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4 702 Plumas St.
5 Reno, NV 89509
6 (775) 333-9277
7 Attorney for Plaintiff,
8 Joan E. McKinney

ECF filed: 5/11/17

6 IN THE UNITED STATES DISTRICT COURT FOR THE
7 DISTRICT OF NEVADA

8 _____
9 Joan E. McKinney, individually and)
10 on behalf of others similarly situated,)
11 Plaintiff,)
12 v.)
13 Seterus, Inc.,)
14 Defendant.)
15 _____

Case No. _____

JURY TRIAL DEMANDED

15 CLASS ACTION COMPLAINT

16 Plaintiff, Joan E. McKinney (“McKinney”), for this Class Action Complaint
17 against the Defendant Seterus Inc. alleges and states:

- 18 1. Plaintiff brings this action to secure redress for a course of conduct that
19 included accessing plaintiff’s credit report without consent or any lawful
20 reason, in violation of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §
21 1681 et seq.
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23 2. Venue is properly before this Court because the Plaintiff, Joan E.
24 McKinney, is a resident and a citizen of this District and the acts
25 complained of caused injury in this District.
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PARTIES

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3. Plaintiff is an individual who resides in Reno, Nevada.

4. Defendant is Seterus Inc., an entity formed as a specialty loan servicing company.

5. The Defendant has willfully and intentionally participated in the wrongful conduct complained of herein and caused injury to the Plaintiff and others similarly situated to the Plaintiff.

CLASS DEFINITION

6. Joan McKinney also sues on behalf of others who are similarly situated to Joan McKinney. This class of persons consists of the following persons:

Any person who obtained a discharge of their debt to Defendant through a bankruptcy proceeding and after the discharge, the Defendant pulled or obtained a consumer report about that person within the 5 year period preceding the filing of this complaint. The class excludes any person who falls within the definition if the person is (i) an employee or independent contractor of the Defendant; (ii) a relative of an employee or independent contractor of the Defendant; or (iii) an employee of the Court where this action is pending; or (iv) a person who gave written authorization to the Defendant after their discharge; or (v) applied for credit with the Defendant after their discharge. This definition may be amended or modified.

FACTS

7. On February 26, 2010, Joan McKinney and her husband, Ronnie C. McKinney, filed a bankruptcy proceeding under Title 11 before the United States Bankruptcy Court for the District of Nevada, Case No. BK-N-10-50597-GWZ. Prior to the bankruptcy filing, Joan McKinney had a credit relationship with the Defendant as a result of a mortgage debt.

8. As a result of the bankruptcy proceeding, on April 29, 2015 the McKinneys were granted a discharge of their in personam liability for debts, including any debt owed to Seterus, Inc..

1 9. There was no other in personam relationship established or created between
2 Joan McKinney and Seterus Inc. after Joan McKinney filed her bankruptcy.

3 10. Seterus Inc. knew of Joan McKinney's bankruptcy filing and that she was
4 granted a discharge.

5 11. Despite the discharge and the absence of any in personam credit relationship
6 between Joan McKinney and Seterus Inc., it accessed Joan McKinney's personal
7 information after the discharge by pulling or obtaining consumer reports from a
8 consumer reporting agency on more than one occasion after their discharge.

9 12. Joan McKinney has not requested credit from the Defendant, nor was it a
10 replacement for any other credit Joan McKinney had.

11 13. Joan McKinney had not authorized Seterus Inc. access to her private credit
12 reports or information.

13 14. Defendant invaded Joan McKinney's privacy when it obtained Joan
14 McKinney's private credit information without complying with the FCRA.

15 **CLASS ALLEGATIONS**

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17 15. This action is also brought as a Class Action under Rule 23 of the Federal
18 Rules of Civil Procedure. Plaintiff proposes to represent herself and the class defined
19 above.

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21 16. The named Plaintiff falls within the Class definition and is a Class Member.

22 17. The particular members of the Class are capable of being described without
23 difficult managerial or administrative problems. The members of the Class are readily
24 identifiable from the information and records in the possession, custody or control of
25 the Defendant and the records of the consumer reporting agencies since they charge the
26 Defendant for each pull made by it.
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1 18. Upon information and belief, the Class is sufficiently numerous such that
2 individual joinder of all members is impractical. This allegation is based on the fact that
3 Defendant is a substantial credit provider.

4 19. There are questions of law and fact common to the Class which
5 predominates over any questions affecting only the individual members of the Class
6 and, in fact, the wrongs alleged against the Defendant are identical. The common issues
7 include, but are certainly not limited to:

8 (i) Whether the Defendant obtained or pulled information
9 about the Plaintiff and members of the Class from a consumer
10 reporting agency;

11 (ii) Whether the Defendant can show any permissible purpose
12 or written authorization to obtain or pull private credit information
13 about the Plaintiff or the members of the class;

14 (iii) Whether the Defendant acted willfully, as that term has been
15 interpreted under the FCRA, when it pulled or obtained the private
16 information about the Plaintiff or the members of the Class;

17 (iv) The amount of statutory damages to be assessed against the
18 Defendant;

19 (v) Whether an award of punitive damages against Defendant is
20 appropriate.

21 20. The Plaintiff's claims are the same for each member of the Class and are
22 based on the same legal and factual theories. There is nothing unusual about the
23 Plaintiff to warrant a material difference between her claims and the claims of the
24 members of the class.
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1 21. Defendant's likely defenses (though unavailing) are and will be typical of
2 and the same or identical for each of the Class Members and will be based on the same
3 legal and factual theories. There are no valid unique defenses.

4 22. The named Plaintiff will fairly and adequately represent and protect the
5 interests of the Class. The named Plaintiff has retained counsel that is experienced in
6 consumer litigation. The named Plaintiff's co-counsel is also experienced in consumer
7 cases including having been appointed as class counsel in a number of class actions
8 asserting claims under consumer protection laws.

9
10 23. The named Plaintiff does not have any interests antagonistic to the members
11 of the Class.

12 ***Certification Under Fed. R. Civ. P. 23(b)(2) and (b)(3)***

13 24. The Defendant has acted on grounds that apply uniformly across the Class,
14 so that the statutory relief afforded pursuant to 15 U.S.C.A. § 1681n is appropriate
15 respecting the Class as a whole. Further, the common questions predominate over any
16 individual questions and a class action is superior for the fair and efficient adjudication
17 of this controversy. A class action will cause an orderly and expeditious administration
18 of Class members' claims, and economies of time, effort, and expenses will be fostered
19 and uniformity of decisions will be ensured.

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21 25. There are no individual questions to establish the claims of the Plaintiff and
22 the Class Members. The claims are based on the Defendant's invasion of her privacy
23 interests in her private credit information when they did not comply with the FCRA to
24 do so.

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26 26. Plaintiff's claims are typical of the claims of the class members.

27 27. The Class members have suffered damages, losses, and harm similar to those
28 sustained by the named Plaintiff. This includes the invasion of their privacy. All are

1 entitled to the statutory damages allowed by the FCRA as damages for the invasion of
2 privacy and to any punitive damages that may be awarded based on that conduct.

3 **COUNT I - FAIR CREDIT REPORTING ACT**

4 28. McKinney incorporates the foregoing paragraphs.

5 29. In enacting the FCRA, Congress found “[t]here is a need to insure that
6 consumer reporting agencies exercise their grave responsibilities with fairness,
7 impartiality, and a respect for the consumer’s right to privacy.”

8 30. The FCRA, 15 U.S.C. § 1681 b, sets forth when the private information held
9 by Consumer Reporting Agencies may be shared with others. The FCRA provides it is
10 only permissible to obtain a credit report on a consumer with the written consent of the
11 consumer or for certain “permissible purposes, which insofar as pertinent are the
12 extension of credit to, or review or collection of an account of, the consumer,
13 employment purposes, the underwriting of insurance, or in connection with a business
14 transaction that is initiated by the consumer”.

15 31. The requester must affirmatively certify to the consumer reporting agency
16 that a permissible purpose exists.

17 32. Defendant obtained or “pulled” the consumer report of Joan McKinney and
18 the members of the class without written permission or a “permissible purpose”.

19 33. To obtain the consumer report of Joan McKinney or the class members, the
20 Defendant had to affirmatively certify that it had either written consent or a permissible
21 purpose.

22 34. The Defendant knew that it did not have either written consent or a
23 permissible purpose.

24 35. The FCRA, 15 U.S.C. § 1681q, provides:
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§ 1681q. Obtaining information under false pretenses

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined under title 18, United States Code, imprisoned for not more than 2 years, or both.

36. The Defendant obtained information about Joan McKinney and the class members under false pretenses since the Defendant did not have a permissible purpose or written permission.

37. The FCRA, 15 U.S.C. § 1681n, provides:

§1681n. Civil liability for willful noncompliance

- (a) In general. Any person who willfully fails to comply with any requirement imposed under this title [15 USC §§ 1681 et seq.] with respect to any consumer is liable to that consumer in an amount equal to the sum of -
 - (1)
 - (A) any actual damages sustained by the consumer as a result of the failure or damages of not less than \$ 100 and not more than \$1,000; or
 - (B) in the case of liability of a natural person for obtaining a Consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or \$1,000, whichever is greater;
 - (2) such amount of punitive damages as the court may allow; and
 - (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys fees as determined by the court.

38. The FCRA, 15 U.S.C. § 1681p, provides:

§ 1681p. Jurisdiction of courts; limitation of actions

An action to enforce any liability created under this title [15 USC §§ 1681 et seq. may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this title [15 USC §§ 1681 et seq.] to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this title [15 USC §§ 1681 et seq.], the action may be brought at any time within two years after the discovery by the individual of the misrepresentation.

1 39. The Plaintiff and the class members have had their privacy illegally
2 invaded as a result of Defendant's willful actions and they are entitled to statutory
3 damages allowed by the FCRA to compensate them for their injuries.
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5 40. The Defendant's actions support an award of punitive damages since
6 they acted knowingly when they accessed reports without a permissible purpose and
7 made false certifications to pull or obtain the private information of the Plaintiff and
8 class members.

9 Wherefore, the Plaintiff prays for the following relief and judgment in her favor
10 and the members of the class and against the Defendant:

11 a. The Court certify a class of persons defined herein as may be modified or
12 amended;

13 b. Appoint Plaintiff as a Class Representative and her counsel as Class Counsel to
14 represent the class certified;

15 c. Award statutory damages to the Plaintiff and each class member;

16 d. Award punitive damages against the Defendant;

17 e. Award the Plaintiff and Class their costs, including attorney fees.
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19 f. Award such other and further relief as may be appropriate and proper.
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JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted,
Joan E. McKinney
By her Attorneys,

Christopher P. Burke, Esq.

Dated: 5/11 /17

/s/ Christopher P. Burke
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and

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Attorneys for Plaintiff

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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.)

I. (a) PLAINTIFFS

JOAN E. MCKINNEY

(b) County of Residence of First Listed Plaintiff Washoe (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Christopher P. Burke, Esq. 702 Plumas Street Reno, Nevada 89509 Phone: (775)333-9277

DEFENDANTS

SETERUS, INC.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known) none known

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Fair Credit Reporting Act ("FCRA") 15 U.S.C. §1681 et seq.

Brief description of cause: violation of FCRA, obtaining personal information without a permissible purpose

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: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions) JUDGE DOCKET NUMBER

DATE 05/11/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Christopher P. Burke, Esq.

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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six 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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- 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.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Nevada

JOAN E. MCKINNEY, individually and on behalf of others similarly situated,

Plaintiff(s)

v.

Seterus, Inc.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Seterus, Inc. c/o: Resident Agent The Corporation Trust Company of Nevada 701 S. Carson St., Ste. 200 Carson City, Nevada 89701

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Christopher P. Burke, Esq. 702 Plumas Street Reno, Nevada 89509

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Seterus Illegally Checks Consumers' Credit Reports](#)
