

1. George Correa (“Correa”) brings this class action for monetary damages and other relief on behalf of all persons whose rights under the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681b(b)(3), were violated by Defendant, Chipotle Mexican Grill, Inc. (“Chipotle”), on or after June 12, 2013. Chipotle took adverse action against Correa based on a criminal background check report procured for employment purposes without first providing Correa: (a) a pre-adverse action disclosure that included a copy of Correa’s consumer report, (b) a description in writing of Correa’s rights under the FCRA; and (c) a pre-adverse action opportunity to dispute the accuracy of the reported information. Criminal background check reports that employers obtain from consumer reporting agencies are considered consumer reports for purposes of the FCRA. 15 U.S.C. § 1681(d).

Parties

2. Correa is a resident of the Northern District of Illinois and Cook County. He is a consumer as that term is defined by FCRA. 15 U.S.C. § 1681a(c).

3. Defendant Chipotle is a Delaware corporation with its principal place of business in Denver, Colorado. Chipotle operates 1,755 Chipotle Mexican Grill restaurants in the United States and overseas, as well as other subsidiary and allied businesses. At all relevant times, Chipotle has been a “person” within the meaning of the Fair Credit Reporting Act. 15 U.S.C. § 1681a(b).

Jurisdiction and Venue

4. The Court has jurisdiction of this matter under 28 U.S.C. § 1331 and 15 U.S.C. § 1681p.

5. Venue is proper in the Northern District of Illinois under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this judicial district.

Factual Allegations

6. In April 2015, Chipotle hired Correa to work as an hourly employee at one of its restaurants in Chicago, and he began working for the company.

7. In April 2015, Chipotle requested a consumer report about Correa for employment purposes from a company named TalentWise, Inc. (“TalentWise”) to evaluate whether Correa’s criminal record prevented him from continuing to work for Chipotle.

8. Before it procured the consumer report, Chipotle certified to TalentWise that it would provide a copy of the report to Correa before it used the consumer report to take adverse action against him. *See* 15 U.S.C. § 1681b(b)(1).

9. The TalentWise consumer report revealed criminal record information about Correa.

10. On or about May 6, 2015, Chipotle took adverse action against Correa based in whole or in part on the consumer report that it procured from TalentWise.

11. On or about May 6, 2015, Chipotle informed Correa that he was not eligible to work for Chipotle because of information received from TalentWise and terminated his employment.

12. Before Chipotle took adverse action against Correa, it did not provide him a copy of the TalentWise consumer report, a description in writing of his rights under the FCRA, or an opportunity to dispute the accuracy of the information contained in the TalentWise consumer report.

13. By taking adverse action against Correa based on a consumer report without first providing him a copy of his consumer report, a description in writing of his rights under the FCRA, or an opportunity to dispute the accuracy of the information contained in the consumer report, Chipotle acted in reckless disregard of Correa's FCRA rights.

14. Beginning at least as early as June 2013, Chipotle had a practice or policy of terminating employees or suspending employees without pay based on consumer reports without first providing them a copy of their consumer report, a description in writing of their rights under the FCRA, and an opportunity to dispute the accuracy of the information contained in their consumer report.

15. More specifically, when an employee failed Chipotle's criminal background check, it was Chipotle's policy to terminate the employee or suspend the employee without pay

and provide the employee a copy of his or her consumer report and summary of FCRA rights after taking adverse action against the employee.

Fair Credit Reporting Act Requirements

16. Under the FCRA, before a company takes adverse action against a consumer based on information contained in a consumer report obtained for employment purposes, the company must first provide the consumer: (a) a pre-adverse action disclosure that includes a copy of the individual's consumer report; (b) a description in writing of the individual's rights under the FCRA; and (c) a pre-adverse action opportunity to dispute the accuracy of the reported information. 15 U.S.C. § 1681b(b)(3).

17. Pursuant to the FCRA, a criminal background check report that is obtained for employment purposes is considered a consumer report. *See* 15 U.S.C. § 1681a(d). Pursuant to the FCRA, an "adverse action" includes "a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee." 15 U.S.C. § 1681a(k).

18. On information and belief, Chipotle has a policy and practice of requesting that TalentWise and other consumer reporting agencies provide it with consumer reports for employment purposes and terminating employees or suspending employees without pay based on information contained in those consumer reports without first providing consumers: (a) a pre-adverse action disclosure that includes a copy of the individual's consumer report; (b) a description in writing of the individual's rights under the FCRA; and (c) a pre-adverse action opportunity to dispute the accuracy of the reported information.

Class Action Allegations

19. Correa brings this lawsuit pursuant to Federal Rule of Civil Procedure 23, on behalf of himself and all other Chipotle employees who, on or after June 12, 2013, were terminated or suspended without pay based in whole or in part on information contained in consumer reports that Chipotle obtained for employment purposes.

20. The class defined above satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of Rule 23. The class is so numerous and geographically dispersed that joinder of all members is impracticable, and the disposition of their claims in a class action will provide substantial benefits to both the parties and the Court.

21. Common questions of law and fact predominate over individual issues affecting only individual class members. The common questions of law and fact include, among others, the following:

- a. whether Chipotle failed to provide class members with a pre-adverse action disclosure containing a copy of the employee's consumer report that Chipotle obtained from the consumer reporting agency and a description in writing of the employee's rights under the FCRA;
- b. whether Chipotle failed to provide class members with a pre-adverse action opportunity to dispute the accuracy of the reported information;
- c. whether Chipotle actions as described above constitute violations of the FCRA;
- d. whether Chipotle actions were willful; and
- e. whether Chipotle engaged in a policy or practice of terminating employees or suspending employees without pay based on consumer reports without first providing class members with a pre-adverse action disclosure containing a copy of the consumer report and a description in writing of the consumer's rights under the FCRA.

22. Correa will fairly and adequately protect the interests of all class members. Correa is a member of the class, and his claims are typical of the claims of all class members. Correa's interest in obtaining monetary relief for Chipotle's violations of the class members'

rights are consistent with and are not antagonistic to those of any person within the class. Correa has retained counsel competent and experienced in complex and class action litigation, including FCRA class action litigation.

23. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because it will:

- a. avoid the heavy burden of multiple, duplicative suits;
- b. avoid the virtually impossible task of getting all class members to intervene as party-plaintiffs in this action;
- c. allow the Court, upon adjudication of defendant's liability, to determine the claims of all class members; and
- d. allow the Court to enter appropriate final monetary relief with respect to the class as a whole.

Count One – Chipotle's FCRA violations

24. Plaintiff realleges and incorporates by reference paragraphs 1-23 of this Complaint as if fully set forth herein.

25. Chipotle willfully failed to provide Correa and members of the plaintiff class, as required by 15 U.S.C. § 1681b(b)(3), (a) a pre-adverse action disclosure containing a copy of the their consumer reports; (b) a description in writing of their rights under the FCRA; and (c) a pre-adverse action opportunity to dispute the accuracy of the reported information.

26. Chipotle's willful violations of 15 U.S.C. § 1681b(b)(3) have caused damages to Correa and members of the plaintiff class for which damages Chipotle is liable under 15 U.S.C. § 1681n.

27. In the alternative to paragraph 25 of this complaint, Chipotle negligently failed to provide Correa and members of the plaintiff class, as required by 15 U.S.C. § 1681b(b)(3), (a) a pre-adverse action disclosure containing a copy of their consumer report, (b) a description of

their rights under the FCRA; and (c) a pre-adverse action opportunity to dispute the accuracy of the information contained in the consumer report.

28. Chipotle's negligent violation of 15 U.S.C. § 1681b(b)(3) has caused damages to Correa and members of the plaintiff class, in the form of lost wages, for which damages Chipotle is liable under 15 U.S.C. § 1681o.

Prayer for Relief

WHEREFORE, Plaintiff respectfully requests, on behalf of himself and the class he seeks to represent, that this Court:

- A. Certify this action as a class action, pursuant to Fed. R. Civ. P. 23(b)(3), on behalf of the proposed plaintiff class and designate Correa representative of the class and his counsel of record as class counsel;
- B. Award statutory and punitive damages against Defendant to Plaintiff and members of the plaintiff class, as provided in 15 U.S.C. § 1681n, for Defendant's failure to provide them a copy of their consumer reports before taking adverse action against them based in whole or in part on consumer reports.
- C. Award statutory and punitive damages against Defendant to Plaintiff and members of the plaintiff class, as provided in 15 U.S.C. § 1681n, for Defendant's failure to provide them a summary of their FCRA rights before taking adverse action against them based in whole or in part on consumer reports.
- D. Award lost wages to Plaintiff and members of the Plaintiff class, pursuant to 15 U.S.C. § 1681o, to compensate them for Chipotle's premature suspension of their employment based on a consumer report.

- E. Award Plaintiff and members of the plaintiff class their attorneys' fees pursuant to 15 U.S.C. § 1681n & o;
- F. Award Plaintiff and members of the plaintiff class their costs pursuant to 28 U.S.C. § 1920; and
- G. Grant all such additional relief as the Court deems appropriate.

Jury Demand

Plaintiff demands trial by jury on all issues as to which a jury trial is available.

DATED: June 12, 2015

Respectfully submitted,

s/ Christopher J. Wilmes
One of the Attorneys for Plaintiff

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