

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

**TYRONE HENDERSON and
JAMES O. HINES, JR.,
on behalf of themselves and others
similarly situated,**

Plaintiff,

v.

Civil Action No. 3:12-cv-00097-REP

**CORELOGIC NATIONAL BACKGROUND
DATA, LLC, f/k/a National Background Data,
LLC,**

Defendant .

SECOND AMENDED CLASS ACTION COMPLAINT

COME NOW, the Plaintiffs, Tyrone Henderson and James O. Hines, Jr., on behalf of themselves and all similarly situated individuals and for their Amended Class Action Complaint, they state as follows:

INTRODUCTION

1. Tyrone Henderson and James O. Hines, Jr. (“Plaintiffs”) bring this class action against Defendant to obtain relief for themselves and the class they propose to represent for violations of the federal Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681, *et seq.*

2. CoreLogic National Background Data, LLC (“NBD”) operates as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. Defendant and its corporate affiliate Saferent maintain an extensive database of public records regarding consumers. They then sell consumer reports generated from the database and furnish these consumer reports to other reseller consumer reporting agencies who rebrand them and sell

them to the potential employers for the Plaintiffs and the putative class members. Defendant and the reseller never reveal to the consumer from where this original report was generated and sold.

3. Plaintiffs allege an individual claim under 15 U.S.C. § 1681e(b), which required that Defendant use “reasonable procedures to assure maximum possible accuracy” in the publication of Plaintiffs’ consumer report.

4. Mr. Henderson had received a tentative job offer conditioned upon his employment background check. The background check that Defendant then sold to the employer was grossly inaccurate – most significantly because it reported that the Plaintiff had been convicted of a felony in Westmoreland County, Pennsylvania. Defendant had mixed the criminal history of a stranger with the same first and last name into the Plaintiff Henderson’s report, even though that person shared nothing else in common. Mr. Henderson did not then get the job.

5. Mr. Hines, in the course of applying for a position as a physical therapy assistant, was the subject of a background check by Defendant that inaccurately identified him as a “Registered Sex Offender” in the state of Indiana, even though he has never been to that state. Mr. Hines was not approved for hire.

6. Plaintiffs also 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 an employment purposed consumer report at the time it did so. This important requirement is intended to provide consumers immediate notice of the furnishing of the employment 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 employer. Defendant's failure to comply with these long standing requirements denied the Plaintiffs and each putative class member these important rights.

JURISDICTION AND VENUE

7. The Court has jurisdiction under the FCRA, 15 U.S.C. § 1681p and 28 U.S.C. § 1331. Venue is proper in this Court under 28 U.S.C. § 1391(b) as the Defendant regularly does business in the district and division.

8. Plaintiff Henderson is a citizen of Richmond, Virginia and maintains all of the documents relevant to this dispute at his home in Richmond, Virginia. Plaintiff Hines is a resident of Hayes, Virginia.

PARTIES

9. Plaintiffs are each a natural person and a "consumer" as protected and governed by the FCRA.

10. According to Defendant, "National Background Data by CoreLogic is the leading wholesale criminal data provider to the background screening industry. National Background Data is part of CoreLogic. CoreLogic brings you powerful new capabilities to assess risk from every angle - and realize dynamic insights you need to optimize business performance."

11. According to Defendant, "Hundreds of screening companies count on [NBD] for unmatched quality data and superior service to drive risk down and income up. With the largest privately held criminal records database, we provide efficient and economical access to multi-jurisdictional data. ... Whether the goal is to provide an employment screening package or to screen volunteers, we partner with our clients to provide a high quality, low cost solution tailored to meet the needs of the end client."

12. NBD sells criminal and employment-purposed background checks solely on a wholesale basis. Consumers do not typically even know that an employment report originated from Defendant. They “work in the background to deliver the industry-leading background information search solutions [the employer clients of reseller background check companies] want [.]” According to Defendant, its “business is built on two principles. First, to provide comprehensive background data and searches. Second, to join forces with background screening companies to enable them to provide optimum value to their clients while growing their own businesses.” NBD sells “exclusively through a network of screening companies never direct to the client.”

13. According to Defendant, “National Background Data by CoreLogic is a consumer reporting agency that assembles and evaluates consumer information and provides consumer reports to third parties for the purpose of residential screening, employment screening and/or other purposes as permitted under federal, state and local laws.”

14. NBD is a “consumer reporting agency”, as defined in 15 U.S.C. § 1681(f). It is regularly engaged in the business of assembling, evaluating, and disbursing information concerning consumers for the purpose of furnishing consumer reports to third parties. CoreLogic controls the acts and practices of itself and of NBD.

15. Defendant disburses consumer reports to third parties under contract for monetary compensation during the class period and currently.

16. NBD operates as a nationwide consumer reporting agency as governed by the FCRA.

17. At all relevant times, third parties Verifications, Inc. (“Verifications”), ADP and HR Plus each also operated as a “consumer reporting agency” as defined and governed by the

FCRA. For purposes of this action, they each operate as a “reseller” of consumer report data.

18. NBD itself also operates as a “reseller” consumer reporting agency as it obtains and then resells consumer reports from its corporate sibling, Saferent.

FACTUAL ALLEGATIONS

A. Plaintiff Tyrone Henderson

19. In or around the months of August and September 2009, Plaintiff Henderson applied for a job with Interstate Brands Corporation, subject to a background check being conducted.

20. On or about November 5, 2009, Interstate Brands Corporation requested a background check from Verifications.

21. Immediately thereafter and in accordance with Defendant’s standard procedures, Verifications ordered an FCRA-governed consumer report from Defendant, which it furnished.

22. Additionally, late in this litigation, Henderson discovered from NBD’s produced documents that another consumer report was produced during the class period to HR Plus, a second reseller of NBD reports.

23. Plaintiff Henderson did not learn that Defendant had furnished a report regarding him until late 2011, while litigating a collateral case against Verifications.

24. Defendant returned several “hits” attributed to the Plaintiff in these reports, including purported criminal conviction public records from Westmoreland County, Pennsylvania.

25. The Westmoreland County records did not belong to the Plaintiff Henderson. They regarded an unrelated man with a similar name, but entirely different social security number.

26. As soon as Verifications and HR Plus received the NBD reports, they placed same within a reseller-branded consumer report regarding Mr. Henderson provided to the Plaintiff's prospective employers. While these reports did not contain the details of the Pennsylvania convictions, they did report that the Plaintiff's history had come back with these "hits" in a search of his national criminal background. This reports were furnished immediately to the respective employer who by contract had access to (and did review) this report even before Defendant had completed additional processes to obtain confirming data from another source.

27. Defendant's failure to follow reasonable procedures to assure that their reports regarding Mr. Henderson did not include information regarding a different person was a substantial factor in the rejection of Plaintiff's employment application and other related actual harm he suffered. As a result of these consumer reports, Henderson's prospective employers withdrew all offers of employment.

28. Later, after losing the Interstate Brands Corporation job as a result of the Verification's report, the Plaintiff was able to obtain – just by asking the court clerk directly – a copy of the actual Westmoreland County criminal records.

29. The Pennsylvania records from the Court itself confirm that they do not belong to the Plaintiff and do not match his social security number.

30. The Pennsylvania public records contained a social security number for the person about whom the records regarded.

31. In accordance with its standard procedure, NBD's source of public records purchased or obtained criminal records in bulk and thus without identifying information, such as social security numbers.

32. In creating and furnishing the Plaintiff's consumer report, Defendant failed to

follow reasonable procedures to assure that the reports it furnished were as accurate as maximally possible. For example, NBD allowed and/or used very loose match criteria to determine whether to include information pertaining to a stranger with a different social security number living in a different state at a different address within Plaintiff's consumer report.

33. Plaintiff never received a letter or any other communication from CoreLogic, NBD or any other CoreLogic entity "at the time" the either the Verifications or the HR Plus resold reports were furnished.

34. Plaintiff also never received a letter or any other communication from Verifications or HR Plus "at the time" a report was then furnished to a prospective employer.

35. In fact, after the events alleged herein, the records in Pennsylvania clearly showed that the social security number in the public records did not match that of the Plaintiff. Had Defendant actually contacted the governmental source or obtained the complete records from the original source, it would have seen this obvious discrepancy.

36. Despite providing a report for employment purposes containing public record information likely to have an adverse affect upon their ability to obtain or maintain employment, Defendant failed to provide notice "at the time" of the fact that the public record information was being reported by it, together with the name and address of the person(s) to whom such information was being reported.

B. Plaintiff James O. Hines, Jr.

37. Plaintiff James O. Hines, Jr. is a 41 year old married father of nine children, and resides in Hayes, Virginia. He has over 20 years of experience as a physical therapist in Virginia, and has been nominated for and selected for employer awards for excellent service in his field

38. In or around May 2011, Plaintiff Hines was employed by a homecare agency in Hampton, Virginia as a physical therapist.

39. Needing to increase his income to meet his family's financial obligations, Plaintiff applied for a second job, also as a physical therapy assistant, with CareSouth Homecare Professionals in Newport News, Virginia.

40. In connection with Plaintiff's application for employment, CareSouth requested and did purchase from ADP Screening and Selection Services ("ADP") a consumer report regarding Mr. Hines, on or about June 1, 2011.

41. ADP purchased the information included in the consumer report from Defendant, directly from NBD.

42. The consumer report contained inaccurate information concerning Mr. Hines. In particular, the consumer report contained five pages that identified Plaintiff as a "Registered Sex Offender" in Indiana.

43. Plaintiff has never been to Indiana.

44. Plaintiff has never been a sex offender, registered or otherwise.

45. The report purchased from Defendant by ADP and re-sold by ADP to CareSouth was furnished for employment purposes.

46. Plaintiff did not receive a letter or any other communication from NBD or any other CoreLogic entity "at the time" the report was furnished.

47. Plaintiff also never received a letter or any other communication from ADP "at the time" a report was furnished to CareSouth.

48. Plaintiff was notified by CareSouth of the derogatory public record information supplied to CareSouth by ADP.

49. Plaintiff, on or about June 6, 2011, disputed the accuracy of the information that ADP had sold to CareSouth.

50. On or about June 30, 2011, ADP wrote to Plaintiff and notified him that (a) ADP submitted the dispute to NBD; (b) that NBD had notified ADP that a dispute reinvestigation was complete; and (c) that NBD had notified ADP that “the disputed information has been verified.”

51. As a result of the consumer report, CareSouth refused to hire or approve Mr. Hines for hire.

52. As with the Henderson reports, NBD did not obtain the complete public record prior to furnishing it to ADP. Had Defendant actually contacted the governmental source or obtained the complete records from the original source, it would have seen that this information did not belong to Mr. Hines.

C. All Plaintiffs

53. Plaintiffs allege that Defendant did not attempt for any consumer to follow the option available at 15 U.S.C. § 1681k(a)(2). The alternative would only be applicable if NBD had in place before any report was furnished strict procedures designed to ensure that it actually contacted the original source of public records information (*e.g.*, the Court clerk) before furnishing a report which includes such information to insure that the information it included in its reports was the complete and up to date public record. A § 1681k(a)(2) option is not available to NBD because the public records it furnishes to third parties are summaries, indexes or partial records that it obtains secondhand from SafeRent. NBD never furnishes the complete and up-to-date public record. 15 U.S.C. § 1681k(a)(2) is thus inapplicable to the consumer reports at issue in this case.

54. Defendant knew or should have known about their 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.

55. Defendant obtained or had available substantial written materials that apprised it of its duties under the FCRA.

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

57. Plaintiffs allege that Defendant's conduct as alleged herein was consistent with its established and systematically executed procedures and policies for compliance with the FCRA.

CLAIMS FOR RELIEF

COUNT I - VIOLATION OF THE FCRA § 1681k(a)(1) (CLASS ACTION)

58. Plaintiffs reiterate each of the allegations in the preceding paragraphs (including, but not limited to paragraph 54) as if set forth at length herein.

59. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this action for themselves and on behalf of a class (the "1681k Class") defined as follows:

All natural persons residing in the United States (a) who were the subject of a report sold by NBD to Verifications, ADP or HR Plus, (b) where NBD's Results Returned database indicates that it was furnished for an employment purpose (Code 6), (c) where NBD's Results Returned database showed that the report contained at least one adverse criminal record "Hit", (d) within five years next preceding the filing of this action and during its pendency.

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

60. **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.

61. **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. Without limitation, the total focus of the litigation will be Defendant's uniform conduct and procedures, whether Defendant sent the required notices, when they did so and whether Defendant acted willfully in its failure to design and implement procedures to assure compliant delivery and/or timing of these notices. Even the appropriate amount of uniform statutory and/or punitive damages under 15 U.S.C. § 1681n is a common question.

62. **Typicality. FED. R. CIV. P. 23(a)(3).** Plaintiffs' claims are typical of the claims of each Class member. Plaintiffs seek only statutory and punitive damages. In addition, Plaintiffs are entitled to relief under the same causes of action as the other members of the Class.

63. **Adequacy. FED. R. CIV. P. 23(a)(4).** Plaintiffs are adequate representatives of the Class because their interests coincide with, and are not antagonistic to, the interests of the members of the Class they seek to represent, they have retained counsel competent and experienced in such litigation, and they intend to prosecute this action vigorously. Plaintiffs and their Counsel will fairly and adequately protect the interests of members of the Class.

64. **Superiority. FED. R. CIV. P. 23(b)(3).** Questions of law and fact common to the Class members predominate over questions affecting only individual members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy. The statutory and punitive damages sought by each member are such that individual prosecution would prove burdensome and expensive given the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for the members of the Class

individually to redress effectively the wrongs done to them. Even if the members of the Class themselves could afford such individual litigation, it would be an unnecessary burden on the courts. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the complex legal and factual issues raised by Defendant's conduct. By contrast, 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.

65. **Injunctive Relief Appropriate for the Class. FED. R. CIV. P. 23(b)(2).** Class certification is appropriate because Defendant has acted on grounds generally applicable to the Class, making appropriate equitable injunctive relief with respect to Plaintiffs and the Class members.

66. As 15 U.S.C. § 1681k(a)(2) is inapplicable to the types of public records NBD furnishes and the manner in which it obtains and furnishes them, Defendant's failure to timely provide the required FCRA notices to the Plaintiffs and other members of the Class violated 15 U.S.C. § 1681k(a)(1).

67. The conduct, action, and inaction of Defendant was willful, rendering Defendant liable for statutory and punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n.

68. Plaintiffs and other members of the Class are entitled to recover costs and attorney's fees as well as appropriate equitable relief from Defendant in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n.

69. As a result of these FCRA violations, Defendant is liable to Plaintiffs and to each

Class Member, for statutory damages from \$100.00 to \$1,000.00 pursuant to 15 U.S.C. §1681n(a)(1)(A), plus punitive damages pursuant to 15 U.S.C. § 1681n(a)(2), and for attorneys fees and costs pursuant to § 1681n.

COUNT II - FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681e(b)
(Individual Claims of Plaintiffs Henderson and Hines)

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

71. 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 it furnished regarding Henderson and Hines.

72. As a result of this conduct by the Defendant, Plaintiffs each suffered actual damages, including without limitation, by example only and as described herein on their behalf by counsel: loss of employment, damage to reputation, embarrassment, humiliation and other emotional and mental distress.

73. Defendant's violations of 15 U.S.C. § 1681e(b) were willful, rendering Defendant liable pursuant to 15 U.S.C. § 1681n. In the alternative, the Defendant was negligent, entitling Plaintiffs to recover under 15 U.S.C. § 1681o.

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

COUNT III - FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681i
(Individual Claim of Plaintiff Hines)

75. Plaintiff Hines reiterates each of the allegations in the preceding paragraphs as if

set forth at length herein.

76. Defendant violated 15 U.S.C. § 1681i by failing to comply with its duties to reinvestigate disputed information as to Plaintiff Hines.

77. As a result of this conduct by the Defendant, Plaintiff Hines suffered actual damages, including without limitation, by example only and as described herein on his behalf by counsel: loss of employment, damage to reputation, embarrassment, humiliation and other emotional and mental distress.

78. Defendant's violation of 15 U.S.C. § 1681i was willful, rendering Defendant liable pursuant to 15 U.S.C. § 1681n. In the alternative, the Defendant was negligent, entitling Plaintiff Hines to recover under 15 U.S.C. § 1681o.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class Members pray for relief as follows:

a. That an order be entered certifying the proposed Class under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiffs and their counsel to represent the Class;

b. That judgment be entered for Plaintiffs individually against Defendant for actual and/or statutory damages and punitive damages for violation of 15 U.S.C. §§ 1681e(b) and 1681i, pursuant to 15 U.S.C. §§ 1681n and 1681o;

c. That judgment be entered for the Class against Defendant for statutory damages and punitive damages for violation of 15 U.S.C. § 1681k(a) pursuant to 15 U.S.C. §

1681n.

d. That the Court award costs and reasonable attorneys' fees, pursuant to 15 U.S.C. §§ 1681n and 1681o; and,

e. That the Court grant such other and further relief as may be just and proper.

TRIAL BY JURY IS DEMANDED

**TYRONE HENDERSON and
JAMES O. HINES, JR.,
For themselves and on behalf of all
similarly situated individuals.**

By: /s/ Matthew J. Erausquin
Matthew J. Erausquin, VSB No. 65434
Casey S. Nash, VSB No. 84261
Consumer Litigation Associates, P.C.
1800 Diagonal Rd., Ste. 600
Alexandria, VA 22314
Tel: (703) 273-7770
Fax: (888) 892-3512
matt@clalegal.com
casey@clalegal.com

Leonard A. Bennett, VSB No. 37523
Susan M. Rotkis, VSB No. 40693
Consumer Litigation Associates, P.C.
763 J. Clyde Morris Blvd., Suite 1-A
Newport News, VA 23601
757-930-3660
757-930-3662 (fax)
lenbennett@clalegal.com
srotkis@clalegal.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July 2015, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

David Neal Anthony
Troutman Sanders LLP
Troutman Sanders Bldg
1001 Haxall Point
PO Box 1122
Richmond, VA 23219
Email: david.anthony@troutmansanders.com

John C. Lynch
Troutman Sanders LLP
P. O. Box 61185
222 Central Park Ave., Suite 2000
Virginia Beach, VA 23462
Email: john.lynch@troutmansanders.com

Timothy James St. George
Troutman Sanders LLP
Troutman Sanders Bldg
1001 Haxall Point
P.O. Box 1122
Richmond, VA 23219
Email: tim.stgeorge@troutmansanders.com

/s/
Matthew J. Eerausquin, VSB No. 65434
Consumer Litigation Associates, P.C.
1800 Diagonal Rd., Ste. 600
Alexandria, VA 22314
Tel: (703) 273-7770
Fax: (888) 892-3512
matt@clalegal.com
Counsel for Plaintiffs