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12 Attorneys for Plaintiff,
13 MARCUS CHISM and MICHELLE BLANKENSHIP

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 IN AND FOR THE COUNTY OF SAN FRANCISCO
16 UNLIMITED JURISDICTION

17 COORDINATION PROCEEDINGS
18 SPECIAL TITLE (RULE 3.550)

19 FIRST ADVANTAGE CREDIT CASES

20 Included Actions:

21 *Chism v. First Advantage Background Services*
22 *Corp.* (San Francisco County Superior Court,
23 Case No. CGC-17-560531)

24 *Larroque v. First Advantage LNS Screening*
25 *Solutions, Inc.* (San Mateo County Superior
26 Court, Case No. CIV535083)

27 MARCUS CHISM and MICHELLE
28 BLANKENSHIP, on behalf of themselves, all
others similarly situated,

Plaintiffs,

vs.

FIRST ADVANTAGE BACKGROUND
SERVICES CORP., a Florida corporation; and
DOES 1 through 100, inclusive,

Defendants.

Judicial Council Coordination Proceeding
Case No. 4961

Case No. CGC-17-560531

Assigned For All Purposes to the Honorable
Marie S. Weiner, Department 2

CLASS ACTION

FIRST AMENDED COMPLAINT

Violation of 15 U.S.C. 1681b(b)(1)(A)
(Fair Credit Reporting Act.)

JURY TRIAL DEMANDED

1 Plaintiffs, MARCUS CHISM and MICHELLE BLANKENSHIP (hereafter "Plaintiffs"),
2 on behalf of themselves and all others similarly situated, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiffs bring this class action against defendant FIRST ADVANTAGE
5 BACKGROUND SERVICES CORP, a Florida corporation ("FIRST ADVANTAGE"); and
6 DOES 1 through 100, inclusive (collectively, "Defendants") for alleged violations of the Fair
7 Credit Reporting Act ("FCRA").

8 2. Plaintiffs allege that Defendants routinely acquire consumer, investigative
9 consumer and/or consumer credit reports (referred to collectively as "credit and background
10 reports") to conduct background checks on Plaintiffs and other prospective, current and former
11 employees and use information from credit and background reports in connection with their
12 hiring process without complying with the law. Plaintiffs, individually and on behalf of all
13 others similarly situated current, former, and prospective employees, seeks compensatory and
14 punitive damages due to Defendants' systematic and willful violations of the FCRA, 15 U.S.C.
15 §§ 1681 *et seq.*

16 **PARTIES**

17 6. Plaintiff MARCUS CHISM ("CHISM") was employed by Frito-Lay,
18 Inc./PepsiCo, Inc. as an hourly, non-exempt employee working in the State of California from
19 approximately October 2015 to September 2016.

20 7. Plaintiff MICHELLE BLANKENSHIP ("BLANKENSHIP") was employed by
21 Turning Point Community Programs as an hourly, non-exempt employee working in the State
22 of California from approximately June 2, 2015 through May 30, 2017.

23 8. Defendant FIRST ADVANTAGE is a corporation organized and existing under
24 the laws of Florida and also a citizen of California based on Plaintiffs' information and belief.

25 9. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of
26 participation in the conduct alleged herein, of the defendants sued as DOES 1-100, inclusive,
27 but is informed and believes and thereon alleges that said defendants are legally responsible for
28 the wrongful conduct alleged herein and therefore sues these defendants by such fictitious

1 names. Plaintiffs will amend the Complaint to allege the true names and capacities of the DOE
2 defendants when ascertained.

3 10. Plaintiffs are informed and believe and thereon allege that, at all relevant times
4 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
5 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
6 and scope of such agency or employment, and with the approval and ratification of each of the
7 other Defendants.

8 11. Plaintiffs allege that each and every one of the acts and omissions alleged herein
9 were performed by, and/or attributable to, all Defendants, each acting as agents and/or
10 employees, and/or under the direction and control of each of the other defendants, and that said
11 acts and failures to act were within the course and scope of said agency, employment and/or
12 direction and control.

13 CLASS ALLEGATIONS

14 12. This action has been brought and may be maintained as a class action pursuant to
15 Code of Civil Procedure section 382 because there is a well-defined community of interest
16 among the persons who comprise the readily ascertainable classes defined below and because
17 Plaintiffs are unaware of any difficulties likely to be encountered in managing this case as a
18 class action.

19 13. **Class Definitions:** The classes are defined as follows:

20 **FCRA Class:** All of Defendants' and/or any staffing agencies' and/or any third-party
21 parties' current, former and prospective applicants for employment in the United States
22 who applied for a job with Defendants at any time during the period beginning five years
prior to the filing of this action and ending on the date that final judgment is entered in
this action.

23 14. **Numerosity:** The class members are so numerous that the individual joinder of
24 each individual class member is impractical. While Plaintiffs do not currently know the exact
25 number of class members, Plaintiffs are informed and believe that the actual number exceeds
26 the minimum required for numerosity under California law.

27 15. **Commonality and Predominance:** Common questions of law and fact exist as
28 to all class members and predominate over any questions which affect only individual class

1 members. These questions include, but are not limited to:

2 A. Whether Defendants failed to obtain legally required certification before
3 issuing a consumer report;

4 B. Wherein Defendants willfully failed to comply with the FCRA.

5 16. **Typicality:** Plaintiffs' claims are typical of the other class members' claims.
6 Plaintiffs are informed and believes and thereon alleges that Defendants have a policy, practice
7 or a lack of a policy which resulted in Defendants failing to comply with the FCRA as alleged
8 herein.

9 17. **Adequacy of Class Representative:** Plaintiffs are adequate class representatives
10 in that they have no interests that are adverse to, or otherwise in conflict with, the interests of
11 absent class members. Plaintiffs are dedicated to vigorously prosecuting this action on behalf of
12 class members. Plaintiffs will fairly and adequately represent and protect the interests of class
13 members.

14 18. **Adequacy of Class Counsel:** Plaintiffs' counsel are adequate class counsel in
15 that they have no known conflicts of interest with Plaintiffs or absent class members, are
16 experienced in class action litigation and are dedicated to vigorously prosecuting this action on
17 behalf of Plaintiffs and absent class members.

18 19. **Superiority:** A class action is vastly superior to other available means for fair
19 and efficient adjudication of class members' claims and would be beneficial to the parties and
20 the Court. Class action treatment will allow a number of similarly situated persons to
21 simultaneously and efficiently prosecute their common claims in a single forum without the
22 unnecessary duplication of effort and expense that numerous individual actions would entail. In
23 addition, the monetary amounts due to many individual class members are likely to be relatively
24 small and would thus make it difficult, if not impossible, for individual class members to both
25 seek and obtain relief. Moreover, a class action will serve an important public interest by
26 permitting class members to effectively pursue the recovery of monies owed to them. Further, a
27 class action will prevent the potential for inconsistent or contradictory judgments inherent in
28 individual litigation.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO OBTAIN CERTIFICATION IN VIOLATION OF FCRA**

3 **(15 U.S.C. § 1681b(b)(1))**

4 **(By Plaintiffs and the FCRA Class)**

5 20. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged
6 herein.

7 21. Pursuant to section 1681b(b)(1) a Consumer Reporting Agency can only
8 furnish a background check report “if the person who obtains such report from the agency
9 certifies to the agency that [they have complied with the stand-alone disclosure and authorization
10 requirements.”

11 22. First Advantage is a Consumer Reporting Agency in that it regularly engages
12 in assembling consumer information which it provides to third parties for a fee.

13 23. First Advantage issued a consumer report on Plaintiff CHISM when Plaintiff
14 applied for employment with Pepsico and Frito Lay.

15 24. Plaintiff CHISM is informed and believed and thereon alleges that First
16 Advantage did not obtain the legally required certification. The source of Plaintiff’s belief is as
17 set forth below.

18 25. Plaintiff’s employee file which Plaintiff CHISM obtained pursuant to Labor
19 Code § 1198.5 does not contain such a certification.

20 26. Plaintiff’s counsel has requested that First Advantage provide a copy of any
21 certification. First Advantage has not done so.

22 27. The consumer report itself contains a boilerplate statement that: “Client
23 certifies that it has complied with the Fair Credit Reporting Act (FCRA) and that it has provides
24 a clear disclosure in compliance with the FCRA to the consumer/ applicant/ candidate/employee
25 and obtained consent and authorization.”

26 28. This boilerplate statement is not a certification by Pepsico or Frito-Lay. It
27 requires no affirmative action by Pepsico or Frito-Lay. Further, since the boilerplate statement is
28 on the report itself, there is no certification prior to First Advantage issuing the report.

1 29. A certification that the employer “has complied” with the stand alone
2 disclosure requirement cannot be given honestly on a prospective basis. Since the blanket
3 certification is at most a future promise to comply, and not a certification that the statute has
4 actually been complied with, it does not meet the statutory requirements.

5 30. First Advantage issued a consumer report on Plaintiff BLANKENSHIP when
6 Plaintiff applied for employment with Turning Point Community Programs.

7 31. Plaintiff BLANKENSHIP is informed and believed and thereon alleges that
8 First Advantage did not obtain the legally required certification. The source of Plaintiff’s belief
9 is as set forth below.

10 32. Plaintiff’s employee file which Plaintiff BLANKENSHIP obtained pursuant
11 to Labor Code § 1198.5 does not contain such a certification.

12 33. Plaintiffs on behalf of themselves and the Class seek all available remedies
13 including but not limited to statutory damages, punitive damages, and attorneys’ fees.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated,
16 prays for relief and judgment against Defendants as follows:

- 17 A. An order that the action be certified as a class action;
18 B. An order that Plaintiff be appointed class representative;
19 C. An order that counsel for Plaintiff be appointed class counsel;
20 D. Statutory penalties;
21 E. Statutory damages for the putative class in the amount of at least Five
22 Billion Dollars (\$5,000,000,000);
23 F. Civil penalties;
24 G. Punitive damages;
25 H. Injunctive relief;
26 I. Costs of suit;
27 J. Interest;
28 K. Reasonable attorneys’ fees; and

1 L. Such other relief as the Court deems just and proper.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a
4 jury trial on all issues so triable.

5
6 DATED: July 9, 2018

7 SETAREH LAW GROUP

8 

9 SHAUN SETAREH
10 Attorney for Plaintiff,
11 MARCUS CHISM and MICHELLE
12 BLANKENSHIP
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PROOF OF SERVICE

I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 9454 Wilshire Boulevard, Suite 907 Beverly Hills, CA 90212.

On July 9, 2018, I served the foregoing documents described as:

FIRST AMENDED COMPLAINT

in this action by transmitting a true copy thereof enclosed in a sealed envelope addressed as follows:

G. Daniel Newland Esq.

Eric M Lloyd Esq

Seyfarth Shaw LLP

560 Mission Street, Suite 3100

San Francisco, CA 94105

Pro hac Vice for Defense Counsel for First Advantage Background Services Corp and First Advantage LNS Screening Solution Inc.

Peter R. Dion-Kindem Esq.

DION-KINDEM LAW FIRM

21550 Oxnard St. Suite 900

Woodland Hills, California 91367

Counsel For Plaintiff Elizabeth Larroque

Chair, Judicial Council of California

Attn: Appellate Court Services

(Civil Case Coordination)

455 Golden Gate Ave. Floor 5

San Francisco, CA 94102-3688

Fedrick T. Smith Esq.

Esther Slater McDonald Esq.

1075 Peachtree St. N.E. Suite 2500

Atlanta, Georgia 30309

Pro hac Vice for Defense Counsel for First Advantage Background Services Corp and First Advantage LNS Screening Solution Inc.

Lonnie C. Blachard III Esq.

BLANCHARD LAW GROUP, APC

3311 East Pico Blvd.,

Los Angeles, CA 90023

Council For Plaintiff Elizabeth Larroque

BY MAIL

I am readily familiar with the practice of Setareh Law Group for the collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with United States Postal Service the same day it is submitted for mailing with postage thereon fully prepaid at Beverly Hills, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

1 **BY E-MAIL OR ELECTRONIC TRANSMISSION**

2 Based on a Court order or on an agreement by the parties to accept service by e-mail or
3 electronic transmission, I caused the document(s) described above to be sent to the person(s)
4 listed at the address listed above. I did not receive, within a reasonable time after the
transmission, any electronic message or other indication that the transmission was unsuccessful.

5 **BY FEDERAL EXPRESS**

6 I am readily familiar with the practice of Setareh Law Group for the collection and
7 processing of correspondence for deposit with Federal Express. It is the practice that
8 correspondence is deposited with Federal Express the same day it is submitted for mailing with
9 fees thereon fully prepaid at Beverly Hills, California. I am aware that on motion of the party
served, service is presumed invalid if date of receipt of the document by Federal Express is
more than one day after date of deposit for mailing in affidavit.

10 **BY FACSIMILE MACHINE**

11 I transmitted from a facsimile transmission machine whose telephone number is (310)
12 888-0109 to the above-identified recipient and fax telephone number. The above-described
13 transmission was reported as complete without error by a transmission report issued by the
14 facsimile transmission machine upon which the said transmission was made immediately
following the transmission.

15 **PERSONAL SERVICE**

16 I delivered the foregoing document by hand delivery to the addressee named above.

17 **BY CERTIFIED MAIL/RETURN RECEIPT REQUESTED**

18 I deposited such envelope in the mail at Beverly Hills, California. The envelope was
19 mailed Certified/Return Receipt Requested with postage thereon fully prepaid. I am readily
20 familiar with the practice of Setareh Law Group for collection and processing of
21 correspondence for mailing with the United States Postal Service. It is the practice that
22 correspondence is deposited with United States Postal Service the same day it is submitted for
mailing with postage thereon fully prepaid at Beverly Hills, California. I am aware that on
23 motion of the party served, service is presumed invalid if postal cancellation date or postage
meter date is more than one day after date of deposit for mailing in affidavit.

24 **STATE** I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

25
26 Executed on July 9, 2018, at Beverly Hills, California.

27 
28 _____
IVAN GONZALEZ