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8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION
12

13 BRITTANY WYNN, on behalf of herself and
all others similarly situated,

14 *Plaintiff,*

15 v.

16 UNITED PARCEL SERVICE, INC., an Ohio
17 corporation; and DOES 1 through 50,
18 inclusive,

19 *Defendants.*

Case No.

CLASS-ACTION

COMPLAINT

Violation of 15 U.S.C. §§ 1681b(b)(2)(A) (Fair
Credit Reporting Act)

DEMAND FOR JURY TRIAL

1 COMES NOW, Plaintiff BRITTANY WYNN (hereafter “Plaintiff”), on behalf of herself and all
2 others similarly situated, and complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against defendant UNITED PARCEL SERVICE, INC.,
5 an Ohio corporation; and DOES 1 through 50 inclusively (collectively referred to as “Defendants”), for
6 alleged violations of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681 *et sequitur*.

7 2. Plaintiff alleges that Defendants routinely acquire consumer reports to conduct
8 background checks on Plaintiff and other prospective, current, and former employees and use
9 information from consumer reports in connection with their hiring process without providing proper
10 disclosures and without obtaining proper authorization in compliance with the law.

11 3. Plaintiff, individually and on behalf of all others similarly situated current, former, and
12 prospective employees, seeks statutory penalties due to Defendants’ systematic and willful violations of
13 the FCRA.

14 **JURISDICTION AND VENUE**

15 4. This Court has original subject matter jurisdiction over Plaintiff’s claims pursuant to 28
16 U.S.C. section 1331 because these claims seek redress for violation of Plaintiff’s and the putative class’
17 federal statutory rights under the Fair Credit Reporting Act (15 U.S.C. §§ 1681 *et seq.*).

18 5. Venue is proper in this District under 28 U.S.C. section 1391(b)(2) and (c) because a
19 substantial part of the events and omissions giving rise to the claims alleged in this complaint occurred
20 in this District.

21 6. This Court has personal jurisdiction over this matter because Defendants conduct
22 substantial business activity in this District, and because many of the unlawful acts described in this
23 complaint occurred in this District and gave rise to the claims alleged.

24 **PARTIES**

25 7. Plaintiff is an individual who resides in the State of California.

26 8. Defendant UNITED PARCEL SERVICE, INC. is an Ohio corporation and does
27 business in the State of California.

28 9. Plaintiff is ignorant of the true names, capacities, relationships, and extent of

1 participation in the conduct alleged herein of the defendants sued as DOES 1 through 50, inclusive, but
2 is informed and believes and thereon alleges that said defendants are legally responsible for the
3 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff
4 will amend the Complaint to allege the true names and capacities of the DOE defendants when
5 ascertained.

6 10. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all
7 Defendants were the agents, employees, servants, masters, or employers of the remaining defendants
8 and, in doing the things hereinafter alleged, were acting within the course and scope of such agency or
9 employment and with the approval and ratification of each of the other Defendants.

10 11. Plaintiff alleges that each and every one of the acts and omissions alleged herein were
11 performed by and/or attributable to all Defendants, each acting as agents and/or employees and/or under
12 the direction and control of each of the other defendants, and that said acts and failures to act were
13 within the course and scope of said agency, employment, and/or direction and control.

14 **CLASS ALLEGATIONS**

15 12. This action has been brought and may be maintained as a class action pursuant to
16 Federal Rules of Civil Procedure 23 because there is a well-defined community of interest among many
17 persons who comprise the class defined below.

18 13. **Class Definitions:** The class is defined as follows:

19 **FCRA Class:** All of Defendants' current, former and prospective applicants for
20 employment in the United States who applied for a job with Defendants for whom a
21 background check was performed at any time during the period beginning five years prior
to the filing of this action and ending on the date that final judgment is entered in this
action.

22 14. **Revisions to Proposed Class Definitions:** Plaintiff reserves the right to amend or
23 modify the class definitions by further division into subclasses and/or by limitation to particular issues
24 and/or to exclude improper constituents as may subsequently prove necessary.

25 15. **Numerosity:** The class members are so numerous that the individual joinder of each
26 individual class member is impractical. While Plaintiff does not currently know the exact number of
27 class members, Plaintiff is informed and believes that the actual number exceeds the minimum required
28 for numerosity under federal law.

1 16. **Commonality and Predominance:** Common questions of law and fact exist as to all
2 class members and predominate over any questions that affect only individual class members. These
3 questions include, but are not limited to:

- 4 i. Whether Defendants willfully failed to provide the class with clear and conspicuous,
5 stand-alone written disclosures before obtaining a background report in compliance with
6 the statutory mandates;
- 7 ii. Whether Defendants willfully failed to identify the name, address, telephone number,
8 and/or website of the consumer reporting agency conducting the investigation;
- 9 iii. Whether Defendants willfully failed to identify the source of the consumer report to be
10 performed; and
- 11 iv. Whether Defendants willfully failed to comply with the FCRA.

12 17. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff is
13 informed and believes and thereon alleges that Defendants have a policy, practice, or a lack of a policy
14 which resulted in Defendants failing to comply with the FCRA as alleged herein.

15 18. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that
16 she has no interests that are adverse to, or otherwise in conflict with, the interests of absent class
17 members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of class members.
18 Plaintiff will fairly and adequately represent and protect the interests of class members.

19 19. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they
20 have no known conflicts of interest with Plaintiff or absent class members, are experienced in class
21 action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent
22 class members.

23 20. **Superiority:** A class action is vastly superior to other available means for fair and
24 efficient adjudication of class members' claims and would be beneficial to the parties and the Court.
25 Class-action treatment will allow a number of similarly situated persons to simultaneously and
26 efficiently prosecute their common claims in a single forum without the unnecessary duplication of
27 effort and expense that numerous individual actions would entail. In addition, the monetary amounts due
28 to many individual class members are likely to be relatively small and would thus make it difficult, if

1 not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will
2 serve an important public interest by permitting class members to effectively pursue the recovery of
3 monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory
4 judgments inherent in individual litigation.

5 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

6 21. The disclosure requirement at issue, 15 U.S.C. section 1681b(b)(2)(A)(i), creates a right
7 to information by requiring prospective employers to inform job applicants that they intend to procure
8 their consumer reports as part of the employment application process. The authorization requirement,
9 Section 1681b(b)(2)(A)(ii), creates a right to privacy by enabling applicants to withhold permission to
10 obtain the report from the prospective employer, and a concrete injury when applicants are deprived of
11 their ability to meaningfully authorize the background check.

12 22. By failing to provide a clear and conspicuous disclosure and/or a disclosure that consists
13 solely of the disclosure, Defendants have created informational injuries with their failure to comply with
14 the FCRA.

15 23. Accordingly, Plaintiff discovered Defendant UPS's violation(s) within the last two years
16 when she obtained and reviewed her personnel file from Defendant UPS and discovered that Defendant
17 UPS had procured and/or caused to be procured a 'consumer report' regarding her for employment
18 purposes without furnishing a compliant disclosure that consisted solely of the disclosure and obtaining
19 written authorization from Plaintiff prior to procuring a background check report on Plaintiff.

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF THE FCRA**

22 **(15 U.S.C. §§ 1681b(b)(2)(A))**

23 **(By Plaintiff and the FCRA Class Against All Defendants)**

24 24. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 25. Defendants are "persons" as defined by § 1681a(b) of the FCRA.

26 26. Plaintiff and **FCRA Class** members are "consumers" within the meaning of § 1681a(c)
27 of the FCRA, because they are individuals.

28 27. Section 1681a(d)(1) of the FCRA defines "consumer report" as

1 any written, oral, or other communication of any information by a consumer reporting
2 agency bearing on a consumer's credit worthiness, credit standing, credit capacity,
3 character, general reputation, personal characteristics, or mode of living which is used or
expected to be used or collected in whole or in part for the purpose of serving as a factor
in establishing the consumer's eligibility...for employment purposes.

4 As defined, a credit or background report qualifies as a consumer report.

5 28. Section 1681b(b) of the FCRA provides, in relevant part:

6 Conditions for furnishing and using consumer reports for employment purposes

7 (b) Conditions for furnishing and using consumer reports for employment purposes

8 ...[¶]...

(2) Disclosure to consumer

9 (A) In general

10 Except as provided in subparagraph (B), a person may not procure a consumer
11 report, or cause a consumer report to be procured, for employment purposes with
respect to any consumer, unless-

12 (i) a *clear and conspicuous* disclosure has been made in writing to the
13 consumer at any time before the report is procured or caused to be
procured, in a document that *consists solely of the disclosure*, that a
14 consumer report may be obtained for employment purposes; and

15 (ii) the consumer has authorized in writing (which authorization may be
made on the document referred to in clause (i)) the procurement of the
16 report by that person.

17 (Emphasis added.)

18 29. Section 1681b(b)(2)(A)(i) requires that a clear and conspicuous disclosure be made in
19 writing.

20 30. As described above, Plaintiff alleges, on information and belief, that in evaluating her
21 and other class members for employment, Defendants procured or caused to be prepared credit and
22 background reports (i.e., a consumer report and/or investigative consumer report, as defined by 15
23 U.S.C. § 1681a(d)(1)(B) and 15 U.S.C. § 1681a(e)).

24 31. Under the FCRA, it is unlawful to procure or caused to be procured a consumer report or
25 investigative consumer report for employment purposes unless the disclosure is made in a document that
26 consists solely of the disclosure and the consumer has authorized, in writing, the procurement of the
27 report. 15 U.S.C. § 1681b(b)(2)(A)(i)–(ii). Lack of disclosure, therefore, violates § 1681b(b)(2)(A) of
28 the FCRA.

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- F. Injunctive relief;
- G. Costs of suit;
- H. Interest;
- I. Reasonable attorneys' fees; and
- J. Such other relief as the Court deems just and proper or as authorized by statute.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of Plaintiff and all others similarly situated, hereby demands a jury trial on all issues so triable.

DATED: December 27, 2021

SETAREH LAW GROUP

/s/ Shaun Setareh

SHAUN SETAREH
WILLIAM M. PAO
NOLAN DILTS
Attorneys for Plaintiff
BRITTANY WYNN

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

BRITTANY WYNN, on behalf of herself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff Los Angeles, CA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Setareh Law Group, 9665 Wilshire Suite 430, Beverly Hills, CA 90212, (310) 888-7771

DEFENDANTS

UNITED PARCEL SERVICE, INC., an Ohio corporation; and Does 1 through 50, inclusive,

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, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Real Property, Labor, etc.

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, 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. §§ 1681b(2)(A)
Brief description of cause: Violation of Fair Credit Reporting Act

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 SIGNATURE OF ATTORNEY OF RECORD

December 28, 2021 /s/ Shaun Setareh

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.
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: [Lawsuit Claims UPS Failed to Provide Disclosures, Obtain Authorization for Job Applicant Background Checks](#)
