

539884

ORIGINAL



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN – SOUTHERN DIVISION

LLOYD WHITAKER,

Plaintiff,

-vs-

Case: 2:06-cv-11121
Assigned To: Zatkoff, Lawrence P
Referral Judge: Kornives, Paul J
Filed: 03-15-2006 At 02:54 PM
CMP WHITAKER V. AUBURN PONTIAC (TAM
)

DEMAND FOR JURY TRIAL

AUBURN PONTIAC, INC.,

Defendant.

COMPLAINT & JURY DEMAND

Lloyd Whitaker states the following claims for relief:

JURISDICTION

1. This court has jurisdiction under the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691 *et seq.*, the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681 *et seq* and 28 U.S.C. §§ 1331,1337.

PARTIES

2. The Plaintiff to this lawsuit is Lloyd Whitaker who resides in Waterford, Michigan.
3. The Defendant to this lawsuit is Auburn Pontiac, Inc., ("Auburn Pontiac") which is a corporation doing business in Michigan and which by statute and condition of licensing, may be served through the Michigan Department of State, Compliance Division, 3rd Floor – Treasury Building, 430 W. Allegan Street, Lansing, MI 48918.

VENUE

4. The transactions and occurrences which give rise to this action occurred in Oakland County.

5. Mr. Whitaker is a citizen of the State of Michigan.
6. Venue is proper in the Eastern District of Michigan.

GENERAL ALLEGATIONS AS TO Auburn Pontiac, Inc.

7. Mr. Whitaker went to the business place of Auburn Pontiac for the purpose of purchasing a vehicle.
8. Mr. Whitaker completed a credit application for a vehicle.
9. Auburn Pontiac took adverse action on that credit application.

COUNT I – Equal Credit Opportunity Act (Auburn Pontiac)

10. Mr. Whitaker incorporates the preceding allegations by reference.
11. Auburn Pontiac is a creditor for purpose of the Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. § 1691 *et seq.*
12. Following the receipt of the complete application for credit by Mr. Whitaker , Auburn Pontiac was required to make a credit decision within 30 days.
13. Based upon that credit application Auburn Pontiac denied credit, or alternatively refused to extend credit on substantially similar terms to those applied for by Mr. Whitaker, or alternatively failed to render its credit decision within 30 days.
14. Mr. Whitaker did not accept any credit from Auburn Pontiac.
15. Auburn Pontiac took adverse action for purposes of the ECOA.
16. Auburn Pontiac failed to issue the adverse action notice to Mr. Whitaker which the ECOA requires of users of consumer credit reports who take adverse action.
17. Auburn Pontiac was otherwise required to provide an adverse action notice to Mr. Whitaker.
18. Upon information and belief, Auburn Pontiac has no policies or procedures in place to

comply with the ECOA's adverse action notice.

19. Auburn Pontiac failed to provide an adverse action notice to Mr. Whitaker.
20. This failure to issue an adverse action notice constituted a negligent violation of the ECOA, 15 U.S.C. § 1682 by Auburn Pontiac; alternatively this failure to issue an adverse action notice constituted a willful violation of the ECOA, 15 U.S.C. § 1682 by Auburn Pontiac.
21. Auburn Pontiac has failed to maintain proper records of its credit actions in violation of the ECOA.
22. This failure to properly maintain records constituted a negligent violation of the ECOA, 15 U.S.C. § 1691 *et seq.* by Auburn Pontiac; alternatively this failure to properly maintain records constituted a willful violation of the ECOA, 15 U.S.C. § 1691 *et seq.*
23. Mr. Whitaker suffered damages by this violation of ECOA.

COUNT II – Fair Credit Reporting Act Adverse Action Notice (Auburn Pontiac)

24. Mr. Whitaker incorporates the preceding allegations by reference.
25. At all relevant times Auburn Pontiac – in the ordinary course of its business – operated as a "user" of consumer credit reports as that term is used in 15 U.S.C. § 1681m.
26. At all relevant times Auburn Pontiac – in the ordinary course of its business – operated as a "user" of consumer credit reports as that term is used in 15 U.S.C. § 1681m.
27. Following application for credit by Mr. Whitaker , Auburn Pontiac accessed and used Mr. Whitaker's consumer credit report for the purpose of determining eligibility for credit.
28. Based upon a review of that consumer credit report, Auburn Pontiac took adverse action for purposes of the FCRA.
29. Auburn Pontiac failed to issue the adverse action notice to Mr. Whitaker which the FCRA

requires of users of such credit information not contained within a credit report.

30. Upon information and belief, Auburn Pontiac has no policies or procedures in place to comply with the FCRA's adverse action notice.
31. This failure to issue an adverse action notice constituted a negligent violation of the FCRA, 15 U.S.C. § 1681o by Auburn Pontiac; alternatively this failure to issue an adverse action notice constituted a willful violation of the FCRA, 15 U.S.C. § 1681m by Auburn Pontiac..
32. This failure to issue an adverse action notice constituted a violation of the FCRA, 15 U.S.C. §§ 1681m, 1681n, and 1681o by Auburn Pontiac.

COUNT III – SPECIAL REQUEST FOR EQUITABLE RELIEF (Auburn Pontiac)

33. Mr. Whitaker incorporates the preceding allegations by reference.
34. The Auburn Pontiac failed or refused to put in place mechanisms to comply with the ECOA's adverse action notice requirements.
35. Those requirements serve as the primary means of record keeping to permit both private litigants and governmental entities to determine whether or not Auburn Pontiac is in compliance with the Act's anti-discrimination purposes.
36. Similarly, the adverse action notice provisions of the ECOA serve an important consumer education function.
37. These salutatory purposes will be completely defeated if Auburn Pontiac is allowed to continue operating without compliance.
38. Additionally, Auburn Pontiac will gain an unfair competitive advantage over its competitors if is are permitted to continue operation without bearing the cost of compliance which are actually born by its market competitors who have complied with the adverse action notice

requirements of the ECOA.

39. Accordingly, Mr. Whitaker requests that the Court enter an appropriate order enjoining further violations of the ECOA by Auburn Pontiac.

JURY DEMAND

40. Lloyd Whitaker demands a jury trial in this case.

REQUEST FOR RELIEF

Plaintiff requests that this Honorable Court grant the following relief:

- a. *Award statutory and punitive damages.*
- b. *Award statutory costs and attorney fees.*
- c. *A declaration that Auburn Pontiac has violated the ECOA and award injunctive relief to prevent further violations.*

Respectfully Submitted,

LYNGKLIP & TAUB
CONSUMER LAW GROUP, PLC

By: _____

Ian B. Lyngklip (P47173)
Attorney For Lloyd Whitaker
24500 Northwestern Highway, Ste. 206
Southfield, MI 48075
(248) 746-3790
IanLaw@Pop.Net

Dated: March 15, 2006

ORIGINAL

JS 44 11/99

CIVIL COVER SHEET COUNTY IN WHICH THIS ACTION AROSE: Oakland

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I. (a) PLAINTIFFS

LLOYD WHITAKER

DEFENDANTS

AUBURN PONTIAC, INC.

(b) County of Residence of First Listed Oakland

County of Residence of First Listed Oakland

(c) Attorney's (Firm Name, Address, and Telephone Number)

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Lyngklip & Taub Consumer Law Group, PLC
24500 Northwestern Hwy., Ste. 206, Southfield, MI 48075
(248) 746-3790

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- Diversity (Indicate Citizenship of Parties in item 111)

III. CITIZEN

- (For Diversity Cases Only)
- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PLA | DEF | | PLA | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|---|---|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel And Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY Med. Malpractice <input type="checkbox"/> 362 Personal Injury-Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability PERSONAL INJURY <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21: 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 851 H IA (1 395ff) <input type="checkbox"/> 852 Black Lung (923) <input type="checkbox"/> 853 DIWC/DIWW (405(g)) <input type="checkbox"/> 854 SSID Title XVI <input type="checkbox"/> 855 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Com modities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 800 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | | |
| <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | | |

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multi district Litigation
- 7 Appeal to District Judge from Magistrate

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Plaintiff brings this cause of action for violations of the ECOA 15 U.S.C. §1691 et seq., and FCRA 15 U.S.C. §§ 1681 et seq.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 \$ DEMAND CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE SIGNATURE OF ATTORNEY OF RECORD

3/13/06

[Handwritten Signature]

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :

03/15/06