

February 10, 2015

Molly C. Dwyer, Clerk
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

**Re: Response to Rule 28(j) Letter in *Moran v. The Screening Pros*, No. 12-57246
(Argued on February 2, 2015 before Pregerson, Kleinfeld, and Nguyen, JJ.)**

Dear Ms. Dwyer:

The Screening Pros suggested at oral argument that the Fair Credit Reporting Act's seven-year reporting period runs from the date of *dismissal* because a dismissal is itself an "adverse item of information." That suggestion is wrong for several reasons.

First, as the federal regulatory agencies explain in their joint amicus brief, "in the case of a criminal charge that is eventually dismissed, the dismissal is not an adverse item that starts its own seven-year reporting period" because "[t]he dismissal of a charge, standing alone," would not "reasonably be expected to bear unfavorably on the consumer's eligibility for credit or other benefits." CFPB/FTC Br. 11, 13. Instead, "[t]o the extent a dismissal reflects negatively on a consumer, it does so because it reveals the existence of the criminal charge," which is "the truly adverse information." *Id.* at 13-14.

Second, the two cases cited in The Screening Pros' Rule 28(j) letter do not support a contrary reading. Those cases did not concern whether the seven years runs from the date of the charge versus the date of dismissal: *Both* the charges *and* the dismissals in those cases antedated the reports by more than seven years. Instead, those cases involved dismissals accompanied by convictions. The defendants argued that the dismissals could be reported indefinitely as part of the "records of convictions" exception in section 1681c(a)(5). Both courts rejected that reading.

Dunford v. American Data Bank is thus fully consistent with our position: "It is quite clear that stand-alone dismissed charges (more than seven years old) must be omitted under the Act." 2014 WL 3956774, at *14 (N.D. Cal. 2014). And, although the convictions were reportable, the court held, the "stale dismissed counts must be combed out and go unreported." *Id.*; *see also Haley v. TalentWise, Inc.*, 9 F. Supp. 3d 1118, 1192 (WD. Wash. 2014) (rejecting defendant's argument).

Third, a contrary reading would have the effect of undoing Congress's 1998 amendment, which eliminated the "date of disposition" as a trigger for the seven-year period.

Sincerely,

/s/ Deepak Gupta
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