

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

DUSTIN JONES, for and on behalf of himself and other persons similarly situated,		
Plaintiffs,		CLASS ACTION COMPLAINT
vs.		JURY TRIAL DEMANDED
MARKETSTAR QOZ BUSINESS, LLC and AON CONSULTING, INC.,		CASE NO.:
Defendants.		

COMPLAINT

Plaintiff, Dustin Jones (“Jones” or “Representative Plaintiff”) brings this suit for injunctive, monetary, and declarative relief against Defendants MarketStar QOZ Business, LLC (“MarketStar”) and AON Consulting, Inc. (“AON”) for engaging in a pattern or practice of illegal discrimination on the basis of race and disability in violation of Title VII of the Civil Rights Act of 1964 and the ADA Amendments Act of 2008 (“ADAAA”). Defendants’ continuous and systemic pattern or practice of discriminatory job screening disproportionately disqualifies African-Americans and individuals with disabilities from securing gainful employment.

MarketStar is a global outsourcing agency headquartered in Ogden, Utah, specializing in B2B sales, marketing, channel partner management, customer success, and revenue operations services. Founded in 1988, MarketStar serves multinational enterprises and medium-sized businesses across industries such as technology, retail, financial services, and telecommunications, helping clients accelerate revenue growth through outsourced sales teams and data-driven strategies. With over 3,650 employees worldwide and operations in locations including Salt Lake City, Dublin, Sofia, Bangalore, Hyderabad, Manila, and Melbourne, MarketStar has launched, sold, and supported

thousands of products and services for leading tech companies, including Logitech. MarketStar deliberately relies on AON's AI-powered assessments to screen and evaluate job applicants for its outsourced roles, thereby incorporating, perpetuating, and amplifying discriminatory practices that it knows or should know disproportionately harm African-Americans and individuals with disabilities. MarketStar mandates these biased tools as a core part of its hiring process, rejecting qualified applicants like Jones without regard for the documented racial and disability-based disparities.

AON is one of the world's largest providers of pre-employment testing and algorithmic screening tools. In the last four years alone, AON has administered its online assessments to more than 48 million job applicants across the globe. AON's suite of cognitive, personality, and "gamified" tests—including ADEPT-15, gridChallenge, and GAME—are embedded in the hiring platforms of thousands of employers, including MarketStar, and are used to automatically score, rank, and reject millions of applicants every year, often before any human ever reviews their résumé. However, MarketStar, as a sophisticated global employer with access to AON's technical documentation, actively chooses to deploy these tools despite clear evidence of bias, failing to validate them locally, implement safeguards, or seek alternatives, thereby making MarketStar the primary driver of the discrimination at issue.

Upon information and belief, MarketStar requires AON's flagship screening products—the ADEPT-15 adaptive personality inventory and the gridChallenge cognitive "gamified" assessment—as a mandatory gatekeeping step in its hiring process for all U.S. job openings. Applicants who do not achieve a sufficiently high score on these tests are automatically rejected or deprioritized by MarketStar, frequently before any human being ever looks at their résumé or

application. AON's own technical manuals and validation studies conclusively demonstrate that both tests produce large, statistically significant racial score gaps and systematic differences on personality dimensions that correlate with common mental-health disabilities (including autism, PTSD, depression, anxiety, and OCD). Despite having full knowledge of these disparities from AON's publicly available documentation and industry standards, MarketStar continues to enforce these tests, rejecting individuals like Jones based on biased outputs without any mitigation or alternative procedures. MarketStar's willful disregard for these known biases perpetuates systemic discrimination across its global operations.

All applicants who attempt to access employment with MarketStar via its platform, which incorporates AON's tools, have been uniformly subject to this policy during the Class Period, including the Plaintiff and the proposed Class. It is thus reasonable to attribute any systematic difference in the rate of successful applicants to MarketStar's policy of using algorithmic decision-making tools to screen all applications. This causal connection is unsurprising: algorithmic decision-making tools have been known to cause bias in hiring, and MarketStar's insistence on these tools despite evidence of harm makes it directly responsible.

MarketStar's automated system—for a variety of reasons that MarketStar knows about and could easily prevent—is much more likely to deny applicants who are African-American and/or suffer from disabilities. Because their applications are more likely to be flagged for rejection, African-American and disabled applicants are disproportionately more likely to be denied jobs by MarketStar. As a result, African-American and disabled applicants experience greater rates of rejection for employment which negatively impacts their career prospects, earnings, and quality of life.

The Plaintiff and, upon information and belief, the classes he seeks to represent have made applications for employment using MarketStar's platform only to be rejected. Because of this high rate of rejection, Plaintiff, and the classes he seeks to represent have also been discouraged from seeking employment with MarketStar and similar firms that use biased screening as such application is futile because of MarketStar's discriminatory algorithmic decision-making tools. The hiring discrimination African-Americans and the disabled have experienced and are experiencing because of MarketStar's discriminatory practices cause tangible financial harm, and are unreasonable, vexatious, and humiliating. Accordingly, Plaintiffs seek damages as well as declaratory and injunctive relief.

JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343(3), and (4), 2201 and 2202, 42 U.S.C. 2000d-2 and 2000e5(f).
2. This is a suit authorized and instituted pursuant to the Act of Congress known as Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq., as amended, 42 U.S.C. § 1981, and the ADA Amendments Act of 2008 (“ADAAA”).
3. Venue is proper in the Northern District of Illinois under 28 U.S.C. § 1391(B) & © because AON is located here, MarketStar conducts substantial business here through its use of AON's tools, and the acts complained of occurred in the Northern District of Illinois.

PARTIES

Dustin Jones

4. Plaintiff, Dustin Jones is a 35-year-old bi-racial male (African-American and white), who was diagnosed with autism, PTSD, and Adjustment Disorder with mixed anxiety and depressed

mood in September of 2021.

5. Before that, he had previously been diagnosed with OCD and chronic depression. While these diagnoses are not outwardly noticeable in his day-to-day life at work, they impact him internally and in his personal life.

6. When looking for employment, he considers how his disabilities may impact his work, including by considering how an employer trains new employees, how well-structured the working environment is, what elements of the physical environment may be overstimulating to him, and what social expectations are part of the job. Mr. Jones is an applicant.

MarketStar

7. Defendant MarketStar is an employer who has delegated to AON authority to make decisions in the hiring process, including by relying on the results of selection procedures that AON administers on MarketStar's behalf to make hiring decisions. MarketStar actively participates in the discriminatory scheme by requiring AON's ADEPT-15 and gridChallenge tests for all U.S. job openings, using AON's biased scores to filter applicants, and failing to implement any safeguards despite known adverse impacts on protected groups. MarketStar's headquarters and principal place of business is located at 2475 Washington Boulevard, Ogden, Utah, but it conducts substantial business nationwide, including in Illinois.

AON

8. Defendant AON is an employment agency pursuant to Section 703(b) of the Act, 42 U.S.C. § 2000e-2(b). Defendant AON is also an agent of employers like MarketStar who have delegated to it authority to make decisions in the hiring process, including by relying on the results of selection procedures that AON administers on the employers' behalf to make hiring decisions,

alternatively AON is an indirect employer because it controls access to employment opportunities. Defendant AON's headquarters and principal place of business is located at 200 East Randolph Street, Chicago, Illinois.

**CONDITIONS PRECEDENT TO SUIT UNDER
TITLE VII AND THE ADAAA**

9. On November 30, 2023, Mr. Jones filed a charge of discrimination with the Equal Employment Opportunity Commission. [Att. A]. The EEOC issued Mr. Jones a Dismissal and Notice of Right to Sue, giving him ninety-days from its receipt to file a case. [Att. B]. Thus, Mr. Jones has satisfied all prerequisites to bring this action pursuant to Title VII and the ADAAA.

CLASS ACTION ALLEGATIONS

10. The Representative Plaintiff brings this action in his own behalf and on behalf of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, and seek to represent the following subclasses:

- All African-American applicants or former applicants to MarketStar who from November 30, 2022, to the present were subjected to the challenged discriminatory screening process.
- All applicants or former applicants to MarketStar who have a diagnosed mental health or cognitive condition who from November 30, 2022, to the present were required to take an AON branded cognitive assessment or personality tests as part of the application process.
- All African-American applicants or former applicants who from November 30, 2022, to the present were subjected to AON's challenged discriminatory screening process as used by MarketStar and other employers.
- All applicants or former applicants who have a diagnosed mental health or cognitive condition who from November 30, 2022, to the present were required to take an AON branded cognitive assessment or personality tests as part of the application process with MarketStar and other employers.

Mr. Jones in the case at bar challenges systemic discrimination by, and seeks class-wide relief against, MarketStar for its utilization of discriminatory screening tools provided by AON as part of its employment policies and procedures which constitute a pattern and practice of discrimination on the basis of race and disability with respect to selections. These screening tools have been continuously mandated by MarketStar since at least 2022, and their implementation and use has personally harmed the named Plaintiff, and the classes he seeks to represent have experienced extreme harm, including loss of compensation, wages, back and front pay, and other employment benefits. MarketStar delegates to AON aspects of the hiring process but retains ultimate control, requiring the use of biased assessments and/or tests to process and interpret an applicant's qualifications and decide whether the applicant should be accepted or rejected.

MarketStar's utilization of these screening tools relies upon subjective practices which have caused disparate impact and disparate treatment to applicants who are African-American and/or disabled. Applicants who are not members of these protected groups and who are similarly situated to the Representative Plaintiff, have not been subjected to such discriminatory treatment.

A. COMMON QUESTIONS OF LAW AND FACT

11. The prosecution of the claims of the Representative Plaintiff requires adjudication of numerous questions of law and fact common to his individual claims and those of the putative classes he seeks to represent. The common questions of law would include, inter alia: (1) whether MarketStar's enforcement of AON's screening products discriminated against the aforementioned applicants because of their race and/or disability with regards to hiring; (2) whether compensatory and punitive damages, injunctive relief, and other equitable remedies for the class are warranted; and (3) whether MarketStar discriminated against the aforementioned protected groups in other terms

and conditions of employment. The details of the Representative Plaintiff's claims are encompassed within the claims prosecuted on behalf of the class and set forth in this Complaint.

B. TYPICALITY

12. The claims of the Representative Plaintiff are typical of those of the members of the class. The Representative Plaintiff and all class members have been and are similarly adversely affected by the systemic racially discriminatory practices complained of herein. Specifically, the representative claims, like those of the class members, arise out of Defendant's pervasive discriminatory conduct with regard to aforementioned discrimination in hiring and other terms and conditions of employment. The relief necessary to remedy the claims of the Representative Plaintiff is the same relief that is necessary to remedy the claims of the putative class members in this case. The Representative Plaintiff seeks the following relief for individual claims and class claims asserted herein: (1) declaratory judgment that Defendant has engaged in systemic discrimination against African-Americans and the disabled; (2) a permanent injunction against such continuing discrimination; (3) injunctive relief which reforms MarketStar's hiring policies, practices and procedures so that the Representative Plaintiff and the class members will be able to compete fairly in the future for jobs and enjoy terms and conditions of employment traditionally afforded similarly situated employees outside of the protected categories; (4) backpay, front pay, compensatory damages, and other equitable remedies necessary to make the Plaintiff, and the class, whole from MarketStar's past discrimination; and, (5) attorneys' fees, costs, and expenses.

C. NUMEROSITY AND IMPRACTICABILITY OF JOINDER

13. The class that the Representative Plaintiff seeks to represent is too numerous to make joinder practicable. The proposed class consists of numerous former, current, and future applicants

who have been denied employment due to MarketStar's discriminatory enforcement of AON's screening products. MarketStar's pattern or practice of discrimination also makes joinder impracticable by making it impractical and inefficient to identify many members of the class prior to the determination of the merits of MarketStar's class wide liability. Thus, the number of Class members is currently indeterminate, but is certainly numerous.

D. ADEQUACY OF REPRESENTATION

14. The Representative Plaintiff will fairly and adequately protect the interests of the class inasmuch as they are broadly representative, as reflected in the preceding paragraphs. There are no conflicts of interest present with the members of the proposed class as each would benefit from the imposition of a remedy for the Defendant's discriminatory employment practices. The Representative Plaintiff has retained counsel experienced in litigating major class actions in the field of employment discrimination, and who are prepared and able to meet the time and fiscal demands of class action litigation of this size and complexity. The combined interest, experience, and resources of the Representative Plaintiff and his counsel to litigate competently the individual and class claims of employment discrimination at issue satisfy the adequacy of representation requirement under Fed.R.Civ.P. 23(a)(4).

E. EFFICIENCY OF CLASS PROSECUTION OF COMMON CLAIMS

15. Certification of a class of similarly-situated applicants is the most efficient and economical means of resolving the questions of law and fact that are common to the individual claims of the Representative Plaintiff and the proposed class. The individual claim of the Representative Plaintiff requires resolution of the common question of whether Defendant has engaged in a systemic pattern of discrimination against African-Americans and the disabled. The

Representative Plaintiff seeks remedies to undo the adverse effects of such discrimination in his own life and career. The Representative Plaintiff has standing to seek such relief because of the adverse effect that such discrimination has had on him individually and on the putative classes he seeks to represent, in general. In order to gain such relief for himself, as well as for the putative class members, the Representative Plaintiff will first establish the existence of systemic discrimination as the premise of the relief they seek. Without class certification, the same evidence and issues would be subject to re-litigation in a multitude of individual lawsuits with an attendant risk of inconsistent adjudications and conflicting obligations. Certification of the subclasses affected by the common questions of law and fact is the most efficient and judicious means of presenting the evidence and arguments necessary to resolve such questions for the Representative Plaintiff, the class and the Defendant. The Representative Plaintiff's individual and class claims are premised upon the traditional bifurcated method of proof and trial for systemic disparate treatment claims of the type at issue in this complaint. Such a bifurcated method of proof and trial is the most efficient method of resolving such common issues.

F. CERTIFICATION IS SOUGHT PURSUANT TO FED. R. CIV. P. 23(b)(2)

16. MarketStar has acted on grounds generally applicable to the Representative Plaintiff and the proposed class by adopting and following systemic practices and procedures that discriminate on the basis of race and/or disability. MarketStar's hiring practices are regularly used to discriminate on the basis of race and/or disability. MarketStar has refused to act on grounds generally applicable to the putative class by: (1) refusing to adopt or follow screening productions and selection procedures which do not systemically discriminate on the basis of race and/or disability. MarketStar's discriminatory hiring practices have made appropriate final injunctive relief

and declaratory relief with respect to the class as a whole. The injunctive relief and declaratory relief are the predominate reliefs sought because they are both the culmination of the proof of MarketStar's individual and class-wide liability at the end of Stage I of a bifurcated trial and the essential predicate for the Representative Plaintiff and the class members entitlement to monetary and non-monetary remedies at Stage II of such a trial. Declaratory and injunctive relief flow directly and automatically from proof of the common questions of law and fact regarding the existence of systemic discrimination against individuals on the basis of race and/or disability. Such relief is the factual and legal predicate for the Representative Plaintiff's and the class members entitlement to injunctive and equitable remedies caused by such systemic discrimination.

G. ALTERNATIVELY CERTIFICATION IS SOUGHT PURSUANT TO FED. R. CIV. P. 23(b)(3)

17. The common issues of fact and law affecting the claims of the Representative Plaintiff and proposed class members, including, but not limited to, the common issues identified above, predominate over any issues affecting only individual claims. A class action is superior to other available means for the fair and efficient adjudication of the claims of the Representative Plaintiff and members of the proposed class. The cost of proving MarketStar's pattern or practice of discrimination makes it impracticable for the named Plaintiff and members of the proposed class to control the prosecution of their claims individually. The Northern District of Illinois is the most logical forum in which to litigate the claims of the Representative Plaintiff and the proposed class in this case because AON's home office is here and MarketStar engages in or ratifies illegal conduct adversely affecting the Plaintiff here.

H. ALTERNATIVELY, CERTIFICATION IS SOUGHT PURSUANT TO FED. R. CIV. P. 23(c)(4) FOR INJUNCTIVE AND DECLARATORY RELIEF.

18. Alternatively, claims for injunctive and declaratory relief for the Injunctive Relief Class are properly certified under Federal Rule of Civil Procedure 23(c)(4) because such claims present only common issues, the resolution of which would advance the interests of the parties in an efficient manner.

I. ALTERNATIVELY, CERTIFICATION IS SOUGHT PURSUANT TO FED. R. CIV. P. 23(c)(4) FOR CLASS WIDE LIABILITY.

19. Alternatively, class wide liability claims are properly certified under Federal Rule of Civil Procedure 23(c)(4) for the Classes because such claims present only common issues, the resolution of which would advance the interests of the parties in an efficient manner.

J. PUNITIVE DAMAGES MAY ALTERNATIVELY BE CERTIFIED PURSUANT TO FED.R.CIV.P. 23(b)(2).

20. Punitive damages liability may alternatively be certified under Federal Rule of Civil Procedure 23(b)(2) because such relief focuses on the conduct of MarketStar and not the individual characteristics of the Plaintiff and are an allowable form of incidental monetary relief.

HOW MARKETSTAR'S ALGORITHMIC DISCRIMINATION WORKS

21. Defendant MarketStar unlawfully enforces “algorithmic decision-making tools” provided by AON that power applicant screening systems that in turn determine whether MarketStar should accept or reject an application for employment based on the individual’s race and/or disability.

22. AON's own technical documentation and validation studies show that these tests produce statistically significant and practically meaningful score gaps that disfavor

African-American applicants and applicants with mental-health disabilities. Despite this, MarketStar mandates their use without studying their impact or implementing alternatives, willfully perpetuating bias. AON has never studied whether the tests adversely affect applicants with autism, PTSD, anxiety, depression, or OCD, yet MarketStar continues to require them as "valid" and "fair."

23. Because MarketStar uses these tests to generate numeric "fit" scores, percentile ranks, and automated pass/fail recommendations that it routinely relies on to advance or reject candidates, the racial and disability-based score disparities translate directly into racial and disability-based rejection disparities under MarketStar's control.

24. MarketStar does not merely use résumé-screening software; it mandates pre-employment testing from AON as a core hiring requirement.

25. MarketStar pays AON to administer personality inventories (ADEPT-15), cognitive-ability games (gridChallenge, GAME), situational-judgment tests, and other assessments that produce quantitative scores and automated hiring recommendations, which MarketStar enforces without question.

26. MarketStar's own hiring practices describe these tests as "AI-enhanced," "machine-learning powered," and capable of "automatically dispositioning candidates" and "reducing time-to-hire," yet MarketStar ignores the embedded biases. MarketStar requires artificial intelligence and machine-learning algorithms in the scoring, norming, weighting, and reporting of these tests so that it can rank and reject applicants at scale without human review.

27. AON's technical manuals openly report that: Black applicants score substantially underperform White and Asian applicants on GAME and gridChallenge ($d \sim 0.5$, statistically significant at $p < .05$), but MarketStar disregards this data.

28. Black applicants' mean scores on these tests fall below the 4/5ths threshold recognized by the Uniform Guidelines on Employee Selection Procedures as presumptive evidence of adverse impact, yet MarketStar enforces them anyway.

29. ADEPT-15 produces systematic score differences on multiple personality dimensions that are known to correlate with common mental-health conditions (e.g., lower "Emotional Stability" and higher "Sensitivity" scores among individuals with depression, anxiety, PTSD, and autism spectrum traits), and MarketStar uses these without mitigation.

30. Despite these documented disparities, MarketStar does not conduct local validation studies, does not warn applicants of potential violations of Title VII or the ADA, and does not offer any alternative non-discriminatory selection procedure.

31. Instead, MarketStar markets its hiring as "efficient" and "data-driven," representations that are materially false given the known biases.

32. MarketStar further amplifies discrimination by:

- a. Converting raw personality scores into directional "recruitment match scores" (1–100) in which higher is always presented as better;
- b. Combining multiple test scores into ranked "multi-merit lists" that are exported directly into its applicant-tracking systems;
- c. Applying proprietary "norm groups" that can mask or magnify subgroup differences; and,
- d. Setting automated cutoffs that reject applicants whose scores fall below a chosen percentile.

33. The result is a fully automated, high-volume rejection pipeline under MarketStar's control that operates as a modern-day "digital gatekeeper," systematically screening out African-American applicants and applicants with disabilities at the earliest stage of the hiring

process.

34. The selection tools, assessments, and/or tests enforced by MarketStar, utilizing AON's products, in making selection decisions-to include screening and hiring applicants discriminate on the basis of race in violation of §703(k) of Title VII, 42 U.S.C. §2000e-2(k).

35. Upon information and belief, these processes disparately impact African-American applicants because they have the effect of disproportionately excluding African-Americans from jobs at MarketStar.

36. Furthermore, these selection procedures are not job-related, nor are they consistent with any business necessity.

37. Title VII prohibits discrimination by employers. Section 703(a) of the Act, 42 U.S.C. § 2000e-2(a), reads: "it shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin."

38. Section 701(b) of the Act, 42 U.S.C. § 2000e(b), defines the term "employer" as: a person engaged in an industry affecting commerce who has fifteen or more employees... and any agent of such a person.

39. MarketStar is an employer as that term is defined by Title VII because it hires employees and delegates aspects of hiring to agents like AON but retains control over the process.

40. Upon information and belief, Mr. Jones and other African-Americans have been intentionally discriminated against by MarketStar because of their race (African-American), in violation of Title VII of the Civil Rights Act of 1964, as amended.

41. Furthermore, the screening tools, to include assessments and tests, required by MarketStar discriminate on the basis of disability in violation of the ADA Amendments Act of 2008 (ADAAA).

42. Upon information and belief, these screening tools disparately impact disabled applicants because they have the effect of disproportionately excluding individuals with disabilities from MarketStar jobs. Furthermore, the screening tools are not job-related, nor are they consistent with any business necessity.

CHALLENGED DISCRIMINATORY PRACTICES

43. Mr. Jones is challenging MarketStar's use of these common discriminatory screening tools per se, and not merely the individualized manifestations of their use, the fact that the common components may vary to some small degree or be applied differently is of no consequence.

44. Individuals impacted the same way by MarketStar's processes number in the thousands if not tens of thousands.

45. The selection tools, assessments, and/or tests utilized by MarketStar in making selection decisions-to include screening and hiring applicants discriminate on the basis of race in violation of §703(k) of Title VII, 42 U.S.C. §2000e-2(k).

46. Upon information and belief, these processes disparately impact African-American applicants because they have the effect of disproportionately excluding African-Americans from jobs.

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50. Upon information and belief, Mr. Jones and other African-Americans have been intentionally discriminated against by MarketStar because of their race (African-American), in violation of Title VII of the Civil Rights Act of 1964, as amended.

51. Furthermore, the screening tools, to include assessments and tests, required by MarketStar discriminate on the basis of disability in violation of the ADA Amendments Act of 2008 (ADAAA).

52. Upon information and belief, these screening tools disparately impact disabled applicants because they have the effect of disproportionately excluding individuals with disabilities. Furthermore, the screening tools are not job-related, nor are they consistent with any business necessity.

53. Upon information and belief, MarketStar’s contracted algorithmic decision-making tools include cognitive assessments such as gridChallenge and GAME, which measure working memory, and personality assessments such as ADEPT-15.

54. Independent statistical analysis of these tools demonstrates significant adverse impact on protected groups, including African-Americans and individuals with disabilities, yet MarketStar enforces them.

55. For the GAME assessment, based on a 2016 sample of approximately 8,000 test-takers, Black or African American individuals scored lower on average than individuals of other races, with disparities that are statistically significant at the .05 level and of practical significance (Cohen's *d* effect size of approximately 0.5 compared to White test-takers, indicating moderate disparities).

56. The mean score for Black test-takers was less than 4/5 the mean score for the highest-scoring group under the Uniform Guidelines on Employee Selection Procedures, further evidencing adverse impact, which MarketStar ignores.

57. For the gridChallenge assessment, based on a 2018 sample of 350 test-takers, Black or African American individuals scored lower on average than individuals of other races, with the difference between Black and White test-takers statistically significant at the .05 level (Cohen's *d* effect size of approximately 0.5, indicating moderate disparities).

58. The mean score for Black test-takers was less than 4/5 the mean score for the highest-scoring group. These disparities raise serious concerns about disparate impact, particularly given the similarities between gridChallenge and GAME, yet MarketStar mandates their use.

59. Upon information and belief, personality tests such as ADEPT-15 are likely to screen out individuals with mental health conditions such as autism, PTSD, depression, and anxiety, as they may penalize responses indicative of such disabilities, leading to disparate impact, and MarketStar enforces this without safeguards.

60. MarketStar provides no analysis of subgroup differences related to test takers with mental or cognitive disabilities for any of its assessments, despite existing literature on algorithmic auditing for disability bias.

61. This omission further supports the inference that MarketStar's tools disproportionately impact disabled applicants, including those with mental health conditions like the Plaintiff's autism, PTSD, depression, and anxiety.

62. MarketStar requires two online assessments—Adaptive Employee Personality Test (“ADEPT-15”) and “gridChallenge”—that (1) contain disability-related inquiries and/or constitute a preemployment medical examination; (2) screen out or tend to screen out a person or people with disabilities and/or identify disabilities instead of accurately identifying what the assessments purport to measure; and/or (3) have a disparate impact on the basis of race.

63. MarketStar acknowledges in its public statements that it uses advanced AI tools in hiring, but admits risks of bias without adequate oversight.

64. However, MarketStar admits that certain use cases of artificial intelligence in its business processes could pose operational, legal or reputational risks where there may be incorrect outputs or bias in those systems or processes, or where there is inadequate human oversight.

65. Despite these known risks, MarketStar deploys AI-embedded tools in its applicant screening processes without sufficient safeguards to prevent bias and discrimination.

MarketStar's Products and Services

66. MarketStar provides sales and marketing services to medium-sized and large, global organizations that span numerous industry categories, including professional and business services, financial services, healthcare, education, government, technology, media, retail, and

hospitality.

67. Firms outsource to MarketStar, and as part of their operations, MarketStar uses applicant screening services from AON to hire for these roles.

68. MarketStar processes a massive number of applications by requiring automated screening tools that rely on artificial intelligence.

69. Upon information and belief, MarketStar “embeds artificial intelligence (‘AI’) and machine learning (‘ML’) into its algorithmic decision-making tools, enabling these applications to make hiring decisions.”

70. MarketStar's applicant screening tools integrate neuroscience-inspired gamified assessments, such as gridChallenge, that use AI and machine learning to score cognitive traits, in combination with existing employee referrals and recommendations.

71. According to Jones, these tools 'determine whether MarketStar should accept or reject an application' and are designed in a manner that reflects MarketStar's biases and relies on biased training data. An applicant can advance in the hiring process only if they get past MarketStar's screening algorithms.

Jones's Qualifications and Experience with MarketStar

72. Jones is an African American male with a bachelor's degree in Computer Graphics from Westwood College.

73. He is Server+ certified. Jones suffers from autism, PTSD, adjustment disorder with mixed anxiety and depressed mood, OCD, and chronic depression.

74. Since 2010, he has worked in various IT help-desk, sales, and customer-service oriented jobs.

75. For example, Jones has experience as an Inside Sales Account Manager with Axis Communications, and a Customer Service Representative with the Internal Revenue Service.

77. Between November 2022 and May 2023, Jones was actively searching for employment primarily within the field of technical sales. During his search, he came across a Sales Engineer for Logitech position at MarketStar on LinkedIn.

78. From his understanding, the role was to use technical expertise to provide pre- and post-sales support to clients and MarketStar's sales teams.

79. The sales engineer would work directly with an internal team of six to twelve sales representatives and would be expected to provide the technical information necessary to successfully market Logitech products, create sales kits, present on and demonstrate Logitech's conference room technologies, and to overall be a subject matter expert on Logitech products for sales.

80. As MarketStar outsources sales solutions to several companies, the sales engineer for Logitech would also serve as a point of contact between the two organizations.

81. This means that the sales engineer would be a MarketStar employee but much of their work would be outsourced to Logitech.

82. Based on his experience, Jones believed himself to be well qualified for the position. Prior to applying to MarketStar, he worked in technical sales as an inside sales account manager at Axis Communications for over a year and as a sales engineer at Fortress Security for four years.

83. In his time at Axis, he facilitated communications between internal and external sales teams and demonstrated products, including software portfolio and suite of tools used for mapping.

84. Jones's application process generally proceeded as follows: Jones would see a job posting on a third-party website (e.g., LinkedIn), and clicking on the job link redirected him to

MarketStar's platform, which uses AON tools.

85. The platform then prompted Jones to create a username and password to access the employment opportunity, after which he either uploaded his resume or entered his information manually.

86. Jones's resume includes his graduation from Westwood College and his employment history.

87. On February 7, 2023, Jones applied to the Sales Engineer for Logitech position and received an application confirmation email from MarketStar.

88. On February 13, 2023, MarketStar emailed Jones inviting him to take assessments provided by AON.

89. Jones took the assessments on the same day, including the ADEPT-15 and gridChallenge. He found the assessments odd and unrelated to the job requirements.

90. Numerous positions at MarketStar also required him to take an AON-branded assessment and/or personality test.

91. Jones alleges that these assessments and personality tests are likely to reveal mental health disorders or cognitive impairments, and that those like Jones who suffer from autism, PTSD, depression, and anxiety are likely to perform worse on these assessments and be screened out by MarketStar.

92. MarketStar's contracted screening tools then use the information from those tests and assessments to evaluate an applicant's qualifications and recommend whether the applicant should be accepted or rejected.

93. Jones had interviews with Jennifer Hood (recruiter) and MarketStar representatives Jody Young (Director of Channel Sales) and Shae Hill and Rich (sales engineers).

94. The interviews went well, with positive feedback, but he received no further response after February 27, 2023, despite follow-ups.

95. Upon information and belief, the assessments impacted the final rejection due to his race and disabilities, as enforced by MarketStar.

96. Despite his qualifications, Jones was denied employment for the application that he submitted to MarketStar.

97. For example, when Jones applied via MarketStar's platform for a Sales Engineer - Logitech position, the qualifications for which allegedly mirrored his prior experience as an Inside Sales Account Manager with Axis Communications. His application was rejected by MarketStar.

98. Jones alleges that MarketStar's algorithmic decision-making tools discriminate against job applicants who are African American and/or disabled.

99. He asserts federal law claims under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e et seq., and the ADA Amendments Act of 2008 ("ADA"), 42 U.S.C. § 12101 et seq., for intentional discrimination on the basis of race and disparate impact discrimination on the basis of race and disability.

CLASS CLAIMS

Count One

Intentional Employment Discrimination on the Basis of Race in Violation of Title VII of the Civil Rights Act of 1964

100. Representative Plaintiff restates and incorporates by reference all applicable

paragraphs above as part of this Count of Complaint.

101. MarketStar as an employer has intentionally discriminated against the Representative Plaintiff and the class he seeks to represent with regards to selection procedures and other terms and conditions of employment because of their race, African-American, in violation of Title VII of the Civil Rights Act of 1964.

102. MarketStar's conduct has been intentional, deliberate, willful and conducted with disregard for the rights of the Plaintiff and members of the proposed class.

103. By reason of MarketStar's discriminatory employment practices, the Representative Plaintiff and the proposed class members have experienced extreme harm, including loss of compensation, wages, back and front pay, and other employment benefits, and, as such, are entitled to all legal and equitable remedies available under Title VII of the Civil Rights Act of 1964.

104. MarketStar controls access to employment and withholds Class Members from gaining employment. Prospective applicants cannot gain employment without passing MarketStar's biased screening.

105. MarketStar utilizes AON's "AI", "ML", assessments, tests, and other screening tools in a discriminatory fashion that blocks African-American applicants from employment opportunities.

106. MarketStar has also interfered with the present and future employment prospects of class members that have used its application platform in violation of Title VII.

107. MarketStar and AON are liable under Title VII for its discriminatory treatment of the class members because it has interfered with their opportunity to gain employment.

Count Two

**Disparate Impact Discrimination on the
Basis of Race and Disability in Violation of Title VII
of the Civil Rights Act of 1964, and the ADA Amendments Act of 2008**

108. Representative Plaintiff restates and incorporates by reference all applicable paragraphs above as part of this Count of the Complaint.

109. The algorithmic decision-making tools that MarketStar uses to screen out African-American and disabled applicants make it directly responsible under Title VII and the ADA.

112. For purposes of these statutes, MarketStar is an employer because (1) it makes hiring decisions and (2) it has the ability to interfere with and control access to employment opportunities.

113. MarketStar utilizes AON's discriminatory screening tools that consciously or unconsciously discriminate against applicants on the basis of race and/or disability.

114. There is no business necessity justifying the disparate impact these screening tools have on individuals in these protected categories.

115. Because there are no guardrails to regulate MarketStar's conduct, the utilization of AON's algorithmic decision-making tools to screen out applicants provide a ready mechanism for discrimination.

116. MarketStar's utilization of AON's algorithmic decision-making tools discriminated against the Representative Plaintiff and the classes he seeks to represent both within and outside the liability period in this case.

117. As a direct and proximate result of MarketStar's and AON's discriminatory policies and/or practices as described above, the Representative Plaintiff and the classes he seeks to represent have suffered damages including, but not limited to, lost past and future income, compensation, and

benefits.

Count Three

Intentional Employment Discrimination in Violation of the ADA Amendments Act of 2008

118. Representative Plaintiff restates and incorporates by reference all applicable paragraphs above as part of this Count of Complaint.

119. MarketStar as an employer has intentionally discriminated against the Representative Plaintiff and the class he seeks to represent with regards to selection procedures and other terms and conditions of employment because of their disabilities in violation of the ADA Amendments Act of 2008.

120. MarketStar's conduct has been intentional, deliberate, willful and conducted with disregard for the rights of the Plaintiff and members of the proposed class.

121. By reason of MarketStar's discriminatory employment practices, the Representative Plaintiff and the proposed class members have experienced extreme harm, including loss of compensation, wages, back and front pay, and other employment benefits, and, as such, are entitled to all legal and equitable remedies available under the ADA Amendments Act of 2008.

122. MarketStar controls the decision to either permit or withhold Class Members from gaining employment. Prospective applicants cannot gain employment without accessing MarketStar's platform.

123. MarketStar utilizes AON's "AI", "ML", assessments, tests, and other screening tools in a discriminatory fashion that blocks disabled applicants from employment opportunities.

124. MarketStar has also interfered with the present and future employment prospects of

class members that have used its application platform in violation of the ADA.

125. MarketStar and AON are liable under the ADA for their discriminatory treatment of the class members because it has interfered with their opportunity to gain employment.

Count Four

Unlawful Medical Examinations and Disability-Related Inquiries in Violation of the ADA

126. Representative Plaintiff restates and incorporates by reference all applicable paragraphs above as part of this Count of the Complaint.

127. MarketStar's utilization of AON's algorithmic decision-making tools, including ADEPT-15 and gridChallenge, constitute pre-employment medical examinations and/or contain disability-related inquiries in violation of 42 U.S.C. § 12112(d)(2).

128. These assessments are designed to reveal mental health impairments such as autism, PTSD, depression, and anxiety.

129. MarketStar administers these assessments before an offer of employment is extended.

130. These assessments are not job-related and consistent with business necessity.

131. As a direct and proximate result of MarketStar's and AON's unlawful medical examinations and disability-related inquiries, the Representative Plaintiff and the classes he seeks to represent have suffered damages including, but not limited to, lost past and future income, compensation, and benefits.

Count Five

Intentional Race Discrimination in Violation of 42 U.S.C. § 1981

132. Representative Plaintiff restates and incorporates by reference all applicable

paragraphs above as part of this Count of the Complaint.

133. MarketStar as an employer has intentionally discriminated against the Representative Plaintiff and the class he seeks to represent with regards to selection procedures and other terms and conditions of employment because of their race, African-American, in violation of 42 U.S.C. § 1981.

134. MarketStar's conduct has been intentional, deliberate, willful and conducted with disregard for the rights of the Plaintiff and members of the proposed class.

135. By reason of MarketStar's and AON's discriminatory employment practices, the Representative Plaintiff and the proposed class members have experienced extreme harm, including loss of compensation, wages, back and front pay, and other employment benefits, and, as such, are entitled to all legal and equitable remedies available under 42 U.S.C. § 1981.

136. MarketStar controls the decision to either permit or withhold Class Members from gaining employment.

137. Prospective applicants cannot gain employment without accessing MarketStar's platform and submitting to testing by AON.

PRAYER FOR RELIEF

WHEREFORE, the Representative Plaintiff and the Proposed Classes pray for relief as follows:

1. Certification of the case as a class action on behalf the proposed subclasses;
2. Designation of Plaintiff as representative of the subclasses;
3. Designation of Plaintiff's Counsel of record as Class Counsel;
4. A declaratory judgment that the practices complained of herein are unlawful and violate Title VII, 42 U.S.C. § 1981, and the ADA; and

5. A preliminary and permanent injunction against the Defendants and their officers, agents, successors employees, representatives, and any and all persons acting in concert with them from engaging in each of the unlawful policies, practices, customs, and usages set forth herein;

6. An order that the Defendants institute and carry out policies, practices, and programs that provide equal employment opportunities for all minorities, and that it eradicate the effects of its past and present unlawful employment practices;

7. For back pay, front pay and other monetary relief according to proof (including interest and benefits);

8. For all damages sustained as a result of the Defendants' conduct according to proof;

9. For compensatory damages, nominal damages, and liquidated damages according to proof;

10. For exemplary and punitive damages in an amount commensurate with the Defendants' ability to pay, to deter future conduct, and to set an example for others;

11. For reasonable attorneys' fees and cost including under to the extent allowable by law;

12. Pre-judgment and post-judgment interest, as provided by law;

13. For such ancillary orders, decrees and such further legal and equitable relief as may be necessary to enjoin and restrain the improper conduct and wrongdoing of Defendants; and,

14. For such other and further relief as the Court deems proper.

JURY TRIAL DEMANDED

Respectfully submitted,

/s/Roderick T. Cooks

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Roderick T. Cooks (*pro hac vice forthcoming*)
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