

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

MICHAEL DION SWIFT,

Plaintiff,

-vs-

ADP SCREENING AND SELECTION
SERVICES, INC.,

Defendant.

Case No. 3:24-cv-342

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, MICHAEL DION SWIFT (hereinafter “Plaintiff”), by and through his undersigned counsel, for his cause of action against Defendant, ADP SCREENING AND SELECTION SERVICES, INC. (hereinafter “ADP SASS”), and in support thereof respectfully alleges violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. (“FCRA”).

PRELIMINARY STATEMENT

1. This is an action for actual damages, statutory damages, punitive damages, costs, and attorney’s fees brought pursuant to the FCRA.
2. Consumer reporting agencies that create background reports, like ADP SASS, are charged with using reasonable procedures designed to ensure the maximum possible accuracy of the information they report. It is not enough for them to simply

parrot information they receive from entities, particularly where a consumer makes a dispute about information reported.

3. When a consumer, like Plaintiff, disputes information through the consumer reporting agencies, those disputes are transmitted to the party furnishing the information. The FCRA demands that each party separately conduct a reasonable investigation of the consumer's dispute and correct or delete information they learn to be inaccurate or cannot otherwise verify.

4. The Consumer Financial Protection Bureau has noted, "experience indicates that [CRAs] lack incentives and under-invest in accuracy" Consumer Fin. Prot. Bureau, Supervisory Highlights Consumer Reporting Special Edition 21 (Issue 14, March 2, 2017).

JURISDICTION, VENUE, AND PARTIES

5. Jurisdiction for this Court is conferred by 28 U.S.C. § 1331, as this action involves violations of the FCRA.

6. Venue is proper for this Court pursuant to 28 U.S.C. § 1391(b)(2), as this is the judicial district in which a substantial part of the events or omissions giving rise to the claims occurred.

7. Venue is proper in this District as Plaintiff is a natural person and resident of El Paso County, in the State of Texas; the violations described in this Complaint occurred in this District; and ADP SASS transacts business within this District.

8. Plaintiff is a "consumer" as defined by the FCRA.

9. ADP SASS is a corporation with its principal place of business in the State of New Jersey and is authorized to do business in the State of Texas through its registered agent, C T Corporation System, located at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

10. ADP SASS is a “consumer reporting agency” as defined in 15 USC § 1681(f). ADP SASS is regularly engaged in the business of assembling, evaluating, and disbursing information concerning consumers for the purpose of furnishing background reports, as defined in 15 U.S.C. § 1681(d) to third parties.

11. ADP SASS disburses such background reports to third parties under contract for monetary compensation.

FACTUAL ALLEGATIONS

12. In or about August 2024, Plaintiff was working with a recruiting and staffing company, non-party, Loop Recruiting, to apply for employment.

13. Following an interview, as a requirement for the hiring process, Plaintiff had to submit to a background check.

14. Plaintiff was not concerned since on or about May 9, 2024, Plaintiff obtained a copy of his background report from non-party, First Advantage, which did not include any items of concern such as criminal convictions.

15. The prospective employer utilized the services of ADP SASS who provided a background report on Plaintiff.

16. Upon information and belief, ADP SASS was hired to prepare a background report on Plaintiff to determine his eligibility for employment.

17. Said background report contained falsehoods about Plaintiff, most damaging being that he was “Deshaun Jones” and convicted of a first-degree felony on July 20, 2017, in El Paso County in the State of Texas.

18. Due to the severity of the false record, Plaintiff was not hired for employment.

19. Due to its lack of proper policies and procedures to ensure the maximum possible accuracy of the consumer reports it prepares, ADP SASS falsely reported that Plaintiff was “Deshaun Jones” and convicted of a first-degree felony.

20. This inaccuracy should have been caught by ADP SASS as a simple inquiry with the El Paso County District Clerk’s Office would confirm that Plaintiff and “Deshaun Jones” are not the same person.

21. Due to the inaccurate reporting, on or about August 26, 2024, Plaintiff mailed a detailed written dispute letter to ADP SASS. Plaintiff advised that the criminal conviction was inaccurate. In the letter, Plaintiff included an image of his driver’s license and recent banking statement as proof of identity. In the letter, Plaintiff included images of the erroneous reporting, images of the First Advantage report without any criminal convictions, images of a letter from the El Paso County Clerk’s Office stating it did not have any records for Plaintiff, and other supporting documents.

22. Plaintiff mailed his detailed dispute letter to ADP SASS via USPS Certified Mail, tracking number 9589 0710 5270 1566 2142 66.

23. On or about September 4, 2024, Plaintiff received dispute results from ADP SASS which stated Plaintiff's background report was corrected and the inaccurate criminal records were removed.

24. ADP SASS clearly does not have policies and procedures in place to ensure the maximum possible accuracy of the consumer reports it publishes.

25. As a result of the inaccurate consumer reporting, Plaintiff has suffered damages, including, but not limited to:

- i. Monies lost by attempting to fix his background file. Plaintiff has suffered actual damages in postage paid, wasted ink and paper, and wasted time;
- ii. Loss of time attempting to cure the errors;
- iii. Mental anguish, added stress, aggravation, embarrassment, sleepless nights, and other related impairments to the enjoyment of life; Plaintiff is being physically affected by ADP SASS's reluctance to fix the errors;
- iv. Apprehensiveness to apply for employment due to ADP SASS's errors; and
- v. Defamation as ADP SASS published inaccurate information to third party entities.

CAUSES OF ACTION

COUNT I

**Violation of 15 U.S.C. § 1681e(b) as to
Defendant, ADP Screening and Selection Services, Inc. (Negligent)**

26. Plaintiff re-alleges and incorporates paragraphs one (1) through twenty-five (25) above as if fully stated herein.

27. ADP SASS 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 background report and background files it published and maintains concerning Plaintiff.

28. ADP SASS allowed inaccurate information to be reported on Plaintiff's background file.

29. ADP SASS prevents its agents from calling consumers (like Plaintiff) during the dispute process or from calling witnesses with knowledge about the dispute.

30. As a direct result of this conduct, action and/or inaction of ADP SASS, Plaintiff suffered damages, including without limitation, denials for employment; loss of time; financial loss; and mental and emotional pain stemming from the anguish, humiliation, apprehension in applying for employment, and the damages otherwise outlined in this Complaint.

31. The conduct, action, and/or inaction of ADP SASS was negligent, rendering it liable for actual damages in an amount to be determined by the Court pursuant to 15 USC § 1681o.

32. Plaintiff is entitled to recover costs and attorney's fees from ADP SASS in an amount to be determined by the Court pursuant to 15 USC § 1681o.

WHEREFORE, Plaintiff, MICHAEL DION SWIFT, respectfully requests that this Court award actual damages against Defendant, ADP SCREENING AND SELECTION SERVICES, INC., jointly and severally; award Plaintiff his attorney's fees and costs; award pre-judgment and post-judgment interest at the legal rate; and grant all such additional relief as the Court deems appropriate.

COUNT II
Violation of 15 U.S.C. § 1681e(b) as to
Defendant, ADP Screening and Selection Services, Inc. (Willful)

33. Plaintiff re-alleges and incorporates paragraphs one (1) through twenty-five (25) above as if fully stated herein.

34. ADP SASS 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 background report and background files it published and maintains concerning Plaintiff.

35. ADP SASS allowed inaccurate information to be reported on Plaintiff's background file.

36. ADP SASS prevents its agents from calling consumers (like Plaintiff) during the dispute process or from calling witnesses with knowledge about the dispute.

37. As a direct result of this conduct, action and/or inaction of ADP SASS, Plaintiff suffered damages, including without limitation, denials for employment; loss

of time; financial loss; and mental and emotional pain stemming from the anguish, humiliation, apprehension in applying for employment, and the damages otherwise outlined in this Complaint.

38. The conduct, action, and/or inaction of ADP SASS was willful, rendering it liable for actual or statutory damages and punitive damages in an amount to be determined by the Court pursuant to 15 USC § 1681n.

39. Plaintiff is entitled to recover costs and attorney's fees from ADP SASS in an amount to be determined by the Court pursuant to 15 USC § 1681n.

WHEREFORE, Plaintiff, MICHAEL DION SWIFT, respectfully requests that this Court award actual or statutory damages and punitive damages against Defendant, ADP SCREENING AND SELECTION SERVICES, INC., jointly and severally; award Plaintiff his attorney's fees and costs; award pre-judgment and post-judgment interest at the legal rate; and grant all such additional relief as the Court deems appropriate.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff hereby demands a trial by jury of all issues triable by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, MICHAEL DION SWIFT, respectfully requests that this Court award judgment for actual, statutory, compensatory, and punitive damages against Defendants, ADP SCREENING AND SELECTION SERVICES, INC., jointly

and severally; attorneys' fees and costs; prejudgment and post-judgment interest at the judgment rate; and such other relief the Court deems just and proper.

DATED this 20th day of September 2024.

Respectfully submitted,

/s/ Octavio Gomez

Octavio "Tav" Gomez, Esq.

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