

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ZORANA ALEKSIC, and)	
STEVEN SCHALLER,)	
on behalf of themselves and the class)	
members described herein,)	
)	
Plaintiffs,)	
)	
vs.)	13-cv-7802
)	Judge Guzman
EXPERIAN INFORMATION)	
SOLUTIONS, INC., and CLARITY)	
SERVICES, INC.,)	
)	
)	
Defendants.)	

PLAINTIFFS' AMENDED MOTION FOR CLASS CERTIFICATION¹

Plaintiffs respectfully request that this Court enter an order determining that this action alleging violation of the Fair Credit Reporting Act ("FCRA") be certified as a class action.

Plaintiffs seek to certify the class defined as follows:

The class consists of (a) all individuals (b) with Illinois addresses (c) whose Experian credit reports Clarity Services, Inc., pulled (d) on behalf of a lender who did not have a depository institution charter or a license from the Illinois Department of Financial and Professional Regulation, or a lead generator or broker for such lenders (including but not limited to the entities described in paragraphs 16-26 of the complaint), (e) on or after a date two years prior to the filing of this action.

Plaintiffs further request that Edelman, Combs, Lattuner & Goodwin, LLC be appointed

¹ Plaintiffs' initial filing of this motion was denied without prejudice, and plaintiffs were directed to refile this motion, based Experian's attorney's claim that the motion contained errors as to the names of the parties and the legal claims. A review of the motion indicated it contained no such errors, and plaintiffs are therefore refiling the same motion.

counsel for the class.

In support of this motion, plaintiffs state as follows:

I. NATURE OF THE CASE.

1. At all times relevant hereto, Clarity Services Inc. (“Clarity”) and Experian Information Solutions, Inc. (“Experian”), were “consumer reporting agencies” governed by the FCRA, and were regularly engaged in the business of assembling information concerning consumers for the purpose of furnishing consumer reports, as defined in 15 U.S.C. §1681(d) to third parties. In fact, Experian and Clarity provide consumer reports to third parties under contract for monetary compensation.

2. Plaintiffs complain that Experian and Clarity furnished plaintiffs’ credit reports and the credit reports of other Illinois residents to unlicensed high-interest payday/internet lenders without any lawful purpose, and without properly screening and monitoring those entities prior to allowing them access to plaintiffs’ personal information.

3. Plaintiff Aleksic received harassing phone calls after her credit report was provided to the illegal lenders, and plaintiff Schaller received debt collection letters for a payday loan he did not obtain, along with harassing phone calls.

4. In the case of plaintiff Aleksic, Clarity pulled her credit report with Experian and furnished it to (a) Mambo Cash, (b) Great Plains Lending, (c) Red Rock Tribal Lending, LLC, (d) CIAW T3 Leads Night, (e) CashwebUSA, (f) Lead Express, and (g) Payday Max Ltd.

5. In the case of plaintiff Schaller, Clarity pulled his credit report with Experian and furnished it to (a) Red Rock Tribal Lending, LLC, (b) Vivus Servicing, Ltd., (c) Mambo Cash, (d) Green Trust Cash, (e) Star Group, LLC, (f) RP Capital, LLC, and (g) Blue Novis Inc.

6. Red Rock Tribal Lending is a high-interest Internet lender. It does not have a license to make high-interest loans to Illinois residents.

7. Mambo Cash is a high-interest Internet lender. On information and belief, it uses as an address Edificio Conhotel, Oficina #1, Sabana Norte, San Jose, Costa Rica. It does not have a license to make high-interest loans to Illinois residents.

8. Great Plains Lending, LLC, is a high-interest Internet lender. It makes loans at rates varying between 199% and 450%. It does not have a license to make high-interest loans to Illinois residents.

9. On information and belief, CashwebUSA is a high-interest lender of unknown address. It does not have a license to make high-interest loans to Illinois residents.

10. PaydayMax Ltd. is a high-interest Internet lender. It makes loans at in excess of 600% interest. It does not have a license to make high-interest loans to Illinois residents.

11. On information and belief, CIAW T3 Leads Night and Lead Express are lead generators or brokers for high-interest Internet lenders. They do not have a license to make or arrange high-interest loans to Illinois residents.

12. On information and belief, Vivus Servicing, Ltd., is a high-interest Internet lender. It does not have a license to make high-interest loans to Illinois residents.

13. Defendant Green Trust Cash, LLC, is a high-interest Internet lender organized as a limited liability company with an address of PO Box 340, Hays, MT 59527. It makes loans at rates exceeding 360%. It does not have a license to make high-interest loans to Illinois residents.

14. On information and belief, Star Group LLC is a high-interest Internet lender. It does not have a license to make high-interest loans to Illinois residents.

15. On information and belief, RP Capital LLC is a high-interest Internet lender. It does not have a license to make high-interest loans to Illinois residents.

16. On information and belief, Blue Novis Inc. is a high-interest Internet lender. It does not have a license to make high-interest loans to Illinois residents.

17. The type of loans the entities listed above make require either a depository institution charter (bank, S&L, or credit union) or a license from the Illinois Department of Financial and Professional Regulation.

18. The making of loans by the entities listed above at the usual rates charged by those entities, is (a) civilly usurious, 815 ILCS 205/4, and (b) a felony under Illinois law, 720 ILCS 5/17-59. In addition, such loans are void and unenforceable. 205 ILCS 670/20(d).

19. Consequently, Clarity Services, Inc. did not and could not have any permissible purpose for pulling the Experian credit of plaintiffs or any other Illinois resident.

20. For the same reason, Experian could not have any permissible purpose for furnishing credit reports on Illinois residents to Clarity Services, Inc., acting on behalf of such entities.

21. The inquiries made by Clarity Services, Inc., always listed the name of its principal, so that Experian was well aware of the entities to which its credit reports were being furnished.

22. Information about Clarity Services on the Better Business Bureau's website and other consumer complaint websites indicate that what happened to plaintiffs was not an isolated incident, and that there is a pattern of consumers complaining about getting threatening calls relating to alleged payday loans after Clarity provides their credit reports to various payday

lenders they had no connection with.

23. On information and belief, many of the entities Clarity Services is providing Illinois consumers' credit information to, are actually scam artists and/or identity thieves. Numerous consumers have complained to the Better Business Bureau about payday loan related identity theft which follows multiple credit pulls by Clarity Services on behalf of various alleged payday lenders. The Better Business Bureau issued an "alert" regarding Clarity Services in response to these complaints.

24. Press releases by both Experian and Clarity Services indicate that Clarity Services is obtaining "fraud prevention" information from Experian, which it is selling to third parties, such as, on information and belief, some of the entities listed on plaintiff's reports. One of the services provided is "identification and return of the social security number for a consumer." In the wrong hands, such a "service," will allow scam artists and identity thieves to obtain sensitive information about consumers to be used to perpetrate more scams, which appears to be what happened in plaintiffs' cases. Selling such a "service" to long lists of companies who are not licensed to do business in Illinois, and who are in fact engaged in felonious illegal conduct with respect to Illinois consumers does not constitute a permissible purpose, and is likely to increase fraud and scams committed against Illinois residents rather than decrease them.

25. Pursuant to 15 U.S.C. §1681e, no consumer reporting agency may release a consumer report to anyone if it has reasonable grounds to believe the report will not be used for a permissible purpose.

26. Pursuant to 15 U.S.C. §1681e, a consumer reporting agency must have adequate procedures in place to ensure that it does not release a consumer report to anyone without

making reasonable efforts to verify the identity of the entity requesting the report and the uses certified by the prospective users.

27. Defendants did not have reasonable procedures in place to verify that the entities to whom they provided plaintiffs' consumer reports actually had a permissible purpose to obtain plaintiff's reports, including requiring such entities to provide supporting documentation of their identities and permissible purposes, and taking steps to verify that information. If they had such procedures in place, they would have easily learned that the illegal lenders did not have a license to do business in Illinois.

28. On information and belief, defendants also failed to monitor the ongoing activities of the entities to whom they provided consumer reports once initially approving them to receive reports, including comparing the application information provided with the requests made later by those entities. If they had, they would have discovered, among other things, the pattern of complaints, including the Better Business Bureau warning, regarding consumers receiving scam payday loan collection calls following the release of their personal information by defendants to various illegal internet payday lenders.

29. Given the fact that the illegal internet payday lenders listed above could not have produced a license to conduct business in Illinois, defendants could not have had a reasonable belief and/or reasonable grounds to believe that any certification they obtained from the lenders and/or from each other regarding those lenders having a permissible purpose to obtain the credit reports of Illinois residents was accurate.

30. On information and belief, based on a pattern of consumer complaints, defendants failed to take reasonable measures to ensure that the illegal payday lenders listed above obtained

proper consent from consumers to pull their credit reports and/or to ensure that the lenders properly ensured that the loan applicants were in fact the consumers they claimed to be, and not imposters and/or an identity thieves. As noted above, neither plaintiff applied for credit from any of the illegal lenders that were provided plaintiffs' credit reports containing highly personal information about plaintiffs.

31. The Federal Trade Commission has filed enforcement actions against credit reporting agencies that failed to have proper procedures in place to screen users, verify their identities and purposes, and monitor their continued conduct.

32. Members of the class defined herein all have the same claim – that defendants failed to comply with 15 U.S.C. §1681b by furnishing consumer reports to unlicensed entities who did not have a permissible purpose to obtain them. Therefore, certification is appropriate.

33. Defendants thereby violated 15 U.S.C. §1681n and/or §1681o.

34. 15 U.S.C. §1681n provides:

§1681n. Civil liability for willful noncompliance

(a) In general. Any person who willfully fails to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of–

(1)

(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than \$ 100 and not more than \$ 1,000; or

(B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or \$1,000, whichever is greater;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court. . . .

35. Section 1681o provides:

§1681o. Civil liability for negligent noncompliance

(a) In general. Any person who is negligent in failing to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure;

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

36. Section 1681p provides:

§ 1681p. Jurisdiction of courts; limitation of actions

An action to enforce any liability created under this title [15 USCS §§ 1681et seq.] may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of—

(1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or

(2) 5 years after the date on which the violation that is the basis for such liability occurs.

II. CLASS CERTIFICATION REQUIREMENTS.

37. All requirements of Fed.R.Civ.P. 23(a) and 23(b)(3) have been met.

38. On information and belief, there are over 100 persons who had their Experian credit reports pulled by Clarity Services and provided to illegal high interest lenders. Given the class period and number of persons in the class, joinder is impracticable.

39. Plaintiffs will obtain the exact number of class members through discovery, and

will file a memorandum in support of his motion for class certification after obtaining such information. Credit bureaus routinely save and report all inquiries of the sort involved here in their records, so identifying the class will be possible using defendants' own records.

40. There are questions of law and fact common to the members of the class, which common questions predominate over any questions that affect only individual class members. The predominant common questions include the following:

- a. Whether defendants had a reasonable belief that there was a permissible purpose for furnishing and providing to unlicensed internet/payday lenders, Experian credit reports of Illinois residents;
- b. Whether defendants had reasonable procedures in place to ensure that they only provided credit reports to entities that had a permissible purpose for obtaining those reports;
- c. Whether defendants properly investigated the entities listed in paragraphs 20-30 above prior to providing them with consumer reports of Illinois residents;
- d. Whether defendants properly monitored those entities after obtaining the required initial certification from those entities;
- e. Whether Experian had a permissible purpose for furnishing the credit reports of Illinois residents to Clarity Services in order to provide those reports to unlicensed payday/internet lenders; and
- f. Whether defendants' practices violated the FCRA.

41. Plaintiffs' claims are typical of those of the class members. All are based on the same factual and legal theories.

42. Plaintiffs will fairly and adequately represent the class members. Plaintiffs

have no interests that conflict with the interests of class members. Plaintiffs have retained experienced counsel. (Appendix A)

43. A class action is superior for the fair and efficient adjudication of the class members' claims, in that individual actions are uneconomical.

44. Courts have recently held that actions alleging FCRA violations are appropriate for class resolution. *Cicilline v. Jewel Food Stores, Inc.*, 542 F. Supp. 2d 831 (N.D.Ill. 2008), *Matthews v. United Retail, Inc.*, 2008 U.S. Dist. LEXIS 17217 (N.D.Ill. Mar. 5, 2008), *Harris v. Circuit City Stores, Inc.*, 2008 U.S. Dist. LEXIS 12596 (N.D.Ill. Feb. 7, 2008), *Halperin v. Interpark, Inc.*, 2007 U.S. Dist. LEXIS 87851 (N.D.Ill. Nov. 29, 2007).

45. Plaintiffs will file a memorandum in support of their motion for class certification after obtaining the exact number of class members through discovery.

46. Plaintiffs are filing a class certification motion at this time because of the decision in *Damasco v. Clearwire Corp.*, 662 F.3d 891 (7th Cir. 2011.)

WHEREFORE, plaintiffs respectfully request that this Court enter an order determining that this action may proceed as a class action.

Respectfully submitted,

s/ Daniel A. Edelman
Daniel A. Edelman

Daniel A. Edelman
Tara L. Goodwin
EDELMAN, COMBS, LATTURNER & GOODWIN, LLC
120 S. LaSalle Street, 18th Floor
Chicago, Illinois 60603
(312) 739-4200
(312) 419-0379 (FAX)
courtecl@edcombs.com

CERTIFICATE OF SERVICE

I, Daniel A. Edelman, hereby certify that on January 16, 2014 I caused to be filed the forgoing documents with the Clerk of the Court using the CM/ECF System, and caused to be served, on this date or as soon thereafter as service may be effectuated, a true and accurate copy of such filing via hand delivery or process server upon the following parties:

Adam W. Wiers
Kathryn L. Dore
JONES DAY
77 W. Wacker Dr.
Chicago, IL 60601
awwiers@jonesday.com
kdore@jonesday.com

Rodney L. Lewis
Jeremy S. Unruh
Polsinelli, P.C.
161 N. Clark St., Suite 4200
Chicago, IL 60601
rodneylewis@polsinelli.com
junruh@polsinelli.com

s/ Daniel A. Edelman
Daniel A. Edelman

Daniel A. Edelman
Tara L. Goodwin
EDELMAN, COMBS, LATTURNER & GOODWIN, LLC
120 S. LaSalle Street, Suite 1800
Chicago, Illinois 60603-3593
(312) 739-4200
(312) 419-0379 (FAX) (may use for service of pleadings)
Email address for service: courtecl@edcombs.com