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Submitted via www.regulations.gov

Re: Use of Electronic Payroll Data to Improve Program Administration, 89 Fed. Reg. 11773 (February 15, 2024), Docket No. SSA-2016-0039

To whom it may concern:

These comments are submitted on behalf of Justice in Aging and the National Consumer Law Center (on behalf of its low-income clients) regarding the Notice of Proposed Rulemaking (NPRM)¹ concerning the Social Security Administration's proposed procedures for implementing access to and use of the payroll information held by Equifax and its subsidiary The Work Number.

Justice in Aging is an advocacy organization with the mission of improving the lives of low-income older adults. We use the power of law to fight senior poverty by securing access to affordable health care, economic security and the courts for older adults with limited resources. We have decades of experience with Social Security and Supplemental Security Income (SSI) benefits, with a focus on the needs of low-income beneficiaries and populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency (LEP). Justice in Aging conducts training and advocacy regarding Social Security and SSI benefits, provides technical assistance to attorneys and others from across the country on how to address problems that arise under these programs, and advocates for strong protections to ensure that beneficiaries receive the benefits to which they are entitled promptly and without arbitrary denial or disruption.

The National Consumer Law Center is a nonprofit organization specializing in consumer issues on behalf of low-income people and older Americans. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states who represent low-income and elderly individuals on consumer issues. As a result of our daily contact with these advocates, we have seen many examples from every part of the nation of the damage wrought by abuses from data companies regulated under the Fair

¹ Use of Electronic Payroll Data to Improve Program Administration, 89 Fed. Reg. 11773 (February 15, 2024), <https://www.federalregister.gov/documents/2024/02/15/2024-02961/use-of-electronic-payroll-data-to-improve-program-administration>.

Credit Reporting Act, *i.e.*, consumer reporting agencies such as Equifax and its subsidiary, the Work Number. It is from this vantage point that we supply these comments on behalf of our low-income clients.

Section 824 of the Bipartisan Budget Act of 2015 added section 1184 to the Social Security Act, authorizing the Social Security Administration (SSA) to enter into information exchanges with payroll data providers for the purposes of efficient program administration and prevention of improper Social Security Disability Insurance (SSDI) and SSI payments. SSA has now published these proposed rules to support the agency’s proper use of information exchanges with the payroll data provider, The Work Number, in order to help SSA administer its programs more efficiently and prevent improper payments of SSDI and SSI benefits.

We support SSA’s efforts to receive complete, accurate, and timely wage and employment information, which will allow the agency to administer its programs efficiently and to avoid improper payments that can occur when it does not have such information. However, a notable element of this information exchange that is not included in the NPRM is any discussion of due process rights under the U.S. Constitution or under the Fair Credit Reporting Act (FCRA), in particular for those receiving SSI benefits.

In these comments, we identify nine concerns related to how this payroll information exchange may impact SSI recipients' due process rights and ability to prevent benefits disruptions based on inaccurate information. We make specific recommendations to address these concerns and thereby strengthen the proposed rules.

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1. The agency’s “usual procedures,” including the appeals process, are inadequate to protect the due process rights of SSI recipients who disagree with the information obtained from The Work Number.

The Fifth Amendment of the Constitution states, in relevant part, that the federal government may not deprive a person of “life, liberty, or property, without due process of law.”² In *Goldberg v. Kelly*, the Supreme Court ruled in 1970 that recipients of means-tested public benefits must be afforded the “opportunity to be heard” before their benefits can be suspended.³ The Court decided that a pre-termination evidentiary hearing was necessary when recipients require the benefit payments for their basic needs, and the government has an interest in ensuring that eligible recipients are not erroneously terminated. The government should not deprive the recipient of the means to survive while appealing the claim:

“... the crucial factor in this context ... is that termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate.”⁴

SSI benefits, as a means-tested program for extremely low-income recipients, are subject to the same due process protections as in *Goldberg*.⁵ In the context of an SSI benefit reduction or suspension due to allegations of earned income from The Work Number, the most important of these procedural safeguards are a timely and adequate notice detailing the reasons for a proposed reduction or suspension of benefits; an evidentiary hearing to dispute the reduction or suspension of SSI benefits; and having SSI benefits continue to be paid at the Protected Payment Level (PPL)⁶ pending a decision on the appeal.⁷

SSA has in place regulations concerning the SSI program that conform to the requirements of *Goldberg* and constitutional due process. These regulations establish an administrative appeal process that, on paper, protects the due process rights of SSI recipients who face a reduction or suspension of benefits.⁸ However, in practice, these due process rights will not be protected by the processes laid out in this NPRM.

Taking the example given in the NPRM, SSA would receive data from The Work Number (TWN) on November 7th regarding the October earnings of an SSI recipient or deemor. SSA would then

² U.S. CONST. Amend. V.

³ *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970).

⁴ *Id.*

⁵ *Cardinale v. Mathews*, 399 F.Supp. 1163 (D.D.C., 1975).

⁶ The Protected Payment Level is the amount of monthly SSI benefits received prior to a proposed adverse action. It is the unreduced benefit amount that a recipient may continue to receive until there is a decision at the first level of appeal. SSA Program Operations Manual (POMS), SI 02301.300 Due Process Protections – General, paragraph C.11. (July 26, 2023), <https://secure.ssa.gov/apps10/poms.nsf/lrx/0502301300>.

⁷ *Goldberg* at 267-68.

⁸ 20 C.F.R. § 416.1400 et seq.

automatically generate a Notice of Planned Action (NOPA) reducing or suspending the SSI recipient's benefits for December based on the October data. Under the regulations, it is presumed that the SSI recipient would receive that NOPA dated November 7th by November 12th.⁹ If the SSI recipient files their Request for Reconsideration disputing TWN data used to reduce or suspend their December benefits on November 22nd, within the 10 days required by the regulations,¹⁰ it will be too late to have their December benefits continue to be paid at the Protected Payment Level (called "Goldberg Kelly" or "GK payment continuation" by SSA), because the December benefit data will have already been transmitted to the U.S. Treasury Department reducing or suspending their benefits based on TWN data.

Furthermore, SSA continues to experience "work-load related challenges" in its Field Offices that affect the agency's "ability to efficiently and timely process a request for reconsideration" and ensure that they "protect a recipient's constitutional due process right to GK payment continuation."¹¹ As a result, SSI recipients who file a Request for Reconsideration more than 15 days after the date on the NOPA, but within 65 days after the date on the notice, also receive GK payment continuation. But clearly these SSI recipients who timely file a request for reconsideration in December or the first half of January on a NOPA from early November will not receive GK payment continuation for December or January, and will have to jump through many hoops to continue receiving their SSI benefits at the Protected Payment Level while their appeal is pending.

Because SSI recipients are by definition individuals without "independent resources," their situation will become "immediately desperate" due to the disruption in their benefits. As SSA continues to experience many challenges with processing Requests for Reconsideration in a timely manner, SSI recipients' due process right to have their benefits continue to be paid, without being reduced or suspended while their appeal is pending, is not adequately protected under this proposal.

Recommendation: Like SSDI beneficiaries, SSI recipients should be given an adverse action notice at least 30 days before a NOPA is generated, so that they have the opportunity to dispute TWN data that will be used to reduce or suspend their benefits based on that data. As discussed in Section 4.c below, if the recipient disputes TWN data as inaccurate, benefits should not be reduced or suspended during the up to 30-day period that the FCRA provides to TWN to conduct a dispute investigation.

⁹ 20 C.F.R. § 416.1336(b).

¹⁰ *Id.*

¹¹ EM-21064 REV, Goldberg Kelly Payment Continuation Period, Oct. 29, 2021, [PolicyNet/Instructions Updates/EM-21064 REV: Goldberg Kelly Payment Continuation Period \(ssa.gov\)](#).

2. The TWN accuracy study is flawed and may underestimate errors

In the Supplementary Information, SSA discusses a study it conducted on the accuracy of The Work Number, claiming the accuracy rate is 95.6 percent.¹² SSA justifies its use of TWN based on this TWN Accuracy study and its results. However, there are a number of flaws with the study.

a. The TWN Accuracy study did not attempt to determine the rate of misidentification of a consumer, including misidentification resulting from pervasive and well-documented identity theft

One of the most prominent types of errors with consumer reporting is when a CRA matches information to the wrong consumer. Mismatches are unfortunately too common with both credit reports, *i.e.*, reports from Equifax, Experian and TransUnion, as well as background check reports, such as tenant screening reports.¹³

The TWN Accuracy study did not even attempt to determine whether there were mismatches that identified the wrong individual. The study simply looked at the accuracy of the TWN reports in comparison to paystubs submitted by the recipient, which presumably means that the TWN report correctly identified the recipient as the subject of the report, *i.e.* both the report and the paystubs identified the same employer and identifying information. SSA admits that:

The sampling choices limit the types of conclusions that can be drawn about the accuracy of Equifax's data across the entire covered population. For example, if Equifax reports payroll information on an individual who was not working during a pay period, such an error would lower the true accuracy of using the Equifax database but would not be identified in this study.¹⁴

As discussed in Section 4.a below, one of the most critical protocols for accuracy will be to ensure that identity matching is done based on all nine digits of a consumer's Social Security Number (SSN). Even with full nine-digit SSN matching, mismatches can be a possibility with TWN reports.

One problematic issue for TWN occurs when a recipient's SSN is used by an unauthorized party to engage in employment. A recently filed class action against TWN under the Fair Credit Reporting Act describes this phenomenon:

¹² 89 Fed. Reg. at 11,776 ("TWN Accuracy study").

¹³ See National Consumer Law Center, Fair Credit Reporting (10th ed. 2022), updated at [www.nclc.org/library.NCLC at 4.3.3](http://www.nclc.org/library.NCLC%20at%204.3.3) (discussing mixed and mismatched files); CFPB, Advisory Opinion on Fair Credit Reporting; Name-Only Matching Procedures, [86 Fed. Reg. 62,468](https://www.federalregister.gov/documents/2021/11/10/2021-24468) (Nov. 10, 2021).

¹⁴ 89 Fed. Reg. 11,775, note 28.

9. The use of stolen personal identifying information by undocumented immigrants is a pervasive and well-known problem—well over 1 million [undocumented] immigrants use Social Security numbers belonging to someone else in order to obtain employment. 10. The problem of undocumented immigrants using stolen identities to obtain employment is particularly pervasive in meat and poultry processing plants, and employers in this industry know that their workers use fraudulent Social Security numbers to obtain employment. Non-citizens make up the majority of the workforces in these plants, and many of these workers lack authorization to work in the United States.¹⁵

This complaint discusses the specific example of the named plaintiff, Vanessa Muniz Gerena, a Virginia resident who had been receiving SNAP benefits:

51. [The Virginia Department of Social Services] informed Plaintiff that it had obtained a report from The Work Number which stated that she was employed at OK Foods at a plant located in Alabama. The report inaccurately stated that she was paid wages for work at OK Foods as recently as February 11, 2022, and that she worked a full-time job there.

52. The report bewildered Plaintiff, as she had only ever lived in Virginia since moving from Puerto Rico, and as a homemaker had not worked for any company since 2015.

* * * *

55. Furthermore, the disclosure nonsensically stated that she also had been employed in June 2022 at a Wal-Mart and lived at an address in Zephyrhills, Florida, and that she had been employed at an Amazon location in August 2022 and lived at another address in Tampa, Florida.¹⁶

The TWN Accuracy study would not have detected this type of identity theft that potentially affects about a million individuals,¹⁷ translating into potentially thousands of SSDI and SSI recipients who TWN could wrongly match to another person’s payroll information.

b. The study did not determine the rate of misclassified payments

The TWN accuracy study appears to have focused on whether certain amounts reported by the TWN matched the amount on a paystub. This assumes the correctness of how the amount was characterized. However, in some cases, payment may be misclassified by the employer. For example, National Consumer Law Center staff received the following email from a consumer:

¹⁵ Complaint, Vanessa Muniz Gerena v. Equifax, Case 3:24-cv-00098, ¶¶ 9-10 (E.D. Va. Feb. 9, 2024). A copy of the complaint is attached to these comments as Attachment A.

¹⁶ *Id.* at ¶¶ 51, 52, and 55.

¹⁷ Government Accountability Office, Employment-Related Identity Fraud: Improved Collaboration and Other Actions Would Help IRS and SSA Address Risks, GAO-20-492, May 2020, at 8, <https://www.gao.gov/assets/gao-20-492.pdf> (section entitled “A Million SSNs May Be at Risk of Employment-Related Identity Fraud and Tax Noncompliance, but the Extent of Such Fraud Is Unknown”).

I am being directly impacted by SSA's use of the Equifax Work Number program. ... The Equifax report has a column called "Overtime." In my report, there is thousands reported for 2017, 2018, and 2019 as Overtime. In reality, the amounts reported were for Travel Reimbursements which are not considered income by Social Security.

Equifax says they only report what is given to them by the employer and refused to discuss it further. My employer has no idea how that got reported as Overtime (I am still trying to get that answer from them, i.e., who, exactly, sent that to Equifax?). I filed a dispute with Equifax but have received no response. I contacted my SSA caseworker in mid July about the erroneous income but recently received a letter dated August 25 stating that I owe Social Security \$5500 in overpayment! Based on this erroneous report that I can't even seem to dispute.¹⁸

The TWN Accuracy study may not have detected a misclassification error, and definitely would not have detected the error if the consumer's paystub reflected the same misclassification.

These flaws in the TWN accuracy study, and the types of errors discussed above, require that SSA take certain measures (or require The Work Number take certain measures) to avoid errors. These measures are discussed in the next section.

3. SSA and The Work Number must follow reasonable procedures for maximum possible accuracy

The Work Number has identified itself as a "consumer reporting agency" under the Fair Credit Reporting Act,¹⁹ and is listed in the CFPB's List of Consumer Reporting Agencies.²⁰ Information from TWN is considered a "consumer report," which imposes certain duties on both TWN and SSA. SSA must provide an adverse action notice when it terminates, reduces, or suspends a recipient's benefits, discussed in Section 6 below.

For its part, TWN must follow "reasonable procedures to ensure maximum possible accuracy." 15 U.S.C. § 1681e(b). Unfortunately, TWN's procedures may be lacking, as alleged in the recent putative class action filed against TWN, *Vanessa Muniz Gerena v. Equifax*.²¹ It is incumbent upon SSA to insist that TWN take steps to ensure the accuracy of its reports by mandating certain measures as detailed below, such as use of all nine digits of an SSN for matching and adopting procedures to check for logical inconsistencies.

¹⁸ Email from Debra Fisher to Chi Chi Wu, Sept 1, 2021, on file with authors.

¹⁹ The Work Number, California Privacy Rights Act, <https://theworknumber.com/cpra> (viewed Mar. 15, 2024)("The Work Number® database is subject to the Fair Credit Reporting Act (FCRA)").

²⁰ CFPB, List of Consumer Reporting Agencies, 2024, https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-companies-list_2024.pdf, at 19.

²¹ See n.15, supra.

a. SSA must require The Work Number to match files based on all nine digits of a recipient's SSN

SSA needs to ensure that reports are based only on a match of all nine digits of the recipient's SSN, and such matching criteria should be mandated by proposed Section 422.150 itself or the guidelines issued thereto. Matching based on a partial SSNs (*e.g.*, seven out of nine digit) or no SSNs is unacceptable, as it causes mismatches or "mixed files" in which the wrong consumer gets tagged with information.

Unfortunately, there appears to be an "alternative ID search option" that permits agencies to obtain a TWN report without an SSN. A memorandum from the Oregon Department of Health and Human Services "recommends" not using the feature because "This feature may identify the wrong person. This is a national database and entering a name, address and DOB of an individual may yield results for someone with similar information to that of the participant."²² SSA should adopt a prohibition on using this "alternative ID search option," and not just recommend against using it.

SSDI and SSI benefits are often a recipient's only source of income. Suspending or reducing such benefits can be devastating to a recipient, leaving them without the funds for rent, food, or medicine. Such actions should never be taken based on unreliable matching practices that risk wrongfully penalizing recipients by incorrectly tagging them with another consumer's payroll data.

Recommendation: Section 422.150 itself, or the guidelines issued thereto, should require that there be a match of the recipient's full, nine-digit SSN in order to match a TWN record to the recipient. There should also be a prohibition on using any alternative search option that does not search by full SSN.

b. SSA must require TWN to adopt procedures to check for logical inconsistencies

As part of the requirement to follow reasonable procedures for maximum possible accuracy, a consumer reporting agency must have procedures to prevent logical inconsistencies, also called facially false data. The Consumer Financial Protection Bureau (CFPB), which is charged with interpreting and enforcing the FCRA, has stated that a CRA must have procedures to "identify logical inconsistencies in consumer information, such that, if included in a consumer report, some of the information therein would necessarily be inaccurate."²³

²² Oregon Department of Health and Human Services, Information Memorandum Transmittal - Office of Self-Sufficiency Programs, at 3, Oct. 24, 2018, <http://www.dhs.state.or.us/policy/selfsufficiency/publications/im/im-2018/ss-im-18-029.pdf>.

²³ CFPB, Advisory Opinion on Fair Credit Reporting; Facially False Data (Oct. 20, 2022).

Yet TWN has failed to adopt such procedures to prevent logical inconsistencies or facially false data. This is especially true with respect to the issue of SSN employment identity theft. The complaint in *Vanessa Muniz Gerena v. Equifax* alleges:

30. The Work Number allows employers to report information in a manner which exacerbates the likelihood of erroneous information appearing in its consumer reports. Employers are not required to identify to The Work Number the physical location of their employees' work. For instance, Wal-Mart simply reports its address as "702 SW 8th St., Bentonville, AR 72716," and "Amazon.com, Inc. and its affiliates" reports an address of "207 Boren Avenue N., Seattle, WA 98109." Wal-Mart employs nearly 1.6 million individuals in the United States, many, if not most, of whom work at locations outside Bentonville, Arkansas. Amazon employs over a million people in the United States with most of these employees working outside Seattle, Washington. Defendant can require employers to identify a work location but chooses not to do so; instead, it lets the employer decide whether to report a work location. Defendant could also require employers to identify the state of employment or the state where an employee pays taxes but chooses not to do so.

31. The Work Number likewise has access to but never uses resources to identify where an employee lives separately from any information from the employer.²⁴

32. The Work Number routinely maintains and reports facially false data about consumers. For example, The Work Number reported simultaneous employment for Ms. Gerena in Alabama and Florida, in locations approximately 600 miles apart. The Work Number employs no substantive procedures to filter or parse data to prevent reporting of simultaneous employment which would be impossible because of geographic distance between employment or residence location, time constraints, or even common sense. It also employs no procedures to prevent reporting of employment at a location hundreds or even thousands of miles from the consumer's residence.²⁵

Recommendation: SSA must mandate that TWN adopt procedures to prevent facially false data or logical inconsistencies, including providing a more precise address for the location of employment and filtering out logically impossible situations, such as employment in two states with locations hundreds of miles apart. At a minimum, such logical inconsistencies should be flagged and a human being required to conduct an independent review.

c. If a recipient disputes the data under the FCRA, there should be no change in benefits during the 30-day investigation period

One of the most critical protections under the FCRA is the consumer's right to dispute errors in their consumer report, 15 U.S.C. § 1681i(a). When the consumer lodges a dispute with a

²⁴ This likely refers to the main credit reporting database information held by Equifax, which would usually have the recipient's address.

²⁵ Complaint, *Vanessa Muniz Gerena v. Equifax*, Case 3:24-cv-00098 (E.D. Va. Feb. 9, 2024), *see n.15, supra*.

consumer reporting agency such as TWN, the CRA must conduct a “reasonable investigation” which also must involve the party that supplied the information, called the “furnisher.” Such an investigation generally must be conducted within 30 days of when the CRA receives the dispute. During that time, there should be no disruption of benefits to a recipient. As discussed in Section 1 above, SSI recipients are by definition low-income individuals without independent resources. They should not have their primary source of income reduced or suspended due to an error by TWN.

Recommendation: If a consumer disputes a TWN report, SSA should not take any action, such as suspending benefits or imposing an overpayment, until the dispute investigation is concluded. Furthermore, if the consumer continues to dispute information after the investigation, SSA should also conduct an independent review. These protections should be included in proposed Section 422.150 or the guidelines promulgated pursuant to that section.

d. SSA must require review by a human when potential errors, including logical inconsistencies are flagged, or a recipient disputes information.

A review by a human being is the least that is required by the due process principles of the Matching Act. As we discussed in our February 2021 comments,²⁶ while the Matching Act technically only applies to a government database, the Office of Management and Budget (OMB) has advised agencies to consider applying its principles when a commercial database is involved. Review by a human being is important because we can often catch errors that an automated system cannot, such as when a report states that an individual is employed at two different jobs which are hundreds of miles apart.

Recommendation: SSA should require that a human being review information when a potential error, including an illogical inconsistency, is flagged. An independent review should also be required when a recipient disputes information in a TWN report, and the recipient should be sent a copy of the review results.

4. Beneficiaries and recipients should not be required to prove a negative.

The NPRM states the following at pages 11780 – 11781:

“Individuals are generally responsible for providing evidence to us, but if a situation arises in which it is difficult for them to obtain evidence, we may assist them. Our policies direct technicians to use other acceptable evidence of wages when discrepancies are present, and to document the discrepancy, resolution, and associated evidence. If a technician determines based on acceptable evidence that the earnings do

²⁶ Justice in Aging and National Consumer Law Center, Comments to SSA re Advance Notice Use of Electronic Payroll Data to Improve Program Administration (Feb. 18, 2021), https://www.nclc.org/wp-content/uploads/2022/08/Comments_Equifax_Data_Matching-1.pdf.

not belong to the individual, those earnings will be removed and will not affect SSI eligibility or payment determinations.”

This gives too much discretion to SSA employees to decide when they might have to assist with obtaining additional evidence. The burden to “prove a negative” should not fall on the individual disputing that TWN data is correct. If a claimant, beneficiary, recipient, or deemor disagrees with the allegation that the wages reflected in TWN data are theirs, then the SSA technician must have to establish additional, acceptable evidence documenting that TWN data is correct before it can be relied upon to deny a claim for benefits or adjust an individual’s benefits.

Recommendation: SSA should establish a procedure similar to that found in the Program Operations Manual System (POMS) at section SI 01140.100 Non-Home Real Property, for when SSI claimants, recipients, and deemors disagree with the information found in the LexisNexis|Accurint database on real property.²⁷

5. SSA must comply with the FCRA adverse action notice requirements and should do so before a NOPA is sent

As we discussed in our February 2021 comments,²⁸ SSA must provide an adverse action notice whenever it terminates, suspends, or reduces a recipient’s SSI or SSDI benefits based on a Work Number report. This notice is in addition to, and should be in advance of, the Notice of Planned Action (NOPA) that SSA must provide to SSI beneficiaries before their benefits are to be reduced or suspended.

We understand that SSA has been including the information required by the FCRA adverse action notice in its sample NOPAs.²⁹ However, there is no actual requirement set forth in proposed regulation or written guidelines to provide the information in an adverse action notice. Furthermore, the adverse action notice should be sent *in advance* of the NOPA so that the recipient has the ability to review a copy of the TWN report and dispute any errors.

Recommendation: The requirement to comply with the FCRA adverse action notice requirement should be stated in proposed Section 422.150 or the guidelines promulgated pursuant to that section. The adverse action notice should be provided prior to the NOPA, not as part of it.

We also suggest that SSA use formatting and language that better explains exactly what information was used by SSA to make its decision. The language used in the sample NOPA

²⁷ SSA POMS SI 01140.100, Non-Home Real Property, Nov. 20, 2023
<https://secure.ssa.gov/apps10/poms.nsf/lrx/0501140100>.

²⁸ Justice in Aging and National Consumer Law Center, Feb. 18, 2021 Comments, *see supra* n.26.

²⁹ For example, the sample notices at this link: https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=202008-0960-020&icID=8980.

makes a reference to Equifax but does not explain that a specialized type of report – a wage and employment information report from The Work Number– was used. Recipients may see the name Equifax and assume that a traditional credit report was used in SSA’s decision.

Also, we noticed several flaws in the sample adverse action notice:

- The notice says SSA “may have” received information from a consumer report and “may” have used the information in making a decision. The “may” is unhelpfully vague to a consumer trying to understand the basis of an adverse action and is not accurate if SSA actually obtained and used a TWN report. The notice should unequivocally state when SSA bases its decision on the TWN report.
- The web address to request a file disclosure (*i.e.*, for a consumer to request their own report) is incorrect. Also, there is no contact information provided for submitting an FCRA dispute. Accurate, complete contact information for requesting file disclosures and submitting disputes is an essential component of effective notice and due process and should be included.
- The formatting of the notice is dense and difficult to read. We recommend a tabular format for accessibility and ease of reading comprehension.

Thus, we recommend the use of the following sample:

Fair Credit Reporting Act (FCRA) Rights	
What is a Work Number wage and employment information report?	A wage and employment information report is a report provided by The Work Number, a subsidiary of Equifax. This report provides a record of your employment and wages as reported by your employers. It is a type of “consumer report” regulated by the Fair Credit Reporting Act. However, it is not the same as a credit report.
How did SSA use your Work Number wage and employment information report[s]?	<p>SSA used information from your Work Number wage and employment information report to determine your earnings as stated above, and to [describe actual action taken].</p> <p>SSA obtained your Work Number report from Equifax, but Equifax did not make the decision to [terminate/deny/reduce] your [type of] benefits. Equifax is unable to provide you with the specific reasons why your [type of] benefits were [terminated/denied/reduced].</p>

<p>What if there are mistakes in your Work Number wage and employment information report?</p>	<p>You have a right to dispute any inaccurate or incomplete information in your Work Number wage and employment information report.</p> <p>If you find mistakes in your Work Number report, contact Equifax at:</p> <p>Equifax Workforce Solutions Attn: Disputes 3470 Rider Trail South Earth City, MO 63045 866-222-5880 or TTY 800-424-2053 https://employees.theworknumber.com/employee-data-dispute</p> <p>It is a good idea to check your Work Number report to make sure the information it contains is accurate.</p>
<p>How can you obtain a copy of your Work Number wage and employment information report?</p>	<p>Under Federal law, you have the right to obtain a copy of your Work Number report without charge for 60 days after you receive this notice. To obtain your free report, contact Equifax at:</p> <p>Equifax Workforce Solutions Attn: EDR 3470 Rider Trail South Earth City, MO 63045 866-222-5880 or TTY 800-424-2053 https://employees.theworknumber.com/employment-data-report</p>

Whether or not SSA chooses to use our suggested notice, we recommend that SSA consult with the CFPB about the adequacy of the adverse action notice that it develops.

Furthermore, in addition to the adverse action notice, we suggest that SSA provide a copy to the recipient of the Work Number report that it relied upon to terminate, suspend, or reduce the recipient’s benefits. Under the FCRA, Equifax cannot prohibit SSA from sharing the report with the recipient.³⁰

³⁰ 15 U.S.C. § 1681e(c).

6. NOPAs and TWN wage and employment reports should be translated for LEP recipients.

SSA should clarify that because TWN is receiving federal funds as a federal contractor, it is subject to Executive Order 13166³¹ and should provide language access for limited English proficient (LEP) individuals. Under its contract, SSA should assess whether TWN is providing quality LEP services and has sufficient resources for translation and interpreter services. To meet its obligations, TWN should provide meaningful access for LEP individuals to their wage and employment information reports by translating them into the top languages spoken by LEP SSI recipients.

Recommendation: TWN should provide LEP SSI recipients with their wage and employment report in their preferred language.

In addition, SSA itself is subject to EO 13166 and has obligations to LEP individuals to provide them with meaningful language access. Under SSA's Language Access Plan for FY 2024 - 2026,³² SSA translates vital documents based on assessments of needs and capacity. SSA currently sends notices, including Notices of Planned Action, in English and Spanish, with most notices available in full Spanish versions, and a Spanish cover letter is included with English-only notices, for people with a Spanish language preference. SSA should provide a translated NOPA whenever the recipient has requested language translation services in the past and SSA has translated the form NOPA into the applicable language. SSA should begin by translating the NOPA into additional languages spoken by consumers with limited English proficiency in the United States (Chinese, Vietnamese, Korean, and Tagalog), and should add more languages over time.

Recommendation: SSA should translate the NOPA into the top five languages spoken by consumers with LEP in the U.S. and should provide the NOPA in the preferred language of the SSI recipient whenever the recipient has requested language services in the past.

7. Authorizations are misleading if recipients are not informed that they are not required to give consent for Work Number access and can revoke the authorization at any time.

Proposed § 404.703(b) states that SSA will ask a recipient for authorization to obtain information from a payroll data provider such as TWN, as required by Section 824 of the Balanced Budget Act.³³ In the preamble, SSA states in a footnote that "The law allows SSA to require the authorizations. SSA has decided that we will request the authorizations on a voluntary basis ... Under the law, individuals may refuse to provide this authorization and may

³¹ Title VI of the Civil Rights Act of 1964 -- National Origin Discrimination Against Persons With Limited English Proficiency, 65 F.R. 50123 (Aug. 16, 2000). This is the Federal Register cite for Department of Justice guidance for Executive Order 13166, Improving Access To Services For Persons With Limited English Proficiency, signed on August 11, 2000.

³² Social Security Administration, Language Access Plan Fiscal Years 2024 - 2026, <https://www.ssa.gov/eo/documents/LAP2024-2026.pdf>.

³³ Pub. L. 114-74 (2015).

revoke it.”³⁴ However, proposed § 404.703(b) does not include any requirement that SSA or the authorization form inform the recipient that authorization is voluntary and the recipient may refuse to provide it and revoke it in the future.

In fact, SSA has begun to obtain authorizations that fail to disclose that consent to the authorization is voluntary. SSA is also failing to notify SSI recipients that their benefits will not be adversely impacted if they decline to give permission for the wage and employment report. In order for ongoing consent to be valid under basic consumer protection principles, SSA also must inform SSI recipients that they have the right to revoke the authorization at any time, and the initial authorization letter should explain how to revoke that authorization.

The omission of this critical information makes the authorization incomplete and misleading. Under the Federal Trade Commission Act and state analogs, omission of critical information can be considered a deceptive practice. Furthermore, under the FCRA, a consumer report may be furnished when the consumer gives a written permission to provide a report to the user, but the consumer’s written consent qualifies as an “instruction” only if it clearly authorizes the issuance of a report.³⁵ Without clear and accurate information about the implications of authorizing the use of TWN report, the authorization SSA is obtaining is not a sufficient grant of permission.³⁶

SSA should explain to the consumer it cannot receive the report unless the consumer specifically authorizes it; that the consumer is not required to authorize it; the consumer’s receipt of SSI will not be jeopardized if they refuse to authorize it; and that the authorization can be revoked at any time.

Recommendation: SSA should include in proposed § 404.703(b), and revise its authorization form to clearly state, that the consumer is not required to provide permission for use of a wage and employment report and that SSI benefits will not be jeopardized if they withhold permission. Additionally, the regulation and form should be revised to explain how to revoke permission at a future date. SSA should cease using reports based on the inadequate authorizations it obtained in the past until it can resend requests for authorization that provide complete information and are not misleading.

³⁴ 89 Fed. Reg. at 11776-77, note 40.

³⁵ Federal Trade Commission, 40 Years of Experience with the Fair Credit Reporting Act; An FTC Staff Report with Summary of Interpretations, at p 43, § 604(a)(2) item 1 (July 2011). We recognize that SSA has a separate permissible purpose to obtain TWN reports under 15 U.S.C. § 1681b(a)(3)(D), *i.e.*, in connection with a determination of the consumer’s eligibility for a government benefit. However, to the extent SSA relies on the permissible purpose of written authorization, it needs to ensure the authorization is not misleading.

³⁶ FTC Staff Summary § 604(a)(2) item 1 (2011), reproduced at [Appx. D](#), *infra*.

8. SSA must ensure that recipients can easily obtain file disclosures from The Work Number and/or provide recipients with the copy that SSA obtained to make an adverse action

TWN's systems appear to impose barriers or an outright inability for consumers to obtain a copy of their own TWN report. Before proceeding on a large scale with this program, SSA must ensure that SSI recipients have simple and easy access to TWN reports by mandating performance standards for such in proposed § 422.150 itself, the guidelines issued thereto, or its contracts with TWN.

One of the most critical provisions under the FCRA is the ability for consumers to obtain a copy of their own consumer report under 15 U.S.C. § 1681g(a), technically called a "file disclosure." For certain "nationwide specialty consumer reporting agencies" such as TWN, consumers are entitled under 15 U.S.C. § 1681j(a)(1)(C) to a free file disclosure each year. Consumers are also entitled to a free file disclosure under 15 U.S.C. § 1681j(b) when an adverse action has been taken against them. These free disclosures are critical, because they enable consumers to identify and dispute errors in their reports. In addition, a consumer's ability to access information about themselves is a basic principle of fair information practices.

Yet TWN appears to be in violation of these FCRA file disclosure requirements. When we contacted Debra Fisher, the consumer in the example discussed in Section 2.b, Ms. Fisher informed us that she agreed with our suggestion that SSA provide a copy of any TWN report it relies on in making an adverse action and explaining that she and others had significant difficulty accessing these reports:

I had two acquaintances . . . one who works for the same organization that I do and one who worked for Walmart for 25 years . . . attempt to access TWN to check their records. They were never able to gain that access. When I called TWN to get assistance with logging on, even their own customer service was unable to figure out how to access my report. It took two days of attempts before I accidentally got into it. And I'm fairly internet savvy. So providing a copy with the adverse action notice would be most helpful especially for those who can't navigate the confusion [sic]. or, perhaps, don't even have access to the internet in the first place.

SSA cannot proceed with this program if recipients cannot access their TWN reports, as legally mandated by the FCRA. SSA cannot allow TWN to have poorly designed systems and websites that make it difficult or impossible for SSI recipients to obtain their reports, especially given that recipients are likely to be people with disabilities and/or older adults and have more difficulty with Internet access. Before proceeding with this program, SSA must ensure that recipients have easy access to their own TWN reports and/or SSA provides recipients with the copies of reports that SSA relied upon in taking an adverse action.

Recommendation: SSA must ensure that recipients have simple and easy access to TWN reports by mandating certain performance standards for such in proposed § 422.150 itself, the guidelines issued thereto, or its contracts with TWN. In addition or alternatively, SSA should

provide recipients with a copy of the TWN report that SSA relied upon before taking an adverse action.

9. Monthly adjustment of benefits and monthly NOPAs will cause confusion and distress for many SSI recipients

Changes in the amount of wages an SSI recipient or deemor receives from month to month may affect the recipient's payment amount or eligibility. The use of TWN data to automatically generate NOPAs reflecting even small changes in the payment amount could result in many SSI recipients receiving a new NOPA every month due to a fluctuating number of hours worked from month to month. Rather than increasing the efficiency of program administration, this flood of notices will result in more calls to SSA's 800 number and Field Offices, with questions and concerns from SSI recipients. They will have to receive help understanding SSI's retrospective monthly accounting rules in order to track whether the monthly payment amount in the NOPA has been calculated correctly.

Recommendation: SSI recipients should receive an adverse action notice at least 30 days before a NOPA is generated, so that they have the opportunity to dispute TWN data. If the recipient disputes TWN data as inaccurate, benefits should not be reduced or suspended during the up to 30-day period during which TWN conducts the dispute investigation.

Thank you for the opportunity to comment on this advance notification. If there are questions concerning this submission, please contact Tracey Gronniger at tgronniger@justiceinaging.org and Chi Chi Wu at cwu@nclc.org.

Respectfully submitted,

Justice in Aging
National Consumer Law Center (on behalf of its low-income clients)

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

VANESSA MUNIZ GERENA,
*on behalf of herself and others
similarly situated,*

Plaintiff,

v.

Civil Action No.

EQUIFAX WORKFORCE
SOLUTIONS, LLC
d/b/a THE WORK NUMBER,

JURY TRIAL DEMANDED

Defendant.

CLASS ACTION COMPLAINT

Plaintiff Vanessa Muniz Gerena (“Ms. Muniz” or “Plaintiff”), *individually and on behalf of others similarly situated*, by counsel, brings this Complaint against Defendant Equifax Workforce Solutions, LLC d/b/a The Work Number (“The Work Number” or “Defendant”) on the grounds and for the relief set forth herein:

PRELIMINARY STATEMENT

1. This is an action for actual, statutory, and punitive damages; costs; and attorney’s fees pursuant to 15 U.S.C. § 1681 *et seq.* (Federal Fair Credit Reporting Act—“FCRA”).
2. Plaintiff is the victim of identity theft—a pervasive and destructive crime. One or more unknown fraudsters obtained and used Ms. Muniz’s personal information to secure employment at multiple companies across multiple states, including at OK Foods, Inc., which operates poultry processing plants. At least one fraudster gained employment at an OK Foods plant in Albertville, Alabama.

3. The Work Number is a consumer reporting agency (“CRA”) that holds a repository of employment data. Equifax updates this database when employers provide it with payroll and other employment-related data.

4. According to its website, The Work Number database holds over 641 million current and historic employment records. The Work Number sells information from this database to various entities, among them government agencies that use the employment records The Work Number sells to verify eligibility for government assistance programs.

5. The Work Number does not have procedures to assure the maximum possible accuracy of the information it sells.

6. The Work Number accepts the consumer information it receives from employers at face value, and does not take any steps to review, analyze, or filter the data for accuracy.

7. Likewise, The Work Number does not sample or test the accuracy of the data it receives from employers.

8. The Work Number has reason to know employer data can be inaccurate. The Work Number routinely receives disputes from consumers indicating that the data it obtained from employers was inaccurate.

9. The use of stolen personal identifying information by undocumented immigrants is a pervasive and well-known problem—well over 1 million illegal immigrants use Social Security numbers belonging to someone else in order to obtain employment.

10. The problem of undocumented immigrants using stolen identities to obtain employment is particularly pervasive in meat and poultry processing plants, and employers in this industry know that their workers use fraudulent Social Security numbers to obtain employment.

Non-citizens make up the majority of the workforces in these plants, and many of these workers lack authorization to work in the United States.

11. The consequences of this problem are far-reaching—the illegal use of a U.S. citizen’s Social Security number to obtain employment can cause that citizen to lose the assistance of government benefits, including unemployment, child-care, and Supplemental Nutrition Assistance Program (SNAP), and result in improper tax liability calculations by the IRS.

12. Despite these well-known issues and dire consequences for Americans, The Work Number chooses to flout its legal obligation under 15 U.S.C. § 1681e(b) to “follow reasonable procedures to assure maximum possible accuracy of the information” it reports to its customers, including government agencies, regarding employment data. *Id.*

13. The Consumer Financial Protection Bureau (CFPB) has noted, “experience indicates that [Consumer Reporting Agencies] lack incentives and under-invest in accuracy” Consumer Fin. Prot. Bureau, Supervisory Highlights Consumer Reporting Special Edition 21 (Issue 14, March 2, 2017). This is particularly true as to how Defendant has complied with its now over 50-year-old obligation to report information for Americans victimized by employment identity theft.

14. Ms. Muniz brings this class action against The Work Number because it violated § 1681e(b) on a systemic basis. Defendant reported inaccurate employment information about Plaintiff and others like her, rather than maintain reasonable procedures to assure maximum accuracy. It instead deferred to nonsensical, contradictory, and unverified information reported automatically by its employer customers.

15. When Ms. Muniz disputed the false employment information, Defendant violated § 1681i, as it does with respect to numerous consumers, by unlawfully imposing a burdensome

“proof of address” submission from Ms. Muniz as a precondition to fulfilling its legal obligation to conduct a lawful reinvestigation. This hurdle, and others like it, created by The Work Number are designed to reduce the number of disputes that it must process. Accordingly, Ms. Muniz also alleges a class action claim against The Work Number for its systematic imposition of barriers to illegally reduce expenses incurred in reinvestigating consumer disputes as required by the FCRA.

JURISDICTION AND VENUE

16. This Court has jurisdiction as to this case under the provisions of 15 U.S.C. § 1681p and 28 U.S.C. § 1331.

17. Venue is proper under 28 U.S.C. 1391(b)(1) and Local Civil Rule 3(C) because “a substantial part of the events or omissions giving rise to the claim[s] occurred” in this District and Division, and the Defendant transacts business within this District and Division.

PARTIES

18. Ms. Muniz is a natural person residing in Midlothian, Virginia. At all times relevant to the Complaint, Ms. Muniz was a “consumer” as defined by 15 U.S.C. § 1681a(c).

19. The Work Number is a foreign corporation that does business in the Commonwealth of Virginia. The Work Number is a consumer reporting agency as defined by 15 U.S.C. § 1681a(f), and it disburses consumer reports to third parties for monetary compensation.

FACTUAL ALLEGATIONS

Section 1681e(b) of The Fair Credit Reporting Act Requires Robust Procedures to Assure Maximum Possible Accuracy in Defendant’s Consumer Reports

20. “Congress enacted FCRA in 1970 out of concerns about abuses in the consumer reporting industry. *See* S. Rep. No. 91–517, at 3 (1969); 116 Cong. Rec. 35941 (1970) (statement of Sen. Proxmire); *id.* at 36570 (statement of Rep. Sullivan); In enacting FCRA Congress adopted a variety of measures designed to insure that agencies report accurate

information.” *Dalton v. Capital Associated Indus., Inc.*, 257 F.3d 409, 414–15 (4th Cir. 2001). “In recognition of the critical role that CRAs play in the credit markets and the serious consequences borne by consumers because of inaccurate information disseminated in consumer credit reports prepared by CRAs, Congress placed on a CRA what can only be described as very high legal duties of care, set forth . . . in 15 U.S.C. §§ 1681e(b), 1681i(a)(1)(A), and 1681i(a)(3)(A).” *Burke v. Experian Info. Sols., Inc.*, No. 1:10-cv-1064 AJT/TRJ, 2011 WL 1085874, at *4 (E.D. Va. Mar. 18, 2011).

21. To accomplish Congress’ goals, the FCRA contains a variety of requirements to protect consumers, including § 1681e(b), one of the cornerstone provisions of the FCRA. Whenever a consumer reporting agency prepares a consumer report, § 1681e(b) requires CRAs, like The Work Number, to follow reasonable procedures to assure maximum accuracy of the information concerning the individual about whom the report relates. 15 U.S.C. § 1681e(b).

22. The Work Number is a consumer reporting agency and is charged with using reasonable procedures designed to ensure the maximum possible accuracy of the information it reports. The Work Number fell short of that duty here, as it reported inaccurate, nonsensical information that adversely affected Ms. Muniz and those like her.

23. One of these measures, 15 U.S.C. § 1681e(b), “deal[s] with the procedures consumer reporting agencies must follow when collecting and transmitting information. Congress also gave individuals the right to sue reporting agencies for violations of FCRA. Id. § 1681e(b) sets forth the CRAs’ overall duty:

(b) Accuracy of report. 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.

Burke, at *4.

24. Further, as The Work Number is aware, this Court has held that even though the term “investigation” is not used in § 1681e(b), it is clear that Defendant has a duty to conduct a reasonable initial investigation pursuant to § 1681e(b) as well as § 1681i(a) and that this is “central” to the CRAs’ duties of care under that portion of the Act:

This conclusion flows from the plain meaning of both [§1681e(b) and §1681i(a)]. For example, Section 1681e(b) requires (1) “reasonable procedures” that (2) “assure” (3) “maximum possible accuracy.” To “assure” means “to make sure or certain: put beyond all doubt.” Webster's Third New International Dictionary 133 (1993). “Maximum” means the “greatest in quantity or highest degree attainable” and “possible” means something “falling within the bounds of what may be done, occur or be conceived” *Id.* at 1396, 1771. It is difficult to imagine how “maximum possible accuracy” could be guaranteed without an adequate investigation. Likewise, Section 1681i(a)(1)(A) requires a “reinvestigation,” necessarily implying that an “investigation” was required to have been performed in the first instance.

Burke, 2011 WL 1085874, at *4.

25. As the Fourth Circuit explained in *Johnson v. MBNA*:

The key term at issue here, “investigation,” is defined as “[a] detailed inquiry or systematic examination.” *Am. Heritage Dictionary* 920 (4th ed. 2000); see *Webster’s Third New Int’l Dictionary* 1189 (1981) (defining “investigation” as “a searching inquiry”)

357 3d 426, 430 (4th Cir. 2004).

26. It has long been the law—since 1970 in fact—that:

[W]hen a CRA learns or should reasonably be aware of errors in its reports that may indicate systematic problems (by virtue of information from consumers, report users, from periodic review of its reporting system, or otherwise), it must review its procedures for assuring accuracy and take any necessary steps to avoid future problems. Similarly, it should establish procedures to avoid reporting information from its furnishers that appears implausible or inconsistent.

Fed. Tr. Comm’n, 40 YEARS OF EXPERIENCE WITH THE FAIR CREDIT REPORTING ACT (July 2011),

at 67.¹

27. Despite consumer disputes and complaints and notice from report users, Defendant continues to report employer information without review, much less, filtering and takes no substantive steps to assure accuracy.

***Defendant Failed to Implement Procedures to Prevent
Inclusion of Facially False Data In Its Consumer Reports***

28. As The Work Number knows, “a consumer reporting agency is uniquely positioned to identify certain obvious inaccuracies and implement policies, procedures, and systems to keep them off consumer reports.” Consumer Fin. Prot. Bureau, *Fair Credit Reporting Act—Facially False Data*, 87 Fed. Reg. 64689-02 (Oct. 26, 2022).

29. Importantly,

In some cases, such as when certain account or other information fields on consumer reports are logically inconsistent with other fields of information, a consumer reporting agency can detect the logical inconsistencies and prevent the inaccurate information from being included in consumer reports it generates, thereby avoiding the consumer harm to individual consumers that can result from reporting such inaccurate information.

Id.

30. The Work Number allows employers to report information in a manner which exacerbates the likelihood of erroneous information appearing in its consumer reports. Employers are not required to identify to The Work Number the physical location of their employees’ work. For instance, Wal-Mart simply reports its address as “702 SW 8th St., Bentonville, AR 72716,” and “Amazon.com, Inc. and its affiliates” reports an address of “207 Boren Avenue N., Seattle, WA 98109.” Wal-Mart employs nearly 1.6 million individuals in the United States, many, if not

¹ Available at <https://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrareport.pdf>.

most, of whom work at locations outside Bentonville, Arkansas. Amazon employs over a million people in the United States with most of these employees working outside Seattle, Washington. Defendant can require employers to identify a work location but chooses not to do so; instead, it lets the employer decide whether to report a work location. Defendant could also require employers to identify the state of employment or the state where an employee pays taxes but chooses not to do so.

31. The Work Number likewise has access to but never uses resources to identify where an employee lives separately from any information from the employer.

32. The Work Number routinely maintains and reports facially false data about consumers. For example, The Work Number reported simultaneous employment for Ms. Gerena in Alabama and Florida, in locations approximately 600 miles apart. The Work Number employs no substantive procedures to filter or parse data to prevent reporting of simultaneous employment which would be impossible because of geographic distance between employment or residence location, time constraints, or even common sense. It also employs no procedures to prevent reporting of employment at a location hundreds or even thousands of miles from the consumer's residence.

Defendant Imposes Barriers on Consumers Disputing Inaccurate Information While Allowing Its Customers to Access Consumer Reports With Minimal or No Identifying Information

33. The Work Number does not make money by processing disputes from consumers—in fact, this is purely an expense for Equifax, i.e., a cost center. It is in The Work Number's interest to reject disputes for any possible reason, as doing so saves money.

34. For example, The Work Number informed Plaintiff that it would not process a dispute from her unless she provided “proof of address” in the following form:

Provide a copy of one of the following (must include current mailing address and be issued

within the past 60 days)

- Utility bill (phone, water, gas, electric, trash or sewer, etc.)
- Paystub
- Housing Rental Agreement or Mortgage document in your name
- W-2 or 1099 Form (most current year)

35. It also insists that consumers provide their full Social Security number, full date of birth, and government issued identification card.

36. Notwithstanding these onerous requirements placed on consumers—for which no justification is found in the FCRA—Defendant sells consumer reports to its customers if those customers provide as little as a Social Security number with no name, address, or date of birth. The Work Number even sells employment history reports to customers where the customer searches by employer, not by specific employee.

37. The Work Number does not require that these customers provide a copy of a government issued identification card for the subject of the requested report.

38. Furthermore, The Work Number does not require that these customers provide a copy of a utility bill, paystub, lease or mortgage document, or W-2 or 1099 for the subject of the requested report.

39. The Work Number imposes onerous requirements on consumers requesting reinvestigations to reduce the number of disputes that it must process.

40. The Work Number makes money by selling credit reports.

41. The Work Number does not make money by processing disputes for consumers complaining about inaccurate information in their consumer files.

42. Therefore, according to Defendant's unjustifiable and burdensome requirements, a consumer who lives in a rural area and does not have access to a photocopier to make a copy of a government issued identification card and/or utility statement could not have his or her dispute

processed at all.

43. Similarly, a consumer who does not possess government issued identification or does not have a utility bill, paystub, lease or mortgage document, or W-2 or 1099 could not have his or her dispute processed.

Facts Relating Specifically to Plaintiff

44. Ms. Muniz is a native of Puerto Rico. She moved to Virginia from Puerto Rico in or around May 2015.

45. In or around 2015, after she moved to Virginia, Plaintiff began discovering that an unknown individual was using her personal identifiers. She applied for a cell phone account, but the cell phone provider informed her that an unknown individual had previously opened an account using her personal identifiers.

46. In 2021, Plaintiff discovered that she was the victim of extensive identify theft: a fraudster had completely stolen her identity and used it to open credit accounts, purchase vehicles with automobile loans, and purchase homes with mortgage loans. This unknown individual operated in Florida; Plaintiff has never lived in Florida and has been a resident of Virginia ever since she moved from Puerto Rico in 2015.

47. Plaintiff commenced the work to restore her identity: she completed an online FTC Identify Theft report, and filed a police report with the Chesterfield County Police Department detailing the identity theft.

48. In or around March 2022, Plaintiff discovered that the theft of her identity was yet more extensive.

49. Prior to March 2022, Plaintiff regularly received benefits from the Virginia Department of Social Services (“DSS”) under the federal Supplemental Nutrition Assistance

Program.

50. On or around February 18, 2022, DSS mailed Ms. Muniz a notice that her SNAP benefits would cease effective February 28, 2022. Plaintiff received the letter in early March 2022, and immediately contacted DSS to determine the cause of the cessation of benefits.

51. DSS informed Plaintiff that it had obtained a report from The Work Number which stated that she was employed at OK Foods at a plant located in Alabama. The report inaccurately stated that she was paid wages for work at OK Foods as recently as February 11, 2022, and that she worked a full-time job there.

52. The report bewildered Plaintiff, as she had only ever lived in Virginia since moving from Puerto Rico, and as a homemaker had not worked for any company since 2015.

53. In November 2022, Plaintiff sent a disclosure request to The Work Number, including with that request copies of her driver's license, Social Security card, and bill from Dominion Energy.

54. The disclosure that Plaintiff received from The Work Number shocked and confused her. Because she received benefits from Virginia DSS, the Commonwealth of Virginia was the main requester of information—Virginia had requested verification of employment information from The Work Number eight times in the two years preceding November 2022; the most recent request from Virginia DSS was in August 2022. Despite this, The Work Number simultaneously reported that she was actively employed at OK Foods at a location in Albertville, Alabama, and that she had been actively employed at OK Foods continuously since July 2018. The report further stated that she lived at an address in Albertville.

55. Furthermore, the disclosure nonsensically stated that she also had been employed in June 2022 at a Wal-Mart and lived at an address in Zephyrhills, Florida, and that she had been

employed at an Amazon location in August 2022 and lived at another address in Tampa, Florida.

56. The report did contain an indication of the actual truth—in 2015 Plaintiff was briefly employed by a temp agency called Employbridge, which was accurately reported by The Work Number, and her address while employed there was accurately reported as being in Chesterfield, Virginia.

57. Plaintiff mailed a letter (with a copy of her driver’s license) to The Work Number in February of 2023 to dispute the inaccurate information contained in the report. Within days of receiving this dispute letter, The Work Number e-mailed Plaintiff, stating that it would not process her dispute unless she provided “proof of address” in the following form:

Provide a copy of one of the following (must include current mailing address and be issued within the past 60 days)

- Utility bill (phone, water, gas, electric, trash or sewer, etc.)
- Paystub
- Housing Rental Agreement or Mortgage document in your name
- W-2 or 1099 Form (most current year)

58. The Work Number’s request for “proof of address” occurred after it had already mailed her a disclosure (nearly three months earlier) to the address it supposedly sought to verify.

59. Plaintiff expended lost time and money in fulfilling The Work Number’s burdensome and nonsensical demand for “proof of address.”

60. The Work Number then responded to Plaintiff’s request with the results of the reinvestigation, mailed to her Chesterfield, Virginia address. While The Work Number did remove all of the inaccurate information, it also enclosed an updated disclosure which inaccurately, and at this stage bizarrely, stated that Plaintiff now actively worked for a new employer in Albertville, Custom Cut Solutions LLC, and that she lived at same residence address previously associated with her “employment” at OK Foods. The disclosure also listed that Virginia DSS had requested employment verification data from The Work Number again in February 2023.

The Work Number's Violations Were Willful

61. The Work Number's reporting of the inaccurate employment information was willful and carried out in reckless disregard for the consumers' rights under the FCRA. Likewise, The Work Number's decision obstructing consumers seeking to obtain reinvestigations of inaccurate reporting was willful and in reckless disregard of its FCRA duties.

62. The Work Number's conduct was willful because it was accomplished through intended procedures that prioritize its own profitability over accuracy.

63. The Work Number is a subsidiary of Equifax, Inc. ("Equifax"). The FCRA was enacted in 1970, and The Work Number has had decades to become compliant.

64. The Work Number is a large company with access to legal advice through its own general counsel's office and/or outside litigation counsel. Yet, there is no contemporaneous evidence that it determined that its conduct was lawful.

65. The Work Number knew or had reason to know that its conduct was inconsistent with numerous Attorneys General's guidance, case law, and the plain language of the FCRA.

66. The Work Number voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless.

67. Numerous consumers have made disputes and complaints to The Work Number regarding the reporting of inaccurate employment information, but The Work Number has failed to adjust or even implement procedures to assure maximum possible accuracy in its reporting. The Work Number knows that the burdens it imposes on consumers seeking reinvestigations reduce the number of disputes it processes and increase inaccuracies in its consumer reports.

68. The Work Number knows that the use of stolen personal identifiers by undocumented immigrants to obtain employment is a significant problem, but instead of

implementing procedures designed to check the accuracy of information reported by employers, The Work Number merely parrots the information provided.

69. The Work Number knows that many consumers lack the ability to comply with its burdensome and unwarranted request for identification and address information it never requires from its customers seeking employment information about consumers.

70. Even when consumers repeatedly dispute reporting from a particular employer as inaccurate, The Work Number removes false reporting about the disputing consumers but otherwise continues to report employment information from that employer as to other consumers without change.

71. The Work Number knows that the reporting of false employment information to government agencies causes dire consequences to U.S. citizens, including the loss of government benefits, yet it does nothing to implement procedures that would assure maximum possible accuracy when it reports employment data to government agencies.

72. The Work Number knows that its impositions on consumers result in fewer completed disputes and less accurate consumer reports but continues its conduct unabated because doing so reduces expenses.

73. The Work Number's violations of the FCRA were repeated and systemic.

CLAIMS FOR RELIEF

COUNT ONE: VIOLATION OF THE FCRA, 15 U.S.C. §1681e(b) (Class Claim)

74. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

75. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this action for herself and on behalf of a class initially defined as:

1681e(b) Class: All persons residing in the United States who (1) were the subject of a consumer report published by The Work Number; (2) within the five years before the filing of this action; (3) containing employer information originating from an employer who submitted a W-2 that was posted to the Social Security Administration's Earning Suspense File; (4) and have consumer files at The Work Number reflecting simultaneous employment by separate employers who provided employee addresses in different states.

Excluded from the class definition are any employees, officers, directors of Defendant, any attorney appearing in this case, any person employed by the Federal Judiciary, and all persons who have signed a written release of his or her claim.

76. Plaintiff is a member of the 1681e(b) Class.

77. **Numerosity. FED. R. CIV. P. 23(a)(1).** Upon information and belief, Plaintiff alleges that the class members are so numerous that joinder of all their claims is impractical. The class members' names and addresses are identifiable through The Work Number's internal business records, and they may be notified of the pendency of this action by published and/or mailed notice.

78. **Predominance of Common Questions of Law and Fact. FED. R. CIV. P. 23(a)(2).** Common questions of law and fact exist as to all putative class members, and there are no factual or legal issues that differ between the putative class members. These common questions predominate over the questions affecting only individual class members. These common questions include (a) whether The Work Number's conduct violated § 1681e(b) by reporting inaccurate information related to the class members' employment data; (b) whether The Work Number maintained reasonable procedures designed to avoid violations of § 1681e(b); (c) whether The Work Number's conduct was willful or negligent; and (d) the appropriate amount of damages to be awarded to each consumer.

79. **Typicality. FED. R. CIV. P. 23(a)(3).** Plaintiff's claims are typical of the claims of each putative class member. Plaintiff is entitled to relief under the same cause of action as the other

putative class members. Additionally, Plaintiff's claims are based on the same facts and legal theories as each of the class members' claims.

80. **Adequacy of Representation. FED. R. CIV. P. 23(a)(4).** Plaintiff is an adequate representative of the putative class because her interests coincide with, and are not antagonistic to, the interests of the other putative class members. Plaintiff has retained counsel competent and experienced in such litigation and intends, with their counsel, to continue to prosecute the action vigorously. Plaintiff and her counsel will fairly and adequately protect the class members' interests. Neither Plaintiff nor her counsel have any interest that might conflict with their vigorous pursuit of this action.

81. **Superiority. FED. R. CIV. P. 23(b)(3).** Questions of law and fact common to the class members 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 damages sought by each class member are such that individual prosecution would prove burdensome and expensive. It would be virtually impossible for individual class members to effectively redress the wrongs done to them. Even if the class members could afford individual litigation, it would be an unnecessary burden on the courts. 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 legal and factual issues raised by The Work Number'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 a case.

82. As described above, The Work Number violated § 1681e(b) of the FCRA by failing to establish or to follow reasonable procedures to assure maximum possible accuracy in the

preparation of the employment reports it published and maintained concerning the Plaintiff and the class members.

83. The Work Number knew or should have known about its obligations under the FCRA. These obligations are well established in the plain language of the FCRA, in the promulgations of the Federal Trade Commission (FTC) and CFPB, and in well-established case law.

84. The Work Number obtained or had available substantial written materials that apprised it of its duties under the FCRA.

85. Despite knowing of these legal obligations, The Work Number acted consciously in breaching its known duties and deprived Plaintiff and the class members of their rights under the FCRA.

86. The Work Number published multiple inaccurate employment reports relating to Plaintiff and the class members to third parties.

87. As a result of The Work Number's failure to comply with the requirements of the FCRA, Plaintiff and the putative class members suffered particularized and concrete injuries, including damages to their reputations, economic loss, and/or increased risk of loss of employment, government benefits, or credit.

88. The Work Number's violations were willful, rendering it liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, the violations were negligent, entitling Plaintiff and each member of the putative class to recover against The Work Number under 15 U.S.C. § 1681o.

89. Plaintiff and each class member are entitled to recover statutory damages, punitive damages, costs, and attorneys' fees from Defendant in an amount to be determined by the Court

pursuant to 15 U.S.C. § 1681n.

**COUNT TWO: VIOLATION OF THE FCRA, 15 U.S.C. §1681i
(Class Claim)**

90. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

91. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this action for herself and on behalf of a class initially defined as:

1681i Class: All persons residing in the United States who were the subject of a consumer report published by The Work Number within the five years before the filing of this action and for whom The Work Number refused to conduct a reinvestigation of a dispute until and unless the consumer provided proof of address documentation following The Work Number's receipt of the dispute.

Excluded from the class definition are any employees, officers, directors of Defendant, any attorney appearing in this case, any person employed by the Federal Judiciary, and all persons who have signed a written release of his or her claim.

92. Plaintiff is a member of the 1681i Class.

93. **Numerosity. FED. R. CIV. P. 23(a)(1).** Upon information and belief, Plaintiff alleges that the class members are so numerous that joinder of all their claims is impractical. The class members' names and addresses are identifiable through The Work Number's internal business records, and they may be notified of the pendency of this action by published and/or mailed notice.

94. **Predominance of Common Questions of Law and Fact. FED. R. CIV. P. 23(a)(2).** Common questions of law and fact exist as to all putative class members, and there are no factual or legal issues that differ between the putative class members. These common questions predominate over the questions affecting only individual class members. These common questions include (a) whether The Work Number had a right to request "proof of address" documentation before processing their disputes; (b) whether The Work Number actually required "proof of

address” documentation in order to locate the consumers’ files; (c) whether Defendant refused to process the consumers’ disputes absent submission of “proof of address” documentation; (d) whether The Work Number’s conduct was willful or negligent; and (e) the appropriate amount of damages to be awarded to each consumer.

95. **Typicality. FED. R. CIV. P. 23(a)(3).** Plaintiff’s claims are typical of the claims of each putative class member. Plaintiff is entitled to relief under the same cause of action as the other putative class members. Additionally, Plaintiff’s claims are based on the same facts and legal theories as each of the class members’ claims.

96. **Adequacy of Representation. FED. R. CIV. P. 23(a)(4).** Plaintiff is an adequate representative of the putative class because her interests coincide with, and are not antagonistic to, the interests of the other putative class members. Plaintiff has retained counsel competent and experienced in such litigation and intends, with their counsel, to continue to prosecute the action vigorously. Plaintiff and her counsel will fairly and adequately protect the class members’ interests. Neither Plaintiff nor her counsel have any interest that might conflict with their vigorous pursuit of this action.

97. **Superiority. FED. R. CIV. P. 23(b)(3).** Questions of law and fact common to the class members 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 damages sought by each class member are such that individual prosecution would prove burdensome and expensive. It would be virtually impossible for individual class members to effectively redress the wrongs done to them. Even if the class members could afford individual litigation, it would be an unnecessary burden on the courts. 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 legal and factual issues raised by The Work Number'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 a case.

98. The Work Number violated § 1681i by its conduct which includes, but is not limited to: (a) failing to conduct a reasonable reinvestigation absent submission of "proof of address" documentation; (b) failing to provide notice of disputes to its furnishers of the disputed information within the 5 business days of receipt of dispute; (c) refusing to reinvestigate disputes when the consumer provided sufficient information to reinvestigate the disputed information; and (d) failing to review and consider all relevant information submitted by the consumer within 30 days of receipt of the consumer's dispute.

99. As a result of The Work Number's failure to comply with the requirements of the FCRA, Plaintiff and the putative class members suffered particularized and concrete injuries, including damages to their reputations, economic loss, and increased risk of loss of employment, government benefits, or credit.

100. The CFPB issued guidance in November 2022 advising that CRAs "must reasonably investigate disputes received directly from consumers that are not frivolous or irrelevant . . . even if such disputes do not include the entity's preferred format, preferred intake forms, or preferred documentation or forms." Consumer Fin. Prot. Bureau, Reasonable Investigation of Consumer Reporting Disputes, Circular 2022-07 (Nov. 10, 2022).

101. Nonetheless, The Work Number continued (and continues) to insist that consumers provide its preferred documentation as a precondition to reinvestigating disputes.

102. The Work Number's violations were willful, rendering it liable for punitive

damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, the violations were negligent, rendering The Work Number liable under 15 U.S.C. § 1681o.

103. Plaintiff and each class member are entitled to recover statutory damages, punitive damages, costs, and attorneys' fees from Defendant in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n.

WHEREFORE, Plaintiff requests certification of the classes pursuant to Fed. R. Civ. P. 23(b); demands judgment on liability finding that Defendant willfully, or in the alternative negligently, violated 15 U.S.C. §§ 1681e(b) and 1681i; demands judgment for actual, statutory, and punitive damages against the Defendant, for attorneys' fees and costs, for prejudgment and postjudgment interest at the legal rate, and such other relief the Court deems appropriate.

PLAINTIFF DEMANDS TRIAL BY JURY.

Respectfully submitted,

VANESSA MUNIZ GERENA

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