

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL A. KELLY, *on behalf of himself  
and all others similarly situated,*

Plaintiff,

v.

BUSINESS INFORMATION GROUP, INC.,

Defendant.

Civil Action No.: 2:15-cv-06668-DS

**AMENDED CLASS COMPLAINT**

COMES NOW the Plaintiff, Michael A. Kelly (“Plaintiff”), on behalf of himself and all similarly situated individuals, by counsel, and as for his Amended Class Complaint against the Defendant, he alleges as follows:

**PRELIMINARY STATEMENT**

1. This is an action for statutory and punitive damages, costs, and attorney’s fees brought pursuant to 15 U.S.C. § 1681, *et seq.* (the Fair Credit Reporting Act or “FCRA”). The FCRA imposes several important requirements on consumer reporting agencies (“CRAs”) that furnish consumer reports, including background checks for employment. The FCRA was designed to protect consumers like the Plaintiff.

2. Plaintiff was denied employment opportunities due to inaccuracies in a consumer report from the Defendant, Business Information Group, Inc. (“Defendant”). At least one consumer report furnished by Defendant to Mr. Kelly’s employer contained materially false and derogatory information. Accordingly, Plaintiff alleges an individual claim against Defendant for

violating § 1681e(b) of the FCRA, which requires CRAs to follow reasonable procedures to assure maximum possible accuracy when furnishing credit reports.

3. Additionally, Plaintiff also alleges a class action claims against Defendant pursuant to § 1681k, which is an important requirement intended to provide consumers immediate notice of the furnishing of a consumer report for employment purposes and the details necessary to preemptively contact the reporting agency to obtain and, as appropriate, correct information in the furnished report.

### **JURISDICTION**

4. The jurisdiction of this Court is conferred by the FCRA, 15 U.S.C. § 1681(p) and 28 U.S.C. §1331.

5. Venue lies properly in this District and Division pursuant to 28 U.S.C. § 1391(b)(2).

### **PARTIES**

6. The Plaintiff, Michael A. Kelly (“Mr. Kelly”), is a natural person, and at all times relevant to this Complaint was a “consumer” as defined by the Fair Credit Reporting Act, at 15 U.S.C. § 1681a.

7. Defendant Business Information Group, Inc. (“Defendant”) is a Pennsylvania corporation that at all times relevant to the Complaint was doing business in the Commonwealth of Pennsylvania.

8. Defendant is a “consumer reporting agency” as defined in 15 U.S.C. § 1681a(f) that regularly conducts business in the Commonwealth of Pennsylvania. Defendant is also a “reseller” that assembles and merges information contained in the databases of other consumer reporting agencies and resells the data to third parties, as defined in 15 U.S.C. § 1681a(u).

**STATEMENT OF FACTS**

9. On or around December 19, 2013, Defendant procured a consumer report from Trans Union about Plaintiff as part of a routine employment background screening.

10. In turn, Defendant resold the consumer report to Plaintiff's employer.

11. Mr. Kelly suffered real world and actual harm in his employment because of the inaccurate, incomplete and out of date information in that consumer report.

**Defendant Fails to Follow Reasonable Procedures to Ensure Maximum Possible Accuracy**

12. The report sold by Defendant contained derogatory and inaccurate public record information erroneously attributed to Plaintiff, including that he had a court case filed against him for an unpaid debts that did not belong to him.

13. The derogatory and inaccurate public record information that was in Plaintiff's consumer report was likely to have an adverse effect on Plaintiff's ability to obtain employment.

14. Upon information and belief, this incorrect reporting was caused by Defendant's failure to follow reasonable procedures to assure maximum possible accuracy in the preparation of the consumer reports and consumer files it publishes and maintains concerning Plaintiff.

15. Defendant—a "reseller" as defined by § 1681a(u)—does not have sufficient procedures to assure the maximum possible accuracy of the credit reports it furnishes regarding consumers. Instead, Defendant assembles and merges the information from other consumer reporting agencies (such as Trans Union) without following any procedures to assure the accuracy of the underlying data. If Defendant had any procedure to check the underlying data, or make sure it was complete, it would have discovered that the judgment reported was taken against Plaintiff's son.

16. Additionally, Defendant does not have in place and did not follow as to Mr. Kelly any procedure reasonably calculated to ensure that Defendant furnished the correct and truthful status of its public records. Specifically, the judgment Defendant included in its reports was actually showing in the New Jersey court records as paid and not owing.

17. Defendant has absolutely no procedure to confirm that the judgment records it buys actually and truthfully reflect the record in the courthouse or clerk's office.

18. In fact, Defendant buys its public record judgments, bankruptcies and tax liens from third party TransUnion, which itself buys them from another third party private company, which – in turn – collects them in most instances through automated and intermittent computer “webscrapes” of the very limited information made available in public court websites.

**Defendant's Civil Public Records Are Not Up to Date and Are Grossly Incomplete**

19. Defendant does not maintain procedures designed to ensure public record information that is likely to have an adverse effect on a consumer's ability to obtain employment is complete and up to date.

20. Moreover, despite providing a report for employment purposes, which contained public record information likely to have an adverse effect upon Plaintiff's employment, Defendant failed to provide timely notice to Plaintiff that it was doing so.

21. Defendant did not attempt to follow the option available at 15 U.S.C. § 1681k(a)(2), which requires a consumer reporting agency to maintain strict procedures designed to ensure that its public records reporting is complete and up to date.

22. Defendant failed to follow 15 U.S.C. § 1681k(a)(2) as to Mr. Kelly in multiple material ways. Had it done so in either regard, none of the injury alleged in this case would have occurred.

23. The only information Defendant included in its employment report regarding Mr. Kelly was the very minimal information it elected to purchase from private third party Trans Union. The entire information it elected to obtain (and then furnish as its own report) was as follows:

	TransUnion LLC Employment Disclosure Report 2 Baldwin Place, P.O. Box 1000 Chester, PA 19022
<b>Public Record Information</b>	
Record Type: Pocket #: Plaintiff: Attorney: Court Type: Location: Acct Designator:	Civil Judgment SC00296612 Bantadaniel  Circuit Court  Individual Account
	Date Added to Credit File: 02/2013 Date Paid: Amount Owed: Assets: Liabilities:
	\$750.00

24. The public record Defendant obtained and then furnished in Plaintiff's employment report did not contain the current status of the court record and in fact did not even contain the date of the supposed judgment. Instead, it contained only the date the judgment was added to Mr. Kelly's file.

25. **First, Defendant's reporting of the New Jersey civil judgment was out of date.** Subsequent to February 2013, the New Jersey judgment was recorded as "satisfied" in the real courthouse record. In fact, the actual courthouse record contained this letter, including the bold-emphasis of middle initials, (and in addition to various other statements that the debt was satisfied):

June 10, 2013

Re: Document SC00298912  
Civil Judgment Court  
Michael A. Kelly/Michael R. Kelly  
\$750

---

To Whom It May Concern:

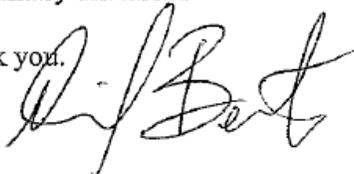
I filed a small claims civil action against Michael R. Kelly. He owed me rent, which has now been satisfied in full. When I submitted the claim to the court I mistakenly wrote Michael A. Kelly (the father) not Michael R. Kelly. Please withdraw the initial document.

Michael R. Kelly lived with his father (Michael A. Kelly) prior to living at my apartment.

Please correct as soon as possible as this claim has been completely satisfied.

Involuntary dismissal.

Thank you.



Daniel Bento  
417 West Bourne Avenue  
Long Branch, NJ 07740

26. Defendant never checks actual courthouse records for update or more recent changes to earlier civil judgments because it never checks any civil records at a courthouse.

27. The report Defendant sold regarding the Plaintiff was not up to date.

28. Defendant fails to maintain strict procedures designed to ensure that it does not furnish out of date civil judgments or tax liens that have been satisfied, vacated, or otherwise dismissed after being initially entered.

29. **Second, Defendant does not furnish complete public record information.** Instead, it furnishes only very limited and grossly incomplete information it purchases from other

private companies who themselves obtain only basic information available on general online docket sheets. Few if any courthouses ever make available the complete and up to date public record through such Internet web searches.

30. In the context of 15 U.S.C. § 1681k(a)(2) “complete and up to date” refers to a consumer report that contains information that represents the full material components of the actual public record. For example, as above, Defendant’s omission of the more recent and current events in the court file – that the civil judgment was satisfied – evidences that it does not contain the complete and up to date public record, but only a small part of it.

31. Similarly, as is obvious from the minimal information Defendant purchased, the record it included in its report regarding Plaintiff omitted full identifying information contained in that actual judgment record at the New Jersey courthouse, including something so obvious as the middle initial (or name) of the person actually associated with the public record. For example, the actual final amended judgment ultimately included the above-inserted correspondence explaining that the judgment was against Michael “R” Kelly and not Michael “A” Kelly. Defendant’s record was thus both incomplete and not up to date for the same reasons and in similar manners – it never checks the actual civil courthouse documents.

32. While it may make sense to sometimes permit the reporting of such partial and out of date records (for cost, it appears), a consumer reporting agency that furnishes those types of incomplete and not current records cannot rely on Section 1681k(a)(2), which is inapplicable to the consumer reports at issue in this case, and must instead take the otherwise simple step of sending consumers contemporaneous notice that an employment report has been furnished.

33. Moreover, Defendant also knew about its legal obligations to provide notice of the fact that public record information is being reported by the consumer reporting agency,

together with the name and address of the person to whom such information is being reported, to consumers who are the subject of a consumer report for employment purposes at the time that the report is made. These obligations are well established in the plain language of the FCRA and in the promulgations of the Federal Trade Commission and the Consumer Financial Protection Bureau.

34. The procedures Defendant followed as to Mr. Kelly are the same it follows as to other consumers about whom it is furnishing a civil judgment record.

35. Defendant routinely fails to provide this notice. Its failure was intentional and not a mere accident or mistake. Instead, Defendant's actions constitute its standard operating procedures.

36. At all times pertinent to this Complaint, Defendant's conduct was willful and carried out in reckless disregard for a consumer's rights under the FCRA. By example only and without limitation, Defendant's conduct is willful because it was intentionally accomplished through its intended procedures; these procedures have continued despite the fact that Defendant and other consumer reporting agencies have been subject to court decisions in other states critical of similar conduct; and Defendant will continue to engage in this conduct because it believes that there is greater economic value in hiding information from consumers, as well as collecting and reporting derogatory public record information than updating consumers' reports with information that would fully cancel or render the previous reporting of the public record irrelevant.

**COUNT ONE:**  
**Violation of 15 U.S.C. § 1681e(b)**  
**Plaintiff's Individual Claims**

37. Plaintiff restates each of the allegations in the preceding paragraphs as if set forth at length herein.

38. 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 consumer report and credit files it published and maintained concerning Plaintiff.

39. As a result of Defendant's conduct, action, and inaction, Plaintiff suffered actual damages, including but not limited to: embarrassment and humiliation, credit rating, lost opportunities to enter into consumer credit transactions, denial of credit and aggravation, inconvenience, embarrassment and frustration. Moreover, Mr. Kelly was denied employment opportunities.

40. Defendant's conduct, actions, and inaction were willful, rendering it liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, it was negligent, entitling the Plaintiff to recover under 15 U.S.C. § 1681o.

41. Plaintiff is entitled to recover actual damages, statutory damages, costs, and their attorney's fees from Defendant in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and/or 15 U.S.C. § 1681o.

**COUNT TWO:**  
**Violation of 15 U.S.C. § 1681k**  
**Class Claim**

42. Plaintiff restates each of the allegations in the preceding paragraphs as if set forth at length herein.

43. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this action for himself and on behalf of a class (the “Satisfied Judgment Class”) defined as follows:

All natural persons residing in the United States (including all territories and other political subdivisions of the United States) (a) who were the subject of a consumer report furnished to a third party by Defendant, (b) that was furnished for an employment purpose, (c) that contained at least one record of an unsatisfied civil judgment, (d) on or after December 15, 2010, (e) when the actual courthouse or clerk’s file for that record showed that the judgment had been satisfied at least thirty (30) days before the consumer report was furnished, and (f) to whom Defendant 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.

Excluded from the class are all attorneys in the case, employees of any Defendant, any judge responsible for the case and the judge’s staff and immediate family.

44. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff also brings this action for himself and on behalf of a second class (the “Incomplete Identifiers Class”) defined as follows:

All natural persons residing in the United States (including all territories and other political subdivisions of the United States) (a) who were the subject of a consumer report furnished to a third party by Defendant, (b) that was furnished for an employment purpose, (c) that contained at least one record of an unsatisfied civil judgment, (d) on or after December 15, 2010, (e) when the actual courthouse or clerk’s file for that record showed that the judgment was the responsibility of a person who had a different middle name, middle initial, date of birth and/or social security number than the one Defendant’s files showed to belong to the subject of the consumer report, and (f) to whom Defendant 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.

Excluded from the class are all attorneys in the case, employees of any Defendant, any judge responsible for the case and the judge’s staff and immediate family.

45. Each member of both classes is a member of the class originally pleaded and proposed in the original Complaint.

46. Numerosity. Fed. R. Civ. P. 23(a)(1). Upon information and belief, Plaintiff alleges that both classes are so numerous that joinder of the claims of all class members is impractical. Plaintiff estimates that each is comprised of at least hundreds and potentially thousands of consumers. Defendant operates as a national consumer-reporting agency and, upon information and belief, provides at least tens of thousands of consumer reports for employment purposes each year. The names and addresses of the class members are identifiable through documents maintained by Defendant as compared against actual courthouse or government records, and the class members may be notified of the pendency of this action by published and/or mailed notice.

47. Existence and Predominance of Common Questions of Law and Fact. Fed. R. Civ. P. 23(a)(2). There are questions of law and fact common to the class, which common issues predominate over any issues involving only individual class members. For example, and without limitation, the focus of the litigation will be: (a.) whether Defendant sent the required notices; (b.) the date on which the Defendant sent the required notices; (c.) whether Defendant's conduct constituted a violation of the FCRA; (d.) whether Defendant acted willfully in its failure to design and implement procedures to assure compliant delivery and/or timing of these notices; and (e.) the appropriate amount of statutory and/or punitive damages that are appropriate for such a violation.

48. Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of those of the class members. All are based on the same facts and legal theories. Defendant uses common practices and automated systems in committing the conduct that Plaintiff alleges injured him and

the Class. Defendant routinely failed to notify consumers when it provided a consumer report for an employment purpose containing public record information likely to have an adverse effect upon the consumer's ability to obtain employment during the full class period. Plaintiff seeks statutory and punitive damages for the class claims for the purposes of class certification. Plaintiff would seek individual or actual damages only if class certification is denied.

49. Adequacy. Fed. R. Civ. P. 23(a)(4). Plaintiff will fairly and adequately protect the interests of the class. Plaintiff's interests coincide with and are not antagonistic to the class members' interests. Plaintiff has retained counsel experienced in handling actions involving unlawful practices against consumers and class actions. Plaintiff's Counsel has prosecuted complex FCRA class actions across the country, many of those within this District and Division. Neither Plaintiff, nor their counsel have any interests that might cause them not to vigorously pursue this action. Plaintiff is aware of his responsibilities to the putative classes and have accepted such responsibilities.

50. Superiority. Fed. R. Civ. P. 23(b)(3). Questions of law and fact common to the 1681k 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 class members to individually redress effectively the wrongs done to them. Even if 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 just one case.

51. Further, the Court is able to certify a liability-only class pursuant to Fed. R. Civ. P. 23(c)(4).

52. Injunctive Relief Appropriate for the Class. Fed. R. Civ. P. 23(b)(2). Certification of a class under Rule 23(b)(1) of the Federal Rules of Civil Procedure is proper. Prosecuting separate actions by or against individual class members would create a risk of adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

53. Certification of a class under Rule 23(b)(2) of the Federal Rules of Civil Procedure is appropriate in that Defendant has acted on grounds generally applicable to the class thereby making appropriate declaratory relief with respect to the class as a whole.

54. Certification of the class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that:

a. As alleged above, the questions of law or fact common to the members of the classes predominate over any questions affecting an individual member. Each of the common facts and legal questions in the case overwhelm the more modest individual damages issues. Further, those individual issues that do exist can be effectively streamlined and resolved in a manner that minimizes the individual complexities and differences in proof in the case.

b. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Consumer claims generally are ideal for class treatment

as they involve many, if not most, consumers who are otherwise disempowered and unable to afford and bring such claims individually. Further, most consumers affected by Defendant's FCRA violation would likely be unaware of their rights under the law, or of whom could represent them in federal litigation. Additionally, individual litigation of the uniform issues in this case would be a waste of judicial resources as it 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. The issues at the core of this case are class wide and should be resolved at one time. One win for one consumer would set the law as for every similarly situated consumer.

55. Defendant's failure to timely provide the required FCRA notices to Plaintiff and the putative class members violated 15 U.S.C. § 1681k(a)(1).

56. Defendant failed to satisfy the requirements at 15 U.S.C. § 1681k(a)(2) as to Plaintiff and class members for the reasons alleged above.

57. The conduct, actions, and inaction of Defendant was willful, rendering it liable for statutory and punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n.

58. Plaintiff and other members of both classes are entitled to recover costs and attorney's fees as well as appropriate equitable relief from Defendant in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n.

59. As a result of these FCRA violations, Defendant is liable to Plaintiff to each class member, for statutory damages from \$100.00 to \$1,000.00, punitive damages, and for their attorney's fees and costs. If class certification is denied, Plaintiff intend

WHEREFORE, Plaintiff, on behalf of himself and the putative class members, moves for class certification, statutory, and punitive damages, and attorney's fees and costs against Defendant for his class claims, as well as statutory, actual, and punitive damages, and attorney's fees and costs against Defendant for his individual claims; for pre-judgment and post-judgment interest at the legal rate, and such other relief the Court does deem just, equitable, and proper.

**TRIAL BY JURY IS DEMANDED.**

Dated: January 9, 2017

Respectfully submitted,  
**MICHAEL KELLY**, *on behalf of himself and of  
all similarly situated individuals*

*/s/ James A. Francis*  
JAMES A FRANCIS  
JOHN SOUMILAS  
LAUREN KW BRENNAN  
**FRANCIS & MAILMAN, P.C.**  
Land Title Building, 19th Floor  
100 South Broad Street  
Philadelphia, PA 19110  
Tel. (215) 735-8600  
Fax (215) 940-8000  
jfrancis@consumerlawfirm.com  
jsoumilas@consumerlawfirm.com  
lbrennan@consumerlawfirm.com

Kristi Cahoon Kelly (pro hac vice pending)  
KELLY & CRANDALL, PLC  
4084 University Drive, Suite 202A  
Fairfax, VA 22030  
Tel: (703) 424-7572  
Fax: (703) 591-0167  
E-mail: [kkelly@kellyandcrandall.com](mailto:kkelly@kellyandcrandall.com)

*Attorneys for Plaintiff and the Class*