

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

DEMIS ESPINOZA, on behalf
of himself and on behalf of all others
similarly situated,

Plaintiff,

v.

Case No.: 1:21-cv-22684-BB

MANAGED LABOR SOLUTIONS,
LLC, and, PEOPLEASE, LLC,

Defendants.

**SECOND AMENDED CLASS ACTION
COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, Demis Espinoza, on behalf of himself, the putative classes set forth below, and in the public interest, brings this Second Amended Class Action Complaint against, and Peoplease, LLC (“Peoplease”) and Managed Labor Solutions, LLC (“MLS”), for violations of the Fair Credit Reporting Act of 1970, as amended (“FCRA”), 15 U.S.C. § 1681 *et seq.* Plaintiff seeks a trial by jury to hold MLS and Peoplease accountable for violating his federally protected privacy rights.

PRELIMINARY STATEMENT

1. The FCRA, 15 U.S.C. § 1681b, makes it presumptively unlawful to obtain and use a consumer report for an employment purpose. The use of a

consumer report for employment purposes only becomes lawful if the consumer reporting agency and person procuring the report comply with the FCRA's strict requirements.

2. Fifty years ago, Congress enacted the Fair Credit Reporting Act ("FCRA") to ensure the protection of consumer privacy and to limit consumer reporting agencies from recklessly disseminating consumers' personal and sensitive information. Recognizing the impact consumer reports can have on all aspects of life, including employment, Congress created stringent but simple requirements consumer reporting agencies and re-sellers must follow before releasing a consumer report for employment purposes to ensure consumers are properly notified of their rights and the content of their consumer reports. When consumer reporting agencies ignore their statutory obligations, consumers and society pay the price for non-compliance.

3. In this action, Demis Espinoza, by and through his attorneys, and on behalf of himself and the putative classes set forth below, seeks to hold Peoplease and MLS accountable for failing to follow the FCRA's requirements imposed on consumer reporting agencies and users of consumer reports for employment purposes, and in turn violating his federally protected privacy and information rights.

CLAIMS AGAINST PEOPLEASE

4. Defendant, Peoplease is a professional employer organization (“PEO”) and both a consumer reporting agency and user of consumer reports under the FCRA, providing its employer-clients with consumer reports, commonly referred to as “background checks,” for employment purposes. Peoplease’s employer-clients rely on these reports to make employment-related decisions on applicants and employees.

5. Peoplease’s employer-clients order, obtain and purchase consumer reports through Peoplease. Peoplease procures the reports it furnishes to employers from non-party Crimcheck (“Crimcheck”). Crimcheck is a CRA under the FCRA, and the information it provides to Peoplease is a “consumer report” under the Act.

6. The FCRA makes accessing employment-purpose background checks by anyone presumptively illegal. To access and use background checks, employers must abide by strict disclosure and notice requirements imposed by the statutes, and must—before they may obtain a report in the first place—certify to the CRA that they have (as to disclosure) and will (regarding notice) abide by these requirements. *See* 15 U.S.C. §§ 1681b(b)(2), (3).

7. The FCRA also makes it presumptively illegal for a CRA or re-seller like Peoplease to furnish a report in the employment context. A CRA may issue such a report “only if” it first obtains from the person to whom it plans to issue the

report the certification described in the preceding Paragraph.

8. These requirements must be met as to *each report* a CRA or re-seller issues—blanket or prospective certifications of compliance by the users of reports are not permitted.

9. The failure to meet these certification rules means the CRA is forbidden from issuing reports in the employment context. If the agency issues a report without the certifications, it violates the law with each report it so issues.

10. By way of its relationship with Crimcheck, Peoplease provides the means for its employer-clients to order consumer reports for employment purposes.

11. Peoplease procures reports on applicants on its clients' behalf through an arrangement with Crimcheck, and affixes its name to the reports.

12. Peoplease provides the Peoplease-branded reports to its clients through the Peoplease client portal or mobile application.

13. Peoplease sells the reports to its employer-clients for a profit.

14. Peoplease profits from the sale of the reports to its employer-clients.

15. In FCRA parlance, this relationship places Peoplease in the role of a “reseller” of consumer reports. A reseller is:

a consumer reporting agency that—

(1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any

consumer for purposes of furnishing such information to any third party, to the extent of such activities; and

(2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.

15 U.S.C. § 1681a(u).

16. Peoplease qualifies as a consumer reporting agency in these circumstances because it:

for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

Id. § 1681a(f).

17. The information Peoplease provides its employer-clients by way of its relationship with Crimcheck qualifies as a “consumer report” under the FCRA because the information constitutes:

written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for [in this case, employment].

15 U.S.C. § 1681a(d)(1).

18. As such, the FCRA imposes upon Peoplease many of the same responsibilities and obligations as Crimcheck.

19. The same certification requirements therefore apply to Peoplease just as they do to Crimcheck. That means that for *every report* that a Peoplease customer orders through Peoplease's system, the recipient must certify *to Peoplease* its intended use for that report. *Id.* § 1681b(b)(1). Peoplease violates the FCRA with each report it issues to its customers without such certifications.

20. Peoplease willfully violated the FCRA's requirements in multiple ways, in systematic violation of Plaintiff's rights and the rights of other putative class members.

21. Peoplease violated 15 U.S.C. §§ 1681b(b)(1)(A)(i)–(ii) by providing consumer reports used for employment purposes without certification from its clients that they would abide by the FCRA's disclosure, authorization, and notice requirements set forth in 15 U.S.C. § 1681b(b)(2) and § 1681b(b)(3).

22. Based on the foregoing violations, Plaintiff asserts FCRA claims against Peoplease on behalf of himself and a class consisting of consumers whose consumer reports were furnished by Peoplease without certification that the user would comply with the FCRA's strict disclosure, authorization, and notice requirements.

23. Count I Plaintiff asserts a FCRA claim against Peoplease under 15

U.S.C. §§ 1681b(b)(1)(A)(i)-(ii) on behalf of a “FCRA Certification Class” consisting of:

All employees and job applicants in the United States who were the subject of a consumer report furnished by Peoplease and obtained through Crimcheck that was provided without the user’s certification to Peoplease of compliance with 15 U.S.C. § 1681b(b)(2) and 15 U.S.C. § 1681b(b)(3), within five years of the filing of this lawsuit through the date of final judgment in this action.

24. On behalf of himself and the putative class, Plaintiff seeks statutory damages, costs and attorneys’ fees, equitable relief, and other appropriate relief under the FCRA.

25. In the employment context, the FCRA imposes upon CRAs and resellers additional requirements designed to protect consumers’ rights. In keeping with the FCRA’s fundamental goal of transparency, the FCRA requires CRAs and resellers, when providing reports containing public-record information likely to have an adverse effect on a consumer’s ability to obtain employment, must either:

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer’s ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments,

convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

15 U.S.C. § 1681k(a).

26. Discovery in this case will confirm that Peoplease does not believe the FCRA applies to it at all, so it has no process in place to meet either of these options. Specifically, although Peoplease provided Plaintiff's potential employer with a report containing negative criminal-history information, it did not provide him with "at the time" notice that it was providing the report to his potential employer.

27. Discovery will likewise confirm that Peoplease has no process in place to ensure the information it reports is complete and up to date. All Peoplease does is affix its name to the reports compiled by Crimcheck, and make the reports available to its employer-clients without any independent verification.

28. In Count II, Plaintiff brings a separate claim against Peoplease under § 1681k, for the class:

All employees and job applicants in the United States who were the subject of a consumer report furnished by Peoplease and obtained from Crimcheck that included criminal history entries of the grade of misdemeanor or higher, within five years of the filing of this lawsuit through the date of final judgment in this action.

***FCRA Requirements for Using
Employment-Purposed Consumer Reports***

29. Under the FCRA, it is unlawful to procure a consumer report or cause a consumer report to be procured for employment purposes unless certain requirements are satisfied. Specifically, in relevant part:

(2) Disclosure to Consumer.

(A) *In general.* Except as provided in subparagraph (B), a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, 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 in writing (which *authorization* may be made on the document referred to in clause (i)) the procurement of the report *by that person*.

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

30. Peoplease is a PEO. Pursuant to its contractual relationship with its employer-clients, Peoplease co-employs employees with its employer-clients after the employee is deemed eligible for employment.

31. The consumer reports Peoplease procures are used to determine whether consumers are eligible for hire.

32. Peoplease uses consumer reports for employment purposes because it co-employs employees with its employer-clients and the reports are used to make employment decisions.

33. Peoplease did not provide consumers a clear and conspicuous disclosure in a document consisting solely of the disclosure before procuring or causing their consumer reports to be procured for employment purposes.

34. Peoplease did not obtain consumers' written authorization to procure their consumer reports procuring or causing their consumer reports to be procured.

35. The purpose of FCRA notice provisions, including § 1681b(b)(2)(A)(i), is to put consumers on notice that their consumer report is being procured and who is procuring it. This gives consumers the opportunity to exercise substantive rights conferred by the FCRA or other statutes, allowing consumers to decide who accesses their personal, sensitive information.

36. Without clear notice as to who is obtaining and accessing their personal, sensitive information, applicants and employees are deprived of the opportunity to make informed decisions, assert protected rights, or maintain control over their personal information. Control over one's personal and private information is a fundamental right dating back to English common law and violations thereof have historically been recognized as actionable in American courts.

37. Peoplease knowingly and recklessly disregarded case law and regulatory guidance and willfully violated 15 U.S.C. § 1681b(b)(2)(A) by procuring consumer reports on applicants and employees without first providing a disclosure or obtaining their written authorization ahead of time.

38. Peoplease's conduct is also willful because:

- a. Peoplease is a large and sophisticated employer with access to legal advice through its own attorneys and there is no evidence it determined its own conduct was lawful;
- b. Peoplease knew or had reason to know that its conduct was inconsistent with published FCRA guidance interpreting the FCRA, case law and the plain language of the statute; and
- c. Peoplease voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless.

39. Peoplease acted in a deliberate or reckless disregard of its obligations and the rights of Plaintiff and the other "No Disclosure" and the "No Authorization" class members.

40. Peoplease violated 15 U.S.C. § 1681b(b)(2)(A)(i) by procuring consumer reports on Plaintiff and other putative class members, without lawfully disclosing to them that it may obtain their consumer report, before obtaining a copy of their consumer report.

41. Peoplease violated 15 U.S.C. § 1681b(b)(2)(A)(ii) by obtaining consumer reports on Plaintiff and other putative class members without their

written authorization.

42. Plaintiff asserts FCRA claims against Peoplease on behalf of himself and others to whom Peoplease did not provide a disclosure or from whom Peoplease did not obtain written authorization prior to procuring their consumer report for employment purposes.

43. In Count III, Plaintiff asserts a FCRA claim under 15 U.S.C. § 1681b(b)(2)(A)(i) against Peoplease on behalf of a “No Disclosure Class” consisting of:

All job applicants and employees in the United States subject of a consumer report procured or caused to be procured by Peoplease for employment purposes but to whom Peoplease did not first provide a clear and conspicuous disclosure in a document consisting solely of the disclosure in the five years preceding the filing of this action through the date of final judgment.

44. In Count IV, Plaintiff asserts a FCRA claim under 15 U.S.C. § 1681b(b)(2)(A)(ii) against Peoplease on behalf of a “No Authorization Class” consisting of:

All job applicants and employees in the United States subject of a consumer report procured or caused to be procured by Peoplease for employment purposes but from whom Peoplease did not first obtain written authorization in the five years preceding the filing of this action through the date of final judgment.

CLAIMS AGAINST MLS

45. MLS is an employer and user of the consumer reports it obtained from

Peoplease and Crimcheck. Crimcheck is a CRA under the FCRA, and the information it provides to Peoplease is a “consumer report” under the Act.

46. MLS violated 15 U.S.C. § 1681b(b)(3) by denying employment opportunities to Plaintiff based in part or in whole, on the results of Plaintiff’s consumer report without first providing him notice and a copy of the report.

47. Plaintiff asserts FCRA claims against MLS on behalf of himself and others to whom MLS did not provide notice and a copy of their consumer report before taking adverse employment action against them based in whole or in part on their consumer reports as required by 15 U.S.C. § 1681b(b)(3).

48. In Count V, Plaintiff asserts a FCRA claim under 15 U.S.C. § 1681b(b)(3) against MLS on behalf of an “Adverse Action Class,” defined as:

All Managed Labor Solutions job applicants and employees in the United States against whom adverse employment action was taken, based, in whole or in part, on information contained in their consumer report, who were not provided notice and a copy of their report in the five years preceding the filing of this action through the date of final judgment.

49. On behalf of himself and the putative classes, Plaintiff seeks statutory damages, costs and attorneys’ fees, and other appropriate relief under the FCRA.

THE PARTIES

50. Individual and representative Plaintiff, Demis Espinoza (“Plaintiff”) is a member of all five putative classes.

51. Peoplease is a professional employer organization (“PEO”), consumer reporting agency, re-seller and user of consumer reports as contemplated by the FCRA, at 15 U.S.C. § 1681b.

52. MLS is an employer and user of consumer reports as contemplated by the FCRA, at 15 U.S.C. § 1681b.

JURISDICTION AND VENUE

53. Plaintiff alleges violation of federal law. Plaintiff originally filed his action in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida pursuant to 28 U.S.C. § 1331. Defendants subsequently removed the action to this Court.

54. Plaintiff originally filed his action in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, because the underlying events occurred in or near Miami, Florida.

Facts Supporting Plaintiff’s Claims

55. Plaintiff was previously co-employed by MLS and Peoplease between September 18, 2019 and November 13, 2019.

56. MLS and Peoplease terminated Plaintiff’s employment on November 13, 2019, thereby terminating the employment relationship between MLS, Peoplease and Plaintiff.

57. In October, 2020, eleven (11) months after MLS and Peoplease

terminated Plaintiff's employment, Plaintiff again applied for employment with MLS in Miami, Florida.

58. On October 19, 2020, as a condition of hire, Plaintiff authorized MLS to obtain his consumer report.

59. Peoplease and Crimcheck had a contractual relationship wherein Peoplease furnished its employer-clients, including MLS, with consumer reports created by Crimcheck.

60. Peoplease and MLS had a contractual relationship wherein Peoplease sold consumer reports to MLS.

61. On or around October 20, 2020, MLS used Peoplease's app, client portal or computer system to order Plaintiff's consumer report.

62. Peoplease procured or caused Plaintiff's consumer report to be procured for employment purposes.

63. Upon receiving the order and pursuant to its contract with Peoplease, Crimcheck created Plaintiff's consumer report.

64. Plaintiff's consumer report was labeled a "Background Screening Report – Peoplease, LLC."

65. Crimcheck adjudicated/scored Plaintiff as "Questionable" based upon his then-pending criminal charges.

66. Peoplease sold Plaintiff's consumer report to MLS.

67. On or around October 23, 2020, Peoplease, through its client portal, furnished MLS with Plaintiff's consumer report.

68. Discovery will show "Questionable" is an adjudication/score which, unless otherwise changed, renders an applicant ineligible for hire.

69. The adjudication "Questionable" rendered Plaintiff ineligible for hire for as long as such adjudication was affixed to Plaintiff's consumer report.

70. Discovery will show that on or before October 23, 2020, Crimcheck affixed to Plaintiff's consumer report an adjudication making Plaintiff ineligible for hire, causing MLS to make the decision to reject Plaintiff's application for employment.

71. Discovery will show that on or October 23, 2020, Peoplease furnished MLS access to Plaintiff's consumer report containing the adjudication making Plaintiff ineligible for hire, causing MLS to enter into its computer system a code or designation confirming Plaintiff's ineligibility.

72. Discovery will show Peoplease knew the consumer report it furnished MLS contained public record information likely to have an adverse effect on Plaintiff's opportunity to obtain employment but did not notify Plaintiff of the fact it was reporting such public record information, together with the name and address of the person to whom such information is being reported.

73. Discovery will show Peoplease failed to maintain strict procedures

designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date because Peoplease merely furnished the reports it obtained from Crimcheck without taking any independent action to verify the accuracy of the information contained therein.

74. Discovery will show that if Plaintiff had been designated/adjudicated "Clear" in October 2020, he would have been eligible for employment and would have been hired by MLS.

75. Discovery will show that on or about October 23, 2020, MLS adopted the adjudication as its own. The adoption of the adjudication was an adverse employment action.

76. MLS rejected Plaintiff for employment on October 23, 2020, in whole or in part because of his consumer report.

77. Shortly after October 23, 2020, Plaintiff contacted MLS's corporate office to check on the status of his application. Plaintiff was informed by an employee in MLS's Human Resource Department that his application for employment had been rejected because of his "background check."

78. Plaintiff was not provided notice or a copy of his background check from MLS prior to being rejected for employment. As a result, Plaintiff never saw what was on his consumer report and didn't know whether it was in fact accurate.

79. MLS's failure to provide Plaintiff with pre-adverse action notice, including a copy of his consumer report and written summary of his FCRA rights at least five (5) business days before rejecting him for employment was a blatant violation of the requirements set forth by 15 U.S.C. § 1681b(b)(3).

80. MLS failed to provide Plaintiff with pre-adverse action notice, including a copy of his consumer report and written summary of his FCRA rights before rejecting him for employment because Peoplease never required MLS to certify its compliance with 15 U.S.C. § 1681b(b)(3), when applicable.

81. Ultimately, through his counsel, Plaintiff obtained a copy of the consumer report MLS relied upon to deny him employment in October, 2020.

82. If Plaintiff had not hired an attorney to obtain a copy of his consumer reports, Plaintiff would have never known Peoplease had furnished his consumer report to MLS.

83. If Plaintiff had not hired an attorney, Plaintiff would have never seen the consumer report, including "Questionable" adjudication/score, that was used October 2020, to take an adverse employment action against him because he was never provided pre-adverse action notice and a copy of his report beforehand. Consequently, Plaintiff would never have seen the contents of his own consumer report or learned what was being reported about him.

84. Had Plaintiff known Peoplease would re-sell his consumer report or

furnish his consumer report to MLS without obtaining the requisite certification of compliance with 15 U.S.C. § 1681b(b)(3), he never would have signed the authorization documents.

85. Because Peoplease never obtained MLS's certification of compliance with § 1681b(b)(2), Peoplease was not aware of any purported authorization from Plaintiff to issue his report to MLS at the time it did so.

86. MLS never certified to Peoplease that it would comply with 15 U.S.C. § 1681b(b)(2)(A) or § 1681b(b)(3) before obtaining Plaintiff's consumer report from Peoplease.

87. Peoplease furnished the consumer report to MLS even though MLS had never certified compliance with 15 U.S.C. § 1681b(b)(2)(A) before obtaining the report or that it would comply with § 1681b(b)(3), if ever applicable.

88. Despite having none of the requisite certifications of FCRA compliance, Peoplease still furnished MLS, and a multitude of employers like it, with thousands of consumer reports that were being used for employment purposes.

89. MLS obtained Plaintiff's consumer report from Peoplease and used the report for employment purposes. Peoplease was aware that it was furnishing Plaintiff's report, and thousands like it, to MLS and others for use in the employment context. Yet, Peoplease failed to obtain the requisite certifications of

compliance from MLS.

90. Shortly thereafter, MLS rejected Plaintiff for employment based upon the consumer report Peoplease unlawfully furnished to MLS. However, Plaintiff was never provided pre-adverse action notification pursuant to § 1681b(b)(3), most likely because MLS never certified to Peoplease it would provide such notification, if applicable, before obtaining Plaintiff's consumer report.

91. In other words, Plaintiff was denied employment, was not provided with the proper notice so that he would have been apprised of his rights to dispute any information in the consumer report or to otherwise discuss the information in the report before MLS rejected him, and had his consumer report improperly accessed because Peoplease failed to obtain the appropriate certifications from MLS. Such failure also caused an invasion of Plaintiff's privacy, as Peoplease made his consumer report available to MLS without having statutory permission for doing so.

92. In October 2020, Peoplease did not disclose to Plaintiff it intended to procure his consumer report from a consumer reporting agency.

93. In October, 2020, Plaintiff did not authorize Peoplease to obtain his consumer report from a consumer reporting agency.

94. In October 2020, Peoplease failed to obtain Plaintiff's written authorization prior procuring his consumer report.

95. Plaintiff values his privacy and would not have authorized Peoplease to obtain his consumer report without his consent.

96. Plaintiff values his privacy rights and would not have consented to Peoplease obtaining or possessing his personal and sensitive information without his knowledge.

97. Plaintiff would not have authorized Peoplease to obtain his consumer report in October, 2020 if he knew it was being obtained without his knowledge and would be used to deny him employment.

98. If Plaintiff had not hired an attorney to obtain a copy of his consumer reports, Plaintiff would have never known his personal and sensitive information had been published or made available to Peoplease.

Peoplease Has Caused Plaintiff Concrete Harm

99. Peoplease unjustly enriched itself by unlawfully compiling Plaintiff's personal, private and sensitive information and selling it without a permissible purpose. The injury of "unjust enrichment" has its roots in English common law. Causes of action for unjust enrichment were part of "the traditional concern of the Courts at Westminster." *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 US 765, 774 (2000) (quoting *Coleman v. Miller*, 307 U.S. 433, 460 (1939)).

100. Peoplease also violated Plaintiff's right to privacy by furnishing it to a third party, MLS, without a permissible purpose, since Peoplease did not have the

requisite certifications from MLS such that Peoplease could overcome the statutory presumption that trafficking in consumer reports is illegal.

101. The FCRA's protections regarding who may obtain consumer reports and under what circumstances they may do so are real and substantive, not merely procedural. The violation alleged here is not some mere technical requirement—without the certification from MLS, Peoplease had no statutory permission to provide MLS with a report about Plaintiff.

102. This improper issuance of a report harmed Plaintiff by invading his privacy—Peoplease released Plaintiff's private, personal information to MLS without a lawful reason for doing so.

103. Protection of consumer privacy is one well-recognized aspect of the FCRA, and the statutory provisions violated here have been part of the FCRA since its enactment in 1970.

104. Plaintiff and the putative class members have a common-law right to keep their personal information from being distributed without the statutory safeguards. Congress sought to enhance the protection of that right by enacting the FCRA and incorporating many consumer-oriented safeguards, which restrict the distribution of consumer reports only for the reasons listed “and no other.” Indeed, the FCRA preempts the common-law tort of intrusion upon seclusion, and the FCRA expresses Congress's finding of “a need to insure that consumer reporting

agencies exercise their grave responsibilities with fairness, impartiality and a respect for the consumer's right to privacy." 15 U.S.C. § 1681a(4).

105. Peoplease invaded Plaintiff's and the putative class members' right to privacy when it provided their highly confidential personal information to MLS without a statutory basis for doing so.

106. The invasion of privacy is all the more egregious when considered against the fact that Plaintiff and class members were unaware that Peoplease was even involved in the process. Plaintiff understood that MLS would engage some manner of a background check about him, but was never made aware that Peoplease would play a role.

107. Peoplease's failure to obtain the appropriate certifications from MLS injured Plaintiff in that (1) his privacy was unlawfully invaded by Peoplease's provision of background reports about him without statutory permission; (2) Plaintiff was deprived of his ability to contest or discuss with MLS the contents of his consumer report because Peoplease did not obtain the proper certification from MLS that it would provide the appropriate notice to Plaintiff if MLS chose to use the contents of his consumer reports as a basis to deny employment; and (3) Peoplease was unjustly enriched by selling Plaintiff's consumer report to MLS when Peoplease had no statutory basis on which to release the report to MLS.

108. Peoplease's conduct is precisely the type that Congress sought to

prevent—protection of consumer privacy—with the restrictions it has imposed on access to consumers’ sensitive, personal information.

109. Plaintiff and the putative class members therefore suffered a concrete, in-fact injury that is directly traceable to Peoplease’s unlawful conduct and that is likely to be redressed by a favorable decision here.

110. Peoplease violated Plaintiff’s right to privacy by re-selling or furnishing his consumer report containing his personal and sensitive information without a permissible purpose and selling it for a profit to a third party.

111. MLS rejected Plaintiff for employment based in whole or in part on the contents of his consumer report, which Peoplease provided to MLS without a statutory basis for doing so. However, MLS never provided Plaintiff with pre-adverse action notice, a copy of his consumer report or summary of rights.

112. Again, it is not surprising MLS failed to satisfy the requirements of § 1681b(b)(3) since MLS never certified to Peoplease that it would comply with § 1681b(b)(3) before obtaining Plaintiff’s consumer report.

113. If Plaintiff had known Peoplease was furnishing his consumer report to MLS without a legal right to do so, Plaintiff would not agree to have Peoplease furnish his consumer report to MLS.

114. If Plaintiff had known Peoplease was furnishing his consumer report to MLS without a legal right to do so, and such consumer report would be the basis

for his termination, Plaintiff would not have signed any authorization form provided by MLS.

115. If Plaintiff knew Peoplease was profiting unlawfully from his consumer report, Plaintiff would not have signed the authorization purporting to permit the compilation of his personal, private, and sensitive information for sale.

116. Peoplease invaded Plaintiff's privacy when it failed to provide Plaintiff with a disclosure or obtain his written authorization before it procured his consumer report, which contained Plaintiff's personal and sensitive information.

117. Peoplease invaded Plaintiff's privacy by having access to his personal and sensitive information without first disclosing to Plaintiff its intent or obtaining his written authorization to possess such information before procuring his consumer report.

118. Peoplease invaded Plaintiff's privacy by accessing his personal and sensitive information without first disclosing to Plaintiff its intent or obtaining his written authorization before procuring his consumer report.

119. Peoplease invaded Plaintiff's privacy by accessing Plaintiff's personal and sensitive information without his knowledge or written consent.

120. Peoplease did not provide a disclosure to Plaintiff before obtaining his consumer report for employment purposes. Therefore, Peoplease illegally invaded Plaintiff's privacy by accessing his consumer report without his consent,

authorization, or a permissible purpose.

121. Plaintiff suffered a concrete informational injury when Peoplease circumvented the FCRA's disclosure requirement. When Peoplease obtained Plaintiff's consumer report without disclosing its intent to procure a consumer report, Plaintiff suffered informational injury in that he lost control over the dissemination of his personal and sensitive information – a right Congress elevated to a concrete harm by incorporating the disclosure requirement into the FCRA.

122. Plaintiff suffered a concrete informational injury when Peoplease circumvented the FCRA's authorization requirement. When Peoplease obtained Plaintiff's consumer report without obtaining his written authorization, Plaintiff suffered informational injury in that he lost control over the dissemination of his personal and sensitive information – a right Congress elevated to a concrete harm by incorporating the written authorization requirement into the FCRA.

123. Peoplease violated the FCRA by procuring consumer reports on Plaintiff and other No Disclosure Class members without first providing them a clear and conspicuous disclosure as required by 15 U.S.C. § 1681b(b)(2)(A)(i).

124. Peoplease violated the FCRA by procuring consumer reports on Plaintiff and other No Disclosure Class members without first obtaining written authorization as required by 15 U.S.C. § 1681b(b)(2)(A)(ii).

125. Peoplease's failure to provide a disclosure or obtain written

authorization created a risk of harm that Plaintiff and members of the putative No Disclosure Class would never know their personal and sensitive information was obtained and possessed by Peoplease.

126. Additionally, Peoplease invaded Plaintiff's right to privacy and intruded upon his seclusion. Under the FCRA, a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless it complies with the statutory requirements (*i.e.*, disclosure and authorization) set forth in subsections 15 U.S.C. §§ 1681b(b)(2)(A)(i)-(ii).

127. The FCRA's disclosure and authorization requirements codified in 15 U.S.C. §§ 1681b(b)(2)(A)(i)-(ii) bear a close relationship to privacy torts actionable under common law including “(a) unreasonable intrusion upon the seclusion of another, ... (b) appropriation of the other's name or likeness, ... (c) unreasonable publicity given to the other's private life, ... or (d) publicity that unreasonably places the other in a false light before the public’ Restatement (Second) of Torts § 652A(2)(a)-(d) (1977).”

128. These statutory requirements were enacted by Congress expressly to protect consumer privacy by restricting the circumstances under which a person (in this instance Peoplease) could obtain and use a consumer's personal information consumer report.

129. In enacting this FCRA provision, Congress also expressly sought to guarantee important material information be provided to Plaintiff and consumers like him with respect to employer use of a consumer report for an employment adverse action.

130. Plaintiff and each putative class member have been substantively harmed and injured by Peoplease in the deprivation of the congressionally mandated information.

MLS Has Caused Plaintiff Concrete Harm

131. MLS's failure to provide pre-adverse action notice injured Plaintiff in that he was deprived of information due to him at a particular time, and the ability to contest or discuss with MLS the content of his consumer report.

132. These rights attach even if the report was accurate, as courts regularly recognize that § 1681b(b)(3) entitles consumers to know the same information the employer is using to make its hiring decision and, even if the report contains no inaccuracies, to soften the brunt of negative information by discussing it preemptively with the employer before the hiring decision is made.

133. MLS denied Plaintiff employment based in whole or in part on the content of his consumer report but did not first provide him with pre-adverse action notice, including a copy of his consumer report. Therefore, MLS failed to satisfy the federally imposed requirements of § 1681b(b)(3)(A)(i). This resulted in an

informational injury to Plaintiff and the putative class members.

134. Because MLS failed to provide Plaintiff with a copy of his consumer report, Plaintiff was deprived of the opportunity to proactively address how his background was being interpreted by MLS and to discuss the information and place it in context.

135. Plaintiff was worried whether the information contained in his consumer report was accurate and how it would affect his prospects of employment elsewhere.

136. Plaintiff spent time researching his rights to obtain the information contained in his consumer report.

137. Plaintiff spent time obtaining his consumer report from Crimcheck. This despite the fact that MLS is required by the FCRA to provide consumers with copies of their reports before taking adverse actions against them. 15 U.S.C. § 1681b(b)(3).

138. The FCRA's protections regarding who may obtain consumer reports and how they may be used are real and substantive, not merely procedural. The violation alleged here is not just a technical requirement – MLS had no right to take an adverse employment action against Plaintiff without first providing him notice of its intent, and a copy of his consumer report.

139. Plaintiff and the putative class members, all of whom were denied pre-

adverse action notice, therefore suffered a concrete, in-fact injury that is directly traceable to MLS's conduct and that is likely to be redressed by a favorable decision here.

140. Plaintiff and the putative class members suffered additional concrete harm because of the adjudication of their reports. In taking such adverse actions against applicants before providing them with the notice and summary of rights demanded by § 1681b(b)(3), MLS deprived Plaintiff and class members with information to which they were statutorily entitled at a particular time. This deprivation worked concrete harm on Plaintiff and members of the classes.

141. Courts regularly recognize that violations of § 1681b(b)(3) work concrete harm on consumers. *See, e.g., Helwig v. Concentrix Corp.*, No. 1:20-cv-920, 2021 WL 1165719, at *3 (N.D. Ohio Mar. 26, 2021) (concluding that deprivation of notice before adverse action resulted in Article III harm, and citing cases from the Third, Sixth, Seventh, and D.C. Circuits so holding).

142. This statutory requirement was enacted by Congress expressly to protect consumer privacy by restricting the circumstances under which a person (in this instance MLS) could obtain and use a consumer's personal information consumer report. Congress elevated the use of consumers' private information without following the statutory requirements as a harm causing a concrete injury.

143. In enacting this FCRA provision, Congress also expressly sought to

guarantee important material information be provided to Plaintiff and consumers like him with respect to employer use of a consumer report for an employment adverse action.

144. Plaintiff and each putative class member have been substantively harmed and injured by Defendants in the deprivation of the congressionally mandated information.

145. Concrete harm results from the deprivation of notice even if the background report is accurate. *Hood v. Action LoCrimchecktix, LLC*, No. 4:20-cv-978 RWS, 2021 WL 1143885, at *4 (E.D. Mo. Mar. 25, 2021) (concluding that “[a]n unsuccessful job applicant suffers a concrete harm when he is deprived of these [Section 1681b(b)(3)] rights—even if the information in the report is true and accurate,” and collecting cases holding likewise).

146. That is because context is important, and being denied the ability to see the report on which an employer is basing a negative hiring decision prevents consumers from being able to explain any negative information. *See id.* at *5 (“[T]he language of § 1681b(b)(3)(A) as well as the legislative history of the FCRA reflects clear congressional intent to make an individual’s inability to review and respond to the contents of his consumer report before suffering an adverse employment action a redressable harm.”).

147. Moreover, § 1681b(b)(3)(A) bears a “close relationship” with

common law privacy rights understood as being invaded by “(a) unreasonable intrusion upon the seclusion of another, ... (b) appropriation of the other's name or likeness, ... (c) unreasonable publicity given to the other's private life, ... or (d) publicity that unreasonably places the other in a false light before the public’ Restatement (Second) of Torts § 652A(2)(a)-(d) (1977).” *Long v. S.E. Pennsylvania Transportation Auth.*, 903 F.3d 312, 319 (3d Cir. 2018).

Peoplease Acted Willfully

148. Peoplease knew or should have known about its legal obligations under the FCRA. These obligations are well established in the statute’s plain language, judicial decisions interpreting the Act, and in the Federal Trade Commission’s and Consumer Financial Protection Bureau’s promulgations.

149. Peoplease obtained, or had available, substantial written materials, which apprised it of its duties under the FCRA.

150. Before CRAs or re-sellers provide consumer reports for employment purposes, they must obtain a written certification that the recipient has (a) provided the consumer with an FCRA-compliant disclosure that a report will be sought; and (b) received that consumer’s written authorization. *Obabuecki v. Int’l Business Machines Corp.*, 145 F. Supp. 2d 371, 393 (S.D.N.Y. 2001).

151. This requirement has been part of the fabric of the FCRA since Congress enacted it. Peoplease has had decades by which to become compliant

with this requirement, yet it has not done so.

152. Discovery will show that Peoplease has no process or procedure directed to compliance with the FCRA's certification requirement with respect to employers receiving consumer reports for employment purposes through solutions providers like Peoplease, despite knowing of its existence.

153. Despite knowledge of these legal obligations, Peoplease acted consciously in breaching its known duties and depriving the Plaintiff and putative class members of their rights under the FCRA.

154. As a result of these FCRA violations, Peoplease is liable to Plaintiff and to each putative class member for statutory damages from \$100.00 to \$1,000.00 pursuant to 15 U.S.C. § 1681n(a)(1)(A), plus punitive damages pursuant to 15 U.S.C. § 1681n(a)(2), for the violations alleged herein, and for attorneys' fees and costs pursuant to § 1681n and § 1681o.

MLS Acted Willfully

155. MLS knew or should have known about its legal obligations under the FCRA. These obligations are well established in the statute's plain language, judicial decisions interpreting the Act, and in the Federal Trade Commission's and Consumer Financial Protection Bureau's promulgations.

156. Before a person takes an adverse employment action, it must provide two documents to the prospective employee. *See* Letter from Clark W.

Brinckerhoff to Erick J. Weisberg (June 27, 1997), FTC Informal Staff Letter (“Brinckerhoff Letter II”) (noting that taking action a period of five business days after notice “appears reasonable.”); *Williams v. Telespectrum, Inc.*, Civil Action No. 3:05cv853 (E.D. Va. 2006), Report and Recommendation of MaCrimchecktrate Judge Hannah Lauck dated November 7, 2006, adopted by Judge R. Payne January 8, 2005, (holding that a user of a consumer report must provide to the consumer a copy of the report and disclosure of rights a sufficient amount of time before it takes adverse action so that the consumer can rectify any inaccuracies in the report, and simultaneous provision of the report does not satisfy this requirement); *Kelchner v. Sycamore Manor Health Ctr.*, 305 F. Supp. 2d 429, 435 (M.D. Pa. 2004); (holding a reasonable period for the employee to respond to disputed information is not required to exceed five business days following the consumers receipt of the consumer’s report from the employer).

157. MLS obtained, or had available, substantial written materials, which apprised it of its duties under the FCRA.

158. These requirements have been part of the fabric of the FCRA since Congress enacted it. MLS has had decades by which to become compliant with these requirements, yet it has not done so.

159. Despite knowledge of these legal obligations, MLS acted consciously in breaching its known duties and depriving the Plaintiff and putative class

members of their rights under the FCRA.

160. As a result of these FCRA violations, MLS is liable to Plaintiff and to each putative class member for statutory damages from \$100.00 to \$1,000.00 pursuant to 15 U.S.C. § 1681n(a)(1)(A), plus punitive damages pursuant to 15 U.S.C. § 1681n(a)(2), for the violations alleged herein, and for attorney's fees and costs pursuant to § 1681n and § 1681o.

CLASS ACTION ALLEGATIONS

161. In Count I, Plaintiff asserts a claim against Peoplease on behalf of a "Certification Class," defined as:

All employees and job applicants in the United States who were the subject of a consumer report furnished by Peoplease and obtained through Crimcheck that was provided without the user's certification of compliance with 15 U.S.C. § 1681b(b)(2) and 15 U.S.C. § 1681b(b)(3), within five years of the filing of this lawsuit through the date of final judgment in this action.

162. In Count II, Plaintiff also asserts a claim against Peoplease on behalf of a "1681k Notice Class," defined as:

All employees and job applicants in the United States who were the subject of a consumer report furnished by Peoplease and obtained through Crimcheck that included criminal history entries of the grade of misdemeanor or higher, within five years of the filing of this lawsuit through the date of final judgment in this action.

163. In Count III, Plaintiff asserts a FCRA claim under 15 U.S.C. § 1681b(b)(2)(A)(i) against Peoplease on behalf of a "No Disclosure Class"

consisting of:

All job applicants and employees in the United States subject of a consumer report procured or caused to be procured by Peoplease for employment purposes but to whom Peoplease did not first provide a clear and conspicuous disclosure in a document consisting solely of the disclosure in the five years preceding the filing of this action through the date of final judgment.

164. In Count IV, Plaintiff asserts a FCRA claim under 15 U.S.C. § 1681b(b)(2)(A)(ii) against Peoplease on behalf of a “No Authorization Class”

consisting of:

All job applicants and employees in the United States subject of a consumer report procured or caused to be procured by Peoplease for employment purposes but from whom Peoplease did not first obtain written authorization in the five years preceding the filing of this action through the date of final judgment.

165. In Count V, Plaintiff asserts a FCRA claim under 15 U.S.C. § 1681b(b)(3) against MLS on behalf of an “Adverse Action Class,” defined as:

All Managed Labor Solutions job applicants and employees in the United States against whom adverse employment action was taken, based, in whole or in part, on information contained in their consumer report, who were not provided notice and a copy of their report in the five years preceding the filing of this action through the date of final judgment.

166. **Numerosity.** The members of the putative classes are so numerous that joinder of all class members is impracticable. Peoplease furnished hundreds of consumer reports to MLS alone, for positions across the United States. Peoplease

regularly compiles consumers' personal, private and sensitive information into consumer reports for sale to employers and has obtained even more reports on consumers to whom it did not provide a disclosure or from whom it did not obtain written authorization. Plaintiff is informed and believes that during the relevant time period, tens of thousands of employees and prospective employees, if not hundreds of thousands, satisfy the definition of the putative classes. Based on the number of putative class members and their geographic dispersal, joinder is impracticable. The names and addresses of the class members are identifiable through Peoplease's records and putative class members may be notified of this action by mailed notice.

167. **Predominance of Common Questions of Law or Fact.** Class treatment is also appropriate because questions of law or fact common to the putative Classes predominate over any questions affecting only individual members of the putative Classes, and also because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Peoplease's and MLS's conduct stems from common and uniform policies and practices, resulting in common violations of the FCRA. Such common questions include, among others:

- a. whether Peoplease furnished consumer reports for employment purposes without the user's certification of compliance with 15 U.S.C. § 1681b(b)(1), before furnishing such reports;

- b. whether Peoplease furnished consumer reports for employment purposes without the user's certification of compliance with 15 U.S.C. § 1681b(b)(3), if applicable;
- c. whether Peoplease furnished consumer reports for employment purposes containing public record information likely to have an adverse effect on consumers' ability to obtain employment without providing consumers the notice required by U.S.C. § 1681k, when furnishing such reports;
- d. whether Peoplease disclosed to consumers its intent to obtain their consumer reports for employment purposes before procuring such reports as required by 15 U.S.C. § 1681b(b)(2)(A)(i).
- e. whether Peoplease obtained consumers' written authorization to procure their consumer reports for employment purposes before procuring such reports as required by 15 U.S.C. §§ 1681b(b)(2)(A)-(ii).
- f. whether MLS provided applicants with the pre-adverse action notice requirements set forth by 15 U.S.C. § 1681b(b)(3);
- g. whether the alleged violations of the FCRA were willful; and
- h. the proper measure of statutory damages.

168. Members of the putative classes do not have an interest in pursuing separate actions against Peoplease and MLS, as the amount of each class member's 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. 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.

169. This case is further maintainable as a class action because prosecution of actions by individual members of the putative classes would result in inconsistent or varying adjudications and create the risk of incompatible standards of conduct for Peoplease and MLS. 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.

170. This case is also maintainable as a class action because Peoplease and MLS acted or refused to act on grounds that apply generally to the putative classes.

171. Class certification is also appropriate because questions of law and fact common to the putative classes 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. Peoplease's and MLS's conduct stems from common and uniform policies and practices, resulting in common violations of the FCRA. Members of the putative classes do not have an interest in pursuing separate actions against Peoplease and MLS, as the amount of each class member's 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 Peoplease and MLS. 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.

172. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the interests of the putative classes, and has retained Counsel experienced in complex class action litigation, including nationwide class actions pressing claims under the FCRA.

COUNT I
**Failure to Obtain Certification Prior to
Furnishing a Consumer Report for Employment
Purpose In Violation of 15 U.S.C. § 1681b(b)(1)(A)
(Against Peoplease)**

173. Plaintiff alleges and incorporates by reference the allegations in the preceding paragraphs 55-98.

174. Peoplease willfully violated 15 U.S.C. § 1681b(b)(1)(A) because it provided consumer reports about Plaintiff and class members, which were used for employment purposes, without the user's certification of compliance with the disclosure, authorization and notification requirements set forth in 15 U.S.C.

§§1681b(b)(2) and § 1681b(b)(3).

175. Peoplease invaded Plaintiff's privacy by compiling Plaintiff's personal, private and sensitive information into a consumer report for employment purposes, and furnishing said consumer report without a permissible purpose.

176. Peoplease caused Plaintiff injury because the report Peoplease furnished was used, in whole or in part, as the basis for an adverse employment action.

177. Peoplease caused Plaintiff injury because Peoplease permitted the user of its consumer reports to circumvent the disclosure, authorization and notification requirements of the FCRA when using consumer reports for employment purposes by failing to require MLS to certify compliance therewith.

178. The forgoing violations were willful. At the time Peoplease violated 15 U.S.C. § 1681b(b)(1)(A), Peoplease knew it was required to obtain certification of compliance with 15 U.S.C. § 1681b(b)(2) from MLS before furnishing MLS with consumer reports for employment purposes and certification with the notification requirements of 15 U.S.C. § 1681b(b)(3), if applicable. Peoplease's willful conduct is also reflected by, among other things, the following facts:

- a. Peoplease knew of potential FCRA liability;
- b. Peoplease is a company with access to legal advice through its own general counsel's office and outside employment counsel, and there will be no contemporaneous evidence that it determined that its conduct was lawful;

- c. The FCRA's certification requirement is clearly spelled out in the plain language of the statute;
- d. Peoplease knew or had reason to know that its conduct was inconsistent with published FTC guidance interpreting the FCRA and the plain language of the statute; and
- e. Peoplease voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless.

179. Plaintiff and the Certification Class are entitled to statutory damages of between \$100.00 and \$1,000.00 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).

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

WHEREFORE, Plaintiff, on behalf of himself and the putative Certification Class pray for relief as follows, in the form of an order:

- a. determining that this action may proceed as a class action;
- b. designating Plaintiff as class representative and designating Plaintiff's Counsel as counsel for the putative class;
- c. requiring notice to the putative class at Peoplease's expense;
- d. finding that Peoplease acted willfully in deliberate or reckless disregard of Plaintiff's rights and its obligations under the FCRA;

- e. awarding statutory damages as provided by the FCRA, including punitive damages, to members of the putative class; and
- f. awarding reasonable attorneys' fees and costs as provided by the FCRA.

COUNT II
Failure to Provide Contemporaneous Notice
in Violation of 15 U.S.C. § 1681k(a)(1)
(Against Peoplease)

181. Plaintiff alleges and incorporates by reference the allegations in the preceding paragraphs 55-98.

182. Peoplease willfully violated 15 U.S.C. § 1681k(a)(1) because it provided consumer reports about Plaintiff and Class Members, which were used for employment purposes and contained public-record information likely to have an adverse effect on consumers' ability to obtain employment, without providing the subjects of the report contemporaneous notice that it was furnishing the report to the users.

183. Peoplease cannot rely on the "strict procedures" requirement of Section 1681k(a)(2) because it takes no steps to ensure the public-record information it reports is complete and up to date.

184. Instead, Peoplease simply parrots, without verification, the information it obtains from Crimcheck.

185. Plaintiff and Class Members suffered informational injury by

Peoplease's failure to provide them with statutorily required information when such information was due.

186. Peoplease further caused Plaintiff and class members injury because it deprived Plaintiff and Class Members of the knowledge that it was reporting information about them that may affect their job prospects, eliminating those individuals' ability to correct inaccuracies or preemptively discuss any negative information with potential employers.

187. The forgoing violations were willful. At the time Peoplease violated 15 U.S.C. § 1681k(a)(1), Peoplease knew it was required to provide contemporaneous notice of its furnishing of reports because it has no process in place to meet the strict procedures requirement of Section 1681k(a)(2) when it furnishes reports for employment purposes that contain negative public-record information. Peoplease's willful conduct is also reflected by, among other things, the following facts:

- a. Peoplease knew of potential FCRA liability;
- b. Peoplease is a company with access to legal advice through its own general counsel's office and outside employment counsel, and there will be no contemporaneous evidence that it determined that its conduct was lawful;
- c. The FCRA's at-the-time notice requirement is clearly spelled out in the plain language of the statute;

- d. Peoplease knew or had reason to know that its conduct was inconsistent with published FTC guidance interpreting the FCRA and the plain language of the statute; and
- e. Peoplease voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless.

188. Plaintiff and the 1681k Notice Class are entitled to statutory damages of between \$100.00 and \$1,000.00 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).

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

WHEREFORE, Plaintiff, on behalf of himself and the putative 1681K Notice class pray for relief as follows, in the form of an order:

- a. determining that this action may proceed as a class action;
- b. designating Plaintiff as class representative and designating Plaintiff's Counsel as counsel for the putative class;
- c. requiring notice to the putative class at Peoplease's expense;
- d. finding that Peoplease acted willfully in deliberate or reckless disregard of Plaintiff's rights and its obligations under the FCRA;
- e. awarding statutory damages as provided by the FCRA, including punitive damages, to members of the putative class; and

- f. awarding reasonable attorneys' fees and costs as provided by the FCRA.

COUNT III
Failure to Make Proper Disclosure
in Violation of FCRA 15 U.S.C. § 1681b(b)(2)(A)(i)
(Against Peoplease)

190. Plaintiff alleges and incorporates by reference the allegations in the preceding paragraphs 49-98.

191. Peoplease violated the FCRA by procuring consumer reports relating to Plaintiff and other No Disclosure Class members without first providing a disclosure.

192. The foregoing violations were willful. At the time Peoplease violated 15 U.S.C. § 1681b(b)(2)(A)(i), Peoplease knew that it had to disclose to Plaintiff and the putative class that it intended to procure their consumer reports before it was permitted to obtain their consumer reports for employment purposes. A plethora of authority, including both case law, and FTC opinions, existed at the time of Peoplease's violations on this very issue. Peoplease's willful conduct is also reflected by, among other things, the following facts:

- a. Peoplease is a large corporation with access to legal advice through its own general counsel's office and outside employment counsel, and there is not contemporaneous evidence that it determined that its conduct was lawful;
- b. Peoplease knew or had reason to know that its conduct was inconsistent with published FTC guidance interpreting the FCRA and the plain language of the statute; and

- c. Peoplease voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless.

193. Plaintiff and the No Disclosure Class are entitled to statutory damages of not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000.00) 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).

194. Plaintiff and the No Disclosure Class are further entitled to recover their costs and attorneys' fees, in accordance with 15 U.S.C. § 1681n(a)(3).

WHEREFORE, Plaintiff, on behalf of himself and the putative No Disclosure class, prays for relief as follows:

- a. determining that this action may proceed as a class action;
- b. designating Plaintiff as class representative and designating Plaintiff's Counsel as counsel for the putative class;
- c. requiring notice to the putative class at Peoplease's expense;
- d. finding that Peoplease acted willfully in deliberate or reckless disregard of Plaintiff's rights and its obligations under the FCRA;
- e. awarding statutory damages as provided by the FCRA, including punitive damages, to members of the putative class; and
- f. awarding reasonable attorneys' fees and costs as provided by the FCRA.

COUNT IV
Failure to Obtain Authorization in
Violation of FCRA 15 U.S.C. § 1681b(b)(2)(A)(ii)
(Against Peoplease)

195. Plaintiff alleges and incorporates by reference the allegations in the preceding paragraphs 55-98.

196. Peoplease violated the FCRA by procuring consumer reports relating to Plaintiff and other No Authorization class members without first obtaining their written authorization.

197. The foregoing violations were willful. Peoplease acted in deliberate or reckless disregard of its obligations and the rights of Plaintiff and other No Authorization Class members under 15 U.S.C. § 1681b(b)(2)(A)(ii). Peoplease knew or should have known of its legal obligations under the FCRA. These obligations are well established in the plain language of the statute and in the promulgations of the Federal Trade Commission. Peoplease obtained or otherwise had available substantial written materials that apprised Peoplease of its duties under the FCRA. Any reasonable employer knows of the existence of these FCRA mandates, or can easily discover their substance.

198. Plaintiff and the No Authorization Class are entitled to statutory damages of not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000.00) for each and every one of these violations under 15 U.S.C. § 1681n(a)(1)(A), in addition to punitive damages as the Court may allow

under 15 U.S.C. § 1681n(a)(2).

199. Plaintiff and the No Authorization Class are further entitled to recover their costs and attorneys' fees, in accordance with 15 U.S.C. § 1681n(a)(3).

WHEREFORE, Plaintiff, on behalf of himself and the putative No Authorization class, prays for relief as follows:

- a. determining that this action may proceed as a class action;
- b. designating Plaintiff as class representative and designating Plaintiff's Counsel as counsel for the putative class;
- c. requiring notice to the putative class at Peoplease's expense;
- d. finding that Peoplease acted willfully in deliberate or reckless disregard of Plaintiff's rights and its obligations under the FCRA;
- e. awarding statutory damages as provided by the FCRA, including punitive damages, to members of the putative class; and
- f. awarding reasonable attorneys' fees and costs as provided by the FCRA.

COUNT V

Failure to Provide Pre-Adverse Action Notice in Violation of the FCRA 15 U.S.C. § 1681b(b)(3)(A)(i) (Against MLS)

200. Plaintiff alleges and incorporates by reference the allegations in the preceding paragraphs 55-91.

201. MLS used a "consumer report," as defined by the FCRA, to take an adverse employment action against Plaintiff and other members of the Adverse

Action Class.

202. MLS violated the FCRA by failing to provide Plaintiff and other class members with pre-adverse action notice, and a copy of the consumer report used to take adverse employment action against them, before taking such adverse action. *See* 15 U.S.C. § 1681b(b)(3)(A)(i).

203. The foregoing violations were willful. MLS acted in deliberate or reckless disregard of its obligations and the rights of Plaintiff and other Class members under 15 U.S.C. § 1681b(b)(3)(A)(i). MLS knew or should have known of its legal obligations under the FCRA. These obligations are well established in the plain language of the statute and in the promulgations of the Federal Trade Commission. MLS obtained or otherwise had available substantial written materials that apprised MLS of its duties under the FCRA. Any reasonable employer knows of the existence of these FCRA mandates, or can easily discover their substance.

204. Moreover, at the time MLS failed to follow 15 U.S.C. § 1681b(b)(3)(A)(i) a plethora of FTC opinions and case law existed.

205. Plaintiff and the putative class are entitled to statutory damages of not less than \$100.00 and not more than \$1,000.00 for each and every one of these violations under 15 U.S.C. § 1681n(a)(1)(A), in addition to punitive damages as the Court may allow under 15 U.S.C. § 1681n(a)(2).

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

WHEREFORE, Plaintiff, on behalf of himself and the putative Adverse Action Class, prays for relief as follows:

- a. determining that this action may proceed as a class action;
- b. designating Plaintiff as class representative and designating Plaintiff's Counsel as counsel for the putative class;
- c. requiring notice to the putative class at Peoplease's expense;
- d. finding that Peoplease acted willfully in deliberate or reckless disregard of Plaintiff's rights and its obligations under the FCRA;
- e. awarding statutory damages as provided by the FCRA, including punitive damages, to members of the putative class; and
- f. awarding reasonable attorneys' fees and costs as provided by the FCRA.

DEMAND FOR JURY TRIAL

Plaintiff and the putative classes demand a trial by jury.

Dated this 10th day of January, 2022.

/s/ Marc R. Edelman

MARC R. EDELMAN, ESQ.

Florida Bar No.: 0096342

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed via CM/ECF and has been provided via electronic transmission and/or via U.S. Mail on this 10th day of January, 2022, to the following:

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