

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

CORY GROSHEK,
and all others, similarly situated,

Plaintiff,

v.

Case No.: 15-cv-143

GREAT LAKES HIGHER EDUCATION CORPORATION

Defendant.

CLASS ACTION COMPLAINT

Plaintiff, Cory Groshek, on behalf of himself and others similarly situated, by his attorneys Gingras, Cates & Luebke and Axley Brynelson, LLP, hereby states the following as his complaint in the above-referenced matter.

PRELIMINARY STATEMENT

1. This is a putative class action brought pursuant to the Fair Credit Reporting Act, 15 § U.S.C. 1681, *et seq.*, (“FCRA”), alleging, *inter alia*, willful violation of the FCRA’s disclosure requirements.

JURISDICTION AND VENUE

2. Jurisdiction over the subject matter of this action is conferred by 28 U.S.C. § 1331 and 15 U.S.C. §1681p.

3. Venue in the Western District of Wisconsin is proper pursuant to 28 U.S.C. § 1391 insofar as the Defendant regularly conducts business within this District, and the events or omissions giving rise to the claim occurred within this District.

PARTIES

4. The Plaintiff, Cory Groshek (hereinafter “Groshek” or “Plaintiff”), an individual and representative class member, is an adult male citizen of the United States and at all times relevant resided in Brown County, Wisconsin.

5. The Defendant, Great Lakes Higher Education Corporation (hereinafter “Great Lakes”) services student loans on behalf of the United States Department of Education and private lenders. Great Lakes handles the day-to-day management of student loans; including counseling borrowers, processing payments and maintaining account records. It is principally located at 2401 International Lane, Madison, Wisconsin 53704. Great Lakes’ registered agent in Wisconsin is Nancy Seifert, 2401 International Lane, Madison, Wisconsin 53704.

STATUTORY BACKGROUND

6. In the 1960’s concerns over consumer reports grew as their usage became increasingly wide-spread. Errors and inaccuracies plagued these reports and jeopardized applications for, among other things, employment, credit, and housing.

7. Congress passed the FCRA to resolve these issues and concerns. In particular, the FCRA was passed to require “reasonable procedures for meeting the needs of a commerce for consumer credit... and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information.” 15 U.S.C. § 1681(a)(4).

8. Under the FCRA, at any time before procuring a consumer report for employment purposes, an employer must disclose to the consumer that a consumer report may be obtained for employment purposes. 15 U.S.C. § 1681b(b)(2)(A)(i).

9. Under the FCRA, the aforementioned disclosure must be a “clear and conspicuous disclosure,” made “in writing,” and “made before the report is procured or caused to be procured.” 15 U.S.C. § 1681b(b)(2)(A)(i).

10. Under the FCRA, the aforementioned disclosure must be located in “a document that consists **solely** of the disclosure.” 15 U.S.C. § 1681b(b)(2)(A)(i) (emphasis added).

FACTUAL ALLEGATIONS

11. On information and belief, Groshek applied for employment with Great Lakes in February, 2014 as a Customer Outreach Representative and/or a Borrower Services Representative. The location at which Groshek would have worked for Great Lakes was in Stevens Point, Wisconsin.

12. On February 6, 2014, Groshek interviewed in-person for the position and received various documents regarding his potential employment.

13. On information and belief, any potential offer of employment to Groshek by Great Lakes was conditioned upon his filling out the paperwork provided to him prior to and during the interview process.

14. Among the various forms Groshek was required to sign was a “Disclosure and Release of Information Authorization.” This was a two-sided document; the other side was the “Great Lakes Higher Education Corporation and Affiliates (Great Lakes) Applicant Disclosure of Criminal Conviction History”. This two-sided document is attached to this complaint as Exhibit A as a two-page document.

15. Preceding the Applicant portion of the Disclosure and Release of Information Authorization is a liability release which reads, in part: “I release all parties for all liability for any damage that may result from furnishing information, including my providing my birth date

to Verifications, Inc. if requested, and this authorization to Great Lakes and Verifications, Inc.”
(Exh. A).

16. In February, 2014, after Groshek completed the Disclosure and Release of Information Authorization, Great Lakes submitted a request to Verifications, Inc. (“Verifications”) for a consumer report on Groshek.

17. Verifications is a consumer reporting agency as defined by the FCRA.

18. On or about February 11, 2014, Verifications completed Great Lakes’ request for a consumer report on Groshek.

19. Verifications’ consumer report on Groshek is attached to this complaint as Exhibit B.

20. On information and belief, the forms and procedures used and followed by Great Lakes for their procurement of a consumer report on Groshek are similar if not identical to the forms and procedures used and followed by Great Lakes for the procurement of consumer reports for all other of its employment fulfillment and hiring purposes.

21. Great Lakes willfully violated 15 U.S.C. § 1681b(b)(2)(A)(i) by procuring a consumer report on Groshek for employment purposes without first providing Groshek a clear and conspicuous written disclosure, in a document consisting solely of the disclosure, that a consumer report may be obtained for employment purposes.

22. On information and belief, at all material times, Great Lakes conducted background checks on job applicants as part of its standard screening process.

23. On information and belief, at all material times, Great Lakes did not perform these background checks itself; but rather, Great Lakes relied on outside consumer reporting

agencies (such as Verifications, as described above) to obtain this information and report it to Great Lakes. These reports constitute “consumer reports” for purposes of the FCRA.

24. On information and belief, at all material times, Verifications was a “consumer reporting agency” within the meaning of the FCRA.

25. The FCRA requires that, prior to procuring consumer reports, employers must certify to the consumer reporting agency that they will comply with the FCRA’s stand-alone disclosure requirements. *See* 15 U.S.C. § 1681b(b).

26. On information and belief, Verifications required Great Lakes to certify that it would comply and/or that it had complied with the stand-alone disclosure provisions of the FCRA.

27. On information and belief, Great Lakes certified to Verifications that it would and had complied with the stand-alone disclosure provisions of the FCRA.

28. Despite the representations made by Great Lakes to Verifications, Great Lakes included a liability release / waiver and other extraneous information into its Disclosure and Release of Information Authorization. (Exh. A).

29. At all material times, the rules and regulations under the FCRA, and the interpretation thereof, governing Great Lakes’ conduct as relates to its background screening processes and compliance with the FCRA were clearly established.

30. Great Lakes is subject to numerous laws concerning the protection of sensitive borrower information.

31. Great Lakes conducts background checks on all applicants in furtherance of its own legal obligations and responsibilities to borrowers and employees. It also obtains

background checks because most or all of the lenders for which it services student loans – including the United States Department of Education – require background checks.

32. On Great Lakes’ employment application, applicants are notified of Great Lakes’ background-check requirement but are not required to provide any information about their criminal records. Applicants are required to disclose their criminal history when interviewed. Great Lakes conducts background checks on applicants to which it has extended conditional employment offers.

33. Great Lakes’ practices with respect to its Disclosure and Release of Information Authorization violate a fundamental protection afforded to employees and prospective employees under the FCRA, are contrary to the unambiguous language of the statute and are in direct contradiction to judicial and regulatory guidance that has been in place since at least 1998. *See Exhibit C, (Hauxwell, 1998) (“[T]he [disclosure] form should not contain any extraneous information ... The inclusion of such a waiver in a disclosure form will violate Section 604(b)(2)(A) of the FCRA [now located in the U.S. Code at 15 U.S.C. § 1681b(b)(2)(A)], which requires that a disclosure consists solely of the disclosure that a consumer report may be obtained for employment purposes.”)*

34. By knowingly inserting a liability release and other extraneous information into Plaintiff’s and other putative class members’ disclosures, Great Lakes willfully violated 15 U.S.C. § 1681b(b)(2)(A)(i).

CLASS ALLEGATIONS

35. Plaintiff brings this action individually and as a class action for Great Lakes’ violations of § 1681b(b)(2) and 1681b(b)(3) of the FCRA, pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure, on behalf of the following (“the Class”):

Proposed Class: All individuals in the United States for whom Great Lakes obtained a consumer report as part of any employment process during the five years prior to the filing date of this complaint.

36. On information and belief, the respective class includes thousands of individuals; potentially every person for whom Great Lakes procured, or caused to be procured, a consumer report within the five years prior to the date of this complaint. As such, joinder of all members of the Class is not feasible.

37. The claims of Plaintiff are typical of the Class he seeks to represent. Moreover, the questions of law and fact common to the members of the Class predominate over any questions affecting only individual class members, as all members of the Class are individuals for whom Great Lakes procured or caused to be procured a consumer report for employment purposes. These common questions include, but are not limited to:

- a. Whether Great Lakes willfully violated the FCRA by failing to provide a disclosure consisting solely of a consumer report disclosure;
- b. Whether Great Lakes willfully violated the FCRA by failing to provide the requisite clear and conspicuous disclosure;
- c. Whether Great Lakes willfully violated the FCRA by including a liability waiver in their FCRA credit report disclosure documents;
- d. Whether, and the degree to which, Great Lakes' conduct warrants an award of statutory damages to the Plaintiff and corresponding Class pursuant to 15 U.S.C. § 1681n(a);

e. Whether, and the degree to which, Great Lakes' conduct warrants an award of punitive damages to the Plaintiff and corresponding Class pursuant to 15 U.S.C. § 1681n(a).

38. Plaintiff will fairly and adequately protect the interests of the Class. The interests of the named plaintiff are consistent with, and not antagonistic to, those of the Class.

39. Plaintiff is represented by competent counsel, who are experienced in complex class action litigation, business and employment law, personnel management, computer technology and electronic discovery. Co-counsel are licensed to practice before the U.S. District Courts of the Eastern and Western Districts of Wisconsin, the Seventh Circuit Court of Appeals and the U.S. Supreme Court. Co-counsel has participated in the litigation and resolution on behalf of national and state classes in multiple cases, including: *Sjoblom v. Charter*, (United States District Court for the Western District of Wisconsin, Case No. (07-C-0451-C); *Capp v. Microsoft*; *Goodel et al. v. Charter Communications*; *Wilcox et al. v. AEI, Inc. et al.*; *Espenscheid et al. v. UniTec USA, LLC et al.*; and *Taylor v. Copper Family Community Care, Inc., et al.*

40. A class action is superior to other available methods for the fair and efficient adjudication of this controversy and is consistent with the legislative history and objectives of the FCRA.

41. Maintenance of this action as a class action will promote the equitable administration of justice because pursuing claims on an individual basis would be disproportionately expensive.

42. The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Great Lakes.

FIRST CAUSE OF ACTION – FAILURE TO PROVIDE A PROPER CONSUMER REPORT DISCLOSURE UNDER 15 U.S.C. 1681b(b)(2)(A)

43. Plaintiff realleges and incorporates by reference paragraphs (1) through (42) as if set forth fully herein.

44. Great Lakes procured consumer reports, as defined by the FCRA, on Groshek and all putative class members. These reports were procured for employment purposes without first providing Groshek or any class member a clear and conspicuous disclosure made in writing, in a document consisting solely of the disclosure that a consumer report may be obtained for employment purposes in violation of 15 U.S.C. § 1681b(b)(2)(A)(i).

45. As a result of Great Lakes' failure to provide Groshek and other putative class members with a clear and conspicuous disclosure form that consisted solely of the disclosure itself, Great Lakes failed to obtain a valid authorization from Groshek and other putative class members prior to its procuring a consumer report on them which is a violation of 15 U.S.C. § 1681b(b)(2)(A)(ii).

46. Great Lakes' Candidate Disclosure and Release of Information Authorization is obscured by virtue of the fact that Great Lakes included the document with a plethora of other information and documents provided at the same time.

47. Great Lakes' Disclosure and Release of Information Authorization also included a waiver of liability for Great Lakes.

48. The foregoing violations were willful. Great Lakes acted in deliberate or reckless disregard of its obligations and the rights of Plaintiff and other putative class members under 15

U.S.C. § 1681b(b)(2)(A)(i). Great Lakes' willful conduct is demonstrated by the following (which is a non-exhaustive list):

- a. The FCRA was enacted in 1970, amended various times; such that the current provisions of the FCRA were in place during much of Great Lakes existence as a company;
- b. Great Lakes' conduct was inconsistent with the Fair Trade Commission's longstanding regulatory guidance, judicial interpretation and the plain language of the statute itself;
- c. Great Lakes knew or had reason to know that its conduct violated the FCRA;
- d. Great Lakes certified to ADP that it had complied with the disclosure requirements of the FCRA;
- e. On information and belief, Great Lakes repeatedly and routinely used the unlawful disclosure it used with Groshek to procure consumer reports;
- f. Great Lakes' inclusion of a liability release clearly implies awareness by Great Lakes that it could be held liable for improperly procuring a consumer report;
- g. Despite the plain language of the statute and the clear guidance provided by the FTC and judicial sources, Great Lakes systematically procured consumer reports without first disclosing in writing to the consumer in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and
- h. By adopting such a policy, Great Lakes voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading of such law that was merely careless.

49. As a direct result of Great Lakes' conduct, as described herein, Plaintiff and the putative class he seeks to represent are entitled to statutory damages of not less than \$100 and not more than \$1,000 for each and every one of these violations, pursuant to 15 U.S.C. § 1681n(a)(1)A).
50. As a direct result of Great Lakes' conduct, as described herein, Plaintiff and the putative class he seeks to represent are entitled to punitive damages in an amount sufficient to deter such conduct in the future pursuant to 15 U.S.C. § 1681n(a)(2); and to recover attorneys' fees and costs pursuant to 15 U.S.C. 1681n(a)(3).

PRAYER FOR RELIEF.

WHEREFORE, Plaintiff and the Class Members request that this Court:

- a. Pursuant to Rule 23, Certify the proposed class, designating Plaintiff as a named representative of the Class, and designating the undersigned as Class Counsel;
- b. Declare that Great Lakes committed multiple, separate violations of the FCRA;
- c. Permanently enjoin Great Lakes from violating the FCRA by requiring that they update their disclosure authorization forms to meet FCRA standards;
- d. Enter judgment against Great Lakes for statutory damages not more than \$1,000 per violation per Class member pursuant to 15 U.S.C. § 1681n(a);
- e. Award Plaintiff's costs and reasonable attorney's fees;
- f. Award punitive damages to Plaintiff and the members of the Class pursuant to 15 U.S.C. § 1681n(a)(2);
- g. Issue proper notice to the Class pursuant to Rule 23 at Great Lakes' expense;

- h. Declare that Great Lakes acted willfully, in deliberate or reckless disregard of Plaintiff's and Class Members' rights and Great Lakes' obligations under the FCRA; and
- i. Grant any other relief which this Court believes is reasonable and proper.

DEMAND FOR A JURY TRIAL

Plaintiff hereby respectfully demands a trial by jury pursuant to the Seventh Amendment of the United States Constitution and Fed.R.Civ.Pro 38(a).

Respectfully submitted this 5th day of March, 2015

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