

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Greensboro Division**

DIANE OLIVER and
CHAD MARTIN,
*on behalf of themselves and all similarly
situated individuals*

Plaintiffs,

v.

FIRSTPOINT, INC d/b/a
FIRSTPOINT INFORMATION RESOURCES

SERVE: HD Business Services, LLC
300 North Green Street, Suite 200
Greensboro, NC 27401

Defendant.

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CLASS ACTION COMPLAINT

COME NOW the Plaintiffs, Diane Oliver (“Oliver”) and Chad Martin (“Martin”) (together, “the Plaintiffs”), on behalf of themselves and all similarly situated individuals, by counsel, and as for their Class Action Complaint against the Defendant, they allege as follows:

PRELIMINARY STATEMENT

1. Plaintiffs bring this class action for statutory and punitive damages, costs, and attorneys’ fees brought pursuant to 15 U.S.C. § 1681, *et seq.* (the Fair Credit Reporting Act or “FCRA”). The Defendant operates as a nationwide consumer reporting agency that furnishes consumer reports for employment and other purposes.

2. Plaintiffs allege a class claim under 15 U.S.C. § 1681k because Defendant did not provide Plaintiffs and other similarly situated consumers timely and lawful notice that it was furnishing a report for employment purposes at the time it did so. This important requirement is

intended to provide consumers immediate notice of the furnishing of the report and details necessary to preemptively contact the reporting agency to obtain and, as appropriate, correct information in the furnished report. It also was intended to alert the consumer to the employer's use of the report to provide them the opportunity to address any concerns or derogatory history in the report directly with the user. Defendant's failure to comply with these long standing requirements denied Plaintiffs and each putative class member these important rights.

3. Additionally, Defendant provided a consumer report regarding the Plaintiffs to one or more of their employers or prospective employers. The reports that the Defendant furnished contained materially false and derogatory information regarding the Plaintiffs.

JURISDICTION

4. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1681p.

PARTIES

5. Plaintiffs are each a "consumer" as defined and protected by the FCRA.

6. Defendant FirstPoint, Inc. d/b/a FirstPoint Information Resources (hereafter "FirstPoint" or "Defendant") is a North Carolina corporation doing business in Virginia.

7. FirstPoint is a "consumer reporting agency" as defined in 15 U.S.C. §1681a(f). FirstPoint is regularly engaged in the business of assembling, evaluating, and disbursing information concerning consumers for the purpose of furnishing consumer reports, as defined in 15 U.S.C. §1681a(d) to third parties.

8. Additionally, FirstPoint is also a "consumer reporting agency" as defined at 15 U.S.C. § 1681a, that furnishes consumer report "for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public

record and are likely to have an adverse effect upon a consumer's ability to obtain employment".
15 U.S.C. § 1681k(a).

STATEMENT OF FACTS

Facts Relating to Plaintiff Diane Oliver

9. Plaintiff Oliver applied for employment, and as part of this application procedure, her potential employers requested a consumer background report regarding Plaintiff from the Defendant.

10. In response to this request, the Defendant sold one or more consumer reports to Plaintiff's potential employers.

11. These reports contained public record information likely to have an adverse effect upon Plaintiff's ability to obtain employment.

12. Despite selling a report that contained public record information likely to have an adverse affect upon Plaintiff's ability to obtain employment for employment purposes, Defendant nonetheless failed to provide notice to Plaintiff that it was doing so, along with the name and address of the entity to whom such information was being reported.

13. The Defendant did not attempt to follow the option available at 15 U.S.C. §1681k(a)(2), which requires a consumer reporting agency to actually contact the original source of public records information (e.g. the Clerk of the Court) immediately before furnishing a report which includes such information. Title 15 U.S.C. §1681k(a)(2) is thus inapplicable to the consumer report at issue in this case.

14. The consumer report that the Defendant furnished regarding Plaintiff Oliver was also materially inaccurate.

15. Defendant furnished a report regarding the Plaintiff that contained a felony

conviction.

16. Plaintiff Oliver was never convicted of a felony.

17. The Defendant failed to follow reasonable procedures to assure maximum possible accuracy of the information in the report concerning Plaintiff Oliver.

18. Plaintiff Oliver thereafter suffered an adverse employment decision as a result of the consumer report Defendant provided, and her employment offer was revoked.

19. After discovering that Defendant had furnished inaccurate information about her in the consumer report, Plaintiff Oliver disputed the inclusion of a felony conviction on her consumer report with Defendant.

20. Plaintiff Oliver mailed a written dispute dated July 25, 2012 to the Defendant, in which the Plaintiff disputed the felony conviction contained within her report.

21. Plaintiff Oliver also included supporting documentation along with her dispute letter to Defendant.

22. Upon information and belief, Defendant failed to perform a meaningful and searching inquiry into the substance of Plaintiff Oliver's dispute and record the current status of the disputed information or delete the item from the file in accordance with the requirements of the FCRA.

23. Additionally, upon information and belief, the Defendant failed to forward all relevant information regarding Plaintiff Oliver's dispute to the entity that provided the information in dispute.

24. Further, upon information and belief, the Defendant failed to review and consider all relevant information submitted by Plaintiff Oliver in her dispute.

25. Plaintiff followed up with the Defendant about her dispute on numerous

occasions.

26. Despite these efforts by the Plaintiff to obtain assurance that her report had been fixed, the Defendant never responded to Plaintiff Oliver's dispute or provided her with any written notice of the results of any reinvestigation of her dispute.

27. As a result of the Defendant's failure to investigate her dispute and to notify her of the results of its investigation, Plaintiff Oliver suffered actual damages.

28. Additionally, the Defendant's procedures and conduct described herein were willful. They were carried out as intended and not by mere accident or mistake. Defendant's actions constitute its standard procedures and policy of conducting business.

Facts Relating to Plaintiff Chad Martin

29. Upon information and belief, the Defendant furnished one or more consumer reports regarding Plaintiff Martin for employment purposes.

30. Upon information and belief, the consumer reports that Defendant furnished contained public record information likely to have an adverse effect upon Plaintiff Martin's ability to obtain employment.

31. Despite providing a report that contained public record information likely to have an adverse affect upon Plaintiff Martin's ability to obtain employment for employment purposes, Defendant failed to provide notice to Plaintiff Martin that it was doing so along with the name and address of the person to whom such information was being reported.

32. Upon information and belief, Plaintiff Martin alleges that Defendant did not attempt to follow the option available at 15 U.S.C. §1681k(a)(2), which requires a consumer reporting agency to actually contact the original source of public records information (e.g. the Clerk of the Court) immediately before furnishing a report which includes such information.

Title 15 U.S.C. §1681k(a)(2) is thus inapplicable to the consumer report at issue in this case.

33. Upon information and belief, the reports that Defendant furnished regarding Plaintiff Martin were also materially inaccurate.

34. The reports that Defendant furnished regarding Plaintiff Martin contained inaccurate criminal conviction information.

35. Plaintiff has never been convicted of a crime.

36. The Defendant failed to follow reasonable procedures to assure maximum possible accuracy of the information in the report concerning Plaintiff Martin.

37. As a result of the Defendant's actions, Plaintiff Martin suffered actual damages.

Facts Common to the Plaintiffs

38. As a matter of practice, the Defendant regularly and consistently fails to provide notice of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported, to consumers who are the subject of a consumer report for employment purposes.

39. Defendant's procedures and conduct were willful. They were carried out as intended and not by mere accident or mistake. Defendant's actions constitute its standard procedures and policy of conducting business.

40. As a consumer reporting agency, the Defendant knew or should have known about its legal obligations under the FCRA. These obligations are well established in the plain language of the FCRA and in the promulgations of the Federal Trade Commission and the Consumer Financial Protection Bureau.

41. Further, upon information and belief, the Defendant obtained or had available substantial written materials that informed it of its duties under the FCRA. Any reasonable

consumer reporting agency knows about or can easily discover these mandates.

42. Despite knowing of these legal obligations, the Defendant acted consciously and willfully in breaching its known duties and deprived the Plaintiffs of their rights under the FCRA.

43. Plaintiffs allege that the Defendant's conduct as alleged herein was consistent with its established and systematically executed procedures and policies of noncompliance with the FCRA.

44. Therefore, the Defendant's conduct was willful and entitles Plaintiffs to recover punitive damages for its violations of the FCRA.

COUNT ONE: VIOLATION OF 15 U.S.C. § 1681k
Class Claim By Both Plaintiffs

45. Plaintiffs restate each of the allegations in the preceding paragraphs as if set forth at length herein.

46. **The FCRA Class.** Pursuant to Fed. R. Civ. P. 23, Plaintiffs bring this action individually and on behalf of a class initially defined as follows ("the Class"):

All natural persons residing in the United States (including all territories and other political subdivisions of the United States) (a.) who were the subject of a report sold by FirstPoint to a third party, (b.) that was furnished for an employment purpose, (c.) that contained at least one record of a criminal conviction or arrest, civil lien, bankruptcy or civil judgment obtained directly from a source other than the courthouse or governmental entity that maintains such record (i.e. information from a non-governmental database), (d.) within five years next preceding the filing of this action and during its pendency, and (e.) to whom Defendant did not place in the United States mail postage pre-paid, on the day it furnished any part of the report, a written notice that it was furnishing the subject report and supplying the name of the entity that was to receive the report.

Excluded from the class definition are any employees, officers, directors of the Defendant, any attorney appearing in this case, and any judge assigned to hear this action.

47. **Numerosity. Fed. R. Civ. P. 23(a)(1).** The Class members are so numerous that

joinder of all is impractical. The names and addresses of the Class members are identifiable through documents maintained by the Defendant, and the Class members may be notified of the pendency of this action by published and/or mailed notice.

48. **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. These questions predominate over the questions affecting only individual members. These common legal and factual questions include, among other things: (a) whether Defendant furnished consumer reports containing public record information likely to have an adverse effect on the Plaintiff's and putative class members' ability to obtain employment; (b) whether Defendant provided notice to Plaintiffs and the putative class members that it was doing so along with the name and address of the person to whom such information was being reported at the time it furnished such information; and (c) whether the Defendant acted knowingly and intentionally or with conscious disregard of the rights of the consumers. Even the appropriate amount of uniform statutory and/or punitive damages under 15 U.S.C. § 1681n is a common question.

49. **Typicality. Fed. R. Civ. P. 23(a)(3).** Plaintiff's claims are typical of the claims of each Class member and all are based on the same facts and legal theories. Upon information and belief, Defendant's procedures in furnishing reports that contain public record information to third parties is standardized and were used for all consumers during the full class period. For purposes of class certification only, Plaintiffs seeks only statutory and punitive damages for their class claims. Plaintiff Oliver seeks individual or actual damages for her individual claims only. Plaintiffs would seek individual or actual damages for their class claim only if class certification is denied. In addition, Plaintiffs are entitled to the relief under the same causes of action as the other members of the Class.

50. **Adequacy. Fed. R. Civ. P. 23(a)(4).** Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs' interests coincide with and are not antagonistic to the interests of the Class members they seek to represent. Plaintiffs have retained counsel experienced in handling actions involving unlawful practices against consumers and class actions. Neither Plaintiffs nor their counsel have any interests that might cause them not to vigorously pursue this action. Plaintiffs are aware of their responsibilities to the putative class and have accepted such responsibilities.

51. Certification of the class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that:

a. As alleged above, the questions of law or fact common to the members of the classes predominate over any questions affecting an individual member. Each of the common facts and legal questions in the case overwhelm the more modest individual damages issues. The statutory and punitive damages sought by each member are such that the individual prosecution would prove burdensome and expensive given the complex and extensive litigation necessitated by Defendant's conduct. Further, those individual issues that do exist can be effectively streamlined and resolved in a manner that minimizes the individual complexities and differences in proof in the case.

b. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Consumer claims generally are ideal for class treatment as they involve many, if not most, consumers who are otherwise disempowered and unable to afford and bring such claims individually. Further, most consumers regarding whom Defendant furnished a consumer report containing public record information without complying with the requirements of the FCRA are likely unaware of their rights under the law or of who they could

find to represent them in federal litigation. Individual litigation of the uniform issues in this case would be a waste of judicial resources as well. The issues at the core of this case are classwide and should be resolved at one time. 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 just one case.

52. Defendant violated 15 U.S.C. § 1681k(a)(1) by failing to provide the required FCRA notices to the Plaintiffs and the putative class at the time it reported public record information regarding the Plaintiffs and the putative class members.

53. Defendant's conduct, actions, and inaction were willful, rendering it liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Defendant was negligent, entitling the Plaintiffs to recover under 15 U.S.C. § 1681o.

54. Plaintiffs are entitled to recover statutory damages, costs, and their attorneys' fees from Defendant in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and/or 15 U.S.C. § 1681o.

COUNT TWO: VIOLATION OF 15 U.S.C. § 1681e(b)
Individual Claim By Both Plaintiffs

55. Plaintiffs restate each of the allegations in the preceding paragraphs as if set forth at length herein.

56. Defendant violated 15 U.S.C. § 1681e(b) by failing to establish or to follow reasonable procedures to assure maximum possible accuracy in the preparation of the consumer report and credit files it published and maintained concerning the Plaintiffs.

57. As a result of the Defendant's conduct, action, and inaction, Plaintiffs suffered

actual damages.

58. Defendant's conduct, actions, and inaction were willful, rendering it liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Defendant was negligent, entitling the Plaintiffs to recover under 15 U.S.C. § 1681o.

59. Plaintiffs are entitled to recover actual damages, statutory damages, costs, and their attorneys' fees from Defendant in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and/or 15 U.S.C. § 1681o.

COUNT THREE: VIOLATION OF 15 U.S.C. § 1681i(a)(1)
Individual Claim By Plaintiff Oliver Only

60. Plaintiff restates each of the allegations in the preceding paragraphs as if set forth at length herein.

61. Defendant violated 15 U.S.C § 1681i(a)(1) by its conduct which includes, but is not limited to, failing to conduct a reasonable reinvestigation to determine whether the disputed information was inaccurate and record the current status of the disputed information, or delete the item from the file in accordance with § 1681i(a)(5).

62. As a result of the Defendant's conduct, action, and inaction, Plaintiff suffered actual damages.

63. Defendant's conduct, actions, and inaction were willful, rendering it liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Defendant was negligent, entitling the Plaintiff to recover under 15 U.S.C. § 1681o.

64. Plaintiff is entitled to recover actual damages, statutory damages, costs, and her

attorneys' fees from Defendant in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and/or 15 U.S.C. § 1681o.

COUNT FOUR: VIOLATION OF 15 U.S.C. § 1681i(a)(2)
Individual Claim By Plaintiff Oliver Only

65. Plaintiff restates each of the allegations in the preceding paragraphs as if set forth at length herein.

66. Defendant violated 15 U.S.C § 1681i(a)(2) by its conduct which includes, but is not limited to, failing to send to the furnisher all relevant information that it received in the Plaintiff's dispute letter.

67. As a result of this alleged conduct, action, and inaction, Plaintiff suffered actual damages.

68. Defendant's conduct, actions, and inaction were willful, rendering it liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Defendant was negligent, entitling the Plaintiff to recover under 15 U.S.C. § 1681o.

69. Plaintiff is entitled to recover actual damages, statutory damages, costs, and her attorneys' fees from Defendant in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and/or 15 U.S.C. § 1681o.

COUNT FIVE: VIOLATION OF 15 U.S.C. § 1681i(a)(4)
Individual Claim By Plaintiff Oliver Only

70. Plaintiff restates each of the allegations in the preceding paragraphs as if set forth at length herein.

71. Defendant Equifax violated 15 U.S.C § 1681i(a)(4) by its conduct which includes, but is not limited to, failing to review and consider all relevant information that it received in

Plaintiff's communications.

72. As a result of the Defendant's conduct, action, and inaction, Plaintiff suffered actual damages.

73. Defendant's conduct, actions, and inaction were willful, rendering it liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Defendant was negligent, entitling the Plaintiff to recover under 15 U.S.C. § 1681o.

74. Plaintiff is entitled to recover actual damages, statutory damages, costs, and her attorneys' fees from Defendant in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and/or 15 U.S.C. § 1681o.

COUNT SIX: VIOLATION OF 15 U.S.C. § 1681i(a)(5)
Individual Claim By Plaintiff Oliver Only

75. Plaintiff restates each of the allegations in the preceding paragraphs as if set forth at length herein.

76. Defendant violated 15 U.S.C § 1681i(a)(5) by its conduct which includes, but is not limited to, failing to delete any information that was the subject of Plaintiff's disputes and that was inaccurate or could not be verified.

77. As a result of the Defendant's conduct, action, and inaction, Plaintiff suffered actual damages.

78. Defendant's conduct, actions, and inaction were willful, rendering it liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Defendant was negligent, entitling the Plaintiff to recover under 15 U.S.C. § 1681o.

79. Plaintiff is entitled to recover actual damages, statutory damages, costs, and her attorneys' fees from Defendant in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and/or 15 U.S.C. § 1681o.

COUNT SEVEN: VIOLATION OF 15 U.S.C. § 1681i(a)(6)
Individual Claim By Plaintiff Oliver Only

80. Plaintiff restates each of the allegations in the preceding paragraphs as if set forth at length herein.

81. Defendant violated 15 U.S.C § 1681i(a)(6) by its conduct which includes, but is not limited to, failing to provide Plaintiff with written notice of the results of a reinvestigation.

82. As a result of the Defendant's conduct, action, and inaction, Plaintiff suffered actual damages.

83. Defendant's conduct, actions, and inaction were willful, rendering it liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Defendant was negligent, entitling the Plaintiff to recover under 15 U.S.C. § 1681o.

84. Plaintiff is entitled to recover actual damages, statutory damages, costs, and her attorneys' fees from Defendant in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and/or 15 U.S.C. § 1681o.

WHEREFORE, Plaintiffs and the putative class respectfully demand judgment for statutory and punitive damages against the Defendant; for their attorneys' fees and costs; and such other relief the Court does deem just, equitable, and proper. Additionally, Plaintiffs respectfully demand judgment for compensatory and actual damages against the Defendant for their individual claims.

TRIAL BY JURY IS DEMANDED.

Respectfully submitted,
DIANE OLIVER and
CHAD MARTIN
on behalf of themselves and all similarly
situated individuals

By: /s/ Leonard A. Bennett
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