



3. Venue is proper in this District, pursuant to 28 U.S.C. § 1391(b), because a substantial part of the events or omissions giving rise to Plaintiff's claim occurred in this District, and because Defendant resides in this District within the meaning of 28 U.S.C. § 1391(c).

### **III. PARTIES**

4. Plaintiff Jose Flores is an adult individual and citizen of the Commonwealth of Pennsylvania.

5. Defendant Express Services, Inc. (Express Services) is a franchising business entity that does business under the name of Express Employment Professionals. Express Services has more than 600 franchises in the United States, Canada, and South Africa, including 36 in Pennsylvania, New Jersey and Delaware. The company employs over 10,000 individuals and generated \$2.3 billion in sales in 2012. Express Services markets itself as offering "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 Services can also provide solutions to HR challenges, including an HR Hotline, HR compliance audits, employee handbook creation, Organizational Effectiveness Surveys, onsite client training programs, and affirmative action plans." See <http://www.expresspros.com/company/overview/>. Express Services has headquarters at 8516 NW Expressway, Oklahoma City, Oklahoma 73162.

6. Defendant Express Personnel – Philadelphia (Express Philadelphia) is a franchisee of Defendant Express Services. Express Philadelphia also does business under the name of Express Employment Professionals and markets itself as serving "local businesses with both full-time and temporary staffing and job placement in addition to providing human resource services and consulting." See <http://philadelphiapa.expresspros.com/>. Express Philadelphia

operates a place of business at 1617 JFK Boulevard, Suite 490, Philadelphia, Pennsylvania 19103.

#### **IV. FACTUAL ALLEGATIONS**

7. In late 2012, Plaintiff Flores applied for employment with the Express Philadelphia office in Philadelphia, Pennsylvania.

8. On information and belief, the employment application process followed by Express Philadelphia is the usual and customary process, including the use of standardized form documents, which it is required to follow pursuant to its franchise agreement with Express Services.

9. As a condition of the employment application with Express Philadelphia, Mr. Flores authorized a background report.

10. On information and belief, Express Services and Express Philadelphia are parties to form contracts with a consumer reporting agency named backgroundchecks.com (BGC). Pursuant to these contracts, BGC agrees to provide consumer reports for employment purposes within the meaning of section 1681b(b) of the FCRA. In connection with its contracts, BGC requires customers such as Express Services and Express Philadelphia to acknowledge and agree that the information BGC will provide in connection with a background check is regulated FCRA consumer report information. In doing so, BGC further requires that customers such as Express Services and Express Philadelphia follow FCRA procedures and safeguards that apply to the use of consumer reports.

11. As part of a standard agreement, BGC requires its employer customers such as Defendants to provide the certifications mandated by 15 U.S.C. § 1681b(b), including a certification that, for each background screen ordered, the employer-customer will have disclosed in writing to the job applicant its intent to procure a “consumer report” as part of the

application and the applicant will have provided the customer with a written consent to such procurement.

12. Under the FCRA, a “user” of a consumer report, such as the Defendants, who intends to take an “adverse action” on a job application “based in whole or in part” on information obtained from the consumer report, must provide notice of that fact to the consumer-applicant, and must include with the notice a copy of the consumer report and a notice of the consumer’s dispute rights under the FCRA, *before* taking the adverse action. 15 U.S.C. § 1681b(b)(3)(A).

13. The reasons for the “pre-adverse action notice” requirement with regard to employment situations are to alert the job applicant that he is about to experience an adverse action, such as a rejection, based on the content of a report, and to provide him an opportunity to challenge the accuracy or relevancy of the information with the consumer reporting agency or the user before that job prospect or job is lost. *See* H.R. Rep. No. 103-486, at 30 (1994) (discussing 15 U.S.C. § 1681b(b)(3)).

14. In late 2012 or early 2013, Plaintiff dropped off his resume at Defendant’s office at 1617 JFK Boulevard in Philadelphia.

15. Subsequently, Plaintiff received a telephone call from a representative of Defendant asking him to come into the Philadelphia office to interview for a specific position.

16. On or about January 11, 2013, Plaintiff visited Defendant’s office as requested. Plaintiff filled out the application papers presented to him and interviewed for an open employment position described as working in a warehouse or a factory.

17. Plaintiff was asked by Defendant’s interviewer whether he owned the certain type of boots necessary for the particular job, and he answered that he did.

18. Plaintiff was also asked to sign a drug and alcohol test authorization, which he

did.

19. In answer to questions during the application process, Plaintiff answered truthfully and accurately that he had a criminal record from an incident many years ago involving allegations of operating a “chop shop.”

20. Plaintiff was told that the incident did not disqualify him from employment with Defendant. He was told that Defendant would proceed to obtain a background report on him.

21. Defendants ordered a background report on Mr. Flores from BGC.

22. Pursuant to its agreement with Defendants, BGC produced and sold to Defendants a background report on Mr. Flores, dated January 11, 2013, that consisted of 64 pages and contained approximately 170 criminal records pertaining to other unrelated individuals from many other states, including a “Rape-Child” case from Harris County, Texas.

23. Mr. Flores has one criminal record from 2001 in Philadelphia, Pennsylvania. That record did not appear on the January 11, 2013 background report.

24. Based on the results of the January 11, 2013 background report, Defendants took adverse action against Mr. Flores by determining that the criminal record information contained in the report disqualified Mr. Flores from employment. Defendants immediately stopped processing the placement of Mr. Flores in the position for which they had called him to the office to be interviewed.

25. Mr. Flores was not provided with a copy of the BGC report and/or a written summary of his rights under the FCRA prior to the adverse action and was thus deprived of the opportunity to explain that the report was completely false.

26. Subsequently, Mr. Flores received a copy of the BGC report that BGC mailed to his home and saw that the report was completely false.

27. Mr. Flores then returned to Defendant’s office and informed the individual who

had interviewed him that the report was false.

28. Mr. Flores was told to call the Defendant's office about the position. Mr. Flores continued to call the office a number of times but was never given any further information.

## V. CLASS ACTION ALLEGATIONS

29. Plaintiff brings this action individually and as a class action for Defendants' violations of section 1681b(b)(3)(A) of the FCRA, pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure, on behalf of the following Class:

All natural persons residing within the jurisdiction of the Third Circuit who (i) within two (2) years prior to the filing of the Complaint; (ii) applied for employment with Defendants; (iii) were the subject of a consumer report used by Defendants for employment purposes; (iv) were the subject of an adverse employment action by Defendants; and, (iv) were not provided with a copy of the report and/or a written summary of their rights under the FCRA prior to the adverse action.

30. The Class is so numerous that joinder of all members is impracticable. Although the precise number of Class members is known only to Defendants, Plaintiff avers upon information and belief that the Class numbers in the hundreds if not thousands. Defendant Express Services is a business with more than 500 offices nationwide, including 36 offices within the Third Circuit (*see* <http://www.expresspros.com/locations/>) that staffs other businesses, and utilizes common practices and procedures for screening job applicants.

31. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class members. The principal questions include whether Defendants, by employing a policy and practice of failing to provide job applicants with pre-adverse action notices, willfully and negligently violated section 1681b(b)(3) of the FCRA.

32. Plaintiff's claims are typical of the claims of the Class, which all arise from the same operative facts and are based on the same legal theories.

33. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff is committed to vigorously litigating this matter. Plaintiff has secured counsel experienced in handling consumer class actions. Neither Plaintiff nor his counsel has any interests which might cause them not to vigorously pursue this claim.

34. This action should be maintained as a class action because the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members which would establish incompatible standards of conduct for the parties opposing the Class, as well as a risk of adjudications with respect to individual members which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

35. A class action is a superior method for the fair and efficient adjudication of this controversy. The interest of Class members in individually controlling the prosecution of separate claims against Defendants is small as the maximum statutory damages are limited to \$1,000.00 under the FCRA. Management of the Class claims is likely to present significantly fewer difficulties than those presented in many individual claims. The identities of the Class members may be obtained from Defendants' records.

## **VI. CAUSES OF ACTION**

### **COUNT ONE – FCRA § 1681b(b)(3)**

36. Plaintiff incorporates the foregoing paragraphs as though the same were set forth at length herein.

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

38. The background or consumer reports that Defendants purchase regarding employment applicants are “consumer reports” within the meaning of 15 U.S.C. § 1681a(d).

39. 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 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).

40. 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).

41. Defendants are each a “person” that regularly uses consumer reports for employment purposes.

42. The FCRA requires Defendants, as users of consumer reports for employment purposes, before taking adverse action based in whole or in part on the report, to provide to the consumer to whom the report relates, a copy of the report and a written description of the consumer’s rights under the FCRA. 15 U.S.C. § 1681b(b)(3)(A)(i), (ii).

43. Defendants willfully and negligently violated section 1681b(b)(3) of the FCRA by failing to provide to the consumer about whom the report relates a copy of the report and a written description of the consumer’s rights under the FCRA a sufficient time before it took adverse action based in whole or in part on the consumer report.

44. Pursuant to sections 1681n and 1681o of the FCRA, Defendants are each liable for willfully and negligently violating FCRA section 1681b(b)(3) by failing to provide to the consumer about whom the report relates a copy of the report and a written description of the consumer’s rights under the FCRA a sufficient time before it took adverse action based in whole or in part on the consumer report.

## **VII. JURY TRIAL DEMAND**

45. Plaintiff demands trial by jury on all issues so triable.

**VIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff seeks relief against the Defendants as follows:

- (a) That an order be entered certifying the proposed Class under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiff and his counsel to represent the Class;
- (b) That judgment be entered against Defendants for actual damages;
- (c) That judgment be entered against Defendants for statutory damages in the amount of not less than \$100 and not more than \$1,000 per violation per Class member, pursuant to 15 U.S.C. § 1681n(a);
- (d) That judgment be entered against Defendants for punitive damages pursuant to 15 U.S.C. § 1681n(a)(2);
- (e) That the Court award costs and reasonable attorney's fees; and
- (f) That the Court grant such other and further relief as may be just and proper.

Dated: October 8, 2014

Respectfully submitted,

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