,

Case No.:2019-CA-971

v.

WASTE MANAGMENT, INC. OF
FLORIDA, and WASTE MANAGEMENT, INC.,

Defendants.

**PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiff, JOSH TWARDOSKY ("Plaintiff"), by and through undersigned counsel, and on behalf of the Putative Class set forth herein, as well as in the public interest, brings the following Class Action as of right against Defendants, WASTE MANAGEMENT INC OF FLORIDA ("WMF") and WASTE MANAGEMENT, INC. ("WMI"), (collectively as "Defendants") under the Fair Credit Reporting Act of 1970, as amended ("FCRA"), 15 U.S.C. § 1681 *et seq.*

NATURE OF THE CASE

1. Plaintiff brings this action against Defendants for violations of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681a-1681x. The FCRA imposes several important requirements on employers that use a background checks as part of their hiring processes, which are designed to protect consumers like Plaintiff.

2. WMI is one of the largest environmental services provider in North America¹, which employs approximately 43,000 individuals across the United States. WMF is a subsidiary of WMI and has locations located in and around the state of Florida, including in Hernando County, Florida.

3. Defendants are “joint employers” under the FCRA by virtue of the rigorous control Waste Management, Inc., exercises over all of its subsidiaries.

4. WMI exercises control over almost all aspects of a subsidiaries’ operations, including, but not limited to, the job application process, job screening process, job qualification requirements, employment policies, pricing, uniforms, food quality and preparation, store design, etc.

5. As part of its hiring processes, Defendants use consumer reports (commonly known as background checks) to make employment decisions.

6. While the use of consumer report information for employment purposes is not per se unlawful, it is subject to strict disclosure and authorization requirements under the FCRA.

7. Defendants willfully violated these requirements in multiple ways, thereby systematically violating Plaintiff’s rights and the rights of other Putative Class members.

8. Defendants violated 15 U.S.C. § 1681b(b)(2)(A)(i) by procuring consumer reports on Plaintiff and other Putative Class members for employment purposes, without first making the statutorily-mandated disclosures to them in the format required by the statute. Under this subsection of the FCRA, Defendants are required to disclose to its employees—in a document that consists solely of the disclosure—that it may obtain a consumer report on them for employment purposes. This disclosure must be made by employers prior to obtaining copies of employees’, or

¹ <https://www.wm.com/us/en/about-us>

prospective employees', consumers reports. *Id.* Defendants willfully violated this requirement by failing to provide Plaintiff and other Putative Class members with a copy of a separate document consisting solely of Defendants' disclosure, stating that Defendants may obtain a consumer report on any person for employment purposes. Defendants also violated this requirement by failing to provide this disclosure to Plaintiff and other Putative Class members *prior* to obtaining a copy of the person's consumer report. (Emphasis added). This practice violates long standing regulatory guidance from the Federal Trade Commission ("FTC").

9. Further, Defendants violated 15 U.S.C. § 1681b(b)(2)(A)(ii) by obtaining consumer reports for Plaintiff and other Putative Class members without proper authorization, due to the fact that its disclosure forms fail to comply with the requirements of the FCRA.

10. In response to Defendants' willful violations of the FCRA, Plaintiff asserts two class claims under 15 U.S.C. §§ 1681b(b)(2)(A)(i) (ii), on behalf of a "Improper Disclosure and Authorization Class," consisting of all of Defendants' employees and prospective employees in the United States who were the subject of a consumer report that was procured by Defendants within five years of the filing of this complaint through the date of final judgment in this action, and who did not receive a clear, conspicuous, separate form disclosure in writing, and did not authorize the procurement of the report in writing, as required under 15 U.S.C. § 1681b(b)(2)(A).

11. On behalf of and the Putative Class identified herein, Plaintiff seeks statutory damages, costs and attorneys' fees, equitable relief, and other appropriate relief under the FCRA.

THE PARTIES

12. Plaintiff is a resident of Pasco County, Florida. Plaintiff is a former employee of Defendants, and is also a member of the Putative Class defined below.

13. Plaintiff is a "consumer" as defined by the FCRA.

14. WMI is incorporated in Delaware with its principal place of business in Texas and is licensed to conduct business in Florida.

15. WMF is licensed to conduct business in Florida.

16. Defendants employed Plaintiff within this County and regularly conduct business in Hernando County, Florida.

JURISDICTION AND VENUE

17. This is an action for damages in excess of \$15,000, exclusive of interest, fees, and costs, for violations of the FCRA.

18. Venue is proper in Hernando County, Florida because the majority of the events giving rise to these claims occurred in this judicial circuit. Plaintiff worked for Defendants in in this judicial circuit where Defendants regularly conducts business.

19. This Court has personal jurisdiction over Defendants under the Florida Long Arm Jurisdiction Act, Fla Stat. Section 48.193.

20. Furthermore, this Court's exercise of personal jurisdiction is constitutionally sound. Through its operations throughout Florida, including in this county, Defendants have established sufficient minimum contacts with the State of Florida. Defendants will suffer no unfair prejudice from the exercise of this Court's personal jurisdiction, which serves the interests of justice in this case.

ALLEGATIONS REGARDING DEFENDANTS' BUSINESS PRACTICES

Background Checks

21. Defendants conduct background checks on the majority of its prospective employees as part of a standard screening process. In addition, Defendants also conduct background checks on its current employees from time to time during the course of their

employment.

22. Defendants do not perform these background checks in-house. Rather, Defendants rely on various outside consumer reporting firms to obtain this information, and return the corresponding reports to Defendants. These reports are "consumer reports" within the meaning of the FCRA.

FCRA Violations Relating to Background Check Class

23. Defendants procured consumer report information on Plaintiff in violation of the FCRA.

24. Under the FCRA, it is unlawful to procure a consumer report or cause a consumer report to be procured for employment purposes, unless:

- (i) a *clear and conspicuous disclosure* has been made in writing to the consumer at any time before the report is procured or caused to be procured, *in a document that consists solely of the disclosure* that a consumer report may be obtained for employment purposes; and
- (ii) the consumer has authorized the procurement of the consumer report in writing (which authorization may be made on the document referred to in clause (i)).

15 U.S.C. §§ 1681b(b)(2)(A)(i)-(ii) (emphasis added).

25. Defendants failed to satisfy these unambiguous disclosure and authorization requirements.

26. Defendants do not have a stand-alone FCRA disclosure or authorization form that clearly and conspicuously states that a consumer report may be procured on prospective or current employees for employment purposes.

27. This practice violates the plain language of the FCRA, and also flies in the face of unambiguous case law and regulatory guidance from the FTC. *See EEOC v. Video Only, Inc.*, No. 06-1362, 2008 WL 2433841, at *11 (D. Or. June 11, 2008) (King, J., granting summary

judgment to Plaintiffs on their FCRA claim on the grounds that:

Video Only violated . . . 15 § 1681b(b)(2)(A)(i). This section provides that at any time before the report is procured, a disclosure is made in a document that consists solely of the disclosure that a consumer report may be obtained for employment purposes. Video Only disclosed this possibility as part of its job application, which is not a document consisting solely of the disclosure.

28. Defendants willfully disregarded this unambiguous case law and regulatory guidance, and it willfully violated 15 U.S.C. § 1681b(b)(2)(A) by procuring consumer report information on prospective or current employees and failing to comply with the disclosure and authorization requirements of the FCRA.

FACTUAL ALLEGATIONS

29. On or about September 6, 2017 Plaintiff applied for a position with Defendants in Hernando County, Florida.

30. After reviewing Plaintiff's qualifications, Defendants offered Plaintiff the position for which he had applied for.

31. Defendants told Plaintiff that its offer of employment was subject to the completion of a background check.

32. On or about September 6, 2017, Defendants procured a consumer report on Plaintiff by using the services of a third-party vendor.

33. Pursuant to the FCRA, Defendants are required to disclose to its employees—in a document that consists solely of the disclosure—that it may obtain a consumer report on them for employment purposes, prior to obtaining a copy of their consumer report.

34. Defendants' disclosure and authorization form failed to follow the requirements of the FCRA.

35. The document contained a plethora of extraneous information in disregard of the

FCRA's stand-alone disclosure mandate.

36. Defendants' violation was willful. Defendants willfully violated this requirement by failing to comply with both the plain language of the FCRA, well-established case law, and the unambiguous regulatory guidance provided by the FTC.

37. In fact, Defendants were required to first certify that it would comply with the requirements of the FCRA. To ensure knowing compliance with the FCRA, Congress requires that the employer must first certify to the consumer reporting agency that the employer shall comply with the disclosure, authorization, and if applicable, the adverse action requirements pursuant to 15 U.S.C. § 1681b(b)(1)(A). The consumer reporting agency may not procure a consumer report before this certification has been executed by the employer.

38. Upon information and belief, Defendants knowingly executed a certification providing that it would comply with the disclosure and authorization provisions provided by the FCRA.

39. Despite its certification, Defendants knowingly violated the FCRA by failing to comply with the Disclosure and Authorization requirements.

40. Further, Defendants knew or should have known about its legal obligations under the FCRA. These obligations are well established in the plain language of the FCRA and in the promulgations of the Federal Trade Commission and Consumer Financial Protection Bureau. Defendants obtained or had available substantial written materials, which apprised it of its duties under the FCRA.

41. Plaintiff was confused and distracted by the extraneous material contained in Defendants' disclosure. More specifically, Plaintiff was confused about his rights due to the presence of the additional language contained in Defendants' disclosure form.

42. Plaintiff values his privacy rights. If Plaintiff was aware Defendants had presented him with an unlawful disclosure form, Plaintiff would not have authorized Defendants to procure a consumer report and dig deep into his personal, private and confidential information.

43. Defendants knowingly violated 15 U.S.C. § 1681b(b)(2)(A)(i-ii) by failing to provide Plaintiff and the Putative Class with a copy of a document consisting solely of a disclosure stating that Defendants may obtain a consumer report on Plaintiff and the Putative Class for employment purposes, prior to obtaining a copy of their consumer reports.

CLASS ACTION ALLEGATIONS

44. Plaintiff asserts claims pursuant to 15 U.S.C. §§ 1681b(b)(2)(A)(i)-(ii) in Count I and II of this Complaint on behalf of a ("Improper Disclosure and Authorization Class"), defined as:

Improper Disclosure and Authorization Class: All employees and prospective employees of Defendants' in the United States who were the subject of a consumer report that was procured by Defendants within five years of the filing of this complaint through the date of final judgment in this action, and who did not receive a clear, conspicuous, separate form disclosure in writing, and did not authorize the procurement of the report in writing, as required under 15 U.S.C. § 1681b(b)(2)(A).

45. **Numerosity:** The Class is so numerous that joinder of all members is impracticable. Defendants regularly obtained and used information in consumer reports to conduct background checks on prospective employees and current employees. Based on information and belief, the Class is comprised of at least thousands of members who are geographically dispersed throughout the country so as to render joinder of all Class Members impracticable. The names and addresses of the Class Members are identifiable through documents maintained by the Defendants, and the Class Members may be notified of the pendency of this action by published and/or mailed notice.

46. **Typicality:** Plaintiff's claims are typical of those of the members of the putative

Class. Defendants typically use consumer reports to conduct background checks on employees and prospective employees. The FCRA violations suffered by Plaintiff are typical of those suffered by other Putative Class members, and Defendants treated Plaintiff in a manner consistent with its treatment of other Putative Class members under its standard policies and practices.

47. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the Putative Class. Plaintiff's interests coincide with, and are not antagonistic to, other class members' interests. Plaintiff has retained counsel experienced in complex class action litigation.

48. **Commonality:** Common questions of law and fact exist as to all members of the Putative Class, and predominate over any questions solely affecting individual members of the Putative Class. These common questions include, but are not limited to:

- (a) Whether Defendants use consumer report information to conduct background checks on employees and prospective employees;
- (b) Whether Defendants' background check practices and/or procedures comply with the FCRA;
- (c) Whether Defendants violated the FCRA by procuring consumer report information without making proper disclosures in the format required by the statute;
- (d) Whether Defendants violated the FCRA by procuring consumer report information based on invalid authorizations;
- (e) Whether Defendants' violations of the FCRA were willful;
- (f) The proper measure of statutory damages; and
- (g) The proper form of injunctive and declaratory relief.

49. This case is maintainable as a class action under Fla. R. Civ. P. 1.220(b)(1), because prosecution of actions by or against individual members of the Putative Class would result in inconsistent or varying adjudications and create the risk of incompatible standards of conduct for Defendants. Further, adjudication of each individual class member's claim as separate

action would potentially be dispositive of the interest of other individuals not a party to such action, thereby impeding their ability to protect their interests.

50. This case is also maintainable as a class action under Fla. R. Civ. P. 1.220(b)(2), because Defendants have acted or refused to act on grounds that apply generally to the Putative Class, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole.

51. Class certification is also appropriate under Fla. R. Civ. P. 1.220(b)(3), because questions of law and fact common to the Putative Class predominate over any questions affecting only individual members of the Putative Class, and also because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendants' conduct, which is described in this Complaint, stems from common and uniform policies and practices, resulting in common violations of the FCRA. Members of the Putative Class do not have an interest in pursuing separate actions against Defendants, as the amount of each class members' individual claim for damages is small in comparison to the expense and burden of individual prosecution. Class certification will also obviate the need for unduly duplicative litigation that might result in inconsistent judgments concerning Defendants' practices. Moreover, management of this action as a class action will not present any foreseeable difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all Putative Class members' claims in a single action, brought in a single forum.

52. Plaintiff intends to send notice to all members of the Putative Class to the extent required by Fla. R. Civ. P. 1.220. The names and addresses of the Putative Class members are readily available from Defendants' records.

COUNT I – VIOLATION OF 15 U.S.C. § 1681b(b)(2)(A)(i)
Failure to Make Proper Disclosure in Violation of FCRA
15 U.S.C. § 1681b(b)(2)(A)(i)

53. Plaintiff alleges and incorporates by reference the allegations of paragraphs 1 through 47 of this Complaint as though fully set forth herein.

54. In violation of the FCRA, the background check that Defendants required the Plaintiff and the Putative Class to complete as a condition of their employment with Defendants does not satisfy the disclosure requirements of 15 U.S.C. § 1681b(b)(2)(A)(i), because Defendants failed to provide a stand-alone document pertaining to how the consumer report information would be obtained and utilized.

55. Defendants violated the FCRA by procuring consumer reports on Plaintiff and other Background Check Class members without first making proper disclosures in the format required by 15 U.S.C. § 1681b(b)(2)(A)(i). Namely, these disclosures had to be made: (1) before Defendants actually procured consumer reports, and (2) in a stand-alone document, clearly informing Plaintiff and other Background Check Class members that Defendants might procure a consumer report on each of them for purposes of employment.

56. The foregoing violations were willful. Defendants knew that it was required to provide a stand-alone form prior to obtaining and then utilizing a consumer report on any of the Background Check Class members. By failing to do so, Defendants acted in deliberate or reckless disregard of its obligations and the rights of Plaintiff and other Background Check Class members under 15 U.S.C. § 1681b(b)(2)(A)(i). Defendants knew or should have known of its legal obligations under the FCRA. These obligations are well established in both the plain language of the FCRA and in the promulgations of the Federal Trade Commission. Defendants obtained, or had available to it, substantial written materials that apprised it of its duties under the FCRA. Any

reasonable employer would know of, or could easily discover, the FCRA's mandates.

57. Plaintiff and the Background Check Class are entitled to statutory damages of not less than one hundred Dollars (\$100) and not more than one thousand Dollars (\$1,000) for each and every one of these violations under 15 U.S.C. § 1681n(a)(1)(A), in addition to punitive damages under 15 U.S.C. § 1681n(a)(2).

58. Plaintiff and the Background Check Class are further entitled to recover their costs and attorneys' fees, in accordance with 15 U.S.C. § 1681n(a)(3).

COUNT II – VIOLATION OF 15 U.S.C. § 1681b(b)(2)(A)(ii)
Failure to Obtain Proper Authorization in Violation of FCRA
15 U.S.C. § 1681b(b)(2)(A)(ii)

59. Plaintiff alleges and incorporates by reference the allegations of paragraphs 1 through 47 of this Complaint as though fully set forth herein.

60. Defendants violated the FCRA by procuring consumer reports relating to Plaintiff and other Background Check Class members without proper authorization. *See* 15 U.S.C. § 1681b(b)(2)(A)(ii).

61. The authorization requirement under 15 U.S.C. § 1681b(b)(2)(A)(ii) follows the disclosure requirement of § 1681b(b)(2)(A)(i) and presupposes that the authorization is based upon a valid disclosure. "After all, one cannot meaningfully authorize his employer to take an action if she does not grasp what that action entails." *Burghy v. Dayton Racquet Club, Inc.*, 695 F. Supp. 2d 689, 699 (S.D. Ohio 2010), *see also United States v. DeFries*, 129 F.3d 1293, 1307 (D.C. Cir. 1997) ("[A]uthorization secured 'without disclosure of . . . material information' is a nullity.")

62. The foregoing violations were willful. Defendants acted in deliberate or reckless disregard of its obligations and the rights of Plaintiff and other Improper Disclosure and Authorization class members under 15 U.S.C. § 1681b(b)(2)(A)(ii). Defendants knew or should

have known of its legal obligations under the FCRA. These obligations are well established in both the plain language of the FCRA and in the promulgations of the Federal Trade Commission. Defendants obtained, or had available to it, substantial written materials that apprised it of its duties under the FCRA. Any reasonable employer would know of, or could easily discover, the FCRA's mandates.

63. Plaintiff and the Background Check Class are entitled to statutory damages of not less than one hundred Dollars (\$100) and not more than one thousand Dollars (\$1,000) for each and every one of these violations under 15 U.S.C. § 1681n(a)(1)(A), in addition to punitive damages under 15 U.S.C. § 1681n(a)(2).

64. Plaintiff and the Background Check Class are further entitled to recover their costs and attorneys' fees, in accordance with 15 U.S.C. § 1681n(a)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of and the Putative Class, prays for relief as follows:

- (a) Determining that this action may proceed as a class action under Rule 1.220(b)(1), and (2) and (3) of the Florida Rules of Civil Procedure;
- (b) Designating Plaintiff as class representative and designating Plaintiff's counsel as counsel for the Putative Class;
- (c) Issuing proper notice to the Putative Class at Defendants' expense;
- (d) Declaring that Defendants committed multiple, separate violations of the FCRA;
- (e) Declaring that Defendants acted willfully in deliberate or reckless disregard of Plaintiff's rights and its obligations under the FCRA;
- (f) Awarding statutory damages as provided by the FCRA, including punitive damages;

- (g) Awarding reasonable attorneys' fees and costs as provided by the FCRA; and
- (h) Granting other and further relief, in law or equity, as this Court may deem appropriate and just.

DEMAND FOR JURY TRIAL

Plaintiff and the Putative Class demand a trial by jury for all issues so triable.

Dated this 30th day of August, 2019.

Respectfully submitted,

/s/ Brandon J. Hill

BRANDON J. HILL

Florida Bar Number: 0037061

WENZEL FENTON CABASSA, P.A.

1110 N. Florida Avenue, Suite 300

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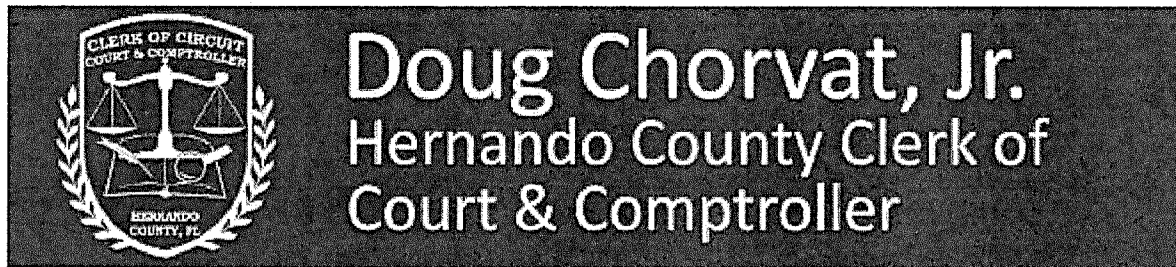
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Attorney for Plaintiff



New Search Collapse All

Case Number	Filed Date	County	Case Type	Status	Contested	Jury Trial
272019CA000971CAAXMX [19000971CAAXMX]	08/26/2019	HERNANDO	Circuit Civil 3-D	OPEN	No	Yes

Filing Date	Description	Active	Contested	Judgment Date
08/26/2019	DISCRIM EMPLOYMENT OR OTHER	YES	NO	-


Party Name	Party Type	Attorney	Bar ID
ANGELIADIS, GEORGE	JUDGE		
TWARDOSKY, JOSH	PLAINTIFF	HILL, BRANDON J	37061
WASTE MANAGEMENT INC OF FLORID	DEFENDANT		

Dockets

Page : 1

ALL ☐

Image	Doc #	Action Date	Description	Pages
	16	09/04/2019	SUMMONS ISSUED FOR: REGISTERED AGENT C/O WASTE MANAGEMENT INC	2
	14	09/04/2019	Payment received: \$10.00 Receipt Number H 644377	
	13	09/04/2019	Assessment 2 Total Assessed \$10.00 Balance Remaining \$0.00	
	15	09/03/2019	SUMMONS ISSUED FOR: REGISTERED AGENT C/O WASTE MANAGEMENT INC (BLANK)	2
	12	09/03/2019	Assessment 2 assessed at sum \$10.00	
	11	08/30/2019	AMENDED COMPLAINT/PETITION AND DEMAND FOR JURY TRIAL	14
	10	08/28/2019	SUMMONS ISSUED FOR: REGISTERED AGENT C/O WASTE MANAGEMENT, INC. OF FLORIDA CT CORPORATION SYSTEM	2
	5	08/27/2019	Payment received: \$410.00 Receipt Number H 643125	
	4	08/27/2019	Assessment 1 Total Assessed \$410.00 Balance Remaining \$0.00	
	2	08/27/2019	Judge: Assigned	
	9	08/26/2019	SUMMONS ISSUED REGISTERED AGENT C/O WASTE MANAGEMENT, INC. OF FLORIDA CT CORPORATION SYSTEM (BLANK)	2
	8	08/26/2019	CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL	13
	7	08/26/2019	COVER SHEET	3

Image	Doc #	Action Date	Description	Pages
	6	08/26/2019	COVER SHEET	2
	3	08/26/2019	Assessment 1 assessed at sum \$410.00	
	1	08/26/2019	Case 272019CA000971CAAXMX Filed with Clerk on 8/26/2019	

Judge Assignment History ☐

Assigned Date	Withdraw Date	Judicial Officer	Type
08/27/2019	-	ANGELIADIS, GEORGE	

Court Events ☐

Event Date	Judge	Docket Type	Location	Prosecutor	Defendant Attorney
No records found.					

Financial Summary ☐

Financial Summary			
Assessment	Total: \$420.00	Paid to Date: \$420.00	Balance Due: \$0.00
Restitution	Total: \$0.00	Paid to Date: \$0.00	Balance Due: \$0.00

Financial Details					
Count	Assessment Due	Assessment Paid to Date	Restitution Due	Restitution Paid to Date	Last Payment Date
	\$420.00	\$420.00	\$0.00	\$0.00	-

Reopen History ☐

Reopen Date	Reopen Close Date	Reopen Reason
No records found.		

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

JOSH TWARDOSKY, on behalf of himself and all similarly-situated individuals,

(b) County of Residence of First Listed Plaintiff Hernando

(EXCEPT IN U.S. PLAINTIFF CASES)

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

Brandon J. Hill, Wenzel Fenton Cabassa, P.A., 1110 North Florida Ave., Suite 300, Tampa, FL 33602 (813) 337-7992

DEFENDANTS

WASTE MANAGEMENT INC OF FLORIDA, and WASTE MANAGEMENT INC,

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

Nancy A. Johnson, Littler Mendelson, P.C., 111 North Orange Avenue, Suite 1750, Orlando, Florida 32801, (407) 393-2900

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	FORFEITURE/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 checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<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"/> 376 Qui Tam (31 USC 3729(a)) <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 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):
 The Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681b(b)(2)(A)(i)

Brief description of cause:

Plaintiff alleges Defendants violated Plaintiff's rights and rights of other putative class members

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 Judge George Angeliadis

DOCKET NUMBER 2019-CA-971

DATE
10/4/19

SIGNATURE OF ATTORNEY OF RECORD
/s/ Nancy A. Johnson Bar No. 597562

FOR OFFICE USE ONLY

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

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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. **Origin.** Place an "X" in one of the six 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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- 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: [Waste Management Violated FCRA Regulations for Employee Background Checks, According to Class Action](#)
