

**SUPREME COURT OF THE CITY NEW YORK
COUNTY OF NEW YORK**

HUONG THU NGUYEN-WILHITE, on behalf of
herself and others similarly situated,

Plaintiff,

-against-

TAPESTRY, INC.,

Defendant.

Index No. _____

CLASS ACTION COMPLAINT

(Trial by Jury Demanded)

On behalf of herself and all others similarly situated, Plaintiff Huong Thu Nguyen-Wilhite (“Plaintiff” or “Ms. Nguyen-Wilhite”), through her attorneys, Francis Mailman Soumilas, P.C., respectfully alleges as follows:

NATURE OF THE ACTION

1. This is a consumer class action under the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.* (“FCRA”), brought on behalf of applicants for employment with Defendant Tapestry, Inc. (“Defendant” or “Tapestry”), an American multinational branded luxury fashion company that includes the well-known brands Coach, Kate Spade, and Stuart Weitzman. Plaintiff contends that Defendant regularly violates section 1681b(b)(3) of the FCRA by using consumer reports to take adverse employment actions without, *beforehand*, providing the person who is the subject of the report sufficient and timely notification and a copy of the report and a summary of rights under the FCRA, leaving the person who is the subject of the report without any meaningful opportunity to explain any negative entries on the report and/or to correct any errors on the report.

2. The FCRA regulates the use of “consumer reports” for employment purposes, commonly called “background reports.” Congress included in the statutory scheme a series of

due-process-like protections that impose strict procedural rules on “users of consumer reports,” such as Tapestry. This action involves Defendant’s violations of those important rules.

3. Plaintiff was denied employment as a manager at a Coach New York (“Coach”)¹ store operated by Tapestry based upon a standardized background screen conducted by First Advantage Background Services Corporation (“First Advantage”) pursuant to an agreement between First Advantage and Tapestry whereby First Advantage performs a standardized background screen on all of Tapestry’s candidates for hire, transfer or promotion. First Advantage, applying Tapestry’s pre-determined criteria, determined that Plaintiff had failed the background check and was not eligible for the job based upon the purported existence of multiple criminal records. These crimes, however, do not belong to or relate to Plaintiff and were erroneously included in her background report.

4. In violation of the FCRA, Defendant willfully and negligently failed to comply with the FCRA’s mandatory pre-adverse action notification requirement, and failed to provide a copy of the inaccurate background report they obtained from First Advantage, *before* the adverse action occurred, as required by 15 U.S.C. § 1681b(b)(3). Every year, individuals who have applied to Coach and other Tapestry-run businesses subject to the same practices have been similarly aggrieved by the same violation of 15 U.S.C. § 1681b(b)(3).

5. Pursuant to 15 U.S.C. §§ 1681n and 1681o, Plaintiff seeks monetary relief for herself and classes of similarly situated employment applicants for whom Defendant failed to comply with FCRA section 1681b(b)(3)’s pre-adverse action notification requirements.

PARTIES

6. Plaintiff is an adult individual residing in Tucson, Arizona.

¹ Coach New York, commonly known as Coach, is a subsidiary of Tapestry, Inc. In October 2017 Coach, Inc. was renamed and rebranded as Tapestry, Inc.

7. Defendant Tapestry, Inc. regularly conducts business in the Southern District of New York. Defendant Tapestry, Inc. is a parent of and regularly oversees and manages the operations of three branded luxury fashion companies: Coach New York, Kate Spade New York and Stuart Weitzman. Tapestry, Inc. has its headquarters and a principal place of business at 10 Hudson Yards, New York, NY 10001-2158.

JURISDICTION AND VENUE

8. This Court has personal jurisdiction over Defendant pursuant to Section 301 of New York's Civil Practice Law & Rules, N.Y. C.P.L.R. § 301, because Defendant is a domestic corporation duly authorized and qualified to conduct business in the State of New York.

9. Venue for this action is properly laid in the County of New York, pursuant to N.Y. C.P.L.R. § 503, because the Defendant resides in New York County.

STATEMENT OF FACTS

Tapestry's Use of First Advantage's Screening Services

10. First Advantage is a consumer reporting agency which provides "consumer reports," as defined by 15 U.S.C. § 1681a(d)(1)(B), background and employment screening services, and decision-making intelligence to prospective employers.

11. First Advantage investigates and reviews public record and private databases and assembles and/or maintains consumer files which contain public record information concerning, among other things, the alleged criminal record history of individuals.

12. From its files, First Advantage sells consumer reports to potential employers (such as Tapestry) wishing to review the criminal record history, or lack thereof, of various job applicants or employees.

13. In addition to providing background reports, First Advantage offers to its employment screening customers an enhanced service where, in addition to creating a background report about an applicant or employee, First Advantage will also review the report to determine whether it meets the employer’s hiring criteria. Under this service, the employer develops a “matrix” together with First Advantage which establishes the records that will disqualify the applicant or employee and lead to an adverse action if they appear on a background report. First Advantage then applies these standards as part of the creation of the report, delivering a “score” on the face of the report indicating whether the applicant or employee is “Eligible” or whether they have “Fail[ed]” the background check and/or are “In-Eligible for Hire.” This type of enhanced background screening service is known in the background screening industry as “adjudication.”

14. The adjudication service is attractive to First Advantage’s customers such as Tapestry who are constantly hiring and promoting in high volumes because it provides the customer with a remote, outsourced tool to make employment decisions rapidly.

15. First Advantage offers customers the possibility of using its screening service both to screen applicants for employment, and current employees either on a recurring basis, or in connection with a promotion or transfer to a different role.

16. Tapestry used and/or continues to use First Advantage’s screening services to conduct background checks on applicants for employment and employees with all of its subsidiaries in the United States, including Coach.

17. The background reports resulting from these services are obtained by and delivered to Tapestry.

18. Defendant orders and receives background reports from First Advantage for applicants for employment, as well as on existing employees.

19. Tapestry’s business arrangement for obtaining background reports from First Advantage about current and prospective employees includes the use of First Advantage’s adjudication services. Pursuant to those services, Tapestry has identified its hiring criteria to permit First Advantage to place a “score” on the face of background reports indicating whether the applicant or employee is eligible or ineligible for employment with Tapestry.

20. Once First Advantage adjudicates an applicant or employee as ineligible for employment on a background report (because that applicant purportedly has a criminal court record, for example) that adjudication removes an applicant from hiring consideration with Tapestry, and Tapestry typically moves on the next employment candidate.

21. Tapestry will, in effect, adopt First Advantage’s adjudication as its own, without any further process given to the job applicant, and take adverse action based upon that adjudication.

22. For existing employees, an adjudication result indicating that the employee has failed the background check or is ineligible for hire will lead to the employee’s immediate termination, suspension, or other adverse employment actions.

23. Indeed, Defendant will not even reconsider that applicant for future employment unless First Advantage clears that applicant and notifies Tapestry that the applicant has in fact been cleared and thus may reapply.

24. Under the FCRA, any “person” using a consumer report, such as Tapestry, who intends to take an “adverse action” on a job application “based in whole or in part” on information obtained from the consumer report must provide notice of that fact to the consumer-applicant, and must include with the notice a copy of the consumer report and a notice of the consumer’s dispute rights under the FCRA, *before* taking the adverse action. 15 U.S.C. § 1681b(b)(3)(A); *see also* *Goode v. LexisNexis Risk & Info. Analytics* 848 F. Supp. 2d 532, 542 (E.D. Pa. 2012) (more than

one business can be a user of a single background report; “Under the FCRA, ‘person’ means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity. § 1681a(b). Thus, defendant is a person and must comply with § 1681b(b)(3)(A).”).

25. There is longstanding regulatory guidance for employers making clear their obligations and the protections afforded to job applicants under the FCRA. The Federal Trade Commission (“FTC”) has long held that Section 604(b)(3)(a) [15 U.S.C. § 1681b(b)(3)(A)] “requires that all employers who use consumer reports provide a copy of the report to the affected consumer before any adverse action is taken. Employers must comply with this provision even where the information contained in the report (such as a criminal record) would automatically disqualify the individual from employment or lead to an adverse employment action. Indeed, this is precisely the situation where it is important that the consumer be informed of the negative information in case the report is inaccurate or incomplete.” *See* Federal Trade Commission letter dated June 9, 1998 to A. Michael Rosen, Esq.

26. A primary reason that Congress required that a person intending to take an adverse action based on information in a consumer report provide the report to the consumer before taking the adverse action is so the consumer has time to review the report and dispute information that may be inaccurate or discuss the report with the prospective employer before adverse action is taken. *See* Federal Trade Commission letter dated December 18, 1997 to Harold R. Hawkey, Esq. (“[T]he clear purpose of the provision to allow consumers to discuss reports with employers or otherwise respond before adverse action is taken.”).

27. The reasons for the “pre-adverse action notice” requirement with regard to employment situations are to alert the job applicant that he is about to experience an adverse action,

such as a rejection, based on the content of a report, and to provide him or her an opportunity to challenge the accuracy or relevancy of the information with the consumer reporting agency or the user before that job prospect or job is lost.

28. Pursuant to its standardized procedures, Tapestry does not provide job applicants with a copy of their consumer reports or a statement of their FCRA rights *before* it takes adverse action against them based upon the information in such reports, despite being required to do so by section 1681b(b)(3)(A) of the FCRA.

29. Rather, Tapestry only sends consumers a copy of the background check and statement of FCRA rights after it has adopted First Advantage's adjudication and removed the applicant or employee from eligibility for employment.

30. The FCRA statutory text, the FTC opinions and the cases cited constitute significant authority that existed during the time Defendant failed to comply with the pre-adverse action requirements of 15 U.S.C. § 1681b(b)(3)(A).

**The Facts Pertaining to Class Representative
Plaintiff Huong Thu Nguyen-Wilhite**

31. Plaintiff Huong Thu Nguyen-Wilhite began working at a Coach store in Scottsdale, Arizona after relocating from California to Arizona. At her California Coach store, Plaintiff had a strong reputation with her supervisors, and had passed a background check in connection with beginning her employment with Coach.

32. On or about November 16, 2022, in connection with this transfer, Tapestry requested First Advantage to conduct a further background check, including a criminal history check, on Ms. Nguyen-Wilhite, and to provide the results.

33. First Advantage completed and delivered to Tapestry a background report concerning Ms. Nguyen-Wilhite on November 23, 2022, the day before Thanksgiving 2022.

34. The November 23, 2022 report was inaccurate. Although Plaintiff has no criminal history, the report included criminal record information pertaining to a “Huong Nguyen” with a different gender, different date of birth, and other different personal identifying information.

35. The background report provided by First Advantage to Defendant reported Santa Clara criminal convictions for possession of smoking device paraphernalia, driving with a suspended license drunk driving, and for theft.

36. All the criminal record history reported by First Advantage to Defendant was inaccurate. Ms. Nguyen-Wilhite has no criminal history, has never been arrested or charged with any crime, and the records reflect a different gender and date of birth for many of the criminal records in question.

37. Pursuant to Tapestry’s hiring criteria, First Advantage placed a score of “Fail” on the face of the report about Plaintiff in connection with the reported but inaccurate criminal history, indicating that she was ineligible for employment. The “Score Result” on Plaintiff’s report further stated “In-Eligible for Hire.”

38. Tapestry adopted First Advantage’s scoring of Plaintiff as ineligible for employment without any additional process or inquiry into the purported criminal history and took adverse action against Plaintiff based upon that scoring before providing Plaintiff any pre-adverse action notice as required by the FCRA.

39. Specifically, on Monday, November 28, 2022, Plaintiff arrived at the Coach store in Scottsdale, Arizona where she had recently transferred in order to begin work as scheduled. Upon her arrival at the Coach store, a Tapestry representative informed Plaintiff that she was no longer eligible for employment with Tapestry based upon criminal record information appearing on the First Advantage background report, and immediately walked her out of the store.

40. Plaintiff was embarrassed, humiliated, and confused, because she has no criminal record, and had not even seen a copy of the First Advantage background report. Plaintiff had no opportunity to dispute or discuss the report with Tapestry before the adverse action took effect and was in effect blindsided.

41. Plaintiff was immediately taken off of payroll, was not paid for that day or for any other day going forward, and lost her health insurance with Coach as a result.

42. Tapestry did not send Plaintiff notice, a copy of the November 23, 2022 report, or a statement of her FCRA rights until the next day, November 29, 2022, informing her that it was *considering* taking adverse action about her in the future – while the reality was that Defendant had already taken adverse action against her the day before.

43. The negative adjudication of Plaintiff's application occurred prior to Plaintiff being notified in writing of that fact and prior to Plaintiff being provided with a copy of the report or any meaningful opportunity to dispute it. In doing so, Defendant failed to comply with the FCRA's pre-adverse action notification requirements.

44. Ms. Nguyen-Wilhite promptly disputed the inaccurate criminal information in her background report shortly after Tapestry terminated her employment by following First Advantage's dispute procedures.

45. Tapestry nevertheless sent Plaintiff another letter on December 6, 2022 confirming that the job was lost as a result of First Advantage's inaccurate reporting.

46. Tapestry's letters to Plaintiff are intended to create the impression that Defendant is complying with the FCRA, but the practical reality is that Tapestry has already acted on the First Advantage adjudication and taken adverse action against Plaintiff without prior warning and no meaningful opportunity for persons like Plaintiff to explain or dispute the report.

47. Upon information and belief, the above alleged conduct occurred in the normal course of business for Tapestry and in accordance with its standard operating practices and procedures.

48. As a direct and proximate cause of Tapestry's conduct, Plaintiff suffered financial harm in the form of loss of employment and its corresponding wages and health insurance benefits, and intangible harm when she was deprived of the information necessary to have a meaningful and timely discussion regarding the background check with either Tapestry or First Advantage.

CLASS ACTION ALLEGATIONS

49. Plaintiff brings this action pursuant to the Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of the following Class:

All candidates for new employment, continued employment, transfer or promotion with Defendant or any subsidiary thereof residing in the United States (including all Territories and other political subdivisions of the United States) who were the subject of a background report obtained from First Advantage that was scored as "In-Eligible For Hire" and/or "Fail" beginning two years prior to the filing of this action and extending through the most recent class certification order in this action.

50. Plaintiff reserves the right to amend the definition of the Class based on discovery or legal developments.

51. **Numerosity. FED. R. CIV. P. 23(a)(1).** The Class members are so numerous that joinder of all is impractical. Upon information and belief, Defendant procures and uses hundreds if not thousands of consumer reports on applicants for employment each year, and those persons' names and addresses are identifiable through documents maintained by Defendant.

52. **Existence and Predominance of Common Questions of Law and Fact. FED. R. CIV. P. 23(a)(2).** Common questions of law and fact exist as to all members of the Class, and predominate over the questions affecting only individual members. The common legal and factual

questions include, among others:

(a) Whether Defendant failed to provide each applicant for employment a copy of their consumer report before Defendant took adverse action based upon the consumer report;

(b) Whether Defendant acted willfully or negligently in disregard of the rights of employment applicants in their failure to permit their employees and automated systems to send employment applicants their full consumer report and a written statement of their FCRA rights before taking adverse action based on the consumer report.

53. **Typicality. FED. R. CIV. P. 23(a)(3).** Plaintiff’s claims are typical of the claims of each Class member. Plaintiff has the same claims for statutory, actual and punitive damages that she seeks for absent class members.

54. **Adequacy. FED. R. CIV. P. 23(a)(4).** Plaintiff is an adequate representative of the Class. Her interests are aligned with, and are not antagonistic to, the interests of the members of the Class she seeks to represent, she has retained counsel competent and experienced in such litigation, and she intends to prosecute this action vigorously. Plaintiff and her counsel will fairly and adequately protect the interests of members of the Class.

55. **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 statutory, actual and punitive damages sought by each member are such that individual prosecution would prove burdensome and expensive given the complex and extensive litigation necessitated by Defendant’s conduct. It would be virtually impossible for the members of the Class individually to redress effectively the wrongs done to them. Even if the members of the Class themselves could afford such individual litigation, it would be an unnecessary burden on

the courts. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the complex legal and factual issues raised by Defendant's conduct. By contrast, the class action device will result in 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 unified proceeding.

CAUSE OF ACTION

COUNT I

Fair Credit Reporting Act, 15 U.S.C. § 1681b(b)(3) (On behalf of Plaintiff and Class)

56. Plaintiff realleges and incorporates all preceding paragraphs as alleged above.
57. Plaintiff is a "consumer," as defined by the FCRA, 15 U.S.C. § 1681a(c).
58. The First Advantage background reports ordered by Defendant are "consumer reports" within the meaning of 15 U.S.C. § 1681a(d).
59. The FCRA provides that any person "using a consumer report for employment purposes" who intends to take any "adverse action based in whole or in part on the report," must provide the consumer with a copy of the report *and* a written description of the consumer's rights under the FCRA, as prescribed by the Federal Trade Commission, *before* taking such adverse action. 15 U.S.C. § 1681b(b)(3)(A).
60. For purposes of this requirement, an "adverse action" includes "any . . . decision . . . that adversely affects any current or prospective employee." 15 U.S.C. § 1681a(k)(1)(B)(ii).
61. Defendant Tapestry, Inc. is a "person" that regularly uses First Advantage background reports for employment purposes.
62. The FCRA requires Defendant, as users of consumer reports for employment purposes, before taking adverse action based in whole or in part on the report, to provide to the

consumer to whom the report relates, a copy of the report and a written description of the consumer's rights under the FCRA. 15 U.S.C. § 1681b(b)(3)(A)(i), (ii).

63. Defendant willfully or negligently violated section 1681b(b)(3) of the FCRA by failing to provide Plaintiff and the members of the Classes the following before using such reports to take adverse action: (a) the required Pre-Adverse Action Notice; (b) a copy of the consumer report; and, (c) a written description of the consumer's rights under the FCRA, and thereby denied the consumers sufficient time to be able to review and dispute the report before Defendant took adverse action on their employment applications.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class prays for relief as follows:

- A. An order certifying the case as a class action on behalf of the proposed Class under Federal Rule of Civil Procedure 23 and appointing Plaintiff and the undersigned counsel of record to represent same;
- B. An award of actual, statutory and punitive damages for Plaintiff and the Class;
- C. An award of pre-judgment and post-judgment interest as provided by law;
- D. An award of attorneys' fees and costs; and,
- E. Such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby requests and demands a trial by jury.

Respectfully submitted,

HUONG THU NGUYEN-WILHITE, by her attorneys,

/s/ Kevin C. Mallon

Kevin C. Mallon

FRANCIS MAILMAN SOUMILAS, P.C.

ONE LIBERTY PLAZA, SUITE 2301

NEW YORK, NY 10006
T: 917.734.6815
E: kmallon@consumerlawfirm.com

FRANCIS MAILMAN SOUMILAS, P.C.
JOHN SOUMILAS (*pro hac vice forthcoming*)
LAUREN KW BRENNAN (*pro hac vice forthcoming*)
1600 Market Street, Suite 2510
Philadelphia, PA 191003
T: 215.735.8600
F: 215.940.8000
E: jsoumilas@consumerlawfirm.com
E: lbrennan@consumerlawfirm.com

Attorneys for Plaintiff and the Class

Dated: February 17, 2023

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Tapestry Hit with Class Action Over Alleged Credit Report Violations](#)
