

Getting Technical: Court finds that disclosures mandated under FCRA must meet the precise requirements of the Act

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“Technically speaking, your claim is not good enough.” That was the message that the United States District Court for the District of New Jersey delivered to the Plaintiff in *Tonge v. Cpc Logistics*, 2018 U.S. Dist. LEXIS 160813 (D. N.J. Sept. 20, 2018).

In *Tonge*, a plaintiff brought a putative FCRA class action against a trucking company with whom she had applied for a job. In her complaint, the plaintiff alleged that, after applying for employment, she received a letter informing her that she was rejected based on information contained in a Drive-A-Check Report, a common consumer report used in the commercial trucking industry, which showed that she had three accidents as a commercial trucker. The plaintiff alleged that this letter was not FCRA compliant.

The plaintiff’s FCRA claims were based solely upon alleged technical violations of the Act’s disclosure requirements in 15 U.S.C. § 1681b. First, the plaintiff claimed that the employer violated § 1681b by failing to provide a clear and conspicuous disclosure *before* the report was procured or caused to be procured in a document that consisted solely of the disclosure. Second, Plaintiff claimed that the employer’s subsequent disclosure violated § 1681(b) by failing to provide (i) the address and telephone number of the entity that provided the report, (ii) a notification that the report provider did not make the adverse decision, and (iii) a notification that a free copy of the report could be obtained and a dispute filed with the agency.

The employer moved to dismiss the FCRA claims pursuant to FED. R. CIV. P. 12(b)(6) arguing that the complaint did not allege that the information was not provided to Plaintiff, only that it was not provided in the correct format — a non-material violation. The Court rejected this argument and ruled that, because the statute requires the information and other disclosures to be provided in a specific format, the plaintiff could state a technical claim for failure to provide the information as required.

The employer, however, also moved to dismiss the plaintiff’s FCRA claims pursuant to FED. R. CIV. P. 12(b)(1) for lack of standing under *Spokeo*. The Court granted this motion because the plaintiff failed to allege that she was injured or confused as a result of the timing or content of the disclosures provided to her or that the employer’s failure to hire her resulted from the alleged FCRA violation, *i.e.*, the failure to present the information in a technically compliant manner.

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