

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CLINT MILLIEN, individually and on behalf of all others
similarly situated,

Plaintiff(s),

-against-

THE MADISON SQUARE GARDEN COMPANY and
MSGN HOLDINGS, L.P.,

Defendant(s).

Index No. [REDACTED]

Summons

Date Index No. Purchased: [REDACTED]

To the above named Defendant(s)

THE MADISON SQUARE GARDEN COMPANY and MSGN HOLDINGS, L.P.
Two Penn Plaza, New York, New York 10121

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is location of Defendants' principal office and residence,
which is Two Penn Plaza, New York, New York 10121

Dated: New York, New York

April 26, 2017

OUTTEN & GOLDEN LLP

by /s/ Ossai Miazad

Ossai Miazad

Attorneys for Plaintiff

OUTTEN & GOLDEN LLP
Ossai Miazad
Lewis M. Steel
Christopher M. McNerney
Chauniqua D. Young
685 Third Avenue, 25th Floor
New York, New York 10017
Telephone: (212) 245-1000
Facsimile: (646) 509-2060

Attorneys for Plaintiff Millien and the Putative
Classes

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

CLINT MILLIEN, individually and on behalf of all others similarly situated,

Plaintiff,

v.

THE MADISON SQUARE GARDEN COMPANY and MSGN HOLDINGS, L.P.,

Defendants.

Index No.:

CLASS ACTION COMPLAINT

Jury Trial Demanded

Plaintiff Clint Millien (“Millien” or “Plaintiff”), 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:

SUMMARY OF THE CLAIMS

1. Plaintiff brings this case on his own behalf and that of a proposed class of all others similarly situated against Defendants The Madison Square Garden Company and MSGN Holdings, L.P. (“MSG” or “Defendant”) for violation of their rights under the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.*, and the New York State Fair Credit Reporting Act (“NY FCRA”), N.Y. Gen. Bus. Law § 380 *et seq.*

2. Mr. Millien sought employment at MSG. He was qualified for the job, made a conditional offer of employment and subjected to MSG’s background check process.

3. Upon information and belief, MSG routinely rejects job applicants based on information contained in background check reports (“consumer reports”) that it obtains from consumer reporting agencies (“CRAs”) without providing those individuals with copies of their consumer reports, a statement of rights under the FCRA, or a copy of Article 23-A of the New

York Correction Law (“Correction Law”). MSG’s failure to provide these documents violates section 1681b(b)(3)(A) of the FCRA, which renders illegal the use of consumer reports to make adverse employment decisions without the employer first providing the individual who is the subject of the report with sufficient and timely notification of its intent to take an adverse action, a copy of the report, and a summary of rights under the FCRA. *See* 15 U.S.C. § 1681b(b)(3)(A)(i) and (ii). It also violates N.Y. Gen. Bus. Law § 380-g(d), which requires that employers provide individuals with a copy of Article 23-A of the Correction Law when a consumer report has been procured on them.

4. MSG’s violations of the FCRA and NY FCRA cause concrete injury by, among other examples, invading individuals’ privacy and depriving them of crucial information that Congress and the New York legislature intended that they possess so that, for example, applicants could explain their conviction histories or otherwise challenge their rejections of employment.

5. MSG has willfully violated the above-mentioned provision of the FCRA and NY FCRA.

6. On behalf of himself and others similarly situated, Plaintiff seeks statutory and/or actual 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

7. This Court has jurisdiction over Plaintiff’s claims pursuant to 15 U.S.C. § 1681p, which permits claims under the FCRA to be brought in any “court of competent jurisdiction.” This Court also has jurisdiction over Plaintiff’s FCRA and NY FCRA claims pursuant to New York Civil Practice Law and Rule § 301.

8. Venue is proper in this District pursuant to New York Civil Practice Law and Rule § 503 because MSG is headquartered and resides in this District and because a substantial part of the events and omissions giving rise to the claims alleged herein occurred in this District.

9. This case is properly brought in the Commercial Division of the Supreme Court because, upon information and belief, the damages of Plaintiff and the putative class, exclusive of punitive damages, interests, costs, disbursements and counsel fees claimed, exceed the monetary threshold for New York County of \$500,000.

PARTIES

Plaintiff

10. Plaintiff Millien and the proposed Class Members he seeks to represent are “consumers” as defined by the FCRA and NY FCRA.

11. Plaintiff is a resident of Essex County, New Jersey.

Defendants

12. The Madison Square Garden Company is a corporation organized under the laws of the State of Delaware and maintains its headquarters at Two Pennsylvania Plaza, New York, NY.

13. MSGN Holdings, L.P. is registered as a Delaware limited partnership and maintains its headquarters at Two Pennsylvania Plaza, New York, NY.

14. At all relevant times, The Madison Square Garden Company and MSGN Holdings, L.P. have each been a “person” using “consumer reports” of Plaintiff and proposed Class Members for “employment purposes” and have taken “adverse action” against Plaintiff and similarly situated applicants, as defined by the FCRA and NY FCRA, for example by preventing them from explaining or challenging their rejections of employment. These adverse actions have

been based wholly or in part on those consumer reports.

15. At all relevant times, The Madison Square Garden Company and MSGN Holdings, L.P. have been aware of the requirements of the FCRA and NY FCRA, and yet have disregarded those requirements.

STATEMENT OF FACTS

Clint Millien

16. On or about July 13, 2015, Mr. Millien spoke with a recruiter employed by MSG about job openings with the company. The recruiter encouraged Mr. Millien to apply, based on his previous work experience.

17. Mr. Millien subsequently applied to work at MSG through MSG's online portal. Either on the application, or in a separate document, MSG asked Mr. Millien about his criminal history. Mr. Millien was confused by MSG's forms, and only disclosed one of his two misdemeanor convictions, which he reasonably believed was the only information MSG was asking about.

18. On or about July 14, 2015, Mr. Millien was interviewed by an MSG representative for approximately thirty minutes.

19. The interview was successful, and at its conclusion, Mr. Millien was told that he was conditionally hired but that MSG would conduct a background check. He also was told that he would have an orientation in early August and that he would start working for MSG after the orientation.

20. Later that day, Mr. Millien received an email from MSG with the subject line "Offer Documents." A link in the email led to documents that containing information about Mr. Millien's employment with MSG, including that he would be paid approximately \$11.00 an hour

for a position in “food prep.”

21. Mr. Millien received a second email from MSG on July 14, 2015, instructing him to take a drug test. Following those instructions, Mr. Millien took a drug test and passed it.

22. At some point during this process, MSG obtained a consumer report on Mr. Millien that contained a criminal record check.

23. In or around July or August, 2015, Mr. Millien received a phone call from an MSG employee informing him that MSG was rescinding its employment offer as a result of its background check.

24. Mr. Millien never received a copy of his consumer report.

25. Mr. Millien never received a statement of his rights under the Fair Credit Reporting Act.

26. Mr. Millien never received a copy of Article 23-A of the New York Correction Law.

27. During the entire relevant period, Mr. Millien resided at the same address known to MSG.

Factual Allegations Common to All Class Members

The Fair Credit Reporting Act

28. The FCRA was enacted in 1970. Through its passage, Congress required that consumer reports be “fair and equitable to the consumer” and protect a “consumer’s right to privacy” through “adopt[ing] reasonable procedures” to ensure “the confidentiality, accuracy, relevancy, and proper utilization” of information contained within consumer reports. 15 U.S.C. §§ 1681(a)(4)-(b).

29. Congress also required that “consumer reports” explicitly include background

reports procured for employment purposes. *See* 15 U.S.C. § 1681a(d)(1)(B).

30. Through the FCRA, Congress requires that “before taking any adverse action based in whole or in part on [a consumer report],” the employer taking the adverse action must provide “the consumer to whom the report relates” with:

- (i) a copy of the report; and
- (ii) a description in writing of the rights of the consumer under this subchapter, as prescribed by the [Consumer Financial Protection] Bureau under section 1681g(c)(3)[.]

15 U.S.C. § 1681b(b)(3)(A)(i) and (ii).

31. The FCRA defines adverse action as both “a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee,” and “an action taken or determination that is . . . adverse to the interests of the consumer.” 15 U.S.C. § 1681a(k)(1)(B)(ii) and (iv).

32. Upon information and belief, MSG has routinely and systematically failed to provide Plaintiff and other job applicants with their consumer report and a summary of their rights under the FCRA before taking adverse actions against them.

33. In Congress’s judgment, an employer’s failure to provide a consumer with his or her consumer report and a summary of his or her rights under the FCRA are both harms sufficient to establish Article III standing.

34. Without notice that a consumer report is going to be used to take adverse action against them, job applicants are hindered in their ability to preserve their privacy, provide context for their criminal histories, or to correct errors or other problems with the report.

35. MSG has acted willfully in violating the FCRA. MSG 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. Further, MSG is required to certify to the consumer reporting agency that it will comply with the FCRA's stand-alone disclosure and authorization requirements. *See* 15 U.S.C. § 1681b(b)(1)(A).

36. Despite MSG's awareness of its legal obligations, it has acted recklessly and willfully in breaching its known duties and depriving Plaintiff and other job applicants of their rights under the FCRA.

The NY FCRA

37. The NY FCRA requires that:

When a consumer reporting agency provides a consumer report that contains criminal conviction information, permitted by paragraph one of subdivision (a) of section three hundred eighty-j of this article, to a user, the person, firm, corporation or other entity requesting such report shall provide the subject of such report a printed or electronic copy of article twenty-three-A of the correction law governing the licensure and employment of persons previously convicted of one or more criminal offenses.

N.Y. Gen. Bus. Law § 380-g(d).

38. "The public policy of [New York] state, as expressed in [its Correction Law], [is] to encourage the licensure and employment of persons previously convicted of one or more criminal offenses." N.Y. Corr. Law § 753(1)(a).

39. Upon information and belief, MSG has routinely and systematically failed to provide Plaintiff and other job applicants with a copy of Article 23-A of the Correction Law.

40. This has caused Plaintiff and other job applicants concrete harm because it has denied them an opportunity to learn of their rights under Article 23-A of the Correction Law and created the risk of future harm.

41. For example, under the Correction Law, MSG cannot deny employment to an individual “when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses, unless” MSG shows “a direct relationship” between the conviction(s) and the job or “an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.” N.Y. Corr. Law § 752.

42. Instead, MSG must consider eight factors laid out in Section 753 of the Correction Law and whether the individual has a certificate of relief from disabilities or a certificate of good conduct. N.Y. Corr. Law § 753.

43. In turn, Section 754 of the Correction law allows an individual “previously convicted of one or more criminal offenses” to request a written explanation for the employer’s denial of employment, which the employer is required to provide within 30 days of the request—providing applicants with crucial information as to the basis for the job denial. N.Y. Corr. Law § 754.

44. MSG’s failure to provide Plaintiff and other job applicants with a copy of Article 23-A of the Correction law denied them information about their legal right to be free from discrimination and remedies for that discrimination once it had occurred.

45. MSG’s failure to provide this information also created the risk that Plaintiff and other job applicants would fail to seek to vindicate their right to be free from discrimination—either from MSG’s denial of employment or the denial of employment by another employer.

46. Given that the time for an individual to bring a claim against MSG through the New York City Commission on Human Rights (“NYCCHR”) is only one year, *see* N.Y.C. Admin. Code § 8-109(e) (stating that commission lacks jurisdiction over complaints “filed more than one year after the alleged unlawful discriminatory practice or act of

discriminatory harassment or violence . . . occurred”); N.Y. Corr. Law § 755(2) (explaining that claims can be brought against private employers, *inter alia*, through NYCCHR), many putative class members have had their choice of venues diminished through MSG’s actions, causing further concrete harm.

47. MSG’s violation of the NY FCRA frustrates New York’s public policy to increase the employment of persons with criminal convictions. *See* N.Y. Corr. Law § 753(1)(a).

48. MSG has acted willfully in violating the requirements of the NY FCRA. MSG knew or should have known about its obligations under the NY FCRA. These obligations are well-established by the plain language of the NY FCRA.

49. Despite MSG’s awareness of its legal obligations, it has acted recklessly and willfully in breaching its known duties and depriving Plaintiff and other job applicants of their rights under the FCRA.

CLASS ACTION ALLEGATIONS

50. Plaintiff 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 (collectively, the “Classes”).

51. Plaintiff asserts the First Cause of Action against MSG on behalf of the “FCRA Consumer Report Class” defined as follows:

FCRA Consumer Report Class: All individuals who, during the applicable five year statute of limitations period, were subjected to an adverse action by MSG at least in part because of information in their consumer reports without being provided with a copy of their consumer report and/or a statement of their rights under the FCRA.

52. Plaintiff asserts the Second Cause of Action against MSG on behalf of the “NY FCRA Class” defined as follows:

NY FCRA Class: All individuals who, during the applicable two year statute of limitations period, had consumer reports requested about them by MSG and were not provided with a copy of article twenty-three-A of the correction law.

53. The members of the FCRA Consumer Report Class and NY FCRA Class are collectively referred to as “Class Members.”

54. Plaintiff 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. MSG is a large New York employer. The number of job applicants harmed by MSG’s violations of the FCRA and NY FCRA is far greater than feasibly could be addressed through joinder. The precise number is uniquely within Defendant’s possession, and 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:

- (a) whether Defendant violated the FCRA by failing to provide Plaintiff and the FCRA Consumer Report Class with a copy of their consumer report before taking adverse action against them in violation of 15 U.S.C. § 1681b(b)(3)(A)(i);
- (b) whether Defendant violated the FCRA by failing to provide Plaintiff and the FCRA Consumer Report Class with a written description of their rights under the FCRA before taking adverse action against them in violation of 15 U.S.C. § 1681b(b)(3)(A)(ii);
- (c) whether Defendant’s actions caused informational injury to Plaintiff and Class Members, and whether Defendant’s actions violated the privacy of Plaintiff and Class Members;
- (d) whether Defendant violated the NY FCRA by failing to provide Plaintiff and the NY FCRA Class with a copy of Article 23-A of the Correction Law, in violation of N.Y. Gen. Bus. Law § 380-g(d).
- (e) whether Defendant was willful in its noncompliance with the requirements of the FCRA and NY FCRA; and

- (f) whether statutory damages, compensatory damages, exemplary damages and punitive damages for Class Members are warranted.

57. Plaintiff is a member of the classes he seeks to represent. MSG took adverse action against Plaintiff without first providing him with a copy of his consumer reports, a written summary of his rights under the FCRA, or a copy of Article 23-A of the Correction Law.

58. Plaintiff's claims are typical of the claims of the classes he seeks to represent. Upon information and belief, it is MSG's standard practice to take adverse actions against applicants without first providing them with a copy of their consumer reports, a written summary of their rights under the FCRA, or a copy of Article 23-A of the Correction Law. Plaintiff is entitled to relief under the same causes of action as other Class Members.

59. Plaintiff 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. Plaintiff has retained Counsel who are competent and experienced in complex class actions, including litigation pertaining to criminal background checks, the FCRA and NY FCRA, other employment litigation, and the intersection thereof. There is no conflict between Plaintiff and the Class Members.

60. Class certification is appropriate pursuant to Federal Rule of Civil Procedure 23(b)(3) for the FCRA Consumer Report Class because common questions of fact and law predominate over any questions affecting only individual Class Members. For example, MSG has maintained a common policy of taking adverse action without first providing applicants with copies of their consumer reports and/or a written description of their rights under the FCRA. Moreover, 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 MSG has maintained a common

policy of failing to properly inform Class Members of their rights under the FCRA, many Class Members are likely unaware that their rights have been violated.

61. Class certification is appropriate pursuant to Federal Rule of Civil Procedure 23(b)(3) for the NY FCRA Class because common questions of fact and law predominate over any questions affecting only individual Class Members. For example, MSG has maintained a common policy of obtaining consumer reports from individuals without providing them with a copy of Article 23-A of the Correction Law. Moreover, 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 MSG has maintained a common policy of failing to properly inform Class Members of their rights under the NY FCRA, many Class Members are likely unaware that their rights have been violated.

62. The amount of each Class Member's individual claim is 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 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

MSG's Failure to Provide Consumer Reports and FCRA Notices Before Adverse Actions (15 U.S.C. § 1681b(b)(3)(A), Brought by Mr. Millien on Behalf of Himself and the FCRA Consumer Report Class)

63. Mr. Millien, on behalf of himself and the FCRA Consumer Report Class, incorporates the preceding paragraphs as alleged above.

64. MSG violated the FCRA by taking adverse employment actions against Mr. Millien and the FCRA Consumer Report Class based in whole or in part on the information contained within their consumer reports.

65. Before taking these adverse employment actions, MSG failed to provide Mr. Millien and the FCRA Consumer Report Class with a copy of their consumer reports and a reasonable amount of time to respond.

66. Before taking these adverse employment actions, MSG failed to provide Mr. Millien and the FCRA Consumer Report Class with a written description of their rights under the FCRA.

67. These failures are each separate violations of the FCRA.

68. MSG's policy caused concrete injury (including the risk of harm) to Mr. Millien and the FCRA Consumer Report Class, including because they could not:

- (a) evaluate information contained in the consumer reports to ensure accuracy;
- (b) challenge and correct that information;
- (c) explain the circumstances surrounding that information (even if accurate);
- (d) explain why information reported should not preclude employment;
- (e) explain why information that was different on the consumer report than the application should not preclude employment; and
- (f) learn of their rights and opportunities under the FCRA, including the opportunity to bring suit under the FCRA.

69. MSG acted willfully and in knowing or reckless disregard of its obligations and the rights of Mr. Millien and the FCRA Disclosure Class.

70. MSG'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)(3)(A).

71. MSG's willful conduct is still further reflected by the following:
- (a) The FCRA was enacted in 1970, and Defendant has had years 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 took adverse action based in whole or in part on information contained in a consumer report before providing consumers with a copy of the consumer report or FCRA rights; and
 - (d) 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.

72. As a result of MSG's actions, Mr. Millien and the FCRA Consumer Report Class have been deprived of their consumer rights, prevented from timely and effectively contesting the adverse action, and had their privacy invaded.

73. MSG's willful conduct makes it liable for 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
MSG's Failure to Provide Copy of Article 23-a
(N.Y. Gen. Bus. Law § 380-g(d), Brought by Mr. Millien on Behalf of Himself
and the NY FCRA Class)

74. Mr. Millien, on behalf of himself and the NY FCRA Class, incorporates the preceding paragraphs as alleged above.

75. MSG violated the NY FCRA by procuring consumer reports from Mr. Millien and the NY FCRA Class without providing them with copies of Article 23-A of the Correction Law.

76. MSG's policy caused concrete injury (including the risk of harm) to Mr. Millien and the NY FCRA Class, including because they could not learn of their rights and opportunities under the NY FCRA.

77. MSG acted willfully and in knowing or reckless disregard of its obligations and the rights of Mr. Millien and the FCRA Disclosure Class.

78. MSG's willful conduct is reflected by, among other things, the fact that it violated a clear statutory mandate set forth in N.Y. Gen. Bus. Law § 380-g(d).

79. MSG's willful conduct is still further reflected by the following:

- (a) Defendant has had years to become compliant with the NY FCRA;
- (b) Defendant repeatedly and routinely failed to provide individuals with copies of Article 23-A as required by the NY FCRA; and
- (c) 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.

80. As a result of MSG's actions, Mr. Millien and the NY FCRA Class have been deprived of their consumer rights, prevented from timely and effectively contesting the adverse action.

81. MSG's willful and/or negligent conduct makes it liable for actual damages, punitive damages, and attorneys' fees and costs, in an amount to be determined by the Court pursuant to N.Y. Gen. Bus. Law § 380-l and N.Y. Gen. Bus. Law § 380-m.

PRAYER FOR RELIEF

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

- (a) Certification of the case as a class action on behalf of the proposed classes;
- (b) Designation of Plaintiff Clint Millien as a representative of Class Members;

- (c) Designation of Plaintiff's counsel of record as Class Counsel;
- (d) An award of all actual and/or statutory damages awardable for violations of the FCRA and NY FCRA including punitive damages for each violation found to be willful;
- (e) An award of costs incurred herein, including reasonable attorneys' fees to the extent allowable by law;
- (f) Pre-judgment and post-judgment interest, as provided by law;
- (g) Payment of a reasonable service award to Plaintiff, in recognition of the services he has rendered and will continue to render to Class Members, and the risks he has taken and will take; and
- (h) Such other and further legal and equitable relief as this Court deems necessary, just and proper.

JURY DEMAND

Plaintiff demands a trial by jury in this action.

Dated: New York, New York
April 26, 2017

Respectfully submitted,

By: /s/ Ossai Miazad

OUTTEN & GOLDEN LLP

Ossai Miazad
Lewis M. Steel
Christopher M. McNerney
Chauniqua D. Young
685 Third Avenue, 25th Floor
New York, New York 10017
Telephone: (212) 245-1000
Facsimile: (646) 509-2060

YOUTH REPRESENT

Michael C. Pope
Eric Eingold
11 Park Place, Suite 1512
New York, NY 10007
Telephone: (646) 759-8080
Facsimile: (646) 217-3097

*Attorneys for Plaintiff Millien and the Putative
Classes*