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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 MICHAEL SHERIDAN, on behalf of himself
11 and all others similarly situated,

12 Plaintiff,

13 vs.

14 DRAGONFLY ENERGY CORPORATION;
15 SENTRYLINK LLC; and DOES 1 through
16 50, inclusive,

17 Defendants.

Case No.: 3:23-cv-00473-LRH-CSD

FIRST AMENDED

CLASS ACTION COMPLAINT:

- 1) Violation of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.*
2) Violation of NRS 613.520, *et seq.*

INDIVIDUAL COMPLAINT:

- 3) Violation of NRS 613.010;
4) Breach of Contract; and
5) Promissory Estoppel.

JURY TRIAL DEMANDED

21 COMES NOW Plaintiff MICHAEL SHERIDAN, on behalf of himself and all others
22 similarly situated and, alleges the following class and individual claims:

23 All allegations in this Complaint are based upon information and belief except for those
24 allegations that pertain to the Plaintiff named herein and his counsel. Each allegation in the
25 Complaint either has evidentiary support or is likely to have evidentiary support after a
26 reasonable opportunity for further investigation and discovery.

27 **JURISDICTION AND VENUE**

1 acts, omissions, or representations alleged herein and any reference to “Defendants,” shall mean
2 “Defendants and each of them.”

3 FACTUAL ALLEGATIONS

4 9. Sometime on or about March 2023, Plaintiff, a resident of Tampa, Florida, and an
5 employee of PolyMaterialsApp at that time earning approximately \$70,000 per year (\$5,833 per
6 month), applied for a position with Defendant DRAGONFLY, a Reno, Nevada based company.

7 10. On May 16, 2023, Defendant DRAGONFLY offered Plaintiff the position of
8 R&D Engineer II in Reno, Nevada. A true and correct copy of the May 16, 2023, offer letter
9 (“Offer Letter”) is attached hereto as Exhibit A. Defendant DRAGONFLY’s offer of
10 employment to Plaintiff was “conditioned on [Plaintiff’s] satisfactory completion of certain
11 requirement, as explained in this letter.” *Id.* The Offer Letter further stated that “Your
12 employment is subject to the terms and conditions set forth in this letter, which override anything
13 communicated to you orally or in writing, during your interview or as part of any other
14 communication, about your employment with Dragonfly Energy Corp.” *Id.* Notably, successful
15 completion of a background and/or credit check was not a condition for employment that was
16 ever specified in the Offer Letter. Indeed, Defendant DRAGONFLY never notified Plaintiff that
17 it would run a background and/or credit check.

18 11. Plaintiff accepted Defendant DRAGONFLY’s offer of employment on May 16,
19 2023, and left his position at PolyMaterialsApp that same day. That very same day, Defendant
20 DRAGONFLY sent Plaintiff an email with a link to complete all the new hire paperwork. A true
21 and correct copy of that email is attached hereto as Exhibit B.

22 12. Plaintiff immediately completed the new hire paperwork requested by Defendant
23 DRAGONFLY and was given a new hire start date of June 14, 2023. At no point during this
24 new hire process was Plaintiff ever notified that Defendant DRAGONFLY and/or any one of its
25 agents would run a background and/or credit check on Plaintiff.

26 13. Since Plaintiff was required to relocate from Tampa, Florida, to Reno, Nevada,
27 for his new position, Defendant DRAGONFLY provided Plaintiff with a moving and relocation
28

1 payment of \$7,500 on May 19, 2023. Plaintiff actually incurred approximately \$10,800 in
2 relocation expenses from Tampa to Reno.

3 14. On May 30, 2023, Plaintiff notified George Lopes, Director of Human Resources
4 with Defendant DRAGONFLY, that he had packed up his apartment and his furniture was
5 enroute from Tampa, Florida, to Reno, Nevada. Plaintiff also notified Mr. Lopes that he had
6 signed a lease Reno. Mr. Lopes responded to Plaintiff that same day, "Thank you, Michael! Safe
7 travels and we look forward to seeing you on the 14th. Director of Research & Development with
8 Defendant DRAGONFLY responded to Plaintiff the same day as well, "Sounds great Michael!
9 We look forward to your start."

10 15. On June 1, 2023, Plaintiff and his family arrived in Reno, Nevada. Plaintiff signed
11 a one-year apartment lease for \$23,760 (\$1,980 per month). Plaintiff paid rent for June, July, and
12 August of 2023. He was ultimately able to break his year lease but was required to pay an early
13 cleaning and termination fees of approximately \$1,000.

14 16. On June 2, 2023, Plaintiff first became aware that a background and/or credit
15 check had been run on him via email from Defendant SENTRYLINK. A true and correct copy
16 of that email notification is attached hereto as Exhibit C.

17 17. On June 5, 2023, Mr. Lopes sent Plaintiff an email with a request to speak on the
18 telephone: "Good morning, Michael, Could you please give me a call today at (775) 622-3448
19 EXT 152?"

20 18. Plaintiff immediately called Mr. Lopes and soon discovered that Defendant
21 DRAGONFLY was looking further into Plaintiff's background and/or credit report.

22 19. On or about June 7, 2023, Defendant DRAGONFLY rescinded Plaintiff's job
23 offer and terminated his employment.

24 20. In summary, Plaintiff has been injured as a result of Defendants' unlawful conduct
25 because:

26 A. Defendant DRAGONFLY never informed Plaintiff that a background
27 and/or credit report was a condition of employment;
28

1 B. Defendant DRAGONFLY never asked Plaintiff for permission to run a
2 background and/or credit report;

3 C. Defendant SENTRYLINK never asked Plaintiff for permission to run a
4 background and/or credit report;

5 D. Defendant SENTRYLINK disclosed Plaintiff's background and/or credit
6 report with DRAGONFLY (an unauthorized third-party) without Plaintiff's
7 authorization;

8 E. Defendant DRAGONFLY took an adverse employment action—i.e.,
9 rescinding Plaintiff's offer of employment—without providing Plaintiff with a Notice of
10 Adverse Action and a copy of his background and/or credit report and,

11 F. As a result of these unlawful acts, Plaintiff voluntarily left his \$70,000 a
12 year job in Tampa, incurred expenses to move across the county to Reno, signed a one-
13 year lease for an apartment in Reno, incurred additional expenses to move from Reno to
14 Memphis Tennessee, was unemployed for three (3) months, and suffered extreme mental
15 anguish and emotional distress.

16 21. Apart from the concrete injury of having had a background and/or credit report
17 run without his authorization, having had his background check shared with a third-party without
18 his permission, and having suffered an adverse employment action without having received any
19 pre-adverse notification and a copy of this background and/or credit report, Plaintiff has also
20 suffered approximately \$40,000 in hard damages (not including damages for emotional distress,
21 punitive damages, interest, penalties, attorneys fees, and costs) resulting from Defendants
22 unlawful actions.

23 SUMMARY OF CLAIMS

24 22. This action is brought as: (A) a class action under federal and state law for
25 improper background and/or credit disclosures and (B) an individual action for inducing Plaintiff
26 to relocate to the State of Nevada for a position without disclosing a material term and condition
27 of that employment.

1 ///

2 ///

3 **A. Summary of Class Claims**

4 23. The class action portion of this action is brought pursuant to the Fair Credit
5 Reporting Act (“FCRA”) and Nevada’s equivalent state statute, Nevada Revised Statute (NRS)
6 NRS 613.520, *et seq.*

7 24. The class action is brought against both Defendants for the acquisition and use of
8 consumer and/or investigative consumer reports to conduct background and credit checks on
9 Plaintiff and other prospective and current employees without proper legal notification.

10 25. Defendants obtain background and credit reports for prospective and current
11 employees.

12 26. Defendants use the information in background and credit reports to make
13 employment related decisions for prospective and current employees.

14 27. Defendants fail to comply with federal mandates for obtaining and using
15 background and credit reports for employment purposes.

16 28. Defendants violated the FCRA and NRS 613.520, *et seq.*’s core protections, by
17 procuring background and credit reports on employees and job applicants without proper legal
18 notification that a background and credit report would be procured.

19 29. Under the FCRA, an employer or prospective employer cannot “procure, or cause
20 a consumer report to be procured, for employment purposes with respect to any consumer, unless
21 . . . a clear and conspicuous disclosure has been made in writing to the consumer at any time
22 before the report is procured or caused to be procured, in a document that consists solely of the
23 disclosure, that a consumer report may be obtained for employment purposes.” 15 U.S.C. §
24 1681b(b)(2)(A)(i) (emphasis added).

25 30. Defendants have willfully and systematically violated 15 U.S.C. §
26 1681b(b)(2)(A)(i) by procuring consumer reports on Plaintiff and other putative class members
27 for employment purposes without first making proper disclosures.
28

31. Based on Defendants' conduct, Plaintiff asserts FCRA claims on behalf of himself and the class defined below. On behalf of himself and the class, Plaintiff seeks statutory damages, punitive damages, attorneys' fees, litigation costs, and all other available relief.

B. Summary of Individual Claims

32. The individual action, in this case, is brought pursuant to (i) Nevada's statutory prohibition of luring a worker from another state to work in the state of Nevada, NRS 613.010, (ii) breach of contract, and (iii) promissory estoppel.

CLASS ACTION REQUIREMENTS

33. Plaintiff asserts his claim on behalf of the following Classes of individuals:

Nationwide Class: Any person whom Defendants procured a background report for employment purposes in the period beginning 5 years prior to the filing of the Complaint up to and including judgment.

Nevada Class: Any person whom Defendants procured a background report for employment purposes in the state of Nevada in the period beginning 3 years prior to the filing of the Complaint up to and including judgment.

34. **Numerosity:** The class is so numerous that joinder of all class members is impracticable. Defendants procure background reports on current employees and job applicants without a disclosure. Thousands of Defendants' prospective and existing employees satisfy the class definition.

35. **Typicality:** Plaintiffs' claims are typical of the members of the class. The FCRA and Nevada state law violations suffered by Plaintiff is typical of those suffered by other class members, and Defendants treated Plaintiff consistent with other class members in accordance with its standard practices.

36. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the class and has retained counsel experienced in complex class action litigation.

1 37. **Commonality:** Common questions of law and fact exist as to all members of the
 2 class and predominate over any questions solely affecting individual members of the class,
 3 including but not limited to:

4 (a) Whether Defendants procured background reports on prospective and existing
 5 employees;

6 (b) Whether Defendants violated the FCRA by procuring such background
 7 reports without a legally compliant disclosure;

8 (c) Whether Defendants' FCRA violations were willful;

9 (d) The proper measure of statutory damages; and

10 (e) The proper measure of punitive damages.

11 38. **Predominance/Superiority:** Class certification is appropriate under Fed. R. Civ.
 12 P. 23(b)(3) because questions of law and fact common to the class predominate over any
 13 questions affecting only individual members of the class and because a class action is superior
 14 to other available methods for the fair and efficient adjudication of this litigation. Defendants'
 15 conduct described in this Complaint stems from common and uniform policies and practices,
 16 resulting in common violations of the FCRA and Nevada law. Class certification will also
 17 preclude the need for unduly duplicative litigation that might result in inconsistent judgments
 18 concerning Defendants' practices. Moreover, management of this action as a class action will
 19 not present any likely difficulties. In the interests of justice and judicial efficiency, it would be
 20 desirable to concentrate the litigation of all class members' claims in a single forum.

21 39. Plaintiff intends to send notice to all members of the class to the extent required
 22 by Fed. R. Civ. P. 23. The names and addresses of the class members are available from
 23 Defendants' records.

24 **FIRST CAUSE OF ACTION**

25 **Procuring Consumer Reports without First Making Proper Disclosures**

26 **15 U.S.C. § 1681b(b)(2)(A)(i)**

27 (On Behalf of Plaintiff and the Nationwide Class Against Defendants)

1 40. Plaintiff realleges and incorporates by this reference all the paragraphs above in
2 this Complaint as though fully set forth herein.

3 41. Defendants procured consumer reports, as defined by the FCRA, on Plaintiff and
4 all Nationwide Class Members. These reports were procured for employment purposes without
5 first providing Plaintiff or any Nationwide Class Member a clear and conspicuous disclosure
6 made in writing, in a document consisting solely of the disclosure, that a consumer report may
7 be obtained for employment purposes in violation of 15 U.S.C. § 1681b(b)(2)(A)(i).

8 42. The foregoing violations were willful. Defendants acted in deliberate or reckless
9 disregard of its obligations and the rights of Plaintiffs and other Nationwide Class Members
10 under 15 U.S.C. § 1681b(b)(2)(A)(i). Defendants' willful conduct is reflected by, *inter alia*, the
11 following:

12 (a) The FCRA was enacted in 1970; Defendants have had over 40 years to
13 become compliant;

14 (b) Defendants' conduct is inconsistent with the FTC's longstanding
15 regulatory guidance, judicial interpretation, and the plain language of the statute;

16 (c) Defendants knew or had reason to know that its conduct violated the
17 FCRA;

18 (e) Defendants repeatedly and routinely use the disclosure it used with
19 Plaintiffs to procure consumer reports;

20 (f) Defendants' inclusion of a liability release clearly implies awareness by
21 Defendants that they could be held liable for improperly procuring a consumer
22 report;

23 (g) Despite the pellucid statutory text and there being a depth of guidance,
24 Defendants systematically procured consumer reports without first disclosing in
25 writing to the consumer *in a document that consists solely of the disclosure* that
26 a consumer report may be obtained for employment purposes; and
27
28

1 (h) By adopting such a policy, Defendants voluntarily ran a risk of violating
2 the law substantially greater than the risk associated with a reading that was
3 merely careless.

4 43. Plaintiff and members of the Nationwide Class are entitled to statutory damages
5 of not less than \$100 and not more than \$1,000 for each and every one of these violations,
6 pursuant to 15 U.S.C. § 1681n(a)(1)(A).

7 44. Plaintiff and members of the Nationwide Class are entitled to such amount of
8 punitive damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(2).

9 45. Plaintiff and members of the Nationwide Class are further entitled to recover their
10 costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).

11 **SECOND CAUSE OF ACTION**

12 **Violation of NRS 613.520, *et seq.***

13 (On Behalf of Plaintiff and the Nevada Class Against Defendants)

14 46. Plaintiff realleges and incorporates by this reference all the paragraphs above in
15 this Complaint as though fully set forth herein.

16 47. Both Defendants are "employers" under NRS 613.560 and therefore subject to
17 the requirements set forth in NRS 613.520, *et seq.* See NRS 613.440(1) ("Employer" includes
18 any person acting directly or indirectly in the interest of an employer in relation to an employee
19 or prospective employee.").

20 48. NRS 613.570 states that, subject to certain exceptions that are not applicable here,
21 "it is unlawful for any employer in this State to (1) Directly or indirectly, require, request, suggest
22 or cause any employee or prospective employee to submit a consumer credit report or other credit
23 information as a condition of employment; (2) Use, accept, refer to or inquire concerning a
24 consumer credit report or other credit information; (3) Discharge, discipline, discriminate
25 against in any manner or deny employment or promotion to, or threaten to take any such action
26 against any employee or prospective employee: (a) Who refuses, declines or fails to submit a
27 consumer credit report or other credit information; or (b) On the basis of the results of a
28 consumer credit report or other credit information[.]"

49. Defendants procured consumer reports, as defined by NRS 613.530, on Plaintiff and all Nevada Class Members. These reports were improperly procured for employment purposes.

50. Plaintiff and members of the Nevada Class are entitled to statutory damages for each and every one of these violations.

51. Plaintiff and members of the Nationwide Class are entitled to such amount of punitive damages as the Court may allow pursuant to NRS 42.005.

52. Plaintiff and members of the Nationwide Class are further entitled to recover their costs and attorneys' fees pursuant to NRS 613.590.

THIRD CAUSE OF ACTION

Violation of NRS 613.010

(On Behalf of Plaintiff Against DRAGONFLY)

53. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.

54. NRS 613.010 states that "It shall be unlawful for any person, persons, company, corporation, society, association or organization of any kind doing business in this state by himself, herself, itself, themselves, his, her, its or their agents or attorneys to induce, influence, persuade or engage workers to change from one place to another in this state, or to bring workers of any class or calling into this state to work in any of the departments of labor in this state, through means of false or deceptive representations, false advertising or false pretenses concerning: . . . (c) The . . . conditions of their employment[.]"

55. Defendant DRAGONFLY violated NRS 613.010(1) by luring Plaintiff to Nevada with false or deceptive representations, false advertising, or false pretenses that a background/credit check was not required but then refusing to employ Plaintiff after he arrived in the state of Nevada.

56. Plaintiff has been damaged as a result of Defendant DRAGONFLY's false or deceptive representations, false advertising, or false pretenses with respect to "conditions of

1 employment” in the form of compensatory damages for lost wages, moving expenses, and
2 emotional distress.

3 57. Plaintiff, therefore, requests all damages, attorneys’ fees, costs, and all other relief
4 as a result of Defendant DRAGONFLY’s unlawful conduct.

5 6 7 **FOURTH CAUSE OF ACTION**

8 **Breach of Contract**

9 (On Behalf of Plaintiff Against DRAGONFLY)

10 58. Plaintiff realleges and incorporates by this reference all the paragraphs above in
11 this Complaint as though fully set forth herein.

12 59. Defendant DRAGONFLY offered Plaintiff employment without disclosing that
13 a background/credit check was a condition of employment. Plaintiff accepted Defendant’s offer
14 of employment. Only after having moved across the United States did Defendant DRAGONFLY
15 breach the contract with Plaintiff and insist upon a background/credit check. By refusing to
16 continue to employ Plaintiff after illegally obtaining a background/credit check, Defendant
17 breached the contract with Plaintiff to hire him for the position of R&D Engineer II in Reno,
18 Nevada. Plaintiff has been damaged as a result of Defendant DRAGONFLY’s breach in the
19 form of lost wages, benefits, and relocation expenditures.

20 60. Wherefore, Plaintiff is entitled to all recoverable damages, together with
21 attorneys’ fees, costs, and interest as provided by law.

22 **FIFTH CAUSE OF ACTION**

23 **Promissory Estoppel**

24 (On Behalf of Plaintiff Against DRAGONFLY)

25 61. Plaintiff realleges and incorporates by this reference all the paragraphs above in
26 this Complaint as though fully set forth herein.

27 62. In the alternative to a breach of contract claim, Plaintiff is also entitled to relief
28 in promissory estoppel.

63. Defendant DRAGONFLY promised Plaintiff that all the terms and conditions of employment were set forth in the Offer Letter. Defendant DRAGONFLY never disclosed that the completion of a background/credit check was a term and condition of employment. Plaintiff relied on Defendant DRAGONFLY's promise to their detriment by rejecting other employment offers, uprooting his family from Tampa, Florida, and moving to Reno, Nevada.

64. Wherefore, Plaintiff is entitled to all recoverable damages, together with attorneys' fees, costs, and interest as provided by law.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff and the class demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the class, prays for relief as follows:

1. Determining that this action may proceed as a class action under Rule 23(b)(3) of the Federal Rules of Civil Procedure;
2. Designating Plaintiff as Class Representative and designating Plaintiff's Counsel as counsel for the Classes;
3. Issuing proper notice to the Classes at Defendants' expense;
4. Declaring that Defendants committed multiple, separate violations of the FCRA;
5. Declaring that Defendants acted willfully, in deliberate or reckless disregard of Plaintiffs' and class members' rights and Defendants' obligations under the FCRA;
6. Awarding actual, statutory, and punitive damages as provided by the FCRA;
7. Awarding reasonable attorneys' fees and costs as provided by the FCRA;
8. Declaring that Defendants committed multiple, separate violations of the NRS 613.520, *et seq.*;
9. Awarding statutory and punitive damages as provided by NRS 613.520, *et seq.*;

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10. Awarding reasonable attorneys' fees and costs as provided by NRS 613.520,
et seq.;
11. Declaring that Defendant DRAGONFLY violated NRS 613.010;
12. Awarding actual, statutory, and punitive damages as provided by NRS
613.010;
13. Awarding reasonable attorneys' fees and costs as provided by NRS 613.520,
et seq.;
14. Declaring that Defendant DRAGONFLY promised employment to Plaintiff,
that Plaintiff relied on that promise, that Plaintiff has been damaged because
Defendant DRAGONFLY reneged on that promise, and awarding damages as
a result thereof; and
15. Granting other and further relief, in law or equity, as this Court may deem
appropriate and just.

DATED: November 8, 2023

THIERMAN BUCK LLP

/s/ Joshua D. Buck

Mark R. Thierman

Joshua D. Buck

Leah L. Jones

Attorneys for Plaintiff