

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-cv-80047-BER

SHEKEARA ADMORE,

Plaintiff,

v.

HOSPICE OF PALM BEACH COUNTY, INC.,

Defendant.

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**ORDER ON MOTION FOR PARTIAL SUMMARY JUDGMENT**

In this consolidated action, Shekeara Admore brings claims for FMLA interference and retaliation (Counts I and II in case number 20-81295) and a claim for violating the Fair Credit Reporting Act (FCRA) (Count I of the First Amended Complaint in case number 21-80047). Defendant Hospice of Palm Beach County, Inc. (“Hospice”), moves for partial summary judgment on the FCRA claim.

**SUMMARY JUDGMENT STANDARD**

The legal standard for summary judgment is well-settled:

A party may obtain summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The parties may support their positions by citation to the record, including inter alia, depositions, documents, affidavits, or declarations. Fed. R. Civ. P. 56(c). An issue is genuine if “a reasonable trier of fact could return judgment for the non-moving party.” A fact is material if it “might affect the outcome of the suit under the governing law.” The Court views the facts in the light

most favorable to the non-moving party and draws all reasonable inferences in its favor.

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The moving party shoulders the initial burden of showing the absence of a genuine issue of material fact. Once this burden is satisfied, “the nonmoving party ‘must make a sufficient showing on each essential element of the case for which he has the burden of proof.’” Accordingly, the non-moving party must produce evidence, going beyond the pleadings, and by its own affidavits, or by depositions, answers to interrogatories, and admissions on file, designating specific facts to suggest that a reasonable jury could find in his favor.

*Rubenstein v. Fla. Bar*, 72 F. Supp. 3d 1298, 1307–08 (S.D. Fla. 2014) (J. Bloom) (citations omitted). An issue is genuine if “a reasonable trier of fact could return judgment for the non-moving party.” *Miccosukee Tribe of Indians of Fla. v. United States*, 516 F. 3d 1235, 1243 (11th Cir. 2008) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986)). A fact is material if it “might affect the outcome of the suit under the governing law.” *Id.* (quoting *Anderson*, 477 U.S. at 247–48). “The mere existence of a scintilla of evidence in support of the [non-moving party’s] position will be insufficient; there must be evidence on which a jury could reasonably find for the [non-moving party].” *Anderson*, 477 U.S. at 252. “If more than one inference could be construed from the facts by a reasonable fact finder, and that inference introduces a genuine issue of material fact, then the district court should not grant summary judgment.” *Bannum, Inc. v. City of Fort Lauderdale*, 901 F.2d 989, 996 (11th Cir. 1990).

### UNDISPUTED FACTS

1. Ms. Admore applied to work for Hospice on or about January 30, 2017.
2. As part of the application process, Ms. Admore completed a form titled “FAIR CREDIT REPORTING ACT: DISCLOSURE/AUTHORIZATION” (“FCRA Disclosure Form”).
3. As part of the application process, Ms. Admore completed a Florida Department of Law Enforcement VECHS Waiver and Statement for Criminal History Record Checks form (“Criminal History Check Form”).
4. The first paragraph of the FCRA Disclosure Form read:

In accordance with the provisions of section 604(b)(2)(A) of the Fair Credit Reporting Act (FCRA) (Title II, Subtitle D, Chapter I, Public Law 104-208) you are hereby informed that a consumer report about you may be ordered and used for employment purposes. (Under the provisions of the Act, a driving record and criminal history are considered consumer reports when used for screening purposes. We will not be checking your “credit” history.)
5. The second paragraph of the FCRA Disclosure Form read:

I freely authorize Trustbridge or an authorized designee to conduct a personal background investigation, which will include character education, driving and criminal records only.
6. Both the FCRA Disclosure Form and the Criminal History Check Form were provided to Ms. Admore by Hospice.
7. The Criminal History Check Form is for criminal history record checks under the National Child Protection Act of 1993, as amended, and Section 954.0542, Florida Statutes, and states, in part:

I hereby authorize (enter Name of Qualified Entity) Trustbridge,

to submit a set of my fingerprints and this form to the Florida Department of Law Enforcement for the purpose of accessing and reviewing Florida and national criminal history records that may pertain to me . . . . By signing this Waiver Agreement, it is my intent to authorize the dissemination of any national criminal history record that may pertain to me to the Qualified Entity with which I am or am seeking to be employed . . . . I understand that, until the criminal history background check is completed, you may choose to deny me unsupervised access to children, the elderly, or individuals with disabilities.

8. Prior to hiring Ms. Admore, Hospice used forms she executed to obtain documents related to Ms. Admore from various State, governmental, national, and other agencies or entities.

9. Records were obtained from the Florida Department of Highway Safety and Motor Vehicles and from Florida Department of Law Enforcement. ECF No. 53-3; ECF No. 50-1.

10. Ms. Admore was hired by Hospice and began working on or around February 27, 2017, as a nurse float manager.

11. When Hospice hired Ms. Admore, she was a registered nurse, licensed to practice in the State of Florida.

12. On June 30, 2020, Ms. Admore's employment with Hospice was terminated.

13. On August 11, 2020, Ms. Admore filed a lawsuit against Hospice alleging FMLA interference and retaliation.<sup>1</sup>

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<sup>1</sup> The lawsuit was originally docketed under case number of 20-cv-81295-BER, but has since been consolidated with this case. See ECF No. 45.

14. Sometime after October 23, 2020, Hospice produced Ms. Admore's personnel file during discovery in the FMLA litigation, containing pre-hire documentation including the FCRA Disclosure Form and the Criminal History Check Form, and, for the first time produced to Ms. Admore or her counsel the materials Hospice obtained using those forms.

15. On January 11, 2021, Ms. Admore filed this action, which asserts a claim for a violation of the FCRA.

16. The currently-operative First Amended Complaint was filed July 7, 2021.

17. When Ms. Admore was deposed on June 28, 2021, she was asked if she "ever heard of Hospice preparing job offers for people that were conditioned upon [] the individual passing a background check", and she answered, "I think that is the stipulation where we have to pass a background check."

18. On June 28, 2021, when asked what she understood the second paragraph of the FCRA Disclosure Form to mean, Ms. Admore testified:

I gave them free authorization or an authorized designee or anybody working for Trustbridge to conduct a background investigation, whatever that means, personal background and investigation.

As I said before, I always thought personal is an investigation only for my criminal history . . . which will include character evidence, I don't know what a character education is, but I assume they're missing a comma. It's supposed to [sic] character, education, driving, and criminal records only. . . . Otherwise, I'm not familiar with what the character education is.

...

I understand it to mean exactly what it - - what I just said. I freely authorize Trustbridge or someone working at Trustbridge to conduct personal background investigation which means to me an individual criminal investigation. . . . And investigation, I don't - which will include and like I said to you, I always thought a background just included criminal. And I would say - go as far as to say it , it includes driving, because if I'm a visual - DUI or anything like that, so that's what I understood to mean right now.

And as far as that character education, I've never heard of anything like that unless it's, like I said, unless it's missing a comma. So, I don't know what character education would be.

...

And how you would conduct the background check to find out? I just don't know what that term means.

ECF No. 53-4 at 19.

19. Ms. Admore cannot remember whether, in 2017, she understood the FCRA Disclosure Form.

20. Ms. Admore does not remember, in 2017, reading the FCRA Disclosure Form.

21. Ms. Admore is unable to recall whether there are any documents, potential witnesses, or individuals that would remind her or allow her to refresh her recollection as to whether, in 2017, she read or understood the FCRA Disclosure Form.

22. When asked during her deposition whether an employer could seek information about a candidate's prior employment as part of a background check, Ms. Admore testified, "To be honest, I don't know. The only thing I know about a background check was [sic] for to check and see if you have a criminal record. I don't

– I don’t know it include – what else it included. I just really don’t know.” ECF No. 53-4 at 13.

23. Upon review of the FCRA Disclosure Form at her deposition, Ms. Admore testified that she believed a personal investigation to be “only for my criminal history.”

24. As the State of Florida requires her to maintain a certain background and level of credential in order to keep her license through the State, Ms. Admore believes that some employers may not conduct background checks if the applicant’s license is active.

25. Ms. Admore has a problem with the FCRA Disclosure Form if it violates the law and would not have signed the FCRA Disclosure Form had she known it was illegal.

## DISCUSSION

### *A. Does Ms. Admore have Article III Standing?*

The First Amended Complaint asserts one count of violating the Fair Credit Reporting Act (FCRA). ECF No. 35 at 10. The legal theory is that the FCRA Waiver Form improperly included extraneous information, in violation of 15 U.S.C. § 1681b(b)(2)(A)(i), which states in relevant part:

[A] person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless –

- (i) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report

may be obtained for employment purposes.

“Consumer report” is a defined term under the FCRA. With exceptions not applicable here:

The term “consumer report” means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for—

**(A)** credit or insurance to be used primarily for personal, family, or household purposes;

**(B)** employment purposes; or

**(C)** any other purpose authorized under section 1681b of this title.

15 U.S.C.A. § 1681a(d).

In Hospice’s Statement of Material Facts, the sole reference to obtaining any background information before hiring Ms. Admore is, “Prior to hiring Plaintiff, Hospice obtained, by way of providing various forms Plaintiff executed, a number of documents from various State, governmental, national, and other agencies or entities that applied to Plaintiff.” ECF No. 50, ¶ 5. It then cites Docket Entry 50-1, which is 25 pages of documents comprising driver license checks, driving history, criminal history records, and records from the Florida Agency for Health Care Administration. ECF No. 50-1. Ms. Admore does not dispute Hospice’s statement that it obtained



documents using forms that she executed, nor she dispute the accuracy of the cited records. ECF No. 54, ¶ 5.<sup>2</sup>

But Paragraph 5 of Defendant’s Statement of Facts goes farther. It describes the cited evidence as “Portion of Defendant’s Documents Produced in Response to Plaintiff’s Request for Production which relate to Hospice obtaining documents on Plaintiff’s background pursuant to, for example, state law requirements.” ECF No. 50, ¶ 5. There is no record citation for the referenced Request for Production. Ms. Admore properly disputes “the description and purpose stated by Counsel.” I will not consider this unsupported characterization of the record evidence.

Hospice argues that Ms. Admore has not suffered a constitutionally-cognizable injury-in-fact because she ultimately was hired for the job. Hospice argues that, at most, she suffered a mere informational injury. Ms. Admore responds that she suffered an injury-in-fact because information about her was improperly disclosed to Hospice based on a form that did not comply with the FCRA. Ms. Admore has the burden of demonstrating standing. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2207 (2021).

Ms. Admore has standing. A party suffers a constitutionally-sufficient injury-in-fact where, as here, non-public information is disclosed to a third party based on that third party’s failure to provide a statutorily-required notice. *Moody v. Ascenda USA Inc.*, 16-CV-60364-WPD, 2016 WL 5900216, at \*3 (S.D. Fla. Oct. 5, 2016) (J.

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<sup>2</sup> Ms. Admore’s Statement of Material Facts states “the documents speak for themselves,” citing a 16-page exhibit that does not include the AHCA documents.

Dimitrouleas) (finding injury in fact from § 1681b(b)(2)(A)(i) violation); *see also TransUnion*, 141 S. Ct. at 2210 (distinguishing standing based on the dissemination of information to a third party from lack of standing when the same information is not disseminated).

B. *Did Hospice Obtain a “Consumer Report” as that term is used in the FCRA?*

Hospice next argues that the information it obtained did not meet the statutory definition of a “consumer report.” It first invokes the exception to the FCRA for records it was required by law to obtain:

Here, Hospice obtained a limited set of records related to Ms. Admore. SOF ¶6 and its referenced Ex. 1 . . . [M]ost of the records Hospice obtained meet the exclusions set forth in § 1681a(y) [because they] were obtained by Hospice in an effort to comply with confirmation and clearances that it must confirm are met due to State, local, and Federal laws related to regulating health care workers and agencies including those that work with vulnerable populations. SOF ¶6.”

ECF No. 49 at 5. Hospice cites several provisions of Florida law requiring background checks for healthcare workers. *Id.* at 5–6 & n. 4.

Ms. Admore argues that Hospice waived this argument because it is an affirmative defense that was not timely raised. ECF No. 55 at 10. I disagree. One element of the FCRA claim (on which Ms. Admore has the burden to prove) is that Hospice obtained a “consumer report.” Hospice asserts that Ms. Admore cannot prove that the information it obtained meets the statutory definition of a “consumer report.” That is a denial, not an affirmative defense. *Wright v. Southland Corp.*, 187 F.3d 1287, 1303 (11th Cir. 1999) (“An affirmative defense is generally a defense that, if established, requires judgment for the defendant even if the plaintiff can prove his

case by a preponderance of the evidence.”); *Bluewater Trading LLC v. Willmar USA, Inc.*, No. 07-61284-CIV, 2008 WL 4179861, at \*1 (S.D. Fla. Sept. 9, 2008) (J. Cohn) (Affirmative defense “admits to the complaint, but avoids liability, wholly or partly, by new allegations of excuse, justification, or other negating matters.”).

Hospice concedes that Ms. Admore’s motor vehicle records do not fall under the §1681a(y) exception. It nevertheless argues that these records are not “consumer reports” because they “do[] not bear on Ms. Admore’s ‘credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living’, it merely bares [sic] on her eligibility to perform the duties required of her position, such as the ability to drive to patient’s homes.” ECF No. 49 at 6. A reasonable jury could conclude that these records are “consumer reports” because they reflect on Ms. Admore’s “character, general reputation, personal characteristics, or mode of living.” This conclusion would be a particularly reasonable inference given that the FCRA Disclosure Form states, “Under the provisions of the [FCRA], a driving record and criminal history are considered consumer reports when used for screening purposes.”

*C. Is the FCRA Claim barred by the statute of limitations?*

The FCRA statute of limitations is “the earlier of (1) 2 years after the date of discovery by the Ms. Admore of the violation that is the basis for [the alleged FCRA] liability; or (2) 5 years after the date on which the violation that is the basis for such liability occurs.” 15 U.S.C. § 1681p. Hospice bears the burden of proving that the

statute of limitations ran before Ms. Admore brought her FCRA claim. *Smith v. Duff & Phelps, Inc.*, 5 F.3d 488, 492 n. 9 (11th Cir. 1993).

A violation of § 1681b(b)(2)(A) is not complete until a prospective employer obtains a consumer report. *Alibris v. ADT LLC*, Case No. 14-CV-81616, 2015 WL 5084231, at \*9 (S.D. Fla. Aug. 28, 2015) (J. Rosenberg); see ECF No. 37 at 5 (conceding, “[a] violation of § 1681b(b)(2)(A) occurs at the point of time that an employer procures a credit report or causes one to be procured without receiving proper authorization.”). So, the 2-year FCRA statute of limitations does not begin to run until Ms. Admore “discovers the facts forming the basis for Defendant's alleged violation of [the FCRA] disclosure requirements, i.e. when Plaintiff knew or should have known that Defendant had obtained a copy of Plaintiff's [consumer] report.” *Id.*


There are disputed issues of fact about whether, prior to October 2020, Ms. Admore subjectively knew that Hospice intended to use the FCRA Disclosure Form to obtain her driving records or her criminal history. For example, it is disputed whether Ms. Admore read the form and/or understood it.

Hospice asserts that, nevertheless, Ms. Admore should have known that Hospice obtained a consumer report prior to her commencing employment on or about February 27, 2017. Ms. Admore testified that she believed a background check might not be required if her nursing license was active. ECF No. 53-4 at 24. The issue of whether (and/or when) Ms. Admore should have known that the FCRA Disclosure Form would be used to obtain information about her cannot be resolved in Hospice's favor on summary judgment.

**CONCLUSION**

Hospice's Motion for Partial Summary Judgment is DENIED.

**DONE and ORDERED** in Chambers at West Palm Beach, Palm Beach County, in the Southern District of Florida, this 13th day of December 2021.

A handwritten signature in black ink, appearing to read "Bruce Reinhart", written over a horizontal line.

BRUCE E. REINHART  
UNITED STATES MAGISTRATE JUDGE