

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

STANLEY NAPIER, on behalf of himself and
those similarly situated,
2749 Highlawn Avenue
Huntington, WV 25702

Plaintiff,

v.

J.B. HUNT TRANSPORT, INC.,
615 J B Hunt Corporate Drive
Lowell, AR 72745

Defendant.

INDIVIDUAL AND CLASS ACTION

No.

JURY TRIAL DEMANDED

INDIVIDUAL AND CLASS ACTION COMPLAINT

Named Plaintiff Stanley Napier (hereinafter “Named Plaintiff”), on behalf of himself and those similarly situated, by and through undersigned counsel, hereby complains as follows against Defendant J.B. Hunt Transport, Inc. (hereinafter “Defendant”).

INTRODUCTION

1. Named Plaintiff initiates the instant action to redress Defendant’s violations of the Fair Credit Reporting Act (“FCRA”). Named Plaintiff and those similarly situated were the subject of consumer reports obtained by Defendant as a precondition of employment with Defendant during the period provided by 15 U.S.C. § 1681p and preceding the date of filing. Defendant violated the FCRA by not obtaining proper authorization from Named Plaintiff and those similarly situated to procure consumer reports and by not providing them with proper disclosure of their rights after Defendant made an adverse employment decision based wholly or in part on consumer reports.

JURISDICTION AND VENUE

2. The foregoing paragraphs are incorporated herein as if set forth in full.

3. This Court, in accordance with 28 U.S.C. § 1331, has jurisdiction over Named Plaintiff's federal claims because this civil action arises under a law of the United States, 15 U.S.C. § 1681p *et seq.*

4. This Court may properly maintain personal jurisdiction over Defendant because Defendant's contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendant to comply with traditional notions of fair play and substantial justice.

5. Pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), venue is properly laid in this judicial district because all of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district and Defendant is deemed to reside where it is subject to personal jurisdiction, rendering Defendant a resident of this judicial district.

PARTIES

6. The foregoing paragraphs are incorporated herein as if set forth in full.

7. Named Plaintiff is an adult individual residing at addresses set forth in the above caption and a "consumer" within the meaning of 15 U.S.C. § 1681a.

8. Defendant is a corporation headquartered at the address set forth in the above caption. Defendant conducts business throughout the United States, including in the State of New Jersey.

9. Defendant is engaged in the hauling and delivery of freight across the United States.

10. Further, Defendant is a "person" using "consumer reports" to make "employment

decisions” and take “adverse action” against “consumers,” as those terms are defined by 15 U.S.C. § 1681a.

11. At all times relevant herein, Defendant acted by and through its agents, servants, and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendant.

CLASS ACTION ALLEGATIONS

13. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

14. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and the Class Action Fairness Act of 2005, Named Plaintiff brings his claims on behalf of two separate classes of individuals:

Authorization Class

- a. Named Plaintiff brings his claims on behalf of all natural persons residing in the United States (hereinafter referred to as “Authorization Class Plaintiffs”): 1) who applied for employment with Defendant during the period provided by 15 U.S.C. § 1681p via an internet website, facsimile, telephone, electronic mail, regular mail, or other similar means, 2) about whom, during the application process, Defendant obtained a consumer report without first obtaining verbal, electronic, or written authorization to obtain a consumer report, and 3) whom Defendant did not provide verbal, electronic, or written notice that they had the right to obtain a free copy of the consumer report from the consumer reporting agency within 60 days and to dispute the accuracy or completeness of any information in the consumer report directly with the consumer reporting agency.

Adverse Action Class

- b. Named Plaintiff also brings his claims on behalf of all natural persons residing in the United States (hereinafter referred to as “Adverse Action Class Plaintiffs”) who applied for employment with Defendant via an internet website, facsimile, telephone, electronic mail, regular mail, or other similar means, and against whom, during the period provided by 15 U.S.C. § 1681p, Defendant took adverse action based in whole or in part upon the consumer report without providing verbal, electronic, or written notice that: 1) an adverse action had been taken based on whole or in part on the consumer

report, 2) the name, address, and telephone number of the consumer reporting agency, 3) that the consumer reporting agency did not make the decision to take adverse action and is unable to provide the consumer with specific reasons why the adverse action was taken, and 4) the consumer may request a free copy of the report and may dispute with the consumer reporting agency the accuracy or completeness of the report, as required by § 1681b(b)(3)(B).

15. Named Plaintiff alleges that the putative Classes are so numerous that joinder of all members is impracticable. Named Plaintiff does not know the exact size of the classes, as such information is in the exclusive control of Defendant; however, on information and belief, the number of potential class members is estimated to be in the thousands.

16. Named Plaintiff's claims are typical of the claims of the Class members as all Class members were similarly affected by Defendant's unlawful conduct in violation of the FCRA.

17. Named Plaintiff will fairly and adequately protect the interests of the putative class because Named Plaintiff's interests are coincident with, and not antagonistic to, those of the Class members. Named Plaintiff has retained counsel with substantial experience in the prosecution of class actions.

18. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action. The class will be easily identifiable from Defendant's records.

19. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Such treatment will allow all similarly situated individuals to prosecute their common claims in a single forum simultaneously. Prosecution of separate actions by individual members of the putative class would create the risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible

standards of conduct for Defendant. Furthermore, the amount at stake for individual putative class members may not be great enough to enable all of the individual putative class members to maintain separate actions against Defendant.

20. Questions of law and fact that are common to the members of the class predominate over questions that affect only individual members of the class. Among the questions of law and fact that are common to the class are:

- a. Whether Defendant violated 15 U.S.C. § 1681b(b)(2)(B)(i) by failing to provide Named Plaintiff and Authorization Class Plaintiffs with verbal, electronic, or written notice of a right to obtain a free copy of a consumer report from the consumer reporting agency within 60 days and to dispute the accuracy or completeness of any information in the consumer report directly with the consumer reporting agency;
- b. Whether Defendant violated 15 U.S.C. § 1681b(b)(2)(B)(ii) by failing to obtain verbal, electronic, or written consent from Named Plaintiff and Authorization Class Plaintiffs to procure a consumer report;
- c. Whether Defendant, within three (3) business days of taking adverse action, provided oral, written, or electronic notification to consumer that adverse action had been taken against Named Plaintiff and Adverse Action Class Plaintiffs based in whole or in part on a consumer report received from a consumer reporting agency as required by 15 U.S.C. § 1681b(b)(3)(B)(i)(I);
- d. Whether Defendant, within three (3) business days of taking adverse action, provided to Named Plaintiff and Adverse Action Class Plaintiffs oral, written, or electronic notification to consumer of the name, address, and

telephone number of the consumer reporting agency that furnished the consumer report (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) as required by 15 U.S.C. § 1681b(b)(3)(B)(i)(II);

- e. Whether Defendant, within three (3) business days of taking adverse action, provided to Named Plaintiff and Adverse Action Class Plaintiffs oral, written, or electronic notification to consumer 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 as required by 15 U.S.C. § 1681b(b)(3)(B)(i)(III);
- f. Whether Defendant knowingly and intentionally acted in conscious disregard of the rights of the consumer.
- g. Whether Defendant was negligent in its (or had a complete lack of) training, supervision, and/or implementation of policies and procedures concerning the appropriate usage of consumer reports.

21. Therefore, Named Plaintiff should be should be permitted to bring this action as a class action for and on behalf of himself and those individuals similarly situated, pursuant to Federal Rule of Civil Procedure 23.

FACTUAL BACKGROUND

As to Common Questions

22. The foregoing paragraphs are incorporated herein as if set forth in full.

23. Among other things, the FCRA regulates the collection, maintenance, and disclosure of job consumer's personal information by consuming reporting agencies, including

public record information.

24. Under the FCRA, consumer reports include those which are written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for employment.

25. An employer, like Defendant, must comply with FCRA mandates, conditions, procedures, and limitations on both the procurement and use of consumer reports to determine a consumer's eligibility for employment.

26. Upon information and belief, Defendant purchases consumer reports regarding job applicants from consumer reporting agencies as defined by 15 U.S.C. § 1681a, and uses these consumer reports as a basis for taking adverse action against said applicants.

27. The FCRA requires trucking industry employers, like Defendant, to notify each job applicant, applying by mail, telephone, computer or other similar means, that the applicant's consumer reports will be procured for employment purposes, that the applicant has a right to a free copy of any consumer report obtained about him within 60 days, and that the applicant can dispute any information contained in the consumer report directly with the consumer reporting agency. 15 U.S.C. § 1681b(b)(2)(B).

28. Only after the consumer has received this notice and provided consent by oral, written, or electronic means, may any employer properly procure such reports.

29. Additionally, the FCRA mandates that, if an employer like Defendant takes adverse action based in whole or in part on a consumer report, the employer must provide, within three (3) days, notice:

- a. that the adverse action was taken based in part or in whole on a consumer report;
- b. of the name, address, and telephone number of the consumer reporting agency that furnished the report;
- c. that the consumer reporting agency did not take the adverse action and is unable to provide the specific reasons why the action was taken; and
- d. that the consumer may, upon providing proper identification, request a free copy of the consumer report and dispute the accuracy directly with the consumer reporting agency.

15 U.S.C. § 1681b(b)(3)(B)(i).

30. Defendant does not provide proper disclosure and does not obtain proper authorization before procuring consumer reports as required by 15 U.S.C. § 1681b(b)(2)(B).

31. Further, Defendant does not provide any oral, written, or electronic notice after taking adverse action based in whole or in part on the information contained in a consumer report, nor does it provide consumers with the information required by 15 U.S.C. § 1681b(b)(3)(B).

32. Defendant's violations of the FCRA have been willful, wanton, and reckless in that Defendant knowingly or recklessly disregarded its statutory duty to comply with the requirements of the FCRA.

33. Upon information and belief, Defendant knowingly or recklessly failed to avail itself of easily accessible resources, and, instead, willfully violated the requirements of the FCRA.

34. The 15 U.S.C. § 1681n(a) permits a consumer to recover statutory and punitive

damages, along with attorney fees and costs for willful violations of the FCRA.

As to Named Plaintiff

35. The foregoing paragraphs are incorporated herein as if set forth in full.

36. In or around January 2016, Named Plaintiff applied for a truck driver position with Defendant via an online website.

37. Defendant's application did not contain any language advising Named Plaintiff that, pursuant to 15 U.S.C. § 1681b(b)(2)(B), a consumer report would be procured to determine his eligibility for employment, that he has a right to a free copy of the consumer report obtained about him within 60 days, and that he could dispute any information contained in the consumer report directly with consumer reporting agency.

38. Thus, the application does not lawfully seek the consumer's oral, electronic, or written authorization to procure a consumer report.

39. Thereafter, in or around January 2016, Defendant procured Named Plaintiff's background report, a "consumer report" from a consumer reporting agency as defined by 15 U.S.C. § 1681a without obtaining proper authorization from Named Plaintiff.

40. The consumer report inaccurately reported Named Plaintiff's driving record with his former employer, PAM Transportation.

41. Defendant obtained and used Named Plaintiff's consumer report before it had an in-person meeting with Named Plaintiff.

42. Defendant did not advise Named Plaintiff prior to its procurement of his consumer report, that he could receive a free copy of the consumer report within 60 days and that he could dispute the accuracy or completeness of any information contained in the consumer report with the consumer reporting agency.

43. Accordingly, Defendant obtained Named Plaintiff's consumer report from a consumer reporting agency without proper authorization under the FCRA.

44. Immediately after receiving Named Plaintiff's consumer report, Defendant took adverse action against Named Plaintiff by disqualifying him from further consideration for employment because of the information contained in Named Plaintiff's consumer report.

45. At no time did Defendant provide Named Plaintiff with the notice required by the FCRA within three (3) business days of taking the adverse action, including: (i) that an adverse action had been taken based in whole or in part on the consumer report, (ii) the name, address, and telephone number of the consumer reporting agency, (iii) that the consumer reporting agency did not make the decision to take the adverse action and was unable to provide the Named Plaintiff with specific reasons why the adverse action was taken, or (iv) that Named Plaintiff could request a free copy of the report and dispute the accuracy and/or completeness of the report with the consumer reporting agency.

46. At all times pertinent hereto, Defendant's conduct, as well as that of its agents, servants, and/or employees, was intentional, willful, and in reckless disregard of federal laws and the rights of Named Plaintiff and the putative class members.

COUNT I

Violations of the Fair Credit Reporting Act

(Inadequate Disclosure and Authorization - 15 U.S.C. § 1681b(b)(2)(B))

47. The foregoing paragraphs are incorporated herein as if set forth in full.

48. Defendant willfully violated 15 U.S.C. § 1681b(b)(2)(B) by failing to provide Named Plaintiff and Authorization Class Plaintiffs with mandatory FCRA notices prior to the procurement of consumer reports including that a consumer report may be obtained for employment purposes, that the applicant has a right to a free copy of any consumer report about

the applicant from the consumer reporting agency within 60 days and the right to dispute directly with the consumer reporting agency the accuracy or completeness of the applicant's consumer report.

49. Alternatively, Defendant negligently violated 15 U.S.C. § 1681b(b)(2)(B) by failing to provide Named Plaintiff and Authorization Class Plaintiffs with mandatory FCRA notices prior to the procurement of consumer reports including that a consumer report may be obtained for employment purposes, that the applicant has a right to a free copy of any consumer report about the applicant from the consumer reporting agency within 60 days and the right to dispute directly with the consumer reporting agency the accuracy or completeness of the applicant's consumer report.

50. Defendant also violated 15 U.S.C. § 1681b(b)(2)(B) by failing to obtain proper oral, written, or electronic authorization from Named Plaintiff and Class members prior to procuring a consumer report.

51. Named Plaintiff and Authorization Class Plaintiffs seek statutory damages, attorney's fees, and costs for violations pursuant to 15 U.S.C. § 1681n(a)(1).

52. Named Plaintiff and Authorization Class Plaintiffs also seek punitive damages, attorney fees and costs for these violations pursuant to 15 U.S.C. § 1681n(a)(2).

53. To the extent Defendant's conduct is deemed negligent under 15 U.S.C. § 1681o, Named Plaintiff and Authorization Class Plaintiffs seek issue certification of such negligence only under Fed.R.Civ.P.23(c)(4).

COUNT II
Violations of the Fair Credit Reporting Act
(Adverse Action - 15 U.S.C. § 1681b(b)(3)(B))

54. The foregoing paragraphs are incorporated herein as if set forth in full.

55. Defendant willfully violated 15 U.S.C. § 1681b(b)(3)(B)(i) by taking adverse action against Named Plaintiff and Adverse Action Class Plaintiffs without providing verbal, electronic, or written notice within three (3) business days of taking the adverse action (i) that adverse action had been taken based in whole or in part on the consumer report, (ii) the name, address, and telephone number of the consumer reporting agency, (iii) that the consumer reporting agency did not make the decision to take adverse action and is unable to provide the consumer with specific reasons why the adverse action was taken, (iv) that the consumer may request a free copy of the report and may dispute with the consumer reporting agency the accuracy or completeness of the report.

56. Alternatively, Defendant negligently violated 15 U.S.C. § 1681b(b)(3)(B)(i) by taking adverse action against Named Plaintiff and Adverse Action Class without providing verbal, electronic, or written notice within 3 business days of taking the adverse action (i) that adverse action had been taken based in whole or in part on the consumer report, (ii) the name, address, and telephone number of the consumer reporting agency, (iii) that the consumer reporting agency did not make the decision to take adverse action and is unable to provide the consumer with specific reasons why the adverse action was taken, (iv) that the consumer may request a free copy of the report and may dispute with the consumer reporting agency the accuracy or completeness of the report.

57. Named Plaintiff and Adverse Action Class Plaintiffs seek statutory damages for these violations pursuant to 15 U.S.C. § 1681n(a)(1)(A).

58. Named Plaintiff and Adverse Action Class Plaintiffs also seek punitive damages, attorney's fees, and costs for these violations pursuant to 15 U.S.C. § 1681n(a)(2).

59. To the extent Defendant's conduct is deemed negligent under 15 U.S.C. § 1681o,

Named Plaintiff and Adverse Action Class Plaintiffs seek issue certification of such negligence only under Fed.R.Civ.P.23(c)(4).

WHEREFORE, Named Plaintiff, Authorization Class Plaintiffs, and Adverse Action Class Plaintiffs respectfully pray for the following relief:

- a) An order certifying the proposed classes herein pursuant to Fed. R. Civ. P. 23(b)(3) and appointing the undersigned counsel to represent same;
- b) An order declaring that Defendant's actions as described above are in violation of the FCRA;
- c) Judgment against Defendant for statutory damages in an amount of not less than \$100.00 and not more than \$1,000.00 per violation per Class member, pursuant to 15 U.S.C. § 1681n(a);
- d) Judgment against Defendant for punitive damages pursuant to 15 U.S.C. § 1681n(a)(2);
- e) Alternatively, an order certifying Defendant's conduct as negligent pursuant to Fed. R. Civ. P. 23(c)(4);
- f) Costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1681n; and
- g) A trial by jury.

Respectfully Submitted,

SWARTZ SWIDLER, LLC

/s/ Matthew Miller

Matthew D. Miller, Esq.

Richard S. Swartz, Esq.

Justin L. Swidler, Esq.

1101 Kings Highway N., Ste. 402

Cherry Hill, NJ 08034

Tel: 856-685-7420

Fax: 856-685-7417

Attorneys for Plaintiffs

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