

**IN CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
HILLSBOROUGH COUNTY, FLORIDA
GENERAL CIVIL DIVISION**

FERNANDEZ FORESTAL,
on behalf of himself and on behalf
of all others similarly situated,

Plaintiff,

v.

Case No.: 23-CA-013634

SH GROUP OPERATIONS, L.L.C.,
And STERLING INFOSYSTEMS, INC.,

Defendants.

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

Plaintiff, Fernandez Forestal, on behalf of himself, the putative classes set forth below, and in the public interest, brings this Class Action Complaint SH Group Operations, L.L.C. (“SH Group”) and Sterling Infosystems, Inc. (“Sterling,” collectively “Defendants”) for violations of the Fair Credit Reporting Act of 1970, as amended (“FCRA”), 15 U.S.C. §§ 1681–168x. Plaintiff seeks to hold Defendants accountable for violating his federally protected privacy rights.

PRELIMINARY STATEMENT

1. The FCRA, 15 U.S.C. § 1681b, makes it presumptively unlawful to issue, obtain or use a consumer report for an employment purpose.¹ The use of a consumer report for employment purposes only becomes lawful if the consumer reporting agency, reseller, and person procuring the report comply with the FCRA’s strict requirements.

2. Defendants SH Group and Sterling willfully and systematically violated Plaintiff’s

¹ In the employment context, consumer reports are commonly referred to as “background checks.” Consumer reports and background checks are used interchangeably herein.

rights and the rights of other putative class members.

3. SH Group is an employer and user of consumer reports procured from Kiosite.

4. SH Group 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.

5. SH Group violated 15 U.S.C. § 1681b(b)(2)(A)(ii) by procuring consumer reports on Plaintiff and other putative class members without first obtaining their written authorization before obtaining a copy of their consumer report.

6. SH Group violated 15 U.S.C. § 1681b(b)(3)(A)(i) -(ii) by failing to provide Plaintiff and other putative class members 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)(A)(i)-(ii).

7. Sterling provides employers with consumer reports, commonly referred to as “background checks,” for employment purposes. Employers rely on these reports to make employment related decisions on applicants and employees.

8. As such, the FCRA “require[s] that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy and proper utilization of such information in accordance with the requirements of this title.” 15 U.S.C § 1681(b).

9. The FCRA also imposes a requirement that “prospective users of the information identify themselves, certify the purposes for which the information is sought and certify that the information will be used for no other purpose.” 15 U.S.C. § 1681e(a). In accord therewith,

every consumer reporting agency “shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report.” *Id.*

10. In some instances, CRAs do not furnish consumer reports directly to the end-user. Rather, CRAs furnish the reports or information to “resellers” that assemble and merge the information concerning any consumer “for purposes of furnishing such information to any third party.” 15 U.S.C. § 1681(a)(u). However, that does not relieve the CRA’s obligation to obtain the identity of the end user before issuing the report. 15 U.S.C. § 1681e(a).

SUMMARY OF CLASS ACTION CLAIMS

11. In Count I, Plaintiff asserts a FCRA claim under 15 U.S.C. § 1681b(b)(2)(A)(i)-(ii) against SH Group as on behalf of a “SH Group No Disclosure/Authorization Class” consisting of:

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

12. In Count II, Plaintiff asserts a claim against Sterling on behalf of a “Sterling § 1681e(a) Class” defined as:

All employees and job applicants in the United States who were subject of a consumer report furnished by Sterling to Kiosite and furnished to an end-user without Sterling first obtaining the identify of such end user or from whom Sterling did not first obtain a certification of permissible use, within five years of the filing the complaint through the date of final judgment in this action.

13. In Count III, Plaintiff asserts a claim against Sterling on behalf of a § 1681k, for a “Sterling 1681k Notice” Class defined as:

All employees and job applicants in the United States who were the subject of a consumer report (or consumer report information) furnished by Sterling to Kiosite 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.

THE PARTIES

14. Individual and representative Plaintiff, Fernandez Forestal (“Plaintiff”) is a member of the putative class.

15. SH Group is an employer and user of consumer reports as contemplated by 15 U.S.C. § 1681b.

16. Sterling is a consumer reporting agency as contemplated by 15 U.S.C. § 1681b.

JURISDICTION AND VENUE

17. This is an action for statutory damages for violations of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681–1681x, a federal statute.

18. This action is presently in this Court because Sterling does business in Hillsborough County, Florida.

FCRA REQUIREMENTS

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

(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).

20. SH Group did not provide consumers with a clear and conspicuous disclosure in a document consisting solely of the disclosure before procuring (or causing to be procured) their consumer reports for employment purposes.

21. SH Group did not obtain consumers' written authorization to procure (or cause to be procured) their consumer reports before procuring their consumer reports for employment purposes.

22. SH Group knowingly and recklessly disregarded case law and regulatory guidance and willfully violated 15 U.S.C. § 1681b(b)(2)(A)(i)-(ii) by procuring (or causing to be procured) consumer reports on applicants and employees without first providing a disclosure or obtaining their written authorization ahead of time.

23. Providing notice to consumers is a critical component of the FCRA, evidenced by the fact the FCRA also contains several other notice provisions, including 15 U.S.C. § 1681b(b)(3)(A) (pre-adverse action).²

24. The FCRA states “in using a consumer report for employment purposes, before

² See, e.g., 15 U.S.C. § 1681b(4)(B) (notice of national security investigation); § 1681c(h) (notification of address discrepancy); § 1681g (full file disclosure to consumers); § 1681k(a)(1) (disclosure regarding use of public record information); § 1681h (form and conditions of disclosure; and § 1681m(a) (notice of adverse action).

taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates . . . a copy of the report[.]” 15 U.S.C. § 1681b(b)(3)(A)(i).

25. SH Group violated 15 U.S.C. § 1681b(b)(3)(A)(i), which requires persons who use consumer reports provide notice and a copy of the report to the affected consumer before any adverse employment action is taken.

26. By failing to provide Plaintiff with the information required by 15 U.S.C. § 1681b(b)(3)(A)(i) before taking adverse employment action against him based on the information contained in his report, SH Group disregarded unambiguous regulatory guidance and the plain language of the statute. 15 U.S.C. § 1681b(b)(3)(A).

**FCRA REQUIREMENTS FOR FURNISHING CONSUMER REPORTS FOR
EMPLOYMENT PURPOSES**

27. The FCRA imposes the same requirements on re-sellers as it does consumer reporting agencies.

28. The FCRA also makes it presumptively illegal for a CRA like Sterling to furnish a report in the employment context. A CRA or reseller may issue such a report “only if” it first obtains from the person to whom it plans to issue the report a certification that it has provided the consumer with an FCRA-compliant disclosure, obtained the consumer’s written authorization and if applicable, will provide the consumer with pre-adverse action notice. The Act provides:

(b) Conditions for Furnishing and Using Consumer Reports for
Employment Purposes

- (1) *Certification from user.* A consumer reporting agency may furnish a consumer report for employment purposes only if:

- (A) the person who obtains such report from the agency certifies to the agency that
 - (i) the person has complied with paragraph (2) with respect to the consumer report, and the person will comply with paragraph (3) with respect to the consumer report if paragraph (3) becomes applicable...

15 U.S.C. § 1681b(b)(1)(A)(i)-(ii).

29. Sterling furnished consumer reports to employer-clients without first obtaining certification that the consumer had been provided a lawful disclosure, had authorized in writing the procurement of the consumer report, and would provide pre-adverse action notice when applicable.

30. The FCRA also requires that CRAs reporting negative public record information likely to adversely affect a consumer's ability to obtain employment, must provide the consumer with contemporaneous notice of the fact that it is reporting such information and to whom it is reporting it.

31. Sterling violated 15 U.S.C. § 1681k(a)(1) by failing to provide Plaintiff with contemporaneous notice when it furnished Plaintiff's consumer report information to SH Group. The information furnished was likely to have an adverse effect upon Plaintiff's ability to obtain employment.

32. Sterling violated 15 U.S.C. § 1681k(a)(2) because did not maintain strict procedures to ensure the public record information it reports is complete and up to date.

FACTS

33. Kiosite provides applicant screening and talent management software for its employer-clients.

34. As part of its offering to employers, Kiosite furnishes its clients with consumer reports (or consumer report information), which its clients use to make employment decisions, such as hiring and firing.

35. On June 3, 2019, SH Group ordered Plaintiff's consumer report from Kiosite.

36. SH Group did not provide Plaintiff a written disclosure or obtain Plaintiff's written authorization prior to procuring his consumer report from Kiosite.

37. Plaintiff had not received a written disclosure or authorized SH Group to obtain his consumer report.

38. Plaintiff's consumer report contained a designation, "Review," that ultimately led to his denial of employment. The "Review" designation was an adverse employment action since Plaintiff could not be hired if he was designated "Review."

39. The "Review" designation was an adverse employment action since it informed SH Group that there was information contained in Plaintiff's report that may disqualify him from employment.

40. Plaintiff's consumer report contained information likely to have an adverse effect on Plaintiff's prospects for employment.

41. Discovery will show SH Group rejected Plaintiff for employment in whole, or in part, because of his consumer report. Thus, Plaintiff suffered an adverse employment action.

42. In June 2021, Plaintiff received his consumer report file from Sterling.

43. Upon review of his consumer report file, Plaintiff discovered for the first time that SH Group, without his knowledge, had procured his consumer report from Kiosite in June 2019.

44. Plaintiff obtained documents from SH Group. SH Group produced documents revealing for the first time it had obtained Plaintiff's consumer report information in June 2019.

45. Plaintiff also obtained his full consumer report file from Sterling and learned Kiosite had procured or caused his consumer report to be procured in June 2019.

46. If Plaintiff had not obtained a copy of his full file disclosure from Sterling, Plaintiff would have never seen the consumer report that was used in June 2019, to take an adverse employment action against him because he was never provided pre-adverse action notice or a copy of his report. Consequently, Plaintiff would never have seen the contents of his own consumer report or learned what was being reported about him.

47. Sterling did not require Kiosite, a reseller, to identify the end users of the reports it procured for resale.

48. Because Sterling did not require Kiosite to identify end-users, SH Group was not identified as a recipient of Plaintiff's consumer report information. In fact, only Kiosite was identified as a recipient.

49. Sterling did not require resellers to certify consumers had been provided a disclosure, that the consumer's written authorization had been obtained, or that pre-adverse action notice would be provided, if applicable, prior to furnishing resellers with consumer reports.

50. Sterling furnished the consumer report information of thousands of consumers to Kiosite for resale even though Kiosite had never certified compliance with 15 U.S.C. § 1681b(b)(2)(A)(i)-(ii) before obtaining the report or that it would comply with § 1681b(b)(3), if ever applicable.

51. Consequently, because Sterling failed to require re-sellers and end-users to certify compliance with 15 U.S.C. § 1681b(b)(2)(A)(i)-(ii) before obtaining the report or that it would comply with § 1681b(b)(3), if ever applicable, SH Group obtained Plaintiff's consumer report

without first providing him a written disclosure, obtaining his written authorization, or providing him with pre-adverse action notice, including a copy of his consumer report, before taking an adverse employment against him.

***The FCRA Violations Alleged Bear
Close Relationships to Common Law Claims***

52. 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 relating to privacy, 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 (2D) OF TORTS § 652A(2)(a)-(d) (1977).

53. These statutory requirements were enacted by Congress expressly to protect consumer privacy by restricting the circumstances under which a person could procure (or cause to be procured) and use a consumer’s personal information found in a consumer report.

54. The FCRA’s disclosure and authorization requirements set forth in 15 U.S.C. § 1681b(b)(2)(A)(i)-(ii) bear a close relationship to common-law claims including invasion of privacy and intrusion upon seclusion, as these provisions are intended protect fundamental privacy rights, including the right to maintain control over one’s personal information and to prevent the dissemination of a person’s personal and sensitive information without a person’s knowledge or authorization.

55. The FCRA’s pre-adverse action notice requirements set forth in 15 U.S.C. § 1681b(b)(3)(A)(i)-(ii) and 15 U.S.C. § 1681k bear a close relationship to common law claims including invasion of privacy and intrusion upon seclusion; both are intended to protect the use of a person’s personal and sensitive information without their knowledge, the right to know

precisely what is being reported about them and to whom it is being reported, and to ensure the right to exercise “confession and avoidance” remedies available under common law.

56. The FCRA’s certification requirement set forth in 15 U.S.C. § 1681b(b)(1)(A)(i)-(ii) bears a close relationship to common law claims including invasion of privacy and intrusion upon seclusion, as it is intended protect fundamental privacy rights and the release of a person’s personal and sensitive information without a person’s knowledge or authorization.

57. Plaintiff’s privacy was invaded when SH Group circumvented the FCRA’s disclosure and authorization requirements. Specifically, SH Group obtained the personal and sensitive information in his consumer report without his knowledge or written authorization. SH Group’s statutory violations bear a close relationship to common law claims of invasion of privacy and intrusion upon seclusion, which Congress elevated to a concrete harm by enacting the FCRA.

58. Plaintiff suffered a concrete informational injury when SH Group circumvented the FCRA’s disclosure requirement. When SH Group 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.

59. Plaintiff suffered a concrete informational injury when SH Group circumvented the FCRA’s authorization requirement. When SH Group obtained Plaintiff’s consumer report without obtaining his written authorization, Plaintiff suffered an 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.

60. SH Group violated the FCRA by procuring consumer reports on Plaintiff and other putative class members without first providing them a clear and conspicuous disclosure as required by 15 U.S.C. § 1681b(b)(2)(A)(i).

61. SH Group violated the FCRA by procuring consumer reports on Plaintiff and other class members without first obtaining written authorization as required by 15 U.S.C. § 1681b(b)(2)(A)(ii).

62. SH Group's failure to provide a disclosure or obtain written authorization created a risk of harm that Plaintiff and members of the putative classes would never know their personal and sensitive information was procured, used, and possessed by SH Group.

63. Sterling violated Plaintiff's right to privacy by compiling his personal, private, and sensitive consumer information into a consumer report and furnishing it to a reseller, Kiosite, without a permissible purpose, since Sterling did not require Kiosite to identify the end user of the consumer report information.

64. Sterling violated Plaintiff's right to privacy by compiling his personal, private, and sensitive consumer report information and furnishing it to Kiosite, without a permissible purpose, since Sterling did not have the requisite certifications from Kiosite or the end user.

65. Sterling violated Plaintiff's right to privacy by failing to maintain an accurate record of the persons to whom it had released his consumer report information.

66. Sterling violated Plaintiff's right to privacy when upon Plaintiff's request, it failed to disclose to him the end-user of his consumer report information.

67. Sterling violated Plaintiff's right to privacy when upon Plaintiff's request, it failed to disclose to him precisely who had procured his consumer report for employment purposes.

68. Sterling violated Plaintiff's right to privacy by releasing his consumer report information to a person that was never disclosed to him as a recipient of his consumer report information.

69. Sterling violated Plaintiff's right to privacy by releasing his consumer report information to a person he had not authorized in writing to receive it.

70. Sterling violated Plaintiff's right to privacy by compiling his personal, private, and sensitive information into a consumer report and selling it to a re-seller without requiring the reseller to identify the end users of his consumer report information.

71. If Sterling had obtained the requisite certifications from the end-user, Plaintiff would have received pre-adverse action notice and would have been able to explain its contents to SH Group and would have obtained employment.

72. If Sterling had obtained the requisite certifications from the end-user, Plaintiff would have received pre-adverse action notice and would have known what was being reported about him and been able to use such information to his benefit when subsequently seeking employment.

73. If Sterling had provided Plaintiff with contemporaneous notice, it was reporting public record information likely to SH Group likely to have a negative effect on his employment, Plaintiff would have at least known what was being reported about him, and to whom it was being reported, back in 2019. Instead, Plaintiff did not learn his information had been reported to SH Group until 2022.

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

Defendants Acted Willfully

75. Defendants knew, or should have known, about their 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.

76. SH Group obtained, or had available, substantial written materials, which apprised it of its duties under the FCRA.

77. Sterling knowingly violated the FCRA's provisions applicable to consumer reporting agencies.

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

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

80. As a result of these FCRA violations, Defendants are liable to Plaintiff and to each putative class member for statutory damages from \$100 to \$1,000 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.

81. Numerosity: The members of the putative classes are so numerous that a joinder of all Class members is impracticable. Plaintiff is informed that all the Sterling putative classes have thousands of members. Similarly, the SH Group class has hundreds of class members. Joinder of all Class members is impracticable.

82. Typicality: Plaintiff's claims are typical of those of the members of the putative classes, as all violations alleged occur from the same policies and procedures and effected class members in the same way.

83. Adequacy: Plaintiff is a member of and will fairly and adequately protect the interests of the putative classes and has retained counsel experienced in FCRA class action litigation.

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

- a. whether SH Group procured consumer reports for employment purposes without making the FCRA-required disclosures;
- b. whether SH Group procured consumer reports for employment purposes without first obtaining consumers' written authorization;
- c. whether Sterling failed to obtain certifications of compliance with the FCRA's disclosure and authorization requirements from end users before furnishing consumer reports;
- d. whether Sterling failed to provide contemporaneous notice to consumers when reporting public record information likely to have an adverse effect on the consumer's ability to obtain employment and the person to whom it was reporting such information;
- e. whether Sterling's FCRA violations were willful;
- f. whether SH Group's FCRA violations were willful;
- g. the proper measure of statutory damages and attorneys' fees.

85. This case is maintainable as a class action because prosecution of actions by or against individual members of the putative classes 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 a 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.

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

87. 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 classes, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendants' conduct, which is described herein, 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, 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 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.

88. Plaintiff intends to send notice to all members of the putative classes to the extent required by the Federal Rules of Civil Procedure. The names and addresses of the putative class members are readily available from Defendants and through records maintained by third parties.

COUNT I
Failure to Make Proper Disclosure or Obtain Written Authorization
in Violation of FCRA 15 U.S.C. § 1681b(b)(2)(A)(i)-iii)
(Against SH Group)

89. Plaintiff alleges and incorporates by reference the allegations in the preceding

paragraphs.

90. SH Group violated the FCRA by procuring consumer reports relating to Plaintiff and other SH Group No Disclosure/No Authorization Class members without first providing a disclosure or obtaining their written authorization.

91. The foregoing violations were willful. At the time SH Group violated 15 U.S.C. § 1681b(b)(2)(A)(i)-(ii), SH Group knew that it had to disclose to Plaintiff and the putative class that it intended to procure their consumer reports and obtain their written authorization 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 SH Group's violations on this very issue. SH Group's willful conduct is also reflected by, among other things, the following facts:

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

92. Plaintiff and the SH Group No Disclosure/No Authorization Class are entitled to statutory damages of not less than \$100 and not more than \$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).

93. Plaintiff and the SH Group No Disclosure/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 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. issuing proper notice to the putative class at SH Group's expense;
- d. awarding statutory damages as provided by the FCRA, including punitive damages, to members of the putative class; and
- e. awarding reasonable attorneys' fees and costs as provided by the FCRA.

COUNT II
**Failure to Obtain Certification Prior to Furnishing a
Violation of 15 U.S.C. § 1681b(b)(1)(A)
("Sterling No Certification Class")**

94. Plaintiff restates the allegations set forth in the preceding paragraphs.

95. Sterling willfully violated 15 U.S.C. § 1681b(b)(1)(A) because it provided consumer reports about Plaintiff, which were used for employment purposes, without the user's or recipient'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).

96. Sterling caused Plaintiff injury because the reports Sterling furnished were used, in whole or in part, as the basis for an adverse employment action.

97. The forgoing violations were willful. At the time Sterling violated 15 U.S.C. § 1681b(b)(1)(A), Sterling knew it was required to obtain certification of compliance with 15 U.S.C. § 1681b(b)(2) and certification with the notification requirements of 15 U.S.C. § 1681b(b)(3), if applicable, before furnishing consumer reports used for employment purposes.

Sterling's willful conduct is also reflected by, among other things, the following facts:

- a. Sterling knew of potential FCRA liability;

- b. Sterling is a consumer reporting agency with access to legal advice through their own general counsel's office and outside employment counsel, and there is not 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. Sterling knew or had reason to know that their conduct was inconsistent with published FTC guidance interpreting the FCRA and the plain language of the statute; and
- e. Sterling voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless.

98. Plaintiff and the "Sterling Certification Class" are entitled to statutory damages of not less than \$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).

99. Plaintiff and the "Sterling 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 "Sterling Certification Class" pray 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. issuing proper notice to the putative class at Sterling's expense;

- d. finding that Sterling committed multiple, separate violations of the FCRA;
 - e. finding that Sterling 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, to members of the putative class; and
100. awarding reasonable attorneys' fees and costs as provided by the FCRA.

COUNT III
Violation of 15 U.S.C. § 1681e(a)
("Sterling § 1681e(a) Class")

101. Plaintiff restates the allegations set forth in paragraphs.

102. Sterling willfully violated 15 U.S.C. § 1681e(a) because it provided consumer reports about Plaintiff, which were used for employment purposes, without first obtaining the identity of the end-user.

103. Sterling willfully violated 15 U.S.C. § 1681e(a) because it provided consumer reports about Plaintiff, which were used for employment purposes, without first obtaining the user's certification such report was being used for a permissible purpose.

104. Sterling caused Plaintiff injury by releasing his consumer report information without first knowing the identity of the user or the purpose of its use. By failing to first obtain the identity of the end user, Sterling violated the FCRA's provision intended to ensure consumers have the ability to know who uses and possesses their personal and sensitive information and to ensure such information is used for permissible purposes.

105. The forgoing violations were willful. At the time Sterling violated 15 U.S.C. § 1681e(a), Sterling knew it was first required to obtain the identity of the user and certification

from such user that the consumer report would be used for permissible purposes before releasing the consumer report:

- a. Sterling knew of potential FCRA liability;
- b. Sterling is a consumer reporting agency with access to legal advice through their own general counsel's office and outside employment counsel, and there is not 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. Sterling knew or had reason to know that their conduct was inconsistent with published FTC guidance interpreting the FCRA and the plain language of the statute; and
- e. Sterling voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless.

106. Plaintiff and the "Sterling § 1681e(a) Class" are entitled to statutory damages of not less than \$100 and not more than \$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).

107. Plaintiff and the "Sterling § 1681e(a) 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 "Sterling § 1681e(a) Class" pray 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. issuing proper notice to the putative class at Sterling's expense;
- d. finding that Sterling committed multiple, separate violations of the FCRA;
- e. finding that Sterling 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, to members of the putative class; and
- g. awarding reasonable attorneys' fees and costs as provided by the FCRA.

COUNT IV
Violation of 15 U.S.C. § 1681k(a)(1)
("Sterling § 1681k Notice Class")

108. Plaintiff restates the allegations set forth in fully set forth herein.

109. Sterling 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.

110. Sterling invaded Plaintiff's privacy by furnishing a consumer report containing public record information likely to have an adverse effect on his ability to obtain employment without providing him notice of the information being reported and the person to whom it was reporting such information.

111. Sterling caused Plaintiff informational injury by depriving him of information to which he was entitled, at the time he was entitled to receive it – the negative public information it was reporting about him and to the person to whom it was being reported.

112. The forgoing violations were willful. At the time Sterling violated 15 U.S.C. § 1681k(a)(1), Sterling knew it was required to provide Plaintiff contemporaneous notice and the identity of the person to whom it was reporting negative public record information:

- a. Sterling knew of potential FCRA liability;
- b. Sterling is a consumer reporting agency with access to legal advice through their own general counsel's office and outside employment counsel, and there is not contemporaneous evidence that it determined that its conduct was lawful;
- c. The FCRA's contemporaneous notice requirement is clearly spelled out in the plain language of the statute;
- d. Sterling knew or had reason to know that their conduct was inconsistent with published FTC guidance interpreting the FCRA and the plain language of the statute; and
- e. Sterling voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless.

113. Plaintiff and the "Sterling 1681k Notice Class" are entitled to statutory damages of not less than \$100 and not more than \$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).

114. Plaintiff and the "Sterling 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 “Sterling 1681k Notice Class” pray 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. issuing proper notice to the putative class at Sterling’s expense;
- d. finding that Sterling committed multiple, separate violations of the FCRA;
- e. finding that Sterling 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, to members of the putative class; and 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 11th day of July, 2023.

/s/ Marc R. Edelman
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