

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

AMBER SCHWARTZ, for herself and on behalf of all others similarly situated,)	
)	
Plaintiff,)	
)	
v.)	
)	
UBS FINANCIAL SERVICES INC.,)	
)	
Defendant.)	

Case No.: 2021-cv-3176

NOTICE OF REMOVAL

Defendant UBS Financial Services Inc. (“UBSFS”), by and through the undersigned counsel and pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, hereby files this Notice of Removal of this civil action from the Circuit Court of Lake County, Illinois, in which it is now pending, to the United States District Court for the Northern District of Illinois, Eastern Division.

In support of this Notice of Removal, UBSFS states the following:

1. On or about April 28, 2021, Plaintiff Amber Schwartz (“Plaintiff”) filed a Complaint against UBSFS with the Circuit Court of Lake County, Illinois, bearing Case No.: 2021-CH-164. (A true and correct copy of the Complaint is part of Composite Exhibit 1 attached hereto.)

2. On or about May 14, 2021, Plaintiff served the Complaint upon UBSFS. (A true and correct copy of the Notice of Service of Process is part of Composite Exhibit 1 attached hereto.)

3. In her Complaint, Plaintiff alleges that UBSFS violated the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* (See Complaint, *generally.*)

4. Pursuant to 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant

or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

5. Under 28 U.S.C. § 1331, this Court has original federal question jurisdiction over this action because Plaintiff’s claims pursuant to the Fair Credit Reporting Act arise under the laws of the United States. Therefore, this case is properly removable to this Court under 28 U.S.C. §§ 1441 and 1446.

6. In accordance with 28 U.S.C. § 1446(b)(1), this Notice of Removal is timely filed within 30 days of Plaintiff’s service of a copy of the Complaint.

7. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon UBSFS in this action are attached hereto. (Composite Exhibit 1.)

8. On June 14, 2021, UBSFS filed with the Clerk of the Circuit Court of Lake County, Illinois, a Notice of Filing of Notice of Removal.

9. UBSFS has provided written notice to Plaintiff by contemporaneously serving her counsel with this Notice of Removal.

10. By filing this Notice of Removal, UBSFS does not waive any defense that may be available.

WHEREFORE, for the reasons stated above, this action is removable to this Court pursuant to 28 U.S.C. §§ 1331, 1441, and 1446 under this Court’s federal question jurisdiction.

Dated: June 14, 2021

Respectfully Submitted,

UBS FINANCIAL SERVICES INC.

By: /s/ Steven J. Pearlman

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I, Steven J. Pearlman, one of the attorneys for Defendant UBS Financial Services Inc., hereby certify that I caused a copy of the foregoing Notice to be served by electronic mail on counsel for Plaintiff:

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on this 14th day of June, 2021.

/s/ Steven J. Pearlman

EXHIBIT 1



**Werman
Salas P.C.**

77 West Washington Street, Suite 1402, Chicago, IL 60602 Tel: 312-419-1008 | Fax: 312-419-1025 www.flsalaw.com

5/10/2021

Via Certified U.S. Mail
Sangamon County Sheriff
Attn: Civil Process
1 Sheriffs Plaza,
Springfield, IL 62701

Re: *Schwartz v. UBS Financial Services, Inc.*
Case No: 21CH00000164

To whom it may concern,

Enclosed please find two copies of the Summons, a copy of the Complaint, a copy of the Jury Demand, a copy of Plaintiff's Motion for Class Certification and the Notice of Motion to be served on the following Defendant:

UBS FINANCIAL SERVICES, INC.
c/o Registered Agent: IL Corporation Service C
801 Adlai Stevenson Dr.
Springfield, IL 62703

Also enclosed is a check payable to Sangamon County Sheriff's Office in the amount of \$50.00. Should you have any questions, please contact me at 312-419-1008.

Finally, if possible, please e-mail the affidavit of service to mreyes@flsalaw.com.

Very truly yours,

Maria Reyes
Paralegal

Enclosures

FILED

4/28/2021 5:18 PM

ERIN CARTWRIGHT WEINSTEIN

Clerk of the Circuit Court

Lake County, Illinois

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

21CH00000164

AMBER SCHWARTZ, <i>for herself and on</i>	:	Case No. _____
<i>behalf of all others similarly situated,</i>	:	
	:	
Plaintiff,	:	CLASS ACTION COMPLAINT AND
	:	DEMAND FOR JURY TRIAL
v.	:	
	:	
UBS FINANCIAL SERVICES, INC.,	:	
	:	
Defendant.	:	

COMES NOW the Plaintiff, Amber Schwartz, ("Plaintiff") for herself and on behalf of all others similarly situated and by Counsel, and for her Class Action Complaint against Defendant UBS Financial Services, Inc., ("UBS") alleges as follows:

PRELIMINARY STATEMENT

1. Fifty years ago, Congress enacted the Fair Credit Reporting Act ("FCRA") to ensure the protection of consumer privacy and to limit consumer reporting agencies from recklessly disseminating consumers' personal and sensitive information. Recognizing the impact consumer reports can have on all aspects of life, including employment, Congress created stringent but simple requirements consumer reporting agencies must follow before releasing a consumer report for employment purposes to ensure consumers are properly notified of their rights and the content of their consumer reports. When consumer reporting agencies ignore their statutory obligations, consumers are deprived of the opportunity to decide who accesses their personal information, learn what is being reported about them, address any inaccuracies or even explain what is being reported. Consumer reporting agencies sell the reports, consumers and society pay the price for non-compliance.

2. In this action, Amber Schwartz, by and through her attorneys, and on behalf of herself and the putative classes set forth below, seeks to hold an employer accountable, and brings the following Class Action Complaint against Defendant including its related entities, subsidiaries, predecessors and successors, under the FCRA, 15 U.S.C. § 1681a–x.

3. The FCRA imposes several important requirements on employers that use a consumer report for employment purposes (commonly known as a “background check”), which are designed to protect consumers like Plaintiff.

4. Defendant UBS is a corporate entity that has its primary offices in New York, New York. UBS provides a number of banking and financial services to consumers across the country, and employs more than 34,000 individuals. It fills its staffing needs with consumers like Plaintiff. As part of its hiring processes, UBS and its subsidiaries use background checks to make employment decisions. Because such reports are governed by the FCRA, UBS is obliged to adhere to certain statutory requirements in accessing and using them.

5. Employer access to background checks is presumptively illegal and impermissible. To overcome this presumption, employers must disclose to applicants their intent to obtain such reports in a document that consists solely of the disclosure. Employers must then obtain consumers’ written authorization to obtain the report.

6. Plaintiff brings nationwide class claims against UBS under 15 U.S.C. § 1681b(b)(2) because, as a systematic omission in its hiring process UBS failed to provide Plaintiff and other consumers with a stand-alone disclosure that a consumer report will be procured about them.

7. A statutorily compliant disclosure could be a simple statement as “we intend to obtain a consumer report about you for employment purposes.” The statute demands nothing more. 15 U.S.C. § 1681b(b)(2).

8. UBS's disclosure, on the other hand, is two pages of eye-straining type, contains multiple statements about the categories of information that may be obtained, lists several potential sources of information, sets out a litany of notices for employment candidates in California, among many other categories of information that make the document more than a stand-alone statement of UBS's intent to obtain a consumer report about the applicant.

9. This failure means UBS illegally accessed thousands of consumer reports for employment purposes.

10. Based on the foregoing violations, Plaintiff asserts FCRA claims against UBS on behalf of herself and a class consisting of consumers about whom UBS obtained consumer reports for employment purposes using a form similar in content to the one presented to Plaintiff.

11. In Count I Plaintiff asserts a FCRA claim against UBS under 15 U.S.C. § 1681b(b)(2) on behalf of a "FCRA Disclosure Class" consisting of:

All natural persons in the United States who were the subject of a consumer report obtained by UBS pursuant to a Fair Credit Reporting Act disclosure form substantially similar to the form presented to Plaintiff, within five years of the filing of this lawsuit through the date of final judgment in this action.

12. On behalf of herself and the putative class, Plaintiff seeks statutory damages, costs and attorneys' fees, equitable relief, and other appropriate relief under the FCRA.

THE PARTIES

13. Individual and class representative Amber Schwartz lives in Lake Zurich, Illinois. Plaintiff applied for employment with UBS in Lake Zurich but was rejected for employment based upon the contents of her consumer report.

14. Plaintiff is a member of the putative Class defined above.

15. Defendant UBS is an employer authorized to do business in Illinois.

16. At all times pertinent to this Complaint, UBS was a user of "consumer reports" as

defined in the FCRA.

JURISDICTION AND VENUE

17. This Court has subject-matter jurisdiction over Plaintiff's FCRA claims because Congress has not retained such jurisdiction exclusively in federal courts.

18. The Court has personal jurisdiction over Defendant because it markets and provides its services for use within this county.

19. Venue is appropriate in this Court because this is the county in which the transaction or some part thereof occurred of which Plaintiff's causes of action arose. 735 ILL. COMP. STAT. 5/2-101.

ALLEGATIONS REGARDING DEFENDANT'S BUSINESS PRACTICES

20. Congress has recognized consumer reporting agencies have assumed a vital role in assembling information on consumers, and therefore implemented the FCRA to ensure credit reporting agencies "exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy." 15 U.S.C. § 1681.

21. In accordance with Congress's findings, an employer may only obtain a consumer report for employment purposes if it meets the requirements of Section 1681b(b)(2):

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

22. The FCRA requires that the disclosure be “in writing” in a stand-alone document.

23. The disclosure UBS provided to Plaintiff was buried in an 18-page application and contained unnecessary additional language.

24. As a result of its defective disclosure, UBS procured a consumer report for Plaintiff and other consumers without first obtaining a proper, written authorization to do so.

25. 15 U.S.C. § 1681b(b)(2)(B) does not apply to Plaintiff because Plaintiff interviewed with UBS in person before UBS procured Plaintiff’s consumer report from TransUnion.

26. Discovery will show that it is UBS’s standard hiring practice to use a wordy disclosure which is not contained in a stand-alone document consisting solely of the disclosure.

27. Plaintiff values her privacy and would not, unless forced to by a prospective employer, share her background with anyone.

28. Had Plaintiff known at the time she authorized UBS to conduct the background check on her that UBS sought that authorization based on a disclosure form that may violate the FCRA, she would not have authorized UBS to conduct the background check.

ALLEGATIONS SPECIFIC TO PLAINTIFF

29. Plaintiff applied to work at UBS in Illinois in August 2020.

30. As part of its hiring process, UBS presented to Plaintiff an 18-page application package to review and sign in multiple places.

31. Buried in the middle of the package is a document entitled *Notice to Applicants Regarding Consumer Reports*, purportedly authorizing UBS to procure Plaintiff’s consumer report for employment purposes.

32. The *Notice to Applicants Regarding Consumer Reports* was presumably intended to serve as UBS's FCRA disclosure. However, the document was confusing, as it contains a host of unnecessary information regarding categories of information, companies from whom that information may be obtained, descriptions of the uses for the reports and potential users of them, notices to California applicants (of which Plaintiff is not one), and additional, unnecessary statements. Plaintiff had no basis for knowing which reporting agency was compiling her sensitive, personal information and providing it to UBS for employment purposes.

33. Additionally, the *Notice to Applicants Regarding Consumer Reports* contained an impermissible liability waiver, which led Plaintiff to believe she had released UBS and anyone else from liability related to her background check.

34. Had Plaintiff known that UBS would violate the law in obtaining and using her background check, she never would have signed the authorization documents.

35. Shortly after obtaining Plaintiff's consumer report, UBS rejected Plaintiff for employment based upon the consumer report UBS unlawfully obtained.

PLAINTIFF'S CONCRETE HARM

36. UBS violated Plaintiff's right to privacy by obtaining her personal, private and sensitive information without meeting the statutory threshold for accessing that information. Only by using a stand-alone disclosure can employers like UBS overcome the statutory presumption that trafficking in consumer reports is illegal.

37. The FCRA's protections regarding who may obtain consumer reports and under what circumstances they may do so are real and substantive, not merely procedural. The violation alleged here is not some mere technical requirement—without providing Plaintiff with a stand-alone disclosure, UBS had no statutory permission to obtain a report about Plaintiff.

38. This improper obtaining of a report harmed Plaintiff by invading her privacy—UBS accessed Plaintiff's private, personal information without a lawful reason for doing so.

39. Protection of consumer privacy is one well-recognized aspect of the FCRA, and the statutory provisions violated here have been part of the FCRA since its enactment in 1970.

40. Plaintiff and the putative class members have a common-law right to keep their personal information from being distributed and used without their knowledge. Congress sought to enhance the protection of that right by enacting the FCRA and incorporating many consumer-oriented safeguards, which restrict the distribution of consumer reports only for the reasons listed “and no other.” Indeed, the FCRA preempts the common-law tort of intrusion upon seclusion, and the FCRA expresses Congress's finding of “a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality and a respect for the consumer's right to privacy.” 15 U.S.C. § 1681a(4).

41. UBS invaded Plaintiff's and the putative class members' right to privacy when it obtained their highly confidential personal information without a statutory basis for doing so.

42. UBS's failure to appropriately disclose its intent to obtain consumer reports injured Plaintiff in that (1) her privacy was unlawfully invaded by UBS's accessing of background reports about her without statutory permission; and (2) Plaintiff suffered an informational injury—by not obtaining a proper disclosure of UBS's intent to obtain her consumer report for employment purposes.

43. UBS's conduct is precisely the type that Congress sought to prevent—protection of consumer privacy—with the restrictions it has imposed on access to consumers' sensitive, personal information.

44. Plaintiff and the putative class members therefore suffered a concrete, in-fact injury

that is directly traceable to UBS's conduct and that is likely to be redressed by a favorable decision here.

45. UBS violated Plaintiff's right to privacy by accessing her personal, private and confidential information without abiding by the statutory safeguards permitting it to access that information.

46. UBS rejected Plaintiff for employment based in whole or in part on the contents of her consumer report, which it obtained without a statutory basis for doing so.

47. If Plaintiff had known UBS was accessing her consumer report without a legal right to do so, Plaintiff would not agree to have UBS obtain her consumer report.

DEFENDANT ACTED WILLFULLY

48. UBS knew or should have known about its legal obligations under the FCRA. These obligations are well established in the statute's plain language, judicial decisions interpreting the Act, and in the Federal Trade Commission's and Consumer Financial Protection Bureau's promulgations.

49. UBS obtained, or had available, substantial written materials, which apprised it of its duties under the FCRA.

50. Before employers obtain consumer reports for employment purposes, they must provide consumers with a stand-alone document disclosing the intent to obtain such reports. 15 U.S.C. § 1681b(b)(2).

51. 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).

52. 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.

53. 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.

54. Plaintiff has suffered a concrete informational injury because UBS failed to provide Plaintiff with information to which she was entitled by statute. Pursuant to § 1681b(b)(2), Plaintiff was entitled to receive certain information at a specific time, namely a disclosure that a consumer report may be procured for employment purposes in a document consisting solely of the disclosure.

55. Such a disclosure was required to be provided to Plaintiff before the consumer report was to be procured. Indeed, the disclosure that was provided lacked the basic information required by the FCRA be disclosed by employers to consumers. By depriving them of this information, UBS injured Plaintiff and the putative class members. *Public Citizen v. United States Dept. of Justice*, 491 U.S. 440 (1989); *Fed. Election Comm’n v. Akins*, 524 U.S. 11 (1998).

56. By failing to provide Plaintiff and the Putative Class Members that she seeks to represent 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), UBS denied Plaintiff and the Putative Class Members information to which they were specifically entitled under the FCRA.

57. By procuring the consumer reports of Plaintiff and the Putative Class Members that she seeks to represent in this matter without making the disclosure required by § 1681b(b)(2)(A), UBS has unlawfully invaded Plaintiff’s and the Putative Class Members’ rights of privacy created

by the FCRA. *See Thomas*, 2016 U.S. Dist. LEXIS 85545, 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.”).

58. As one court put it, “[t]he FCRA makes it unlawful to ‘procure’ a report without first providing the proper disclosure and receiving the consumer’s written authorization.” *Harris v. Home Depot U.S.A., Inc.*, 114 F. Supp. 3d 868, 869 (N.D. Cal. 2015). Plaintiff’s report contained a wealth of private information which UBS had no right to access absent a specific Congressional license to do so. The report included, among other things, Plaintiff’s date of birth, address history, social security number, and information about her credit history. By procuring a report containing this private information without complying with Section 1681b(b)(2)’s requirements, UBS illegally invaded Plaintiff’s privacy.

59. The invasion of privacy exists regardless of the fact that a consumer may have signed the authorization form, and regardless of the accuracy of any information in the resulting consumer report. The violation occurs when UBS obtains a consumer report based on the defective disclosure form, and every time UBS does so.

60. The informational injuries and the breach of privacy injury suffered by Plaintiff and the Putative Class Members as a result of UBS’s violations of § 1681b(b)(2)(A) are particularized because those injuries happened to Plaintiff and each Putative Class Member.

61. The informational injuries suffered by Plaintiff and the Putative Class Members as a result of UBS’s violations of § 1681b(b)(2)(A) 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." *Thomas*, 2016 U.S. Dist. LEXIS 85545 at *27–28; *see also id.* at *36.

62. The invasion of privacy injury suffered by Plaintiff and the Putative Class Members as a result of UBS's 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.

63. Despite knowledge of these legal obligations, UBS acted consciously in breaching its known duties and depriving the Plaintiff and Putative Class Members of their rights under the FCRA.

64. As a result of these FCRA violations, UBS is liable to Plaintiff and to each Putative 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.

CLASS ACTION ALLEGATIONS

65. Plaintiff asserts a claim against UBS on behalf of a "Disclosure Class," defined as:

All natural persons in the United States who were the subject of a consumer report obtained by UBS pursuant to a Fair Credit Reporting Act disclosure form substantially similar to the form presented to Plaintiff, within five years of the filing of this lawsuit through the date of final judgment in this action.

66. This action has been brought and may be maintained as a class action under Illinois

Code of Civil Procedure Section 2-801 because: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members; (3) Plaintiff and her Counsel will fairly and adequately protect the interests of the class; and (4) the class action is an appropriate method for the fair and efficient adjudication of the controversy.

67. **Numerosity.** The members of the putative class are so numerous that joinder of all class members is impracticable. UBS obtained consumer reports over an extended period of time, for applicants for positions across the United States. UBS regularly uses consumer reports in its hiring process. Plaintiff is informed and believes that during the relevant time period, thousands of employees and prospective employees, if not tens of thousands, satisfy the definition of the putative class. Based on the number of putative class members and their geographic dispersal, joinder is impracticable. The names and addresses of the putative class members are identifiable through UBS's records and putative class members may be notified of this action by mailed notice.

68. **Predominance of Common Questions of Law or Fact.** Class treatment is also appropriate because questions of law or fact common to the putative Class Members predominate over any questions affecting only individual members of the putative Class, and also because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. UBS's conduct stems from common and uniform policies and practices, resulting in common violations of the FCRA. Such common questions include, among others:

- a. whether Defendant obtained consumer reports for employment purposes without properly disclosing the intent to obtain such reports, as described in 15 U.S.C. § 1681b(b)(2), before obtaining such reports;
- b. whether Defendant's violations of the FCRA were willful;

- c. the proper measure of statutory damages; and
- d. the proper form of relief.

69. Members of the putative Class do not have an interest in pursuing separate actions against UBS, as the amount of each putative class member's individual claim for damages is small in comparison to the expense and burden of individual prosecution. Class certification will also obviate the need for unduly duplicative litigation that might result in inconsistent judgments concerning Defendant. Moreover, management of this action as a class action will not present any foreseeable difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all putative class members' claims in a single action, brought in a single forum.

70. This case is further maintainable as a class action because prosecution of actions by or against individual members of the putative class would result in inconsistent or varying adjudications and create the risk of incompatible standards of conduct for UBS. Further, adjudication of each individual putative class member's claim as separate action would potentially be dispositive of the interests of other individuals not a party to such action, thereby impeding their ability to protect their interests.

71. This case is also maintainable as a class action because UBS acted or refused to act on grounds that apply generally to the putative Class.

72. Class certification is also appropriate because questions of law and fact common to the putative class predominate over any questions affecting only individual members of the putative class, and also because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. UBS's conduct stems from common and uniform policies and practices, resulting in common violations of the FCRA. Members of the putative class

do not have an interest in pursuing separate actions against UBS, as the amount of each putative class member's individual claim for damages is small in comparison to the expense and burden of individual prosecution. Class certification will also obviate the need for unduly duplicative litigation that might result in inconsistent judgments concerning Defendant. Moreover, management of this action as a class action will not present any foreseeable difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all putative class members' claims in a single action, brought in a single forum.

73. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the interests of the putative Class, and has retained Counsel experienced in complex class action litigation, including nationwide class actions pressing claims under the FCRA.

CLAIM FOR RELIEF

COUNT I – FCRA Violation

**Failure to Provide Stand-alone Disclosure Prior to Obtaining a
Consumer Report for Employment Purposes in Violation of 15 U.S.C. § 1681b(b)(2)**

74. UBS willfully violated 15 U.S.C. § 1681b(b)(1)(A) because it provided consumer reports about Plaintiff and putative class members, which were used for employment purposes, without the user's certification of compliance with the disclosure, authorization and notification requirements set forth in 15 U.S.C. §§ 1681b(b)(2) and 1681b(b)(3).

75. UBS invaded Plaintiff's privacy by compiling Plaintiff's personal, private and sensitive information into a consumer report for employment purposes, and furnishing said consumer report without a permissible purpose.

76. UBS caused Plaintiff injury because the report UBS furnished was used, in whole or in part, as the basis for an adverse employment action.

77. UBS caused Plaintiff injury because UBS permitted the user of its consumer reports to circumvent the disclosure, authorization and notification requirements of the FCRA when using

consumer reports for employment purposes by failing to require UBS to certify compliance therewith.

78. The forgoing violations were willful. At the time UBS violated 15 U.S.C. § 1681b(b)(1)(A), UBS knew it was required to obtain certification of compliance with 15 U.S.C. § 1681b(b)(2) from UBS before furnishing UBS with consumer reports for employment purposes and certification with the notification requirements of 15 U.S.C. § 1681b(b)(3), if applicable. UBS's willful conduct is also reflected by, among other things, the following facts:

- a. UBS knew of potential FCRA liability;
- b. UBS is a company with access to legal advice through its own general counsel's office and outside employment counsel, and there will be no contemporaneous evidence that it determined that its conduct was lawful;
- c. The FCRA's certification requirement is clearly spelled out in the plain language of the statute;
- d. UBS knew or had reason to know that its conduct was inconsistent with published FTC guidance interpreting the FCRA and the plain language of the statute; and
- e. UBS voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless.

79. Plaintiff and the Disclosure Class are entitled to statutory damages of between \$100 and \$1,000 for each and every one of these violations under 15 U.S.C. § 1681n(a)(1)(A), in addition to punitive damages under 15 U.S.C. § 1681n(a)(2).

80. Plaintiff and the Disclosure Class are further entitled to recover their costs and attorneys' fees, in accordance with 15 U.S.C. § 1681n(a)(3).

COUNT II – FCRA Violation
Failure to Provide Contemporaneous Notice in Violation of 15 U.S.C. § 1681k(a)(1)

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

82. UBS's failure to provide members of the Disclosure Class with a clear and conspicuous FCRA disclosure contained in a stand-alone document consisting only of the disclosure violated 15 U.S.C. § 1681b(b)(2)(A).

83. Because UBS's disclosures fail to comply with the FCRA, then the written authorizations to obtain background checks are void.

84. Thus, UBS routinely obtains background checks for employment purposes without the written authorization to do so as required by the FCRA.

85. As a result of its defective disclosure, UBS procured consumer reports for members of the Disclosure Class for employment purposes without first obtaining a proper, written authorization to do so, in violation of 15 U.S.C. § 1681b(b)(2)(A).

86. UBS's obtaining and use of Putative Class Member consumer reports without compliance with § 1681b(b)(2)(A) violates 15 U.S.C. § 1681b(f).

87. The conduct, action, and inaction of UBS 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.

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

89. The forgoing violations were willful. At the time UBS violated 15 U.S.C. § 1681b(b)(2), UBS knew it was required to provide a stand-alone disclosure of its intent to obtain

consumer reports about applicants, yet it did not. UBS's willful conduct is also reflected by, among other things, the following facts:

- a. UBS knew of potential FCRA liability;
- b. UBS is a company with access to legal advice through its own general counsel's office and outside employment counsel, and there will be no contemporaneous evidence that it determined that its conduct was lawful;
- c. The FCRA's stand-alone disclosure requirement is clearly spelled out in the plain language of the statute;
- d. UBS knew or had reason to know that its conduct was inconsistent with published FTC guidance interpreting the FCRA and the plain language of the statute; and
- e. UBS voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless.

90. Plaintiff and the Disclosure Class are therefore entitled to statutory damages of between \$100 and \$1,000 for each and every one of these violations under 15 U.S.C. § 1681n(a)(1)(A), in addition to punitive damages under 15 U.S.C. § 1681n(a)(2).

91. Plaintiff and the Disclosure Class are further entitled to recover their costs and attorneys' fees, in accordance with 15 U.S.C. § 1681n(a)(3).

WHEREFORE, Plaintiff, on behalf of himself and the Putative Disclosure Class pray for relief as follows, in the form of an order:

- a. determining that this action may proceed as a class action;
- b. designating Plaintiff as class representative and designating Plaintiff's Counsel as counsel for the putative class;
- c. requiring notice to the putative class at UBS's expense;

- d. finding that UBS committed multiple, separate violations of the FCRA;
- e. finding that UBS acted willfully in deliberate or reckless disregard of Plaintiff's rights and its obligations under the FCRA;
- f. awarding statutory damages as provided by the FCRA, including punitive damages, to members of the putative class; and
- g. awarding reasonable attorneys' fees and costs as provided by the FCRA.

Pursuant to 735 ILL. COMP. STAT. 5/2-1105, Plaintiff and the putative Class hereby demand a trial by jury on all issues so triable.

Dated: April 28, 2021.

Respectfully submitted,

s/Douglas M. Werman
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Attorneys for Plaintiff

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4/29/2021 3:28 PM

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

ERIN CARTWRIGHT WEINSTEIN

Clerk of the Circuit Court
Lake County, IllinoisAMBER SCHWARTZ

Plaintiff(s)

vs.

UBS FINANCIAL SERVICES, INC.

Defendant(s)

Gen No: 21CH00000164

JURY DEMAND

The ☒ plaintiff(s) ☐ defendant(s) in the above entitled cause demand a jury for trial of said cause.By: /s/ Douglas M. Werman
Their Attorney(s)/Pro Se

Prepared by: Douglas M. Werman
 Attorney's Name: 77 W. Washington St., Suite 1402
 Address: Chicago State: IL
 City: 312-419-1008 Zip Code: 60602
 Phone: 6204740
 ARDC: 312-419-1025
 Fax: dberman@flsalaw.com
 E-mail address:

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS**

AMBER SCHWARTZ, for herself and on behalf of all others similarly situated,)
)
)
)
)
)
)
Plaintiff(s))
vs.)
UBS FINANCIAL SERVICES, INC.)
)
)
)
)
)
Defendant(s))

Case No: 21CH00000164

SUMMONS

**To each defendant: UBS Financial Services, Inc., c/o Reg. Agent, IL Corporation Service C,
801 Adlai Stevenson Dr., Springfield, IL 62703**

You are summoned and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, in the office of the Clerk of this Court, within 30 days after service of this summons, not counting the day of service. If you fail to do so, a judgment by default may be entered against you for the relief asked in the complaint.

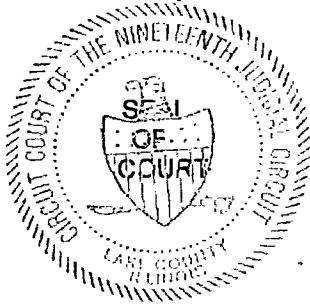
E-filing is now mandatory for documents in civil cases with limited exemptions. To e-file, you must first create an account with an e-filing service provider. Visit <https://efile.illinoiscourts.gov/service-providers.htm> to learn more and to select a service provider. If you need additional help or have trouble e-filing, visit or talk with the Lake County Circuit Clerk's office. If you cannot e-file, you may be able to get an exemption that allows you to file in-person or by mail. Ask the circuit clerk for more information or visit

If you are unable to pay your court fees, you can apply for a fee waiver. for information about defending yourself in a court case (including filing an appearance or fee waiver), or to apply for free legal help, go to www.illinoislegalaid.org. You can also ask the circuit clerk's office for a fee waiver application.

To the officer:

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so indorsed.

This summons may not be served later than 30 days after its date.



WITNESS 4/29/2021

Erin Cartwright Weinstein
ERIN CARTWRIGHT WEINSTEIN, BC
Clerk of Court

Prepared by:

Name: Douglas M. Werman Pro Se ☐

Address: 77 W. Washington Street, Suite 1402

City: Chicago State: IL

Phone: (312) 419-1008 Zip Code: 60602

ARDC #: 6305935

Fax: (312) 419-1025

E-mail address: dberman@flsalaw.com

(If service by facsimile transmission will be accepted, the telephone number of the plaintiff or plaintiff's attorney's facsimile machine is additionally required.)

Date of Service _____, 20____ (to be inserted by officer on copy left with defendant or other person).

SHERIFF'S FEES

(Service and return \$ _____
 (Miles \$ _____
 (Total \$ _____

Sheriff of _____ County

I certify that I served this summons on defendants as follows:

(a)-(Individual defendants – personal):

(The officer or other person making service, shall (a) identify as to sex, race and approximate age of the defendant with whom he left the summons, and (b) state the place where (whenever possible in terms of an exact street address) and the date and time of the day when the summons was left with the defendant).

(b)-(Individual defendants – abode):

By leaving a copy of the complaint at the usual place of each individual defendant with a person of his family, of the age of 13 years or upwards, informing that person of the contents of the summons. (The officer or other person making service, shall (a) identify as to sex, race and approximate age of the person, other than the defendant, with whom he left the summons, and (b) state the place where (whenever possible in terms of an exact street address) and the date and time of day when the summons was left with such person).

and also by sending a copy of the summons and of the complaint in a sealed envelope with postage fully prepaid, addressed to each individual defendant at his usual place of abode, as follows:

Name of defendant	Mailing Address	Date of mailing
_____	_____	_____
_____	_____	_____
_____	_____	_____

(c)-(Corporate defendants):

By leaving a copy and a copy of the complaint with the registered agent, officer or agent of each defendant corporation, as follows:

Defendant corporation	Registered agent, officer or agent	Date of Service
_____	_____	_____
_____	_____	_____
_____	_____	_____

(d)-(Other service):

Sheriff of _____ County
 By: _____
 (Deputy)

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5/7/2021 1:42 PM

ERIN CARTWRIGHT WEINSTEIN

Clerk of the Circuit Court

Lake County, Illinois

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

AMBER SCHWARTZ, *for herself and on
behalf of all others similarly situated,*

Plaintiff,

v.

UBS FINANCIAL SERVICES, INC.,

Defendant.

Case No. 21CH00000164

NOTICE OF MOTION

To: UBS Financial Services, Inc.
c/o Reg. Agent, IL Corporation Service C.
801 Adlai Stevenson Dr.
Springfield, IL 62703

PLEASE TAKE NOTICE that on **August 5, 2021 at 9:00 AM**, or as soon thereafter as counsel may be heard, I shall appear before the Honorable Judge Daniel L. Jasica or any judge sitting in his stead, in the courtroom usually occupied by him in Room C302 of the Circuit Court of Lake County, Illinois, and shall then and there move the Court in accordance with the attached **PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**.

Dated: May 7, 2021

Respectfully submitted,

s/Douglas M. Werman

Douglas M. Werman- ARDC # 6204740

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Craig C. Marchiando (*pro hac vice
forthcoming*)

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Attorneys for Plaintiff

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4/29/2021 5:00 PM

ERIN CARTWRIGHT WEINSTEIN

Clerk of the Circuit Court

Lake County, Illinois

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOISAMBER SCHWARTZ, *for herself and on*
behalf of all others similarly situated,

Plaintiff,

v.

UBS FINANCIAL SERVICES, INC.,

Defendant.

Case No. 21CH00000164

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

Plaintiff brings nationwide class claims against UBS under 15 U.S.C. § 1681b(b)(2) because, as a systematic omission in its hiring process, UBS failed to provide Plaintiff and other consumers with a standalone disclosure that a consumer report will be procured about them. A statutorily compliant disclosure could be a simple statement as “we intend to obtain a consumer report about you for employment purposes.” The statute demands nothing more. 15 U.S.C. § 1681b(b)(2).

UBS's disclosure, on the other hand, is two pages of eye-straining type, contains multiple statements about the categories of information that may be obtained, lists several potential sources of information, sets out a litany of notices for employment candidates in California, among many other categories of information that make the document more than a standalone statement of UBS's intent to obtain a consumer report about the applicant. This failure means UBS illegally accessed thousands of consumer reports for employment purposes.

Based on the foregoing violations, Plaintiff asserts Fair Credit Reporting Act (“FCRA”) claims against UBS on behalf of herself and a class consisting of consumers about whom UBS obtained consumer reports for employment purposes using a form similar in content to the

one presented to Plaintiff.

In Count I Plaintiff asserts a FCRA claim against UBS under 15 U.S.C. § 1681b(b)(2) on behalf of a “FCRA Disclosure Class” consisting of:

All natural persons in the United States who were the subject of a consumer report obtained by UBS pursuant to a Fair Credit Reporting Act disclosure form substantially similar to the form presented to Plaintiff, within five years of the filing of this lawsuit through the date of final judgment in this action.

On behalf of herself and the putative class, Plaintiff seeks statutory damages, costs and attorneys’ fees, equitable relief, and other appropriate relief under the FCRA. The proposed Class meets the requirements for class certification under 735 ILCS 5/2-801 (numerosity, commonality, adequacy, and appropriateness).

First, the Class is too numerous for joinder to be practical because it has more than 40 members, and those members are disbursed. As a result, the numerosity requirement in 735 ILCS 5/2-801(1) is satisfied. *Kim v. Sussman*, No. 03 CH 07663, 2004 WL 3135348, at *2 (Ill. Cir. Ct. Oct. 19, 2004) (“Although there is no bright line test to determine numerosity, the Illinois courts generally follow the reasoning that greater than 40 parties satisfies numerosity, but less than 25 people is insufficient.” (citation omitted)).

Second, there are common questions of law or fact that predominate over questions affecting only individual members, including: whether Defendant UBS illegally accessed thousands of consumer reports for employment purposes; the appropriate measure of statutory damages; and whether Defendant’s violations were willful. These uniform factual and legal determinations satisfy 735 ILCS 5/2-801(2). *See Ramirez v. Midway Moving & Storage, Inc.*, 880 N.E.2d 653, 658 (Ill. App. 1st Dist. 2007) (common questions of law and fact predominate where the potential class challenged the defendant’s “uniform policy.”).

Third, Named Plaintiff will fairly and adequately protect the interests of the Class because

her claims are co-extensive with those of the Classes, she has no interests antagonistic to the Classes, and she is not subject to unique defenses. *See Walczak v. Onyx Acceptance Corp.*, 850 N.E.2d 357, 371 (Ill. App. 2d Dist. 2006) (finding adequacy requirement in 735 ILCS 5/2-801(3) satisfied where “plaintiffs [were] in the same position as all putative class members”).

Finally, a class action is an appropriate method for the fair and efficient adjudication of this controversy because the lawsuit alleges that Defendant’s common practices toward consumers violated the Act. “Where the first three requirements for class certification have been satisfied, the fourth requirement may be considered fulfilled as well.” *Id.* Certification of claims like Plaintiff presents here is a common occurrence.

WHEREFORE, for the foregoing reasons, Named Plaintiff requests that the Court:

- A. Enter and continue this motion and enter an order allowing expedited limited class certification discovery;
- B. Set a schedule for Named Plaintiff to file supplemental evidentiary materials and a supporting memorandum of law; and
- C. Such other relief as this Court deems appropriate under the circumstances.

Dated: April 29, 2021.

Respectfully submitted,

s/Douglas M. Werman
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2021 I electronically filed the foregoing **Plaintiff's Motion for Class Certification** with the Clerk of Court using electronic service provider GreenFiling. I hereby certify that I will provide a copy of this motion along with a Notice of Motion to the Sheriff of Sangamon County to have served on Defendant's registered agent with the Complaint on:

UBS Financial Services, Inc.
c/o Reg. Agent, IL Corporation Service C
801 Adlai Stevenson Dr.
Springfield, IL 62703

/s/Douglas M. Werman

Werman Salas P.C.
77 W. Washington St, Suite 1402
Chicago, IL. 60602



First Class Mail
First Class Mail

UBS Financial Services, Inc
C/o Registered Agent: IL Corporation
Service C
801 Adlai Stevenson Dr.
Springfield, IL 62703

7012 3460 0003 2852 8890



ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims UBS Background Check Disclosure Form Violated Federal Law](#)
