

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON DIVISION

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NATALIE WOOD, individually  
and as a representative of the class,

Case No.

Plaintiff,

**CLASS ACTION COMPLAINT**

v.

**JURY TRIAL DEMANDED**

ONE SOURCE TECHNOLOGY, LLC,  
D/B/A ASURINT,

Defendant.

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COMES NOW, Plaintiff Natalie Wood (“Plaintiff”), on behalf of herself and the classes set forth below and states as follows:

**INTRODUCTION**

1. This is a class action for damages, costs and attorneys’ fees brought against Defendant One Source Technology, LLC, doing business as Asurint (“Defendant” or “Asurint”) pursuant to the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”).

2. Defendant is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. It maintains an extensive database of public records regarding consumers. It then sells consumer reports generated from its database and furnishes these consumer reports to employers who use the reports to make decisions regarding employees and applicants.

3. Defendant inaccurately reported to Plaintiff’s potential employer that Plaintiff had been convicted of several crimes, when those convictions had in fact been expunged years earlier. Defendant’s report cost Plaintiff her job. Defendant also inaccurately reported these

charges multiple times on the same report, making Plaintiff's (expunged) background look much worse than it was.

4. On behalf of herself and two classes of similarly situated individuals, Plaintiff brings claims pursuant to § 1681e(b) of the FCRA. Defendant does not employ reasonable procedures to ensure the maximum possible accuracy of its records, and its failure to employ reasonable procedures resulted in Plaintiff's report being inaccurate.

### **PARTIES AND JURISDICTION**

5. Individual and representative Plaintiff Natalie Wood, is a resident of Anderson, South Carolina.

6. Plaintiff is a natural person and a "consumer" as protected and governed by the FCRA.

7. Defendant One Source Technology, LLC, d/b/a Asurint, provides consumer reports for employment purposes. Defendant sells background reports containing, *inter alia*, information about consumers' criminal backgrounds to prospective employers.

8. Defendant is a consumer reporting agency as contemplated by the FCRA, 15 U.S.C. § 1681a.

9. Defendant is regularly engaged in the business of assembling, evaluating, and disseminating information concerning consumers for the purpose of furnishing consumer reports to third parties.

10. Among other things, Defendant provides background checks to employers for their use in deciding whether to take adverse employment action, such as termination, failure to hire, and failure to promote.

11. Defendant is headquartered in Cleveland, Ohio, Cuyahoga County.

12. The Court has personal jurisdiction over Defendant. Defendant conducts background checks on individuals in this District, and delivers them to potential employers and other in this District. To assemble these reports, Defendant accesses, stores and reproduces court records and other public record from courts and other government entities in this District.

13. This Court has federal question jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1681p, which allows claims under the FCRA to be brought in any appropriate court of competent jurisdiction.

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Plaintiff resides in the District and because a substantial part of the events or omissions giving rise to the claim occurred in this District.

#### **FACTUAL ALLEGATIONS RELATING TO PLAINTIFF**

15. In January 2018, Plaintiff applied to work for the non-party Proper Polymers, via a staffing agency, non-party Staffmark. Plaintiff was preliminary hired and began work at Proper Polymers that same month.

16. On or around January 19, 2018, Defendant prepared a consumer report regarding Plaintiff and furnished the report to Staffmark for a fee. The report is attached hereto as Exhibit A.

17. The consumer report provided by Defendant to Staffmark was inaccurate and materially misleading. The report represented that Plaintiff has been convicted of larceny and burglary in South Carolina in 2003, but failed to mention that Plaintiff's convictions had been expunged in 2014 pursuant to the Youthful Offender Act, S.C. Code Ann. § 22-5-920.

18. The consumer report provided by Defendant to Staffmark was also inaccurate because it reported Plaintiff's expunged record twice. The report lists Plaintiff's expunged

record under her full name Natalie Elisa Wood, Ex. A at 1-3, and then lists the same records again under the heading “Clise Wood, Natalie (Alias Name).” *Id.* at 3-5. This reporting was incorrect because Plaintiff has never gone by the name Natalie Clise Wood, and because reporting the same charges twice created the false impression that Plaintiff had a more serious record than she actually did and/or that Plaintiff’s second record was under a false name. In actuality, she has no record because the charges have been expunged.

19. Upon receiving Defendant’s report, Proper Polymers and/or Staffmark summarily terminated Plaintiff’s employment. She showed up for her previously-scheduled shift, was prevented from punching in, and was immediately terminated.

20. Defendant does not obtain any records regarding expungements in South Carolina in the course of preparing consumer reports.

21. Further, Defendant’s report states that its “criminal records are updated daily.” Ex A at 1. This is clearly not the case, as Defendant’s reporting about Plaintiff was three years out of date.

22. Rather, Defendant accumulates data regarding individuals, and, once that data is in on of Defendant’s databases, it maintains that data indefinitely, even if that data is removed or expunged from the court records from which it was originally obtained.

23. Plaintiff’s report notes that the information reported came from the “National Criminal Information Bureau” (“NCIB”). Ex A. Despite this official-sounding name, the NCIB is simply an internal database maintained by Defendant which “provides results utilizing our proprietary national criminal database made up of aggregated criminal public record data from counties and courts across the country.”<sup>1</sup>

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<sup>1</sup> <https://my.asurint.com/brochure/gs/>, last accessed 9/18/18.

24. Defendant's report on Plaintiff contained records from Defendant's NCIB database which had been expunged from the sentencing court's electronic records. At the time of Plaintiff's report, the record had been expunged from the South Carolina courts' public websites. Defendant reported this information anyway, because it does not verify its NCIB database information with the court's current electronic records prior to issuing reports.

25. Defendant's FCRA violations injured Plaintiff by publishing derogatory and inaccurate information about her. Defendant's violation also defeated the purpose of the expungement itself, and caused her termination from employment.

26. Plaintiff disputed the inaccuracy in her report in a telephone call to Defendant on or about February 19, 2018. Defendant eventually issued a revised report excluding the conviction records, but it was too late to save Plaintiff's employment. The records of Defendant's actions leading up to the issuance of the revised report are attached as Exhibit B.

27. After Plaintiff disputed, the employee of Defendant who was assigned to the dispute attempted to find electronic records of Plaintiff's cases in South Carolina, and was unable to do so, making a note in Defendant's records that "[c]ases do not return on public access – cases should all be removed, expunged from data, and dispute must be closed out as overturned." Exhibit B at 2.

28. Defendant could have and should have checked South Carolina's electronic case records *prior* to issuing the initial report. If it had done so, it would have discovered that the records of Plaintiff's cases were no longer accessible, because they had been expunged. However, it did not check the records, and reported Plaintiff's cases without verifying them by checking South Carolina's electronic case records. Because Defendant did not take those steps, Plaintiff lost her job.

**FACTS DEMONSTRATING THAT DEFENDANT WILLFULLY FAILED TO USE REASONABLE PROCEDURES TO ASSURE MAXIMUM POSSIBLE ACCURACY**

29. If Defendant had reasonable procedures to assure maximum possible accuracy, it could have determined that the information in Plaintiff's report was incorrect and outdated.

30. Defendant has also received disputes in connection with its reporting of South Carolina criminal records where the record had been expunged prior to the date of the report, so it was on notice that this was a problem with its practices.

31. Defendant's failure to ensure that it does not report records on individuals whose records were subsequently expunged is unreasonable. Defendant made an intentional choice to not review courts' electronic records before sending reports, reporting expunged charges without regard to the subsequent expungement.

32. Defendant has no procedure in place whatsoever to check criminal records it reports against publicly available data to find subsequent expungements. Instead, Defendant relies on old and outdated public records data.

33. Defendant could, and should, have a policy which requires it to verify that convictions are current before it reports them. Defendant was able to quickly and easily do exactly that, after Plaintiff disputed Defendant's inaccurate reporting. Defendant could and should have done that before erroneously reporting expunged charges to Plaintiff's employer.

34. However, Defendant chooses not to implement such a policy in order to avoid the time and expense that would have been associated with such a policy. Defendant's intentional and knowing decision to do so was financially motivated and was conducted with reckless disregard for the rights of consumers to have their reports fully and accurately reflect the status of their actual records.

35. Further, appropriate review of Plaintiff's report would have made clear that Defendant was reporting Plaintiff's record twice. Aside from the purported difference between Plaintiff's name and her 'alias' name, the records come from the same court, have the same file number, the same charges and the same dates associated with them. Instead, Defendant employed no procedures to eliminate these duplicates, making it appear to an untrained person that Plaintiff's criminal record was more substantial than it actually is, or that she had attempted to evade responsibility for her actions by using an alias.

**GENERAL FACTS REGARDING DEFENDANT'S WILLFULNESS**

36. In addition to the conduct set forth above, Defendant's willful conduct is further reflected by, *inter alia*, the following:

- a. The FCRA was enacted in 1970; Defendant has had 46 years to become compliant;
- b. Defendant is a corporation with access to legal advice through its own general counsel's office and outside litigation counsel. 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 FTC guidance, case law, and the plain language of the FCRA;
- d. Defendant voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless; and
- e. Defendant could and should have attempted to verify Plaintiff's records online before reporting them; if it had done so, it would have found out about the expungement;

- f. Defendant could have and should have reviewed Plaintiff's report for duplicative information before providing it to her employer; if it had done so, it would have found and removed the duplicative charges;
- g. Defendant's violations of the FCRA were repeated and systematic.

37. At all times relevant hereto, Defendant's conduct was willful and carried out in knowing or reckless disregard for consumers' rights under the FCRA. Defendant's conduct was intentionally accomplished through its intended procedures; these procedures have continued despite the fact that other consumer reporting agencies have been subject to court decisions and consumer complaints critical of similar conduct; and Defendant will continue to engage in this conduct because it believes there is greater economic value in selling over-inclusive consumer reports than in producing accurate reports.

### **CLASS ACTION ALLEGATIONS**

38. Plaintiff brings Count I as a class action pursuant to Fed. R. Civ. P. 23 on behalf of the South Carolina Expungements Class, defined as:

All individuals on whom Defendant prepared consumer reports including information about a South Carolina criminal conviction where the conviction was expunged prior to the date on which the report was issued. The class begins on the date two years prior to the filing of this Complaint and ends on the date the class list is prepared.

39. Plaintiff brings Count II as a class action pursuant to Fed. R. Civ. P. 23 on behalf of the Duplicative Reporting Class, defined as:

All individuals on whom Defendant prepared consumer reports including information about a criminal conviction or charge where the conviction or charge appears on the report more than once. The class begins on the date two years prior to the filing of this Complaint and ends on the date the class list is prepared.

40. Class certification is appropriate under Fed. R. Civ. P. 23(a).

41. Numerosity: The classes are so numerous that joinder of all class members is impracticable. Given the volume of Defendant's business, there are hundreds or thousands of class members.

42. Typicality: Plaintiff's claims are typical of the members of the classes. It is typical for Defendant to produce consumer reports which fail to account for the fact that the convictions listed therein were the subject of an expungement. The FCRA violations suffered by Plaintiff are typical of those suffered by other class members, and Defendant treated Plaintiff consistently with other class members in accordance with its standard policies and practices.

43. Adequacy: Plaintiff will fairly and adequately protect the interests of the classes because she and her experienced counsel are free of any conflicts of interest and are prepared to vigorously litigate this action on behalf of the class.

44. Commonality: This case presents common questions of law and fact, including but not limited to:

- a. Whether Defendant violated the FCRA by failing to follow reasonable procedures to ensure maximum possible accuracy in reporting criminal convictions that were subsequently expunged and in reporting duplicative records;
- b. Whether Defendant's violations of the FCRA were willful; and
- c. The proper measure of damages.

45. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) because, *inter alia*, questions of law and fact common to the class predominate over any questions affecting only individual members of the class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendant's conduct described

in this Complaint stems from common and uniform policies and practices, resulting in common violations of the FCRA. Members of the class do not have an interest in pursuing separate actions against Defendant, 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 Defendant's practices. Moreover, management of this action as a class action will not present any likely 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.

46. In view of the complexities of the issues and the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions.

47. Yet, the amount which may be recovered by individual class members will be large enough in relation to the expense and effort of administering the action to justify a class action. The administration of this action can be handled by class counsel or a third-party administrator, and the costs of administration will represent only a small fraction of the ultimate recovery to be achieved.

48. Plaintiff intends to send notice to all members of the class to the extent required by Rule 23(c)(2). The names and addresses of the class members are available from Defendant's records.

### **COUNT I**

#### **15 U.S.C. § 1681e(b)**

#### **On behalf of Plaintiff and the South Carolina Expungements Class**

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

50. 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 reports it furnished regarding Plaintiff. Specifically, Defendant:

- a. Misidentified Plaintiff as a convicted felon without noting that Plaintiff's conviction had been subsequently expunged;
- b. Failed to verify Plaintiff's record prior to completing her report and sending it to her employer; and,
- c. Relied on information that was at least three years old.

51. The foregoing violations were negligent and/or willful. Defendant acted in knowing or reckless disregard of its obligations and the rights of Plaintiff and other class members under 15 U.S.C. § 1681e(b).

52. As a result of Defendant's conduct, Plaintiff and class members suffered actual damages including but not limited to: denial of employment, damage to reputation, embarrassment, humiliation and other mental and emotional distress.

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

## **COUNT II**

### **15 U.S.C. § 1681e(b)**

#### **On behalf of Plaintiff and the Duplicative Reporting Class**

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

55. 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

reports it furnished regarding Plaintiff. Specifically, Defendant failed to review Plaintiff's report to ensure that information did not appear more than once.

56. The foregoing violations were negligent and/or willful. Defendant acted in knowing or reckless disregard of its obligations and the rights of Plaintiff and other class members under 15 U.S.C. § 1681e(b).

57. As a result of Defendant's conduct, Plaintiff and class members suffered actual damages including but not limited to: denial of employment, damage to reputation, embarrassment, humiliation and other mental and emotional distress.

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

### **JURY TRIAL DEMANDED**

Plaintiff demands a jury trial as to all claims so triable.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of herself and the class, seeks the following relief:

- a. Determining that this action may proceed as a class action under Rule 23;
- b. Designating Plaintiff as the class representative for the class;
- c. Designating Plaintiff's counsel as counsel for the class;
- d. Issuing proper notice to the class at Defendant's expense;
- e. Declaring that Defendant committed multiple, separate violations of the FCRA;
- f. Declaring that Defendant acted negligently, or willfully and in deliberate or reckless disregard of the rights of Plaintiff and the class 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.

Respectfully submitted,

Date: October 19, 2018

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*\*pro hac vice forthcoming*

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