

the criminal-background reports, users are obliged to adhere to certain requirements of the FCRA.

3. When using criminal background reports for employment purposes, employers must, before declining, withdrawing, or terminating employment based in whole or in part on the contents of the report, provide job applicants like Plaintiff with a copy of their respective background reports as well as a written summary of their rights under the FCRA.

4. Providing a copy of the criminal background report as well as a statement of consumer rights before making a final adverse employment decision arms the nation's millions of job applicants with the knowledge and information needed to challenge inaccurate, incomplete, and misleading public-records-based reports. The FCRA is designed to permit individuals whose reports are inaccurate with ample time to identify the inaccuracies and correct them before the employer has made an employment decision.

5. Plaintiff brings nationwide class claims against GEICO under 15 U.S.C. § 1681b because, as an omission in its hiring process and whether by its own conduct or by the conduct of its agent, GEICO failed to provide Plaintiff with a copy of the criminal background report or a summary of her rights under the FCRA before taking an adverse action against her.

II. PARTIES

6. Plaintiff Tiffanie Branch is a "consumer" as protected and governed by the FCRA.

7. Defendant GEICO is a Virginia entity that markets its services throughout the United States, including within this District.

III. JURISDICTION AND VENUE

8. The Court has federal question jurisdiction under the FCRA, 15 U.S.C. § 1681p, and 28 U.S.C. § 1331.

9. Venue is proper in this Court because a substantial part of the events giving rise to Plaintiff's claims occurred in this District. 28 U.S.C. § 1391(b)(2).

10. Venue is also proper in this Court because GEICO can be found in this District. 28 U.S.C. § 1391(b)(3). Among other things, GEICO maintains its corporate headquarters in this District and Division.

IV. FACTUAL ALLEGATIONS

A. Plaintiff's Acceptance of Offer of Employment With GEICO

11. Plaintiff Tiffanie Branch applied for a position as Liability Claims Representative at the Fredericksburg office of Defendant GEICO during the late summer of 2016. On August 26, 2016, she accepted GEICO's offer to join the company as a Liability Claims Representative at an initial salary of \$22.33 an hour.

12. The job offer was contingent on a background check.

13. Prior to the job offer, in the course of the application process Plaintiff had disclosed to GEICO that she had never been convicted of a felony, but that she had a misdemeanor conviction in her past.

14. GEICO ordered a background check on Plaintiff from General Information Services (GIS) on September 2, 2016.

15. Based upon hiring criteria developed or designated by GEICO, GIS adjudicates GEICO applicants' background reports by placing a green, yellow or red flag on the report.

16. If the report is marked with a green flag, the applicant is generally eligible to be placed for employment immediately.

17. If the report is marked with a yellow or red flag, that indicates that GIS has graded the applicant with a derogatory background report.

18. GIS completed Plaintiff's background report and sent it electronically to GEICO on September 21, 2016.

19. The GIS report was inaccurate. GIS reported to GEICO that Plaintiff had been convicted of a felony, which was not true.

20. GIS graded Plaintiff's report as a "Fail" with a red flag.

21. After viewing the report, a GEICO representative named Latoria Parker contacted Plaintiff by telephone on September 21, 2016 to tell her that the job offer was rescinded due to the existence of a felony conviction from the City of Richmond that appeared on the background report.

22. Neither Ms. Parker nor anyone else at GEICO provided Plaintiff with a copy of the background report prior to rescinding her job offer.

23. Plaintiff responded to Ms. Parker on the telephone call that the report was mistaken. Plaintiff explained that the record in question was not a felony but instead a misdemeanor, which Plaintiff had already disclosed to GEICO during the application process. Ms. Parker replied that because the background report stated that the conviction was a felony, GEICO's decision to revoke the job offer was final and would not be changed. Plaintiff disputed that she had ever been convicted of a felony, but Ms. Parker said that all that mattered was that the background report stated she had a felony.

24. Plaintiff was deeply shocked and upset at the revocation of the job offer. Because she had not seen a copy of the background report she did her best to follow up on the telephone conversation by sending Ms. Parker an email later that day providing the details why the GIS report of a felony conviction was a serious mistake. She explained that she had originally been charged with a felony but the charge had been reduced and she pled guilty to a misdemeanor.

25. Plaintiff further explained that the Virginia General District Court Online Case Information System, which can be easily accessed by computer, showed that the charge from the City of Richmond had been reduced to a misdemeanor in the final case disposition. Plaintiff included that documentation with her email to Ms. Parker.

26. Nevertheless, GEICO did not reinstate the job offer to Plaintiff.

27. Subsequently, Plaintiff received a letter dated September 22, 2016 from GIS stating that GEICO “has or will be completing their review of your application within the next few days, and may take action based on the enclosed report.”

28. However, in reality, GEICO had already taken adverse action against Plaintiff on September 21, 2016, when its representative telephoned Plaintiff to revoke the job offer, based on the GIS criminal background report that GEICO had received that same day.

29. In fact, the GIS report states that the grading “Decision Time” occurred on “9/21/2016 [at] 12:39:07 PM.”

30. Thus, the date of the “adverse action” against Plaintiff was the date that GIS first created and instantly “adjudicated” her application. GIS stated on Plaintiff’s report a “Grade” of “Fail” and marked a red flag next to the word “Fail.” GEICO accepts and follows the GIS “Grade” without any independent investigation or exercise of discretion.

B. GEICO's Practices and Policies

31. GEICO has created and implemented national, uniform hiring and staffing policies, procedures, and practices under which it and its subsidiaries operate. Those policies, procedures, and practices cover the use of "background checks" or "consumer reports" to screen potential employees.

32. GEICO routinely uses consumer reports to screen prospective employees, with GIS grading applicants based on criteria GEICO supplies to GIS. As a matter of practice, GEICO regularly fails to provide copies of consumer reports to job applicants against whom it takes an adverse action based in whole or part on consumer reports, before taking that adverse action.

33. As a matter of practice, GEICO regularly fails to provide copies of the FTC or CFPB notice of rights to job applicants against whom it takes an adverse action based in whole or part on a consumer report, before taking that adverse action.

34. As a matter of course, GEICO uses the same business process for obtaining and using consumer reports, and for the "adjudication" of employment applications as it did with Plaintiff and members of the Class described below. In authorizing GIS to mail pre- and final adverse action letters automatically, GEICO deprives consumers of any reasonable time period by which to dispute or discuss any inaccurate or derogatory information in their background reports.

35. As a result of these FCRA violations, GEICO is liable to Plaintiff, and to each 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), and attorneys' fees and costs pursuant to 15 U.S.C. §§ 1681n and 1681o.

36. Defendant's conduct and omissions were willful. Because the FCRA was enacted in 1970, Defendant has had years to become compliant but has failed to do so.

37. GEICO, a nationwide employer, was aware of obligations under the FCRA as they relate to employment because it hired GIS not only to perform its background checks but also to (attempt to) provide GEICO's adverse-action notices to job applicants. GEICO therefore knew of the requirements imposed upon it by the FCRA, and failed to craft a system that would ensure compliance with those requirements.

V. CLASS ACTION ALLEGATIONS

38. Pursuant to Federal Rule of Civil Procedure 23 and 15 U.S.C. § 1681b, Plaintiff brings this action for herself and on behalf of a class (the "Class"), defined as:

All natural persons residing in the United States (including all territories and other political subdivisions of the United States) (a) who submitted an employment application or other request for placement to GEICO; (b) who were the subject of a consumer report which was used by GEICO or GIS to make an employment decision from December 30, 2014 to the present; (c) whose consumer report contained either a "red flag" or a "yellow flag"; and (d) as to whom GEICO either rejected or delayed employment.

39. Specifically excluded from this Class are: (a) all federal court judges who preside over this case and their spouses; (b) all persons who elect to exclude themselves from the Class; (c) all persons who have previously executed and delivered to GEICO releases of all their claims for all of their Class claims; and (d) GEICO's employees, officers, directors, agents, and representatives and their family members.

40. **Numerosity.** The Class is so numerous that joinder of all members is impracticable. At this time, Plaintiff does not know the exact size of the Class. Based on information and belief, the Class is comprised of at least thousands of members who are geographically dispersed throughout the country so as to render joinder of all Class members

impracticable. The names and addresses of the Class members are identifiable through documents maintained by the Defendant, and the Class members may be notified of the pendency of this action by published and/or mailed notice.

41. **Commonality.** Common questions of law and fact exist as to all members of the Class. Without limitation, the total focus of the litigation will be GEICO's uniform conduct and procedures; whether rejecting an applicant for employment when a background report contains a red or yellow flag is an "adverse action" subject to the FCRA notice requirements; whether GEICO provided the required notices; when it did so; and, whether GEICO acted willfully in its failure to design and implement procedures to assure compliant delivery and/or timing of these notices. The appropriate amount of uniform statutory and/or punitive damages under 15 U.S.C. § 1681n is a common question for members of the Class.

42. **Typicality.** Plaintiff's claims are typical of the other Class members' claims. As described above, Defendant GEICO uses common practices and automated systems in committing the conduct that Plaintiff alleges damaged her and the Class. Plaintiff seeks only statutory and punitive damages for her classwide claims and, in addition, Plaintiff is entitled to relief under the same causes of action as the other members of the Class. GEICO uniformly breached the FCRA by engaging in the conduct described above, and these violations had the same effect on each member of the Class.

43. **Adequacy.** Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff's interests coincide with, and are not antagonistic to, other Class members' interests. Additionally, Plaintiff has retained counsel experienced and competent in complex, commercial, multi-party, consumer, and class-action litigation. Plaintiff's counsel has prosecuted complex FCRA class actions across the country.

44. Questions of law and fact common to the Class predominate over questions affecting only individual members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy. The statutory and punitive damages sought by each member are such that individual prosecution would prove burdensome and expensive given the complex and extensive litigation necessitated by GEICO's conduct. It would be virtually impossible for the members of the Class to, individually, effectively redress the classwide wrongs done to them, particularly in light of the fact that the claims are in part based on the failure of GEICO to give Class members the proper notice. Even if the members of the Class themselves could afford such individual litigation, it would be an unnecessary burden on the courts.

45. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the complex legal and factual issues raised by GEICO's conduct. By contrast, the class action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in just one case.

VI. CAUSE OF ACTION

COUNT ONE: VIOLATIONS OF 15 U.S.C. § 1681b(b)(3)(A)

46. Plaintiff incorporates by reference those paragraphs set out above as though fully set forth herein.

47. GEICO's failure to provide members of the Class with a copy of the consumer report upon which it based its decision to take the adverse action, prior to taking such action, violated 15 U.S.C. § 1681b(b)(3)(A)(i).

48. Likewise, GEICO's failure to provide members of the Class the mandated FTC/CFPB Summary of FCRA Rights, prior to taking such action, violated 15 U.S.C. § 1681b(b)(3)(A)(ii).

49. GEICO's creation of a system in which GIS mails pre- and final adverse action letters robs consumers of a reasonable opportunity to dispute inaccurate information in their background reports, further violating section 1681b(b)(3).

50. The conduct, action, and inaction of GEICO were willful, rendering it liable for statutory and punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n.

51. Plaintiff and other members of the Class are entitled to recover costs and attorneys' fees as well as appropriate equitable relief from GEICO in an amount to be determined by the Court, pursuant to 15 U.S.C. § 1681n.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class pray for relief as follows:

1. That an order be entered certifying the proposed Class under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiff and her counsel to represent the Class;
2. That judgment be entered for the proposed Class against Defendant GEICO for statutory damages and punitive damages for violation of 15 U.S.C. § 1681b, pursuant to 15 U.S.C. § 1681n;
3. That the Court award costs and reasonable attorneys' fees, pursuant to 15 U.S.C. §§ 1681n and 1681o; and,
4. That the Court grant such other and further relief as may be just and proper, including but not limited to any equitable relief that may be permitted.

A TRIAL BY JURY IS DEMANDED.

Respectfully submitted,
TIFFANIE BRANCH

By: /s/ Andrew J. Guzzo
Counsel

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Counsel for Plaintiff and the Class

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

I. (a) PLAINTIFFS

Tiffanie Branch, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Stafford

(EXCEPT IN U.S. PLAINTIFF CASES)

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

Kristi C. Kelly & Andrew J. Guzzo/ Kelly & Crandall, PLC
4084 University Dr. Ste. 202-A, Fairfax, VA 22030
(703) 424-7570

DEFENDANTS

Government Employees Insurance Company

County of Residence of First Listed Defendant Virginia Beach

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

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

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

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

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

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

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

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

VI. CAUSE OF ACTION

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

Brief description of cause:
Violation of the Fair Credit Reporting Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

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

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE 12-30-16 SIGNATURE OF ATTORNEY OF RECORD Andrew Guzzo