

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

**ROBERT A. MCBRIDE and  
THERESA BARTLOW,  
Individually and on behalf  
of all others similarly situated,**

**Plaintiffs,**

v.

**Civil No. \_\_\_\_\_  
JURY TRIAL DEMANDED**

**APEX BACKGROUND CHECK, INC.,**

**Defendant.**

**CLASS ACTION COMPLAINT**

Come now the Plaintiffs Robert McBride and Theresa Bartlow, individually and on behalf of all other similarly situated individuals and by Counsel, and files this Class Action Complaint alleging the following claims against Defendant Apex Background Check, Inc.:

**NATURE OF THE CASE**

1. Plaintiff brings this action against Defendant for violations of the Federal Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681c(a), 1681e(b), and 1681k(a)(1).

2. Apex operates a national database of public records, address histories, and related employment histories as a nationwide consumer reporting agency (“CRA”). Apex maintains an FCRA database to prepare and furnish consumer reports for employment and other purposes. Employers regularly use Apex’s consumer reports to determine whether to hire, promote or retain consumers (such as the Plaintiffs).

3. As part of its hiring process, third party employers and “users” obtain background reports generated by Defendant Apex to make employment decisions regarding the Plaintiffs and

others. Those reports fall under the FCRA's umbrella, and impose upon Apex multiple, easy-to-follow requirements when it provides reports for employment purposes.

4. In the employment context, providers of consumer-background reports like Apex must abide by specific mandates. When they supply reports that contain information likely to have an adverse effect on an individual's ability to obtain employment, CRAs must provide consumers notice "at the time" they provide that report to the user.

5. Providing that notice arms the nation's millions of job applicants with the knowledge and information needed to challenge inaccurate, incomplete, and misleading public-records-based reports. The FCRA is designed to permit individuals whose reports are inaccurate with ample time to identify the inaccuracies and correct them before the employer has made an employment decision.

6. Similarly, also in the employment context, the FCRA limits the information that can be included in reports for jobs, like the ones for which Plaintiffs applied, that will pay less than \$75,000 per year. Those reports may contain entries of criminal information that predate the report by more than seven years, but only criminal convictions. All other criminal history must be excluded.

7. Plaintiffs assert nationwide class claims against Apex under 15 U.S.C. § 1681k, because Apex provided Plaintiffs' potential employer with a consumer report containing information likely to adversely affect Plaintiffs' ability to obtain employment without providing him or her with notice at the time it provided that report. Plaintiffs further alleges that Apex does not maintain strict procedures designed to ensure the information it reports about consumers for employment purposes is complete and up-to-date.

8. Plaintiffs likewise brings nationwide class claims against Apex under 15 U.S.C. § 1681c(a) because it included in the report to MFA dismissed criminal charges that predate the report by more than seven years. That information should have been excluded from Plaintiffs' report, as the position for which Plaintiffs applied at MFA could not have reasonably been expected to pay \$75,000 or more per year.

9. In addition, Plaintiffs each bring an individual claim against Apex for a violation of 15 U.S.C. § 1681e(b), which demands (among other things) that CRAs have in place reasonable procedures to ensure the maximum possible accuracy of the information they report. In Plaintiff McBride's report to MFA, Apex included a conviction for assault and battery that was reduced to disorderly conduct after an appeal. MFA refused to hire Plaintiff McBride based on this inaccurate record. In Plaintiff Bartlow's report to MFA, Apex included a criminal record item that had been expunged and should not have appeared in the report.

10. Separately, and also in violation of Section 1681e(b), Apex's report improperly repeats entries of criminal items, making Plaintiff McBride's history appear more dire than it actually is.

### **PARTIES**

11. Plaintiff Theresa Bartlow is a "consumer" as defined by 15 U.S.C. § 1681a.

12. Plaintiff Robert A. McBride is a "consumer" as defined by 15 U.S.C. § 1681a.

13. Defendant Apex is for-profit corporation organized in the State of North Carolina, but that operates nationwide, including within this District and Division. Apex is also a "consumer reporting agency" that provides "consumer reports" "for employment purposes" as those terms are defined by 15 U.S.C. § 1681a.

14. Non-party Medical Facilities of America, Inc. (“MFA”) operates nursing and rehabilitation facilities throughout Virginia and North Carolina. MFA staffs those facilities with consumers like Plaintiffs McBride and Bartlow.

#### **JURISDICTION AND VENUE**

15. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1681p.

16. Venue is proper in the Eastern District of Virginia because Defendant is subject to personal jurisdiction in this District, routinely does business in this District, and provides consumer reports about consumers within this District to its customers within this District. 28 U.S.C. § 1391(c). Further, at least one Plaintiff resides in this Division, and both reside in the District. The facts regarding the named Plaintiffs occurred here.

#### **GENERAL FACTUAL ALLEGATIONS**

17. During the class period, Apex furnished an employment-purposed consumer report concerning Plaintiffs to a potential employer, namely MFA, for its use in evaluating Plaintiffs for possible employment. Apex furnished similar such reports to MFA and other employers for the same purposes during the class period.

18. Among other things, the FCRA regulates the collection, maintenance, and disclosure of consumer credit report information by consumer reporting agencies (“CRAs”), including public record information like criminal history. Additionally, the FCRA mandates conditions, procedures, and limitations on the use of consumer reports for employment purposes by prospective employers and other individuals.

19. The FCRA imposes specific, easy-to-follow duties on CRAs like Apex that provide reports for use in the employment context:

A consumer reporting agency which furnishes a 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 shall--

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer 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; or

(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

15 U.S.C § 1681k(a).

20. Apex, as a matter of uniform and common practice, fails to provide consumers notice at the time it furnishes a report to an employer that contains adverse information. Apex does not avail itself of the second option in Section 1681k(a)—that of subsection k(a)(2)—of having in place strict procedures designed to ensure the public record information it reports is complete and up-to-date.

21. Had Apex met this mandate, it would have learned that one charge it reported for Plaintiff Bartlow had been expunged in 2013 and Plaintiff McBride's 1996 charge of assault and battery was reduced to disorderly conduct after an appeal.

22. The FCRA also governs the information that is included in reports that CRAs provide. Section 1681c(a) prohibits the reporting of:

(1) Cases under Title 11 or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.

(2) Civil suits, civil judgments, and records of arrest that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

(5) Any other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years. . . .

15 U.S.C. § 1681c(a).

23. Any information that falls into these categories cannot be reported in the employment context unless the salary for the position to which the report is attached is \$75,000 or more per year. *Id.* § 1681c(b)(3). Neither of Plaintiffs' salaries with MFA would have reached this threshold.

24. Apex willfully fails to meet the requirements of Section 1681k through either "at the time" notice to consumers or "strict procedures" designed to ensure information it reports is complete and up-to-date.

25. Finally, for employment-purposed reports for jobs with salaries reasonably expected to be below \$75,000 per year, Apex willfully fails to exclude information that predates reports by more than seven years as required by Section 1681c(a).

## **THE EXPERIENCE OF THE REPRESENTATIVE PLAINTIFFS**

### **A. Plaintiff Bartlow**

26. Near the beginning of June 2015, Ms. Bartlow applied for and was interviewed for a Registered Nurse position at MFA's Parham Health and Rehabilitation Facility in Richmond, Virginia.

27. Around June 11, 2015, MFA's representative phoned Plaintiff Bartlow and offered her the RN position, which was then formally offered, by email, the next day. Attached to the email were several forms for Plaintiff to complete, including a one purporting to authorize MFA to conduct a criminal background check on her. Plaintiff Bartlow was to start work June 29.

28. Plaintiff Bartlow completed the forms and returned them to MFA's representative. At some point after June 11, Apex provided MFA with an employment-purposed consumer report about Plaintiff Bartlow. The report included several entries of public-record information likely to have an adverse effect on an individual's ability to obtain employment. Apex did not provide Plaintiff Bartlow with a copy of the report it furnished to MFA.

29. On June 28, an MFA representative emailed Plaintiff Bartlow and stated that MFA was rescinding her job offer because of information on her Apex background report. The MFA representative did not state specifically what disqualified Plaintiff Bartlow from employment, nor did she or anyone at MFA share the Apex report with Plaintiff Bartlow.

30. Beginning on June 30, Plaintiff Bartlow left at least three voicemail messages with MFA's representative requesting her Apex report, to no avail. On approximately July 7, Plaintiff Bartlow emailed MFA's representative and reiterated her request for her Apex report.

31. On July 10, twelve days after MFA denied her employment based on the contents of the Apex report, Plaintiff Bartlow finally received a copy of that report from MFA, and also a copy of a State Police Records Exchange dated June 26, 2015. The Apex background report

contained several inaccuracies, including a criminal record that Plaintiff Bartlow had expunged in 2013.

32. At no time did Apex provide Plaintiff Bartlow with a copy of the report it furnished to MFA. That report included several inaccuracies as well as repeated reporting of the same charges in different areas of the report, making Plaintiff Bartlow's criminal history look worse than it actually is.

33. The alternative to at-the-time notice of Section 1691k(a)(1), the a prior maintenance of strict procedures designed to ensure the information it reports is "complete and up to date," does not apply to MFA's reports because MFA has no such procedures. Alternatively, MFA cannot satisfy the strict procedures requirement because it does not obtain complete and current court records in performing background searches for employment purposes.

34. MFA took an adverse action against Plaintiff Bartlow by denying her employment, and it took that adverse action based on the contents of an FCRA-governed consumer report it obtained from Defendant Apex.

**B. Plaintiff McBride**

35. Mr. McBride applied for a position as a cook at MFA's Norfolk Rehabilitation Center in August 24, 2015. As part of the application process, Mr. McBride completed a lengthy application over the Internet.

36. Despite multiple failures in its application materials, MFA ran a background check on Mr. McBride using the Virginia Criminal Information Network ("VCIN"), around August 24. Apparently satisfied with the contents of that background check, MFA offered Mr. McBride a job the same day.



37. Sometime later, MFA purchased a consumer background report on Mr. McBride from Apex. The Apex report was rife with duplicate entries of criminal information and a key inaccuracy—the reporting of a conviction for assault and battery that was reduced to disorderly conduct after an appeal. MFA rescinded Mr. McBride’s job offer because of the assault and battery conviction, but did not provide him with a copy of the Apex report before it did so.

38. At no time during the application process did Apex provide Plaintiff McBride with a copy of the report it furnished to MFA.

39. MFA did provide Mr. McBride with the background check from VCIN, which included an accurate entry of the disorderly conduct record, but did not provide Mr. McBride with any notice of its intent to take an adverse action against him. After much effort, Mr. McBride eventually convinced MFA to provide him with the Apex report. By that time, it was too late for him to be hired by MFA.

40. Apex provided to MFA a consumer report in the employment context that contained information likely to have an adverse effect on Mr. McBride’s ability to obtain employment. Apex failed to give Mr. McBride notice at the time it provided the report to MFA, in violation of 15 U.S.C. § 1681k(a)(1).

41. The alternative to at-the-time notice of Section 1691k(a)(1), the employment of strict procedures to ensure the information it reports is “complete and up to date,” does not apply to MFA’s reports because MFA has no such procedures. Alternatively, MFA cannot satisfy the strict procedures requirement because it does not obtain full copies of court records in performing background searches for employment purposes.

42. Separately, the report Apex sold to MFA was rife with problems, including reporting of criminal information other than convictions that predate the report by more than

seven years. Apex reported two dismissed criminal charges from 2001, and one charge from 1996 and three from 2005 that the prosecutor abandoned (i.e., *nolle prosequi*), making Mr. McBride's criminal history appear far worse than it is.

43. Such reporting of obsolete information violates FCRA Section 1681c(a)(5), as CRAs must exclude any criminal information that is not a conviction and that is older than seven years.

#### **DEFENDANT ACTED WILLFULLY**

44. Plaintiffs and Class Members have a common-law right to keep their personal information from being distributed and used without their knowledge, and Congress sought to enhance the protection of that right by enacting the FCRA and incorporating into its many consumer-oriented safeguards the restriction that consumer reports only be distributed for listed reasons "and no other." Indeed, the FCRA preempts the common-law tort of intrusion upon seclusion, and the Act expresses Congress's finding of "a need to insure 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. § 1681a(4).

45. Defendant invaded Plaintiffs and the Class Members' right to privacy when it provided their highly confidential personal information at a time when it had no right to do so.

46. The conduct that Defendant engaged in of precisely the type that Congress sought to prevent with restrictions it has imposed on access to consumers' sensitive, personal information.

47. Plaintiffs and Class Members therefore suffered a concrete, in-fact injury that is directly traceable to Defendant's conduct and that is likely to be redressed by a favorable decision here.

48. Plaintiffs and Class Members have a common-law right to know of the information that entities like Apex report about them, and Congress sought to enhance the protection of that right by enacting the FCRA and incorporating into its many consumer-oriented safeguards requirements that consumers receive notice when information is reported for employment purposes. Indeed, the FCRA expresses Congress's mandate that "consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter." 15 U.S.C. § 1681(b) (emphasis added).

49. Defendant violated Plaintiffs and the Class Members' right to notice when it obtained their highly confidential personal information, and then took an adverse action based on that personal information without first providing Plaintiffs and Class Members an opportunity to dispute or discuss the information that served as the basis for those decisions.

50. Further, Defendant violated consumers' right to having the information reported about them be accurate and timely. Consumers further have a right to have information reported about them that is timely and in compliance with statutory mandates.

51. The conduct that Defendant engaged in of precisely the type that Congress sought to prevent with restrictions it has imposed on access to consumers' sensitive, personal information.

52. Plaintiffs and Class Members therefore suffered a concrete, in-fact injury that is directly traceable to Defendant's conduct and that is likely to be redressed by a favorable decision here.

53. Apex knew or should have known about its legal obligations under the FCRA. These obligations are well established in the plain language of the FCRA, judicial decisions interpreting the Act, and in the promulgations of the Federal Trade Commission.

54. Apex obtained or had available substantial written materials, which apprised it of its duties under the FCRA.

## CLASS ACTION ALLEGATIONS

### PLAINTIFFS' PROPOSED CLASSES

55. Plaintiffs bring this action on a class basis, with initial class definitions that follow.

56. ***The § 1681k(a)(1) Notice Class, December 16, 2011, through the present.*** Pursuant to Federal Rule of Civil Procedure 23 and 15 U.S.C. § 1681k, Plaintiffs bring this action for themselves and on behalf of the following “§ 1681k(a)(1) Notice Class,” of which they are both members, initially defined as:

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 consumer report issued after December 16, 2011, (b) that was furnished by Apex for an employment purpose, (c) that contained at least one public record of a criminal or traffic conviction or arrest, and (d) to whom Apex did not place in the United States mail postage pre-paid or convey electronically, on the day it furnished the report, a written notice that it was furnishing the subject report and containing the name of the person that was to receive the report.

57. ***The § 1681c(a) Obsolete Information Class, December 16, 2014 through the present.*** Pursuant to Federal Rule of Civil Procedure 23 and 15 U.S.C. § 1681c, Plaintiffs bring this action for themselves and on behalf of the following “Obsolete Information Class,” of which they are both members, initially defined as:

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 consumer report issued after December 16, 2016, (b) that was furnished by Apex for an employment purpose, (c) for a position for which the annual salary was not, nor reasonably expected to equal, \$75,000 or more, and (d) that contained at least one entry of a criminal record other than a conviction that predated the report by more than seven years.

58. **Numerosity. Fed. R. Civ. P 23(a)(1).** Upon information and belief, the putative Classes exceed 100 members each, making joinder of all members impracticable. The names and addresses of the class members are identifiable through the internal business records maintained by Defendant and the class members may be notified of the pendency of this action by published and/or mailed notice.

59. **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 Class members and predominate over any questions solely affecting individual Class members, including:

- a. Whether the uniform failure to provide timely a copy of employment purposed consumer reports containing a negative public record violated the FCRA;
- b. Whether a Defendant maintains strict procedures designed to insure complete and up-to-date reports when it never obtains a complete and up-to-date court record, therefore § 1681k(a)(2) is inapplicable;
- c. Whether Defendant reports obsolete criminal record information in consumer reports;
- d. Whether the Defendant has reasonable procedures to assure maximum possible accuracy of consumer reports, including whether it double reports various criminal record information;
- e. Whether Defendants' violations of the FCRA were "willful."

60. **Typicality. Fed. R. Civ. P. 23(a)(3).** Plaintiffs' claims are typical of the claims of each putative Class Member. Plaintiffs, as well as every putative class member, allege violations of the same FCRA provisions, 15 U.S.C. §§ 1681c, 1681e(b) and 1681k(a)(1). These claims challenge Defendant's consumer-report-furnishing procedures as they relate to a definable group of consumers—those that Apex furnished a consumer report to a potential employer. In addition, Plaintiffs are entitled to relief under the same causes of action as the other members of the putative class. All are based on the same facts and legal theories.

61. **Adequacy of Representation. Fed. R. Civ. P. 23(a)(4).** Plaintiffs are adequate representatives of the putative Classes, because his interests coincide with, and are not antagonistic to, the interests of the members of the Classes they seek to represent; they have retained Counsel competent and experienced in such litigation; and they have and intend to continue to prosecute the action vigorously. Plaintiffs and their Counsel will fairly and adequately protect the interests of the members of the Classes. Neither Plaintiffs nor their Counsel have any interests which might cause him not to vigorously pursue this action.

62. **Predominance and 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 damages sought by each member are such that individual prosecution would prove burdensome and expensive. Additionally, none of the Class Members would have known of the facts underlying the violation or of the legal basis for this action absent this lawsuit. It would be virtually impossible for members of the Class individually to effectively redress 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 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 a case.

**COUNT ONE – CLASS CLAIM**

**Failure To Provide “At The Time” Notice – 15 U.S.C. § 1681k(a)(1)**

63. Plaintiffs incorporate by reference those paragraphs set out above as though fully set forth herein.

64. The consumer reports of the Named Plaintiffs and of each member of the Section 1681k Class were furnished for an employment purpose and contained one or more public records of the type that may effect an employer's hiring decision.

65. As to the Named Plaintiffs and the § 1681k class, Apex uniformly fails to comply with the rigors of FCRA § 1681k(a)(2) and therefore must necessarily rely on its compliance with § 1681k(a)(1).

66. On information and belief, the Plaintiffs allege that Apex obtains public records including criminal records, civil liens, civil judgments, and civil bankruptcy information from a third party consumer reporting agency and does not attempt to obtain this information through its own courthouse searches or vendors.

67. On information and belief, Plaintiff alleges that as to the § 1681k Notice Class, Apex did not send such class members a notice pursuant to 15 U.S.C. § 1681k(a)(1).

68. On information and belief, Plaintiffs allege that as to the § 1681k Notice Class, Apex did not itself or by its own court researchers or vendors attempt to verify the completeness

or current status of the public records pursuant to 15 U.S.C. § 1681k(a)(2), within 30 days before it furnishes and resells these records in one of its reports.

69. Apex's failure to timely provide the required FCRA notices to the Plaintiffs and other members of the putative Class violated 15 U.S.C. § 1681k(a)(1).

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

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

## **COUNT TWO – CLASS CLAIM**

### **Failure To Remove Obsolete Information – 15 U.S.C. § 1681c(a)(5)**

72. Plaintiffs incorporate by reference those paragraphs set out above as though fully set forth herein.

73. The consumer report of the Named Plaintiffs and of each member of the Section 1681c Obsolete Information Class were furnished for an employment purpose and for positions that did not pay, nor would reasonably be expected to pay, \$75,000 or more per year.

74. Each of these reports contained one or more criminal records that were not convictions of crimes and that predated the reports by more than seven years. Apex's failure to exclude this information violated 15 U.S.C. § 1681c(a)(5).

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



76. Plaintiff and other members of the putative Class are entitled to recover costs and attorneys' fees as well as appropriate equitable relief from Apex in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n.

**COUNT THREE – INDIVIDUAL CLAIM AGAINST APEX**

**15 U.S.C. § 1681e(b)**

77. Plaintiffs incorporate by reference those paragraphs set out above as though fully set forth herein.

78. In both Plaintiffs' reports, Apex included a criminal history that was inaccurate, which led MFA to deny both Plaintiffs employment.

79. The consumer report of Plaintiff McBride contained entries of criminal history that were repeated in multiple entries within the same report, making his criminal background look substantially worse than it actually was.

80. This repetition of criminal history violated the accuracy requirements of 15 U.S.C. § 1681e(b).

81. The report Defendant furnished regarding Plaintiff Bartlow was not maximally possibly accurate. In addition to the repetition problem, the Defendant inaccurately reported a criminal charge that had been lawfully expunged.

82. Defendant Apex 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.

83. As a result of this conduct by Apex, the Plaintiffs 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.

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

85. In the alternative, Apex was negligent, entitling Plaintiffs to recover under 15 U.S.C. § 1681o.

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

**WHEREFORE**, Plaintiffs and the putative Classes respectfully pray for the following relief:

- A. An order certifying the proposed classes herein pursuant to FED. R. CIV. P. 23 and appointing the undersigned counsel to represent same;
- B. The creation of a common fund available to provide notice of and remedy Defendant's unlawful conduct;
- C. That judgment be entered for Plaintiffs and the classes pursuant to 15 U.S.C. §§ 1681n and 1681o;
- D. Statutory and punitive damages for all class claims;
- E. Actual damages and/or statutory damages and punitive damages for Plaintiffs' individual claims;
- F. Equitable and/or injunctive relief;
- G. Attorneys' fees, expenses and costs; and

H. Pre-judgment and post-judgment interest as provided by law.

**TRIAL BY JURY IS DEMANDED**

Respectfully submitted,

**ROBERT MCBRIDE and  
THERESA BARTLOW, *individually and  
on behalf of and all others similarly situated***

By: \_\_\_\_\_ /s/

Leonard A. Bennett, VSB No. 37523  
Susan M. Rotkis, VSB No. 40693  
Craig C. Marchiando VSB No. 89736  
**CONSUMER LITIGATION ASSOCIATES, P.C.**  
763 J. Clyde Morris Blvd., Suite 1-A  
Newport News, VA 23601  
Telephone: (757) 930-3660  
Facsimile: (757) 930-3662  
Email: lenbennett@clalegal.com  
Email: srotkis@clalegal.com  
Email: craig@clalegal.com

Kristi Cahoon Kelly, VSB #72791  
Andrew J. Guzzo, VSB #82170  
**KELLY & CRANDALL, PLC**  
4084 University Drive, Suite 202A  
Fairfax, Virginia 22030  
Telephone: (703) 424-7572  
Facsimile: (703) 591-0167  
E-mail: kkelly@kellyandcrandall.com  
E-mail: aguzzo@kellyandcrandall.com

***Attorneys for the Plaintiffs***

JS 44 (Rev. 08/16)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b>                  ROBERT A. MCBRIDE and THERESA BARTLOW, individually and on behalf of all others similarly situated,</p> <p>(b) County of Residence of First Listed Plaintiff _____                  (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number)                  Leonard A. Bennett, Consumer Litigation Associates, P.C.                  763 J. Clyde Morris Blvd., Suite 1A                  Newport News, VA 23601 (757) 930-3660</p>	<p><b>DEFENDANTS</b>                  Apex Background Check, Inc.</p> <p>County of Residence of First Listed Defendant _____                  (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width:100%;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;"><b>PTF</b></td> <td style="width:33%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> </tr> </table> <p>Incorporated or Principal Place of Business In This State: PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4</p> <p>Incorporated and Principal Place of Business In Another State: PTF <input type="checkbox"/> 5 DEF <input type="checkbox"/> 5</p> <p>Foreign Nation: PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6</p>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3
	<b>PTF</b>	<b>DEF</b>											
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1											
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2											
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3											

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	
			<p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	
			<p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DJWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
	<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty	<p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
		<p><b>IMMIGRATION</b></p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions			

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District (specify)     6 Multidistrict Litigation - Transfer     8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 15 U.S.C. §1681

Brief description of cause:  
 Violation of the Federal Fair Credit Reporting Act (FCRA)

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_

CHECK YES only if demanded in complaint:  
 JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 12/15/16    SIGNATURE OF ATTORNEY OF RECORD: [Signature]

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Filed Against Apex Background Check](#)

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