

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

MICHAEL KELLY, on behalf of himself :
and others similarly situated, :

Plaintiff, :

v. :

BUSINESS INFORMATION GROUP, :
INC., :

Defendant. :

Case No. 15-cv-6668

Honorable David R. Strawbridge

**DEFENDANT’S ANSWER AND AFFIRMATIVE AND OTHER DEFENSES TO
PLAINTIFF’S AMENDED COMPLAINT**

Defendant Business Information Group, Inc. (“BIG”) hereby answers the Amended Complaint of Plaintiff Michael Kelly and interposes its affirmative and other defenses as follows:

1. BIG admits that Plaintiff purports to assert causes of action under the Fair Credit Reporting Act (“FCRA”). BIG denies that Plaintiff’s claims have any merit, denies that class certification would be appropriate, and denies that Plaintiff and the putative class are entitled to any relief whatsoever. The remaining portion of this paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies the remaining portion of this paragraph on that basis.

2. BIG admits that Plaintiff purports to assert an individual FCRA cause of action. BIG denies that Plaintiff’s individual claims have any merit and denies that Plaintiff is entitled to any relief whatsoever. BIG admits that it furnished at least one report regarding Plaintiff that included public record information. BIG lacks knowledge or information sufficient to form a belief as to whether Plaintiff was denied employment opportunities due to alleged inaccuracies in

any of its reports. BIG therefore denies that portion of this paragraph on that basis. The remaining portion of this paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies the remaining portion of this paragraph on that basis.

3. BIG admits that Plaintiff purports to assert a FCRA claim on behalf of a putative class. BIG denies that Plaintiff's claims have any merit, denies that class certification would be appropriate, and denies that Plaintiff and the putative class are entitled to any relief whatsoever. The remaining portion of this paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies the remaining portion of this paragraph on that basis.

4. This paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies this paragraph on that basis. BIG reserves argument on all questions regarding this Court's jurisdiction.

5. This paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies this paragraph on that basis.

6. BIG admits that Plaintiff is a natural person. The remaining portion of this paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies the remaining portion of this paragraph on that basis.

7. BIG admits that, at all times relevant to the Complaint, it had an office located in the Commonwealth of Pennsylvania. BIG denies that it was incorporated in Pennsylvania. The remaining portion of this paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies the remaining portion of this paragraph on that basis.

8. BIG admits that it is a background screening firm and that it provides background screening reports to its customers, including customers located in Pennsylvania, and that some of its background screening reports include information from Trans Union. The remaining portion

of this paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies the remaining portion of this paragraph on that basis.

9. BIG admits that on or about December 19, 2013, it furnished to Sun Life a report regarding Plaintiff that included information obtained from Trans Union. The remaining portion of this paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies the remaining portion of this paragraph on that basis.

10. BIG admits that on or about December 19, 2013, it furnished to Sun Life a report regarding Plaintiff that included information obtained from Trans Union. The remaining portion of this paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies the remaining portion of this paragraph on that basis.

11. This paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies this paragraph on that basis.

12. BIG admits that on or about December 19, 2013, it furnished to Sun Life a report regarding Plaintiff that included information regarding a civil court judgment that had not been satisfied. BIG denies the remaining allegations in this paragraph to the extent not admitted herein.

13. This paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies this paragraph on that basis.

14. This paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies this paragraph on that basis.

15. BIG admits that it is a background screening firm and that on or about December 19, 2013, it furnished to Sun Life a report regarding Plaintiff that included information obtained from Trans Union regarding a civil judgment. The remaining portion of this paragraph contains

legal conclusions to which BIG is not required to respond and therefore BIG denies the remaining portion of this paragraph on that basis.

16. Denied.

17. Denied.

18. Denied as stated. Plaintiff's use of vague terms such as "in most instances" and "automated and intermittent" and "very limited information" as well as reference to unidentified "public court websites" deprives BIG of the ability to substantively answer the allegations in this paragraph.

19. Denied.

20. Denied.

21. This paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies this paragraph on that basis.

22. Denied. BIG denies that it failed to follow the FCRA, and also denies that Plaintiff has pled any valid injury in this case.

23. Denied.

24. Denied.

25. Admitted only that the letter referenced in this paragraph was an attachment to a submission by Plaintiff himself (or for Plaintiff) to the New Jersey court and speaks for itself. BIG denies the remaining allegations in this paragraph.

26. Denied.

27. This paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies this paragraph on that basis.

28. BIG denies that it is legally required to have “strict procedures designed to ensure that it does not furnish out of date civil judgments or tax liens” and denies that its procedures are insufficient to ensure that information it provides to customers is not outdated even if it was legally required to have such procedures.

29. Denied.

30. This paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies this paragraph on that basis.

31. Denied.

32. This paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies this paragraph on that basis.

33. This paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies this paragraph on that basis.

34. Denied.

35. Denied.

36. This paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies this paragraph on that basis.

Count One

37. BIG repeats and reasserts its responses to each of the preceding paragraphs 1-36 as if fully set forth herein.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

Count Two

42. BIG repeats and reasserts its responses to each of the preceding paragraphs 1-41 as if fully set forth herein.

43. BIG admits that Plaintiff purports to assert a FCRA claim on behalf of a putative class which he calls the “Satisfied Judgment Class.” BIG denies that Plaintiff’s claims have any merit, denies that class certification would be appropriate, and denies that Plaintiff and the putative class are entitled to any relief whatsoever.

44. BIG admits that Plaintiff purports to assert a FCRA claim on behalf of a putative class which he calls the “Incomplete Identifiers Class.” BIG denies that Plaintiff’s claims have any merit, denies that class certification would be appropriate, and denies that Plaintiff and the putative class are entitled to any relief whatsoever.

45. Denied.

46. This paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies this paragraph on that basis.

47. This paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies this paragraph on that basis.

48. This paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies this paragraph on that basis.

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54. This paragraph contains legal conclusions to which BIG is not required to respond and therefore BIG denies this paragraph on that basis.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

Affirmative and Other Defenses

BIG further asserts the following affirmative and other defenses. By asserting these defenses, BIG does not concede that it has the burden of production or proof as to any defense asserted below. BIG does not presently know all the factors concerning the conduct of Plaintiff sufficient to state all affirmative defenses at this time. To the extent that a class is later certified in this action, each of the following defenses are asserted against each member of the class to the extent applicable. BIG reserves the right to amend this Answer should it later discover facts demonstrating the existence of additional affirmative or other defenses.

1. Plaintiff's Complaint fails to set forth a claim upon which relief may be granted.

2. BIG alleges that Plaintiff's claims are barred by operation of the applicable statute of limitations, 15 U.S.C. § 1681p, or, in the alternative, the doctrine of laches, or by both, to the extent that Plaintiff was aware of the facts on which his claims are based more than two years prior to the filing of the Complaint. Plaintiff's claims are also barred, in whole or in part, to the extent Plaintiff took no action to file suit or otherwise alert BIG of the alleged violations of the law that now form the basis of his Complaint.

3. BIG alleges that Plaintiff's claims are barred, in whole or in part, because the FCRA sections Plaintiff relies upon do not apply under these circumstances, including but not limited to because BIG operated as a "reseller" as defined by 15 U.S.C. § 1681a(u).

4. BIG alleges that the statutory damages that Plaintiff seeks would be disproportionate to the harm alleged or suffered by Plaintiff (or the putative classes) and would be unconstitutionally excessive and/or an excessive fine.

5. BIG alleges that Plaintiff's claims are barred, in whole or in part, because he lacks Article III standing and/or because individuals covered by his putative class definitions lack Article III standing. For example, Plaintiff fails to adequately allege any facts to support that he and each putative class member suffered any harm or injury-in-fact whatsoever from BIG's alleged conduct fairly traceable to BIG.

6. BIG alleges that Plaintiff's claims, including his request for statutory and punitive damages, are barred in whole or in part because, at all material times, BIG acted reasonably, in good faith and without malice or reckless disregard, based upon all relevant facts and circumstances known by BIG at the time, and BIG did not at any time willfully fail to comply with the FCRA or any other law. BIG acted at all times in an objectively reasonable manner.

7. BIG alleges that Plaintiff's claims are barred, in whole or in part, because, within the context of this case, 15 U.S.C. § 1681e(b) and 15 U.S.C. § 1681k(a) are unconstitutionally vague and unenforceable.

8. BIG alleges that Plaintiff's claims are barred, in whole or in part, because BIG's report regarding Plaintiff was protected speech under the First Amendment of the U.S. Constitution.

9. BIG alleges that both Plaintiff's substantive claims and his claim for damages, which seek to recover statutory and punitive damages, violate the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution and the corresponding provisions of Pennsylvania law. BIG alleges that 15 U.S.C. § 1681n is unconstitutionally vague and ambiguous and unjustifiably arbitrary.

10. BIG alleges that Plaintiff's claims for statutory and punitive damages are barred, in whole or in part, because Plaintiff and the putative class members incurred no actual damages and did not sustain any actual harm.

11. BIG alleges that Plaintiff's claims are barred, in whole or in part, because BIG's communications of information concerning Plaintiff and/or putative class members were not "consumer reports," or fell within a statutory exception to the definition of "consumer report" found in the FCRA (*see, e.g.*, 15 U.S.C. § 1681a(y); *Lamson v. EMS Energy Mktg. Serv.*, 868 F. Supp. 2d 804, 818 (E.D. Wis. 2012)).

12. BIG alleges that all of Plaintiff's claims on behalf of absent putative class members fail because Plaintiff cannot meet their burden of demonstrating that each requirement of Federal Rule of Civil Procedure 23, including but not limited to ascertainability, adequacy, typicality, commonality, predominance, and superiority, is met here, and because certifying a

class in the circumstances of this case would violate BIG' rights to due process under the law. To the extent that class certification is nonetheless granted at a future date, BIG alleges and asserts each of the defenses previously stated herein against each and every putative class member.

13. BIG alleges that Plaintiff's claims are barred, in whole or in part (including but not limited to for lack of jurisdiction or venue) to the extent that Plaintiff or any members of the putative class are bound to arbitrate their claims, including that they are bound to arbitrate their claims on an individual basis. This may include, for instance, where Plaintiff or members of the putative class signed a binding arbitration agreement with a third-party that would encompass claims against BIG.

14. BIG alleges that Plaintiff's claims are barred, in whole or in part, to the extent that Plaintiff already received full relief and satisfaction of any claim and/or any alleged harm or damages that he purports to have suffered from third-parties, including but not limited to from settlements of demands or litigation with Trans Union, other consumer reporting agencies, other businesses, or employers.

15. BIG alleges that Plaintiff's claims are barred, in whole or in part, to the extent that personal jurisdiction is lacking for any putative class member's claims against BIG.

16. BIG alleges Plaintiff's claims for injunctive relief fails because an adequate remedy at law exists, he lacks standing to seek equitable relief, and his claim for injunctive relief would be moot.

WHEREFORE, BIG respectfully requests that the Court dismiss Plaintiff's Amended Complaint with prejudice in its entirety, order that no class may be certified, and award BIG its fees and costs incurred in the defense of Plaintiff's Complaint as well as all other legal and equitable relief to which BIG may be entitled.

Respectfully submitted,

/s/ William J. Simmons

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