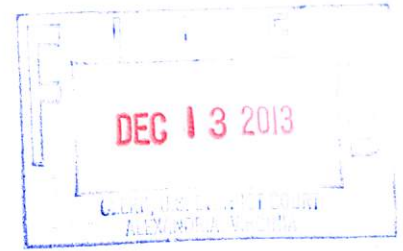


**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Alexandria Division)**



**LEE PELE**

Plaintiff,

v.

**PENNSYLVANIA HIGHER EDUCATION  
ASSISTANCE AGENCY**  
d/b/a American Education Services

Defendant.

Civil Action No: 1:13-cv-1531  
TSE/TRQ

**COMPLAINT**

Plaintiff Lee Pele, by and through counsel, brings this Complaint against Defendant Pennsylvania Higher Education Assistance Agency "PHEAA" doing business as American Education Services hereinafter ("Defendant" or "PHEAA") on the grounds and in the amounts set forth herein:

**Preliminary Statement**

1. Defendant PHEAA is student loan servicing company with various divisions. For the facts at issue in this case, PHEAA Default Collections has negligently and willfully violated the FCRA based upon the events surrounding its investigating and reporting of two fraudulent student loans that appeared on the Plaintiff's credit report. Despite the size of the Defendant and the significant volume of loans in which it furnishes credit report information to credit reporting agencies, this case will expose that at all times relevant the Defendant had not established any procedures for investigating, reporting, and dealing with identity theft related student loans. Worse yet, according to sworn deposition testimony of an ACDV processor who handled most of the credit disputes related to Mr. Pele's accounts, the PHEAA Default Collection ACDV processors

had no written procedures, no policy manuals, and no formal training with regard to the FCRA and FCRA compliance. Given the rampant nature of identity theft in our present society and the fact that these particular student loans (Federal Family Education Loan Program) (“FFELA”) did not have any safeguards to ensure that the person identified as a guarantor actually signed the guaranty made their lack of procedures even more troubling. In this case the guaranties that PHEAA claimed were executed by Mr. Pele were submitted to the lender electronically by the maker without any notary certificate, witness verification, or any other proof that the guarantor actually signed or even saw the document. As described herein, these inaccurate trade lines threatened Mr. Pele’s security clearance for work, resulted in a revocation of a credit line for a wedding band, and denied the opportunity for the Plaintiff to obtain a preapproval for a mortgage with his soon to be wife. PHEAA violated the Fair Credit Reporting Act at 15 U.S.C. 1681 *et. seq.* and is liable for actual and punitive damages for those negligent and willful violations of the law as well as attorneys’ fees and costs in bringing suit.

### **Parties**

2. Plaintiff Lee Pele is a natural person and is a resident and citizen of the Commonwealth of Virginia. Mr. Pele is a “person” and “consumer” as defined by the FCRA at 15 U.S.C. §1681a(b) and (c) because he is an individual. Unless otherwise specifically stated herein, the term “Plaintiff” shall refer to Lee Pele.

3. Defendant Pennsylvania Higher Education Assistance Agency “PHEAA” doing business as American Education Services (“AES”) is a furnisher of information as contemplated by FCRA section 1681s-2(a) & (b), that regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies

about consumer transactions or experiences with any consumer. PHEAA maintains its corporate office in Harrisburg, PA, but it took actions in violation of the Fair Credit Reporting Act that caused injury in the Commonwealth of Virginia as described in the factual averments identified herein. AES services student loans throughout the United States of America including citizens of the Commonwealth of Virginia.

#### **Jurisdiction & Venue**

4. This court has jurisdiction pursuant to the Fair Credit Reporting Act ("FCRA") 15 U.S.C. § 1681(p). Venue is proper in this jurisdiction and division as the Defendant is subject to personal jurisdiction in the Eastern District of Virginia, Alexandria division, by virtue of the business that it has conducted within the division. Because the Defendant is subject to personal jurisdiction in the district and division, venue is proper in this Court.

#### **Factual Allegations**

5. Lee Pele comes from a family that includes a brother and a sister. All of the children have attended college, and all of the children had student loans in order to pay for their educations. Unfortunately for Lee Pele, student loans that he never authorized, initiated, received the proceeds, or guaranteed were placed on his credit file by PHEAA. Because the status of these loans are in collection and past due, the inaccurate derogatory student loans have had a dramatic effect on Mr. Pele and his efforts to further his credit rating.

6. Mr. Pele knew that he had student loans related to his education that should report on his credit report, but he should not have had any defaulted student loans

on his credit report. Mr. Pele monitored his credit report and notified PHEAA that defaulted student loans were inaccurately appearing on his credit file.

7. By February 2013, Mr. Pele started receiving collection calls from a debt collector named Windham Professionals seeking to collect over \$137,000.00 in defaulted student loans for loans that Mr. Pele did not initiate, guaranty, or receive any benefit. When Mr. Pele received the telephone calls, he informed the debt collector that he had no past due student loans and that he was not obligated on the debts as alleged by the debt collector.

8. Windham's collector stated that Mr. Pele had been a co-signer on the fraudulent student loans at issue in this lawsuit, and therefore he was obligated to pay the debts. Mr. Pele knew that he was not responsible for any outstanding past due student loans. Mr. Pele requested validation of the amount that the debt collector alleged he owed and the debt collector stated that it would contact the student loan servicer PHEAA for the information.

9. Around the same time period, Mr. Pele was contacting PHEAA directly and requesting any proof that he was obligated on defaulted student loans. He informed them that he did not have any past due student loans and did not initiate any of the past due student loans that the debt collector had attempted to collect from him. PHEAA was unable to provide him with any documentation that proved or even tended to prove that he had initiated or guaranteed any of the defaulted student loans at issue in this lawsuit.

10. On or about March 15, 2013, Mr. Pele received the documents from the debt collector that purported to represent that he was indebted for student loans in a total amount over \$137,000. Any reasonable review of the documents would never support

the conclusion that Plaintiff Lee Pele owed any amount for the student loans. First, the letter that PHEAA provided to the debt collector was addressed to Moshe Pele, who is the Plaintiff's father. Next, the debt collector provided the underlying promissory notes and account initiation documents related to the alleged debts. None of the documents demonstrated that Lee Pele was obligated as a co-maker on the loans. In fact, only one of the loans contained any mention of Lee Pele's name at all, and that was as a reference for the loan.

11. Mr. Pele kept telling the debt collector that he did not owe the debts, and the debt collector kept insisting that he did owe the debts.

12. Whenever Mr. Pele contacted PHEAA to inquire what was going on with allegedly defaulted student loans, he told them that he disputed existence of any past due student loans. PHEAA would tell him that they could not find the Plaintiff's identifying information in the system for the defaulted students, and Plaintiff disputed that he had defaulted on any student loans.

13. Because of the blatant lack of proof that the debt collector and PHEAA had that the Plaintiff was obligated on the defaulted student loans, Mr. Pele decided to dispute these items on his credit report with the credit reporting agencies that were reporting the inaccurate information.

14. On March 19, 2013, Mr. Pele sent credit dispute letters to Trans Union, Equifax, and Experian that stated the problems associated with the inaccurate reporting of the student loan accounts. In the letter, he described the situation, stated that the debts were related to his father and siblings, and included the supporting documentation proving that he did not sign on the debts as an obligor and was merely a reference for his

father and sibling on the application for one of the loans. Mr. Pele stated that he never opened or initiated the loans and that they should not appear on his credit report. Mr. Pele went on to describe the effect that the situation was having on his life and the undue burden that the credit reporting situation was creating.

15. Mr. Pele was particularly vulnerable at this point in his life to inaccuracies on his credit report. He needed to secure his own student loans to continue graduate school; he was getting married in the summer; he needed to finish payment on a wedding band but his existing credit line was closed with new attempts for credit denied; he wanted to purchase a home with his soon to be wife; and he had a security clearance to maintain for his job. Due to problems associated with government funding, consumers whose jobs require security clearances and have problems with their credit are especially vulnerable to sequestration cuts and furloughs.

16. Defendant PHEAA serviced all of the fraudulent student loans on Mr. Pele's credit report, and PHEAA responded to the ACDVs sent to it by the credit reporting agencies after Mr. Pele's March 19, 2013 dispute letter.

17. Defendant PHEAA responded to ACDVs that were sent by the credit reporting agencies to PHEAA through the e-oscar system after the credit reporting agency had received the March 2013 dispute letter.

18. E-OSCAR is a system that PHEAA uses so that it can receive notices of FCRA credit disputes (known as "ACDVs") from the credit reporting agencies. After PHEAA received each of these credit disputes, PHEAA had a duty to conduct a detailed and systematic inquiry in order to determine if it could still report the account on the Plaintiff's credit report. As part of its investigation, if PHEAA could not verify that Mr.

Pele actually authorized and opened the accounts, it had a duty to instruct the credit reporting agencies to delete the account from Mr. Pele's credit report. According to the ordinary and customary definition of the word, "verify" means to confirm or establish the truthfulness or to prove to be true.

19. As to these particular (FFELA) student loans, PHEAA could never verify that Mr. Pele, or anyone else for that matter, co-signed for the student loans based upon the circumstances surrounding the loan. These FFELA loans were for parents to sign on behalf of their children. In those limited cases where the parent's credit was insufficient to obtain the loan on their own, they were required to obtain a guarantor. The loan documents were submitted to the lender over the internet or telefax. No lender ever met with most of these applicants to verify their identities and based upon information and belief they never met with the purported guarantor. The guaranty form was often submitted after the original loan request, sent electronically and had absolutely no mechanism to ensure that the purported guarantor ever knew anything about the loan. There was no place for a notary public to verify the signature of the guarantor nor was there even a place for a witness to verify that the purported guarantor actually signed the document. There was no requirement that the applicant send in a copy of a driver's license or any other proof that the named guarantor had anything to do with the loan application. As a result, it was very easy for those parents that were required to have a guarantor sign off on the loan to submit a complete fabrication. Because of the lax procedure established for creation of these loans, there was absolutely no proof that a purported guarantor was responsible for the debt other than the fact that their name was typed onto the guaranty form.

20. If PHEAA had ever conducted any reasonable inquiry into the facts and circumstances of the loans, only one conclusion could be reached: PHEAA lacked sufficient information to verify the debts as belonging to Mr. Pele. However, as Plaintiff has only learned recently from the sworn deposition testimony of the ACDV processor involved, the PHEAA Default Collections ACDV processors have no means, methods, or procedures to investigate identity theft disputes and instruct the deletion of identity theft related accounts from credit reports. PHEAA failed to provide any written guide or instructions to its processors on how to process disputes submitted to it through the e-Oscar system. PHEAA's lack of procedures constitutes a reckless disregard for FCRA compliance.

21. As a result of receiving four different ACDVs from Experian and TransUnion as a result of the March 2012 dispute letters, the PHEAA Default Collections ACDV processors had four separate ACDVs in which it needed to reasonably investigate and respond. PHEAA failed on all four occasions to correct the reporting of the accounts disputed by Mr. Pele.

22. TransUnion issued two ACDVs on March 30, 2012 related to the two identity theft related student loans that appeared on Mr. Pele's credit report at issue in this action. On both of the ACDVs TransUnion said, "Claims Company Will Delete. Verify All Account Information Claims True Identity Fraud Account Fraudulently opened Provide or Confirm Complete Id."

23. Similarly Experian issued two ACDVs dated March 27, 2012 that notified PHEAA that the student loan accounts were not Mr. Pele's responsibility and notified PHEAA in part that the account(s), "belong to another individual with same/similar



name. Provide complete ID, CONS SENT AES APPLICATION SHOWING THAT THIS BELONGS TO HIS FATHER MOSHE PELE.”

24. On April 5, 2012, PHEAA Default Collections ACDV employee, Star Shickley responded to all four of the ACDVs by modifying, but not deleting, the information from Mr. Pele’s credit file. Despite the fact that no document existed that verified that Mr. Pele was responsible for either of the two accounts, PHEAA continued to attribute the debts to Mr. Pele to the credit reporting agencies.

25. PHEAA both negligently and willfully violated the FCRA when responding to the ACDVs for two main reasons: 1) it had no procedure in place to investigate a consumer’s claim of identity theft; and 2) PHEAA did not properly train its employees on either investigating identity theft disputes or with FCRA compliance issues.

26. Given the haphazard manner in which student loan accounts are opened, PHEAA has no reliable documents to verify that the account was initiated by the consumer that claims to be the victim of identity theft. The FFELA student loan documents and promissory notes are form documents that are signed without identity verification in front of a notary or even a witness. The acceptance of these endorser addendums or guaranties was so lax that they did not even request a copy of an identification card that included the purported guarantor’s signature. Thus, in the documents produced by PHEAA they did not have any document that would verify or prove that the purported guarantor had anything to do with the loan. In addition, there is also incorrect biographical information provided on the application for loan like Mr.

Pele's addresses and work information. From the very outset there was no reasonable proof supporting a claim that Mr. Pele agreed to guaranty any of the student loans.

27. Pursuant to sworn deposition testimony that Star Schickley has already provided, she fully acknowledged that at the time she processed the ACDV disputes she understood that Mr. Pele was disputing the reporting of the trade line on the grounds that he was the victim of identity theft: "I understood he was claiming identity theft." (Star Schickley Deposition transcript p.55 line 23-24). Ms. Schickley also admitted that no evidence existed that would refute Mr. Pele's position that he was the victim of identity theft: "Q. So you don't have any facts that would refute his position that he's the victim of identity theft? A. Per your question, there would not be. If I'm understanding your question, the answer - - we were not provided any contradicting evidence." (Star Schickley Deposition transcript p.78 line 11-17).

28. In addition, Mrs. Schickley did not send an identity theft fraud investigation packet to Mr. Pele because the PHEAA default division does not even have such a packet to send to consumers that are the victim of identity theft.

29. Based on the manner that it handles identity theft dispute investigations, PHEAA is going to verify as accurate any account that has allegedly been opened via identity theft unless the victim has already proven their innocence and has a court order stating that the account is fraudulent. This is in complete disregard and contravention of PHEAA's duties under the FCRA.

30. Ms. Schickley's lack of training for FCRA compliance also evidences the Defendant's reckless disregard for the statute. Ms. Schickley received only informal instruction on responding to ACDV forms from another employee and the PHEAA

default division did not maintain any FCRA compliance manual that could potentially train an employee. During Mrs. Schickley's deposition, she candidly admitted that she was unaware of the FCRA aside from much more than the fact that it existed in general. It was only well after responding to Mr. Pele's ACDVs and just prior to her deposition that Mrs. Schickley saw an FCRA compliance manual: because she was charged with the instruction to create a FCRA compliance manual for the PHEAA Default Collections division. Ms. Shickley never had a manual she could refer to, did not have any training on compliance with the FCRA, her formal education included a high school diploma and trade school for massage therapy, yet she was the individual selected by PHEAA to draft its first FCRA compliance manual.

31. In addition to recklessly disregarding its duties to conduct reasonable investigations of the ACDVs as required by the FCRA, Mrs. Shickely and PHEAA also recklessly disregarded its duties to comply with 15 U.S.C. §1681s-2(b)(1)(C) by failing to accurately report the results of its reinvestigation to the credit reporting agencies because all of the ACDVs failed to include information in the compliance condition field of the ACDV that Mr. Pele had disputed the account.

32. There is no dispute that Mr. Pele had contacted PHEAA and the debt collector before his March 2012 credit dispute letter to the credit reporting agencies and notified PHEAA that Mr. Pele disputed the accuracy of the account, which required the ACDV to indicate in the compliance condition code section of the ACDV that Mr. Pele disputed the accuracy of the account. By failing to place the proper compliance condition code on the ACDV, the Defendant created a misleading impression that Mr. Pele simply guaranteed student loans and allowed them to go into default. The consumer dispute

notation is a warning to potential creditors that review credit reports that there is more than a refusal/failure to pay on the account. By failing to place the consumer dispute notation on the ACDV on every occasion that it responded to an ACDV, the Defendant demonstrated that its clear pattern and practice is to not provide information related to compliance condition codes when responding to an ACDV.

33. The defendant's failure to include a compliance condition code in the ACDV responses is also in reckless disregard of the requirements of the FCRA and clear guidance from the courts on the very issue. Ms. Shickley did not add the compliance condition code when she responded to any of the ACDVs, because she was totally unaware of her obligation to do so. She had not been trained to add the compliance condition code and as a result never had done that in the past. Worse yet she began training other new ACDV processors and never told them about the compliance condition code requirement under the FCRA.

34. In another effort to obtain the removal of the fraudulent student loans from Mr. Pele's credit report, he sent a second series of credit dispute letters to the credit reporting agencies in April 2012. As a result of these credit dispute letters, the Defendant received at least two more ACDVs from TransUnion that notified it that Mr. Pele continued to dispute the credit reporting for the account. Additional discovery is necessary from Equifax as to any ACDVs that Equifax sent to PHEAA.

35. On April 20, 2012, TransUnion sent two ACDVs that notified the defendant that Mr. Pele disputed the credit reporting on the basis: "Not liable for the Acct. (Ie Ex-spouse, Business) If liable, provide complete ID and ECOA Code. Claims Company Will Delete Verify All Account Information."

36. On April 29, 2012, Star Shickley once again responded to the two TransUnion ACDVs by modifying the account information, but not deleting the account due to fraud. As occurred after the first dispute letter, Ms. Shickley did not conduct a reasonable investigation because she had never been trained on how to conduct a proper investigation. Ms. Shickley proceeded to verify the credit reporting despite the fact that: 1) the underlying documents had incorrect information about Mr. Pele; 2) Mr. Pele's purported signature for the debts did not match his actual signature; 3) no investigation was done into the identity theft; 4) no fraud package had even been sent; 5) no fraud investigation had ever been conducted, and 6) no compliance condition code was provided in response to the ACDV.

37. The results to the second "investigation" are not terribly surprising given the fact that PHEAA had no procedures to investigate identity theft, did not properly train its employees, and had no written manual for reference related to the ACDV investigations or ACDV responses. Ms. Shickley did exactly what she was trained to do and exactly what PHEAA expected her to do. Her validation of the debt and failure to add the dispute code were not accidents, but rather intentional acts based upon the limited training that she had been provided and coincided with the training that she was providing to the new ACDV processors at PHEAA.

38. The Defendant's actions in failing to remove the fraudulent student loans caused significant damage to Mr. Pele in the form of loss of credit, denied credit, interference with family relationships, and emotional distress.

39. Mr. Pele needed a clear credit report to keep moving his life forward during a very pivotal period. Mr. Pele was in graduate school, so he personally needed

additional student loans, which the fraudulent loans complicated. He was financing a wedding band and as a direct result of these defaulted student loans, his credit line was cut-off. Having this problem only shortly before the wedding caused great distress, frustration, and anxiety. He was also concerned about the inaccurate accounts affecting his security clearance at work. Finally, he was unable to get a preapproval for a mortgage despite the fact that he had received a mortgage pre-approval before the disputed loans appeared on his credit report.

**COUNT I**  
**Fair Credit Reporting Act**  
**15 U.S.C. §1681 s-2(b)**

40. Plaintiff incorporates paragraphs one (1) through thirty-nine (39) as if fully stated herein.

41. After Mr. Pele sent notice of his credit dispute to Experian, Equifax, and TransUnion, the respective credit reporting agencies sent ACDVs to the Defendant as identified in the factual averments of this lawsuit. In addition, discovery is necessary into the ACDVs that Equifax issued to the Defendant as Plaintiff is not in possession of Equifax's ACDV documents as those are internal documents within the sole custody and control of Equifax.

42. After PHEAA received each of the ACDVs previously identified, it had a duty to conduct a reasonable investigation of the dispute, and delete the trade lines if they could not be verified in accordance with the requirements of 15 U.S.C. §1681s-2(b)(1)(A) of the Fair Credit Reporting Act.

43. PHEAA, through its employee Star Schickley, did not fully and properly investigate Mr. Pele's disputed accounts after receiving multiple ACDVs because no

reasonable investigation would have led to the conclusion that Mr. Pele opened or initiated any of the student loans. Rather than conduct a detailed and systemic inquiry into the proper credit reporting, the defendant conducted a cursory review of limited information and failed to instruct any credit reporting agency to delete the accounts from Mr. Pele's credit report.

44. The totality of the areas of investigation ignored is even more shocking when multiplied by the number of chances that Defendant had to investigate. PHEAA operated with reckless disregard for the FCRA and/or negligence with regards to the FCRA rights of Mr. Pele because it had no proof that he actually signed any document that guaranteed the loans; did not take into account during its investigation that address and employer information was incorrect, had no procedures in place for identity theft dispute investigations, never sent Mr. Pele a fraud package, and did not properly train its employees in identity theft ACDV issues. Punitive damages are required based upon the reckless indifference that AES had for reporting complete and accurate information as well as investigating the ACDVs after receiving them from the credit reporting agencies. Only substantial punitive damages will deter this conduct in the future.

45. PHEAA also systematically and willfully violated the requirements of 15 U.S.C. 1681s-2(b)(1)(C) by failing to accurately report the results of its reinvestigation to the credit reporting agencies by failing to include a notation that Mr. Pele disputed the credit reporting for the account when reporting the results of the credit dispute investigations on the ACDVs. By not reporting Mr. Pele's accounts as disputed, PHEAA reported incomplete and inaccurate information in violation of 15 U.S.C. §1681s-2(b)(1)(C). Despite clear guidance from the Fourth Circuit from the case of *Saunders v.*

*Branch Banking & Trust Co. of Virginia*, 526 F.3d 142 (4<sup>th</sup> Cir. 2008) that failing to report a consumer's account as disputed when reporting the results of the reinvestigation is a willful violation of the FCRA, PHEAA failed on multiple occasions to report that Mr. Pele disputed the status of the account when responding to an ACDV. This reporting had the effect of creating an inaccurate and misleading portrait of how Mr. Pele handled his credit responsibilities. PHEAA recklessly disregarded compliance with this section of the FCRA as evidenced by the lack of training, failure to report the compliance condition code status correctly on at least six ACDVs, and by the ACDV processors shocking admissions that they were completely unfamiliar with the compliance condition reporting on an ACDV.

46. Plaintiff is entitled to actual damages, statutory damages, and punitive damages based upon the violations of the Fair Credit Reporting Act. Plaintiff suffered damages in the form of loss of time working to correct the reporting of the inaccurate account, the emotional distress of continuing to deal with problems related to the theft of his identity, and denial of credit opportunities.



**Prayer for Relief**

Wherefore, the Plaintiff prays that the Court award the following relief:

- a) Actual damages based upon Defendant's violations of the FCRA;
- b) statutory damages against Defendant's for violations of the FCRA;
- c) punitive damages based upon the violations of the FCRA;
- d) costs and reasonable attorneys' fees incurred by the Plaintiff;
- e) prejudgment interest
- f) all other further relief that this Court deems just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiffs demand trial by jury as to all issues against all defendants.

Respectfully submitted  
Lee Pele

  
By: Counsel

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