



UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA MIAMI-DADE DIVISION

RAFAEL ERNESTO CONDE,
Plaintiff
v.
CHECKR, INC.,
Defendant

Case No.:
COMPLAINT AND
DEMAND FOR JURY TRIAL
1. FCRA, 15 U.S.C.
§1681 et seq.

COMPLAINT

Rafael Ernesto Conde (“Plaintiff” or “Mr. Conde”), by and through his counsel, brings the following Complaint against Checkr, Inc. (“Checkr” or “Defendant”) for violations of the federal Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681, et seq., arising out of an employment background check report that Defendant published to Plaintiff’s potential employer, which falsely portrayed Plaintiff as a convicted violent felon and serial drug offender.

INTRODUCTION

1. This is an individual action for damages costs, and attorney’s fees brought against Defendant pursuant to the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, et seq. (“FCRA”).
2. Checkr is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. It sells consumer reports generated from its database and



furnishes these consumer reports to employers who use the reports to make decisions regarding whether to offer employment to certain consumers.

3. Checkr falsely reported to Plaintiff's prospective employer that Plaintiff was convicted of felony possession of methamphetamine and firearms and misdemeanor possession of drug related objects. Defendant's reporting is grossly inaccurate and untrue.

4. Plaintiff has never been charged with a crime in his life, let alone a violent or drug related crime.

5. Plaintiff's prospective employer denied Plaintiff's job application after receiving an employment background check report from Defendant, which included the inaccurate felony and misdemeanor convictions, which do not belong to Plaintiff.

6. Defendant's inaccurate reporting could have easily been avoided had Defendant reviewed the widely available underlying public court records from Richmond County, Georgia regarding the felony and misdemeanor convictions prior to publishing Plaintiff's report to his prospective employer.

7. Had Defendant performed even a cursory review of the underlying public court records, it would have discovered that the criminal records belong to a different consumer who is wholly distinguishable from Plaintiff by their middle name and date of birth and even reside in a different part of the country from Plaintiff.

8. Defendant does not employ reasonable procedures to assure the maximum possible accuracy of the information it reports regarding consumers. Defendant's failure to employ reasonable procedures resulted in Plaintiff's report being grossly inaccurate.



9. Defendant committed these violations pursuant to its standard policies and practices, which harm innocent consumers seeking employment by prejudicing their prospective employers with inaccurate criminal record information.

10. Defendant's inaccurate report cost Plaintiff a good paying job and job security.

11. As a result of Defendant violations of the FCRA, Plaintiff has suffered a range of actual damages including, without limitation, loss of employment opportunities, wages, and benefits; loss of economic opportunities and positions and advancements in the future; loss of time and money trying to correct his background check report; damage to his reputation; loss of sleep; lasting psychological damage; loss of capacity for enjoyment of life; and emotional distress, including mental anguish, anxiety, fear, frustration, humiliation, embarrassment and crying.

12. As a result of Defendant conduct, action, and inaction, Plaintiff brings claims against Defendant for failing to follow reasonable procedures to assure maximum possible accuracy based on 15 U.S.C. § 1681e(b) of the FCRA.

PARTIES

13. Plaintiff is a natural person residing in Miami, Florida, and is a "consumer" as that term is defined in 15 U.S.C. § 1681a(c).

14. Checkr is a Delaware corporation doing business throughout the United States, including the State of Florida and in this District, and has a principal place of business located at 1 Montgomery Street, Suite 2400 San Francisco, CA 94104.



15. Defendant can be served through its registered agent in Florida, Incorp Services, Inc. located at 3458 Lakeshore Drive, Tallahassee, FL 32312

16. Among other things, Defendant sells background checks to employers for their use in deciding whether to offer employment to prospective employees or to take adverse action such as termination, failure to hire, or failure to promote. These reports are provided in connection with a business transaction initiated by the employer.

17. Defendant is a consumer reporting agency as defined in 15 U.S.C. § 1681a(f) because for monetary fees, it regularly engages in the practice of evaluating and/or assembling information on consumers for the purpose of furnishing consumer reports for employment purposes to third parties, and uses interstate commerce, including the Internet, for the purpose of preparing and furnishing such consumer reports.

JURISDICTION AND VENUE

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

19. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) (2) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

STATUTORY BACKGROUND

20. Enacted in 1970, the FCRA's passage was driven in part by two related concerns: first, that consumer reports were playing a central role in people's lives at crucial



moments, such as when they applied for a job or credit, and when they applied for housing. Second, despite their importance, consumer reports were unregulated and had widespread errors and inaccuracies.

21. While recognizing that consumer reports play an important role in the economy, Congress wanted consumer reports to be “fair and equitable to the consumer” and to ensure “the confidentiality, accuracy, relevancy, and proper utilization” of consumer reports. 15 U.S.C. §1681.

22. Congress, concerned about inaccuracies in consumer reports, specifically required consumer reporting agencies to follow “reasonable procedures to assure maximum possible accuracy” in consumer reports. 15 U.S.C. §1681e(b).

23. Consumer reports that contain factually incorrect information which does not belong to the consumer at issue are neither maximally accurate nor fair to the consumers who are the subjects of such reports.

THE FCRA’S PROTECTIONS FOR JOB APPLICANTS

24. Despite its name, the Fair Credit Reporting Act covers more than just credit reporting, it also regulates employment background check reports like the ones Defendant prepared in Plaintiff’s name.

25. The FCRA provides a number of protections for job applicants who are the subject of background checks for purposes of securing employment, housing, and other purposes.

26. In the parlance of the FCRA, background checks are “consumer reports,” and



providers of background checks, like Defendant, are “consumer reporting agencies.” 15 U.S.C. §§1681a(d) and (f).

27. The FCRA imposes duties on consumer reporting agencies to assure that consumer reports are accurate and 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. §1681.

28. Under 15 U.S.C. §1681e(b), consumer reporting agencies are required “to follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.”

29. Defendant disregarded their duties under the FCRA with respect to Plaintiff’s background check report.

DEFENDANT’S ILLEGAL BUSINESS PRACTICES

30. Over the past 15 years, there has been increased collection and aggregation of consumer data, including criminal records and sex offender registration data. As a result of the increasing availability of this data, there has been a boom in the background check industry.

31. As summarized in a recent report by the Consumer Financial Protection Bureau¹, a 2018 survey of employers found that 95 percent of employers surveyed conducted one or more types of background screening. CFPB Report at 4.

¹ CFPB, Market Snapshot: Background Screening Reports (Oct. 2019), https://fiels.consumerfinance.gov/f/documents/201909_cfpb_market-snapsho-backgroundscreening_report.pdf (“CFPB Report”).



32. The criminal background check industry takes in revenues in excess of three billion dollars, annually.²

33. Criminal background checks are generally created by running automated searches through giant databases of aggregated criminal record data. The reports are created and disseminated with little to no manual, in-person review, and the underlying court records are rarely directly reviewed in creating criminal background checks.

34. Background check companies, like Defendant, collect millions of criminal records from a number of sources with data from county, state, and federal level sources. The data included on the reports is often not obtained directly from court records on an individual basis but instead is purchased in bulk or scraped from court websites.

35. Given that Defendant is in the business of selling background checks, Defendant should be well aware of the FCRA and the attendant harm to consumers for reporting inaccurate or outdated information.

36. Defendant placed their business interests above the rights of consumers and reports such inaccurate information because it is cheaper for Defendant to produce reports containing information that is inaccurate and incomplete than it is for Defendant to exert proper quality control over the reports prior to their being provided to Defendant's customers.

37. Defendant reports such erroneous and incomplete information because it wants to maximize the automation of its report creation process, thereby saving the costs

² IBISWorld, Inc., Background Check Services in the US: Report Snapshot, available at <http://www.ibisworld.com/industry/background-check-services.html>.



associated with conducting the additional review necessary to remove the inaccurate or out-of-date entries.

38. Defendant charged their customers the same price for reports that are grossly inaccurate as it does for accurate reports.

39. Appropriate quality control review of Plaintiff's report would have made clear that Defendant was reporting misdemeanor and felony convictions that belong to an unrelated consumer who has a different middle name and date of birth than Plaintiff.

40. As a provider of background check reports, Defendant should be aware of the FCRA requirements and are both likely a member of the Professional Background Screening Association ("PBSA"). PBSA hosts a conference at least once a year where presenters discuss compliance with federal and state consumer reporting laws.

FACTS

Plaintiff Applies for a Job with Uber

41. Plaintiff was struggling to find work to be able to support himself and his family, including his three children.

42. Plaintiff desperately needed to supplement his income from his real estate agent work, in order to be able to provide for his family.

43. In or around January 2023, Plaintiff, applied to be an Uber driver.

44. In order to work for Uber, Plaintiff was required to undergo a background check before he could begin working.



Checkr Published an Inaccurate Report to Uber

45. Uber contracted with Checkr to conduct background checks, including criminal background checks, on its prospective employees.

46. On or about January 18, 2023, in accordance with its standard procedures, Checkr completed its employment report about Plaintiff and sold the same to Uber.

47. On or about January 18, 2023, Checkr emailed Plaintiff indicating that it had verified Plaintiff possessed a valid class E driver license.

48. However, on or about January 20, 2023, Checkr emailed Plaintiff indicating that on Plaintiff's background report Checkr was reporting adverse information to Uber.

49. Checkr's email included a copy of the background report and within that report, Checkr published inaccurate information about Plaintiff.

50. Specifically, Checkr's report included several grossly inaccurate and stigmatizing violent and drug related felony and misdemeanor convictions from Richmond County, Georgia.

51. The inaccurate information appeared on the employment report as follows:



County Searches		Checkr
Richmond, GA		Checkr
POSSESSION OF METHAMPHETAMINE		Dec 26, 2020
Case Number	2021RCCR00642	
File Date	Apr 9, 2021	
Court Jurisdiction	RICHMOND COUNTY SUPERIOR COURT	
County	RICHMOND	
State	GA	
Full Name	Rafael Ernesto Conde	
DOB	Mar 4, 1977	
Charge	POSSESSION OF METHAMPHETAMINE	
Charge Type	FELONY	
Disposition	GUILTY	
Disposition Date	Sep 2, 2022	
Offense Date	Dec 26, 2020	
Sentenced to	3 Year(s)	
Probation Time		
Other Sentencing Info	3 YEARS PROBATION;	
Charge	POSSESSION AND USE OF DRUG RELATED OBJECTS	
Charge Type	MISDEMEANDR	
Disposition	GUILTY	
Disposition Date	Sep 2, 2022	
Offense Date	Dec 26, 2020	
Sentenced to	12 Month(s)	
Probation Time		
Other Sentencing Info	12 MONTHS PROBATION;	
POSSESSION OF SAWED-OFF SHOTGUN		Nov 14, 2017
Case Number	2018RCCR00037	
File Date	Jan 9, 2018	
Court Jurisdiction	RICHMOND COUNTY STATE COURT	
County	RICHMOND	
State	GA	
Full Name	Rafael Ernesto Conde	
DOB	Mar 4, 1977	
Charge	POSSESSION OF SAWED-OFF SHOTGUN	
Charge Type	FELONY	
Disposition	GUILTY	
Disposition Date	Jun 8, 2018	
Offense Date	Nov 14, 2017	
Sentenced to	5 Year(s)	
Probation Time		
Other Sentencing Info	5 YEARS PRISON;	
Charge	CRIMINAL USE OF ARTICLE WITH ALTERED ID MARK	
Charge Type	FELONY	
Disposition	GUILTY	
Disposition Date	Jun 8, 2018	
Offense Date	Nov 14, 2017	
Sentenced to	3 Year(s)	
Probation Time		
Other Sentencing Info	3 YEARS PRISON;	
Charge	POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE	
Charge Type	FELONY	
Disposition	GUILTY	
Disposition Date	Jun 8, 2018	
Offense Date	Nov 14, 2017	
Sentenced to	5 Year(s)	
Probation Time		
Other Sentencing Info	5 YEARS PRISON;	
Charge	POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA	
Charge Type	FELONY	
Disposition	GUILTY	
Disposition Date	Jun 8, 2018	
Offense Date	Nov 14, 2017	
Sentenced to	3 Year(s)	
Probation Time		
Other Sentencing Info	3 YEARS PRISON;	
Charge	POSSESSION OF A FIREARM DURING THE COMMISSION OF A CRIME	
Charge Type	FELONY	
Disposition	GUILTY	
Disposition Date	Jun 8, 2018	
Offense Date	Nov 14, 2017	
Sentenced to	5 Year(s)	
Probation Time		
Other Sentencing Info	5 YEARS PROBATION;	
Charge	POSSESSION OF A FIREARM BY A CONVICTED FELON	
Charge Type	FELONY	
Disposition	GUILTY	
Disposition Date	Jun 8, 2018	
Offense Date	Nov 14, 2017	
Sentenced to	3 Year(s)	
Probation Time		
Other Sentencing Info	3 YEARS PRISON;	

52. The criminal convictions reported by Checkr about Plaintiff to Uber do not

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belong to Plaintiff.

53. Plaintiff has never been charged with or convicted of a felony or misdemeanor drug or gun crime in his life.

54. A cursory review of the widely available underlying public court records confirms that the records belong to a different person (“Convicted Felon”).

55. Had Checkr actually consulted or obtained the online widely available underlying public court records regarding the two criminal cases, it would have seen obvious discrepancies between Convicted Felon and Plaintiff

56. The discrepancies that should have caused Checkr to realize Plaintiff is not the same person as Convicted Felon include the following:

(a) Plaintiff’s legal name is “Rafael Ernesto Conde” and Convicted Felon’s is “Rafael Junito Conde”;

(b) Plaintiff’s date of birth, which was provided to Checkr prior to Checkr publishing the report, is March 4, 1977, yet the underlying public court records indicate that Convicted Felon’s date of birth is March 1977 (with no direct matching of day of birth);

(c) Plaintiff has only ever resided in Florida, which is confirmed and clearly indicated on the face of the subject employment report, yet the underlying public court records regarding the two criminal convictions indicate that Convicted Felon resided in Richmond County, Georgia at the time he committed the offenses; and,

(d) Plaintiff’s Social Security number, which was provided to Checkr is



contained on the face of the subject employment report is entirely different than that of Convicted Felon;

(e) Plaintiff's picture on his driver license, which was provided by Uber to Checkr, is evidently not the likeness of Convicted Felon.

57. The sole reason the inaccurate criminal records were reported as belonging to Plaintiff was that Checkr failed to follow reasonable procedures to assure the maximum possible accuracy of the information it published within the employment report it sold about Plaintiff to Plaintiff's prospective employer.

58. Had Checkr followed reasonable procedures, it would have discovered that the inaccurate, stigmatizing criminal convictions belong to an unrelated individual with a different middle name than Plaintiff, a different date of birth, a different Social Security Number, who resides in a different part of the country than Plaintiff, and who evidently looks very different on the inmate records picture compared to Plaintiff's driver license.

59. In preparing and selling a consumer report about Plaintiff, wherein Checkr published to Plaintiff's prospective employer inaccurate information about Plaintiff, Checkr failed to follow reasonable procedures to assure that the report was as accurate as maximally possible, in violation of 15 U.S.C. §1681e(b).

Uber Denies Plaintiff's Job Application

60. On or about January 18, 2023, Plaintiff was notified by Uber that they had received the background report from Checkr.

61. Shortly thereafter, Plaintiff was alerted his employment application was denied as a direct result of the inaccurate felony and misdemeanor convictions reported by Checkr.



62. On or about January 20, 2023, Plaintiff obtained a copy of the subject employment report and was shocked, humiliated, and frustrated upon reviewing and realizing that Checkr was publishing the serious criminal convictions of Convicted Felon as Plaintiff's, in the report Checkr sold to Uber.

63. Plaintiff was very panicked, confused, frustrated, and concerned about the impact of Convicted Felon's serious criminal convictions reported on the subject employment report was having and would continue to have on his life.

64. Specifically, Checkr matched Plaintiff with Convicted Felon and published the criminal records of Convicted Felon onto the report about Plaintiff and then sold that report to Uber. This exculpatory public record information was widely available to Checkr prior to publishing Plaintiff's employment report to Uber, but Checkr failed to perform even a cursory review of such information.

Plaintiff Disputed the Misinformation in Checkr's Employment Report

65. On or about January 20, 2022 after receiving Uber's denial, desperate to secure employment with Uber and riddled with worry over the far-reaching impacts of being confused with a convicted felon, Plaintiff disputed the inaccurate information with Checkr through email.

66. Plaintiff identified himself and provided information to Checkr to support his dispute.

67. Plaintiff specifically disputed the criminal records of Convicted Felon.



68. Plaintiff specifically stated that the criminal records do not belong to Plaintiff.

69. Plaintiff specifically asked Checkr to investigate and delete the criminal records from any employment report about Plaintiff.

70. On February 14, Plaintiff received Checkr's correspondence confirming that it had removed the criminal records from Plaintiff's report following the reinvestigation prompted by Plaintiff's dispute.

Plaintiff has suffered Damages as a result of Defendant's Inaccurate Reporting

71. Due to Checkr's unreasonable procedures in the first place and despite Plaintiff's continued efforts to seek employment, Plaintiff has been unable to find the type of work he needs to supplement his income.

72. The injuries suffered by Plaintiff as a direct result of Checkr's erroneous reporting are the type of injuries that the FCRA was enacted to address. Under common law, Defendant's conduct would have given rise to causes of action based on defamation and invasion of privacy.

73. As a result of Checkr's violations of the FCRA, Plaintiff has suffered a range of actual damages including, without limitation, loss of employment opportunities, wages, and benefits; loss of economic opportunities and positions and advancements in the future; loss of time and money trying to correct his background check report; damage to his reputation; loss of sleep; lasting psychological damage; loss of capacity for enjoyment of life; and emotional distress, including mental anguish, anxiety, fear, frustration,



humiliation, embarrassment and crying.

CLAIMS FOR RELIEF

COUNT I

15 U.S.C. §1681e(b)

Checkr's Failure to Follow Reasonable Procedures to Assure Maximum Possible Accuracy

74. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully stated herein.

75. Defendant is a “consumer reporting agency” as defined by 15 U.S.C. §1681a(f).

76. At all times pertinent hereto, Plaintiff was a “consumer” as that term is defined by 15 U.S.C. §1681a(c).

77. At all times pertinent hereto, the above-mentioned employment report was a “consumer report” as that term is defined by 15 U.S.C. §1681a(d).

78. 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 employment report it sold about Plaintiff as well as the information it published within the same.

79. As a result of Defendant’s violations of the FCRA, Plaintiff has suffered a range of actual damages including, without limitation, loss of employment opportunities, wages, and benefits; loss of economic opportunities and positions and advancements in the



future; loss of time and money trying to correct his background check report; damage to his reputation; loss of sleep; lasting psychological damage; loss of capacity for enjoyment of life; and emotional distress, including mental anguish, anxiety, fear, frustration, humiliation, embarrassment and crying.

80. Defendant willfully violated 15 U.S.C. §1681e(b) in that its conduct, actions, and inactions were willful, rendering them liable for actual or statutory damages, and punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. §1681n. Alternatively, Defendant negligent, entitling Plaintiff to recover under 15 U.S.C. §1681o.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- i. Determining that Defendant negligently and/or willfully violated the FCRA;
- ii. Awarding Plaintiff actual, statutory, and punitive damages as provided by the FCRA;
- iii. Awarding Plaintiff reasonable attorneys' fees and costs as provided by the FCRA; and,
- iv. Granting further relief, in law or equity, as this Court may deem appropriate and just.



DEMAND FOR JURY TRIAL

Plaintiff is entitled to and hereby demands a trial by jury on all issues so triable.

Dated: March 1, 2023.

/s/ Santiago J Teran Santiago J
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CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2023, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which will send notice of such filing to all attorneys of record in this matter. Since none of the attorneys of record are non-ECF participants, hard copies of the foregoing have not been provided via personal delivery or by postal mail.

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