

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSE FLORES, on behalf of himself	)	
and all others similarly situated	)	
	)	Civil Action No. 2:14-cv-3298-HB
Plaintiff,	)	
	)	Judge Harvey Battle, III
v.	)	
	)	<i>Filed Electronically</i>
EXPRESS SERVICES, INC.; and	)	
EXPRESS PERSONNEL – PHILADELPHIA,	)	<b>CLASS ACTION</b>
	)	
Defendants.	)	

**EXPRESS SERVICES, INC.’S ANSWER  
AND DEFENSES TO SECOND AMENDED COMPLAINT**

Defendant Express Services, Inc. (“Express”), by and through its attorneys, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., files the within Answer and Defenses to Plaintiff’s Second Amended Class Action Complaint (“Second Amended Complaint”) (Doc. 20):

**FIRST DEFENSE**

Plaintiff’s Second Amended Complaint fails to state any claims upon which relief can be granted.

**SECOND DEFENSE  
(ANSWER)**

1. The allegations contained in Paragraph 1 of the Second Amended Complaint are admitted in part and denied in part. By way of further response, Express admits only that Plaintiff purports to allege individual and class claims pursuant to the Fair Credit Reporting Act. Express denies that it violated the Fair Credit Reporting Act and further denies that Plaintiff and those he seeks to represent are a “class” or that such putative class may be certified or maintained pursuant to Rule 23 of the Federal Rules of Civil Procedure.

2. The allegations regarding jurisdiction contained in Paragraph 2 of the Second Amended Complaint are conclusions of law to which no response is required.

3. The allegations regarding venue contained in Paragraph 3 of the Second Amended Complaint are conclusions of law to which no response is required.

4. The allegations contained in Paragraph 4 of the Second Amended Complaint are admitted in part and denied in part. Express admits only that Jose Flores is the Plaintiff in the above-captioned matter and that he is an adult individual. By way of further response and after a reasonable investigation, Express is without knowledge or information sufficient to determine the state in which Plaintiff is currently a citizen; therefore, the allegation that Plaintiff is a citizen of the Commonwealth of Pennsylvania is denied.

5. The allegations contained in Paragraph 5 of the Second Amended Complaint are admitted in part and denied in part. Express admits only that it is a defendant in the above-captioned matter and that it does business under the name “Express Employment Professionals.” Express denies that it is a “franchising business.” Express admits only that it has more than 600 franchises in the United States, Canada, and South Africa and that it generated \$2.3 billion in sales in 2012. Express admits only that its website states that it provides “a full range of employment solutions for area businesses and job seekers, including professional search and contract, temporary and contract staffing, evaluation and direct hire, flexible staffing, and onsite services. For employers, [Express] can also provide solutions to HR challenges, including an HR Hotline, compliance audits, employee handbook creation, Organizational Effectiveness Surveys, onsite client training programs, and affirmative action plans.” Express admits only that it operates an Internet website located at <http://www.expresspros.com> and that its corporate

headquarters are located at 9701 Boardwalk Boulevard, Oklahoma City, Oklahoma 73162. The remaining allegations contained in Paragraph 5 of the Second Amended Complaint are denied.

6. The allegations contained in Paragraph 6 of the Second Amended Complaint are admitted in part and denied in part. By way of further response, Express admits only that Express Employment Professionals of Philadelphia, incorrectly identified as “Express Personnel – Philadelphia,” is a defendant in the above-captioned matter and is a franchisee of Express. Express denies that “Express Personnel –Philadelphia” is a defendant in the above-captioned matter and denies that Express Employment Professionals of Philadelphia does business under the name “Express Personnel –Philadelphia.” Express admits only that Express Employment Professionals of Philadelphia operates an Internet website located at <http://philadelphiapa.expresspros.com/>, that the website states that it serves “local businesses with both full-time and temporary staffing and job placement in addition to providing human resource services and consulting,” and that it has a place of business located at 1617 JFK Boulevard, Suite 490, Philadelphia, Pennsylvania 19103.

7. The allegations contained in Paragraph 7 of the Second Amended Complaint are denied.

8. The allegations contained in Paragraph 8 of the Second Amended Complaint are denied. By way of further response and after a reasonable investigation, Express is without knowledge or information sufficient to determine the meaning Plaintiff attaches to the phrase “the usual and customary process” or what Plaintiff refers to when using the phrase “standardized form documents;” therefore, the allegations contained in Paragraph 8 of the Second Amended Complaint are denied.

9. The allegations contained in Paragraph 9 of the Second Amended Complaint are denied in part and admitted in part. Express admits only that Plaintiff authorized the procurement of a consumer report or background check. The remaining allegations contained in Paragraph 9 of the Second Amended Complaint are denied.

10. The allegations contained in Paragraph 10 of the Second Amended Complaint are denied. By way of further response and after a reasonable investigation, Express is without knowledge or information sufficient to determine the meaning Plaintiff attaches to the term “form contracts” or what backgroundchecks.com typically requires of its customers; therefore, the allegations contained in Paragraph 10 of the Second Amended Complaint are denied.

11. The allegations contained in Paragraph 11 of the Second Amended Complaint are denied. By way of further response and after a reasonable investigation, Express is without knowledge or information sufficient to know whether Backgroundchecks.com has a “standard agreement,” the meaning Plaintiff attaches to the term “standard agreement,” or the truth of the allegations contained in Paragraph 11 of the Second Amended Complaint; therefore, the allegations contained in Paragraph 11 of the Second Amended Complaint are denied.

12. The allegations contained in Paragraph 12 of the Second Amended Complaint are denied. By way of further response, the text of 15 U.S.C. § 1681b(b)(3)(A) is in writing, speaks for itself, and is the best evidence of its contents; therefore, the allegations and characterizations of facts concerning 15 U.S.C. § 1681b(b)(3)(A) contained in Paragraph 12 of the Second Amended Complaint are denied.

13. The allegations contained in Paragraph 13 of the Second Amended Complaint are denied. By way of further response, H.R. Rep. No. 102-486 is in writing, speaks for itself, and is the best evidence of its contents; therefore, the allegations and characterizations of fact regarding

H.R. Rep. No. 103-486 as contained in Paragraph 13 of the Second Amended Complaint are denied.

14. The allegations contained in Paragraph 14 of the Second Amended Complaint are denied. By way of further response and after a reasonable investigation, Express is without knowledge or information sufficient to determine the truth of the allegations contained in Paragraph 14 of the Second Amended Complaint; therefore, the allegations contained in Paragraph 14 of the Second Amended Complaint are denied.

15. The allegations contained in Paragraph 15 of the Second Amended Complaint are denied. By way of further response and after a reasonable investigation, Express is without knowledge or information sufficient to determine which “Defendant” Plaintiff references or the truth of the allegations contained in Paragraph 15 of the Second Amended Complaint; therefore, the allegations contained in Paragraph 15 of the Second Amended Complaint are denied.

16. The allegations contained in Paragraph 16 of the Second Amended Complaint are admitted in part and denied in part. By way of further response, Express admits only that Plaintiff completed an application on or about January 11, 2013. After a reasonable investigation, Express is without knowledge or information sufficient to determine the truth of the remaining allegations contained in Paragraph 16 of the Second Amended Complaint; therefore, those allegations are denied.

17. The allegations contained in Paragraph 17 of the Second Amended Complaint are denied. By way of further response and after a reasonable investigation, Express is without knowledge or information sufficient to determine the truth of the allegations contained in Paragraph 17 of the Second Amended Complaint; therefore, the allegations contained in Paragraph 17 of the Second Amended Complaint are denied.

18. Express admits only that Plaintiff executed a Drug and Alcohol Testing Consent Form on January 11, 2013.

19. The allegations contained in Paragraph 19 of the Second Amended Complaint are denied. By way of further response and after a reasonable investigation, Express is without knowledge or information sufficient to determine the truth of the allegations contained in Paragraph 19 of the Second Amended Complaint; therefore, the allegations contained in Paragraph 19 of the Second Amended Complaint are denied.

20. The allegations contained in Paragraph 20 of the Second Amended Complaint are denied. By way of further response and after a reasonable investigation, Express is without knowledge or information sufficient to determine the truth of the allegations contained in Paragraph 20 of the Second Amended Complaint; therefore, the allegations contained in Paragraph 20 of the Second Amended Complaint are denied.

21. The allegations contained in Paragraph 21 of the Second Amended Complaint are denied.

22. The allegations contained in Paragraph 22 of the Second Amended Complaint are denied.

23. The allegations contained in Paragraph 23 of the Second Amended Complaint are denied.

24. The allegations contained in Paragraph 24 of the Second Amended Complaint are denied.

25. The allegations contained in Paragraph 25 of the Second Amended Complaint are denied.

26. The allegations contained in Paragraph 26 of the Second Amended Complaint are denied. By way of further response and after a reasonable investigation, Express is without knowledge or information sufficient to determine the truth of the allegations contained in Paragraph 28 of the Second Amended Complaint; therefore, the allegations contained in Paragraph 28 of the Second Amended Complaint are denied.

27. The allegations contained in Paragraph 27 of the Second Amended Complaint are denied. By way of further response and after a reasonable investigation, Express is without knowledge or information sufficient to determine the truth of the allegations contained in Paragraph 27 of the Second Amended Complaint; therefore, the allegations contained in Paragraph 27 of the Second Amended Complaint are denied.

28. The allegations contained in Paragraph 28 of the Second Amended Complaint are denied. By way of further response and after a reasonable investigation, Express is without knowledge or information sufficient to determine the truth of the allegations contained in Paragraph 28 of the Second Amended Complaint; therefore, the allegations contained in Paragraph 28 of the Second Amended Complaint are denied.

29. The allegations contained in Paragraph 29 of the Second Amended Complaint are admitted in part and denied in part. Express admits only that Plaintiff purports to allege individual and class claims pursuant to the Fair Credit Reporting Act and Rule 23(a) and 23(b) of the Federal Rules of Civil Procedure. The remaining allegations contained in Paragraph 29 of the Second Amended Complaint are denied. By way of further response, Express specifically denies that Plaintiff and those he seeks to represent are a “class” or that such putative class may be certified or maintained pursuant to Rule 23 of the Federal Rules of Civil Procedure.

30. The allegations contained in Paragraph 30 of the Second Amended Complaint are denied. By way of further response, Express specifically denies that Plaintiff and those he seeks to represent are a “class” or that such putative class may be certified or maintained pursuant to Rule 23 of the Federal Rules of Civil Procedure.

31. The allegations contained in Paragraph 31 of the Second Amended Complaint are denied. By way of further response, Express specifically denies that Plaintiff and those he seeks to represent are a “class” or that such putative class may be certified or maintained pursuant to Rule 23 of the Federal Rules of Civil Procedure.

32. The allegations contained in Paragraph 32 of the Second Amended Complaint are denied. By way of further response, Express specifically denies that Plaintiff and those he seeks to represent are a “class” or that such putative class may be certified or maintained pursuant to Rule 23 of the Federal Rules of Civil Procedure.

33. The allegations contained in Paragraph 33 of the Second Amended Complaint are denied. By way of further response, Express specifically denies that Plaintiff and those he seeks to represent are a “class” or that such putative class may be certified or maintained pursuant to Rule 23 of the Federal Rules of Civil Procedure.

34. The allegations contained in Paragraph 34 of the Second Amended Complaint are denied. By way of further response, Express specifically denies that Plaintiff and those he seeks to represent are a “class” or that such putative class may be certified or maintained pursuant to Rule 23 of the Federal Rules of Civil Procedure.

35. The allegations contained in Paragraph 35 of the Second Amended Complaint are denied. By way of further response, Express specifically denies that Plaintiff and those he seeks



to represent are a “class” or that such putative class may be certified or maintained pursuant to Rule 23 of the Federal Rules of Civil Procedure.

36. The allegations contained in Paragraph 36 of the Second Amended Complaint require no response. Express hereby incorporates Paragraphs 1 through 35 of this Answer and Defenses as if fully set forth herein.

37. The allegations contained in Paragraph 37 of the Second Amended Complaint are conclusions of law to which no response is required.

38. The allegations contained in Paragraph 38 of the Second Amended Complaint are conclusions of law to which no response is required.

39. The allegations contained in Paragraph 39 of the Second Amended Complaint are conclusions of law to which no response is required.

40. The allegations contained in Paragraph 40 of the Second Amended Complaint are conclusions of law to which no response is required.

41. The allegations contained in Paragraph 41 of the Second Amended Complaint are conclusions of law to which no response is required.

42. The allegations contained in Paragraph 42 of the Second Amended Complaint are conclusions of law to which no response is required.

43. The allegations contained in Paragraph 43 of the Second Amended Complaint are denied.

44. The allegations contained in Paragraph 44 of the Second Amended Complaint are denied.

45. The allegations contained in Paragraph 45 of the Second Amended Complaint are admitted in part and denied in part. Express admits only that Plaintiff purports to demand a trial

by jury on all issues so triable. The allegation that Plaintiff is entitled to a jury trial is a conclusion of law to which no response is required.

The Prayer for Relief set forth by Plaintiff following Paragraph 45 of the Second Amended Complaint requires no response. To the extent a response is deemed necessary, Express denies that Plaintiff is entitled to any of the relief requested. Express specifically denies that the Plaintiff and those he seeks to represent are a “class” or that such putative class may be certified or maintained pursuant to Rule 23 of the Federal Rules of Civil Procedure.

Express denies any and all allegations of fact not specifically admitted herein.

#### **THIRD DEFENSE**

Plaintiff did not experience an adverse employment action within the meaning of the Fair Credit Reporting Act as a matter of law.

#### **FOURTH DEFENSE**

Express complied fully with the Fair Credit Reporting Act with regard to Plaintiff.

#### **FIFTH DEFENSE**

To the extent Plaintiff experienced an adverse employment action, which he did not, Express did not rely in whole or in part upon the contents of any consumer report regarding Plaintiff in making its employment decision.

#### **SIXTH DEFENSE**

This case may not be maintained as a class action because the named Plaintiff is not an adequate representative for the persons whom he purports to represent and, thus, he cannot establish the requirements of Federal Rule of Civil Procedure 23.

**SEVENTH DEFENSE**

Plaintiff cannot satisfy the requirements of Federal Rule of Civil Procedure 23 because there are not questions of law or fact common to the putative class.

**EIGHTH DEFENSE**

This case may not be maintained as a class action because the claims or defenses of the representative parties are not typical of the claims of the class.

**NINTH DEFENSE**

This case may not be maintained as a class action because individual questions of law or fact predominate over common questions.

**TENTH DEFENSE**

Express' actions taken were in good faith, in conformity with applicable statutes, laws, and regulations, and based upon the reasonable belief that Express was in compliance with all applicable laws, thus Plaintiff and/or the putative class he seeks to represent cannot establish a willful violation of the Fair Credit Reporting Act.

**ELEVENTH DEFENSE**

Plaintiff has suffered no actual damages within the meaning of the Fair Credit Reporting Act.

**TWELFTH DEFENSE**

No actions taken by Express with respect to Plaintiff constitute a willful, knowing or reckless disregard of Plaintiff's rights under the law; therefore, Plaintiff may not recover statutory damages under the Fair Credit Reporting Act.

**THIRTEENTH DEFENSE**

To the extent that any of claims alleged fall outside of the statute of limitations of the Fair Credit Reporting Act or are otherwise untimely, then they are barred by the applicable statute of limitations or laches.

**RESERVATION OF DEFENSES**

Express reserves the right to amend its Answer and Defenses to assert additional defenses and/or affirmative defenses based upon information obtained during pretrial discovery.

WHEREFORE, Defendant, Express Services, Inc., respectfully requests that Plaintiff's Prayer for Relief be denied, and that Plaintiff's Second Amended Complaint be dismissed in its entirety with prejudice.

Respectfully submitted,

**OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.**

**/s/ Philip K. Kontul**

W. Scott Hardy, Esq.  
PA I.D. No. 79225 (admitted *pro hac vice*)  
scott.hardy@ogletreedeakins.com

Philip K. Kontul, Esq.  
PA I.D. No. 94156 (admitted *pro hac vice*)  
philip.kontul@ogletreedeakins.com

One PPG Place, Suite 1900  
Pittsburgh, PA 15222  
Telephone: (412) 394-3333  
Facsimile: (412) 232-1799

Richard William Diaz, Esq.  
PA I.D. No. 306980  
richard.diaz@ogletreedeakins.com

1735 Market Street, Suite 3000  
Philadelphia, PA 19103  
Telephone: (215) 995-2835  
Facsimile: (215) 995-2801

Attorneys for Defendants

Dated: November 5, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **EXPRESS SERVICES, INC.'S ANSWER AND DEFENSES TO SECOND AMENDED COMPLAINT** was filed electronically on November 5, 2014. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

**/s/ Philip K. Kontul**

Philip K. Kontul