

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

JURY TRIAL DEMANDED

**DEFENDANT EQUIFAX INFORMATION SERVICES LLC'S
ANSWER AND DEFENSES TO PLAINTIFF'S COMPLAINT**

Defendant Equifax Information Services LLC ("Equifax"), through its undersigned counsel, responds to Plaintiff's Class Action Complaint as follows:

I. PRELIMINARY STATEMENT

1. Equifax denies the allegations in Paragraph 1.

II. JURISDICTION AND VENUE

2. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2.

3. Equifax admits that it transacts business in the Eastern District of New York. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 3.

III. PARTIES

4. Equifax admits that Plaintiff is a consumer as defined by the FCRA and NYFCRA. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 4.

5. Equifax admits that it is a limited liability company that regularly conducts business in the State of New York. Because the term "substantially" is vague, ambiguous, and has no legal meaning of which Equifax is aware, Equifax is without knowledge or information sufficient to form a belief to whether it conducts "substantial" business in New York.

6. Equifax admits the allegations in Paragraph 6.

IV. FACTUAL ALLEGATIONS

7. Equifax states that the term “consumer report” is a legal term that is subject to varying interpretations. As a result, Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7.

8. Equifax states that the term “consumer report” is a legal term that is subject to varying interpretations. As a result, Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8.

9. Equifax denies the allegations in Paragraph 9.

10. Equifax denies the allegations in Paragraph 10.

11. Equifax denies the allegations in Paragraph 11.

12. Equifax states that the provisions of the FCRA speak for themselves, and to the extent Plaintiff misquotes, misstates, mischaracterizes, or takes out of context the provisions of the FCRA, the allegations in Paragraph 12 are denied.

13. Equifax states that the provisions of the FCRA speak for themselves, and to the extent Plaintiff misquotes, misstates, mischaracterizes, or takes out of context the provisions of the FCRA, the allegations in Paragraph 13 are denied.

14. Equifax states that the provisions of the FCRA speak for themselves, and to the extent Plaintiff misquotes, misstates, mischaracterizes, or takes out of context the provisions of the FCRA, the allegations in Paragraph 14 are denied.

15. Equifax denies the allegations contained in the first sentence of Paragraph 15. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 15. Equifax denies the allegations in the last sentence of Paragraph 15.

16. Equifax states that the provisions of the NYFCRA speak for themselves, and to the extent Plaintiff misquotes, misstates, mischaracterizes, or takes out of context the provisions of the NYFCRA, the allegations in Paragraph 16 are denied.

17. Equifax denies the allegations in Paragraph 17.

18. Equifax admits that it is aware of its obligations under the FCRA. Equifax denies the remaining allegations in Paragraph 18.

19. Equifax responds that the language from the Federal Trade Commission's report speaks for itself, and to the extent Plaintiff misquotes, misstates, mischaracterizes, or takes out of context that language, the allegations in Paragraph 19 are denied.

20. Equifax responds that the holdings in the cases cited in Paragraph 20 speak for themselves, and to the extent Plaintiff misquotes, misstates, mischaracterizes, or takes out of context those holdings, the allegations in Paragraph 20 are denied.

21. Equifax responds that the holding in *Steed v. Equifax Info. Serv.'s LLC*, speaks for itself, and to the extent Plaintiff misquotes, misstates, mischaracterizes, or takes out of context the holding in *Steed*, the allegations in Paragraph 21 are denied.

22. Equifax states that Paragraph 22 is merely a narrative by Plaintiff and no response is required from Equifax. To the extent a response is required, Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22.

23. Equifax states that the provisions of the FCRA and NYFCRA speak for themselves, and to the extent Plaintiff misquotes, misstates, mischaracterizes, or takes these provisions out of context, the allegations in Paragraph 23 are denied.

24. Equifax states that the provisions of the FCRA and NYFCRA speak for themselves, and to the extent Plaintiff misquotes, misstates, mischaracterizes, or takes these provisions out of context, the allegations in Paragraph 24 are denied.

25. Equifax states that the provisions of the FCRA and NYFCRA speak for themselves, and to the extent Plaintiff misquotes, misstates, mischaracterizes, or takes these provisions out of context, the allegations in Paragraph 25 are denied.

26. Equifax admits that it receives disputes of inquiry information each year. Equifax denies the remaining allegations in Paragraph 26.

27. Equifax denies the allegations in Paragraph 27.

28. Equifax denies the allegations in Paragraph 28.

29. Equifax denies the allegations in Paragraph 29.

30. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30.

31. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31.

32. Equifax admits it received several disputes from Plaintiff. Equifax states that the disputes speak for themselves, and to the extent Plaintiff misquotes, misstates, mischaracterizes, or takes out of context the disputes with Equifax, the allegations are denied. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 32.

33. Equifax denies the allegation that it “refused to remove the Capital One inquiry.” Equifax conducted reinvestigations for all of Plaintiff’s disputes in accordance with the FCRA.

34. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34.

35. Equifax denies that it was required to remove the Capital One inquiry as a result of Plaintiff’s dispute, but admits that it “did not remove the Capital One inquiry.” Equifax states that it conducted all reinvestigations of Plaintiff’s disputes of the Capital One inquiry in accordance with the FCRA.

36. Equifax admits that it received a dispute on or around October 16, 2019 regarding a dispute of the Capital One inquiry that included a copy of the August 26, 2019 letter from Capital One.

37. Equifax admits that it received a dispute on or around October 16, 2019 regarding a dispute of the Capital One inquiry.

38. Equifax admits that it sent Plaintiff a reinvestigation results letter on or about October 28, 2019. Equifax states that the letter speaks for itself, and to the extent Plaintiff misquotes, misstates, mischaracterizes, or takes out of context the contents of that letter, the allegations in Paragraph 38 are denied.

39. Equifax admits the allegations in Paragraph 39.

40. Equifax denies the allegation that it did not contact the entity that placed the inquiry on Plaintiff’s Equifax credit file. Equifax conducted reinvestigations for all of Plaintiff’s disputes in accordance with the FCRA.

41. Equifax denies the allegations in Paragraph 41.

42. Equifax states that the communication referenced in Paragraph 42 speaks for itself, and to the extent Plaintiff misquotes, misstates, mischaracterizes, or takes out of context the contents of that communication, the allegations in Paragraph 42 are denied.

43. Equifax denies the allegations in Paragraph 43.

44. Equifax denies the allegations in Paragraph 44.

45. Equifax denies the allegations in Paragraph 45.

46. Equifax admits that it is aware of its obligations under the FCRA. Equifax denies the remaining allegations in Paragraph 46.

47. Equifax denies the allegations in Paragraph 47.

48. Equifax denies the allegations in Paragraph 48.

49. Equifax denies the allegations in Paragraph 49.

V. CLASS ACTION ALLEGATIONS

50. Equifax admits that Plaintiff purports to bring claims on behalf of six putative classes, but denies that it has violated the FCRA and NYFCRA or that this case is suitable for class adjudication.

51. Equifax admits that Plaintiff seeks to represent the purported classes, but denies that the purported classes are properly alleged and denies that this case is suitable for class adjudication. Equifax also denies that it “fail[ed] to comply with 15 U.S.C. § 1681i(a)(1) and (2) and N.Y. GEN. BUS. LAW § 380-f(a).” Equifax denies any remaining allegations in this paragraph.

52. Equifax admits that Plaintiff seeks to represent the purported classes, but denies that the purported classes are properly alleged and denies that this case is suitable for class adjudication. Equifax also denies that it “fail[ed] to comply with 15 U.S.C. § 1681e(a) and N.Y. GEN. BUS. LAW § 380-k.” Equifax denies any remaining allegations in this paragraph.

53. Equifax admits that Plaintiff seeks to represent the purported class, but denies that the purported class is properly alleged and denies that this case is suitable for class adjudication. Equifax also denies that it “fail[ed] to comply with 15 U.S.C. § 1681 b(c)(3).” Equifax denies any remaining allegations in this paragraph.

54. Equifax admits that the exact number and identities of the putative Class members are unknown at this time. Equifax denies the remaining allegations in Paragraph 54.

55. Equifax denies the allegations in Paragraph 55.

56. Equifax denies the allegations in Paragraph 56.

57. Equifax denies the allegations in Paragraph 57.

58. Equifax denies the allegations in Paragraph 58.

59. Equifax denies the allegations in Paragraph 59.

VI. CLAIMS for RELIEF

60. Equifax re-alleges and incorporates its responses to the foregoing allegations as if fully set forth herein.

61. Equifax denies the allegations in Paragraph 61.

62. Equifax denies the allegations in Paragraph 62.

63. Equifax re-alleges and incorporates its responses to the foregoing allegations as if fully set forth herein.

64. Equifax denies the allegations in Paragraph 64.

65. Equifax denies the allegations in Paragraph 65.

66. Equifax re-alleges and incorporates its responses to the foregoing allegations as if fully set forth herein.

67. Equifax denies the allegations in Paragraph 67.

68. Equifax denies the allegations in Paragraph 68.

69. Equifax re-alleges and incorporates its responses to the foregoing allegations as if fully set forth herein.

70. Equifax denies the allegations in Paragraph 70.

71. Equifax denies the allegations in Paragraph 71.

72. Equifax re-alleges and incorporates its responses to the foregoing allegations as if fully set forth herein.

73. Equifax denies the allegations in Paragraph 73.

74. Equifax denies the allegations in Paragraph 74.

VII. JURY TRIAL DEMAND

75. Equifax likewise demands a trial by jury.

VIII. PRAYER for RELIEF

Equifax denies that class treatment is appropriate, that it violated the FCRA, or that Plaintiff is entitled to any relief. Any allegation in Plaintiff's Complaint not specifically responded to by Equifax is hereby denied.

Equifax denies that class treatment is appropriate, that it violated the NYFCRA, or that Plaintiff is entitled to any relief. Any allegation in Plaintiff's Complaint not specifically responded to by Equifax is hereby denied.

DEFENSES

Without assuming the burden of proof where it otherwise rests with Plaintiff, Equifax pleads the following defenses to the Complaint:

FIRST DEFENSE

The Complaint fails, in whole or in part, to state a claim against Equifax upon which relief can be granted.

SECOND DEFENSE

At all times relevant herein, Equifax maintained reasonable procedures to comply with the FCRA, including (but not limited to) 15 U.S.C. §§ 1681b and 1681i.

THIRD DEFENSE

Equifax has complied with the FCRA, including (but not limited to) 15 U.S.C. §§ 1681b and 1681i, and is entitled to each and every defense stated in the FCRA and any and all limitations of liability.

FOURTH DEFENSE

Plaintiff has not sustained damages attributable to the conduct of Equifax.

FIFTH DEFENSE

Plaintiff has failed to mitigate his damages, if any.

SIXTH DEFENSE

Plaintiff's claims do not meet the requirements, in whole or in part, of Fed. R. Civ. P. 23 and thus cannot be maintained on a class basis.

SEVENTH DEFENSE

This Court does not possess jurisdiction to adjudicate claims asserted by or on behalf of consumers outside the state of New York.

EIGHTH DEFENSE

Plaintiff's claim for punitive damages is barred or limited by the provisions of 15 U.S.C. § 1681n.

NINTH DEFENSE

The Complaint seeks the imposition of punitive damages. Equifax adopts by reference the defenses, criteria, limitations, standards, and constitutional protections mandated or provided by the United States Supreme Court in the following cases: *BMW v. Gore*, 517 U.S. 559 (1996); *Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 923 (2001); *State Farm v. Campbell*,

538 U.S. 408 (2003); *Philip Morris USA v. Williams*, 549 U.S. 346 (2007); *Exxon Shipping Co. v. Baker*, 554 U.S. 471 (2008).

TENTH DEFENSE

Plaintiff's claims for willful violations of the FCRA are barred by the principles articulated in *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47 (2007).

ELEVENTH DEFENSE

Plaintiff's damages, if any, were not caused by Equifax, but by another person or entity for whom or for which Equifax is not responsible.

Equifax reserves the right to assert additional defenses that it learns of through the course of discovery.

THEREFORE, having fully answered or otherwise responded to the allegations contained in Plaintiff's Complaint, Equifax prays that:

(1) The claims set forth in Plaintiff's Complaint be dismissed in their entirety and with prejudice, with all costs taxed against Plaintiff;

(2) Equifax be dismissed as a party to this action;

(3) This lawsuit be deemed frivolous and Equifax recover from Plaintiffs its expenses of litigation, including but not limited to attorneys' fees pursuant to 15 U.S.C. § 1681n(c) and 15 U.S.C. § 1681o(b); and

(4) Equifax recover such other and additional relief as the Court deems just and appropriate.

DATED: February 3, 2020

Respectfully submitted.

KING & SPALDING LLP

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CERTIFICATE OF SERVICE

I certify that on February 3, 2020, a copy of the foregoing was electronically filed in the ECF system. Notice of this filing will be sent to the parties of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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