

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

LOGAN LYTTLE, on his own behalf
and on behalf of all similarly situated
individuals,

Plaintiff,

v.

Case No: 8:19-cv-2313-CEH-TGW

TRULIEVE, INC., a Florida Profit
Corporation,

Defendant.

_____ /

ORDER

This matter comes before the Court upon Plaintiff's Motion for Class Certification (the "Motion for Class Certification") (Doc. 61), Defendant's Response in Opposition to Plaintiff's Motion for Class Certification (Doc. 70), and Plaintiff's Reply to Defendant's Response in Opposition to Plaintiff's Motion for Class Certification (Doc. 76). The Court, having considered oral argument, the parties' submissions, and being fully advised in the premises, will grant-in-part and deny-in-part the Motion for Class Certification.

I. BACKGROUND

Logan Lyttle, on behalf of himself and all others similarly situated, brings this Fair Credit Reporting Act action against Trulieve, Inc. Doc. 1 ¶¶68, 72–75, 103–113.

Lyttle's complaint contains the following factual allegations. Trulieve conducts background checks on job applicants as part of a standard screening process. *Id.* at ¶24.

Trulieve also occasionally conducts background checks on employees during the course of their employment. *Id.* In or about April of 2019, Lyttle applied for employment with Trulieve. *Id.* at ¶51. Trulieve procured Lyttle's consumer report from Personal Security Concepts, LLC.¹ *Id.* at ¶52. Lyttle did not know the nature or scope of Trulieve's investigation into his background. *Id.* at ¶54.

Trulieve conditionally offered employment to Lyttle. *Id.* at ¶57. However, based on the contents of the consumer report, Trulieve rescinded the job offer and rejected Lyttle's employment application. *Id.* at ¶58. Before rescinding the job offer, Trulieve did not provide Lyttle with notice of its intent to rescind the employment offer, a copy of Lyttle's background check, or a summary of his rights. *Id.* at ¶59.

After Trulieve rejected Lyttle's employment application, Lyttle became concerned about the information contained in his consumer report, whether the report was accurate, and the impact of the report on his future employment prospects. *Id.* at ¶60. The retail regional human resources manager for Trulieve admitted that Trulieve had mistakenly denied employment to Lyttle in April of 2019 based on his consumer report. *Id.* at ¶65. If Trulieve had provided Lyttle with pre-adverse action notice, a copy of his consumer report, and a summary of rights in April of 2019, Lyttle could have clarified any confusion and started his career at Trulieve. *Id.* at ¶66. Trulieve did not afford Lyttle an opportunity to address any concerns regarding his consumer report or state his case before rejecting his employment application. *Id.*

¹ Lyttle previously brought claims against Personal Security Concepts in this action, too, but the Court dismissed those claims, with prejudice, in June of 2020. Doc. 53 at 1.

Lyttle brings one claim against Trulieve under 15 U.S.C. § 1681b(b)(3)(A) on behalf of himself and a class labeled as the “Adverse Action Class,” which consists of

[a]ll Trulieve applicants and employees in the United States against whom adverse employment action was taken, based, in whole or in part, on information contained in a consumer report obtained within five years preceding the filing of this action through the date of final judgment, who were not provided notice, a copy of their report or summary of rights pursuant to § 1681b(b)(3)(A).

Id. at ¶¶11, 14, 19, 68, 103–105, 112–113.

Lyttle alleges that Trulieve violated 15 U.S.C. § 1681b(b)(3)(A) by failing to provide him and other Adverse Action Class members with pre-adverse action notice, a summary of their FCRA rights, and a copy of their consumer report prior to taking adverse action. *Id.* at ¶105. Lyttle further alleges that the violations were willful and that Trulieve “acted in deliberate or reckless disregard of its obligations” and the rights of Lyttle and other Adverse Action Class members under 15 U.S.C. § 1681b(b)(3)(A).

Id. at ¶106.

The Court heard oral argument on the Motion for Class Certification, Doc. 83 at 1, but deferred ruling because Trulieve indicated an intent to challenge subject matter jurisdiction, Doc. 84. After the parties resolved that issue, the Court took the Motion for Class Certification under advisement, only for an individual to move for permissive intervention under Rule 24(b) for the purpose of serving as class representative. Doc. 97 at 1. The Court denied that request. Doc. 104 at 20. The Motion for Class Certification is now ripe for the Court’s review.

II. LEGAL STANDARD

Decisions about class certification rest with the sound discretion of the district court. *Armstrong v. Martin Marietta Corp.*, 138 F.3d 1374, 1386 (11th Cir. 1998). A district court has broad discretion in determining whether to certify a class. *Washington v. Brown & Williamson Tobacco Corp.*, 959 F.2d 1566, 1569 (11th Cir. 1992). A class action may be maintained only when it satisfies all of the requirements of Federal Rule of Civil Procedure 23(a) and at least one of the requirements of Rule 23(b). *See Busby v. JRHBW Realty, Inc.*, 513 F.3d 1314, 1321 (11th Cir. 2008). The party seeking class certification carries the burden of proof and, if doubts exist regarding whether the movant satisfies that standard, then the movant fails to carry its burden. *Brown v. Electrolux Home Prods., Inc.*, 817 F.3d 1225, 1233 (11th Cir. 2016).

As a threshold issue, a plaintiff must demonstrate that the proposed class is “adequately defined and clearly ascertainable.” *Little v. T-Mobile USA, Inc.*, 691 F.3d 1302, 1304 (11th Cir. 2012). A plaintiff seeking to maintain the class action must affirmatively demonstrate his compliance with Rule 23. *Id.* The plaintiff must be prepared to prove that there are “*in fact* sufficiently numerous parties, common questions of law or fact, typicality of claims or defenses, and adequacy of representation, as required by Rule 23(a).” *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013) (emphasis in original). Rule 23 “establishes the legal roadmap courts must follow when determining whether class certification is appropriate.” *Valley Drug Co. v.*

Geneva Pharm., Inc., 350 F.3d 1181, 1187 (11th Cir. 2003). Under Rule 23, a court may certify a class only if:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

III. ANALYSIS

Before certifying a class, a district court must determine that “at least one named class representative has Article III standing to raise each class subclaim.” *Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1279 (11th Cir. 2000). Lyttle has established standing.² As such, the Court must examine ascertainability, the

² The “irreducible minimum” of standing consists of three elements: “[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (internal quotation marks omitted). In simpler terms, a plaintiff must show that the defendant harmed the plaintiff and that a judicial decision can either eliminate that harm or compensate him for it. *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 924 (11th Cir. 2020) (en banc). Here, Lyttle has established standing. He alleges that Trulieve rescinded the job offer based on the report’s contents and failed to provide him with notice of its intent, a copy of the background check, or a summary of his rights before rejecting his application. Doc. 1 ¶¶58–59. According to Lyttle, Trulieve admitted that it mistakenly denied him employment based on the report and, if Trulieve had provided him with the requisite notice before taking adverse action against him, he could have clarified any confusion and started his career at Trulieve. *Id.* at ¶¶65–66, 110. Lyttle also alleges that he was denied the opportunity to determine the veracity of the information in the report and understand how it may affect future efforts to obtain employment. *Id.* at ¶110. Lyttle further supports these allegations in his declaration. Doc. 61-1 at 3–4. Trulieve has recognized that

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