

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
AT KANSAS CITY**

JEFFREY HOEFLICKER, on behalf of
himself and those similarly situated,

Plaintiff,

vs.

CPC LOGISTICS, INC.,

Defendant.

Case Number: 15-CV-00679 BP

Jury Trial Demand

AMENDED COMPLAINT – CLASS ACTION

Now comes Plaintiff, Jeffrey Hoeflicker, by and through his counsel,
and for his Amended Complaint, states and avers as follows:

INTRODUCTION

1. Plaintiff, Jeffrey Hoeflicker, brings this action pursuant to the Fair Credit Reporting Act, 15 USC §1681 *et seq.* (hereinafter “FCRA”) for violation by the defendant CPC Logistics, Inc. (Hereinafter “CPC”).

2. This class action alleges that certain policies and practices followed by CPC in obtaining and using consumer reports pertaining to applicants and current employees violate the FCRA.

3. CPC violates the FCRA, § 1681b(b)(3)(B) by taking adverse action against applicants for employment and employees, and after doing so, failing to notify said applicants or employees within three business days:

a. that CPC took said adverse action based in whole or in part on

a consumer report received from a consumer reporting agency (“CRA”);

- b. of the contact information of the CRA that furnished the consumer report;
- c. that the CRA did not make the decision and cannot provide specific reasons why the adverse action was taken; and
- d. that, upon providing proper identification, they may request a free copy of the consumer report, and may dispute with the CRA regarding the accuracy or completeness of any information in the consumer report.

4. Defendant’s acts and omissions violate a significant provision of the FCRA, and preclude consumers from employment and employment opportunities.

5. These provisions of the FCRA are designed to provide applicants and employees with a meaningful mechanism to review adverse information that is being reported about them and used for employment consideration by potential employers. Such a process provides applicants and employees with an opportunity to review, correct or explain inaccurate or perceivably adverse information in their consumer report, and remedy or mitigate the effects of the consumer report upon their opportunity to realize gainful employment.

6. Plaintiff brings this action to secure redress for CPC’s violations of the FCRA. Plaintiff seeks actual damages, statutory damages, punitive damages, attorney fees and costs.

JURISDICTION AND VENUE

7. Jurisdiction of this Court is conferred under 28 U.S.C. §§ 1331 and 1337, and 15 U.S.C. § 1681p.

8. Venue in this district is proper because CPC conducts business in this district and the events upon which this action is based transpired in this district.

PARTIES

9. Plaintiff Jeffrey Hoeflicker is a resident of this district and is a “consumer” as defined by the FCRA, 15 U.S.C. §1681a(c).

10. Defendant CPC Logistics, Inc. is a for profit corporation that has thousands of employees assigned to perform transportation services for corporate customers in over 300 locations and 40 states. CPC is an international organization headquartered in Chesterfield, Missouri. CPC will be served through its authorized agent for service of process.

11. CPC is regulated by the Secretary of Transportation. At all times relevant hereto, Defendant was a “user” of the consumer report of Plaintiff, as defined by the FCRA.

FACTS

12. Plaintiff is a licensed commercial truck driver.

13. On or about January 22, 2014, Plaintiff applied for employment with CPC.

14. As part of its ordinary and regular business practices, many potential

employers use consumer reports to determine the eligibility of applicants for employment. In the commercial truck driving industry a common consumer report that is utilized is a “DAC” Report.

15. A DAC background report contains commercial truck drivers’ employment history.

16. The DAC report is a “consumer report” as defined by the FCRA, 15 U.S.C. §1681a(d)(1)(B).

17. On or about January 22, 2014, CPC procured a DAC consumer report on Plaintiff to be used for employment purposes.

18. CPC obtained the report to use as a factor in determining Plaintiff’s eligibility for employment and other purposes related to employment.

19. The subject consumer report contained inaccurate and adverse work history information about Plaintiff; specifically, *inter alia*, the consumer report contained derogatory and adverse information relating to employment with Bestmark Express Inc.

20. CPC, in whole or in part, denied Plaintiff employment with CPC based upon information in his consumer report.

21. CPC’s failure to offer Plaintiff employment based in whole, or in part, upon information contained in his consumer report is an “adverse action” as that term is defined by the FCRA, 15 U.S.C. §1681a(k).

22. CPC failed to notify within three business days after taking adverse

action against Plaintiff that CPC took adverse action against Plaintiff based in whole or in part upon information in Plaintiff's consumer report.

23. CPC failed, within three business days of taking the adverse action against Plaintiff, to provide Plaintiff with the contact information for the credit reporting agency(ies) that furnished the consumer report that CPC relied upon, in whole or in part, in taking the adverse action against Plaintiff.

24. CPC failed to tell Plaintiff, within three business days of taking the adverse action against Plaintiff, that the credit reporting agency(ies) that furnished the consumer report could not provide Plaintiff the specific reasons why the adverse action was taken.

25. CPC failed to tell Plaintiff, within three business day of taking the adverse action against Plaintiff, that Plaintiff may, upon providing proper identification, request a free copy of a the consumer report and may dispute with the consumer reporting agency(ies) the accuracy or completeness of any information in a consumer report.

26. Plaintiff has suffered actual damages as a result of these events. Plaintiff has suffered lost employment opportunity, as he was previously offered the job position contingent upon the background search.

FACTS COMMON TO ALL CLASS MEMBERS

27. CPC's regular practice is:

- a. to obtain consumer reports from a consumer reporting agency

on applicants and employees for employment purposes, such as evaluating an applicant for employment or an employee for continued employment; and

- b. to discontinue considering an applicant for employment, or to terminate an employee, when the results of the consumer report contain adverse information.
- c. to discontinue considering an applicant for employment, or to terminate an employee, when the results of the consumer report are unsatisfactory to CPC. (Said discontinuation of consideration for employment and termination of employment is also referred to as an “adverse action” herein).

28. It is CPC’s regular practice to fail to do the following within three business days after taking an adverse action (as described in ¶27(b), *supra*):

- a. Inform the applicant for employment or employee that CPC took adverse action based in whole or in part upon information in the applicant for employment or employee’s consumer report.
- b. Provide the applicant for employment or employee with the contact information for the CRA that furnished the consumer report.
- c. Inform the applicant for employment or employee that the CRA

did not make the adverse action decision and cannot provide the applicant for employment or employee with a reason for the adverse action.

- d. Inform the applicant for employment or employee of their right to request a free copy of the consumer report used in making the adverse action decision, and notification of their right to dispute the accuracy or completeness of the information with CRA that furnished the consumer report.

CPC ACTED WILLFULLY

29. CPC knew or should have known that its actions and omissions violated the FCRA. These obligations are well established in the plain language of the FCRA and in the promulgations of the Federal Trade Commission and Consumer Financial Protection Bureau.

30. CPC procured, or had available to it, substantial written materials that informed it of its duties under the FCRA. Any reasonable employer that utilized consumer reports in whole or in part when making employment decisions knows about, or should know about, and can easily discover the federal mandates arising under the FCRA.

31. Despite knowing of these legal obligations, CPC acted consciously in breaching its known duties and depriving Plaintiff and other members of the class of their rights under the FCRA.

32. As a result of these FCRA violations, Defendant is liable to Plaintiff and to each FCRA Class Member, for statutory damages from \$100.00 to \$1,000.00 pursuant to 15 U.S.C. §1681n(a)(1)(A), plus punitive damages pursuant to 15 U.S.C. §1681n(a)(2) for each of the violations alleged herein, and for attorneys' fees and costs pursuant to §1681n and §1681o.

CLASS ACTION ALLEGATIONS

33. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, Plaintiff brings this action for himself and on behalf of a class (the "Class") initially defined as follows:

All employees of or applicants for employment to Defendant residing in the United States (including all territories and other political subdivisions of the United States) who were the subject of a consumer report that Defendant procured or caused to be procured for an employment purpose during the FCRA statute of limitations period, 15 U.S.C. §1681p; that period is the five years preceding the filing of this action and during the pendency of this action. Excluded from the class definition are any employees, officers or directors of CPC, any attorney appearing in this case, and any judge assigned to hear this action.

34. Plaintiff proposes a Sub-Class. Plaintiff also alleges the following proposed Sub-Class, of which Plaintiff is a member:

All employees of and applicants for employment to Defendant residing in the United States (including all territories and other political subdivisions of the United States) (a) who were the subject of a consumer report that Defendant procured or caused to be procured; (b) during the FCRA statute of limitations period, 15 U.S.C. §1681p; that period is the five years preceding the filing of this action and during the pendency of this action;

and (c) where Defendant did not provide, within three business days of declining to hire the applicant or discharging the employee, notification that an adverse action had been taken based in whole or in part upon information in a consumer report, along with the name, address and telephone number of the consumer reporting agency that furnished the consumer report, notice that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide to the consumer the specific reasons why the adverse action was taken, and notice that the applicant for employment and employee may, upon providing proper identification, request a free copy of a report and may dispute with the consumer reporting agency the accuracy or completeness of any information in a report. Excluded from the class definition are any employees, officers or directors of CPC, any attorney appearing in this case, and any judge assigned to hear this action.

35. Numerosity. FED. R. CIV. P. 23(a)(1). The Class members are so numerous that joinder of all is impractical. The names and addresses of the Class members are identifiable through documents maintained by CPC, and the Class members may be notified of the pendency of this action by published and/or mailed notice. Numerosity can be inferred by Defendant's size, that it employs thousands of employees and the fact that its omissions are part of its routine business practice.

36. Existence and Predominance of Common Questions of Law and Fact. FED. R. CIV. P. 23(a)(2). Common questions of law and fact exist as to all members of the Class. These questions predominate over the questions affecting only individual members. These common legal and factual questions include, among other things and without limitation:

- a. whether CPC provided requisite notice to applicants for employment and employees, within three business days of taking an adverse action based in whole or in part upon information in a consumer report, as mandated by §1681b(b)(3)(B)(i).
- b. whether CPC's implementation and maintenance of the challenged FCRA procedures was willful (committed knowingly or with reckless disregard); and
- c. what is the appropriate amount of statutory damages per class member and punitive damages that should be awarded.

37. **Typicality.** FED. R. CIV. P. 23(a)(3). Plaintiff's claims are typical of the claims of each Class member. Plaintiff seeks only statutory and punitive damages. In addition, Plaintiff is entitled to relief under the same causes of action as the other members of the Class.

38. **Adequacy.** Plaintiff is an adequate representative of the Class because his interests coincide with, and are not antagonistic to, the interests of the members of the Class he seeks to represent, he has retained counsel competent and experienced in such litigation, and he intends to prosecute this action vigorously. Fed.R. Civ.P. 23(a)(4). Plaintiff and his Counsel will fairly and adequately protect the interests of the members of the Class.

39. **Superiority.** Questions of law and fact common to the Class members

predominate over questions affecting only individual members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy. Fed.R. Civ.P. 23(b)(3). The statutory and punitive damages sought by each member are such that individual prosecution would prove burdensome and expensive given the complex and extensive litigation necessitated by CPC's conduct. It would be virtually impossible for the members of the Class individually to redress effectively the wrongs done to them. Even if the members of the Class themselves could afford such individual litigation, it would be an unnecessary burden on the courts. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the complex legal and factual issues raised by Defendant's conduct. By contrast, the class action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in just one case.

40. Injunctive Relief Appropriate for the Class. Class certification is appropriate because Defendant has acted on grounds generally applicable to the Class, making appropriate equitable injunctive relief with respect to Plaintiff and the Class members. Fed.R. Civ.P. 23(b)(2).

COUNT ONE: VIOLATION OF THE FCRA § 1681b(b)(3)(B)

41. Plaintiff restates each of the allegations in the preceding paragraphs

as if set forth at length herein.

42. CPC willfully violated the FCRA, 15 U.S.C. §1681b(b)(3)(B), because it, *inter alia*, failed to provide, within three business days of declining to hire the applicant or discharging the employee, notification that an adverse action had been taken based in whole or in part upon information in a consumer report, along with the name, address and telephone number of the consumer reporting agency that furnished the consumer report, and notice that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide to the consumer the specific reasons why the adverse action was taken; CPC also failed to provide said applicants for employment and employees notification that they may, upon providing proper identification, request a free copy of a report and may dispute with the consumer reporting agency regarding the accuracy or completeness of any information in a report.

WHEREFORE, Plaintiff and the Class Members pray for relief as follows:

1. An order certifying the proposed FCRA class herein under Federal Rule 23 and appointing Plaintiffs and their undersigned counsel of record to represent same;
2. The creation of a common fund available to provide notice of and remedy Defendant's FCRA violations;
3. Statutory and punitive damages;
4. Equitable and/or declaratory relief;
5. Attorneys' fees, expenses and costs;

6. Pre-judgment and post-judgment interest as provided by law; and
7. Such other relief the Court does deem just, equitable and proper.

JURY DEMAND

Plaintiff demands trial by jury.

Respectfully Submitted,

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