

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
(GREENVILLE DIVISION)

Rodney Wright, on behalf of himself and)
all others similarly situated,)

Plaintiff,)

v.)

Trak-1 Technology, Inc.,)

Defendant.)

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

On behalf of himself and all others similarly situated, Plaintiff Rodney Wright (“Plaintiff”), by and through his attorneys, alleges as follows:

NATURE OF THE ACTION

1. This is a consumer class action brought for violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* (“FCRA”) against Trak-1 Technology, Inc. (“Defendant” or “Trak-1”), a national consumer reporting agency. In violation of § 1681e(b) of the FCRA, Trak-1 issues consumer reports without following “reasonable procedures to assure maximum possible accuracy of the information” by systematically failing to match full birth dates between criminal records and consumers. Additionally, Trak-1 violates § 1681i by not conducting a reinvestigation when contacted directly by the consumer with a dispute over the telephone, instead forcing them to fill out pages of forms with superfluous and redundant information.

2. Further, Plaintiff requested a copy of his full file under 15 U.S.C. § 1681g, and Defendant failed to provide Plaintiff’s full file in response to that request. Plaintiff accordingly also brings an individual claim under 15 U.S.C. § 1681g.

PARTIES

3. Plaintiff Rodney Wright is an adult individual residing in Greenville, South Carolina.

4. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1681a(c).

5. Defendant Trak-1 Technology, Inc. is a corporation doing business throughout the United States. Defendant is headquartered in Tulsa, Oklahoma.

6. Defendant is a “consumer reporting agency” as defined by 15 U.S.C. § 1681a(f). For monetary fees, it assembles information on consumers for the purpose of furnishing consumer reports to third parties, and it uses interstate commerce to prepare and furnish its reports. Trak-1 provides these reports to employers for employment purposes, including for use in taking adverse employment action against employees, such as employment termination, withdrawing employment offers, not making employment offers, or not promoting employees. Trak-1 boasts that it issues reports on over 400,000 people annually. See <https://trak-1.com/about-us/our-story/> (last visited August 29, 2018).

THE FCRA’S PROTECTIONS FOR JOB SEEKERS

7. Despite its name, the Fair Credit Reporting Act covers more than just credit reporting, also regulating criminal background checks like the one procured on Plaintiff.

8. The FCRA provides a number of protections for job seekers who are subjected to background checks.

9. In the parlance of the FCRA, criminal background checks are “consumer reports,” and providers of criminal background checks, like Trak-1, are “consumer reporting agencies.” 15 U.S.C. §§ 1681a(d), f.

10. The FCRA also imposes duties on consumer reporting agencies to ensure that consumer reports are accurate and that “consumer reporting agencies exercise their grave

responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy." 15 U.S.C. § 1681.

11. Under 15 U.S.C. § 1681e(b), consumer reporting agencies are required "to follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates."

12. When "a consumer's file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly," a consumer reporting agency is required to "conduct a reasonable reinvestigation to determine whether the disputed information is accurate." 15 U.S.C. § 1681i(a)(1)(A).

13. A consumer reporting agency is also required to "clearly and accurately disclose" upon request, "all information in the consumer's file at the time of the request," including "the sources of the information." 15 U.S.C. § 1681g(a).

JURISDICTION AND VENUE

14. This Court has jurisdiction over this matter based upon 28 U.S.C. § 1331 and 15 U.S.C. § 1681p.

15. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PLAINTIFF'S INACCURATE REPORT

16. In or around May 2018, Plaintiff applied to work with Link Staffing Services. His employment pended in part on the successful completion of a criminal background check provided by Defendant.

17. Plaintiff submitted extensive personal information to Link Staffing Services so that it could order a complete and accurate background check. This included date of birth, Social Security number, home address, and a copy of his driver's license.

18. On or around May 18, 2018, Link Staffing Services procured a background check from Defendant.

19. Defendant's background check was inaccurate and presented Plaintiff to his potential employer as having an extensive criminal record.

20. The background check included two convictions which belong to a different Rodney Wright. The background check indicated that Plaintiff had been convicted of "Malicious injury to tree, house; trespass upon real property, injury value 2,000 or less" as well as "Disorderly/Public disorderly conduct," both in Jasper County, South Carolina. Plaintiff has never been convicted of either crime.

21. In reality, a different Rodney Wright was convicted of these offenses.

22. The background check stated that the convictions belong to a Rodney Wright who lives in Ridgeland, South Carolina. Plaintiff has never lived in Ridgeland.

23. The background check also stated that the date of birth, "DOB," for the Rodney Wright associated with the convictions was "19690000." In other words, Defendant did not obtain the full day and month of birth for the convicted Rodney Wright.

24. Plaintiff was born in October, 1969. The convicted Rodney Wright was born in January, 1969 per his arrest records.¹

25. Plaintiff and the convicted Rodney Wright also do not share a Social Security Number.

26. Defendant knew Plaintiff's exact birth date in October 1969, and also knew Plaintiff's Social Security Number.

¹ The specific days of the birth months are different between Plaintiff and the convicted Rodney Wright as well, but have been omitted for privacy considerations.

27. In South Carolina, no criminal records stored with county clerks include full dates of birth. This is in accordance with South Carolina Rules of Civil Procedure Rule 41.2.

28. Rule 41.2 was added to the South Carolina Rules of Civil Procedure on April 15, 2014.

29. Defendant has had four years to become aware of Rule 41.2 and how it applies to South Carolina court records.

30. Statewide records of arrests and convictions (commonly called a “SLED report”), which include full dates of birth are publically available from the South Carolina Law Enforcement Division.

31. If Defendant had obtained Plaintiff’s SLED report, it would have seen that neither of the convictions it was reporting belonged to Plaintiff.

32. Records of arrest and booking in South Carolina contain full names and dates of birth, and are also publically available.

33. In order to obtain booking records from Jasper County, all that is required is the name of the individual and date of birth.

34. Had Defendant obtained booking records from Jasper County, it would have found that the individual charged with “Malicious injury to tree, house; trespass upon real property, injury value 2,000 or less” and “Disorderly/Public disorderly conduct” is a different Rodney Wright with a different Social Security Number and date of birth.

35. Booking records from Jasper County also include photos of the convicted Rodney Wright. A simple comparison of these photos and Plaintiff’s provided driver’s license would have made it clear that these are two different Rodney Wrights.

36. By relying on incomplete data when more detailed information was available, Defendant did not follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

37. Plaintiff, upon receipt of the erroneous report, called Defendant in order to dispute the inaccurate criminal records. Over the phone, Plaintiff informed Defendant of the issues with his report.

38. Defendant did not take Plaintiff's dispute over the phone and did not begin to reinvestigate. Instead, Defendant informed Plaintiff that he needed to make a submission online in order for Defendant to reinvestigate the report.

39. Plaintiff found the online form to be onerous, requiring him to submit 3 pages of personal data Defendant already had in its possession. This information includes Name, Email, Phone Number, Social Security Number, Date of Birth, Current Address, and a copy of government issued Photo ID.

40. In June 2018, Plaintiff, through counsel, requested his full file pursuant to 15. U.S.C. § 1681g. Defendant sent a response to counsel which stated, "We are unable to locate any record of Trak-1 having ever established a file on the above named individual [Rodney Wright]. This suggests that Trak-1 has never been asked by an end user (employer, company, apartment, or otherwise) to conduct a background check of any kind on the above named individual."

TRAK-1's ILLEGAL BUSINESS PRACTICES

41. Trak-1 sells criminal background checks to employers and volunteer organizations that run background checks on applicants and employees.

42. Trak-1, as a large consumer reporting agency with in-house counsel, whose owner and COO, Nancy Lynn Roberts, is an Oklahoma barred attorney with “FCRA Advanced” certification, is well aware that its reinvestigation policy runs afoul of a plain reading of the FCRA.

43. Defendant is a member of the National Association of Professional Background Screeners (“NAPBS”). NAPBS puts on conferences multiple times a year where presenters discuss FCRA compliance.

44. In violation of the FCRA, Trak-1 reports people as having criminal records based on incomplete data and fails to follow reasonable procedures to assure maximum possible accuracy in data.

45. Defendant should have obtained more publicly available information, including SLED reports or arrest records before erroneously matching Plaintiff with the records it reported.

46. By knowingly issuing background reports that attribute criminal records to consumers matched on incomplete data, Trak-1 willfully ignores both common sense and the plain language of 15 U.S.C. § 1681e(b), which requires: “Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.”

47. Further, by failing to reinvestigate information about a consumer upon being notified directly by a consumer of a dispute over the phone, Trak-1 ignores its duty under 15 U.S.C. § 1681i to reinvestigate and check the accuracy of the disputed information.

48. Instead, Trak-1 forces consumers to fill out a multi-page online form, and provide information already in Defendant’s possession, in order to request a reinvestigation. This is in violation of the plain language of the FCRA, which makes it clear that all a consumer needs to

do to initiate a reinvestigation is to directly notify the reporting agency of the disputed information.

49. Investigating disputes costs money and by putting up unnecessary barriers in the dispute process, Defendant profits from discouraging consumers from disputing.

50. Defendant's conduct violates the plain language of 15 U.S.C. § 1681i. *Brown v. Lowe's Companies, Inc.*, 52 F. Supp. 3d 749, 760 (W.D.N.C. 2014) ("After notification of the dispute . . . a plain reading of the statute requires reinvestigation without any additional condition precedent.").

51. By failing to provide Plaintiff with all of the information contained within his consumer file, and instead claiming that it had not issued a report on Plaintiff, Defendant has willfully violated 15 U.S.C. § 1681g.

CLASS ACTION ALLEGATIONS

52. Plaintiff incorporates by reference all preceding paragraphs as alleged above.

53. Plaintiff brings this action pursuant to the Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of the following Classes:

- a. South Carolina Birth Dates Class: All individuals who had at least one South Carolina offense record attributed to them in reports furnished by Trak-1 in the two years predating the filing of this complaint and continuing through the date the class list is prepared, where (1) Trak-1 reported the record without obtaining the full date of birth (including day and month) associated with the subject of reported record as indicated by a "0000" in the "DOB" field in the report, and (2) the

individual's full date of birth does not match the full date of birth of the subject of the reported record.

- b. Nationwide Disputes Class: All individuals who attempted to dispute any information on a Trak-1 report via telephone, email or through means other than filling out Trak-1's dispute forms, and where Trak-1 did not initiate a reinvestigation in the two years predating the filing of this complaint and continuing through the date the class list is prepared.

54. Plaintiff reserves the right to amend the definition of the Classes based on discovery or legal developments.

55. **Numerosity.** The class members are so numerous that joinder of all is impractical. Although the precise number of class members is known only to Trak-1, Trak-1 has issued hundreds of thousands of reports, and the names and addresses of the class members are identifiable through documents maintained by Trak-1 and through publicly available records.

56. **Existence of Common Questions of Law and Fact.** Common questions of law and fact exist as to all members of the Classes, and predominate over the questions affecting only individual members. The common legal and factual questions include, among others:

- a. Whether Defendant violated the FCRA by failing to follow reasonable procedures to assure maximum possible accuracy by failing to obtain full dates of birth associated with South Carolina offense records;
- b. Whether Defendant willfully violated the FCRA by failing to conduct reinvestigation upon being directly notified by the consumer via telephone;
- c. Whether such violations were willful; and
- d. The proper measure of damages.

57. **Typicality.** Plaintiff's claims are typical of the claims of each class member, which all arise from the same operative facts and are based on the same legal theories. Trak-1 reports information about consumers without following reasonable procedures to assure maximum possible accuracy of the information. Trak-1 also does not perform a reasonable reinvestigation upon being directly notified by the consumer of disputed information. Plaintiff has the same claims for statutory, actual and punitive damages that he seeks for absent class members.

58. **Adequacy.** Plaintiff is an adequate representative of the Classes. His interests are aligned with, and are not antagonistic to, the interests of the members of the Classes he seeks to represent. Plaintiff has retained counsel competent and experienced in such litigation, and intends to prosecute this action vigorously. Plaintiff and his counsel will fairly and adequately protect the interests of members of the Classes.

59. **Predominance and Superiority.** Questions of law and fact common to the class members predominate over questions affecting only individual class members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Trak-1's conduct described in this Complaint stems from common and uniform practices, resulting in common violations of the FCRA. Members of the Classes do not have an interest in pursuing separate actions against Trak-1, as the amount of each class member's individual claim is small compared to the expense and burden of individual prosecution. Class certification also will obviate the need for unduly duplicative litigation that might result in inconsistent judgments concerning Trak-1's practices. Moreover, management of this action as a class action will not likely present any difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all class members' claims in a single forum.

CAUSES OF ACTION

COUNT I

Violation of 15 U.S.C. § 1681e(b)

(On Behalf of Plaintiff and the South Carolina Birth Dates Class)

60. Plaintiff incorporates by reference all preceding paragraphs as alleged above.

61. Trak-1 failed to comply with 15 U.S.C. § 1681e(b) by failing to follow reasonable procedures to assure maximum possible accuracy of criminal record information in the consumer reports it prepared regarding Plaintiff and the other South Carolina Birth Dates Class members.

62. The foregoing violations were negligent.

63. The foregoing violations were willful.

64. Defendant acted in negligent, deliberate and reckless disregard of its obligations and the rights of Plaintiff and South Carolina Birth Dates Class members under 15 U.S.C. § 1681e(b). Defendant's negligent and willful conduct is reflected by, *inter alia*, the following:

- (a) Defendant knowingly used incomplete records to generate consumer reports, even though records which contained sufficient information to issue accurate reports were readily available;
- (b) The FCRA was enacted in 1970; Trak-1, which was founded in 1996, has had over 20 years to become compliant;
- (c) Defendant's conduct is inconsistent with the FTC's longstanding regulatory guidance, judicial interpretation, and the plain language of the statute;
- (d) Defendant knew or had reason to know that its conduct violated the FCRA;

- (e) By adopting such a policy, Defendant voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless.

65. Pursuant to 15 U.S.C. §§ 1681n & o, Trak-1 is liable to Plaintiff and all South Carolina Birth Dates Class members for its failure to comply with 15 U.S.C. § 1681e(b), in an amount equal to: (1) damages of not less than \$100 and not more than \$1,000 per violation or actual damages; (2) punitive damages in an amount to be determined by the jury; (3) attorneys' fees; and (4) litigation costs; as well as such further relief as may be permitted by law.

COUNT II
Violation of 15 U.S.C. 1681i
(On behalf of Plaintiff and the Nationwide Disputes Class)

66. Plaintiff incorporates by reference all preceding paragraphs as alleged above.

67. Trak-1 failed to comply with 15 U.S.C. § 1681i by failing to reinvestigate disputed information on consumer reports when notified directly by consumers via telephone, email, and other means besides Defendant's own dispute form, of inaccurate information contained within their consumer files.

68. The foregoing violations were negligent.

69. The foregoing violations were willful.

70. Defendant acted in negligent, deliberate and reckless disregard of its obligations and the rights of Plaintiff and Nationwide Disputes Class members under 15 U.S.C. § 1681i. Defendant's negligent and willful conduct is reflected by, *inter alia*, the following:

- a. The FCRA was enacted in 1970; Trak-1, which was founded in 1996, has had over 20 years to become compliant;

- b. Defendant's conduct is inconsistent with the FTC's longstanding regulatory guidance, judicial interpretation, and the plain language of the statute;
- c. Defendant knew or had reason to know that its conduct violated the FCRA;
- d. By adopting such a policy, Defendant voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless.

71. Pursuant to 15 U.S.C. §§ 1681n & o, Trak-1 is liable to Plaintiff and all Nationwide Dispute Class members for its failure to comply with 15 U.S.C. § 1681i, in an amount equal to the sum of: (1) damages of not less than \$100 and not more than \$1,000 per violation; (2) actual damages; (3) punitive damages in an amount to be determined by the jury; (4) attorneys' fees; and (5) litigation costs; as well as such further relief as may be permitted by law.

COUNT III
Violation of 15 U.S.C. § 1681g(a)
(On behalf of Plaintiff Individually)

72. Plaintiff re-alleges and incorporates by reference the allegations in the preceding paragraphs.

73. By failing to disclose "all information in the consumer's file at the time of the request," Defendant violated the FCRA. 15 U.S.C. § 1681g(a).

74. The foregoing violation was negligent and/or willful. Defendant acted in knowing or reckless disregard of its obligations and the rights of Plaintiff under 15 U.S.C. § 1681g(a). In addition to the conduct set forth above, Defendant's willful conduct is reflected by, *inter alia*, the following:

- a. The FCRA was enacted in 1970; Defendant, which was founded in 1996, has

had over 20 years to become compliant;

- b. Defendant is a corporation with access to legal advice, yet there is no contemporaneous evidence that it determined that its conduct was lawful;
- c. Defendant knew or had reason to know that its conduct was inconsistent with administrative guidance, case law, and the plain language of the FCRA; and
- d. Defendant voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless.

75. Plaintiff is entitled to actual damages and/or statutory damages of not less than \$100 and not more than \$1,000 and is further entitled to recover his costs and attorneys' fees, pursuant to 15 U.S.C. §§ 1681n, o. Plaintiff is also entitled to punitive damages pursuant to 15 U.S.C. § 1681n(a)(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Classes, seeks the following relief:

- A. An order certifying the case as a class action on behalf of the proposed Classes under Federal Rule of Civil Procedure 23;
- B. Designating Plaintiff as the class representative for the Classes;
- C. Designating Plaintiff's counsel as counsel for the Classes;
- D. Issuing proper notice to the Classes at Defendant's expense;
- E. Declaring that Defendant committed multiple, separate violations of the FCRA;
- F. Declaring that Defendant acted negligently, willfully in deliberate or reckless disregard of the rights of Plaintiff and the Classes under the FCRA;
- G. Awarding actual and/or statutory damages as provided by the FCRA;
- H. Awarding punitive damages;

- I. Awarding reasonable attorneys' fees and costs and expenses, as provided by the FCRA;
- J. Granting other and further relief, in law or equity, as this Court may deem appropriate and just.

JURY DEMAND

Plaintiff, on behalf of himself and the Classes, hereby requests and demand a trial by jury.

Respectfully submitted,

DAVE MAXFIELD, ATTORNEY, LLC

Dated: August 30, 2018

s/ David A. Maxfield

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