

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPADIVISION**

**JEFFREY MCINTOSH, on behalf of himself  
and on behalf of all others  
similarly situated,**

**Plaintiff,**

**v.**

**Case No. :**

**ESTES EXPRESS LINES (CORPORATION),**

**Defendant.**

\_\_\_\_\_ /

**CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

1. Plaintiff, JEFFREY MCINTOSH (“Plaintiff”), by and through undersigned counsel, and on behalf of himself, the Putative Class set forth below, as well as in the public interest, brings the following Class Action as of right against Defendant, ESTES EXPRESS LINES (CORPORATION) (“Defendant”) under the Fair Credit Reporting Act of 1970, as amended (“FCRA”), 15 U.S.C. § 1681 et seq.

2. Plaintiff, JEFFREY MCINTOSH, by and through undersigned counsel, as an individual, also brings an action for damages under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 et seq., for failure to pay overtime wages under 29 U.S.C. § 215(a)(3).

**PRELIMINARY STATEMENT**

3. Defendant, ESTES EXPRESS LINES (CORPORATION), is a Virginia corporation that operates a freight transportation company.

4. Defendant routinely obtains and uses information in consumer reports to conduct background checks on prospective and current employees, and frequently relies on such information, in whole or in part, as a basis for taking adverse employment action, such as termination of employment, reduction in working hours, demotion, failure to hire, and failure to promote.

5. While the use of consumer report information for employment purposes is not per se unlawful, it is subject to strict disclosure and authorization requirements under the FCRA.

6. Defendant willfully violated these requirements in multiple ways, thereby systematically violating Plaintiff's rights and the rights of other putative class members.

7. First, Defendant violated 15 U.S.C. § 1681b(b)(3)(A)(i) by taking adverse action based in whole or in part on a consumer report without providing Plaintiff a copy of the consumer report. Under this subsection of the FCRA, Defendant is required to provide to its employees a copy of the report and a description in writing of the rights of the consumer. 15 U.S.C. § 1681b(b)(3)(A)(i). This disclosure must be made by employers prior to taking any adverse action against the consumer. *Id.* Defendant willfully violated this requirement by failing to provide Plaintiff and other putative class members with a copy of their consumer report and a description in writing of their rights. This practice violates long-standing regulatory guidance from the Federal Trade Commission ("FTC").

8. Based on the foregoing violation, Plaintiff asserts FCRA claims against Defendant on behalf of himself and a putative Class, consisting of Defendant's prospective and current employees.

9. In Count One, Plaintiff asserts an FCRA claim under 15 U.S.C. §§ 1681b(b)(3)(A)(i)-(ii), on behalf of a "Prospective and Current Employee Class," consisting of all of Defendant's prospective and current employees in the United States who were the subject of adverse action taken without first being given a copy of their respective consumer report within five years of the filing of this complaint through the date of final judgment in this action as required under 15 U.S.C. § 1681b(b)(3)(A).

10. On behalf of himself and the Putative Class identified above, Plaintiff seeks statutory damages, costs and attorneys' fees, equitable relief, and other appropriate relief under the FCRA.

### **THE PARTIES**

11. Individual and representative Plaintiff JEFFREY MCINTOSH, ("Plaintiff"), lives in Hillsborough County, Florida. Plaintiff was an employee of Defendant, and is also a member of the Putative Class defined below.

12. Defendant maintains corporate headquarters in Richmond, Virginia. According to its website, Defendant employs more than ten-thousand (10,000) employees in the United States.

### **JURISDICTION AND VENUE**

13. This Court has federal question jurisdiction over Plaintiff's FCRA and FLSA claims under 28 U.S.C. § 1331. This Court also has subject matter jurisdiction

over Plaintiff's claims under the FCRA, 15 U.S.C. §§ 1681n and 1681p and over Plaintiff's FLSA claim under the FLSA, 29 U.S.C. § 201 et seq.

14. Venue is proper in the United States District Court for the Middle District of Florida under 28 U.S.C. § 1391. Plaintiff resides in Davenport, Florida, applied for work in Defendant in Tampa, Florida and a substantial part of Plaintiff's claims arose in Defendant, Florida, where Defendant regularly conducts business. Venue is proper in the Middle District because the majority of the events giving rise to these claims occurred in this District.

### **ALLEGATIONS REGARDING DEFENDANT'S BUSINESS PRACTICES**

#### ***Background Checks***

15. Defendant conducts background checks on the majority of its prospective employees as part of a standard screening process. In addition, Defendant also conducts background checks on its current employees from time to time during the course of their employment.

16. Defendant does not perform these background checks in-house. Rather, Defendant relies on various outside consumer reporting firms to obtain this information, and return the corresponding reports to Defendant. These reports are "consumer reports" within the meaning of the FCRA.

#### ***FCRA Violations***

17. Defendant took adverse action against Plaintiff and the putative class without having first provided them a copy of their consumer report in violation of the FCRA.

18. Under the FCRA, it is unlawful to take adverse action against a current or prospective employee without first providing them:

- a) a copy of the report; and
- b) a description in writing of the rights of the consumer.

15 U.S.C. §§ 1681b(b)(3)(A)(i)-(ii).

19. Defendant failed to satisfy these unambiguous requirements.

**ALLEGATIONS SPECIFIC TO PLAINTIFF'S FCRA CLAIM**

20. On or about April 1, 2017 Plaintiff applied for a position with Defendant in Tampa, Florida.

21. After reviewing Plaintiff's qualifications, Defendant offered Plaintiff the position for which he had applied.

22. Defendant told Plaintiff that its offer of employment was subject to the completion of a background check.

23. On or about April 1, 2017 Defendant procured a consumer report on Plaintiff by using the services of a third-party vendor.

24. Defendant violated 15 U.S.C. § 1681b(b)(3)(A)(i) by taking adverse action against Plaintiff and other putative class members based on the results of consumer reports, without first providing Plaintiff and putative class members a copy of their respective consumer report, as required by the statute. Under this subsection of the FCRA, Defendant is required to provide its current and prospective employees a copy of the consumer report that was the basis of their adverse action. Defendant willfully violated this requirement by failing to provide Plaintiff and the putative class with a copy

of their consumer report before taking adverse action against them. This practice violates long-standing regulatory guidance from the FTC.

25. Defendant willfully disregarded this regulatory guidance and willfully violated 15 U.S.C. § 1681b(b)(3)(A) by taking adverse action against Plaintiff and members of the putative class based on their consumer reports without first providing them copies of said reports.

**ALLEGATIONS SPECIFIC TO PLAINTIFF'S FLSA CLAIM**

26. Plaintiff has satisfied all conditions precedent, or they have been waived.

27. Plaintiff has hired the undersigned attorneys and agreed to pay them a fee.

28. Plaintiff requests a jury trial for all issues so triable.

29. At all times material hereto, Plaintiff was “engaged in the production of goods” for commerce within the meaning of Sections 6 and 7 of the FLSA, and as such was subject to the individual coverage of the FLSA.

30. At all times material hereto, Defendant was an “employer” within the meaning of the FLSA, 29 U.S.C. § 203(d).

31. Defendant continues to be an “employer” within the meaning of the FLSA.

32. At all times material hereto, Defendant was and continues to be an enterprise covered by the FLSA, as defined under 29 U.S.C. §§ 203(r) and 203(s).

33. At all times relevant to this action, Defendant was engaged in interstate commerce within the meaning of the FLSA, 29 U.S.C. § 203(s).

34. At all times relevant to this action, the annual gross sales volume of Defendant exceeded \$500,000 per year.

**CLASS ACTION ALLEGATIONS**

35. Plaintiff assert a claim under Count 1 of this Complaint on behalf of a Putative “Adverse Action Class” defined as follows:

All Defendant employees and job applicants in the United States against whom adverse employment action was taken, based, in whole or in part, on information contained in a consumer report obtained within five years of the filing of this complaint through the date of final judgment in this action, who were not provided the proper pre-adverse notice as required by the FCRA.

36. Numerosity: The members of the Putative Class are so numerous that joinder of all Class members is impracticable. Defendant regularly obtains and uses information in consumer reports to conduct background checks on prospective employees and current employees, and frequently relies on such information, in whole or in part, as a basis for taking adverse employment action. Plaintiff is informed and believes that during the relevant time period, hundreds if not thousands of Defendant’s employees and prospective employees satisfy the definition of the Putative Class.

37. Typicality: Plaintiff’s claims are typical of those of the members of the Putative Class. Defendant typically uses consumer reports to conduct background checks on employees and prospective employees. Defendant typically does not provide copies of consumer reports to employees or prospective employees before taking adverse action against them, based on information contained in such reports. The FCRA violations suffered by Plaintiff are typical of those suffered by other Putative Class members, and Defendant treated Plaintiff in a manner consistent with its treatment of other Putative Class members under its standard policies and practices.

38. Adequacy: Plaintiff will fairly and adequately protect the interests of the Putative Class, and has retained counsel experienced in complex class action litigation.

39. Commonality: Common questions of law and fact exist as to all members of the Putative Class, and predominate over any questions solely affecting individual members of the Putative Class. These common questions include, but are not limited to:

- a) Whether Defendant uses consumer report information to conduct background checks on employees and prospective employees;
- b) Whether Defendant's background check practices and/or procedures comply with the FCRA;
- c) Whether Defendant violated the FCRA by procuring consumer report information without making proper disclosures in the format required by the statute;
- d) Whether Defendant violated the FCRA by procuring consumer report information based on invalid authorizations;
- e) Whether Defendant's violations of the FCRA were willful;
- f) The proper measure of statutory damages; and
- g) The proper form of injunctive and declaratory relief.

40. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1), because prosecution of actions by or against individual members of the Putative Class would result in inconsistent or varying adjudications and create the risk of incompatible standards of conduct for Defendant. Further, adjudication of each individual Class



member's claim as separate action would potentially be dispositive of the interest of other individuals not a party to such action, thereby impeding their ability to protect their interests.

41. This case is also maintainable as a class action under Fed. R. Civ. P. 23(b)(2), because Defendant has acted or refused to act on grounds that apply generally to the Putative Class, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the Class as a whole.

42. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3), because questions of law and fact common to the Putative Class predominate over any questions affecting only individual members of the Putative Class, and also because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendant's conduct, which is described in this Complaint, stems from common and uniform policies and practices, resulting in common violations of the FCRA. Members of the Putative Class do not have an interest in pursuing separate actions against Defendant, as the amount of each Class member's individual claim for damages is small in comparison to the expense and burden of individual prosecution. Class certification will also 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 foreseeable difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all Putative Class members' claims in a single action, brought in a single forum.

43. Plaintiff intends to send notice to all members of the Putative Class to the extent required by Rule 23. The names and addresses of the Putative Class members are readily available from Defendant's records.

**COUNT I – FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF  
FCRA 15 U.S.C. § 1681b(b)(3)(A)(i)**

44. Defendant used a “consumer report,” as defined by the FCRA, to take adverse employment action against Plaintiff and other members of the Adverse Action Class.

45. Defendant violated the FCRA by failing to provide Plaintiff and other Adverse Action Class members with a copy of the consumer report that may have been used to take adverse employment action against them. See 15 U.S.C. § 1681b(b)(3)(A).

46. The foregoing violations were willful. At the time Defendant violated 15 U.S.C. § 1681b(b)(3) Defendant knew that before taking adverse employment action against Plaintiff and other putative class members based on consumer report information it was required to first provide a copy of the pertinent consumer report and a reasonable opportunity to respond to the information in the report. Besides the plain language of the FCRA itself on pre-adverse notice requirements, at that time a plethora of authority existed at the time that Defendant either knew about or should have known about. *See e.g., Kelchner v. Sycamore Manor Health Ctr.*, 305 F. Supp. 2d 429, 436 (M.D. Pa. 2004) *aff'd*, 135 F. App'x 499 Case 0:16-cv-60364-WPD Document 49 Entered on FLSD Docket 07/14/2016 Page 25 of 29 26 (3d Cir. 2005); *Singleton v. Domino's Pizza, LLC*, No. 2012 WL 245965 (D. Md. Jan. 25, 2012); *Reardon v. Closetmaid Corp.*, No. 2:08-cv-1730, 2013 WL 6231606 (W.D.Pa. Dec. 2, 2013).

47. Defendant's willful conduct is also reflected by, among other things, the following facts:

- a) Defendant is a large corporation with access to legal advice through its own general counsel's office and outside employment counsel, and there is no contemporaneous evidence that it determined that its conduct was lawful;
- b) Defendant voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless.

48. Alternatively, and at a minimum, Defendant's actions were negligent.

49. Plaintiff and the Background Check Class are entitled to statutory damages of not less than one hundred Dollars (\$100) and not more than one thousand Dollars (\$1,000) for each and every one of these violations under 15 U.S.C. § 1681n(a)(1)(A), in addition to punitive damages under 15 U.S.C. § 1681n(a)(2).

50. Plaintiff and the Background Check Class are entitled to recover their costs and attorneys' fees, in accordance with 15 U.S.C. § 1681n(a)(3).

#### **FCRA COUNT I PRAYER FOR RELIEF**

51. **WHEREFORE**, Plaintiff, on behalf of himself and the Putative Class, prays for relief as follows:

- a) Determining that this action may proceed as a class action under Rule 23(b)(1), and (2) and (3) of the Federal Rules of Civil Procedure;

- b) Designating Plaintiff as class representative and designating Plaintiff's counsel as counsel for the Putative Class;
- c) Issuing proper notice to the Putative Class at Defendant's expense;
- d) Declaring that Defendant committed multiple, separate violations of the FCRA;
- e) Declaring that Defendant acted willfully in deliberate or reckless disregard of Plaintiff's rights and its obligations under the FCRA;
- f) Awarding statutory damages as provided by the FCRA, including punitive damages;
- g) Awarding reasonable attorneys' fees and costs as provided by the FCRA; and
- h) Granting other and further relief, in law or equity, as this Court may deem appropriate and just.

**COUNT II – FLSA OVERTIME VIOLATION**

52. Plaintiff realleges and readopts the allegations of paragraphs 26 through 34 of this Complaint, as though fully set forth herein.

53. During the statutory period, Plaintiff worked overtime hours while employed by Defendant, and he was not compensated for all of these hours in accordance with the FLSA.

54. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA, within the meaning of 29 U.S.C. § 255(a).

55. As a result of the foregoing, Plaintiff has suffered damages.

**WHEREFORE**, Plaintiff demands:

- a) Judgment against Defendant for an amount equal to Plaintiff's unpaid back wages at the applicable overtime rate;
- b) Judgment against Defendant stating that Defendant's violations of the FLSA were willful;
- c) An equal amount to Plaintiff's overtime damages as liquidated damages;
- d) To the extent liquidated damages are not awarded, an award of prejudgment interest;
- e) A declaratory judgment that Defendant's practices as to Plaintiff were unlawful, and grant Plaintiff equitable relief;
- f) All costs and attorney's fees incurred in prosecuting these claims;  
and
- g) For such further relief as this Court deems just and equitable.

**DEMAND FOR JURY TRIAL**

In accordance with Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff and the Putative Class demand a trial by jury for all issues so triable.

Dated this 30<sup>th</sup> day of June, 2017.

Respectfully submitted,



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**BRANDON J. HILL**

Florida Bar Number: 0037061

**WENZEL FENTON CABASSA, P.A.**

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**Attorneys for Plaintiff**

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.)

I. (a) PLAINTIFFS

Jeffrey McIntosh

(b) County of Residence of First Listed Plaintiff Hillsborough (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address and Telephone Number) Brandon J. Hill, Wenzel Fenton Cabassa, P.A., 1110 N. Florida Ave., Ste. 300, Tampa, FL 33602 813-224-0431

DEFENDANTS

Estes Express Lines (Corporation)

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 main categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-sections like PERSONAL INJURY, HABEAS CORPUS, and various legal codes.

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Fair Credit Reporting Act
Brief description of cause: Violation of the 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: X Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature: BJA

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Estes Express Lines Sued Over Use of Background Report Info](#)

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