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**Pro hac vice motions forthcoming*

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

FRANK LONG, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY,

Defendant.

COMPLAINT – CLASS ACTION

DEMAND FOR JURY TRIAL

Plaintiff Frank Long, individually and on behalf of all others similarly situated, alleges, upon personal knowledge as to himself and upon information and belief as to other matters, as follows:

INTRODUCTION

1. Mr. Long brings this case on his own behalf and that of a proposed class of all others similarly situated against the Southeastern Pennsylvania Transportation Authority (“SEPTA” or “Defendant”) for violation of his rights under Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.*, and Pennsylvania’s Criminal History Record Information Act (“CHRIA”), 18 Pa. Cons. Stat. Ann. § 9125.

2. Mr. Long sought employment at SEPTA. He was qualified for the job he sought and was subjected to SEPTA’s criminal background check process.

3. SEPTA routinely rejects job applicants based on information contained in background check reports (“consumer reports”) that it obtains from background check companies called “consumer reporting agencies” or “CRAs,” such as U.S. Security Care, Inc. (“Security Care”).

4. In screening applicants, SEPTA fails to comply with federal law governing the procurement and use of consumer reports for employment purposes.

5. Specifically, before procuring consumer reports from Security Care and/or other CRAs, SEPTA fails to provide job applicants with a clear and conspicuous disclosure in writing, in a document that consists solely of the disclosure, that it may obtain a consumer report for employment purposes, in violation of 15 U.S.C. § 1681b(b)(2)(A)(i).

6. SEPTA has willfully violated the above-mentioned provision of FCRA.

7. In addition, SEPTA routinely violates CHRIA through its blanket policy and practice of disqualifying job applicants with unrelated felony convictions from employment in positions involving the operation of SEPTA vehicles. *See* 18 Pa. Cons. Stat. Ann. § 9125(b) (“Felony and misdemeanor convictions may be considered by the employer only to the extent to

which they relate to the applicant's suitability for employment in the position for which he has applied.").

8. SEPTA has willfully violated the above-mentioned provision of CHRIA.

9. On behalf of himself and others similarly situated, Mr. Long seeks injunctive and declaratory relief; statutory damages; exemplary and punitive damages; pre-judgment and post-judgment interest; and reasonable attorneys' fees, costs, and expenses associated with this action.

JURISDICTION AND VENUE

10. This Court has original subject matter jurisdiction over Mr. Long's FCRA claim pursuant to 15 U.S.C. § 1681p and 28 U.S.C. § 1331 and jurisdiction over his CHRIA claim pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction).

11. Mr. Long's CHRIA claim is so closely related to the FCRA claim that it forms part of the same case or controversy under Article III of the United States Constitution.

12. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) because SEPTA resides in this District, and under 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to the claims alleged herein occurred in this District.

13. This Court has personal jurisdiction over this matter because SEPTA is located in this District, conducts substantial business activity in this District, and because many of the unlawful acts described herein occurred in this District and gave rise to the claims alleged.

PARTIES

Plaintiff

14. Mr. Long and the proposed Class Members he seeks to represent are "consumers" as defined by FCRA, 15 U.S.C. § 1681a(c).

15. Mr. Long and the proposed Class Members he seeks to represent are employment applicants and persons aggrieved for the purposes of CHRIA.

16. Mr. Long is a 56-year old resident of Philadelphia, Pennsylvania. At the time of his application to SEPTA, Mr. Long was working as a bus driver for a Philadelphia-based school bus company. Prior to that he worked in the warehouse division of a national healthcare company for over 12 years.

17. Mr. Long has regularly volunteered his time to his community, working with neighborhood watch programs, community garden clean-ups, and youth and senior citizens programs through his church.

18. In or about October 2014, Mr. Long applied for the position of Bus Operator with SEPTA.

19. On or about October 17, 2014, Mr. Long interviewed for a Bus Operator position with SEPTA.

Defendant

20. SEPTA operates the United States' sixth-largest public transportation system. It services over 750,000 passengers on a weekday and employs approximately 9,000 employees.

21. SEPTA is a public transit authority organized under the laws of the Commonwealth of Pennsylvania, and maintains its headquarters at 1234 Market Street, Philadelphia, Pennsylvania 19107.

22. At all relevant times, SEPTA has been a "person" using "consumer reports" of Mr. Long and proposed Class Members for "employment purposes."

23. At all relevant times, SEPTA has been an "employer" and a "person" and/or an "organization" for purposes of the CHRIA.

STATEMENT OF FACTS

Plaintiff Long's Experience

24. In or about October 2014, Mr. Long applied to be a Bus Operator with SEPTA.

25. On or about October 17, 2014, Mr. Long interviewed with a SEPTA recruiter for the Bus Operator position.

26. At that interview, Mr. Long discussed the experiences that qualified him for the position, including his Commercial Driver's License and his job as a school bus driver at the time of the interview.

27. The recruiter told Mr. Long that he thought Mr. Long would be a good driver, he interviewed well, and was qualified for the position.

28. Consequently, on the same day of the interview, the recruiter extended an oral offer of employment to Mr. Long contingent on a background check.

29. At SEPTA's behest, Mr. Long completed a SEPTA form disclosing that he has a criminal history and authorizing SEPTA to conduct a background check. The SEPTA form was not only unclear and inconspicuous, but, in addition, it did not "consist solely of the disclosure" that a consumer report may be procured for employment purposes, and instead contained numerous statements and requests in clear violation of the requirements set out by FCRA as described more fully below.

30. SEPTA did not provide Mr. Long with any other authorization form that complied with FCRA.

31. In or about late October, 2014, the recruiter called Mr. Long revoking the offer of employment for the Bus Operator position based on Mr. Long's previous criminal history. The

recruiter told Mr. Long that he could try applying for a Maintenance Custodian position with SEPTA.

32. On his record, Mr. Long had 1997 drug convictions for possession and manufacture of a controlled substance originating from a 1994 arrest.

33. Mr. Long's criminal history was not relevant to the Bus Operator position for which he applied for reasons including the nature of the crime, the age of the conviction and the years Mr. Long has been in the general population without any further convictions.

34. Over four months later, in or about early March, 2015, Mr. Long received a letter from SEPTA's Human Resources Division Recruitment Manager, stating that "based on [its] hiring criteria," SEPTA had decided not to hire Mr. Long for the Bus Operator position. The correspondence indicated that this decision was made from the information SEPTA had received from Security Care's background check. The report enclosed with the letter indicated that Security Care completed the background check back in November 2014.

Factual Allegations Common to All Class Members

The FCRA Claim

35. Enacted in 1970, the FCRA's passage was driven in part by two related concerns: First, that consumer reports were playing a central role in people's lives at crucial moments, such as when they applied for a job or credit, and when they applied for housing. Second, despite their importance, consumer reports were unregulated and had widespread errors and inaccuracies.

36. Congress sought for consumer reports to be "fair and equitable to the consumer" and to ensure "the confidentiality, accuracy, relevancy, and proper utilization" of consumer reports. 15 U.S.C. § 1681.

37. Congress was particularly concerned about the use of background reports in the employment context, and therefore defined the term “consumer reports” to explicitly include background reports procured for employment purposes. *See* 15 U.S.C. § 1681a(d)(1)(B).

38. Through the FCRA, Congress required employers disclose that a consumer report may be obtained for employment purposes before procuring the report. 15 U.S.C. § 1681b(b)(2)(A)(i).

39. Specifically, the FCRA requires that employers “may not procure a consumer report or cause a consumer report to be procured, for employment purposes with respect to any consumer,” unless:

- (i) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, *in a document that consists solely of the disclosure*, that a consumer report may be obtained for employment purposes; and
- (ii) the consumer has authorized in writing (which authorization may be made on the document referred to in clause (i)) the procurement of the report by that person.

15 U.S.C. § 1681b(B)(2)(A)(i) and (ii) (emphasis added). This requirement is frequently referred to as the “stand-alone disclosure requirement.”

40. The FCRA stand-alone disclosure requirement therefore imposes the duty on SEPTA to provide a “clear and conspicuous” disclosure to prospective employees that a consumer report about them will be procured.

41. The FCRA stand-alone disclosure requirement puts consumers on notice that a report about them may be prepared. This knowledge enables consumers to exercise a variety of other substantive rights conferred by the statute, many of which work to ensure accuracy, confidentiality, and fairness. 15 U.S.C. § 1681c(a) (limiting temporal scope of information that can be reported); § 1681e(b) (mandating that consumer reporting agencies employ procedures to

ensure “maximum possible accuracy” in reports); § 1681k (requiring consumer reporting agencies that report public record information to employers to either provide notice to the consumer that information is being reported or have “strict procedures” to ensure that information is “complete and up to date”); § 1681i (requiring that consumer reporting agencies investigate any disputed information); § 1681g (requiring that consumer reporting agencies provide a complete copy of the consumer’s file to the consumer).

42. SEPTA routinely and systemically violates the FCRA stand-alone disclosure requirement by failing to provide “clear and conspicuous” disclosures in writing, in a document that consists solely of the disclosures, that a consumer report may be obtained.

43. Instead, SEPTA uses extraneous language in its disclosure forms, including, but not limited to, language inquiring about the applicant’s educational history, employment history, probation or parole status, and job suitability.

44. SEPTA has acted willfully in violating the FCRA stand-alone disclosure requirement. SEPTA knew or should have known its obligations under the FCRA. These obligations are well-established by the plain language of the FCRA, in the promulgations and opinion letters of the Federal Trade Commission, and in longstanding case law. Moreover, SEPTA’s form letter denying employment to job applicants expressly references the FCRA, establishing its awareness of the FCRA’s requirements. Further, employers are required to certify to the consumer reporting agency that they will comply with FCRA’s stand-alone disclosure and authorization requirements. *See* 15 U.S.C. § 1681b(b)(1).

45. Despite SEPTA’s awareness of its legal obligations, it has acted consciously, recklessly and willfully in breaching its known duties and depriving Mr. Long and other job applicants of their rights under the FCRA.

The CHRIA Claim

46. CHRIA provides that, “[f]elony and misdemeanor convictions may be considered by the employer only to the extent to which they relate to the applicant’s suitability for employment in the position for which he has applied.” 18 Pa. Cons. Stat. Ann. § 9125(b).

47. CHRIA further states that, “[t]he employer shall notify in writing the applicant if the decision not to hire the applicant is based in whole or in part on criminal history record information.” 18 Pa. Cons. Stat. Ann. § 9125(c).

48. SEPTA routinely and systemically violates CHRIA by considering and denying employment to job applicants based on criminal conviction(s) that do not relate to the applicants’ suitability for employment in the positions for which they have applied.

49. Through its actions, SEPTA has acted willfully in violating the requirements of CHRIA.

CLASS ACTION ALLEGATIONS

50. Mr. Long brings this case as a proposed Class action pursuant to Federal Rule of Civil Procedure 23 on behalf of himself and two classes of persons.

51. Mr. Long asserts the First Cause of Action against SEPTA on behalf of the “FCRA Disclosure Class” defined as follows:

FCRA Disclosure Class: All applicants for employment with SEPTA in the United States, within two years of the filing of this Complaint through the date of final judgment, about whom SEPTA procured a consumer report without providing a clear and conspicuous disclosure in writing, in a document that consisted solely of the disclosure, before procuring the consumer report, as required by 15 U.S.C. § 1681b(b)(2)(A)(i).

52. Mr. Long asserts the Second Cause of Action against SEPTA on behalf of the “CHRIA Job Denial Class” defined as follows:

CHRIA Job Denial Class: All applicants for employment with SEPTA in the United States within two years of the filing of this Complaint through the date of final judgment who were denied SEPTA employment involving the operation and/or maintenance of SEPTA non-paratransit vehicles based in whole or in part on a drug-related conviction dating back more than seven (7) years from the decision on their application to SEPTA.

53. The members of the FCRA Disclosure Class and the CHRIA Job Denial Class are collectively referred to as “Class Members.”

54. Mr. Long reserves the right to amend the definition of above-defined classes based on discovery or legal developments.

55. The Class Members identified herein are so numerous that joinder of all members is impracticable. SEPTA employs approximately 9,000 employees. Although Mr. Long does not know the precise number of job applicants harmed by SEPTA’s violations of FCRA and CHRIA, the number is far greater than feasibly could be addressed through joinder. The precise number is also uniquely within Defendant’s possession and the Class Members may be notified of the pendency of this action by published and/or mailed notice.

56. There are questions of law and fact common to Class Members, and these questions predominate over any questions affecting only individual members. Common legal and factual questions include, among others:

- (i) whether Defendant violated FCRA by failing to provide Mr. Long and the FCRA Disclosure Class with a clear and conspicuous disclosure in writing, in a document that consisted solely of the disclosure, prior to procuring their consumer reports for employment purposes, as required by 15 U.S.C. § 1681b(b)(2)(A)(i);
- (ii) whether Defendant violated CHRIA by denying employment to Mr. Long and the CHRIA Job Denial Class based on their criminal convictions;
- (iii) whether Defendant was willful in its noncompliance with the requirements of FCRA;

- (iv) whether Defendant was willful in its noncompliance with the requirements of CHRIA; and
- (v) whether equitable remedies, injunctive relief, statutory damages, compensatory damages, exemplary and punitive damages for Class Members are warranted.

57. Mr. Long is a member of the classes he seeks to represent. SEPTA failed to provide Mr. Long with a clear and conspicuous disclosure in writing, in a document consisting solely of the disclosure, to procure a consumer report for employment purposes before procuring such a report, as required by FCRA. SEPTA denied Mr. Long employment based on his criminal conviction and without that criminal conviction having sufficient relation to his suitability for employment in the position involving the operation of SEPTA vehicles, violating CHRIA.

58. Mr. Long's claims are typical of the claims of the classes he seeks to represent. Upon information and belief, it is SEPTA's standard practice to procure consumer reports without first providing a clear and conspicuous disclosure in writing to applicants, in a document that consists solely of the disclosure. Upon information and belief, it is SEPTA's standard practice to consider felony convictions that do not relate to applicants' suitability for employment involving the operation of SEPTA vehicles when making hiring determinations for employment. Mr. Long is entitled to relief under the same causes of action as other Class Members.

59. Mr. Long will fairly and adequately represent and protect the interests of the Class Members because his interests coincide with, and are not antagonistic to, the interests of the Class Members he seeks to represent. Mr. Long has retained Counsel who are competent and experienced in complex class actions, employment litigation, and the intersection thereof. There is no conflict between Mr. Long and the Class Members.

60. Class certification of the CHRIA Job Denial Class is appropriate pursuant to Federal Rule of Civil Procedure 23(b)(2) because SEPTA has acted and/or refused to act on grounds generally applicable to the Class Members, making declaratory and injunctive relief appropriate with respect to Mr. Long and the Class Members as a whole. The Class Members are entitled to injunctive relief to end Defendant's common, uniform, unfair discriminatory—and illegal—policies and practices.

61. Class certification is appropriate pursuant to Federal Rule of Civil Procedure 23(b)(3) for the FCRA Disclosure Class because common questions of fact and law predominate over any questions affecting only individual Class Members, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Class Members have been damaged and are entitled to recovery as a result of Defendant's uniform policies and practices. Because SEPTA has maintained a common policy of failing to properly inform Class Members of their rights under FCRA, many Class Members are likely unaware that their rights have been violated.

62. Class certification is also appropriate pursuant to Federal Rule of Civil Procedure 23(b)(3) for the CHRIA Job Denial Class because common questions of fact and law predominate over any questions affecting only individual Class Members because SEPTA has maintained a common policy of denying employment because of drug related convictions, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Class Members have been damaged and are entitled to recovery as a result of Defendant's uniform policies and practices.

63. The amount of each Class Member's individual claim is also small compared to the expense and burden of individual prosecution of this litigation. The FCRA has statutorily

specified damages, which Class Members will prove at trial are warranted, that will render calculation of damages for Class Members highly straightforward. The propriety and amount of exemplary and punitive damages are based on Defendant's conduct, making these issues common to Class Members.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

**SEPTA's Failure to Provide Clear and Conspicuous Disclosure
Before Procurement of Consumer Report
(15 U.S.C. § 1681b(b)(2)(A)(i), Brought by Mr. Long on Behalf of
Himself and the FCRA Disclosure Class)**

64. Mr. Long, on behalf of himself and the FCRA Disclosure Class, incorporates the preceding paragraphs as alleged above.

65. SEPTA violated the FCRA by procuring consumer reports on Mr. Long and the FCRA Disclosure Class without making the stand-alone disclosure required by the FCRA. *See* 15 U.S.C. § 1681b(b)(2)(A).

66. Defendant acted willfully and in knowing or reckless disregard of its obligations and the rights of Mr. Long and the FCRA Disclosure Class.

67. SEPTA's willful conduct is reflected by, among other things, the fact that it violated a clear statutory mandate set forth in 15 U.S.C. § 1681b(b)(2), and that Defendant certified that it would comply with 15 U.S.C. § 1681b(b)(2).

68. SEPTA's willful conduct is still further reflected by the following:

- (a) The FCRA was enacted in 1970, Defendant was founded in 1963; Defendant has had since its creation to become compliant;
- (b) Defendant's conduct is inconsistent with the FTC's longstanding regulatory guidance, judicial interpretation, and the plain language of the statute;
- (c) Defendant repeatedly and routinely uses the same unlawful

documents with all of its employees and applicants on whom it procured consumer reports or otherwise failed to provide them with the required stand-alone disclosure;

- (d) Despite the pellucid statutory text and there being a depth of guidance, Defendant 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
- (e) By adopting such a policy, Defendant voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless.

69. As a result of SEPTA's actions, Mr. Long and the FCRA Disclosure Class Members have been deprived of their consumer rights and prevented from making informed decisions about whether to permit SEPTA to procure their personal information.

70. SEPTA's conduct was willful, making it liable for actual or statutory damages, punitive damages, and attorneys' fees and costs, in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n.

SECOND CLAIM FOR RELIEF
SEPTA's Violation of CHRIA
(18 Pa. Cons. Stat. Ann. § 9125(b), Brought by Mr. Long on Behalf of
Himself and the CHRIA Job Denial Class)

71. Mr. Long, on behalf of himself and the CHRIA Job Denial Class, incorporates the preceding paragraphs as alleged above.

72. Mr. Long and the CHRIA Job Denial Class have criminal drug convictions that SEPTA considered when deciding not to offer them employment involving the operation of SEPTA vehicles.

73. Mr. Long and the CHRIA Job Denial Class's convictions are older than seven years and not related to their suitability for employment involving the operation or maintenance of SEPTA non-paratransit vehicles.

74. Mr. Long and the CHRIA Job Denial Class have been aggrieved by SEPTA's denials of employment.

75. As a result of its actions, SEPTA is liable to Mr. Long and the CHRIA Job Denial Class for injunctive relief, damages and reasonable costs of litigation and attorneys' fees, pursuant to 18 Pa. Cons. Stat. Ann. § 9183(a)-(b).

76. SEPTA's conduct has been willful, rendering it liable for exemplary and punitive damages, pursuant to 18 Pa. Cons. Stat. Ann. § 9183(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Long and Class Members pray for relief as follows:

- (a) Certification of Mr. Long's FCRA and CHRIA claims as a class action pursuant to Federal Rule of Civil Procedure 23;
- (b) Designation of Mr. Long as representative of the Class Members;
- (c) Designation of Mr. Long's counsel of record as Class Counsel;
- (d) An order enjoining SEPTA from engaging in further unlawful conduct in violation of FCRA and CHRIA;
- (e) An award of all statutory damages awardable for violations of FCRA including actual and punitive damages for each violation found to be willful;
- (f) An award of all statutory damages awardable for violations of CHRIA including actual and real damages for each violation, and exemplary and punitive damages for each violation found to be willful;
- (g) An award of costs incurred herein, including reasonable attorneys' fees to the extent allowable by law;
- (h) Pre-judgment and post-judgment interest, as provided by law;
- (i) Payment of a reasonable service award to Mr. Long, in recognition of the services he has rendered and will continue to render to the Class Members, and the risks he has taken and will take; and
- (j) Such other and further legal and equitable relief as this Court deems necessary, just and proper.

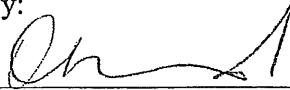
JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Mr. Long demands a trial by jury in this action.

Dated: April 27, 2016

Respectfully submitted,

By:



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