

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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)
UNITED STATES OF AMERICA,)
Plaintiff,)
)
v.)
)
QUALITY TERMINAL SERVICES, LLC,	Civil Action No.)
a limited liability company,)
Defendant.)
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**COMPLAINT FOR CIVIL PENALTIES,
INJUNCTIVE AND OTHER EQUITABLE RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“FTC” or “Commission”), for its Complaint alleges that:

1. Plaintiff brings this action under Sections 5(a), 13(b), and 16(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), and 56(a), and Section 621(a) of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681s(a), to obtain monetary civil penalties and injunctive and other equitable relief from Defendant for engaging in acts or practices violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FCRA, 15 U.S.C. §§ 1681-1681x.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355 and under 15 U.S.C. §§ 45(a), 53(b), 56(a), and 1681s.

3. Venue in the District of Colorado is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b)-(c) and 1395(a).

DEFENDANT

4. Defendant Quality Terminal Services, LLC (“QTS”) is a Colorado limited liability company, with its principal place of business at 252 Clayton Street, Fourth Floor, Denver, Colorado 80206. QTS transacts or has transacted business in this district.

THE FAIR CREDIT REPORTING ACT

5. The FCRA was enacted in 1970, became effective on April 25, 1971, and has been in force since that date.

6. Section 621 of the FCRA, 15 U.S.C. § 1681s, authorizes the Commission to use all of its functions and powers under the FTC Act to enforce compliance with the FCRA by all persons subject thereto except to the extent that enforcement specifically is committed to some other governmental agency, irrespective of whether the person is engaged in commerce or meets any other jurisdictional tests set forth by the FTC Act.

7. Under Sections 604(b)(3) and 615(a) of the FCRA, 15 U.S.C. §§ 1681b(b)(3) and 1681m(a), any person who uses an individual’s consumer report for “employment purposes” and, based in whole or in part on the report, takes “adverse action” with respect to that individual, must send notices to the individual, both before and after taking the adverse action, that include certain specified information and documents.

8. The term “adverse action” is defined by Section 603(k) of the FCRA, 15 U.S.C.

§ 1681a(k), to include, *inter alia*, “a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.” Under Section 603(h) of the FCRA, 15 U.S.C. § 1681a(h), the term “employment purposes” means “for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.”

9. Pursuant to Section 604(b)(3) of the FCRA, 15 U.S.C. § 1681b(b)(3), the notice provided to the individual prior to the adverse action (“pre-adverse action notice”) must include copies of (1) the consumer report upon which the decision is based, and (2) the Summary of Consumer Rights Under the FCRA, 16 C.F.R. Part 698, Appendix F. Pursuant to Section 615(a) of the FCRA, 15 U.S.C. § 1681m(a), the notice provided to the individual after the adverse action (“adverse action notice”) must include (1) the name, address, and telephone number of the consumer reporting agency (“CRA”) that furnished the report; (2) a statement that the CRA did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; (3) notice of the consumer’s right to obtain a free copy of the report from the CRA upon request within 60 days; and (4) notice of the consumer’s right to dispute with the CRA the accuracy or completeness of information in the consumer report.

DEFENDANT’S BUSINESS PRACTICES

10. Defendant provides transportation services on a contract basis to certain railroads, including the Burlington Northern Santa Fe (“BNSF”) and Union Pacific (“UP”) Railroads. As part of these services, some of QTS’s employees work on the properties of BNSF and UP.

11. In March 2007, BNSF and UP began requiring QTS to obtain background checks on all of its employees and job applicants. Only individuals who pass the background check receive an ID badge, which is necessary to obtain admission onto the railroads’ properties.

12. To obtain the background checks, QTS contracted with e-Verifile.com, a consumer reporting agency that conducts background checks utilizing the “e-RAILSAFE” system. The e-RAILSAFE background checks include, among other things, a review of the applicant’s or employee’s criminal background records. These background checks are “consumer reports” within the meaning of Section 603(d) of the FCRA, 15 U.S.C. § 1681a(d).

13. The background checks obtained by QTS are used in determining whether to hire applicants or retain employees, and thus are consumer reports obtained for “employment purposes” within the meaning of Section 603(h) of the FCRA, 15 U.S.C. § 1681a(h).

14. Employees and job applicants who fail the background check are denied an ID badge and are fired (in the case of an employee) or not hired (in the case of an applicant). These actions are “adverse actions” within the meaning of Section 603(k) of the FCRA, 15 U.S.C. § 1681a(k).

15. From at least March 2007 through April 2008, QTS took adverse action against 53 job applicants by denying employment to them, based in whole or in part on information found in their background checks. In each of these cases, QTS failed to provide a pre-adverse action notice to the applicant, as is required by Section 604(b)(3) of the FCRA, 15 U.S.C. § 1681b(b)(3). In addition, in 42 of these cases, the adverse action notices that QTS provided to the applicants did not contain any of the information required by Section 615(a) of the FCRA, 15 U.S.C. § 1681m(a).

VIOLATIONS OF THE FCRA

COUNT I

16. As described in Paragraphs 10 through 15, from at least March 2007 until April

2008, QTS failed to provide pre-adverse action notices to approximately 53 job applicants as to whom QTS took adverse action based in whole or in part on the individuals' consumer reports, prior to taking the action.

17. By and through the acts and practices described in Paragraph 16, Defendant has violated Section 604(b)(3) of the FCRA, 15 U.S.C. § 1681b(b)(3).

COUNT II

18. As described in Paragraphs 10 through 15, from at least March 2007 until April 2008, QTS failed to provide adverse action notices to approximately 42 job applicants as to whom QTS took adverse action based in whole or in part on the individuals' consumer reports, after taking that action.

19. By and through the acts and practices described in Paragraph 18, Defendant has violated Section 615(a) of the FCRA, 15 U.S.C. § 1681m(a).

FTC ACT VIOLATION

20. Pursuant to Section 621(a) of the FCRA, 15 U.S.C. § 1681s(a), the acts and practices alleged in Paragraphs 16 through 19 also constitute unfair and deceptive acts or practices in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a).

THIS COURT'S POWER TO GRANT RELIEF

21. Section 621(a) of the FCRA, 15 U.S.C. § 621(a), authorizes the Court to award monetary civil penalties of not more than \$2,500 for each knowing violation of the FCRA that constitutes a pattern or practice of violations of the statute. Defendant's violations of Sections 604(b)(3) and 615(a) of the FCRA, 15 U.S.C. §§ 1681b(b)(3) and 1681m(a), as alleged in this Complaint, were knowing and constituted a pattern or practice of violations.

22. Each instance in which Defendant has failed to comply with Sections 604(b)(3) or 615(a) of the FCRA, 15 U.S.C. §§ 1681b(b)(3) and 1681m(a), constitutes a separate violation of the FCRA for the purpose of assessing monetary civil penalties.

23. Under Section 621(a) of the FCRA, 15 U.S.C. § 1681s(a), and Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction prohibiting Defendant from violating the FCRA and the FTC Act.

PRAYER FOR INJUNCTIVE AND MONETARY RELIEF

WHEREFORE, Plaintiff requests that this Court, pursuant to 15 U.S.C. §§ 45(a)(1), 53(b), 56(a), and 1681s, and pursuant to the Court's own equitable powers:

(1) Enter judgment against Defendant and in favor of Plaintiff for each violation charged in this Complaint;

(2) Award Plaintiff monetary civil penalties from Defendant for each violation of the FCRA alleged in this Complaint;

(3) Enter a permanent injunction to prevent future violations of the FCRA and the FTC Act by Defendant;

(4) Order Defendant to pay the costs of this action; and

(5) Award Plaintiff such other and additional relief as the Court may determine to be just and proper.

Dated:

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