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12 * *Pro Hac Vice* application forthcoming
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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16

17 DAVID EDWARD WATSON, on behalf of)
18 himself and all others similarly situated,)

19 Plaintiff,)

20 v.)

21 CHECKR, INC.,)

22 Defendant.)
23)
24)

Case No. 3:19-cv-3396

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

FAIR CREDIT REPORTING ACT

PRELIMINARY STATEMENT

1
2 1. This is a consumer class action brought for violations of the Fair Credit Reporting
3 Act, 15 U.S.C. §§ 1681 *et seq.* (“FCRA”) against Defendant Checkr, Inc. (“Defendant” or
4 “Checkr”), a consumer reporting agency (“CRA”). Defendant deprives consumers of their rights
5 under the FCRA by failing to comply with the law and refusing to adopt procedures to assure the
6 maximum possible accuracy of the information it places on reports it prepares and sells about
7 individual consumers.

8 2. Specifically, this case deals with Checkr’s practices for preparing and selling
9 “real-time” reports of arrest records to employers, by generating and delivering a background
10 report containing an arrest record within 24 hours of the arrest. These “real-time” reports
11 attribute arrests to individual consumers using only first and last name, disregarding other
12 identifying information available on the public record, including dates of birth. As a result of
13 this loose name-only matching logic, the “real-time” reports Checkr prepares about many
14 consumers, including Plaintiff, inaccurately include arrest records which do not pertain to the
15 person who is the subject of the report. As in Plaintiff’s case, such inaccuracies are obvious from
16 the face of the report; yet Checkr takes no steps to prevent this inaccurate reporting.

17 3. Plaintiff now individually and on behalf of all others similarly situated, files this
18 Class Action Complaint against Checkr under the Fair Credit Reporting Act, 15 U.S.C. §§ 1681
19 *et seq.*, brought on behalf of other consumers affected by Checkr’s procedures for using name-
20 only matching on “real-time” reports.

JURISDICTION AND VENUE

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22 4. Jurisdiction of this Court arises under 15 U.S.C. § 1681p and 28 U.S.C. § 1331.

23 5. Venue lies properly in this district pursuant to 28 U.S.C. § 1391(b). Pursuant to
24 L.R. 3-2(c)-(d), this case should be assigned to the San Francisco Division of this Court because
25 a substantial part of the events or omissions which gave rise to the lawsuit occurred in San
26 Francisco County.

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PARTIES

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2 6. Plaintiff David Edward Watson is an adult individual who resides in Wichita,
3 Kansas.

4 7. Defendant Checkr is a consumer reporting agency that regularly conducts
5 business in the State of California, and which has a principal place of business in San Francisco,
6 California.

FACTUAL ALLEGATIONS

Checkr's Operations as a Consumer Reporting Agency

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9 8. The Fair Credit Reporting Act ("FCRA") regulates the use of "consumer reports"
10 for employment purposes, commonly called "background reports."

11 9. Among other things, Checkr sells consumer reports to employers who wish to
12 screen job applicants.

13 10. Checkr is a "consumer reporting agency" ("CRA") as defined by the FCRA, and
14 its reports are "consumer reports."

15 11. The FCRA requires CRAs such as Checkr to use reasonable procedures to assure
16 with maximum possible accuracy the information included on consumer reports and that it
17 concerns the individual about whom the report relates. 15 U.S.C. § 1681e(b).

18 12. One of the most well-known and prevalent inaccuracies that occur in the
19 consumer reporting industry is a "mixed file."

20 13. A mixed file is a consumer report in which some or all of the information in the
21 report pertains to an individual who is not the subject of the report.

22 14. The main cause of mixed files is a CRA's failure to use full identifying
23 information to match records to the personal identifying information of consumers who are the
24 subjects of its reports.

25 15. Some of the consumer reports Checkr sells to employers contain information
26 regarding a job applicant's criminal arrest and conviction history.

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1 26. The November 28, 2018 report was a “real-time” report.

2 27. Pursuant to its usual policies and procedures, Checkr matched the arrest record to
3 its report about Plaintiff without using the available year of birth and middle name information,
4 or other information available to it which would have demonstrated that the arrest record did not
5 pertain to Plaintiff.

6 28. Plaintiff has never been to Madison County, Illinois, his middle name is
7 “EDWARD” and his year of birth is 1970, not 1958.

8 29. The November 28, 2018 Checkr report was inaccurate.

9 30. As a result of Checkr’s report, Uber immediately suspended Plaintiff’s account,
10 and he was unable to conduct any work for Uber.

11 31. Plaintiff disputed the inaccurate reporting on or about December 10, 2018.

12 32. On December 26, 2018, Checkr sent Plaintiff an email, informing him “[w]e have
13 completed our reinvestigation of the disputed information and have revised the information
14 contained in your original report.” Attached to the email was a revised report which no longer
15 included the inaccurate arrest information.

16 33. Between the date of the report and the date of Checkr’s correction of the same,
17 Plaintiff was unable to conduct any work for Uber.

18 34. As a result of Checkr’s conduct, Plaintiff suffered damages, including without
19 limitation and by example only: loss of revenues, loss of employment opportunity, damage to
20 reputation, embarrassment, humiliation, and other emotional and mental distress.

21 35. At all times pertinent hereto, Defendant’s conduct was a result of its deliberate
22 policies and practices, was willful, and carried out in reckless disregard for consumers’ rights as
23 set forth under section 1681e(b) of the FCRA, and further assumed an unjustifiably high risk of
24 harm.

25 36. At all times pertinent hereto, Defendant was acting by and through its agents,
26 servants, and/or employees who were acting within the course and scope of their agency or
27 employment, and under the direct supervision and control of the Defendant herein.

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CLASS ACTION ALLEGATIONS

37. Plaintiff brings this action on behalf of the following Classes of consumers:

- a. All natural persons residing within the United States and its territories who, beginning two (2) years prior to the filing of this Complaint and continuing through the conclusion of this action, (i) were the subject of a consumer report prepared by Defendant, (ii) the consumer report included one or more items of information pertaining to an arrest, (iii) the report was prepared within 24 hours of the arrest, and (iv) one or more items of identifying information of the subject of the report was different on its face from the identifying information of the arrested individual.
- b. All natural persons residing within the United States and its territories who, beginning two (2) years prior to the filing of this Complaint and continuing through the conclusion of this action (i) were the subject of a consumer report prepared by Defendant, (ii) the consumer report included one or more items of information pertaining to an arrest, (iii) the report was prepared within 24 hours of the arrest, and (iv) the report was revised after Defendant received a dispute.

38. The Class members are so numerous that joinder of all members is impracticable. Although the precise number of Class members is known only to Defendant, Plaintiff avers upon information and belief that the Classes each minimally numbers in the thousands.

39. There are questions of law and fact common to the Classes that predominate over any questions affecting only individual Class members. The principal questions concern whether the Defendant willfully and/or negligently violated the FCRA by failing to follow reasonable procedures to assure the maximum possible accuracy of the information contained in its reports about consumers.

40. Plaintiff's claims are typical of the claims of the Classes, which all arise from the same operative facts and are based on the same legal theories.

41. Plaintiff will fairly and adequately protect the interests of the Classes. Plaintiff is committed to vigorously litigating this matter. Further, Plaintiff has secured counsel who are

1 very experienced in handling consumer class actions. Neither Plaintiff nor his counsel has any
2 interests which might cause them not to vigorously pursue this claim.

3 42. This action should be maintained as a class action because the prosecution of
4 separate actions by individual members of the Classes would create a risk of inconsistent or
5 varying adjudications with respect to individual members which would establish incompatible
6 standards of conduct for the parties opposing the Classes, as well as a risk of adjudications with
7 respect to individual members which would, as a practical matter, be dispositive of the interests
8 of other members not parties to the adjudications or substantially impair or impede their ability
9 to protect their interests.

10 43. Whether Defendant violated the FCRA can be easily determined by Defendant's
11 policies and a ministerial inspection of Defendant's business records.

12 44. A class action is a superior method for the fair and efficient adjudication of this
13 controversy. Management of the Classes' claims is likely to present significantly fewer
14 difficulties than those presented in many individual claims. The identities of the Class members
15 may be derived from Defendant's records.

16 CLAIMS

17 COUNT I – VIOLATION OF FCRA § 1681e(b) (CLASS)

18 45. Plaintiff incorporates all paragraphs as though the same were set forth at length
19 herein.

20 46. As alleged above, Checkr negligently and willfully failed to follow reasonable
21 procedures to assure the maximum possible accuracy of the information it reported about Plaintiff
22 and members of the Class when it prepared consumer reports containing arrest information about
23 them.

24 47. Pursuant to section 1681n of the FCRA, Defendant is liable for negligently and
25 willfully failing to maintain reasonable procedures to assure maximum possible accuracy of the
26 consumer reports that it sold, in violation of 15 U.S.C. § 1681e(b).

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1 WHEREFORE, Plaintiff respectfully prays that an order be entered certifying the
2 proposed Classes under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiff
3 and his counsel to represent the Classes; that judgment be entered for Plaintiff and the Classes
4 against Defendant for statutory, actual, and punitive damages for violation of 15 U.S.C.
5 §1681e(b), pursuant to 15 U.S.C. §§ 1681n and 1681o; that the Court award costs and reasonable
6 attorney’s fees, pursuant to 15 U.S.C. §§ 1681n and 1681o; and that the Court grant such other
7 and further relief as may be just and proper.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff respectfully prays that this Honorable Court enter judgment
10 in favor of Plaintiff and the Classes defined herein and against Checkr, granting the following:

- 11 • Pursuant to FED. R. CIV. P. 23, certifying the Classes defined herein and appointing
12 Plaintiff and his counsel to represent them;
- 13 • Pursuant to 15 U.S.C. §§ 1681n and 1681o, awarding actual, statutory, and punitive
14 damages to Plaintiff and members of the eligible Classes;
- 15 • Pursuant to 15 U.S.C. §§ 1681n(a)(3) and 1681o(a)(2), awarding costs and reasonable
16 attorney’s fees to Plaintiff’s counsel herein; and
- 17 • For costs of lawsuit, pre-judgment, and post-judgment interest; and
- 18 • Such other and further relief as may be just and proper

19
20 Respectfully submitted,

21 Dated: June 13, 2019

DAVID EDWARD WATSON,
by his attorneys,

/s/Erika A. Heath

Erika A. Heath (SBN 304683)

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Attorneys for Plaintiff and the Proposed Classes

JURY TRIAL DEMAND

Plaintiff demands trial by jury on all issues.

Dated: June 13, 2019

DUCKWORTH & PETERS, LLP

By: /s/ Erika Heath
Erika A. Heath
Attorney for Plaintiff and the Proposed Classes

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CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

David Edward Watson

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Erika A. Heath, Duckworth & Peters LLP (415-433-0333) 369 Pine St., Ste., 410, San Francisco, CA 94104

DEFENDANTS

Checkr, Inc.

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

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

Attorneys (If Known)

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

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

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

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

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

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

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

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

VI. CAUSE OF ACTION

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

Brief description of cause: Fair Credit Reporting Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 06/13/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Erika Heath

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

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

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.