

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

2017 APR 10 PM 4:34
US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

JOHN WALKER JR., on behalf of)
himself and all others similarly situated,)
)
Plaintiff,)
)
v.)
)
JASPER CONTRACTORS, INC.,)
)
Defendant.)

Case No: 6:17-cv-644-ORL-316JK

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff John Walker Jr., on behalf of himself and all others similarly situated, files this Class Action Complaint against Jasper Contractors, Inc. (“Jasper” or “Defendant”). Plaintiff alleges, based on personal knowledge as to Defendant’s actions and upon information and belief as to all other matters, 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 Jasper, a roofing contractor company. Plaintiff contends that Jasper systemically 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 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 Jasper. This action involves Jasper's systematic violations of several of those important rules.

3. Plaintiff was denied employment as a regional sales manager with Jasper based upon a standardized background screen conducted by Criminal Watchdog, Inc. ("Criminal Watchdog") pursuant to an agreement between Criminal Watchdog and Jasper whereby Criminal Watchdog performs a standardized background screen on Jasper's candidates for hire or promotion. Criminal Watchdog adjudicated Plaintiff as not eligible for the job based upon the purported existence of multiple criminal charges and convictions, including a false listing of Plaintiff as a registered sex offender.

4. In violation of the FCRA, Jasper 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 it obtained from Criminal Watchdog, *before* the adverse action occurred, as required by 15 U.S.C. § 1681b(b)(3). Every year, individuals who have applied to Jasper for employment 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 himself and class of similarly situated employment applicants for whom Jasper failed to comply with FCRA section 1681b(b)(3)'s pre-adverse action notification requirements.

PARTIES

6. Plaintiff John Walker Jr. is a "consumer" as protected and governed by the FCRA, and resides in Orlando, Florida.

7. Defendant Jasper is a roofing contractor company that regularly conducts business in the State of Florida and has a principal place of business at 5801 Benjamin Center Drive, Suite 110, Tampa, Florida 33634.

JURISDICTION & VENUE

8. The Court has federal question jurisdiction under the FCRA, 15 U.S.C. § 1681p, and 28 U.S.C. § 1331.

9. Venue is proper in this Court because Jasper can be found in this District, 28 U.S.C. § 1391(b)(3). Defendant has an office and regularly sells its products and services in this District.

STATEMENT OF FACTS

10. Criminal Watchdog is among the nation's employment background screening companies, *i.e.* those that provide "consumer reports," as defined by 15 U.S.C. § 1681a(d)(1)(B), to prospective employers and employers.

11. Criminal Watchdog reviews public records and private databases and assembles and/or maintains consumer files which contain information concerning, among other things, the alleged criminal history of individuals.

12. From its files, Criminal Watchdog sells background consumer reports to potential employers (such as Defendant) wishing to screen applicants for employment. According to its website, Criminal Watchdog "is the foremost authority of accurate, comprehensive and innovative criminal background check and pre-employment screening solutions utilized by the Fortune 500 and small businesses throughout the United States." <http://criminalwatchdog.com/about-us>

13. Jasper uses Criminal Watchdog's services to conduct background checks on applicants for employment. The background reports resulting from these services are delivered directly to Jasper.

14. Under the FCRA, a "user" of a consumer report, such as Jasper, who intends to take any "adverse action" against a job applicant "based in whole or in part" on information obtained from the consumer report must provide notice of that fact to the consumer job 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. § 1681(b)(3)(A).

15. The reasons for the "pre-adverse action notice" requirement with regard to employment situations are to alert the consumer job applicant that he or she is about to experience an adverse action, such as a rejection, based on a report's contents, and to provide him or her an opportunity to challenge the accuracy, completeness or relevancy of the information with the consumer reporting agency or the user *before* that job prospect or job is lost.

The Facts Pertaining to Class Representative Plaintiff John Walker Jr.

16. Plaintiff John Walker Jr. applied for employment with Jasper in or around July 2015.

17. On or about July 24, 2015, Mr. Walker was interviewed in person by Jasper's CEO, and was offered the position that same day, and was also asked by Jasper to consent to a background check.

18. On or about July 29, 2015, Mr. Walker received a telephone call from Ms. Claire Hairston from Jasper's human resources department, explaining that Mr. Walker was being

denied the job. At that time, Mr. Walker did not have a copy of the Criminal Watchdog report or a statement of his rights under the FCRA.

19. On or about July 30, 2015, Mr. Walker sent an email to a representative of Defendant in an attempt to explain that the criminal history did not belong to him.

20. On or about August 4, 2015, Jasper mailed an adverse action letter to Mr. Walker, explaining that Mr. Walker's application for employment had been denied based on information obtained from Criminal Watchdog, along with a copy of the report, which was pulled on July 28, 2015, and which lacked a document explaining a consumer's rights under the FCRA.

21. The background report prepared by Criminal Watchdog for Jasper was not accurate. It reported several misdemeanors as well as Mr. Walker being reported on the sex offender registry in both Alabama and Maryland.

22. Defendant decided against hiring Plaintiff based on the inaccurate report generated by Criminal Watchdog without, beforehand, providing Plaintiff with notice, a copy of the background report and a summary of his rights.

23. 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 fact, Defendant never provided Plaintiff with any "pre-adverse" action letter or a copy of a summary of his rights. In doing so, Defendant failed to comply with the FCRA's pre-adverse action notification requirements.

CLASS ACTION ALLEGATIONS

24. 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 employees and applicants for employment with Jasper 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 consumer report that was used by Jasper and/or its subsidiaries to take an adverse employment action regarding such person, within five years prior to the filing of this action and extending through the resolution of this case, and for whom Jasper and/or its subsidiaries failed to provide the employee or applicant a copy of his or her consumer report and a copy of the FCRA summary of rights at least five business days before it took such adverse action.

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

26. **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 of consumer reports on applicants for employment, and those persons' names and addresses are identifiable through documents maintained by Defendant.

27. **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 and legal factual questions include, among others:

- a. Whether Defendant failed to provide each employee and applicant for employment a copy of their consumer report at least five business days before Defendant took adverse action based upon the consumer reports;
- b. Whether defendant failed to provide each employee and applicant for employment a copy of their written notice of FCRA rights at least five business days or at all before Defendant took adverse action based upon the consumer report;
- c. Whether Defendant acted willfully or negligently in disregard of the rights of employees and employment applicants.

28. **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 and punitive damages that he seeks for absent class members.

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

30. **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 substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in the unified proceeding.

CAUSES OF ACTION

COUNT I

Fair Credit Reporting Act, 15 U.S.C. § 1681b(b)(3)

(On behalf of Plaintiff and Class)

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

32. Plaintiff is a “consumer,” as defined by the FCRA, 15 U.S.C. § 1681a(c).

33. The Criminal Watchdog report ordered by Defendant is a “consumer report” within the meaning of 15 U.S.C. § 1681a(d).

34. 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).

35. 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).

36. Defendant Jasper is a “person” and regularly uses background reports for employment purposes. 15 U.S.C. § 1681a(b).

37. The FCRA requires Defendant, as a user 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) and (ii).

38. Defendant willfully and negligently violated section 1681b(b)(3) of the FCRA by failing to provide Plaintiff and the members of the Class the following before using such reports: (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.

PRAYER FOR RELIEF

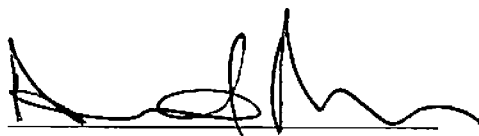
WHEREFORE, Plaintiff and the Class pray for relief as follows:

- 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 statutory, actual 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,
JOHN WALKER JR.

By: 
David M. Marco
Attorney for Plaintiff

Dated: 04/05/ 2017

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JS 44 (Rev. 11/15)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS
JOHN WALKER JR.

DEFENDANTS
JASPER CONTRACTORS, INC.

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

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

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
SMITHMARCO, P.C.
55 W. Monroe Street, Suite 1200, Chicago, IL 60603
312-546-6539

Attorneys (If Known)

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

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

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

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (139511) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities Commodities' Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/ Disabilities - Employment <input type="checkbox"/> 446 Amer. w/ Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609		
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

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

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

VI. CAUSE OF ACTION

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

15 U.S.C. §1681

Brief description of cause:
Fair Credit Reporting Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE: 04/05/17

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Jasper Contractors Violated FCRA with Adverse Employment Action](#)
