

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

_____)
)
UNITED STATES OF AMERICA,)
Plaintiff,)
)
v.)
)
RAIL TERMINAL SERVICES, LLC,)
a limited liability company,)
Defendant.)
)
)
)
_____)

Civil Action No: 09 1111 MJP

**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 Western District of Washington is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b)-(c) and 1395(a).

DEFENDANT

4. Defendant Rail Terminal Services, LLC (“RTS”), is a Delaware limited liability company, with its principal place of business at 1131 SW Klickitat Way, Seattle, Washington 98134. RTS 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”), Union Pacific (“UP”), and Norfolk & Southern (“N&S”) Railroads. As part of these services, some of RTS’s employees work on the

properties of BNSF, UP, and N&S.

11. In mid-2004, some of these railroads began requiring RTS to obtain background checks on all of its job applicants and employees. 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, RTS contracted with e-Verify.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 RTS 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 placed on administrative leave indefinitely without pay or benefits (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 mid-2004 through June 2006, RTS took adverse action against 24 of its employees by placing them on administrative leave without pay or benefits based in whole or in part on information found in their background checks. In each of these cases, RTS failed to provide a pre-adverse action notice to the employee, as is required by Section 604(b)(3) of the FCRA, 15 U.S.C. § 1681b(b)(3), and the adverse action notice RTS provided to the employee failed to contain any of the information required by FCRA Section 615(a), 15 U.S.C. § 1681m(a).

VIOLATIONS OF THE FCRA

COUNT I

16. As described in Paragraphs 10 through 15, from at least mid-2004 through June 2006, RTS failed to provide pre-adverse action notices to approximately 24 employees as to whom RTS took adverse action based in whole or in part on the individuals' consumer reports, prior to taking that 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 mid-2004 through June 2006, RTS failed to provide adverse action notices to approximately 24 employees as to whom RTS 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. § 1681s(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 Section 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:

FOR THE PLAINTIFF
UNITED STATES OF AMERICA:

Of Counsel:

JESSICA RICH
Acting Associate Director
Division of Privacy and Identity Protection

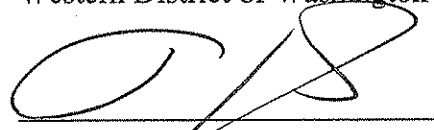
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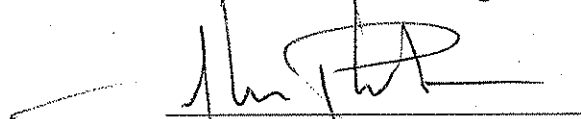
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