



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

RAFAEL CONDE,
Plaintiff,
v.
HIRERIGHT LLC,
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 Hireright LLC. (“Hireright” 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. HireRight 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. HireRight falsely reported to Plaintiff's prospective employer that Plaintiff was convicted of felony robbery and burglary. 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 burglary and robbery 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 Wayne 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. HireRight 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 100 Centerview Drive, Suite 300, Nashville, TX 37214.

15. Defendant can be served through its registered agent in Florida, Legalinc Corporate Services Inc., located at 476 Riverside Ave., Jacksonville, FL 32202

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.

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.

¹ CFPB, Market Snapshot: Background Screening Reports (Oct. 2019), https://files.consumerfinance.gov/f/documents/201909_cfpb_market-snapsho-background_screening_report.pdf (“CFPB Report”). ² IBISWorld, Inc., Background Check Services in the US: Report Snapshot, available at <http://www.ibisworld.com/industry/background-check-services.html>.



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 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 is Offered a Job with Ingram Micro

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 increase his income as his real estate agent work was insufficient to be able to provide for his family.

43. In or around early August 2022, Plaintiff applied for the position of Sales Associate with Ingram Micro.

44. On or about August 9, 2022, Plaintiff was elated to find that he was offered a full-time employment position as a Sales Professional with non-party Ingram Micro, located in Miami, Florida.

45. The job offer from Ingram Micro was conditioned upon Plaintiff completing an interview and passing both a drug test and a background check before he could begin working.

46. Upon accepting Ingram Micro's offer, Plaintiff successfully completed an interview and passed a drug test.

HireRight Published an Inaccurate Report to Ingram Micro

47. Ingram Micro contracted with HireRight to conduct background checks, including criminal background checks, on its prospective employees.



48. On or about August 9, 2022, Ingram Micro ordered a criminal background check on Plaintiff from HireRight.

49. On or about August 15, 2022, in accordance with its standard procedures, HireRight completed its employment report about Plaintiff and sold the same to Ingram Micro.

50. Within that employment report, HireRight published inaccurate information about Plaintiff.

51. Specifically, HireRight's report included two grossly inaccurate and stigmatizing violent gun felony convictions from Wayne County, Georgia.

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



5. Criminal & Offense History (Past 7 Years Search)

Complete - Court Record Found

Conde, Rafael Ernesto

Address(es): Wayne County, GA, USA

Location Searched: Wayne County, GA

Time Completed: Aug 15, 2022 12:10 PM PDT

Verified by: QA-84284

HireRight Comments: Aug 9, 2022 3:45 PM PDT - Note:

-----Reason: Wayne County, GA - Average court turnaround time is currently 4 business days.

Aug 9, 2022 5:28 PM PDT - Delay: 09-Aug-2022, 17:28

-----Email notification sent to requestor.

-----Reason: Additional research with the court is needed to complete this request. Estimated completion date of this search is 08/12/2022.

Aug 12, 2022 4:39 AM PDT - PR61977 - Delay:

-----Email notification sent to requestor: <Sara.Trzepakowski@ingrammicro.com>

-----CC address: <Sara.Trzepakowski@ingrammicro.com>

-----Reason: Search in Progress

-----Estimated Completion Date: 19-Aug-2022

Aug 15, 2022 10:53 AM PDT - Rangaiah, Bharath Chanapattana - Delay:

-----Email notification sent to requestor: <Sara.Trzepakowski@ingrammicro.com>

-----Reason: Additional Research is Required to Complete This Request

-----Estimated Completion Date:22-Aug-2022

1.) Case 2005-SU-CR-287

Nbr.:

Comments:

Identifiers: Confirmation: Name, Date Of Birth. NAME ON FILE (CONDE, RAFAEL);

Count: 1

Severity:

Felony (Or Equivalent) Felony

Offense Jul 26, 2005

Disp. Date:

Nov 7, 2005

Date:

Offense: Burglary.

Disposition:Guilty

Sentence: 3 years prison; 80 hours community service; 7 years probation; \$1,470.00 fine; \$120.00 costs; ; all information reported according to pat; statute: 16-7-1; found in: wayne, ga - superior court

2.) Case 2014-SU-CR-44

Nbr.:

Comments:

Identifiers: Confirmation: Name, Date Of Birth. NAME ON FILE (CONDE, RAFAEL);

Count: 1

Severity:

Felony (Or Equivalent) Felony

Offense Jan 9, 2013

Disp. Date:

Aug 7, 2014

Date:

Offense: Robbery

Disposition:Guilty

Sentence: 11 months jail; 15 years probation; \$1,500.00 fine; \$919.00 restitution; ; all information reported according to pat; statute: 16-8-40; found in: wayne, ga - superior court

53. The criminal convictions reported by HireRight about Plaintiff to Ingram Micro do not belong to Plaintiff.

54. Plaintiff has never been charged with or convicted of a felony or misdemeanor in his life.



55. A cursory review of the widely available underlying public court records confirms that the records belong to an unrelated male, Rafael Junito Conde (“Convicted Felon”).

56. Had HireRight actually consulted or obtained the widely available underlying public court records regarding the two convictions, it would have seen obvious discrepancies between Convicted Felon and Plaintiff.

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

(a) Plaintiff’s legal name is “Rafael Ernesto Conde” (different middle name) and the criminal records belong to a “Rafael Junito Conde,” which is both clearly indicated on the face of the employment report and in the widely available public records from Wayne County, Georgia;

(b) Plaintiff’s date of birth, which was provided to HireRight prior to HireRight publishing the subject report, is March 4, 1977, yet the underlying public court records indicate that Convicted’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 HireRight is contained on the face of the subject employment report is entirely different than that of Convicted Felon.

58. The sole reason the inaccurate criminal records were reported as belonging to Plaintiff was that HireRight 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.

59. Had HireRight 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, and who resides in a different part of the country than Plaintiff.

60. In preparing and selling a consumer report about Plaintiff, wherein HireRight published to Plaintiff's prospective employer inaccurate information about Plaintiff, HireRight 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).

Plaintiff Disputes the Inaccurate in HireRight's Report

61. On or about August 12, 2022 Plaintiff received notice that Ingram Micro was considering taking adverse action regarding his employment. Ingram Micro based its position on HireRight's report—inaccurately—showing that Plaintiff has been convicted of felony burglary and robbery in Wayne County, GA, back in 2005 and 2013 respectively.



62. Plaintiff was shocked and humiliated upon learning that HireRight was serious criminal convictions as Plaintiff's, in the report HireRight sold to Ingram Micro.

63. Desperate to retain his offer of employment with Ingram Micro and riddled with worry over the far-reaching impacts of being confused with a convicted felon, on or about August 19, Plaintiff disputed the inaccurate information with HireRight.

64. Plaintiff identified himself and provided information to HireRight to support his dispute.

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

66. Plaintiff specifically stated that the criminal records of Convicted Felon do not belong to Plaintiff.

67. Plaintiff informed HireRight that he has never lived in Georgia, that he is not Convicted Felon, that he has a different middle name, that he has a different social security number and date of birth from that of Convicted Felon.

68. Plaintiff specifically asked HireRight to investigate and delete Convicted Felon's criminal records from any employment report about Plaintiff.

Ingram Micro Denies Plaintiff's Job Application

69. On or about August 29, 2022, Plaintiff was first notified by Ingram Micro that his employment offer was rescinded as a direct result of the felony convictions inaccurately reported by HireRight.



70. Plaintiff was devastated upon realizing that the serious criminal convictions of someone else, caused Ingram Micro to rescind Plaintiff's offer of employment.

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

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

HireRight Removes the Inaccurate Information Following Plaintiff's Dispute

73. About two weeks after he disputed HireRight's inaccurate reporting, Plaintiff received HireRight's correspondence confirming that it had reinvestigated Plaintiff's dispute and removed the criminal records from the subject employment report.

74. HireRight also communicated to Plaintiff that it had issued a corrected employment report to Ingram Micro.

75. However, by that time, Ingram Micro had already rescinded their offer of employment.

76. Plaintiff continued to follow up with Ingram Micro in the hopes that the job offer would be reinstated, however, Ingram Micro had fully rescinded the job offer and did not renew its job offer to Plaintiff.



77. Plaintiff reasonably believes that due to HireRight's inaccurate reporting in the first instance, Ingram Micro formed a negative opinion about Plaintiff and/or moved on to other candidates.

78. HireRight's false report cost Plaintiff a promising, well-paying job with Ingram Micro.

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

79. Due to HireRight'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 make a living income for him and his family.

80. The injuries suffered by Plaintiff as a direct result of HireRight'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.

81. As a result of HireRight'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 17/20 of life; and emotional distress, including mental anguish, anxiety, fear, frustration, humiliation, and embarrassment.



CLAIMS FOR RELIEF

COUNT I

15 U.S.C. §1681e(b)

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

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

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

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

85. 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).

85. 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).

86. 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.

87. 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, and embarrassment.

88. 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.

89. 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
Teran (FL Bar No. 1018985)
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Attorney for Plaintiff Rafael Conde



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.

20/20

