

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

**T JASON NOYE,
individually and on behalf
of all others similarly situated,**

Plaintiff,

v.

YALE ASSOCIATES, INC.

Defendant.

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Case No. 15-

CLASS ACTION

Jury Trial Demanded

CLASS ACTION COMPLAINT

COMES NOW Plaintiff T Jason Noye, on behalf of himself and all others similarly situated, and files this Class Action Complaint against Yale Associates, Inc. (“Yale” or “Defendant”). Plaintiff alleges, based on personal knowledge as to Defendant’s actions and upon information and belief as to all other matters, as follows:

I. NATURE OF THE CASE

1. Plaintiff brings this action against Defendant for violations of the federal Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681a–1681x.

2. Defendant Yale operates a national database of public records and related employment histories as a nationwide consumer reporting agency (“CRA”). *See* <http://www.yaleassociates.com/>. Yale maintains an FCRA database to prepare and furnish consumer reports for employment and other purposes. Yale provided these consumer reports to prospective and existing employers of Plaintiff and members of the Class. Many of these employers and their agents refused to hire or took other adverse action against Plaintiff and other individuals based in whole or in part on the contents of the consumer reports.

3. Plaintiff brings nationwide class claims against Yale for failure to provide required FCRA notices to Plaintiff in violation of 15 U.S.C. § 1681k(a), and for maintaining a policy and practice of inaccurately reporting Pennsylvania summary offenses, a separate and less serious category of criminal offense, as misdemeanors.

4. The FCRA imposes upon Yale the obligation to maintain systems to ensure the maximum possible accuracy of the information that it puts into consumer reports. Since Yale failed to accurately report Plaintiff's criminal history, its system falls short of this requirement.

II. PARTIES

5. Plaintiff T Jason Noye is a "consumer" as protected and governed by the FCRA.

6. Defendant Yale is incorporated under the laws of the State of New York and sells its products and services throughout the United States, including within this District.

III. JURISDICTION AND VENUE

7. The Court has federal question jurisdiction under the FCRA, 15 U.S.C. § 1681p, and 28 U.S.C. § 1331.

8. Venue is proper in this Court because J&J, Kelly and Yale can be found in this District. 28 U.S.C. § 1391(b)(3). Defendants regularly sell their products and services in this District.

IV. FACTUAL ALLEGATIONS

A. Defendant Yale's Practices As A Consumer Reporting Agency And Furnisher Of Consumer Reports For Employment Purposes

9. Yale furnished consumer reports concerning Plaintiff to a prospective employer as part of the hiring process. During the FCRA statute-of-limitations period, Yale was a "consumer reporting agency" ("CRA") as defined by the FCRA.

10. During the FCRA statute-of-limitations period, Yale was regularly engaged in the business of assembling, evaluating, and disbursing public-record information concerning consumers for the purpose of furnishing consumer reports, as defined in 15 U.S.C. § 1681a(d), to third parties.

11. At all times relevant hereto, prospective employers—to whom Yale sold consumer reports about Class members for employment purposes—were each a “user” of those consumer reports and governed by the FCRA.

12. When a CRA such as Yale furnishes a consumer report for employment purposes, and compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer’s ability to obtain employment, the CRA, *at the time* the public record information is reported to the user of the consumer report, must notify the consumer of the fact that public record information is being reported by the CRA, together with the name and address of the person to whom such information is being reported. 15 U.S.C. § 1681k(a)(1).

13. Alternatively, a CRA is required to maintain strict procedures designed to insure that whenever public record information that is likely to have an adverse effect on a consumer’s ability to obtain employment is reported, that information is accurate, complete and up to date. 15 U.S.C. § 1681k(a)(2).

14. Defendant Yale does not maintain strict procedures to insure that its public records information sold to employers in background consumer reports is complete and up to date.

B. Summary Offenses in Pennsylvania

15. Pennsylvania statutory law maintains a classification system for criminal offenses whereby infractions are categorized as “felonies,” “misdemeanors,” and “summary offenses.” 18 P.S. § 106.

16. Summary offenses are graded lower than felonies or misdemeanors. Summary offenses are either defined by statute or provide for a maximum prison sentence of not more than 90 days. 18 P.S. § 106(c).

17. Summary offenses in Pennsylvania include a variety of minor infractions such as attaching a nail or tack to a utility pole,¹ littering,² and returning library books more than 30 days late.³ Common summary offenses include disorderly conduct, loitering and retail theft.

18. Often, summary offenses are issued for “quality of life” issues such as sitting on the steps of an abandoned house, riding a bike on the payment, or drinking a beer in public.

19. A defendant facing a summary offense that does not potentially carry a jail sentence does not have a right to a lawyer.

20. Each year, there are tens of thousands of convictions for summary offenses in Pennsylvania. In 2013, more than 23,000 citations were issued for summary offenses in Philadelphia alone.

¹ 18 Pa. C.S.A. § 6905.

² 18 Pa. C.S.A. § 6501.

³ 18 Pa. C.S.A. § 6708.

21. Summary offenses frequently are initiated by citation. Defendants often simply resolve such citations by paying them without even going to court.

22. Sentences of imprisonment for summary offenses are rare. Often sentences are limited to fines and costs.

23. Pennsylvania law recognizes that summary offenses are significantly less serious than felonies or misdemeanors by treating them differently than felonies or misdemeanors in post-conviction matters.

24. A Pennsylvania statute permits employers to consider felonies and misdemeanor convictions to the extent that they relate to a job applicant's suitability for a job. 18 P.S. § 9125. However, the statute does not permit employers to consider summary offenses. *Cisco v. United Parcel Servs. Inc.*, 476 A.2d 1340, 1343 (Pa. Super. 1984).

25. Felony and misdemeanor convictions almost never can be expunged in Pennsylvania. However, summary offense convictions can be expunged after the defendant has been free of arrest or prosecution for five years following the conviction for that offense. 18 P.S. § 9122(b)(3)(i).

C. Electronic Case Records for Summary Offenses in Pennsylvania

26. The Administrative Office of Pennsylvania Courts ("AOPC") provides electronic information about Pennsylvania criminal cases, including summary offenses, to the public.

27. Information about an individual's criminal cases in Pennsylvania can be obtained by any member of the public by searching the Unified Judicial System of Pennsylvania's web portal. See <https://ujportal.pacourts.us/docketsheets.aspx>.

28. Information can also be obtained through bulk distribution of electronic case records. AOPC sells this information on a recurring basis.

29. Upon information and belief, Defendant Yale obtains electronic case record data generated by AOPC through a reseller.

30. One of the data elements that is provided by AOPC for each electronic case record, where available, is the grade of the offense. Thus, many electronic case records specifically report the classification of a summary offense. If the grade of the offense is not available, it is left blank.

31. Despite clear and systematic indications of the grade of summary offenses in Pennsylvania, Defendant Yale frequently fails to distinguish between summary offenses and more serious criminal charges and instead reports many summary offenses from Pennsylvania as misdemeanors.

D. Plaintiff's Acceptance of Offer of Employment With Johnson & Johnson

32. Plaintiff T Jason Noye applied for a position as an Operations Supervisor with Johnson & Johnson (“J&J”) in or around February of 2015, through the services of an employment staffing company, Kelly Services, Inc. (“Kelly”). On February 11, 2015, Plaintiff was formally offered the job in writing, which he also accepted in writing that same day.

33. When he filed out the online application, Plaintiff indicated that he had been convicted of a crime. After viewing the application, Kelly communicated to Plaintiff, by email on February 16, 2015, that it needed additional information, but that the conviction would not necessarily bar him from employment with Kelly and J&J.

34. Plaintiff promptly supplied Kelly with all requested documentation.

35. As part of its application procedure, Kelly purchased from Yale a consumer report on Plaintiff.

36. On March 13, 2015, Kelly informed Plaintiff that J&J would not be hiring him. This adverse action was based on a background report obtained from Yale.

37. Yale, as a CRA, is required to follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates. 15 U.S.C. § 1681e(b).

38. Yale does not, however, maintain reasonable procedures designed to assure maximum possible accuracy. Based upon a common policy and practice, Yale regularly and unlawfully reports summary offenses as misdemeanors, so that the individual's criminal record history appears more serious than it actually is.

39. On April 28, 2015, Yale provided Plaintiff with instructions on how to officially request a copy of his background report. After numerous requests, Yale eventually mailed Plaintiff a copy of the report on May 12, 2015, which was 60 days after Plaintiff was informed that his job offer had been rescinded, and 81 days after his start date was first delayed.

E. Plaintiff's Criminal History And Yale's Failure To Correctly Report It

40. Plaintiff has one conviction of a misdemeanor on his criminal history: a 2008 conviction for defiant trespass, a third degree misdemeanor. Yale misreported four other summary offenses as misdemeanors, and listed three additional purported safety violations, which cost Plaintiff his job with J&J.

41. In February of 2009, Plaintiff pled guilty to a misdemeanor charge of defiant trespass and related summary offenses following an altercation in July of 2008 with his ex-girlfriend. He was placed on probation for one year and his case was officially closed in 2011.

42. In its report furnished to J&J, Yale reported four inaccurate misdemeanor charges in addition to the accurate trespass charge: (a) a misdemeanor conviction for harassment subject other to physical contact; (b) a misdemeanor charge of revocation of license to carry firearm; (c) a misdemeanor weed violation, and (d) a misdemeanor criminal mischief charge. All four of these charges were actually summary offenses. The first entry was related to an altercation in 2007 and the third was due to grass on Plaintiff's tenant's lawn exceeding height limitations.

43. In its report to J&J, Yale also reported three summary offenses related to vacant structures or land maintenance as "safety" violations, an offense grading level not recognized under Pennsylvania law.

44. As the result of its violations of the FCRA, Yale is liable to Plaintiff for his actual damages resulting from the inaccuracies contained in his Yale report, as well as attorneys' fees and costs. 15 U.S.C. § 1681o.

45. Defendant's conduct and omissions were willful. Because the FCRA was enacted in 1970, Defendant has had years to become compliant but have failed to do so.

V. CLASS ACTION ALLEGATIONS

46. Pursuant to Federal Rule of Civil Procedure 23 and 15 U.S.C. § 1681b, Plaintiff brings this action for himself and on behalf of the following Classes:

(a) All natural persons residing in the United States (including all territories and other political subdivisions of the United States) who were the subject of a consumer report furnished to a third party by Yale, that was furnished for an employment purpose, that contained at least one record of a criminal conviction or arrest, civil lien, bankruptcy or civil judgment, on or after five years prior to the filing

of this action and extending through the resolution of this case, and to whom Yale did not place in the United States mail postage pre-paid, on the day it furnished any part of the report containing the public record, a written notice that it was furnishing the subject report and containing the name of the person that was to receive the report (the “Section 1681k Class”).

(b) All natural persons residing in the United States who, within five years prior to the filing of this action and continuing through the resolution of this case, were the subjects of background reports prepared by Defendant Yale which disclosed a Pennsylvania summary offense as a misdemeanor or more serious offense (the “Section 1681e(b) Class”).

Plaintiff reserves the right to amend the definition of the Classes based on discovery or legal developments.

47. Specifically excluded from the Classes are: (a) all federal court judges who preside over this case and their spouses; (b) all persons who elect to exclude themselves from the Classes; (c) all persons who have previously executed and delivered to Yale releases of all their claims for all of their Class claims; and (d) Defendant’s employees, officers, directors, agents, and representatives and their family members.

48. **Numerosity.** The Classes are so numerous that joinder of all members is impracticable. At this time, Plaintiff does not know the exact size of the Classes. Based on information and belief, the Classes are comprised of at least thousands of members who are geographically dispersed throughout the country so as to render joinder of all Class members impracticable. The names and addresses of the Class members are identifiable through documents maintained by Defendant, and the Class members may be notified of the pendency of this action by published and/or mailed notice.

49. **Commonality.** Common questions of law and fact exist as to all members of the Classes, and predominate over the questions affecting only individual members. The common legal and factual questions include, among others:

(a) Whether Defendant Yale violated section 1681k(a) of the FCRA by failing to notify consumer job applicants contemporaneously of the fact that public record information is being sent to prospective employers;

(b) Whether Defendant Yale violated section 1681k(a) of the FCRA by failing to maintain strict procedures to assure that its public record information is complete and up to date; and,

(c) Whether Defendant Yale, by employing a policy and practice of misidentifying summary offenses as misdemeanors or more serious offenses, violated section 1681e(b) of the FCRA by failing to follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

50. **Typicality.** Plaintiff's claims are typical of the claims of each Class member. Plaintiff has the same claims for statutory and punitive damages that he seeks for absent class members.

51. **Adequacy.** Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff's interests coincide with, and are not antagonistic to, other Class members' interests. Additionally, Plaintiff has retained counsel experienced and competent in complex, commercial, multi-party, consumer, and class-action litigation. Plaintiff's counsel have prosecuted complex FCRA class actions across the country.

52. **Predominance and Superiority.** Questions of law and fact common to the Class members predominate over questions affecting only individual members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy. The statutory and punitive damages sought by each member are such that individual prosecution would

prove burdensome and expensive given the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for the Class members individually to redress effectively the wrongs done to them. Even if the Class members themselves could afford such individual litigation, it would be an unnecessary burden on the courts. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the complex legal and factual issues raised by Defendant's conduct. By contrast, the class action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in a unified proceeding.

53. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the complex legal and factual issues raised by Defendant's conduct. By contrast, the class action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in just one case.

VI. CAUSES OF ACTION

COUNT 1

15 U.S.C. § 1681k(a)

54. Plaintiff incorporates by reference those paragraphs set out above as though fully set forth herein.

55. Defendant Yale is a "person" and "consumer reporting agency" as defined by sections 1681a(b) and (f) of the FCRA.

56. Plaintiff is a "consumer" as defined by section 1681a(c) of the FCRA.

57. The above-mentioned reports are “consumer reports” as defined by section 1681a(d).

58. Pursuant to section 1681n and 1681o of the FCRA, Defendant Yale is liable for violating FCRA section 1681k(a) by engaging in the following conduct:

(a) Failing to notify consumers contemporaneously of the fact that adverse public and criminal record information is being provided to employers or prospective employers; and,

(b) Failing to maintain strict procedures to insure that the public record information it sells to employers is complete and up to date.

COUNT 2

15 U.S.C. § 1681e(b)

59. Plaintiff incorporates by reference those paragraphs set out above as though fully set forth herein.

60. Defendant Yale is a “person” and “consumer reporting agency” as defined by sections 1681a(b) and (f) of the FCRA.

61. Plaintiff is a “consumer” as defined by section 1681a(c) of the FCRA.

62. The above-mentioned reports are “consumer reports” as defined by section 1681a(d).

63. Pursuant to sections 1681n and 1681o, Defendant Yale is liable for willfully and negligently violating the FCRA by misreporting Pennsylvania summary offenses in Pennsylvania as misdemeanors or more serious offenses, thereby failing to follow reasonable procedures to

assure maximum possible accuracy of the information concerning the individual about whom a consumer report relates, in violation of section 1681e(b).

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Classes pray for relief as follows:

A. That an order be entered certifying the proposed Classes under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiff and his counsel to represent the Classes;

B. That judgment be entered in favor of the Section 1681k Class against Defendant Yale for statutory damages and punitive damages for violation of 15 U.S.C. § 1681k, pursuant to 15 U.S.C. § 1681n;

C. That judgment be entered in favor of the Section 1681e(b) Class against Defendant Yale for statutory damages and punitive damages for violation of 15 U.S.C. § 1681e(b), pursuant to 15 U.S.C. § 1681n;

D. That the Court award costs and reasonable attorneys' fees, pursuant to 15 U.S.C. §§ 1681n and 1681o; and

E. That the Court grant such other and further relief as may be just and proper, including but not limited to any equitable relief that may be permitted.

VIII. TRIAL BY JURY

Plaintiff hereby requests a trial by jury on those causes of action where a trial by jury is allowed by law.

DATED: November 24, 2015

Respectfully submitted,

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