

IN THE CIRCUIT COURT OF COLE COUNTY MISSOURI

CORNELL COLTON,
Individually And On Behalf Of
All Others,

Plaintiffs,

vs.

HIBBETT SPORTING GOODS, INC.
Registered Agent:
CSC-Lawyers Incorporating Service Co.
221 Bolivar Street
Jefferson City, MO 65101
Defendant.

Case No.:

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW the Plaintiff, Cornell Colton, by and through his attorneys, and on behalf of himself, the Putative Classes set forth below, and in the public interest, brings the following class action Petition against Defendant, Hibbett Sporting Good, Inc., ("Defendant"), pursuant to the Fair Credit Reporting Act ("FCRA").

PRELIMINARY STATEMENTS

1. Plaintiff brings this action against Defendant for violations of the FCRA.
2. Defendant routinely obtains and uses information in consumer reports (as a "consumer report" is defined pursuant to the FCRA) to conduct background checks on prospective and existing employees.
3. Defendant relies on information in consumer reports to make decisions regarding prospective or current employees.
4. Defendant relies on information in a consumer report, in whole or in part, as a basis for adverse employment action; such as a refusal to hire and/or termination.
5. Based on the foregoing violations, Plaintiffs assert FCRA claims against

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Defendant on behalf of himself and a class of Defendant's employees and prospective employees.

6. Plaintiff asserts a FCRA claim under 15 U.S.C. § 1681(b)(3)(A) individually and on behalf of all other individuals who suffered an adverse employment action that was based in whole or part on information contained in a consumer report.
7. Based on Defendant's violations of the FCRA, as described above, Plaintiff asserts FCRA claims on behalf of himself and all other individuals whose rights under the FCRA were violated as may be revealed during this proceeding.
8. On behalf of himself and the putative class, Plaintiff seeks statutory damages, punitive damages, costs and attorneys fees, and all other relief available pursuant to the FCRA.

PARTIES

9. Plaintiff Colton is a resident of St. Louis, Missouri. Plaintiff is a member of the Putative Classes defined below.
10. Defendant is a non-resident foreign company formed under the laws of Delaware doing business in Missouri and throughout the United States.

JURISDICTION AND VENUE

11. This court has jurisdiction over Plaintiff's FCRA claim pursuant to 15 U.S.C. § 1681p and Article V, Section 14(a) of the Constitution of Missouri.
12. Venue is proper in this Court pursuant to R.S.Mo. 508.010(4).

FACTUAL ALLEGATIONS

13. Plaintiff Colton applied for work with Defendant online on or about June 2015.
14. Defendant called Plaintiff in for an interview.

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15. Approximately four days after the interview the Defendant contacted Plaintiff and told him to go to their website and complete the required paperwork.
16. Plaintiff completed the paperwork online and was offered the job.
17. Defendant obtained a consumer report on Plaintiff through Talx Corporation.
18. Plaintiff worked approximately one hour the first day and was called to the office by the manager.
19. Plaintiff was told he had a conviction for assault, because of the information from his background check he could no longer work for the Defendant and had to leave the store immediately.
20. Plaintiff was not provided with a reasonable amount of time to challenge any inaccuracy that may have been present within the consumer report.
21. Plaintiff was not provided with an FCRA summary of rights prior to the adverse action that was based upon his consumer report.
22. Defendant is aware of the FCRA.
23. Defendant has knowledge that it must comply with the FCRA.
24. Defendant is required to obtain all consumer reports for employment purposes in accordance with the FCRA.
25. Despite having knowledge of the requirements of the FCRA, Defendant failed to comply with the FCRA.
26. Defendant's failure to provide the Plaintiff with a copy of the consumer report, a reasonable notice period in which to challenge any inaccuracy in the consumer report, or a written description of rights under the FCRA prior to the adverse action, constitutes multiple violations of the FCRA.

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27. Defendant's violations of the FCRA combined with its knowledge of the requirements of the FCRA is evidence that the Defendant's violations were willful.

CLASS ACTION ALLEGATIONS

28. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.
29. Plaintiff asserts the following adverse action class defined as:

Proposed Adverse Action Class: All employees or prospective employees of Defendant in the United States that suffered an adverse employment action on or after December 2, 2013, that was based, in whole or in part, on information contained in a consumer report, and who were not provided a copy of such report, a reasonable notice period in which to challenge any inaccuracy in the consumer report, and/or a written description of their rights in accordance with the FCRA in advance of said adverse employment action.

Numerosity

30. The proposed class is so numerous that joinder of all class members is impracticable. Defendant regularly obtains and uses information in consumer reports to conduct background checks on prospective employees and existing employees. Given the number of employees working for the Defendant, Plaintiffs believe that during the relevant time period, hundreds of Defendant's employees and prospective employees would fall within the definition of the class.

Common Questions of Law and Fact

31. Virtually all of the issues of law and fact in this class action or, to the class predominate over any questions affecting individual class members. Among the questions of law and fact common to the class are:
- a. Whether Defendant uses consumer report information to conduct background checks on employees and prospective employees;
 - b. Whether Defendant violated the FCRA by taking adverse action against Plaintiff and other members of the Adverse Action class on the basis of information in a consumer report, without first providing a copy of the

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report to the affected individuals;

- c. Whether the Defendant violated the FCRA by failing to provide the Plaintiff and other members of the Adverse Action Class with a reasonable amount of time to cure any inaccuracy within the consumer report prior to the adverse employment action;
- d. Whether Defendant's violations of the FCRA were willful;
- e. The proper measure of statutory damages and punitive damages.

Typicality

32. Plaintiff's claims are typical of the members of the proposed class. Defendant typically uses consumer reports to conduct background checks on employees and prospective employees. The FCRA violations suffered by Plaintiff are typical of those suffered by other class members. Defendant typically uses consumer reports to conduct background checks on employees and prospective employees, but fails to provide the consumer report before taking an adverse employment action based on information contained in said report. The FCRA violations suffered by Plaintiff are typical of those suffered by other class members and the Defendant treated Plaintiff consistent with other Putative Class members in accordance with its standard policies and practices.

Adequacy of Representation

33. Plaintiff, as representative of the class, will fairly and adequately protect the interests of the class and has no interest that conflict with or are antagonistic to the interest of the class members. Plaintiff has retained attorneys competent and experienced in class action litigation. No conflict exists between Plaintiff and members of the class.

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Superiority

34. A class action is superior to any other available method for the fair and efficient adjudication this controversy, and common questions of law and fact overwhelmingly predominate over individual questions that may arise.
35. This case is maintainable as a class action under Rule 52 of the Missouri Rules of Civil Procedure because prosecution of actions by or against individual members of the putative class would result in inconsistent or varying adjudications and create the risk of incompatible standards of conduct for Defendant. Further, adjudication of each individual class member's claim as a separate action will potentially be dispositive of the interest of other individuals not a party to such action, impeding their ability to protect their interests.
36. This case is maintainable as a class action under Rule 52 of the Missouri Rules of Civil Procedure because Defendant has acted or refused to act on grounds that apply generally to the class, so that any final relief is appropriate respecting the class as a whole.
37. Class certification is also appropriate under Rule 52 of the Missouri Rules of Civil Procedure because questions of law and fact common to the putative class predominate over any questions affecting only individual members of the putative class, and because a class action superior to other methods for the fair and efficient adjudication of this litigation. Defendant's conduct described in this Complaint stems from common and uniform policies and practices, resulting in common violations of the FCRA. Members of the Putative Class do not have an interest in pursuing separate actions against the Defendant, as the amount of each class

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member's individual claims is small compared to the expense and burden of individual prosecution. Class certification also will obviate the need for unduly duplicative litigation that might result the inconsistent judgments concerning Defendant's practices. Moreover, management of this action as a class action will not present any likely difficulties. In the interests of justice and judicial efficiencies, it would be desirable to concentrate the litigation of all putative class members' claims in a single forum.

38. Plaintiff intends to send notice to all members of the putative class to the extent required by Rule 52 of the Missouri Rules of Civil Procedure. The names and address of the potential class members are available from Defendant's records.

CLAIM I

Adverse Action Violations

39. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.
40. Defendant obtained a "consumer report," as defined by the FCRA, concerning the Plaintiff from First Advantage.
41. Defendant used a consumer report, as defined by the FCRA, to take adverse employment action against Plaintiff, and on information and belief, other members of the adverse action class.
42. Defendant violated the FCRA by failing to provide Plaintiff, and other adverse action class members, with a copy of the consumer report that was used to take adverse employment action against them prior to the adverse action.
43. Defendant violated the FCRA by failing to provide the Plaintiff and other adverse action class members with a reasonable time to cure any inaccuracies within the

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consumer reports prior to the adverse action.

44. The foregoing violations were willful. Defendant acted in deliberate or reckless disregard of its obligations and rights of Plaintiff and other adverse action class members under the provisions of the FCRA. Defendant's willful conduct is reflected by, among other things, the following facts:

- a. Defendant has access to legal advice through outside employment counsel;
- b. Defendant committed multiple violations of the FCRA by not providing the Plaintiff with a copy of the consumer report and not providing the Plaintiff with a reasonable notice period to cure inaccuracies before taking adverse employment action as mandated by the FCRA;
- c. The Defendant has ignored regulatory guidance from FTC Informal Staff Opinions and the unambiguous language of the FCRA; and
- d. 15 U.S.C. §1681-1681y, requires credit agencies to provide notice to users of consumer reports of the users legal obligations under the FCRA prior to the procurement of consumer reports.

45. Plaintiff and the adverse action class are entitled to statutory damages of not less than \$100 and not more than \$1000 for each and every one of these violations, pursuant to 15 U.S.C. §1681n(a)(1)(A).

46. Plaintiff and the adverse action class members are also entitled to punitive damages for these violations, pursuant to 15 U.S.C. §1681n(a)(2).

47. Plaintiff and the adverse action class members are further entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C. §1681n(a)(3).

WHEREFORE, the Plaintiff respectfully requests that this Court issue an Order for the following:

- a. An Order that this action may proceed as a class action under Rule 52 of the Missouri Rules of Civil Procedure;

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- b. Order designating Plaintiff as class representative and designating Plaintiff's counsel as counsel for the Putative Class;
- c. Order directing proper notice to be mailed to the Putative Classes at Defendant's expense;
- d. Order finding that Defendant committed multiple, separate violations of the FCRA;
- e. Order finding that Defendant acted willfully in deliberate or reckless disregard of Plaintiff's rights and its obligations of the FCRA;
- f. Order awarding statutory damages and punitive damages as provided the FCRA;
- g. Order awarding reasonable attorneys' fees and costs as provided by the FCRA; and
- h. Order granting other and further relief, in law or equity, as this Court may deem appropriate and just.

Demand for Jury Trial

Plaintiff hereby demands a jury trial on all causes of action and claims with respect to which Plaintiff and all members of the proposed class have a right to jury trial.

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