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11 **UNITED STATES DISTRICT COURT**
 12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 JACKLYN FEIST and ANGELICA
 14 ZIMMER, Individually and on Behalf
 15 of All Others Similarly Situated,

16 Plaintiffs,

17 v.

18 PETCO ANIMAL SUPPLIES, INC.,
 19 and DOES 1 through 10, inclusive,

20 Defendants.

Case No.: 3:16-cv-01369-H-DHB

**SECOND AMENDED CLASS
 ACTION COMPLAINT FOR:**

**Violation of Fair Credit Reporting
 Act (15 U.S.C. §§ 1681, *et seq.*)**

JURY TRIAL DEMANDED

1 Plaintiffs Jacklyn Feist and Angelica Zimmer (“Plaintiffs”) allege as follows
2 upon personal knowledge as to themselves and their own acts and experiences, and, as
3 to all other matters, upon information and belief, including investigation conducted by
4 their attorneys.

5 **PRELIMINARY STATEMENTS**

6 1. This class action arises from Petco Animal Supplies, Inc.’s (“Defendant”)
7 acquisition and use of consumer and/or investigative consumer reports as those terms
8 are defined by the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681, *et seq.*, to
9 conduct background checks on Plaintiffs and other prospective, current and former
10 employees.

11 2. Defendant routinely procures consumer reports to conduct background
12 checks as part of the employment application process. However, Defendant fails to
13 comply with federal mandates for obtaining and using consumer reports for
14 employment purposes. Plaintiffs bring this action against Defendant for the violation of
15 these federal laws.

16 3. Although the procurement of a consumer report for employment purposes
17 is not *per se* unlawful, it is subject to strict disclosure requirements under federal law
18 pursuant to the FCRA. Among other things, an employer may not procure a consumer
19 report concerning a job applicant or employee unless a “clear and conspicuous”
20 disclosure is made in a stand-alone document that “consists solely of the disclosure”
21 informing the applicant or employee that a report may be obtained for employment
22 purposes. In addition, if an employer takes an adverse action on the basis of a
23 consumer report, it must comply with the FCRA’s pre- and post- adverse action notice
24 requirements.

25 4. Defendant procured consumer reports respecting Plaintiffs and class
26 members as part of its standard practice and policy, but failed to provide them with a
27 clear and conspicuous written disclosure, in a document that consists solely of the
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1 disclosure, that a consumer report may be obtained for employment purposes.
2 Defendant also failed to comply with the FCRA's adverse action notice requirements.

3 5. As a result of Defendant's wrongful acts and omissions, Plaintiffs and
4 other putative class members have been injured, including, without limitation, by
5 having their privacy, informational and statutory rights violated.

6 6. As further alleged herein, Defendant's violations occurred because
7 Defendant has willfully failed to properly apprise itself of the statutory mandates before
8 procuring consumer reports to make employment decisions; violated the express and
9 unambiguous provisions of the relevant statute; and/or recklessly failed to implement
10 reasonable procedures to assure compliance with statutory mandates.

11 7. On behalf of themselves and the putative class, Plaintiffs seek statutory
12 damages, punitive damages, costs and attorneys' fees, equitable relief, and other
13 appropriate relief for Defendant's systematic and willful violations of the FCRA.

14 **PARTIES**

15 8. Plaintiff Jacklyn Feist is, and at all times relevant herein was, a resident of
16 California.

17 9. Plaintiff Angelica Zimmer is, and at all times relevant herein was, a
18 resident of California.

19 10. Upon information and belief, Defendant Petco Animal Supplies, Inc. is,
20 and at all times relevant herein was, a Delaware corporation headquartered in San
21 Diego, California, and engaged in commercial transactions throughout this county, the
22 State of California and the various states of the United States of America.

23 11. Plaintiffs are informed and believe, and thereon allege, that each and all of
24 the acts and omissions alleged herein was performed by, or is attributable to, Defendant
25 and/or DOES 1 through 10 (collectively "Defendants") each acting as the agent for the
26 other, with legal authority to act on the other's behalf. The acts of any and all
27 Defendants were in accordance with, and represent, the official practice and policy of
28 Defendants. Plaintiffs are unaware of the true names or capacities of the Defendants

1 sued herein under the fictitious names DOES 1 through 10, but will seek leave of this
2 Court to amend the Complaint and serve such fictitiously-named Defendants once their
3 names and capacities become known.

4 12. Plaintiffs are informed and believe, and thereon allege, that DOES 1
5 through 10 were the partners, agents, owners, shareholders, managers, or employees of
6 Defendant Petco Animal Supplies, Inc. at all relevant times.

7 13. Plaintiffs are informed and believe, and thereon allege, that each of said
8 Defendants is in some manner intentionally, negligently, or otherwise responsible for
9 the acts, omissions, occurrences, and transactions of each and all of the other
10 Defendants in proximately causing the damages herein alleged.

11 14. At all relevant times, Defendants, and each of them, ratified each and
12 every act or omission complained of herein. At all relevant times, Defendants, and
13 each of them, aided and abetted the acts and omissions alleged herein.

14 **JURISDICTION AND VENUE**

15 15. This action was originally brought in the Superior Court of California for
16 the County of San Diego as a class action pursuant to California Code of Civil
17 Procedure Section 382. The Superior Court had concurrent jurisdiction over Plaintiffs’
18 FCRA claims under 28 U.S.C. Section 1681p which provides, in pertinent part: “An
19 action to enforce any liability created under this title may be brought in any appropriate
20 United States district court, without regard to the amount in controversy, or in any other
21 court of competent jurisdiction.”

22 16. On June 6, 2016 Defendant filed a Notice of Removal in the United States
23 District Court for the Southern District of California [ECF 1].¹

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25 _____
26 ¹ Defendant removed this case even though Defendant contends that this Court does not
27 have subject matter jurisdiction because Plaintiffs lack Article III standing. *See*
28 Defendants’ Motion to Dismiss Plaintiffs’ initial Complaint [ECF 4]. Defendant is
wrong - as discussed herein, Plaintiffs’ plainly do have standing. Nevertheless,

1 for housing. Second, despite their importance, consumer reports were unregulated and
2 had widespread errors and inaccuracies.

3 22. While recognizing that consumer reports play an important role in the
4 economy, Congress wanted consumer reports to be “fair and equitable to the consumer”
5 and to ensure their “confidentiality, accuracy, relevancy, and proper utilization.” 15
6 U.S.C. § 1681.

7 23. Congress was particularly concerned about the use of consumer reports by
8 employers to deny otherwise qualified job applicants or to take other adverse actions
9 against prospective or current employees. Accordingly, Congress required employers to
10 make a clear and conspicuous written disclosure to employees and job applicants, in a
11 document that consists *solely* of the disclosure, that a consumer report may be procured
12 for employment purposes. 15 U.S.C. § 1681b(b)(2). This is commonly referred to as
13 the “stand-alone disclosure” requirement. Congress further required that employers
14 obtain written authorization prior to procurement of a consumer report for employment
15 purposes. *Id.*

16 24. The FCRA’s stand-alone disclosure requirement ensures that employees
17 and job applicants know when reports about them are being generated. This notice is
18 one of many elements of the FCRA that combine to ensure that consumers are aware
19 that consumer reports are generated about them, that they know their rights, and that
20 they have the opportunity to dispute errors in their reports. *See* 15 U.S.C. §
21 1681b(b)(3)(A) (pre-adverse employment action notice requirement); § 1681b(4)(B)
22 (notification of national security investigation); § 1681c(h) (notification of address
23 discrepancy); § 1681d(a) (disclosure of investigative report); § 1681g (full file
24 disclosure to consumers); § 1681k(a)(1) (disclosure regarding the use of public record
25 information); § 1681h (form and conditions of disclosure); § 1681m(a) (post-adverse
26 employment action notice requirement).

27 25. Although the disclosure and the authorization may be combined in a single
28 document, the FTC has warned that the form should not include any extraneous

1 information or be part of another document. For example, in response to an inquiry as
2 to whether the disclosure may be set forth within an application for employment or
3 whether it must be included in a separate document, the FTC stated:

4 The disclosure may not be part of an employment
5 application because the language [of 15 U.S.C. §
6 1681b(b)(2)(A)] is intended to ensure that it appears
7 conspicuously in a document not encumbered by any other
8 information. The reason for requiring that the disclosure be
9 in a stand-alone document is to prevent consumers from
 being distracted by other information side-by-side within
 the disclosure.

10 26. The plain language of the statute also clearly indicates that the inclusion of
11 a waiver in a disclosure form violates the disclosure and authorization requirements of
12 the FCRA, because such a form would not consist “solely” of the disclosure. In fact, the
13 FTC expressly has warned that the FCRA notice may not include extraneous
14 information such as a waiver. In a 1998 opinion letter, the FTC stated:

15 [W]e note that your draft disclosure includes a waiver by
16 the consumer of his or her rights under the FCRA. The
17 inclusion of such a waiver in a disclosure form will violate
18 Section 604(b)(2)(A) of the FCRA, which requires that a
19 disclosure consist ‘solely’ of the disclosure that a consumer
 report may be obtained for employment purposes.

20 27. Consistent with the FCT’s construction of the FCRA, the courts have
21 consistently held that extraneous information renders a purported FCRA disclosure
22 non-compliant. *See, e.g., Woods v. Caremark PHC, LLC*, No. 4:15-cv-00535, 2015
23 WL 6742124, *2 (W.D. Mo. Nov. 2, 2015) (denying motion to dismiss FCRA
24 complaint where plaintiff alleged that purported disclosure contained an overbroad
25 authorization for third parties to provide information to defendant and its consumer
26 reporting agency, and state specific notices that did not apply to plaintiff); *Jones v.*
27 *Halstead Mgmt. Co., LLC*, No. 14-cv-3125, 2015 WL 366244, *5 (S.D. NY Jan 27,
28 2015) (denying motion to dismiss FCRA complaint where plaintiff alleged that

1 purported disclosure form included timeframes during which applicant must challenge
2 accuracy of any report, an acknowledgement that employment decisions are based on
3 non-discriminatory reasons, the contact information for the consumer reporting agency
4 and state specific notices that “stretched what should be a simple disclosure form into
5 two full pages of eye-straining typeface writing.”)

6 28. As discussed below, Defendant routinely violates the FCRA by failing to
7 provide the required stand-alone disclosure to employees and job applicants.

8 **FACTUAL ALLEGATIONS**

9 29. Defendant is a major pet supply retailer that operates more than 1,300
10 locations across the United States, Mexico and Puerto Rico.² On information and
11 belief, Defendant processes tens of thousands of employment applications per year.

12 30. On or about October 25, 2015, Plaintiff Jacklyn Feist applied for work
13 with Defendant by completing Defendant’s online Employment Application
14 (“Application”). Shortly after applying, Plaintiff was called in for an interview at one
15 of Defendant’s California retail locations. Shortly after this interview, Plaintiff was
16 called in for a second interview at the conclusion of which she was provided with a
17 work schedule.

18 31. On or about October 30, 2015, Defendant requested a consumer report on
19 Plaintiff from consumer report vendor HireRight, which came back with an
20 adjudication result that indicated “Does Not Meet Company Standards.” On
21 information and belief, this adjudication result was based on erroneous information.

22 32. When Plaintiff arrived for her first scheduled day of work she was told that
23 her background check had not come through and was not allowed to begin working.
24 Thereafter, Plaintiff called multiple times to follow up but was repeatedly told that the
25 background check was taking additional time.

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28 ² See <https://en.wikipedia.org/wiki/Petco>, last visited 3/15/2016.

1 33. On information and belief, Plaintiff was misinformed when she was told
2 that her background check was taking additional time. On information and belief, the
3 background check had been received by Defendant and Plaintiff was not hired because
4 her background check adjudication result indicated “Does Not Meet Company
5 Standards,” *i.e.*, Defendant took adverse action against Plaintiff on the basis of a
6 consumer report. However, Plaintiff was not provided with a pre- or post- adverse
7 action notification, a copy of her consumer report, an opportunity to cure any
8 inaccuracies in her report, or otherwise informed of the results of her background
9 check. Consequently, Plaintiff was deprived of information to which she was
10 statutorily entitled, and deprived of an opportunity to review and challenge the report
11 upon which, on information and belief, her denial of employment was based.

12 34. On or about July 28, 2014, Plaintiff Angelica Zimmer applied for work
13 with Defendant by completing Defendant’s online Employment Application.

14 35. On or about August 1, 2014, Defendant requested a consumer report on
15 Plaintiff from consumer report vendor LexisNexis. Plaintiff was subsequently hired
16 and worked for Defendant from approximately September 2014 through January 2015
17 in one of Defendant’s California retail locations.

18 36. Defendant’s online Application is a complex document which includes
19 fields for all of the information necessary to process an applicant including, *inter alia*,
20 job specific skills, assessment, tax information, diversity information, etc.

21 37. Buried within Defendant’s Application is a purported “Background Check
22 Consent” which appears on a screen with small-font wording in the middle that the
23 applicant scrolls through by dragging a scrollbar on the right hand side (the “scroll
24 down”). The wording contained within the scroll down itself would comprise
25 approximately five singled-spaced pages if reproduced in 12-point Roman font on
26 standard sized 8-1/2” x 11” paper.

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1 38. The first two paragraphs of Defendant’s purported “Background Check
2 Consent” within the scroll down appear under the words “Background Check
3 Authorization.”

4 39. The first paragraph under the words “Background Check Authorization”
5 states, in part:

6 After carefully reading this Background Check
7 Authorization and Disclosure form, I authorize Petco to
8 order my background check, including investigative
9 consumer reports. I understand that, as allowed by law,
10 Petco may rely on this authorization to order additional
background reports without asking me for my authorization
again...

11 Although this paragraph purports to authorize the ordering of a “background check,
12 including investigative consumer reports” it does not mention the term “consumer
13 report” (as distinguished from “investigative consumer report”), which is the type of
14 report that, on information and belief, was procured on Plaintiffs and Class Members.
15 In addition, it purports to authorize the ongoing procurement of reports.

16 40. The second paragraph under the words “Background Check
17 Authorization” states:

18 I also authorize all of the following to disclose to the CRA
19 and its agents all information about or concerning me,
20 including but not limited to: my past or present employers;
21 learning institutions, including colleges and universities;
22 law enforcement and all other federal, state and local
agencies; federal, state and local courts; the military; credit
23 bureaus; testing facilities; motor vehicle records agencies;
all other private and public sector repositories of
24 information; and any other person, organization, or agency
with any information about or concerning me. The
25 information that can be disclosed to the CRA and its agents
includes, but is not limited to, information concerning my
26 employment and earnings history, education, credit history,
27 motor vehicle history, criminal history, military service,
professional credentials and licenses. I promise that all of
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1 my personal information on this form is true and correct
2 and understand that dishonesty will disqualify me from
3 consideration for employment with Petco, or if I am hired
4 or already work for Petco, that my employment may be
5 terminated. I also agree that a copy of this form is valid like
6 the signed original.

7 This paragraph is not a disclosure that a consumer report will be procured, nor is it an
8 authorization to procure a consumer report. Rather, it is a blanket waiver through
9 which the applicant consents to “also authorize” any person or entity who possesses any
10 information concerning the applicant, to divulge such information whether or not
11 otherwise lawful or appropriate to do so (“Privacy Waiver.”)

12 41. Following the above paragraphs, and in the same scroll down, are the
13 words “Background Check Disclosure,” followed by two lengthy paragraphs which
14 contain, *inter alia*, the following statements, in addition to the statement that a
15 consumer report will be procured:

- 16 a. That background reports are obtained “[i]n the interest of maintaining the
17 safety and security of our customers”;
- 18 b. That Defendant “may order additional background reports on you for
19 employment purposes”;
- 20 c. That Defendant “may order an ‘investigative consumer report’”;
- 21 d. That “[a]n ‘investigative consumer report’ is a background report that
22 includes information from personal interviews (except in California,
23 where that term includes background reports with or without personal
24 interviews)”;
- 25 e. The identity, phone number and address of the consumer reporting agency
26 that will prepare the report; and,
- 27 f. An advisement that “[y]ou have the right to request more information
28 about the nature and scope of an investigative consumer report, if any, by
contacting Petco’s Employee Relations department...”

1 42. Following the above paragraphs, and within the same scroll down, are the
2 words “State Specific Notices,” followed by seven separate paragraphs containing
3 various information relating to the laws of seven different states, California, Maine,
4 Massachusetts, Minnesota, New Jersey, New York and Washington State.

5 43. Following these paragraphs, and within the same scroll down, is “A
6 Summary of Your Rights Under the Fair Credit Reporting Act” which alone would be
7 several pages long if printed in 12-point Roman font on standard sized 8-1/2” x 11”
8 paper.

9 44. Following the “Background Check Consent” and within the same
10 Application, is an “eSignature” which is also presented as a scroll down, and which
11 also contains information that would fill multiple single-spaced pages if reproduced in
12 normal font on standard sized paper. The following paragraph is embedded within the
13 “eSignature” scroll down:

14 I hereby authorize Petco to conduct any necessary
15 investigation regarding my background as it relates to the
16 position I am seeking and to the extent permitted by
17 federal, state, and local law. I agree to complete the
18 requisite authorization forms for the background
19 investigation. I hereby release all parties from any liability
in connection with the provision and use of such
information.

20 45. On information and belief, this same Application was used regularly by
21 Defendant for all online job applicants during the relevant time period pursuant to
22 Defendant’s standard employment policies, procedures, and/or practices.

23 46. Plaintiffs further allege, on information and belief, that Defendant’s online
24 job Application is the only thing provided to applicants prior to Defendant procuring a
25 consumer report on them which relates in any way the fact that a consumer report may
26 be procured.

27 47. The Privacy Waiver, lengthy state law notices and other extraneous
28 information contained within and surrounding Defendant’s purported “Background

1 Check Consent,” as well as the release and reams of extraneous information contained
2 in Defendant’s “eSignature,” would each taken individually, suffice to render
3 Defendant’s Application non-compliant.

4 48. Despite its failure to provide Plaintiffs with the required stand-alone
5 disclosure, following Plaintiffs’ and Class Members’ submission of the Application,
6 Defendant procured or caused to be procured a consumer report on Plaintiffs and Class
7 Members, in accordance with Defendant’s standard employment policies, procedures,
8 and/or practices. On information and belief, Defendant did not procure Plaintiffs’ and
9 Class Members’ reports in connection with any investigation of suspected misconduct
10 relating to employment, or compliance with federal, state, or local laws and regulations,
11 the rules of a self-regulatory organization, or any preexisting written policies of the
12 Defendant.

13 49. On information and belief, Defendant does not perform these background
14 checks in-house. Rather, Defendant hires one or more outside consumer reporting
15 agencies to obtain this information and report it to Defendant for a fee. These reports
16 therefore constitute “consumer reports” within the meaning of the FCRA.

17 50. On information and belief, Defendant used HireRight and Lexis Nexis to
18 procure consumer reports during the class period.

19 51. Defendant’s conduct unambiguously violates the FCRA. By embedding
20 its purported disclosure in an employment application and including extraneous
21 information within and around the disclosure, Defendant disregarded well-established
22 case law and regulatory guidance from the FTC, and failed to provide Plaintiff with
23 information to which she was statutorily entitled. Additionally, the inclusion of the
24 extraneous provisions causes the disclosure to fail to be “clear and conspicuous” and
25 “clear[] and accurate[],” and violates Section 1681b(b)(2)(A) for this reason as well.

26 52. Defendant’s multiple violations of the FCRA combined with its
27 knowledge of the requirements of federal law provides further evidence that
28 Defendant’s violations were willful.

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CLASS ACTION ALLEGATIONS

53. Plaintiffs incorporate the foregoing paragraphs as if fully set forth herein.

54. Plaintiffs assert the following Classes:

Proposed Improper Disclosure Class: All persons regarding whom Defendant procured or caused to be procured a consumer report for employment purposes during the period from May 1, 2014 through December 31, 2015.

Proposed Adverse Action Subclass: All persons regarding whom Defendant took adverse action subsequent to procuring a consumer report and did not receive a pre-adverse action notification letter during the period May 1, 2014 through December 31, 2015.

55. Members of the Classes, as described above, will be referred to as “Class Members.” Excluded from the Classes are: (1) Defendant, any entity or division in which Defendant has a controlling interest, and its legal representatives, officers, directors, assigns, and successors; and (2) the Judge to whom this case is assigned and the Judge’s staff. Plaintiffs reserve the right to amend the above Classes and to add subclasses as appropriate based on investigation, discovery, and the specific theories of liability.

Numerosity

56. The proposed Classes are so numerous that joinder of all Class Members is impracticable. Defendant regularly obtains and uses information in consumer reports to conduct background checks on prospective and existing employees. Given the number of employees working for Defendant, Plaintiffs believe that during the relevant time period, thousands of Defendant’s employees and prospective employees would fall within the definition of the Classes.

1 **Common Questions of Law and Fact**

2 57. Virtually all of the issues of law and fact in this class action predominate
3 over any questions affecting individual Class Members. Among the questions of law
4 and fact common to the Classes are:

- 5 a. Whether Defendant uses consumer report information to conduct background
6 checks on current and prospective employees;
- 7 b. Whether Defendant fails to disclose to current and prospective employees
8 that a consumer report will be procured in a stand-alone document consisting
9 solely of the disclosure;
- 10 c. Whether the Defendant violated the FCRA by procuring consumer report
11 information based on invalid authorizations;
- 12 d. Whether the Defendant violated the FCRA by failing to provide pre-adverse
13 action notice, a copy of the consumer report and a reasonable time to cure
14 inaccuracies, to those with respect to whom Defendant took adverse action
15 based in whole or part upon information contained in a consumer report;
- 16 e. Whether Defendant’s violations of the FCRA were willful; and,
- 17 f. The proper measure of statutory and punitive damages.

18 **Typicality**

19 58. Plaintiffs’ claims are typical of the members of the proposed Classes.
20 Defendant typically requires job applicants to apply via an online employment
21 application with a purported FCRA disclosure and authorization embedded within a
22 long form that contains reams of extraneous information which clearly render the
23 disclosure non-compliant. In addition, on information and belief, Defendant
24 systematically fails to provide notice of adverse action based in whole or part upon
25 information contained within a consumer report. The FCRA violations suffered by
26 Plaintiffs are typical of those suffered by other Class Members, and Defendant treated
27 Plaintiffs consistent with other Class Members in accordance with its standard policies,
28 practices and procedures.

1 **Adequacy of Representation**

2 59. Plaintiffs, as representatives of the Classes, will fairly and adequately
3 protect the interests of the Classes and have no interests that conflict with or are
4 antagonistic to the interests of the other Class Members. Plaintiffs have retained
5 attorneys competent and experienced in class action litigation. No conflict exists
6 between Plaintiffs and members of the Classes.

7 **Superiority**

8 60. A class action is superior to all other available methods for the fair and
9 efficient adjudication of this controversy. Defendant’s conduct described in this
10 Complaint stems from common and uniform policies and practices, resulting in
11 common violations of the FCRA, and the names and addresses of the Class Members
12 are available from Defendant’s records. This case therefore lends itself to class
13 treatment. Furthermore, Class Members do not have an interest in pursuing separate
14 actions against Defendant, as the amount of each Class Member’s individual claims is
15 small compared to the expense and burden of individual prosecution. Class
16 certification will also obviate the need for unduly duplicative litigation that might result
17 in inconsistent judgments concerning Defendant’s practices. Finally, Plaintiffs are
18 unaware of any difficulty which will be encountered in the management of this
19 litigation which would preclude class certification.

20 **FIRST CAUSE OF ACTION**

21 **Failure to Make Proper Disclosure in Violation of FCRA**

22 **(15 U.S.C. §§ 1681b(b)(2)(A)(ii))**

23 61. Plaintiffs incorporate the foregoing paragraphs as if fully set forth herein.

24 62. Defendant violated the FCRA by the use of a disclosure form that contains
25 extraneous information other than the disclosure, and that is embedded within an
26 employment application.

1 63. The foregoing violations were willful as Defendant was aware of its
2 obligation to provide a clear and conspicuous disclosure in a document consisting
3 solely of the disclosure.

4 64. Based upon facts likely to have evidentiary support after a reasonable
5 opportunity for further investigation and discovery, Defendant had and has a policy and
6 practice of failing to provide adequate written disclosures to job applicants and
7 employees, before procuring consumer reports or causing consumer reports to be
8 procured. Pursuant to that policy and practice, Defendant procured consumer reports or
9 caused consumer reports to be procured for Plaintiffs and Class Members without first
10 providing a written disclosure in compliance with Section 1681b(b)(2)(A) of the
11 FCRA.

12 65. Defendant's willful conduct is reflected by, among other things, the
13 following facts:

14 a. The FCRA was enacted in 1970; Defendant, which was founded in
15 1986, has had 30 years to become compliant;

16 b. Defendant is a large corporation with access to legal advice through
17 its own General Counsel's office and outside employment counsel;

18 c. Defendant's conduct is inconsistent with the FTC's longstanding
19 regulatory guidance, judicial interpretation, and the plain language of the statute;

20 d. Defendant knew or had reason to know from its communications
21 with its consumer report vendor(s) that Defendant's conduct violated the FCRA;

22 e. Defendant repeatedly and routinely used the online job Application
23 it used with Plaintiffs prior to procuring consumer reports;

24 f. Despite the clear statutory text and depth of guidance on the subject,
25 Defendant systematically procured consumer reports without first disclosing in writing
26 to the consumer *in a document that consists solely of the disclosure*, that a consumer
27 report may be obtained for employment purposes; and
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1 g. By adopting such a policy, Defendant voluntarily ran a risk of
2 violating the law substantially greater than the risk associated with a reading that was
3 merely careless.

4 66. Plaintiffs and Class Members are entitled to statutory damages of not less
5 than \$100 and not more than \$1000 for each and every one of these violations, pursuant
6 to 15 U.S.C. § 1681n(a)(1)(A).

7 67. Plaintiffs and Class Members are also entitled to punitive damages for
8 these violations pursuant to 15 U.S.C. § 1681n(a)(2).

9 68. Plaintiffs and Class Members are further entitled to recover their costs and
10 attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).

11 **SECOND CAUSE OF ACTION**

12 **Failure to Obtain Proper Authorization in Violation of FCRA**

13 **(15 U.S.C. § 1681b(b)(2)(A)(ii))**

14 69. Plaintiffs incorporate the foregoing paragraphs as if fully set forth herein.

15 70. Because Defendant failed to make a clear and conspicuous disclosure that
16 a consumer report may be procured in a document consisting solely of the disclosure,
17 Defendant violated the FCRA by procuring consumer reports relating to Plaintiffs and
18 other Class Members without proper authorization. *See* 15 U.S.C. § 1681b(b)(2)(A)(ii).
19 Moreover, although the first paragraph of Defendant's purported "Background Check
20 Consent" purports to authorize the ordering of a "background check, including
21 investigative consumer reports" it does not mention the term "consumer report" (as
22 distinguished from "investigative consumer report"), which is the type of report that, on
23 information and belief, was procured on Plaintiffs and Class Members. For this reason
24 as well, Defendant violated the FCRA by procuring consumer reports relating to
25 Plaintiffs and other Class Members without proper authorization.

26 71. The foregoing violations were willful. Defendant acted in deliberate or
27 reckless disregard of its obligations and the rights of Plaintiffs and other Class
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1 Members under 15 U.S.C. § 1681b(b)(2)(A)(ii). Defendant's willful conduct is
2 reflected by, among other things, the facts previously set forth.

3 72. Plaintiffs and Class Members are entitled to statutory damages of not less
4 than \$100 and not more than \$1000 for each and every one of these violations, pursuant
5 to 15 U.S.C. § 1681n(a)(1)(A).

6 73. Plaintiffs and Class Members are also entitled to punitive damages for
7 these violations pursuant to 15 U.S.C. § 1681n(a)(2).

8 74. Plaintiffs and Class Members are further entitled to recover their costs and
9 attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).

10 **THIRD CAUSE OF ACTION**

11 **Failure to Follow Pre-Adverse Action Requirements in Violation of FCRA**

12 **(15 U.S.C. § 1681b(b)(3)(A))**

13 75. Plaintiffs incorporate the foregoing paragraphs as if fully set forth herein.

14 76. Defendant used a consumer report, as defined by the FCRA, to take
15 adverse employment action against Plaintiff Feist (who, on information and belief, was
16 not hired due to the results of her background check) and other Adverse Action Class
17 Members.

18 77. Defendant violated the FCRA by, *inter alia*, failing to provide Plaintiff
19 Feist and other Adverse Action Class Members with a pre-adverse action notice; failing
20 to provide Plaintiff Feist and other Adverse Action Class Members with a copy of the
21 consumer report that was used to take adverse employment action against them prior to
22 the adverse action; and, failing to provide Plaintiff Feist and other Adverse Action
23 Class Members with a reasonable time to cure any inaccuracies within their consumer
24 reports prior to taking adverse action.

25 78. The foregoing violations were willful. Defendant acted in deliberate or
26 reckless disregard of its obligations and the rights of applicants and employees,
27 including Plaintiff Feist and other Adverse Action Class Members. Defendant's willful
28 conduct is reflected by, among other things, the following facts:

1 a. The FCRA was enacted in 1970; Defendant, which was founded in 1986,
2 has had 30 years to become compliant;

3 b. Defendant is a large corporation with access to legal advice through its
4 own General Counsel's office and outside employment counsel;

5 c. Defendant's conduct is inconsistent with the plain language of the statute;

6 d. Defendant knew or had reason to know from its communications with its
7 consumer report vendor(s) that Defendant's conduct violated the FCRA;

8 e. Defendant committed multiple violations of the FCRA's adverse action
9 requirements by, *inter alia*, not providing Plaintiff Feist and other Adverse Action
10 Class Members pre-adverse action notice; not providing a copy of the consumer report;
11 and not providing a reasonable notice period to cure inaccuracies; and

12 f. The FCRA requires consumer reporting agencies to provide notice to users
13 of consumer reports of the users' legal obligations under the FCRA prior to the
14 procurement of consumer reports, despite such knowledge Defendant persisted in the
15 conduct that brought forth this action.

16 79. Plaintiff Feist and other Adverse Action Class Members are entitled to
17 statutory damages of not less than \$100 and not more than \$1,000 for each and every
18 one of these violations, pursuant to 15 U.S.C. §1681n(a)(1)(A).

19 80. Plaintiff Feist and Adverse Action Class Members are also entitled to
20 punitive damages for these violations, pursuant to 15 U.S.C. §1681n(a)(3).

21 81. Plaintiff Feist and Adverse Action Class Members are further entitled to
22 recover their costs and attorneys' fees, pursuant to 15 U.S.C. §1681n(a)(3).

23 **WHEREFORE**, Plaintiffs respectfully request that this Court issue an Order:

24 a. That this action may proceed as a class action under Section 382 of the
25 California Code of Civil Procedure;

26 b. Designating Plaintiffs as class representatives and designating Plaintiffs'
27 counsel as counsel for the Classes;

28

- 1 c. Directing proper notice to be mailed to the Classes at Defendant’s
2 expense;
- 3 d. Holding that Defendant committed multiple, separate violations of the
4 FCRA;
- 5 e. Holding that Defendant acted willfully in deliberate or reckless disregard
6 of Plaintiffs’ and class members’ rights, and its obligations, under the FCRA;
- 7 f. Awarding statutory damages in an amount of \$1,000 per violation and
8 punitive damages as provided by the FCRA;
- 9 h. Awarding reasonable attorneys’ fees and costs as provided by the FCRA;
10 and
- 11 i. Granting other and further relief, in law or equity, as this Court may deem
12 appropriate and just.

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Dated: April 20, 2018

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PROOF OF SERVICE BY ELECTRONIC POSTING

I, the undersigned say:

I am not a party to the above case, and am over eighteen years old. On April 20, 2018, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Southern District of California, for receipt electronically by the parties listed on the Court’s Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 20, 2018, at Los Angeles, California.

s/ Mark S. Greenstone

Mark S. Greenstone

Mailing Information for a Case 3:16-cv-01369-H-RNB Feist et al v. Petco Animal Supplies, Inc. et al

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)