

ZEICHNER ELLMAN & KRAUSE LLP
William T. Marshall, Jr. (WM0626)
33 Wood Avenue South, Suite 110
Iselin, NJ 08830
Telephone: (973) 618-9100
Direct Dial: (973) 852-2660

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CONSUMER DATA INDUSTRY
ASSOCIATION,

Plaintiff,

v.

MATTHEW J. PLATKIN, in his
official capacity as ATTORNEY
GENERAL FOR THE STATE OF
NEW JERSEY,

Defendant.

Civil Action No.
3:19-cv-19054-ZNQ-TJB

**PLAINTIFF'S RESPONSE TO DEFENDANT'S STATEMENT OF
MATERIAL FACTS NOT IN DISPUTE**

**PLAINTIFF’S RESPONSE TO DEFENDANT’S STATEMENT OF
MATERIAL FACTS NOT IN DISPUTE**

Plaintiff Consumer Data Industry Association (“CDIA”) responds to the Statement of Material Facts Not in Dispute, as follows.

1. CDIA is an international trade association that represents the three nationwide credit reporting agencies (“NCRAs”) - Experian, Equifax and Trans Union - and other consumer reporting agencies that furnish information concerning New Jersey consumers.

RESPONSE: Admit. (See ECF No. 22 (Joint Stipulated Facts for Purpose of Summary Judgment filed January 15, 2021), ¶1).

2. Defendant Andrew J. Bruck is the Acting Attorney General of the State of New Jersey and, in this position, is charged with enforcing the laws of the State, including the Consumer Fraud Act, which is codified at N.J.S.A. 56:8-1 et. seq.

RESPONSE: Bruck has been superseded in that position by Matthew J. Platkin (“Defendant”). (See ECF No. 49)

3. This action is brought against Attorney General Bruck in his official capacity.

RESPONSE: It is brought against Defendant in his position as Attorney General. (See ECF No. 49).

4. Plaintiff filed a lawsuit challenging the constitutionality of an amendment to New Jersey’s Fair Credit Reporting Act (“NJ FCRA”), codified at N.J.S.A. 56:11-28 et. seq., which was signed into law in July 2019. With respect to the NJ FCRA, Defendant or his designees have authority to investigate suspected non-compliance, file a civil action to seek enforcement, and request civil penalties for noncompliance.

RESPONSE: Admit. (See ECF No. 22, ¶4).

5. CDIA alleges that the law is preempted by the Federal Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 et. seq., and that the law violates its free speech rights guaranteed by the First Amendment to the U.S. Constitution. CDIA seeks declaratory and injunctive relief.

RESPONSE: Admit. (See ECF No. 22, ¶5).

BACKGROUND AND THE APPLICABLE PROVISIONS OF THE FCRA

6. The purpose of the federal FCRA is to promote the accuracy, fairness, and privacy of information in the files of CRAs. The U.S. Congress, in passing the FCRA in 1970, provided in its statement of purpose that:

- (1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public

confidence which is essential to the continued functioning of the banking system.

- (2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness credit standing, credit capacity, character, and general reputation of consumers.
- (3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.
- (4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

15 U.S.C. § 1681(a).

RESPONSE: Admit. (See ECF No. 22, ¶6).

7. Congress also concluded that
 - (b) It is the purpose of this title [15 USCS §§ 1681 et seq.] to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this title [15 USCS §§ 1681 et seq.].

15 U.S.C. § 1681(b).

RESPONSE: Admit. (See ECF No. 22, ¶7).

8. In the United States, the NCRAs do not record credit report information in any other language other than English.

RESPONSE: Admit.. (See ECF No. 22, ¶8).

9. New Jersey’s Fair Credit Reporting Act (“NJ FCRA”) is codified at N.J.S.A. 56:11-28 et. seq.

RESPONSE: Admit. (See ECF No. 22, ¶9).

10. The NJ FCRA was amended, by Public Law 2019, chapter 183, in July 2019. This bill, which modified N.J.S.A.56:11-34 entitled “Disclosure to consumer,” requires that:

[A] reporting agency that compiles and maintains files on nationwide basis [the NCRAs] shall make the information subject to disclosure pursuant to this section available to a consumer upon the consumer’s request in Spanish or any other language that the Director of the Division of Consumer Affairs determines is the first language of a significant number of consumers in the State.

RESPONSE: Admit. (See ECF No. 22, ¶10).

11. The determination of the additional languages is left to the discretion of the Director. The amendment also provides that the Director “shall require that the information is made available in at least the 10 languages other than English and Spanish that are most frequently spoken as a first language by consumer in [New Jersey].” Additionally, the amendment also requires the NCRAS to provide notice, in any language as determined by the Director, on their

Internet website in a clear and conspicuous location, of the availability of consumer reporting information in languages other than English. [N.J.S.A. 56:11-34].

RESPONSE: Admit. (See ECF No. 22, ¶11).

12. Amended N.J.S.A. 56:11-34 became effective in October 2019.

RESPONSE: Admit. (See ECF No. 22, ¶12).

13. Revised 56:11-34 requires Plaintiff's members to provide file disclosures in a language other than English.

RESPONSE: Admit. (See ECF No. 22, ¶13).

14. To date, the Director has not proposed or adopted any regulations or rules to implement N.J.S.A. 56:11-34.

RESPONSE: Admit. (See ECF No. 22, ¶14).

15. To date, the Director has not determined which languages are the first languages of a significant number of consumers in the State, as required by N.J.S.A. 56:11-34.

RESPONSE: Admit. (See ECF No. 22, ¶15).

16. Neither, to date, has the Director demanded or required any NCRA to provide file disclosure information to New Jersey consumers in languages other than English, nor has the Director required any NCRAS to provide notice on their Internet websites of the availability of information subject to disclosure, pursuant to N.J.S.A. 56:11-34, in languages other than English.

RESPONSE: Admit. (See ECF No. 22, ¶16).

DATED: March 24, 2022

ZEICHNER ELLMAN & KRAUSE LLP
Attorneys for Plaintiff

BY: /s/William T. Marshall, Jr.

WILLIAM T. MARSHALL, JR. (WM0626)