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13 Attorneys for: Plaintiff CRIMCHECK HOLDINGS, LLC

14 **UNITED STATES DISTRICT COURT**

15 **MIDDLE DISTRICT OF TENNESSEE**

16  
17 CRIMCHECK HOLDINGS, LLC, a Wyoming  
limited liability company,

18 Plaintiff,

19 v.

20  
21 TNFC, INC., a Tennessee corporation; and  
DOES 1 through 100,

22 Defendants.  
23

Case No.

**CRIMCHECK HOLDINGS, LLC'S  
COMPLAINT FOR DAMAGES**

1 Plaintiff Crimcheck Holdings, LLC (“Crimcheck”), hereby alleges and complains against  
2 Defendant TNFC, Inc. (“TNFC” or “Defendant”) as follows:

3 **JURISDICTION**

4 1. Plaintiff Crimcheck is, and at all times relevant herein was, a Wyoming limited liability  
5 company with its principal place of business Medina County, State of Ohio.

6 2. Defendant TNFC is, and at all times relevant herein was, a Tennessee corporation, and  
7 insurer of Plaintiff Crimcheck, with its principal place of business in Davidson County, State of  
8 Tennessee. On January 16, 2020, TNFC issued Actual Net Loss Insurance Policy, Policy Number A-7-  
9 20, (the “Policy”) insuring Crimcheck for the time period relevant to this loss.

10 3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332. The amount in  
11 controversy exceeds \$75,000, exclusive of interest and costs, and complete diversity exists between the  
12 parties.

13 **VENUE**

14 4. Venue is proper in this District by consent of the Parties as set forth in Section VII,  
15 Paragraph B, of the Policy, a copy of which is attached hereto as Exhibit “A.”

16 **FACTUAL BACKGROUND**

17 5. Crimcheck provides clients criminal background checks for potential employees and  
18 required the criminal background check as part of their hiring process. To provide its services,  
19 Crimcheck must have access for Crimcheck’s clients to and be able to request records from courts across  
20 the country. In some jurisdictions, records must be manually searched at the courthouse. These  
21 jurisdictions include all state courts in Massachusetts, Delaware, Kentucky, Louisiana, Mississippi, and  
22 New Hampshire, approximately 70 percent of courts in Tennessee, 60 percent of courts in Arkansas,  
23 70 percent of courts in Georgia, and 23 County Superior courts in California.

24 6. On January 16, 2020, TNFC issued the Policy to Crimcheck. Per the Policy, TNFC  
25 agreed to pay Crimcheck for “Actual Net Loss” reported to TNFC during the “Policy Period.” The  
26 “Policy Period” for the Policy is January 1, 2020 to a cancellation date, or the Policy’s expiration date  
27 of December 31, 2020.

28 7. The Policy defines “Actual Net Loss” as casualty incurred as a result of a “Scheduled

1 Event.” The Policy defines a “Scheduled Event” to include “Business Interruption- Civil  
2 Authority/Emergency Response Risk” events. According to the Policy, a “Business Interruption- Civil  
3 Authority/Emergency Response Risk” refers to the following:

4 [T]he *interruption* or cessation of business of Insured at or  
5 from one or more of Insured’s business locations for a period  
6 of no less than 24 hours, caused by *a material restriction or*  
7 *prevention of access to or from*, or ingress/egress to or from,  
8 or use of Insured’s premises by Insured, Insured’s vendors  
9 or supplies, or Insured’s customers or clients, resulting from  
10 an order, directive, or action by a civilian or government  
11 agency or entity, other than a branch of the United States  
12 military (or foreign military) or National Guard if activated  
13 to federal service (or foreign equivalent).

14 8. The Policy defines “Actual Net Loss” in connection with a Business Interruption-Civil  
15 Authority/Emergency Response Risk event to include “Income Loss and Extra Expenses.” “Income  
16 Loss” is defined to consist of “net profit (before taxes) that would have been earned by Crimcheck in  
17 the absence of the Scheduled Event, taking into account the actual experience of Crimcheck’s business  
18 before the Scheduled Event and the probable experience Crimcheck would have had without the  
19 Scheduled Event.” “Extra Expenses” are the “reasonable costs, fees, and expenditures actually paid by  
20 Crimcheck for the sole purpose of avoiding, mitigating or otherwise minimizing Income Loss.”

21 9. In Mid-March 2020, the States of Massachusetts, Arkansas, Georgia, Delaware,  
22 Kentucky, Louisiana, Mississippi, Tennessee, and New Hampshire closed their state courthouses to the  
23 public in response to the outbreak of the COVID-19 Pandemic. The State of California, pursuant to  
24 executive orders from the Governor, followed suit in April 2020. All of these closures remained in place  
25 throughout the first and second quarters of 2020.

26 10. As a result of these court closures, Crimcheck was unable to obtain access to public  
27 records necessary to provide its background check services to customers. Accordingly, on April 3, 2020,  
28 Crimcheck submitted a claim to TNFC for business interruption coverage under the Policy.

11. While Crimcheck’s claim was under review, Crimcheck’s business situation worsened.  
During the third quarter of 2020, the States of Arkansas and Delaware reopened their courthouses to the  
public, but processing times for records requests were substantially increased due to a heavy backlog.

1 Further, although some courthouses in the States of Kentucky, Louisiana, Mississippi, and Tennessee,  
2 also began to reopen at this time, they also faced a heavy backlog of work and access to public records  
3 was severely limited. When the Courts of New Hampshire, Georgia, California, and Massachusetts  
4 began to reopen in the last quarter of 2020, they too suffered from delayed processing times as a result  
5 of the nearly year-long court closures.

6 12. To keep TNFC apprised of the effects of court closures, Crimcheck routinely provided  
7 updated information to TNFC regarding its business income losses and expenses associated with the  
8 COVID-19 court closures. TNFC also responded to all of TNFC's requests for information, including  
9 requests for information related to Crimcheck's mitigation efforts. As relayed to TNFC, Crimcheck  
10 engaged in a long list of mitigation efforts to reduce business losses, including extending business hours,  
11 reducing payroll, review of operations, work from home measures, salary reductions, rent deferment,  
12 new product development, revised marketing strategies, etc.

13 13. Throughout 2020, Crimcheck also engaged in repeated communications with TNFC's  
14 claim management company, Oxford Management Risk Management Group ("Oxford"), regarding  
15 adjustments to Crimcheck's premium payment obligations. Oxford repeatedly assured Crimcheck that  
16 any claims submitted prior to any initial nonpayment of premiums by Crimcheck would still be entitled  
17 to coverage under the Policy.

18 14. On February 4, 2021, TNFC summarily denied Crimcheck's claim on the basis that none  
19 of the coverages in the Policy are triggered by the claim. TNFC communicated its decision to Crimcheck  
20 through Oxford. When Crimcheck consulted Oxford on the grounds for denial of the claim, Crimcheck  
21 learned that TNFC had relied on data provided up to July 2020 only while disregarding all additional  
22 documents provided by Crimcheck.

23 15. On March 9, 2021, before Crimcheck could appeal TNFC's denial, Oxford informed  
24 Crimcheck that because Crimcheck purportedly did not fulfill its obligation to pay the entire premium  
25 for the 2020 Policy term, Oxford closed its claim file.

### **FIRST CAUSE OF ACTION**

#### **(Declaratory Relief)**

28 16. Plaintiff Crimcheck realleges and incorporates by reference each and every allegation set

1 forth in paragraphs 1-15 above, as though fully set forth herein.

2 17. A justiciable controversy exists between the parties regarding the Policy. Plaintiff  
3 Crimcheck contends that a “Scheduled Event,” as defined under the Policy, occurred because Crimcheck  
4 suffered an interruption of business resulting from a restriction of access to vendors or supplies for a  
5 period in excess of 24 hours. Crimcheck further contends that it suffered “Actual Net Losses” as a result  
6 of this business interruption, including but not limited to loss of income and extra expenses, and that  
7 TNFC is obligated under the Policy to cover such “Actual Net Losses.” TNFC denies that coverage  
8 exists under the Policy that there was any “Scheduled Event” as defined by the policy or that Crimcheck  
9 suffered any “Actual Net Losses.” Pursuant to Federal Rules of Civil Procedure 57 and 28 USC § 2201,  
10 this is a controversy ripe for adjudication and a proper subject of declaratory relief as there is a dispute  
11 regarding the parties’ rights and obligations under the Policy to which the parties do not agree.

12 **SECOND CAUSE OF ACTION**

13 **(Breach of Contract)**

14 18. Plaintiff Crimcheck realleges and incorporates by reference each and every allegation set  
15 forth in paragraphs 1-17 above, as though fully set forth herein.

16 19. The Policy issued to Crimcheck is a valid and enforceable contract. Pursuant to the  
17 Policy, TNFC had the obligation to cover “Actual Net Losses” incurred by Crimcheck due to “Scheduled  
18 Events,” as both terms are defined in the Policy, reported between January 1, 2020 and December 31,  
19 2020. A “Scheduled Event,” as defined by the Policy, occurred when COVID-19-related court closures  
20 restricted Crimcheck’s access to vendors or supplies for a period exceeding 24 hours. Crimcheck  
21 reported this “Scheduled Event” to TNFC on April 3, 2020 in the form of a coverage claim. Crimcheck  
22 suffered “Actual Net Losses” as a result of the COVID-19-related court closures based on loss of income  
23 and extra expenses.

24 20. Despite the fact that Plaintiff Crimcheck suffered “Actual Net Losses” due to a  
25 “Scheduled Event” with the policy period that was reported to TNFC during the policy period, TNFC  
26 refuses to cover Crimcheck’s “Actual Net Losses.” TNFC’s nonperformance constitutes a breach of the  
27 Policy.

28 21. Additionally, TNFC’s nonperformance under the Policy is intentional, malicious, and/or

1 reckless. Crimcheck is informed and believes, and on that basis alleges, that TNFC intentionally,  
2 maliciously, and/or recklessly failed to consider all the information it requested from Crimcheck before  
3 denying coverage, and thereby prematurely denied coverage without proper consideration of  
4 Crimcheck's claim. This is further evidenced by the fact Crimcheck's decision to deny coverage is  
5 entirely devoid of factual detail.

6 22. Crimcheck is further informed and believes, and on that basis alleges, that TNFC,  
7 directly, or through its agents, intentionally, maliciously, and/or recklessly represented to TNFC that it  
8 would honor its obligations for claims submitted prior to any nonpayment of premiums. Crimcheck is  
9 also informed and believes, and on that basis alleges, that TNFC, directly, or through its agents, made  
10 this representation with the intentional, malicious, and/or reckless objective of then denying  
11 Crimcheck's rights to appeal the denial of coverage. TNFC's actions entitle Crimcheck to an award of  
12 punitive damages.

13 23. Crimcheck has performed all conditions precedent necessary to enforce the Policy,  
14 except those obligations that have been excused or been made impossible by TNFC's conduct and non-  
15 performance.

16 24. As a direct and proximate result of Defendant TNFC's breach of the Policy, Crimcheck  
17 has been damaged by having to absorb the "Actual Net Losses" it suffered, which presently exceed  
18 \$75,000, as to be determined at trial.

### 19 **THIRD CAUSE OF ACTION**

#### 20 **(Breach of the Implied Covenant of Good Faith and Fair Dealing** 21 **Pursuant to Tennessee Code § 56 -7-105)**

22 25. Plaintiff Crimcheck realleges and incorporates by reference each and every allegation set  
23 forth in paragraphs 1-24 above, as though fully set forth herein.

24 26. TNFC had the obligation to cover "Actual Net Losses" incurred by Plaintiff Crimcheck  
25 due to "Scheduled Events," as both terms are defined in the Policy, reported between January 1, 2020  
26 and December 31, 2020. Crimcheck indeed suffered "Actual Net Losses" as a result of a "Scheduled  
27 Event" that it reported to TNFC on April 3, 2020. Accordingly, coverage under the Policy is due and  
28 owing to Crimcheck.

1 27. Crimcheck made repeated formal demands for payment under the Policy. Crimcheck's  
2 last demand was made on July 12, 2021. On July 16, 2021, TNFC informed Crimcheck that it stands  
3 by its decision to deny coverage under the Policy.

4 28. Crimcheck is informed and believes, and thereupon alleges, that TNFC's denial of  
5 Crimcheck's claim was made in bad faith. Crimcheck is informed and believes, and thereupon alleges,  
6 that TNFC did not consider the data submitted in support of Crimcheck's claim or only considered data  
7 up to July 2020. Crimcheck is further informed and believes, and thereupon alleges that TNFC made  
8 the decision to deny coverage as early as July 2020, yet failed to communicate the decision to Crimcheck  
9 until February 2021. Instead, between July 2020 and February 2021, TNFC, through its agents, actually  
10 represented to Crimcheck that the claim was still under review and continued to make requests for  
11 information that Crimcheck fully complied with. When TNFC finally communicated its decision to deny  
12 Crimcheck's claim, the denial letter was entirely devoid of any rationale for the denial.

13 29. Moreover, following denial of Crimcheck's claim, TNFC, through its agents, informed  
14 Crimcheck that any appeal of the denial was moot for nonpayment of premiums under the Policy. Still,  
15 throughout 2020, TNFC's agents communicated to Crimcheck that any claims submitted prior to any  
16 nonpayment, including Crimcheck's April 3, 2020 claim, would still be entitled to coverage under the  
17 Policy.

18 30. In handling the claim submitted by Crimcheck, TNFC failed to:

- 19 a. Interpret the policy terms in a reasonable manner;
- 20 b. Thoroughly investigate the claim to determine coverage;
- 21 c. Adequately inform Crimcheck as to the claim investigation;
- 22 d. Communicate with Crimcheck as to results of its investigation;
- 23 e. Evaluate the claim giving Crimcheck the benefits of the policy;
- 24 f. Timely pay the Policy benefits to Crimcheck, which has directly harmed  
25 Crimcheck and caused it to not receive all benefits available pursuant to the Policy and  
26 inconsistent with TNFC's duties owed to Crimcheck pursuant to the Policy and the law.

27 31. As a direct and proximate result of Defendant TNFC's bad faith denial of coverage and  
28 refusal to pay, Plaintiff Crimcheck has incurred additional expense, loss, and injury, including attorneys'

1 fees. TNFC's actions were malicious and done with an intent to harm Crimcheck by not properly  
2 handling the claim and wrongfully withholding the policy benefits from Crimcheck. These actions  
3 entitle Crimcheck to an award of punitive damages.

#### 4 **FOURTH CAUSE OF ACTION**

##### 5 **(Fraud)**

6 32. Plaintiff Crimcheck realleges and incorporates by reference each and every allegation set  
7 forth in paragraphs 1-15 above, as though fully set forth herein.

8 33. After submission of its claim to Defendant TNFC, Crimcheck communicated to TNFC,  
9 through its agent, Oxford, that it was struggling to make premium payments in light of its COVID-19-  
10 related business losses. Throughout 2020, TNFC, directly and through its agents, represented to  
11 Crimcheck that TNFC would recognize its obligations under the Policy as to any claim that was  
12 submitted to TNFC prior to nonpayment of any premium owed. This representation was material to  
13 Crimcheck as Crimcheck wanted to ensure its claim was not affected by nonpayment of premiums.

14 34. Plaintiff Crimcheck is informed and believes, and thereupon alleges, that TNFC's  
15 representations, whether made directly or through agents, were false. Plaintiff Crimcheck is further  
16 informed and believes, and thereupon alleges, that TNFC, directly or through its agents, made this  
17 representation either knowingly, recklessly, or without belief in its truth.

18 35. Crimcheck, on the other hand, reasonably relied on TNFC's, and its agent's,  
19 representations because it trusted its insurance carrier, and because it had been lead to believe that  
20 TNFC, and its agents, were acting in good faith.

21 36. However, as a direct and proximate result of TNFC's and its agents' false representations,  
22 Crimcheck was damaged by closure of its claim for nonpayment of premiums, and in an amount subject  
23 to proof at trial. These actions were done maliciously and knowing that Crimcheck would rely on them  
24 to its detriment. TNFC's actions entitle Crimcheck to an award of punitive damages.

25 WHEREFORE, Plaintiff pays for judgment as follows:

26 1. For a declaration that Plaintiff suffered "Actual Net Losses," as defined under the Policy,  
27 in the amount to be determined at trial;

28 2. For a declaration that Defendant TNFC had an obligation to cover Plaintiff's "Actual Net

1 Losses” in an amount to be determined at trial;

2 3. For all consequential and economic damages, including but not limited to, Plaintiff’s  
3 “Actual Net Losses” in the amount to be determined at trial, Plaintiff’s reasonable attorneys’ fees  
4 pursuant to the Policy and/or all other legal bases to seek such legal fees including Tennessee Code  
5 § 56-7-105(a) and costs incurred as a result of TNFC’s breach of the Policy, bad faith denial of coverage  
6 and refusal to pay;

7 4. For an additional award equal to 25% of any consequential and economic damages award  
8 to Plaintiff pursuant to Tennessee Code § 56-7-105 for Defendant TNFC’s bad faith denial of coverage  
9 and refusal to pay;

10 5. For punitive damages in an amount to be determined at trial;

11 6. For all interest as allowed by law; and

12 7. For such other and further relief as the Court may deem proper.

13  
14 Dated: September 30, 2021

WELLS & ASSOCIATES, PLLC

15 By:                   /s/ Murray B. Wells                    
16 Murray B. Wells  
17 Attorneys for Plaintiff CRIMCHECK  
HOLDINGS, LLC

18 Dated: September 30, 2021

WANGER JONES HELSLEY PC  
(PRO HAC VICE PENDING)

19  
20 By:                   /s/ Jay A. Christofferson                    
21 Jay A. Christofferson  
22 Giulio A. Sanchez  
23 Attorneys for Plaintiff CRIMCHECK  
HOLDINGS, LLC