**Order authorizing disclosure of cellphone business records is constitutional, Federal court says**

On April 14, 2015, a California District Court deemed that employers may conduct backgroud checks via LinkedIn. LinkedIn reference searches are not protected under the Fair Credit Reporting Act (“FCRA”), and therefore e*mployers are not subjected to its requirements, (e.g. obtaining candidate’s written permission, disclosures obligations).*

In this case, Ms. Sweet submitted her resume to a potential employer through LinkedIn and was invited to an interview. Sweet thought things went well, especially when she later got word that she would be hired. But soon thereafter, the company called her back and said it had changed its mind. Sweet did not get the job.

Ms. Sweet and three others sought to form a class action against Defendant LinkedIn Corporation, and claimed that the “References Searches” function violated their rights under the Fair Credit Reporting Act **(“FCRA”)**, which protects consumers from the transmission of inaccurate information. According to Plaintiffs, employers used LinkedIn’s “References Searches” function to verify their background and decided not to hire them. LinkedIn’s Reference Search feature allows users who pay a subscription fee to search for “references” for any LinkedIn member. According to Plaintiffs, LinkedIn violated their rights under the FCRA by furnishing Reference Search results for employment purposes, and sought statutory damages, actual damages, punitive damages, attorney’s fees and costs.

LinkedIn moved to dismiss Plaintiffs’ complaint for failure to state a claim.

The District Court

*Plaintiffs alleged five violations of the FCRA:*

*1. LinkedIn is a consumer reporting agency, which failed to obtain required certifications.*

*2. LinkedIn does not verify or make reasonable efforts to verify, the identities of those using Reference Search, or the purpose for which those users are compiling reports.*

*3. The FCRA requires consumer reporting agencies to assure maximum possible accuracy of the information provided; LinkedIn failed to undertake any reasonable procedures to do so.*

*4. The FCRA requires agencies to provide a "Notice to Users of Consumer Reports", which includes a user's obligations to provide a notice to consumers when an adverse action is taken, in this case a refusal of employment. LinkedIn does not provide this Notice to Users.*

*5. Because LinkedIn provides information to users without inquiring into the users' purposes for obtaining the information, the social media site does not have reason to believe the users have permissible purposes as defined by FCRA.*

*The plaintiffs sought monetary damages, punitive damages, and attorneys' fees and costs. LinkedIn moved for dismissal, citing the plaintiffs' failure to state a claim, and prevailed.*

*The federal court judge held that:*

However, the District Court deemed that Plaintiffs did not alleged sufficient facts to support a plausible inference that the Reference Searches are within the FRCA’s definition of a consumer, and dismissed Plaintiffs claims.

The Court based its decision on five main reasons.

First, the specific purpose of LinkedIn is for members to "share their professional identities online. “LinkedIn’s publications of employment histories of the consumers who are the subjects of the Reference Searches are not consumer reports because the information contained in these histories came solely from LinkedIn’s transactions or experiences with these same consumers. The FCPA excludes from the definition of consumer report any “report containing information solely as to transactions or experiences between the consumer and the person making the report."

Second, LinkedIn “gathers the information about the employment histories of the subjects of the Reference Searches not to make consumer reports but to “carry out consumers’ information-sharing objectives”. On the contrary, a consumer reporting agency's purpose is to gather information to furnish to third partie*s.*

Third, the information collected via Reference Search comes from the searcher's networks, not the employment candidate's networks.

Fourth, the purpose of the Reference Searches does not fall within the purpose element of the consumer report definition. According to the Court, LinkedIn “Reference Search results—and therefore expects them to be used—as a way for potential employers to locate people who can provide reliable feedback about job candidates and does not market the results themselves as a source of reliable feedback about job candidates”.

More information on Sweet v. LinkedIn Corporation, NDCA, No. 5:14-cv-04531, April 14, 2015 is available at <http://dockets.justia.com/docket/california/candce/3:2014cv04531/281365>

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