

The District of Massachusetts Declines to Strike FCRA Class Claims in *McIntyre v. RentGrow, Inc.*



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In [McIntyre v. RentGrow, Inc.](#), No. 18-cv-12141-ADB, the District of Massachusetts recently denied a defendant’s motion to dismiss or to strike class claims in a putative [Fair Credit Reporting Act](#) (“FCRA”) [action](#). The plaintiff’s complaint asserted FCRA claims on behalf of a nationwide class of tenants allegedly harmed by the defendant’s tenant screening reports that purportedly contained inaccurate and outdated eviction information.

The Court Declines to Dismiss or Strike FCRA Class Allegations

Under FCRA [§ 1681e\(b\)](#), a defendant violates the Act if it reports inaccurate information about a consumer due to a failure to follow reasonable procedures to ensure accuracy, causing harm to the consumer. The complaint alleged that the defendant’s purchase of eviction information that was not updated, with knowledge of the errors, resulted in inaccurate screening reports that unfairly harmed thousands of tenants. The Court determined that the class claims in the complaint met the requirements of [Rule 8](#), which requires a short and plain statement that the plaintiff is entitled to relief and gives the defendant fair notice. Because the complaint set out factual allegations concerning the defendant’s “long-standing” and “regular practice” of knowingly purchasing reports with “inaccurate or incomplete information,” the Court determined that the complaint should survive the defendant’s motion to dismiss under [Rule 12\(b\)\(6\)](#).

In addition to the motion to dismiss, the defendant also asked the Court to strike the complaint's class allegations under [Rule 12\(f\)](#). Rule 12(f) allows a party to move to strike from a pleading "redundant, immaterial, impertinent, or scandalous matter." Under First Circuit precedent, Rule 12(f) can be used to strike class allegations from a complaint to streamline a case and eliminate unnecessary class-related proceedings if it is "obvious" from the pleadings that "the proceeding cannot possibly move forward on a classwide basis." See [Manning v. Boston Med. Ctr. Corp.](#), 725 F.3d 34, 59 (1st Cir. 2013). The defendant in this case argued that the class allegations were speculative because the complaint only identified one plaintiff and one corresponding inaccurate report. However, the Court noted that the complaint alleged the defendant had a regular practice of purchasing outdated eviction information, resulting in tenant screening reports that it knew were inaccurate and incomplete. Despite the absence of other identified tenants or reports, the Court observed that "discovery can show whether the inaccuracies alleged were widespread and similar enough to support class certification."

The defendant also argued that the plaintiff could not satisfy the ascertainability and predominance requirements of [Rule 23](#) because her FCRA § 1681e(b) case hinged on the accuracy of each class member's report. The defendant relied on other federal district court cases holding that, when a showing of inaccuracy is required for FCRA liability, no class should be certified. However, the Court noted other decisions that did grant class certification for FCRA § 1681e(b) claims. While the Court recognized that "these arguments concerning the elements of class certification may be well-taken," it explained that "the question presented on a Rule 12(f) motion is not whether a class will ultimately be certified, which remains an uphill battle for Plaintiff, but instead whether Plaintiff could ever proceed with her claims on a classwide basis." The Court noted that "meeting the requirements of [Rule 23] may be difficult, it is by no means impossible or impermissible for claims brought under [FCRA] § 1681e(b)." Accordingly, the Court denied the instant motion to strike as premature, leaving open the question of whether the plaintiff's allegations would survive a later challenge at the class certification stage.

Key Lessons for Class Action Practice

This case presents important reminders and notes of caution for class action litigants. First, the decision restates the First Circuit and the District of Massachusetts's standards for motions to strike class allegations, especially when a complaint has met Rule 8 pleading requirements. The analysis confirms that motions to strike are generally disfavored, and should remind defendants to proceed with care. In fact, in some cases, a decision denying a motion to strike could later disadvantage the defendant at the class certification stage. As demonstrated by the Court's analysis here, when a complaint alleges a consistent, routine practice that injured a potential class in a generally uniform manner, a motion to strike class allegations will likely fail. Such motions are better reserved for complaints wherein a class definition is vague or overbroad and includes people who were not injured or who were not injured by the identified common practices. And, when a motion to strike is based on predecessor actions wherein class certification motions have been denied, a defendant should carefully consider whether class treatment has been categorically and conclusively rejected before invoking principles of comity.

Instead, in most cases, the better strategy will be to seek phased discovery limiting the first stage to the issue of class certification and the named plaintiff's individual claim. When class allegations hinge on a general practice, class certification discovery should focus on whether such a uniform practice existed and whether it harmed an identifiable group of people in a uniform way that would not require individualized analysis to determine their claims. Discovery of the plaintiff's individual claim may also create a record that would support the opposition to class certification on grounds of typicality, adequacy, or predominance. As reflected by the Court's decision in this case, generally only after it is armed with this class certification discovery can a defendant make a full and effective attack on the ability of a plaintiff to pursue its claims on a class-wide basis.

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