

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

MIROSLAV STOJANOVIC, on behalf of
himself and all others similarly situated,

Case No. _____

Plaintiff,

CLASS ACTION

v.

DEMAND FOR JURY TRIAL

SELECT PORTFOLIO SERVICING, INC.,

Defendant.

_____ /

CLASS ACTION COMPLAINT

Plaintiff, Miroslav Stojanovic (“**Plaintiff**”), individually and on behalf of all others similarly situated, sues Defendant, Select Portfolio Servicing, Inc. (“**Defendant**” or “**SPS**”), and alleges on personal knowledge, investigation of his counsel, and on information and belief as follows:

NATURE OF ACTION

1. Plaintiff brings this class action for damages and other equitable and legal remedies resulting from the illegal conduct of Defendant in negligently or willfully accessing the consumer credit reports of Plaintiff and putative Class Members without a statutorily permissible purpose in violation of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.* (“**FCRA**”).

JURISDICTION AND VENUE

2. This Court has federal question jurisdiction over this matter because Plaintiff’s claims arise from violations of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.*, which is a law of the United States.

3. Under 28 U.S.C. §§ 1391, venue is proper in the Middle District of Florida (Jacksonville Division) because many of the acts giving rise to this action occurred in this District, Defendant maintains an office in this District, conducts business in this District, and has intentionally availed itself of the laws and markets within this District.

PARTIES

4. Plaintiff, Miroslav Stojanovic, is and was at all times relevant to this matter a resident of the state of Nevada, residing in Las Vegas, Clark County, Nevada. Plaintiff is a consumer as that term is defined by the FCRA, 15 U.S.C. § 1681a(c).

5. Defendant, Select Portfolio Servicing, Inc., is a foreign profit corporation and mortgage servicer. At all times relevant to this matter, SPS was a citizen of the state of Utah with a principal place of business and corporate headquarters in Salt Lake City, Salt Lake County, Utah, with an office in Jacksonville, Duval County, Florida.

THE FAIR CREDIT REPORTING ACT, 15 U.S.C. §§ 1681, et seq.

6. The FCRA, 15 U.S.C. §§ 1681, *et seq.*, was enacted in 1970 to promote the accuracy, fairness, and privacy of consumer credit information contained in the files of consumer reporting agencies.

7. Section 15 U.S.C. 1681b(f) prohibits the use and obtaining of consumer reports “for any purpose unless (1) the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and (2) the purpose is certified in accordance with section 1681e of this title by a prospective user of the report through a general or specific certification.”

FACTUAL ALLEGATIONS

8. At all relevant times, Plaintiff was an individual residing in the state of Nevada.

9. On September 30, 2010, Plaintiff initiated and filed a Chapter 13 personal bankruptcy action, Case No. 10-28542-LED (“**Bankruptcy Action**”).

10. In the Bankruptcy Action, Plaintiff disclosed his joint-ownership with his ex-wife of a residential property located at 4429 Prospect Hill Court, Las Vegas, Nevada 89129 (“**Property**”), which was secured by a lien owed to Bank of America, N.A.

11. Plaintiff surrendered his ownership interest in the Property in his Chapter 13 Confirmed Repayment Plan, thereby terminating any debtor-creditor relationship Plaintiff had in connection with the Property.

12. Plaintiff performed all of his obligations under his Chapter 13 Confirmed Repayment Plan, and received a discharge on April 8, 2014.

13. Subsequent to Plaintiff’s surrender of the Property and his receipt of a discharge, the servicing rights for the Property were allegedly transferred to Defendant.

14. Plaintiff’s debtor-creditor relationship with Defendant, and/or its predecessors-in-interest, was terminated as a result of his surrender of the Property and subsequent discharge.

15. Accordingly, no debtor-creditor relationship existed between Plaintiff and Defendant and/or its predecessors-in-interest after April 8, 2014.

16. Notwithstanding the fact that Plaintiff has had no debtor-creditor relationship in connection with the Property since his discharge on April 8, 2014, Defendant accessed Plaintiff’s consumer credit report via Transunion on July 10, 2014. In connection therewith, Defendant made a general or specific certification to Transunion that it sought Plaintiff’s information for a purported permissible purpose, including “to acquire/service/insure account.”

17. Notwithstanding the fact that Plaintiff has had no debtor-creditor relationship in connection with the Property since his discharge on April 8, 2014, Defendant accessed Plaintiff’s

consumer credit report via Transunion on May 12, 2015. In connection therewith, Defendant made a general or specific certification to Transunion that it sought Plaintiff's information for a purported permissible purpose, including "to acquire/service/insure account."

18. Notwithstanding the fact that Plaintiff has had no debtor-creditor relationship in connection with the Property since his discharge on April 8, 2014, Defendant accessed Plaintiff's consumer credit report via Transunion on January 7, 2016. In connection therewith, Defendant made a general or specific certification to Transunion that it sought Plaintiff's information for a purported permissible purpose, including "to acquire/service/insure account."

19. Notwithstanding the fact that Plaintiff has had no debtor-creditor relationship in connection with the Property since his discharge on April 8, 2014, Defendant accessed Plaintiff's consumer credit report via Transunion on April 7, 2016. In connection therewith, Defendant made a general or specific certification to Transunion that it sought Plaintiff's information for a purported permissible purpose, including "to acquire/service/insure account."

20. Subsequently, Plaintiff accessed his consumer credit report via Transunion and discovered that Defendant had accessed his consumer credit report on the four occasions discussed above.

21. On each of the four occasions that Defendant accessed Plaintiff's consumer credit report, Plaintiff had no debtor-creditor relationship in connection with the Property or Defendant due to its surrender under his Chapter 13 Confirmed Repayment Plan.

22. Plaintiff's surrender of the Property and discharge were public information on each of the four occasions that Defendant accessed Plaintiff's consumer credit report.

23. Defendant's accessing Plaintiff's consumer credit report on each of the four occasions was not in accord with any of the permissible purposes set forth in FCRA, 15 U.S.C. §§ 1681, *et seq.*

24. Defendant's accessing Plaintiff's consumer credit report on each of the four occasions violated 15 U.S.C. § 1681b(f).

CLASS ACTION ALLEGATIONS

25. Pursuant to Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3), and as detailed in the individual counts below, Plaintiff brings this action on behalf of himself and all others similarly situated. Specifically, Plaintiff seeks to represent the following persons ("**the Class**" or "**Class Members**"):

All persons whose consumer credit reports were accessed by Defendant at a time when Defendant did not have a debtor-creditor relationship with said person of the kind specified in 15 U.S.C. § 1681b(a)(3)(A)-(F), and during the two years prior to the filing of the complaint in this action.

The Class definition is subject to amendment as needed.

26. Excluded from the Class are Defendant, its employees, agents and assigns, and any members of the judiciary to whom this case is assigned, their Court staff, and Plaintiff's counsel.

27. Also excluded from this action are any claims for personal injury, wrongful death and/or emotional distress. Members of the above-defined Class can be easily identified through Defendant's records.

Numerosity

28. At the time of filing, Plaintiff does not know the exact number of putative Class Members. However, the volume of residential mortgages serviced by Defendant affirms that

Class Members likely number in the thousands or hundreds of thousands, and are geographically disbursed throughout the country.

29. The alleged size and geographic disbursement of the putative Class, and relatively modest value of each individual claim, makes joinder of all Class Members impracticable or impossible.

Predominance of Common Questions of Law and Fact

30. This action involves common questions of law and fact, which predominate over any questions affecting individual Class Members. The common legal and factual questions include at least the following:

- a. whether Defendant accesses consumer credit reports in its capacity as a residential mortgage servicer;
- b. whether between November 1, 2014 and the present, Defendant accessed the consumer credit reports of Plaintiff and putative Class Members;
- c. whether Defendant is subject to the FCRA, 15 U.S.C. §§ 1681, *et seq.*
- d. whether Defendant can show that it accessed Plaintiff and putative Class Members' consumer credit reports for a permissible purpose;
- e. whether Defendant's conduct violates the FCRA;
- f. whether Defendant's conduct was negligent;
- g. whether Defendant's conduct was knowing and/or willful;
- h. whether Defendant is liable for damages, including statutory, actual and/or punitive damages, and the amount of such damages; and
- i. whether Plaintiff and Class Members are entitled to any other remedy.

Typicality

31. Plaintiff's claims are typical of the claims of the putative Class Members, as Plaintiff and Class Members have been injured by Defendant's uniform misconduct – the accessing of their consumer credit reports without a permissible purpose, as set forth in the FCRA, 15 U.S.C. §§ 1681, *et seq.*

32. Plaintiff shares the aforementioned facts and legal claims and/or questions with all putative Class Members. Further, a sufficient relationship exists between Defendant's conduct and the damages sustained by Plaintiff and putative Class Members.

Adequacy

33. Plaintiff will fairly and adequately protect the interests of putative Class Members and is committed to the vigorous prosecution of this action. Plaintiff has retained counsel experienced in complex consumer class action litigation and matters specifically involving FCRA violations. Plaintiff intends to prosecute this action vigorously, and has no interest adverse or antagonistic to those of the Class.

Superiority

34. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members' claims is impracticable or impossible for at least the following reasons:

- a. The Class claims predominate over any questions of law or fact (if any) affecting only individual Class Members;
- b. Absent a Class, the Class Members will continue to suffer damage and Defendant's violations of the FCRA will continue without remedy;

- c. Given the size of individual Class Members' claims, few (if any) putative Class Members could afford to or would seek legal redress individually for the wrongs Defendant committed and continues to commit against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- d. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts, while also increasing the delay and expense to all parties and the courts. Comparatively, the class action device provides economies of scale and allows Class Members' claims to be comprehensively administered and uniformly adjudicated in a single proceeding;
- e. When the liability of Defendant has been adjudicated, claims of all Class Members can be administered efficiently and determined uniformly by the Court;
- f. No difficulty impedes the action's management by the Court as a class action, which is the best available means by which Plaintiff and Class Members can seek redress for the damages caused to them by Defendant's uniform misconduct;
- g. The litigation and trial of Plaintiff's claims are manageable;
- h. Defendant has acted and/or refused to act on grounds generally applicable to Plaintiff and the Class by uniformly accessing their consumer credit reports without a permissible purpose, as set forth in the FCRA, 15 U.S.C. §§ 1681, *et*

seq. Consequently, class treatment is a superior method for adjudication of the issues in this case; and

- i. Bringing individual claims would burden the courts and result in an inefficient method of resolving this action. As a practical matter, adjudications with respect to individual Class Members would be dispositive of the interests of other Class Members who are not parties to the adjudication and may impair or impede their ability to protect their respective interests. Consequently, class treatment is a superior method for adjudication of the issues in this case.

CAUSES OF ACTION

COUNT I

Violation of the Fair Credit Reporting Act – Willful 15 U.S.C. §§ 1681, *et seq.*

35. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 34.
36. Plaintiff is a “consumer” as that term is defined by the FCRA, 15 U.S.C. § 1681a(c).
37. Defendant is a “person” as that term is defined by the FCRA, 15 U.S.C. § 1681a(b).
38. Transunion is a “consumer reporting agency” as that term is defined by the FCRA, 15 U.S.C. § 1681a(f).
39. The FCRA established specific rules placing limitations upon an entity or person seeking to access a consumer credit report, including:

Certain use or obtaining of information prohibited. - A person shall not use or obtain a consumer report for any purpose unless -

- (1) the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and
- (2) the purpose is certified in accordance with section 1681e of this title by a prospective user of the report through a general or specific certification.

See 15 U.S.C. §1681b(f).

Section 1681 b(a)(3) of the Fair Credit Reporting Act lists the all-inclusive purposes for which a consumer report can be obtained, as follows:

(a) In General. - * * * [A] consumer reporting agency may furnish a consumer report under the following circumstances and no other:

* * *

(3) To a person which it has reason to believe –

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

* * *

(F) otherwise has a legitimate business need for the information -

(i) in connection with a business transaction that is initiated by the consumer; or

(ii) to review an account to determine whether the consumer continues to meet the terms of the account.

40. After Plaintiff surrendered the Property in his Chapter 13 Confirmed Repayment Plan and received a discharge, Defendant had actual knowledge that it did not have a permissible purpose to access Plaintiff's consumer credit report from Transunion.

41. On the four occasions that Defendant accessed Plaintiff's consumer credit report, Defendant had actual knowledge that it did not have a permissible purpose to access Plaintiff's consumer credit report from Transunion.

42. Defendant's accessing Plaintiff's consumer credit report, despite having actual knowledge that it did not have a permissible purpose to do so, constitutes willful violation of the FCRA.

43. As a direct and proximate result of Defendant's willful violations of the FCRA, Plaintiff and putative Class Members are each entitled to \$100.00 to \$1,000.00, plus punitive damages.

44. Plaintiff and Class Members are also entitled to an award of attorneys' fees and reasonable costs, as set forth in 15 U.S.C. § 1681(n).

COUNT II

Violation of the Fair Credit Reporting Act – Negligent 15 U.S.C. §§ 1681, *et seq.*

45. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 34.

46. Plaintiff is a "consumer" as that term is defined by the FCRA, 15 U.S.C. § 1681a(c).

47. Defendant is a "person" as that term is defined by the FCRA, 15 U.S.C. § 1681a(b).

48. Transunion is a "consumer reporting agency" as that term is defined by the FCRA, 15 U.S.C. § 1681a(f).

49. The FCRA established specific rules placing limitations upon an entity or person seeking to access a consumer credit report, including:

Certain use or obtaining of information prohibited. - A person shall not use or obtain a consumer report for any purpose unless -

- (1) the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and
- (2) the purpose is certified in accordance with section 1681e of this title by a prospective user of the report through a general or specific certification.

See 15 U.S.C. §1681b(f).

Section 1681 b(a)(3) of the Fair Credit Reporting Act lists the all-inclusive purposes for which a consumer report can be obtained, as follows:

(a) In General. - * * * [A] consumer reporting agency may furnish a consumer report under the following circumstances and no other:

* * *

(3) To a person which it has reason to believe –

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

* * *

(F) otherwise has a legitimate business need for the information -

(ii) in connection with a business transaction that is initiated by the consumer; or

(ii) to review an account to determine whether the consumer continues to meet the terms of the account.

50. After Plaintiff surrendered the Property in his Chapter 13 Bankruptcy Action and received a discharge, Defendant should have known that it did not have a permissible purpose to access Plaintiff's consumer credit report from Transunion.

51. On the four occasions that Defendant accessed Plaintiff's consumer credit report, Defendant should have known that it did not have a permissible purpose to access Plaintiff's consumer credit report from Transunion.

52. Defendant's accessing Plaintiff's consumer credit report, when it should have known that it did not have a permissible purpose to do so, constitutes negligent violation of the FCRA, 15 U.S.C. § 1681(o).

53. As a direct and proximate result of Defendant's negligent violations of the FCRA, Plaintiff and putative Class Members are each entitled to their actual damages in an amount to be determined at a trial of this matter.

54. Plaintiff and Class Members are also entitled to an award of attorneys' fees and reasonable costs, as set forth in 15 U.S.C. § 1681(n).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court grant Plaintiff and all putative Class Members the following relief against Defendant:

- A. An award of statutory damages;
- B. An award of actual damages;
- C. An award of punitive damages;
- D. An award of attorneys' fees and reasonable costs to Plaintiff's counsel;
- E. An order certifying this matter as a class action pursuant to Federal Rule of Civil Procedure 23, certifying the Class defined herein, appointing Plaintiff as Class Representative, and appointing Plaintiff's counsel as Class Counsel; and
- F. Any additional relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all counts triable by jury.

Dated: November 1, 2016

Respectfully submitted,

**MORGAN & MORGAN
COMPLEX LITIGATION GROUP**

/s/ Jonathan B. Cohen

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** Pending pro hac vice application*

Attorneys for Plaintiff and the Putative Class

JS 44 (Rev 09/10)

3:16 cv 1373-J-3AMCR

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

CIVIL COVER SHEET

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law.

Plaintiff(s):

First Listed Plaintiff:
Miroslav Stojanovic ;
County of Residence: Outside This District

Defendant(s):

First Listed Defendant:
Select Portfolio Servicing, Inc. ;
County of Residence: Outside This District

County Where Claim For Relief Arose: Duval County

Plaintiff's Attorney(s):

Jonathan Cohen (Miroslav Stojanovic)
Morgan & Morgan Complex Litigation Group
201 N. Franklin Street, 7th floor
Tampa, Florida 33602
Phone: 8132235505
Fax: 8132222434
Email: jcohen@forthepeople.com

Defendant's Attorney(s):

Basis of Jurisdiction: 3. Federal Question (U.S. not a party)

Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff: N/A
Defendant: N/A

Origin: 1. Original Proceeding

Nature of Suit: 480 Fair Credit Reporting Act or Fair Debt Collection Practices Act

Cause of Action: FCRA

Requested in Complaint

Class Action: Class Action Under FRCP23
Monetary Demand (in Thousands): 5,000,000
Jury Demand: Yes
Related Cases: Is NOT a refile of a previously dismissed action

Receipt # JAX 021978

Signature: Jonathan B. Cohen

Date: 11/01/2016

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Select Portfolio Servicing Wrongfully Accessed Credit Reports](#)
