

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

DUANE A. HINES, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

EQUIFAX INFORMATION SERVICES LLC,

Defendant.

CIVIL ACTION NO. 1:19-cv-6701

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff DUANE A. HINES (“Hines”), on behalf of himself and all others similarly situated, brings this class action under the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681-1681x, and the New York Fair Credit Reporting Act (“NYFCRA”), N.Y. GEN. BUS. LAW §§ 380-a-380-v, against Defendant EQUIFAX INFORMATION SERVICES LLC (“Equifax”), a national consumer reporting agency (“CRA”). Plaintiff alleges, based on personal knowledge as to Defendant’s actions and upon information and belief as to all other matters, as follows:

I. PRELIMINARY STATEMENT

1. This case arises from Equifax’s refusal to reinvestigate consumer disputes of “inquiry” information, in violation of one of the most fundamental protections afforded to consumers under the FCRA and NYFCRA: to dispute inaccurate information and have the disputed information reinvestigated. Moreover, it undermines the accuracy of the information on consumer reports. Consumers often notice inaccurate information on a consumer report that the consumer reporting agency is not aware of. Through the dispute and reinvestigation procedure mandated by the FCRA, inaccurate information is removed from credit reports. The dispute procedure is virtually the only way that a consumer can correct errors on a consumer report.

II. JURISDICTION and VENUE

2. The Court has federal question jurisdiction pursuant to the FCRA, 15 U.S.C. § 1681p, and 28 U.S.C. § 1331. This Court has supplemental jurisdiction for Plaintiff's NYFCRA claim pursuant to 28 U.S.C. § 1367(a).

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Defendant can be found in this District and regularly sells its products and services in this District.

III. PARTIES

4. Plaintiff Duane A. Hines ("Hines") is a resident of Brooklyn, New York and is a "consumer" as defined by FCRA § 1681a(c) and NYFCRA § 380-a(b).

5. Defendant Equifax Information Services LLC ("Equifax") is a limited liability company that regularly conducts substantial business in the State of New York.

6. Equifax is a consumer reporting agency as defined by FCRA § 1681a(f) and NYFCRA § 380-a(e).

IV. FACTUAL ALLEGATIONS

Consumer Reporting of "Inquiry" Information

7. When Equifax prepares a consumer report (commonly called "credit report") about a given person ("consumer" in credit reporting parlance), it includes a list of persons and companies who, in the two years prior to the date of the report, obtained a consumer report about the consumer who is the subject of the instant report, along with their address(es) and the date(s) on which they obtained a consumer report. Each such combination of name, address, and date is known as an "inquiry."

8. Inquiry information is included on a credit report because it is part of a consumer's credit history. Inquiries identify the persons and companies with whom the consumer sought credit and how often the consumer did so.

9. Inquiries have a negative impact on a consumer's credit score because scoring programs view each inquiry as an application for credit, and a consumer who makes multiple applications is considered a greater risk than a consumer who does not.

10. Inquiry information is often inaccurate, and inquiries may appear on a consumer's credit report notwithstanding the fact that the consumer did not actually seek credit. This can occur when a consumer reporting agency provides a consumer's report to a creditor who requested a report on a different person who may have a similar name.

11. Including inaccurate inquiries on a consumer's report thus misrepresents that consumer's credit history and unfairly lowers the consumer's credit score.

Consumers May Dispute Inaccurate Credit Information

12. Because inaccurate credit information can have significant negative effects on consumers, the FCRA and NYFCRA empower consumers to dispute inaccurate information in their credit reports.

13. For example, the FCRA provides that when a consumer notifies a CRA like Equifax that the consumer disputes "the completeness or accuracy of any item of information contained in a consumer's file," Equifax must "*conduct a reasonable reinvestigation* to determine whether the disputed information is inaccurate and record the current status of the disputed information, *or delete the item from the file*" within 30 days of receiving the consumer's dispute. 15 U.S.C. § 1681i(a)(1)(A) (emphasis added).

14. As part of the reinvestigation, Equifax must “provide notification of the dispute to any person who provided any item of information in dispute,” and the notice must “include all relevant information regarding the dispute that the agency has received from the consumer[.]” 15 U.S.C. § 1681i(a)(2)(A).

15. Contacting the source is critical in doing a reasonable reinvestigation. In situations where the wrong consumer’s report was provided to the source, the source may know it got a report on a consumer who is not the person they were dealing with; or it could check its records to determine if that occurred. Equifax can also reinvestigate such cases by comparing the identifying information for the consumer whose report was provided to see if it differs from the identifying information provided by the person who requested the credit report.

16. The NYFCRA similarly provides that, “[i]f a consumer disputes any item of information contained in his file, and such dispute is directly conveyed to the consumer reporting agency by the consumer, [Equifax] shall promptly re-investigate and record the current status of such information[.]” N.Y. GEN. BUS. LAW § 380-f(a).

Equifax Does Not Reinvestigate Consumer Disputes of Inquiry Information

17. Equifax does none of these things. It does not reinvestigate the disputed inquiry. It does not notify the source about the consumer’s dispute. It does not provide the source with all the relevant information about the dispute. And it does not delete the inquiry.

18. Equifax has long been aware of its obligations to reinvestigate inquiry disputes. It had the benefit of plain, unambiguous statutory language requiring a reasonable reinvestigation of “the completeness or accuracy of *any item* of information contained in a consumer’s file” that is disputed by that consumer. 15 U.S.C. § 1681i(a)(1)(A) (emphasis added).

19. Regulatory guidance from the Federal Trade Commission¹ explicitly addresses CRAs' statutory duty to reinvestigate disputed inquiries or delete them, to wit:

When a CRA receives a dispute from a consumer alleging that an inquiry that appears in his/her file was not made by a person who had a permissible purpose for obtaining the consumer report, and those allegations are supported by the CRA investigation, the CRA has two options. It may either delete the inquiry as inaccurate, or amend the file to make the item "complete" by reflecting clearly that the inquiry was generated by a party who did not have a permissible purpose to obtain a consumer report on the consumer.

20. Courts of Appeals throughout the country have held that CRAs must reinvestigate information in consumers' credit files, regardless of the context. *See Cortez v. Trans Union, LLC*, 617 F.3d 688, 711-13 (3d Cir. 2010) (OFAC terrorist alerts that CRA keeps off site with another company but placed on its credit reports are in the consumer file and must be reinvestigated); *Collins v. Experian Info. Sol's, Inc.*, 775 F.3d 1330, 1335 (11th Cir. 2015) (a CRA violates the FCRA when it fails to do a reasonable reinvestigation of a consumer dispute of "information contained in his file."); *Dennis v. BEH-1, LLC*, 520 F.3d 1067 (9th Cir. 2008); *Morris v. Equifax Info. Serv's, LLC*, 457 F.3d 460, 466-68 (5th Cir. 2006).

21. One district court² held—in a case against Equifax—that:

[Requiring reinvestigation of inquiry disputes] best serves to advance the purpose of FCRA's reinvestigation requirements—ensuring the accuracy of the information used by creditors to determine a consumer's creditworthiness. . . . The interests of consumers and potential creditors are best served by deletion of hard inquiries that Equifax itself admits "misstate[]" the consumer's credit history. Consumer's credit scores are negatively impacted by fraudulent or inaccurate credit inquiries, and creditors are provided with an inaccurate portrait of the consumer's credit history. The only entity that benefits is Equifax, which does not have to expend resources reinvestigating disputed credit inquiries.

¹ Federal Trade Commission, *40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations*, 77 (2011) <https://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrrareport.pdf>.

² *Steed v. Equifax Info. Serv's, LLC*, No. 1:14-cv-0437-SCJ, 2016 WL 7888039, at *4 (N.D. Ga. Aug. 31, 2016).

Voluminous Inquiry Disputes Reveal Other Flaws in Equifax's Procedures

22. Consumer reports are full of sensitive personal and financial information that consumers rationally seek to withhold from persons and companies with whom the consumer does not have and does not seek a relationship.

23. For this reason, both the FCRA and the NYFCRA restrict CRAs' "furnishing" (*i.e.*, sale) of consumer reports to a narrow range of "permissible" purposes.

24. Moreover, both the FCRA and NYFCRA contain requirements that CRAs "maintain reasonable procedures . . . to limit the furnishing of consumer reports" to those permissible purposes and prohibit a CRA from furnishing a consumer report "if it has reasonable grounds for believing that the consumer report will not be used for a [permissible] purpose[.]"

25. Indeed, both the FCRA and NYFCRA also penalize the unauthorized *acquisition* of a consumer report.

26. Equifax receives hundreds of thousands of disputes of inquiry information each year in which consumers represent that Equifax provided a consumer report about them to a third party with which the consumer neither sought credit nor authorized to obtain a consumer report about them.

27. Despite this voluminous evidence, Equifax continues to provide consumer reports to the companies about which consumers have repeatedly complained.

28. Moreover, because Equifax does not reinvestigate or delete disputed inquiries, it continues to report those unauthorized inquiries to new third parties with whom consumers legitimately seek credit or other business relationships.

29. Equifax's procedures are clearly broken. They fail to limit the disclosure of sensitive personal and financial information about millions of consumers to FCRA and NYFCRA

permissible purposes and fail to reign in repeat offenders who illegally obtain sensitive personal and financial consumer information without authorization.

Hines' Experience

30. In late 2018, Hines learned that Equifax was reporting a hard inquiry by Capital One Bank USA NA (“Capital One”) dated November 17, 2018 (the “Capital One inquiry”).

31. Hines had neither initiated nor authorized the Capital One inquiry.

32. Concerned about the harm the Capital One inquiry would do to his creditworthiness and credit score, Hines disputed it to Equifax, to Capital One, and to the Consumer Financial Protection Bureau numerous times.

33. After each dispute, Equifax refused to remove the Capital One inquiry.

34. In correspondence dated August 26, 2019, Capital One told Hines that on August 5, 2019, it had sent a request to Equifax asking it to remove the November 17, 2018 hard inquiry.

35. Nevertheless, Equifax did not remove the Capital One inquiry.

36. On or about October 9, 2019, Hines wrote to Equifax to dispute the Capital One inquiry and included a copy of the August 26, 2019 letter from Capital One.

37. Hines sent his dispute by certified mail and Equifax received it on or about October 15, 2019.

38. In its response to Hines dated October 28, 2019, Equifax stated, in relevant part:

If we were able to make changes to your credit report based on the information you provided, we have done so.

Otherwise, we contacted the company reporting the information to Equifax for them to investigate your dispute.

In this situation:

- We request that the reporting company verify the accuracy of the information you disputed;
- We provide them with any relevant information and supporting documentation you provided us with the dispute to consider as part of the investigation; and
- We request that they send Equifax a response to your dispute and update their records and systems, as necessary.

If your dispute involves a public record item, Equifax contacts a third party vendor to obtain the most recent status of the public record.

39. Equifax did not remove the Capital One inquiry from Hines' Equifax file in response to his October 9, 2019 dispute.

40. Neither did Equifax "[contact] the company reporting the information to Equifax for them to investigate your dispute."

41. Upon information and belief, Equifax never contacts the company that it lists as having made the hard inquiry that is the subject of a consumer's dispute.

42. Instead, under a heading labeled "The Results Of Our Reinvestigation," Equifax provided the following formulaic response to Hines' dispute:

>>> The information you disputed has been received. The results are: Inquiries are a factual record of file access. If you believe this was unauthorized, please contact the creditor. If you have additional questions about this item please contact: **Capital One Bank USA Na, PO Box 30281, Salt Lake City UT 84130-0281 Phone: (800) 695-6950**

43. Upon information and belief, Equifax responds to every consumer who disputes a hard inquiry with a form response that "Inquiries are a factual record of file access."

44. Notwithstanding ample notice that Hines had not initiated nor authorized Capital One inquiry, Equifax reported it to Hines' potential and existing creditors on numerous occasions,

including to Digital Federal Credit Union on December 10, 2018 and March 30, 2019, to Factual Data on December 31, 2018.

45. As a direct and proximate result of Equifax's above-alleged actions and omissions, Hines suffered, without limitation, the following injuries:

A. The continued presence of the Capital One inquiry on his credit report and reduction of his credit score, harm this is ongoing as of the date of this Complaint;

B. Deprivation of the information that Equifax had not reinvestigated his dispute or contacted Capital One which, at a minimum, would have armed him with additional information concerning his creditworthiness;

C. The invasion of his privacy when Equifax provided a consumer report about him to Capital One without a permissible purpose;

D. Distress from getting the run around from Equifax concerning his disputes and what Equifax would actually do to investigate them; and

E. Lost time and resources expended in association with making multiple ignored disputes of the Capital One inquiry to Equifax and directly contacting Capital One itself only to learn that Equifax would not honor its request to remove the inquiry.

Equifax's Conduct is Deliberate and Calculated

46. Equifax recognizes its obligation to reinvestigate disputed information and to contact the source as part of that reinvestigation. This is evident in the letter it sent to Hines in which Equifax stated that it had "contacted the company reporting the information to Equifax for them to investigate your dispute." Nevertheless, Equifax deliberately fails to comply with these legal requirements that it acknowledges it has. In its form response, Equifax tells the consumer to

contact the source of the inquiry if the consumer believes it is unauthorized. The FCRA requires that Equifax, not the consumer, contact the source.

47. Equifax's failure to reinvestigate disputed inquiry information is a result of its standard policies and practices adopted in reckless disregard of consumers' rights under the FCRA and NYFCRA.

48. Equifax willfully violated and continues to violate the requirements of the FCRA and NYFCRA by failing to reinvestigate disputed inquiries, failing to notify the source of the inquiry about the consumer's dispute, and failing to notify disputing consumers that it did not, in fact, conduct any reinvestigation of the disputed inquiry information.

49. Equifax willfully violated and continues to violate the requirements of the FCRA and NYFCRA by failing to maintain reasonable procedures designed to avoid the unauthorized dissemination of consumer reports, despite being put on notice of the problems with its procedures evident from the millions of consumer disputes of inquiry information that it has received in recent years.

V. CLASS ACTION ALLEGATIONS

50. Hines brings this class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of six classes of consumers.

51. Based on Equifax's failure to comply with 15 U.S.C. § 1681i(a)(1) and (2) and N.Y. GEN. BUS LAW § 380-f(a), Hines seeks to represent the following classes:

National Failure to Reinvestigate Class

All persons residing in the United States and its Territories who notified Equifax of a dispute of an inquiry and to whom Equifax sent a communication similar in form and content to the "Inquiries are a factual record of file access" message it sent to Hines, during the period beginning two years prior to the filing of this Complaint and continuing through the date of judgment.

New York Failure to Reinvestigate Class

All persons residing in the State of New York who notified Equifax of a dispute of an inquiry and to whom Equifax sent a communication similar in form and content to the “Inquiries are a factual record of file access” message it sent to Hines, during the period beginning two years prior to the filing of this Complaint and continuing through the date of judgment.

52. Based on Equifax’s failure to comply with 15 U.S.C. § 1681e(a) and N.Y. GEN. BUS. LAW § 380-k, Hines seeks to represent the following classes:

National Unreasonable Procedures Class

All persons residing in the United States and its Territories for whom Equifax’s records reflect the receipt of a dispute of an inquiry in which the disputing consumer stated that Equifax had provided a consumer report without a permissible purpose, during the period beginning two years prior to the filing of this Complaint and continuing through the date of judgment.

New York Unreasonable Procedures Class

All persons residing in the State of New York for whom Equifax’s records reflect the receipt of a dispute of an inquiry in which the disputing consumer stated that Equifax had provided a consumer report without a permissible purpose, during the period beginning two years prior to the filing of this Complaint and continuing through the date of judgment.

53. Hines seeks to represent the following classes based on Equifax’s failure to comply with 15 U.S.C. § 1681b(c)(3):

Improper Furnishing Class

All persons residing in the United States and its Territories for whom Equifax’s records reflect the receipt of a dispute of an inquiry and about whom Equifax published a record of inquiries to the third party that was the subject of the consumer’s dispute, during the period beginning two years prior to the filing of this Complaint and continuing through the date of judgment.

54. Each of the classes is so numerous that joinder of all members is impracticable. Although the precise number of class members is known only to Equifax, Equifax has represented that in recent years, it has received millions of consumer disputes of hard inquiries in which

consumers variously state that the inquiries were not initiated by them or were the result of fraud or identity theft. Accordingly, Plaintiff believes that the classes have hundreds of thousands of members.

55. There are questions of law and fact common to the classes that predominate over any questions affecting only individual class members. The principal questions are whether Equifax violated the FCRA by failing to reinvestigate and contact the source of the disputed inquiry, or delete it; and whether the violations were willful.

56. Hines' claims are typical of the claims of the classes, which all arise from the same operative facts and are based on the same legal theories: a dispute to Equifax regarding an inquiry, Equifax's refusal to reinvestigate or delete the inquiry, Hines' receipt of dispute results from Equifax with standard form language, and Equifax's subsequent furnishing of the disputed inquiry to a third party. Hines' claim is typical of the two-year class because he made his dispute within two years of the filing of this Complaint.

57. Hines will fairly and adequately protect the interests of the classes. Hines is committed to vigorously litigating this matter and has retained counsel experienced in handling class actions and claims under the FCRA and NYFCRA. Neither Hines nor his counsel have any interests that might cause them not to vigorously pursue these claims.

58. This action should be maintained as a class action because questions of law and fact common to class members predominate over any questions affecting only individual class members, and because a class action is a superior method for the fair and efficient adjudication of this controversy. Equifax's conduct described in this Complaint stems from standard policies and practices, resulting in common violations of the FCRA and NYFCRA. Class members do not have an interest in pursuing separate actions against Equifax, as the amount of each class member's

individual claim is small compared to the expense and burden of individual prosecution. Class certification also will obviate the need for unduly duplicative litigation that might result in inconsistent judgments concerning Equifax's practices. Moreover, management of this action as a class action will not present any likely difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all class members' claims in a single forum.

59. This action should be maintained as a class action because the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members which would establish incompatible standards of conduct for the party opposing the class, as well as a risk of adjudications with respect to individual members which would as a practical matter be dispositive of the interests of class members not parties to the adjudications or substantially impair or impede their ability to protect their rights.

VI. CLAIMS for RELIEF

FIRST CLAIM *for* RELIEF

*On Behalf of Plaintiff and the Nationwide Failure to Reinvestigate Class
for Defendant's Violations of FCRA §§ 1681i(a)(1) and (2)*

60. Hines realleges and incorporates paragraphs 1 through 59 as though set forth at length herein.

61. Equifax willfully and negligently failed to comply with the requirements of FCRA sections 1681i(a)(1) and (2) by failing to (a) reinvestigate the disputed inquiry, notify the source of the inquiry about the dispute, and provide the source with all relevant information Hines provided to Equifax; or (b) delete the inquiries disputed by Plaintiff and class members.

62. Pursuant to FCRA sections 1681n and 1618o, Equifax is liable to Hines and all class members for the relief sought herein.

SECOND CLAIM *for* RELIEF

*On Behalf of Plaintiff and the New York Failure to Reinvestigate Class
for Defendant's Violations of N.Y. Gen. Bus Law § 380-f(a)*

63. Hines realleges and incorporates paragraphs 1 through 59 as though set forth at length herein.

64. Equifax willfully and negligently failed to comply with the requirements of N.Y. GEN. BUS LAW § 380-f(a) by failing to promptly reinvestigate the inquiries disputed by Plaintiff and class members.

65. Pursuant to N.Y. GEN. BUS. LAW §§ 380-l and 380-m, Equifax is liable to Hines and all class members for the relief sought herein.

THIRD CLAIM *for* RELIEF

*On Behalf of Plaintiff and the Nationwide Unreasonable Procedures Class
for Defendant's Violations of 15 U.S.C. § 1681e(a)*

66. Hines realleges and incorporates paragraphs 1 through 59 as though set forth at length herein.

67. Equifax willfully and negligently failed to comply with the requirements of FCRA section 1681e(a) by failing to maintain reasonable procedures to limit the furnishing of consumer reports to a permissible purpose and by furnishing consumer reports when it had a reasonable belief that the report would not be used for a permissible purpose.

68. Pursuant to FCRA sections 1681n and 1618o, Equifax is liable to Hines and all class members for the relief sought herein.

FOURTH CLAIM *for* RELIEF

*On Behalf of Plaintiff and the New York Unreasonable Procedures Class
for Defendant's Violations of N.Y. GEN. BUS. LAW § 380-k*

69. Hines realleges and incorporates paragraphs 1 through 59 as though set forth at length herein.

70. Equifax willfully and negligently failed to comply with the requirements of N.Y. GEN. BUS. LAW § 380-k by failing to maintain reasonable procedures to limit the furnishing of consumer reports to a permissible purpose and by furnishing consumer reports when it had a reasonable belief that the report would not be used for a permissible purpose.

71. Pursuant to N.Y. GEN. BUS. LAW §§ 380-l and 380-m, Equifax is liable to Hines and all class members for the relief sought herein.

FIFTH CLAIM *for* RELIEF

*On Behalf of Plaintiff and the Invasion of Privacy Class
for Defendant's Violations of 15 U.S.C. § 1681b(c)(3)*

72. Hines realleges and incorporates paragraphs 1 through 59 as though set forth at length herein.

73. Equifax willfully and negligently failed to comply with the requirements of FCRA section 1681b(c)(3) when it furnished records of inquiries to third parties in cases where it had a record of a consumer dispute in which the consumer stated that he or she had not initiated the credit or insurance transaction indicated by the disputed inquiry.

74. Pursuant to FCRA sections 1681n and 1618o, Equifax is liable to Hines and all class members for the relief sought herein.

VII. JURY TRIAL DEMAND

75. Plaintiff demands a jury trial on all claims.

VIII. PRAYER for RELIEF

WHEREFORE, with respect to his First, Third, and Fifth Claims for Relief, Plaintiff prays for judgment against Defendant as follows:

- a. An order certifying the proposed class under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiff and his counsel to represent the class;
- b. An order declaring that Defendant's actions are in violation of the FCRA;
- c. Statutory damages in the amount of not less than \$100 and not more than \$1,000 per violation per class member, pursuant to 15 U.S.C. § 1681n(a)(1)(A);
- d. Actual damages in an amount to be determined by the jury, pursuant to 15 U.S.C. §§ 1681n(a)(1)(A) and 1681o(a)(1);
- e. Punitive damages to be determined by the jury, pursuant to 15 U.S.C. § 1681n(a)(2);
- f. Attorneys' fees and costs, pursuant to 15 U.S.C. §§ 1681n(a)(3) and 1681o(b); and
- g. Such other relief as may be just and proper.

WHEREFORE, with respect to his Second and Fourth Claims for Relief, Plaintiff prays for judgment against Defendant as follows:

- a. An order certifying the proposed class under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiff and his counsel to represent the class;
- b. An order declaring that Defendant's actions are in violation of the NYFCRA;
- c. An order enjoining Equifax to comply with the provisions of N.Y. GEN. BUS. LAW § 380-f(a);

- d. An order enjoining Equifax to comply with the provisions of N.Y. GEN. BUS. LAW § 380-k;
- e. Actual damages, pursuant to N.Y. GEN. BUS. LAW §§ 380-m(a) and 380-l(a);
- f. Punitive, pursuant to N.Y. GEN. BUS. LAW § 380-l(b);
- g. Attorney's fees and costs, pursuant to N.Y. GEN. BUS. LAW §§ 380-m(b) and 380-l(c); and
- h. Such other relief as may be just and proper.

DATED: November 27, 2019

Respectfully submitted,

DUANE A. HINES, by his attorneys,



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*Petition to appear *pro hac vice* forthcoming