

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**Civil Action No:** \_\_\_\_\_

**OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.,  
SHANE PAUL,  
STEVEN BUSSONE,  
DALE STEWART,  
KENNETH HINZMAN and  
WILLIAM MECK,  
on behalf of themselves and all others similarly situated,**

**Plaintiffs,**

**v.**

**USIS COMMERCIAL SERVICES, INC., /d/b/a DAC Services, an Oklahoma corporation,**

**Defendant.**

---

**CLASS ACTION COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF, AND DAMAGES;  
DEMAND FOR JURY TRIAL**

---

The Owner-Operator Independent Drivers Association, Inc. (“OOIDA”), Shane Paul, Steven Bussone, Dale Stewart, Kenneth Hinzman, and William Meck, (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, bring this action against USIS Commercial Services, Inc., d/b/a DAC Services, “Defendant,” and allege as follows:

## NATURE OF THE ACTION

1. The Defendant USIS Commercial Services, Inc. (“USIS ”), d/b/a DAC Services, is an Oklahoma corporation, and a “consumer reporting agency” governed by the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 et seq. Among other things, USIS purchases or otherwise acquires, without the permission of professional truck drivers, statements about them by previous employers, including statements about their work records, and then sells “consumer reports” containing such statements to other motor carriers considering applications by drivers seeking to haul freight in interstate commerce for them. USIS and its predecessor corporation have provided such statement collection and reporting services to the trucking industry for more than twenty years. Plaintiffs include a trade association of professional truck drivers and five individual drivers. Plaintiffs allege, *inter alia*, that Defendant has acquired consumer reports for employment purposes from previous employers without notice to or permission from the drivers, and failed to satisfy its statutory responsibility as a consumer reporting agency to follow reasonable procedures to assure maximum possible accuracy in the collection and transmission of data through its reports. USIS regularly publishes and sells consumer reports that are vague, ambiguous and incomplete, using phrases with uncommon meanings, and that are therefore inaccurate within the meaning of the FCRA. Plaintiff drivers and others similarly situated have been harmed by the acquisition without their permission of such statements, and their re-publication in consumer reports by USIS. By this action, the Plaintiffs seek:
  - a. A declaratory judgment that the use of certain statements in consumer reports prepared

by Defendant violate the FCRA;

- b. An order enjoining the use of such improper statements;
- c. An order enjoining USIS from receiving consumer reports from carriers without first providing notice to and obtaining permission from drivers;
- d. An order directing USIS to account for and restore to the class the profits it has generated through both the obtaining of consumer reports and the reporting of inaccurate statements about class members, in violation of the FCRA;
- e. An award of compensatory and punitive damages for past violations of FCRA as provided for in 15 U.S.C. §§ 1681n and 1681o; and
- f. An award of costs, interest and attorneys' fees as provided for in 15 U.S.C. §§ 1681n(a)(3) and 1681o(a)(2).

### **JURISDICTION AND VENUE**

- 2. The causes of action alleged in this Complaint arise under the laws of the United States regulating interstate commerce and the activities of consumer reporting agencies. 15 U.S.C. § 1681p authorizes the bringing of civil actions in the federal district courts to enforce rights under the FCRA.
- 3. Jurisdiction of this claim is granted to this Court by 28 U.S.C. §§ 1331 (federal question jurisdiction), and § 1337 (proceedings arising under an act of Congress regulating commerce).
- 4. Venue is based upon 28 U.S.C. § 1391(c), in that the Defendant USIS, by virtue of principles of "long arm jurisdiction," is subject to personal jurisdiction within this state and because a

substantial part of the events giving rise to the claims raised herein occurred within this district or state. Some of the USIS members submitting Termination Record forms to USIS are located in and do business in Colorado, some of the USIS members purchasing consumer reports from USIS are located in and do business in Colorado, three of the five individual plaintiffs are residents of Colorado, and were residents of Colorado when Termination Record forms about them were submitted to USIS by carriers doing business in Colorado, and when they sought employment as drivers with carriers doing business in Colorado. For example, Navajo Express, Inc., Bullocks Express Transportation, Inc., Houg Enterprises, Inc., and Voyager Express, Inc., all located in Colorado, provided (without his permission) statements about Plaintiff Shane Paul, a Colorado resident, that were included in a USIS consumer report. USIS does business in Colorado.

#### **PARTIES TO THE ACTION**

5. Plaintiff Owner-Operator Independent Drivers Association, Inc. (“OOIDA”) is a business association of professional truck drivers including owner-operators, small business truckers, and employee drivers. OOIDA is a not-for-profit Missouri corporation, with its headquarters located at 1 NW OOIDA Drive, Grain Valley, Missouri 64029. OOIDA was founded in 1973 and now has about 112,000 members residing in all fifty (50) states and in Canada. A large number of OOIDA’s members including the Plaintiffs Paul, Bussone, Stewart, Hinzman and Meck have been the subject of consumer reports by carriers and by USIS. OOIDA brings this action in a representative capacity and seeks declaratory and injunctive relief on

behalf of all professional drivers who now are, or may in the future be, the subject of a consumer report published by a carrier or by USIS or its predecessor.

6. Plaintiff Shane Paul, f/k/a Shane Paul Kluck, is a resident of the state of Colorado. He is or has been an independent truck owner-operator and a member of OOIDA. Like each of the similarly situated members of the putative class, Plaintiff Paul is a consumer as defined by 15 U.S.C. § 1681a and has been the subject of a consumer report received and published by USIS or its predecessor. Plaintiff Paul seeks declaratory and injunctive relief as well as compensatory and punitive damages for himself and others similarly situated.
7. Plaintiff Steven Bussone is a resident of Colorado. He is or has been an independent truck owner-operator and a member of OOIDA. Like each of the similarly situated members of the putative class, Plaintiff Bussone is a consumer as defined by 15 U.S.C. § 1681a and has been the subject of a consumer report received and published by USIS or its predecessor. Plaintiff Bussone seeks declaratory and injunctive relief as well as compensatory and punitive damages for himself and others similarly situated.
8. Plaintiff Dale Stewart is a resident of Colorado. He is or has been an independent truck owner-operator and a member of OOIDA. Like each of the similarly situated members of the putative class, Plaintiff Stewart is a consumer as defined by 15 U.S.C. § 1681a and has been the subject of a consumer report received and published by USIS or its predecessor. Plaintiff Stewart seeks declaratory and injunctive relief as well as compensatory and punitive damages for himself and others similarly situated.

9. Plaintiff Kenneth Hinzman is a citizen of the state of Florida. He is an independent truck owner-operator and a member of OOIDA. Like each of the similarly situated members of the putative class, Plaintiff Hinzman is a consumer as defined by 15 U.S.C. § 1681a and has been the subject of a consumer report received and published by USIS or its predecessor. Plaintiff Hinzman seeks declaratory and injunctive relief as well as compensatory and punitive damages for himself and others similarly situated.
10. Plaintiff William Meck is a citizen of the state of Florida. He is an independent truck owner-operator and a member of OOIDA. Like each of the similarly situated members of the putative class, Plaintiff Meck is a consumer as defined by 15 U.S.C. § 1681a and has been the subject of a consumer report received and published by USIS or its predecessor. Plaintiff Meck seeks declaratory and injunctive relief as well as compensatory and punitive damages for himself and others similarly situated.
11. The Defendant USIS is an Oklahoma for profit corporation. Its principal offices are located at 4500 South 129<sup>th</sup> East Ave., #200, Tulsa, Oklahoma 74134. USIS is a “consumer reporting agency” as defined by the FCRA. In 2003, USIS became the surviving corporate entity after the merger of several corporations, one of which, Total Information Systems, Inc., an Oklahoma corporation, had been doing business as DAC Services.

### **FEDERAL REGULATORY SETTING**

12. Congress has found that consumer reporting agencies have assumed a “vital role” in gathering information about employees and that such agencies have “grave” responsibilities that must be

exercised with fairness and impartiality. 15 U.S.C. § 1681(a)(3) and (4). Consumer reporting agencies are required to adopt reasonable procedures for meeting with the needs of commerce for personnel information “in a manner that is fair and equitable to the consumer [employee]....with regard to...accuracy [and] relevancy....” 15 U.S.C. § 1681(b). Federal law also requires that a consumer reporting agency “shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the [consumer report] relates.” 15 U.S.C. § 1681e(b). When a consumer reporting agency learns of errors in its reports that may indicate systemic problems it must review its own procedures for assuring accuracy and take all reasonable steps to achieve accuracy. See §§ 607. 3.A and B of the Appendix to 16 C.F.R. Part 600. A consumer reporting agency must also adopt reasonable procedures to eliminate systemic errors resulting from procedures followed by its sources of information and, if those errors are significant, to require its sources to improve its procedures or refuse to receive its statements. *Id.* The rights of individuals under the FCRA are privately enforceable. 15 U.S.C. § 1681p.

### **FACTUAL ALLEGATIONS**

13. Defendant’s contractual relationships with motor carriers is the result of a long-standing collaboration between DAC Services and members of the motor carrier industry. Through this collaboration DAC Services (now USIS) has catered to the needs and desires of motor carriers to an extent that disregards the rights of drivers (consumers) to fairness and impartiality under FCRA, and that frustrates drivers’ rights to check, correct and complete inaccurate

statements in consumer reports.

14. The American Trucking Associations (“ATA”) was formed in 1933. It describes itself on its web site as “the national trade association of the trucking industry.” Although the ATA has suffered a significant loss of membership in the past several years, many of the nations largest motor carriers are still affiliated directly or indirectly with that organization.
15. DAC Services has been a member of the ATA since about 1989. DAC Services continued its close involvement with the ATA following its merger into USIS. In its promotional materials, USIS states: “Our District of Columbia office was opened (in 2002) within the American Trucking Associations’ location, enabling us to better leverage influence on legislative and regulatory decisions that impact the transportation industry.”
16. USIS claims to “store employment histories for more that 2,500 companies across the country. Participating members gain access to... over 4.7 million records...” According to a current USIS web site, its client base includes 95 percent of the largest 100 motor carriers.
17. In the mid-1990's, DAC Services and selected motor carriers affiliated with the ATA collaborated to design a standardized process by which DAC Services could capture, store and transmit to prospective employers (other motor carriers) statements about drivers’ work histories, including statements about carrier/driver contract termination events. The result of the design process was a “Termination Record form” to be used by terminating employers, who were members of DAC Services, to transmit statements about drivers to it for retransmission to prospective employers, who were also members of DAC Services. The collaborators

determined what categories of events would be addressed by the Termination Record form, as well as those that would not, what sets of events would be “coded” within each category, and the language that would be associated with each code, i.e. the definitions of the codes.

Representatives of drivers were not asked to and did not participate in this process.

18. USIS enters into two-year renewable contracts with motor carriers, pursuant to which carriers both purchase from USIS consumer reports about prospective employees, and provide to USIS statements about drivers working, or who have worked, for them. Pursuant to those contracts, USIS imposes upon a carrier a duty “to use its best efforts to furnish USIS an accurate driver’s employment history record within one business day after the driver’s termination of employment or contract.” Through the submitted standardized “Termination Record forms,” carriers regularly provide USIS with statements purporting to bear upon a driver’s personal characteristics and suitability for employment. Carriers, members of USIS, understand that those same statements, when provided, will later be used by other members of USIS who purchase consumer reports from USIS when making hiring decisions. USIS compensates carriers at the rate of \$2.40 per report for submitting “Termination Record forms” to it.
19. USIS does not simply seek to passively receive carriers’ statements in their own words about termination events. USIS undertook in collaboration with motor carrier employers, but not drivers, to define, gather, store and disseminate vague, ambiguous, incomplete descriptions and inaccurate statements respecting driver “work records.” Specifically, USIS and its

collaborators without consulting with drivers or their representatives:

- a. Created and routinized the system for gathering and reporting statements about the interactions between drivers and shippers.
- b. Created and routinized the system for gathering and reporting statements about the termination of carrier/driver contracts.
- c. Designed the Termination Record forms that USIS pays carriers to fill out and return to it, or input directly into the USIS database.
- d. Drafted the vague, ambiguous, incomplete, uncommonly defined and inaccurate terms used in Termination Record forms to describe interactions between drivers and shippers, and to report carrier/driver contract termination events.
- e. Drafted the terms used in Termination Record forms which are vague, ambiguous, uncommonly defined, and incomplete, thereby assuring the use of those terms by employers which, comparing one employer's use with that of another, are inconsistent, and therefore inaccurate.
- f. Drafted the vague, ambiguous, incomplete, uncommonly defined, and inaccurate terms that, because the reader of the consumer reports must guess at the intended meaning, fail to transfer to the readers of consumer reports, both prospective employers and drivers, the knowledge and intended meanings of those filling out Termination Record forms.
- g. Through vague, ambiguous, incomplete and inaccurate terms, and uncommon

definitions of phrases, which were not routinely made known to drivers, undertook to deprive drivers' of notice of any blameworthy conduct of which they were accused, of notice sufficient to permit drivers to make informed decisions to exercise their rights, thereby impeding the drivers' ability to check, correct and complete statements about them in consumer reports.

- h. By frustrating or impeding the drivers' ability to exercise their rights, provide a mechanism to carriers for "blackballing" those drivers who stood up for their rights, thereby insuring a compliant, more easily exploited work force.
- i. Included in its Termination Record forms many formulaic options to describe blameworthy behavior by drivers, but no options to describe blameworthy behavior by carriers, or by shippers.
- j. Required the motor carriers with whom it had service agreements to submit a Termination Record form to it promptly after a termination event without first seeking permission from the driver.
- k. Denied to employers at the time they submitted Termination Record forms an opportunity to expand on or clarify their use of the routinized vague, ambiguous, broad, incomplete and inaccurate statements.
- l. Made no provision for the inclusion of statements from drivers about termination events, and provided no mechanism for drivers to review or comment on carrier-submitted Termination Record forms before including them in its database, and before reporting

them to others.

- m. Decided to routinize the use of anonymously prepared Termination Record forms by not requiring individuals completing them on behalf of motor carriers to sign the forms or otherwise identify themselves, thereby impeding the mandatory re-investigation of statements in consumer reports disputed by drivers.
20. The Termination Record form that resulted from the collaboration between USIS and motor carriers contains a number of categories that are vague, ambiguous, incomplete and therefore inaccurate within the meaning of FCRA, to wit:
- a. “Company policy violation.” (The phrase fails to denote any policy, generally or specifically, or the date, place or manner of any alleged “violation.” The phrase is inherently ambiguous in that company policies vary widely from company to company; within any given company some policies may be lawful and appropriate while others may not; some policies may deal with important matters while others deal with trivial matters; the reader is completely uninformed as to what specific policy was purportedly violated and whether such violation represents relevant information regarding the qualifications of the driver for future employment. But it does have a derogatory connotation. The use of the phrase is equivalent to saying, “He did something wrong.” Because neither a prospective employer or a driver can know what its author was trying to communicate, the phrase is meaningless, will be used inconsistently, and is therefore “inaccurate.”);

- b. “Unsatisfactory safety record.” (The phrase fails to denote the safety standard to which it refers, fails to indicate what parameters were used to separate satisfactory from unsatisfactory safety records, and fails to indicate risky behavior. It fails to give notice to drivers of the time, place and circumstances of any allegedly risky behavior. Because neither a prospective employer or a driver can know what its author was trying to communicate, the phrase is meaningless, will be used inconsistently, and is therefore “inaccurate.”);
- c. “Excessive complaints.” (This phrase is inherently ambiguous. First, it fails to identify the complainer; it cannot be known from this phrase if it is the driver who complained, or if customers, co-employees or others complained about the driver. It is devoid of any reference to the time or subject matter of the complaint. No standard is identified to quantify the term “excessive.” Its ambiguity assures inconsistent usage. Because a reader, whether a driver or a prospective employer, cannot know what its author was trying to communicate, the phrase is meaningless, and therefore “inaccurate.”)
- d. “Cargo loss.” (A reader of this phrase can not infer what happened, when it happened, whether the driver was at fault, or whether the amount of the loss was total or partial, large or small. Was cargo stolen, or struck by lightning while the driver was sleeping, or damaged in a motor vehicle accident? If a motor vehicle accident, was the driver at fault? The ambiguity of the phrase assures inconsistent usage. Because a reader can not know what its author was trying to communicate, the phrase is meaningless, and

therefore “inaccurate.”);

- e. “Equipment loss.” (A reader of this phrase has the same problems identified in subparagraph d dealing with “cargo loss”);
- f. “Quit/dismissed during training/orientation/probation.” (The quoted phrase appears to include both contractual relations and pre-contractual (i.e. non-contractual) relations, in the set of events referenced by the one label. If contractual, the phrase includes both terminations initiated by the driver, and those initiated by the carrier, in the set of events referenced by the one label. If pre-contractual, there was no relationship to terminate and, therefore, no “work record” to describe. But both “quit” and “dismissed” have connotations derogatory to the driver. The use of the phrase is equivalent of saying, “Through the fault of the driver, either an operator agreement was never formed, or was formed and short lived.” The ambiguity of the phrase assures inconsistent usage. Because a reader cannot know what its author was trying to communicate, the phrase is meaningless, and therefore “inaccurate.”)
- g. “Eligible for rehire: ...No.” (The phrase fails to refer to the criteria by which eligibility is determined. It fails even to be limited to legitimate criteria, i.e. it accommodates illegal discrimination and the “blackballing” of drivers who seek to enforce their rights. The phrase as written contains no useful information, but has a distinctly negative connotation. Its ambiguity assures inconsistent usage. The driver is disadvantaged simply by a prospective employer’s need to address the ambiguity and connotation.)

21. During the collaborative Termination-Record-form design process, USIS assumed an active role in the procedures for the recording of the relationship between carriers and their drivers and between drivers and shippers. It chose phrases that are vague, ambiguous, inaccurate and incomplete descriptions of events, leaving the recipient of its consumer reports to guess at which of the many possible meanings (some benign, some not) were intended by the person filling out the Termination Record form. As part of its ongoing business, USIS “puts words into the mouths” of employment references and, for a price, passes off those scripted words as if they were candid comments. It places itself between those with knowledge about driver work histories and about carrier/driver contract termination events, on the one hand, and those in need of that knowledge, prospective employers and drivers, on the other hand. It distorts or makes ambiguous the flow of information. By doing so it breaches what the FCRA established as its “grave” duty to adopt procedures that serve commerce while protecting consumers by being fair and impartial.
22. Defendant USIS has willfully and/or negligently violated the FCRA through the solicitation and dissemination of Termination Record forms that refer to categories of employment-related events that are defined so broadly and vaguely that they are ambiguous, incomplete, assured of being used inconsistently, and are therefore inaccurate when incorporated into consumer reports.
23. Defendant USIS has willfully and/or negligently violated the FCRA by failing to “follow reasonable procedures to assure maximum possible accuracy of information concerning” the

plaintiffs and the class they seek to represent, even after notice its procedures were inadequate.

24. Defendant USIS has willfully and/or negligently violated the FCRA by failing to adopt reasonable procedures to eliminate systemic errors both in communications to it by its sources, and by it to prospective employers. It has failed to teach or discipline those preparing Termination Record form to assure consistent usage among them, even after notice of the need to do so.
25. Plaintiffs, Paul, Bussone, Stewart, Hinzman and Meck, have been damaged by the system created by Defendant USIS. All of them have been the subject of inaccurate consumer reports by carriers, without notice to them and without their permission, to USIS, followed by inaccurate consumer reports by USIS to other carriers; “inaccurate” either or both because false and because they incorporated routinized ambiguous terms used inconsistently by DAC members.
  - a. Plaintiff Paul’s “work record” in the USIS database includes reports received by it from: Navajo Express, Bullocks Express Transportation, Houg Enterprises, Progressive Driver Services, and Voyager Express, all without notice to him and without his permission. His “work record” (sic) is inaccurately characterized by the ambiguous phrase “cargo loss” in a consumer report by USIS referencing his work for Progressive Driver Services. The phrase is ambiguous because, among other things, it includes within its uncommon definition events that are not a “record” of his “work.”
  - b. Plaintiff Bussone’s “work record” in the USIS database includes reports received by it

without notice to him and without his permission. His “work record” is inaccurately characterized by the statement that he abandoned equipment, when he in fact did what he was told to do with the equipment. All statements in his “work record” are ambiguous and incomplete, are used inconsistently by carriers, and are therefore “inaccurate.”

- c. Plaintiff Stewart’s “work record” in the USIS database includes reports received by it without notice to him and without his permission. All statements in his “work record” are ambiguous and incomplete, are used inconsistently by carriers, and are therefore “inaccurate.”
- d. Plaintiffs Hinzman’s and Meck’s “work records” in the USIS database include reports received by it from, among others, Heartland Express, without notice to them and without their permission. All statements in their “work record” are ambiguous and incomplete, are used inconsistently by carriers, and are therefore “inaccurate.” Further, Plaintiffs Hinzman and Meck are owner-operators formerly under lease to Heartland Express, Inc.(Heartland), a motor carrier located in the state of Iowa. Plaintiffs’ lease agreements with Heartland were terminated unilaterally by Heartland. At the time it terminated plaintiffs’ leases, Heartland declined to make any formal disclosure to the plaintiffs of the reasons why it was terminating their leases nor did it provide plaintiffs with an opportunity to contest the reasons for their terminations, nor with notice it would submit a consumer report to USIS, nor with an opportunity to review that

consumer report. USIS received Termination Record Forms from Heartland without permission from either driver. The only record of these termination events are the Termination Record forms maintained by Defendant USIS. Plaintiff Meck's Termination Record form describes his "work record" with the phrase "company policy violation," and states that he was not eligible for rehire. Plaintiff Hinzman, after providing identification, requested a copy of his file from USIS, but USIS has unlawfully failed to provide him with a copy. Upon information and belief, plaintiff Hinzman's Termination Record form also states that the reason for his termination as "company policy violation," and that he is not eligible for rehire. As a result of their USIS generated consumer reports, Plaintiffs Hinzman and Meck have been unable to secure employment at a level of compensation commensurate with their experience and reliability as truck drivers.

### **CLASS ACTION ALLEGATIONS**

26. **Class Description.** Pursuant to F.R.Civ.P. 23, Plaintiffs OOIDA, Paul, Bussone, Stewart, Hinzman, and Meck, bring this action on behalf of themselves and all other similarly situated professional drivers who have been the subject of consumer reports received by USIS from motor carriers without USIS first receiving authorization from the driver to receive them, and all professional drivers who have been the subject of consumer reports published by USIS which contain any of the following phrases:
- a. "Company policy violation,"

- b. “Unsatisfactory safety record,”
- c. “Excessive complaints,”
- d. “Cargo loss,”
- e. “Equipment loss,”
- f. “Quit/dismissed during training/orientation/probation,” and
- g. “Eligible for rehire: ...No,” or
- h. Phrases of substantially equivalent ambiguity, incompleteness, or inconsistent usage, and therefore inaccuracy.

This class will hereinafter be referred to as “professional truck drivers.”

27. **Impracticability of Joinder.** Plaintiffs estimate that there are tens of thousands of professional truck drivers who have been the subject of Termination Record forms (“consumer reports”) submitted by carriers to USIS without notice to or permission of the drivers, and the subject of consumer reports by USIS containing the above listed ambiguous phrases. All such persons are potential class members. Individual joinder of all potential class members is impracticable.
28. **Commonality.** USIS has acted and failed to act, especially in the design and operation of its statement collection and reporting system, in a manner that affects all potential class members similarly. Accordingly any questions of fact relevant to the drivers claims are common to the potential class as a whole. Defendant’s actions and failures to act have caused the same type of harm to all potential class members. Accordingly, any questions of USIS’s liability to the potential class are common to all potential class members. Therefore, class-wide injunctive

relief against such conduct is also appropriate.

29. **Typicality.** The claims of Plaintiffs Paul, Bussone, Stewart, Hinzman and Meck are typical of the claims of the potential class as a whole.
30. **Fair and Adequate Representation.** The Plaintiffs are capable of fairly and adequately protecting the interests of the potential class. Class representative OOIDA is a non-profit trade association of about 112,000 members that is nationally recognized for its efforts to stop unlawful and abusive practices directed at owner-operators, small business truckers and company drivers. OOIDA shares common interests with the potential class members, and there is substantial overlap between the interests of OOIDA's membership and the unnamed potential class members. OOIDA has been recognized as an adequate class representative on behalf of its members in more than twenty (20) class actions. In sum, Plaintiffs Paul, Bussone, Stewart, Hinzman, and Meck, with facts and questions of law typical of those drivers who have been subjects of unauthorized and inaccurate Termination Record Forms and consumer reports, and OOIDA, with its experience in representing the interests of drivers in class action litigation, will fairly and adequately protect the interests of the potential class.
31. **Class Action Superior.** Questions regarding USIS's systematic denial and frustration of the rights of the potential class members under the FCRA predominate over any questions affecting individual members of the potential class. Accordingly, under Fed. R. Civ. P. 23(b)(3), a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

32. **Class Action Appropriate Under Rule 23(b)(2).** USIS has acted and/or failed to act on grounds generally applicable to the potential class as a whole. Specifically, in addition to allegations set forth above and prior to litigation, OOIDA requested that USIS cease its wrongful practices, but USIS declined to do so. Thus, injunctive and declaratory relief is appropriate with respect to the potential class as a whole, making class certification appropriate under F.R.Civ.P. 23(b)(2).
33. **Class Action Appropriate Under Rule 23(b)(3).** The questions of law enumerated herein are common to all potential class members and predominate over any questions affecting only individual members. Therefore, a class action is superior to other available methods for the fair and efficient adjudication of the claims herein.
34. Other factors favoring the maintenance of this suit as a class action include:
- a. The amounts in controversy for individual plaintiffs are relatively small compared to the costs of litigation, so that individual members of the potential class would not find it cost-effective to bring individual claims;
  - b. Requiring individuals to prosecute separate actions would substantially impair or impede the individual members' ability to protect their interests;
  - c. Upon information and belief, there is no litigation already commenced by class members concerning the causes of action raised in this complaint;
  - d. It is desirable to concentrate the individual members' claims in one forum because, given the amounts in controversy, to require these claims to be brought in separate

- forums would effectively prevent individuals from bringing claims to recover their funds;
- e. No substantial difficulties are likely to be encountered in managing this class action;
  - f. Plaintiffs are represented by The Cullen Law Firm, PLLC, which has the experience of representing their clients in numerous class actions involving owner-operators and other small business truckers; and
  - g. Plaintiffs will also be represented by local counsel, who will have the experience of representing plaintiffs in a number of class actions in Federal District Courts.

## **COUNT I**

### **(DECLARATORY AND INJUNCTIVE RELIEF)**

- 35. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 - 34.
- 36. An actual and substantial controversy exists between Plaintiffs, members of the class they seek to represent, and Defendant USIS as to whether the use of the following statements, incorporated in tens of thousands of Termination Record forms gathered, maintained and disseminated by USIS from its computerized data base, violates the FCRA:
  - a. “Company policy violation,”
  - b. “Unsatisfactory safety record,”
  - c. “Excessive complaints,”
  - d. “Cargo loss,”
  - e. “Equipment loss,”
  - f. “Quit/dismissed during training/orientation/probation,” or

g. “Eligible for rehire: ...No”

37. Plaintiffs contend that these statements contain vague, ambiguous and therefore inaccurate and/or incomplete terms within the meaning of the FCRA. Premised upon USIS’s refusal to engage OOIDA in dialogue about its Termination Record form, it is believed that it is USIS’s position that these statements in the context of consumer reports (including Termination Record forms) are permissible, being neither inaccurate nor incomplete within the meaning of the FCRA. Declaratory relief is therefore appropriate to resolve this controversy.

## **COUNT II**

### **(UNLAWFUL PROCUREMENT AND USE OF CONSUMER REPORTS)**

38. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 - 37.
39. Through the use of the collaboratively designed and agreed-upon Termination Record forms, motor carriers regularly assemble statements bearing on a drivers’ work history, including “descriptions” of allegedly blameworthy actions by drivers, for transmission to USIS. These motor carriers submit their statements and/or Termination Record forms to USIS with the expectation that USIS will thereafter transmit them to other motor carriers who are making employment decisions.
40. To encourage the transmission to it of Termination Record forms, USIS made available to carriers a “credit” of \$2.40 for each form provided to be applied against any future purchase of consumer reports on other drivers.
41. The statements and Termination Record forms submitted to USIS by motor carriers are

“consumer reports” within the meaning of the FCRA. By virtue of their regularly providing Termination Record forms to USIS, for compensation, such motor carriers are “consumer reporting agencies” and USIS is a “user” of “consumer reports” within the meaning of the FCRA.

42. The sale by USIS of reports from its database containing statements about drivers gleaned from Termination Record forms is the use of a “consumer report” for “employment purposes” within the meaning of the FCRA. Such sales are acts or determinations that may adversely affect the prospective employment of the subject drivers. Such sales are thus “adverse actions,” which may only be undertaken after providing to the consumer a copy of the “consumer report” and a description of the consumer’s rights.
43. The failure of USIS to implement reasonable procedures to assure that the phrases used in its Termination Record forms are used consistently, and to assure that statements put into its databases are complete and accurate, are “adverse actions” (as defined by the FCRA), and are certain to cause additional “adverse actions” to employees/consumers before they are aware of the inconsistencies, incompleteness or inaccuracies of the USIS consumer reports.
44. USIS routinely procures “consumer reports” (Termination Record forms) for “employment purposes” from motor carriers without first complying with the notice, disclosure and certification requirements of 15 U.S.C. § 1681b(b), and without first obtaining authorization in writing from the subject consumers. By so doing, USIS has frustrated one of the important protections of consumers provided by the FCRA. It has prevented consumers from knowing

about and then, if appropriate, disputing statements or completing descriptions about themselves. As a result, consumers suffer “adverse actions,” before they are even aware that inaccurate or incomplete statements about them are being published.

### **COUNT III**

#### **(CLAIM FOR COMPENSATORY AND PUNITIVE DAMAGES)**

45. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 - 44.
46. Defendant USIS acted willfully and/or negligently when it failed to adopt reasonable procedures to assure maximum possible accuracy concerning the individuals about whom its consumer reports relate when it collaborated with motor carriers, but not drivers, in designing its Termination Record form. As a result of this one-sided collaboration and the lack of driver input, the language adopted and used in the Termination Record form is vague, ambiguous, uncommon, incomplete and subject to inconsistent usage, and therefore inaccurate within the meaning of the FCRA.
47. Defendant USIS acted willfully and/or negligently when it failed to adopt reasonable procedures for meeting the needs of commerce for personnel information in a manner that is fair and equitable to consumers (drivers) with regard to accuracy and relevancy when it collaborated with motor carriers, but not drivers, in designing its Termination Record form.
48. Aside from adopting meaningless phrases for use in Termination Record forms, Defendant USIS acted willfully and/or negligently in concealing from, or failing to disclose to, or even making available either the special agreed-upon (ambiguous) definitions of phrases in the

Termination Record forms, or the guide for their use, to drivers who had and have an absolute right to check, complete, correct and or comment upon the accuracy of statements about them in the consumer reports it published. The effect of USIS's actions has been to force drivers, upon reviewing one of its consumer reports, to guess at the meaning intended by the ambiguous phrases in the report without the benefit of the "glossary" available to carriers, thereby further concealing from drivers what previous employers were saying about them. The result of USIS not making its "glossary" readily available has been a further impedance of both the ability of drivers to protect their own reputations, and the statutorily created mechanism to assure for everyone's benefit the "maximum possible accuracy" of statements in consumer reports.

49. Defendant USIS acted willfully and/or negligently in procuring Termination Record forms from motor carriers that utilize language that is vague, ambiguous, uncommon, incomplete and subject to inconsistent usages, and therefore inaccurate within the meaning of the FCRA.
50. Defendant USIS acted willfully and/or negligently in disseminating consumer reports to motor carriers that utilize language that is vague, ambiguous, uncommon, incomplete, and subject to inconsistent usage, and therefore inaccurate within the meaning of the FCRA.
51. Defendant USIS acted willfully and/or negligently by failing, after notice that inconsistent usage constituted inaccuracy under the FCRA, to either clarify the use of terms in its Termination Record forms, or discipline their users, or take other reasonable steps, to assure consistency in usage among the different sources of statements about drivers.
52. Defendant USIS acted willfully and/or negligently in procuring consumer reports from motor

carriers without complying with mandatory notice, disclosure and authorization requirements.

53. Defendant USIS acted willfully and/or negligently in disseminating consumer reports to prospective employers without complying with mandatory notice, disclosure and authorization requirements.

#### **COUNT IV**

##### **(CLAIM FOR UNJUST ENRICHMENT AND RESTITUTION)**

54. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 - 53.
55. USIS has been unjustly enriched by selling consumer reports of the “work records” of class members that utilize language that is incomplete and inaccurate in violation of FCRA and without having discharged the notice, disclosure and permission-seeking duties imposed upon it under FCRA. In equity, defendant USIS must divest itself of the ill-gotten profits it has received through its unauthorized trading in incomplete and inaccurate statements about class members.

#### **PRAYER FOR RELIEF**

Wherefore, Plaintiffs, on behalf of themselves and all others similarly situated, pray that the Court enter judgment:

1. Declaring that the following phrases, when used in any Termination Record form, or any consumer report, are vague and ambiguous and therefore incomplete and inaccurate within the meaning of the FCRA:
  - a. “Company policy violation.”

- b. “Unsatisfactory safety record.”
  - c. “Excessive complaints.”
  - d. “Cargo loss.”
  - e. “Equipment loss.”
  - f. “Quit/dismissed during training/orientation/probation,”
  - g. “Eligible for rehire: ...No.” or
  - h. The substantial equivalent of any of these phrases.
2. Enjoining USIS from soliciting Termination Record Forms containing such inaccurate phrases, inputting those phrases into its database, and/or delivering a consumer report containing those phrases.
3. Enjoining USIS from soliciting or receiving any Termination Record form (or similar document) from any carrier without first complying with the requirements of 15 U.S.C. § 1681b(b), i.e. without first:
- a. Disclosing to the driver who is the subject of the Termination Record form that it may procure a copy of the Termination Record form from a carrier,
  - b. Obtaining authorization from the driver, who is its subject, to receive the Termination Record form,
4. Certifying to the carrier filling out the Termination Record form that:
- i. It has complied with the above two requirements, and
  - ii. If the Termination Record form contains derogatory or ambiguous statements, it

will provide to the driver who is its subject, a copy of the Termination Record form and a description of the driver's rights under the FCRA.

5. Awarding statutory damages for the Defendant's willful violations of the FCRA in the amount not less than \$100.00, nor more than \$1,000.00, for each:
  - a. Procurement by USIS of a consumer report from a carrier without it first having discharged its notice, disclosure and authority-acquisition duties;
  - b. Procurement of a report from a carrier utilizing language agreed to by USIS that is found to be incomplete or inaccurate under Count I of this Complaint; and
  - c. Dissemination of a report containing language agreed to by USIS that is found to be incomplete or inaccurate under Count I of this Complaint or procured improperly under Count II of this Complaint.
6. Awarding punitive damages for the Defendant's willful violation of the FCRA for each:
  - a. Procurement by USIS of a consumer report from a carrier without it first having discharged its notice, disclosure and authority-acquisition duties;
  - b. Procurement of a report from a carrier utilizing language agreed to by USIS that is found to be incomplete or inaccurate under Count I of this Complaint; and
  - c. Dissemination of a report containing language agreed to by USIS that is found to be incomplete or inaccurate under Count I of this Complaint or procured improperly under Count II of this Complaint.
7. Awarding damages for the Defendant's negligent violation of the FCRA for each:

- a. Procurement by USIS of a consumer report from a carrier without it first having discharged its notice, disclosure and authority-acquisition duties;
  - b. Procurement of a report from a carrier utilizing language agreed to by USIS that is found to be incomplete or inaccurate under Count I of this Complaint; and
  - c. Dissemination of a report containing language agreed to by USIS that is found to be incomplete or inaccurate under Count I of this Complaint or procured improperly under Count II of this Complaint
8. Ordering Defendant to account for and disgorge to the class an amount equal to the unjust profits generated by USIS in the last five years from selling consumer reports either containing any of the statements found to be incomplete or inaccurate under Count I of this Complaint or improperly obtained under Count II of this Complaint.
9. Awarding costs, interest and attorney fees as provided for in 15 U.S.C. §1681n(a)(3) and 1681o(a)(2).
10. Such other relief as the court deems appropriate.

**JURY REQUEST**

The Plaintiffs hereby request a jury to decide all issues appropriate for submission to a jury.

Respectfully submitted,

/s/ Randall S. Herrick-Stare

Paul D. Cullen, Sr., Esq.

Paul D. Cullen, Jr., Esq.

Randall S. Herrick-Stare, Esq.

The Cullen Law Firm, PLLC

1101 30<sup>th</sup> Street NW, #300

Washington, D.C. 20007

Ph: 202-944-8600

Fax: 202-944-8611