

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

RICHARD T. THISTLE SR.,
Plaintiff,
v.
BACKGROUNDCHECKS.COM,
LLC,
Defendant.

Case No.:

COMPLAINT AND DEMAND

FOR JURY TRIAL

Plaintiff Richard T. Thistle Sr. (“Plaintiff”), by and through the undersigned counsel, brings this Complaint and Demand for Jury Trial (“Complaint”) against Defendant Backgroundchecks.com LLC (“Defendant”) alleging violations of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 et seq.

JURISDICTION AND VENUE

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 15 U.S.C. § 1681 et seq.
2. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this District.
3. Defendant regularly transacts business within the District. Defendant

regularly directs business at the District. Defendant voluntarily and purposefully avails itself of the protections of the District, such that personal jurisdiction is established.

PARTIES

4. Plaintiff is a natural person who resides in Pepperell, Massachusetts within the confines of Middlesex County. Plaintiff is a “consumer” as that term is defined by 15. U.S.C. § 1681a(c).

5. According to Defendant, Backgroundchecks.com’s database “has over 650 million records and 22 million photos to search for an instant criminal record,” and claims to be the “#1 online criminal conviction databases in the industry, based on an analysis of publicly available sources.”

6. Defendant serves “thousands of customers nationwide, from small businesses to Fortune 100 companies, by providing comprehensive screening services” to third-parties in exchange for monetary compensation. Further, according to Defendant, “By [the FCRA’s] standards, background screening companies are consumer report agencies that the FCRA regulates.” Therefore, Defendant is a “consumer reporting agency” as defined in 15 U.S.C. § 1681a(f).

7. Defendant maintains a principal place of business located at 100 Centerview Drive Suite #300, Nashville, Tennessee 37214-3455. The Defendant can be served through its registered agent c/o Legalinc Corporate Service Inc., located at 5865 Ridgeway Center Parkway, Suite #389, Memphis, Tennessee 38120-4032.

8. At all times relevant to this Complaint, Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

9. Plaintiff is a seventy-three (73) year old man.

10. After losing his partner years ago, Plaintiff turned to various dating apps for companionship.

11. Amid the Covid-19 pandemic, Plaintiff's social life became entirely dependent on his access to a number of dating apps, including Plenty of Fish ("POF") and OK Cupid.

12. Near the end of 2021, Plaintiff upgraded his POF account to a paid subscription in order to increase his account's visibility and increase the chance of matching with other users.

13. Plaintiff continued to meet people and explore connections on POF and OK Cupid on a regular basis.

14. On or about March 23, 2022, Plaintiff received an email from OK Cupid that stated his account had been deactivated based on the information contained in a report provided by Backgroundchecks.com.

15. Plaintiff was extremely confused, as he had been a member of the OK Cupid platform for years, without issue.

16. Shortly after Plaintiff's OK Cupid profile was deactivated, he learned

that he had also been “banned” from POF based on a report provided by Defendant.

17. Upon information and belief, OK Cupid and POF purchased consumer reports from Defendant to assess Plaintiff’s eligibility for membership.

18. Upon review of the report(s), Plaintiff realized Defendant had made an incredible mistake.

19. Defendant erroneously reported that Plaintiff was a sex offender, convicted of sending, selling, or distributing obscene matter depicting a minor.

20. Plaintiff was disgusted, shocked about the inaccurate information Defendant published about him.

21. Plaintiff was also greatly worried about who at OK Cupid and POF would see the report, and how far the information might be shared.

22. Plaintiff took to the internet to verify that he had not been mistakenly labeled a “sex offender” in other public records.

23. A cursory review of the public records revealed that no person with Plaintiff’s name and date of birth was a registered sex offender.

24. After conducting his own search, Plaintiff returned to the report for a closer review. At that point, Plaintiff became extremely frustrated.

25. A cursory review of the report itself clearly proves that Plaintiff is not the sex offender responsible for the crime listed on his consumer report.

26. Plaintiff’s full name is Richard T. Thistle Sr. Upon information and belief, the sex offender’s name is Richard K. Thistle Jr.

27. Defendant's report included a photo of the man responsible for the alleged crime, and the man in the photo did not at all resemble Plaintiff.

28. Defendant's report included the sex offender's birthdate, 02/24/1950, which differed from Plaintiff's birthday, 02/25/1949.

29. Defendant's report indicated the sex offender lived (and registered) in California, where Plaintiff had never lived.

30. Plaintiff could not understand how Defendant managed to match the erroneous record with his information. However, he was hopeful that the blatancy of the inaccuracy would allow him to regain access to the dating apps after speaking to a representative.

31. On or about March 24, 2022, Plaintiff reached out to POF's customer service to explain that the sex offender record in the backgroundchecks.com report did not belong to him.

32. In response, the POF representative simply stated that there was nothing he could do and explained that the ban was permanent.

33. Plaintiff's devastation at losing access to his accounts was heightened by the implication that his name was the cause of the match, suggesting that he was nearly powerless to avoid the problem in the future.

34. Not only did the sudden deactivation of his dating apps immediately disrupt the connections he was building with other users, but the "permanent" ban completely destroyed any opportunity to develop future connections.

35. Upon information and belief, OK Cupid and POF both pay Defendant to provide background reports to them.

36. Upon information and belief, OK Cupid and POF use Defendant's background reports to make decisions about current and prospective users' eligibility to use their platform(s).

37. Upon information and belief, Defendant's procedures do not require it to obtain information from the public records, rather, depending on the type of report purchased, Defendant will only search their "proprietary criminal database."

38. Upon information and belief, Defendant included the erroneous sex offense in Plaintiff's consumer report without verifying that the record matched his full name or date of birth.

39. Plaintiff has never been convicted of sending, selling or distributing obscene matter depicting a minor.

40. Upon information and belief, Defendant included the erroneous sex offense without verifying that Plaintiff had ever lived in the state in which the sex offender was registered.

41. A cursory review of the public court records clearly shows that the sending, selling, or distributing obscene matter conviction belongs to an individual with a different name and date of birth than Plaintiff.

42. It is wholly unreasonable for Defendant to maintain procedures that allow it to report criminal records information that contradicts the public record.

43. Defendant knows that its services are used to make significant consumer decisions, and even devote a section of their website to notifying potential customers that they are required to follow FCRA requirements in their utilization of consumer reports prepared by Defendant.

44. As a direct result of Defendant's inaccurate reporting and failure to maintain reasonable procedures to ensure maximal accuracy of the information it includes in consumers' reports, Plaintiff was permanently banned from OK Cupid and POF.

45. Plaintiff is entirely reliant upon dating apps for regular interaction with other adults.

46. Moreover, POF was Plaintiff's favorite app for meeting people to date and simply socialize with, which is why he had upgraded to a paid subscription.

47. Plaintiff was also concerned that the people he had met through the dating apps would learn of the inaccurate information and believe he was a sexual predator.

48. Plaintiff was understandably distraught at the thought that his online and/or offline reputation would thus be permanently befouled.

49. As a direct result of Defendant's inaccurate reporting, Plaintiff suffered embarrassment, anxiety, sleeplessness, emotional pain, and mental anguish.

50. As a direct result of Defendant's inaccurate reporting, Plaintiff suffered, and continues to suffer, actual damages, including but not limited to: emotional

distress, mental anguish, humiliation, embarrassment, stress, and damage to reputation.

COUNT I

Defendant's Violations of 15 U.S.C. § 1681e(b)

51. Plaintiff incorporates by reference all the above paragraphs of this Complaint as though fully stated herein.

52. Backgroundchecks.com is a “consumer reporting agency” as defined by the FCRA, 15 U.S.C. § 1681(f) because the company regularly uses the internet to collect and assemble consumer information and thereafter attempts to sell consumer reports to third parties.

53. Despite its name, the Fair Credit Reporting Act covers more than just credit reporting, it regulates all “consumer reports.” 15 U.S.C. § 1681a(d)(1)(C).

54. The FCRA defines a “consumer report” as: “any written, oral, or other communication of any information by a CRA bearing on a consumer’s ...character, **general reputation**, personal characteristics, or mode of living...” 15. U.S.C. §1681a(d)(1)(emphasis added).

55. In the parlance of the FCRA, background reports used for a legitimate business need, such as assessing a consumer’s eligibility for a benefit, are “consumer reports.” 15 U.S.C. § 1681b(a)(3)(F).

56. Defendant’s disclosures constitute “consumer reports” as defined by 15 U.S.C. § 1681a(d) because Defendant’s reports, including that prepared with respect

to Plaintiff, include information such as court or arrest records, and purport to reflect the character and/or general reputation of the subject.

57. The FCRA provides a number of protections for consumers who are subject to background reports, including those seeking “to be included in a computer dating service.” 16 CFR Ch. 1, Pt. 600 App.

58. The FCRA imposes duties on consumer reporting agencies, like Defendant, to ensure that “consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer’s right to privacy.” 15 U.S.C. § 1681.

59. Under 15 U.S.C. § 1681e(b), “whenever a consumer reporting agency prepares a consumer report, it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.”

60. Defendant violated 15 U.S.C. § 1681e(b) by failing to establish, maintain, and/or follow reasonable procedures to assure maximum possible accuracy in the preparation of Plaintiff’s consumer report.

61. Specifically, Defendant failed to establish, maintain, and/or follow procedures to prevent it from inaccurately reporting Plaintiff as a registered sex offender.

62. As a direct result of Defendant’s conduct, actions, and inaction, Plaintiff suffered actual damages as detailed herein.

63. Defendant's violations of 15 U.S.C. § 1681e(b) were willful and knowing. Further, Defendant's violations were committed in reckless disregard of Plaintiff's rights as a consumer. Accordingly, Defendant is liable for Plaintiff's statutory, actual, and punitive damages as determined by the Court at trial. 15 U.S.C. § 1681n.

64. Alternatively, Defendant's violations of 15 U.S.C. § 1681e(b) were negligent, rendering it liable for Plaintiff's statutory and actual damages. 15 U.S.C. § 1681o.

65. In any event, Defendant is liable for Plaintiff's reasonable attorney's fees and costs pursuant to 15 U.S.C. §§ 1681n, 1681o.

TRIAL BY JURY

66. Plaintiff is entitled to and hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Richard Thistle Sr., respectfully requests judgment be entered against Defendant, for the following:

- a. Actual damages pursuant to 15 U.S.C. §§ 1681n and/or 1681o;
- b. Statutory damages pursuant to 15 U.S.C. §§ 1681n and/or 1681o;
- c. Punitive damages pursuant to 15 U.S.C. § 1681n;
- d. Costs and reasonable attorney's fees pursuant to 15 U.S.C. §§ 1681n and/or 1681o;

- e. Any pre-judgment and post-judgment interest as may be allowed under the law; and
- f. Other and further relief as the Court may deem just and proper.

Respectfully submitted this 9th day of May 2022,

/s/ Nicola S. Yousif
Nicola S. Yousif
MA No. 679545
Law Offices of Attorney Nick
Yousif, LLC
157 Belmont Street,
Brockton, MA 02301
T: (508) 588-7300
E: nick@yousiflaw.com

*Attorney for Plaintiff
Richard T. Thistle Sr.*

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Thistle v. Backgroundchecks.com LLC

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

I. 160, 400, 410, 441, 535, 830*, 835*, 850, 880, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.

II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820*, 840*, 895, 896, 899.

III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 485, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES

NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES

NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES

NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES

NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES

NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division

Central Division

Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division

Central Division

Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES

NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Nicola Yousif

ADDRESS 157 Belmont Street Brockton, MA 02301

TELEPHONE NO. (508) 588-7300

UNITED STATES DISTRICT COURT

District of

MASSACHUSETTS

RICHARD T. THISTLE SR.,

SUMMONS IN A CIVIL CASE

V.

BACKGROUNDCHECKS.COM
LLC.

CASE

TO: (Name and address of Defendant)

BACKGROUNDCHECKS.COM LLC
c/o Legalinc Corporate Service Inc.
5865 Ridgeway Center Parkway Suite 389,
Memphis, Tennessee 38120

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Nicola S. Yousif
157 Belmont Street,
Brockton, MA 02301

an answer to the complaint which is herewith served upon you, within 21 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

[Signature line for Clerk]

[Signature line for Date]

CLERK

DATE

(By) DEPUTY CLERK

AO 440 (Rev. 10/93) Summons in a Civil Action

RETURN OF SERVICE

Service of the Summons and complaint was made by me ⁽¹⁾	DATE
NAME OF SERVER (<i>PRINT</i>)	TITLE

Check one box below to indicate appropriate method of service

- G Served personally upon the third-party defendant. Place where served: _____
- G Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____
- G Returned unexecuted: _____
- G Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date Signature of Server

Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

CIVIL COVER SHEET

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

Richard T. Thistle Sr.

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

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

Law Offices of Attorney Nick Yousif, LLC
157 Belmont Street, Brockton, MA 02301

DEFENDANTS

Backgroundchecks.com LLC

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
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-sections like PERSONAL INJURY, LABOR, IMMIGRATION, FEDERAL TAX SUITS.

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

Brief description of cause:

Plaintiff alleges violations of the Fair Credit Reporting Act against the Defendant.

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: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

May 9, 2022

/s/ Nicola S. Yousif

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE