

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

**ROBERT A. MCBRIDE**  
**Individually and on behalf**  
**of all others similarly situated,**

**Plaintiff,**

**v.**

**Civil No. 2:18cv424**

**A+ Student Staffing, Inc.,**

**and**

**ETC Institute,**

**JURY TRIAL DEMANDED**

**Defendants.**

**CLASS ACTION COMPLAINT**

Come now the Plaintiff Robert McBride, individually and on behalf of all other similarly situated individuals and by Counsel, and files this Class Action Complaint alleging the following claims against Defendant A+ Student Staffing, Inc. (“A+ Staffing”) and ETC Institute (“ETC Institute”).

**I. NATURE OF THE CASE**

1. Plaintiff brings this action against Defendants for violations of the Federal Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681b(b)(3).

2. Defendant A+ Staffing is a national staffing agency with offices in Texas and Minnesota. Defendant A+ Staffing hires consumers like Plaintiff McBride to staff short-term projects. Defendant A+ Staffing hires consumers on behalf of customers such as Defendant ETC Institute.

3. Defendant ETC Institute (“ETC Institute”) is a national community-based market research firm based in Olathe, Kansas.

4. On information and belief, Defendant ETC Institute contracted with A+ staffing to conduct a short-term project.

5. As part of their hiring process, A+ Staffing and ETC Institute use consumer reports (commonly known as background checks) to make employment decisions. Because such employment decisions are based in whole or in part on the contents of the criminal-background reports, Defendants are obliged to adhere to certain strictures of the FCRA.

6. Employers that choose to use consumer-report background checks in their hiring process must disclose to applicants their intent to obtain background checks in a standalone document consisting solely of the disclosure. Based on this disclosure, employers must then obtain consumers’ written authorization to procure the report.

7. Properly disclosing the intent to obtain background checks and obtaining the appropriate authorization protects consumers’ privacy by limiting the access to private information to only specific instances, namely, where employers have followed the FCRA’s steps before they procure background reports.

8. When using criminal background reports for employment purposes, employers must, before declining, withdrawing, or terminating employment based in whole or in part on the contents of the report, provide job applicants like the Plaintiff with a copy of their respective background reports as well as a written summary of their rights under the FCRA.

9. Providing a copy of the criminal background report as well as a statement of consumer rights before making a final adverse employment decision arms the nation’s millions of job applicants with the knowledge and information needed to challenge inaccurate,

incomplete, and misleading public-records-based reports. The FCRA is designed to permit individuals whose reports are inaccurate with ample time to identify the inaccuracies and correct them before the employer has made an employment decision.

10. Plaintiff brings a nationwide class claim against Defendants under 15 U.S.C. § 1681b(b)(2) because the disclosure form they provided Plaintiff and Class Members was defective because it was not a stand-alone form and contained additional, extraneous information. The form is inadequate as it does not consist “solely of the disclosure.”

11. Plaintiff McBride also brings a nationwide class claim against Defendants under 15 U.S.C. § 1681b(b)(3) because, as a systematic omission in their hiring process Defendants failed to provide Plaintiff and other consumers with a copy of the criminal background report or a summary of rights under the FCRA before taking an adverse employment action.

12. Defendants are informed of the necessary rigors FCRA compliance imposes, as there are numerous sources from which companies can obtain guidance on the workings of the FCRA in the employment context.

## **II. PARTIES**

13. Plaintiff Robert A. McBride is a “consumer” as defined by 15 U.S.C. § 1681a.

14. Mr. McBride lives in Norfolk, Virginia, which is within the territorial confines of the Eastern District of Virginia, Norfolk Division.

15. Defendant A+ Staffing is for-profit corporation conducting business and hiring employees in the Eastern District of Virginia and in the United States. A+ Staffing is also 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.

16. Defendant ETC Institute is a for-profit organization conducting business and hiring employees in the Eastern District of Virginia and in the United States. Defendant ETC Institute is also 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.

### **III. JURISDICTION AND VENUE**

17. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1681p.

18. Venue is proper in the Eastern District of Virginia because Defendants are subject to personal jurisdiction in this District and make employment decisions regarding individuals residing in this District. 28 U.S.C. § 1391(c). Further, Plaintiff McBride is a resident of this District and Division, and the events giving rise to his causes of action occurred here.

### **IV. FACTUAL ALLEGATIONS**

19. In August 2016, Mr. McBride applied for a surveyor position to be located in Norfolk, Virginia with A+ Staffing and ETC Institute. Defendants sought staff to administer surveys to passengers and collect data on the ridership of Hampton Roads Transport. As part of the application process, Mr. McBride completed a lengthy application over the Internet.

20. The job was contingent upon a background check.

21. The online application contained an “Authorization” with the following statement:

I certify that the facts contained in this application are true and complete to the best of my knowledge and I understand that, if engaged, falsified statements on this application shall be grounds for dismissal. I authorize the investigation of all statements contained herein including a criminal background check. I also authorize the employers listed above to give you any and all information concerning my previous employment and any pertinent information they may have, personal or otherwise, and release the company from all liability for any damage that may result from utilizations of such information. I also understand

that acceptance of an engagement does not create a contractual obligation upon A+ Staffing to continue to engage me on future contracts.

22. Mr. McBride signed the above Authorization. Defendants did not provide him with any other notices or disclosure forms related to the background check.

23. The form is *per se* defective and violates the FCRA because it contains impermissible release language that purports to absolve Defendants of FCRA violations like those Plaintiff alleges.

24. On August 15, 2016, Defendants obtained a background check on Plaintiff McBride.

25. The background report included numerous entries, suggesting that Mr. McBride had been convicted of multiple offenses. In fact, the report contained duplicate entries of charges which were nolle prossed.

26. A+ Staffing processed Mr. McBride's application, scheduled a telephone interview with Mr. McBride and mailed him documentation, such as an employee payroll card, that he received several days later.

27. That same day, on August 15, 2016, Mr. McBride was called by Taryn Grisz, Branch Manager of A+ Staffing to discuss the assignment starting date, meeting locations, and work hours.

28. Presumably, during the on-boarding telephone call, Ms. Grisz reviewed the background report, which contained inaccurate information. Upon reviewing Mr. McBride's criminal record, Grisz declined to hire Mr. McBride.

29. At that point, an "adverse action" had been taken by A+ Staffing and ETC Institute.

30. Neither Ms. Grisz nor anyone else at A+ Staffing or ETC Institute provided Mr. McBride with a copy of the background report prior to the adverse action.

31. Thereafter, on approximately six occasions, Mr. McBride contacted A+ Staffing to request a copy of his background report and application.

32. Despite his numerous requests, Mr. McBride has never received a copy of his background report from A+ Staffing or ETC Institute.

33. A+ Staffing and ETC Institute took an adverse action against Plaintiff McBride based in whole or in part on the contents of his report by denying him employment, and it took that adverse action based on the contents of an FCRA-governed consumer report without first providing to Plaintiff McBride any notice of its intent to take an adverse action against him or with a copy of that report and a summary of his FCRA rights.

34. Mr. McBride was deeply shocked and upset at the revocation of the job offer. He spent time trying to address the issue. Mr. McBride lost income as a result of his inability to secure employment. Even after securing part-time employment, Mr. McBride at times felt helpless and demoralized when contemplating the burden of the unjust denial of employment, which in turn resulted in physical and emotional distress and debilitation.

**A. Defendants' Practices and Policies**

35. Defendants have created and implemented national, uniform hiring and staffing policies, procedures, and practices under which they operate. Those policies, procedures, and practices cover the use of "background checks" or "consumer reports" to screen potential employees.

36. As part of that process, Defendants present all applicants with the same (or substantially the same) disclosure and authorization form presented to Plaintiff.

37. Defendants violate Section 1681b(b)(2) every time they obtain a consumer report based on the form (or one substantially similar to the form) provided to Plaintiff.

38. Defendants routinely use consumer reports to screen prospective employees. As a matter of practice, Defendants regularly fail to provide copies of consumer reports to job applicants against whom an adverse action is taken based in whole or part on consumer reports, before taking that adverse action, in violation of Section 1681b(b)(3).

39. As a matter of practice, Defendants regularly fail to provide copies of the FTC or CFPB notice of rights to job applicants against whom an adverse action is taken based in whole or part on a consumer report, before taking that adverse action.

40. As a matter of course, Defendants use the same business process for obtaining and using consumer reports, and for the “adjudication” of employment applications as taken with Plaintiff McBride and members of the Class described below. In doing so, Defendants deprive consumers of any reasonable time period by which to dispute or discuss any inaccurate or derogatory information in their background reports before a final hiring decision is made.

41. As a result of these FCRA violations, Defendants are each liable to Plaintiff, and to each Class member, for statutory damages from \$100 to \$1,000 pursuant to 15 U.S.C. § 1681n(a)(1)(A), plus punitive damages pursuant to 15 U.S.C. § 1681n(a)(2), and attorneys’ fees and costs pursuant to 15 U.S.C. §§ 1681n and 1681o.

42. Defendants’ conduct and omissions were willful. Because the FCRA was enacted in 1970, Defendant has had years to become compliant but has failed to do so.

43. A+ Staffing is a nationwide employer, whose business it is to screen and hire employees. A+ Staffing therefore knew of the requirements imposed upon it by the FCRA and failed to craft a system that would ensure compliance with those requirements.

**B. Concrete Harm.**

44. By implementing these policies, A+ Staffing robbed Plaintiff and Class Members of their congressionally mandated rights of privacy and to information to which Congress has deemed them entitled.

45. Section 1681b(b)(2)(A) “establishes a right to specific information in the form of a clear and conspicuous disclosure. The statutory requirement that the disclosure be made in ‘a document that consists solely of the disclosure’ helps to implement the textual command that the disclosure be clear and conspicuous.” *Thomas v FTS USA, LLC*, 2016 U.S. Dist. LEXIS 85545, \*18–19 (E.D. Va. June 30, 2016).

46. Section 1681b(b)(2)(A) also “establishes a right to privacy in one’s consumer report that employers may invade only under stringently defined circumstances.” *Id.* at \*19.

47. “Section 1681b(b)(3), like § 1681b(b)(2)(A), provides the consumer with a legally cognizable right to specific information. Specifically, . . . [consumers have] the right to receive a copy of the report on which the adverse action is based and a summary of their rights under the FCRA before the contemplated adverse employment action is taken.” *Id.* at \*35.

48. “Relatedly, [§ 1681b(b)(3)] provides consumers against whom adverse employment action is contemplated with a right to have time to discuss the reports with their current or prospective employers and to correct the reports if necessary before the contemplated adverse action is taken.” *Id.* at \*35–36.

49. The protections established by § 1681b(b)(2)(A) and by § 1681b(b)(3) “are clearly substantive, and neither is technical nor procedural.” *Id.* at 19.



50. By failing to provide Plaintiff and Class Members with a clear and conspicuous disclosure in writing in a document that consists solely of the disclosure that a consumer report may be obtained for employment purposes as required by § 1681b(b)(2)(A), Defendants denied Plaintiff and Class Members information to which they were specifically entitled under the FCRA.

51. By procuring the consumer reports of Plaintiff and Class Members without making the disclosure required by § 1681b(b)(2)(A), Defendants unlawfully invaded Plaintiff's and Class Members' rights of privacy created by the FCRA. *See id.* at \*32–33. (“Thomas . . . has alleged that Defendants invaded the statutory right to confidentiality of his personal information by obtaining his consumer report without first providing the required disclosure or obtaining his written consent, as required by § 1681b(b)(2)(A). This allegedly unauthorized disclosure of personal information constitutes an invasion of the statutory right to privacy and a concrete injury sufficient to confer Article III standing.”).

52. The invasion of privacy exists regardless of the fact that a consumer may have signed the disclosure form, and regardless of the accuracy of any information in the resulting consumer report.

53. By taking adverse action against Plaintiff McBride and Class Members without first providing them with copies of their consumer reports, Defendants denied Plaintiff McBride and Class Members information to which they were specifically entitled under the FCRA.

54. When they took adverse action against Plaintiff McBride and Class Members without providing them sufficient time to discuss the consumer reports and to correct the reports if necessary, Defendants denied Plaintiff McBride and Class members the opportunity that Congress provided through the FCRA.

55. The informational injuries, the breach of privacy injury, and the injury resulting from the deprivation of the opportunity to explain and discuss the issues raised by derogatory information in their consumer reports suffered by Plaintiff and Class Members as a result of Defendant's violations of §§ 1681b(b)(2)(A) and 1681b(b)(3) are particularized because those injuries happened to Plaintiff and each Class Member.

56. The informational injuries suffered by Plaintiff and Class Members as a result of Defendants' violations of §§ 1681b(b)(2)(A) and 1681b(b)(3) are real and concrete because "it is well-settled that Congress may create a legally cognizable right to information, the deprivation of which will constitute a concrete injury [and] [b]y extension, it is well within Congress' power to specify the form in which that information must be presented." *Id.* at \*27–28; *see also id.* at \*36.

57. The invasion of privacy injury suffered by Plaintiff and Class Members as a result of Defendants' violations of § 1681b(b)(2)(A) is real and concrete because "it has long been the case that an unauthorized dissemination of one's personal information, even without a showing of actual damages, is an invasion of one's privacy that constitutes a concrete injury sufficient to confer standing to sue" and Congress has extended the right of privacy to information contained within one's consumer report. *Id.* at \*30–31.

58. With § 1681b(b)(3), Congress identified a substantial risk of harm caused by the dissemination of inaccurate or misleading information regarding consumers, who could potentially suffer an adverse and often secret employment decision without an opportunity to address the underlying information or to know their rights. *See* Sen. Rep. No. 104-185, 35 (Dec. 14, 1995).

## V. LEGAL REQUIREMENTS

59. The FCRA, in Section 1681b(b)(2), regulates the conduct of persons who obtain a “consumer report” about employees or applicants:

Except as provided in subparagraph (B) [circumstances not present here], a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless --

(i) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and

(ii) the consumer has authorized in writing (which authorization may be made on the document referred to in clause (i)) the procurement of the report by that person.

60. Courts, including this one, have roundly held that the disclosure must be in a standalone document, and that “consists solely of the disclosure” means just that.

61. Instead, the Defendants’ disclosure contains unneeded statements about the honesty of the statement, includes a release from liability, and is not in a standalone document.

62. As a result of its defective disclosure, Defendants procured a consumer report for Plaintiff and those similarly situated for employment purposes without first obtaining a proper, written authorization to do so.

63. Section 1681b(b)(3)(A) of the FCRA regulates the conduct of any person who uses a “consumer report” to take an adverse action against any employees or prospective employees as follows:

Except as provided in subparagraph (B) [in cases of a consumer applying for a position over which the Secretary of Transportation may establish qualifications], in using a consumer report for employment purposes, before

taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates --

- (i) a copy of the report; and
- (ii) a description in writing of the rights of the consumer under this subchapter, as prescribed by the Federal Trade Commission under section 1681g(c)(3) of this title.

64. The purpose of § 1681b(b)(3)(A) is to provide a prospective or current employee a sufficient amount of time to review the consumer report, correct any inaccuracies, to notify the prospective employer of these inaccuracies before an adverse action is taken and generally to discuss the contents of the report with the prospective employer.

65. This statutory requirement was enacted by Congress expressly to protect consumer privacy by restricting the circumstances under which a person (in this instance Defendants) could obtain and use a consumer's personal information consumer report.

66. In enacting this FCRA provision, Congress also expressly sought to guarantee important material information be provided to Plaintiff McBride and consumers like him with respect to employer use of a consumer report for an employment adverse action.

67. Plaintiff and each putative Class Member has been substantively harmed and injured by Defendants in the violation of their personal privacy and in the deprivation of the congressionally mandated information.

## **VI. DEFENDANTS ACTED WILLFULLY**

68. Defendants knew or should have known about its legal obligations under 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.

69. Defendants obtained or had available substantial written materials which apprised it of its duties under the FCRA.

70. The written disclosure which precedes a written authorization for a prospective employer to obtain a consumer report for employment purposes must be presented in a clear, conspicuous, stand-alone form. *Thomas v. FTS USA, LLC*, No. 3:13-CV-825, 2016 WL 3653883, at \*7 (E.D. Va. June 30, 2016); *Milbourne v. JRK Residential Am., LLC*, 92 F. Supp. 3d 425, 434 (E.D. Va. 2015).

71. Defendants knew that they had an obligation to provide a stand-alone disclosure and obtain the consumer's authorization before procuring a consumer report.

72. The FCRA requires that, prior to procuring consumer reports, employers must certify to the consumer reporting agency that they will comply with the FCRA's standalone disclosure and authorization requirements. *See* 15 U.S.C. § 1681b(b)(1).

73. In accordance with their standard procedures, the consumer reporting agencies from which Defendants acquired consumer reports during the five years preceding the filing of this Complaint, required Defendants to certify that they would comply with the standalone disclosure provisions of the FCRA.

74. Before procuring Plaintiff's report, Defendants did, in fact, certify to consumer reporting agencies that it would comply with the stand-alone disclosure and authorization provisions of the FCRA.

75. Defendants also agreed that before obtaining a consumer report, Defendants would provide a disclosure in writing to the consumer that a consumer report will be obtained for employment purposes and that such disclosure will be made in a document consisting solely of the disclosure.

76. By systematically inserting extraneous information into Plaintiff's and other Class Members' disclosures, Defendants willfully violated 15 U.S.C. § 1681b(b)(2)(A).

77. Before a person takes an adverse employment action, it must provide two documents to the prospective employee. *See* Letter from Clark W. Brinckerhoff to Erick J. Weisberg (June 27, 1997), FTC Informal Staff Letter (“Brinckerhoff Letter II”) (noting that taking action a period of five business days after notice “appears reasonable.”); *Williams v. Telespectrum, Inc.*, Civil Action No. 3:05cv853 (E.D. Va. 2006), Report and Recommendation of Magistrate Judge Hannah Lauck dated November 7, 2006, adopted by Judge R. Payne January 8, 2005, (holding that a user of a consumer report must provide to the consumer a copy of the report and disclosure of rights a sufficient amount of time before it takes adverse action so that the consumer can rectify any inaccuracies in the report, and simultaneous provision of the report does not satisfy this requirement); *Kelchner v. Sycamore Manor Health Center*, 305 F. Supp. 2d 429, 435 (M.D. Pa. 2004); (holding a reasonable period for the employee to respond to disputed information is not required to exceed five business days following the consumers receipt of the consumer’s report from the employer); *Beverly v. Wal-Mart Stores, Inc.*, No. 3:07cv469 (E.D. Va. 2009) (Consent Order providing ChoicePoint mailing of Adverse Action Notices on behalf of its customers shall occur no earlier than five business days after the mailing of the Pre-adverse Action Notices).

78. To ensure knowing compliance with the FCRA, Congress requires that before any consumer reporting agency may provide consumer reports on an applicant, the reporting agency must have obtained a certification from the employer that it will comply with 15 U.S.C. § 1681b(b)(3) whenever the employer decides to take adverse action based in whole or in part on the consumer report. 15 U.S. C. § 1681b(b)(1)(A).

79. Upon information and belief, Defendants knowingly executed a certification providing that it would comply with the various provisions of the FCRA whenever adverse

action was contemplated or taken based in whole or in part on information contained in a consumer report.

80. Despite their certification and knowledge of the FCRA's requirements in this context, Defendants knowingly violated 15 U.S.C. § 1681b(b)(2) and (b)(3).

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

82. As a result of these FCRA violations, Defendants are liable to Plaintiff and to each Class Member, for statutory damages from \$100 to \$1,000 pursuant to 15 U.S.C. § 1681n(a)(1)(A), plus punitive damages pursuant to 15 U.S.C. § 1681n(a)(2) for the violations alleged herein, and for attorneys' fees and costs pursuant to §§ 1681n and 1681o.

## **VII. CLASS ACTION ALLEGATIONS**

### **PLAINTIFF'S PROPOSED CLASS**

83. Pursuant to Federal Rule of Civil Procedure 23 and 15 U.S.C. § 1681b(b)(2), Plaintiff bring this action for herself and on behalf of a class (the "Impermissible Use Class"), defined as:

All natural persons residing in the United States and its Territories regarding whom, within five years prior to the filing of this action and extending through the resolution of this action, the Defendants procured or caused to be procured a consumer report for employment purposes using a written disclosure containing language substantially similar to the disclosure form provided to Mr. McBride and described above.

Specifically excluded from this Class are: (a) all federal court judges who preside over this case, their spouses and persons who work for them; (b) all persons who elect to exclude themselves from the Class; (c) Plaintiff's counsel and persons who work for them or are related to them by marriage or as immediately family; and (d) Defendants' current employees, officers, directors, agents, and representatives and their family members.

84. Pursuant to Federal Rule of Civil Procedure 23 and 15 U.S.C. § 1681b(b)(3), Plaintiff McBride brings this action for himself and on behalf of a class (the “Adverse Action Class”), defined as:

All natural persons residing in the United States (including all territories and other political subdivisions of the United States), (a) who were employees of Defendants or who applied for an employment position with Defendants (b) as part of this application process were the subject of a consumer report used by Defendants on or after August 15, 2016 and through the pendency of this action (c) where that consumer report contained an item that would disqualify the person from such position under Defendants’ hiring policies, (d) which consumer was not then approved or hired for the position, (e) and to whom Defendants did not provide a copy of the consumer report and the FCRA Summary of Rights at least five business days before the date the employment decision was adjudicated.

Specifically excluded from this Class are: (a) all federal court judges who preside over this case, their spouses and persons who work for them; (b) all persons who elect to exclude themselves from the Class; (c) Plaintiff’s counsel and persons who work for them or are related to them by marriage or as immediately family; and (d) Defendants’ current employees, officers, directors, agents, and representatives and their family members.

85. **Numerosity. Fed. R. Civ. P 23(a)(1).** Upon information and belief, the putative Class exceed 100 members each, making joinder of all members impracticable. The names and addresses of the class members are identifiable through the internal business records maintained by Defendant and the class members may be notified of the pendency of this action by published and/or mailed notice.

86. **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 Class Members and predominate over any questions solely affecting individual Class Members. The total focus of the litigation will be Defendants’ uniform conduct and procedures; whether the disclosure form violates Section 1681b(b)(2) because of its extraneous language and placement within the application; whether Defendants provided the required notices; when it did so; and, whether Defendants acted willfully in their failure to design and implement procedures to assure compliant delivery and/or



timing of these notices. The appropriate amount of uniform statutory and/or punitive damages under 15 U.S.C. § 1681n is a common question for members of the Classes.

87. **Typicality. Fed. R. Civ. P. 23(a)(3).** Plaintiff's claims are typical of the claims of each putative Class Member. Plaintiff, as well as every punitive class member, allege violations of the same FCRA provisions, 15 U.S.C. §§ 1681b(b)(2) and (b)(3). These claims challenge Defendants' hiring and consumer-report-furnishing procedures as they relate to a definable group of consumers—Defendants' employees and applicants. In addition, Plaintiff is entitled to relief under the same causes of action as the other members of the putative class. All are based on the same facts and legal theories.

88. **Adequacy of Representation. Fed. R. Civ. P. 23(a)(4).** Plaintiff is an adequate representative of the putative 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 has and intends to continue to prosecute the action vigorously. Plaintiff and his Counsel will fairly and adequately protect the interests of the members of the Class. Neither Plaintiff nor his Counsel have any interests which might cause them not to vigorously pursue this action.

89. **Predominance and Superiority. Fed. R. Civ. P. 23(b)(3).** 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. The damages sought by each member are such that individual prosecution would prove burdensome and expensive. Additionally, none of the class members would have known of the facts underlying the violation or of the legal basis for this action absent this lawsuit. It would be virtually impossible for members of the Class individually to

effectively redress 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 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 a case.

### **VIII. CAUSES OF ACTION**

#### **COUNT ONE: VIOLATIONS OF 15 U.S.C. § 1681b(b)(2)(A)**

90. Plaintiff incorporates by reference those paragraphs set out above as though fully set forth herein.

91. Defendants' failure to provide Plaintiff McBride and members of the Impermissible Use Class with a standalone disclosure and properly obtain their authorization for A+ Staffing to obtain consumer reports for employment purposes violated 15 U.S.C. § 1681b(b)(2)(A).

92. The conduct, action, and inaction of Defendants were willful, rendering it liable for statutory and punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n.

93. Plaintiff and other members of the Impermissible Use Class are entitled to recover costs and attorneys' fees as well as appropriate equitable relief from Defendants in an amount to be determined by the Court, pursuant to 15 U.S.C. § 1681n.

**COUNT TWO: VIOLATIONS OF 15 U.S.C. § 1681b(b)(3)(A)**

94. Plaintiff incorporates by reference those paragraphs set out above as though fully set forth herein.

95. Defendants' failure to provide Plaintiff McBride and members of the Class with a copy of the consumer report upon which it based its decision to take the adverse action, prior to taking such action, violated 15 U.S.C. § 1681b(b)(3)(A)(i).

96. Likewise, Defendants' failure to provide Plaintiff McBride and members of the Class the mandated FTC/CFPB Summary of FCRA Rights, prior to taking such action, violated 15 U.S.C. § 1681b(b)(3)(A)(ii).

97. Defendants' system robs consumers of a reasonable opportunity to dispute inaccurate information in their background reports, further violating Section 1681b(b)(3).

98. Defendants' obtaining and use of Plaintiff McBride and Class member consumer reports without compliance with § 1681b(b)(3) violates 15 U.S.C. § 1681b(f).

99. The conduct, action, and inaction of Defendants were willful, rendering it liable for statutory and punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n.

100. Plaintiff McBride and other members of the Class are entitled to recover costs and attorneys' fees as well as appropriate equitable relief from A+ Staffing in an amount to be determined by the Court, pursuant to 15 U.S.C. § 1681n.

**IX. PRAYER FOR RELIEF**

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

1. That an order be entered certifying the proposed Classes under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiff and his Counsel to represent the Classes;
2. That judgment be entered for the proposed Classes against Defendants for statutory damages and punitive damages for violation of 15 U.S.C. § 1681b, pursuant to 15 U.S.C. § 1681n;
3. That the Court award costs and reasonable attorneys' fees, pursuant to 15 U.S.C. §§ 1681n and 1681o; and,
4. That the Court grant such other and further relief as may be just and proper, including but not limited to any equitable relief that may be permitted.

**A TRIAL BY JURY IS DEMANDED.**

Respectfully submitted,

**ROBERT MCBRIDE, *individually and on behalf of and all others similarly situated***

By: /s/ Leonard A. Bennett  
Leonard A. Bennett, VSB No. 37523  
Elizabeth W. Hanes, VSB No. 75574  
Craig C. Marchiando VSB No. 89736  
**CONSUMER LITIGATION ASSOCIATES, P.C.**  
763 J. Clyde Morris Blvd., Suite 1-A  
Newport News, VA 23601  
Telephone: (757) 930-3660  
Facsimile: (757) 930-3662  
Email: lenbennett@clalegal.com  
Email: elizabeth@clalegal.com  
Email: craig@clalegal.com

Kristi Cahoon Kelly, VSB #72791  
Andrew J. Guzzo, VSB #82170  
**KELLY & CRANDALL, PLC**  
4084 University Drive, Suite 202A  
Fairfax, Virginia 22030  
Telephone: (703) 424-7572  
Facsimile: (703) 591-0167  
E-mail: [kkelly@kellyandcrandall.com](mailto:kkelly@kellyandcrandall.com)  
E-mail: [aguzzo@kellyandcrandall.com](mailto:aguzzo@kellyandcrandall.com)

*Attorneys for the Plaintiff*

JS 44 (Rev. 06/17)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b> Robert A. McBride, individually and on behalf of all others similarly situated</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>Norfolk</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Leonard A. Bennett, Elizabeth Hanes, Craig Marchiando, Consumer Litigation Associates, P.C., 763 J. Clyde Morris Boulevard, Suite 1-A, Newport News, Virginia 23601 (757) 930-3660</p>	<p><b>DEFENDANTS</b> A+ Student Staffing, Inc., and ETC Institute</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> </thead> <tbody> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </tbody> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)* [Click here for: Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p><b>Other:</b></p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

**V. ORIGIN** *(Place an "X" in One Box Only)*

1 Original Proceeding   
 2 Removed from State Court   
 3 Remanded from Appellate Court   
 4 Reinstated or Reopened   
 5 Transferred from Another District *(specify)*   
 6 Multidistrict Litigation - Transfer   
 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*  
15 U.S.C. § 1681

Brief description of cause:  
Violation of Fair Credit Reporting Act

**VII. REQUESTED IN COMPLAINT:**   
 CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.   
**DEMAND \$** \_\_\_\_\_   
 CHECK YES only if demanded in complaint:  
**JURY DEMAND:**   
 Yes   
 No

**VIII. RELATED CASE(S) IF ANY**   
*(See instructions):*   
 JUDGE \_\_\_\_\_   
 DOCKET NUMBER \_\_\_\_\_

DATE 08/07/2018   
 SIGNATURE OF ATTORNEY OF RECORD  
/s/ Leonard A. Bennett

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_   
 AMOUNT \_\_\_\_\_   
 APPLYING IFP \_\_\_\_\_   
 JUDGE \_\_\_\_\_   
 MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Job Applicant Alleges A+ Student Staffing, ETC Institute 'Robbed' Him of His Rights Under FCRA](#)

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