

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

**DONNA K. SOUTTER and** )  
*on behalf of herself and those similarly* )  
*situated* )  
 )  
**Plaintiff,** )  
 )  
**v.** )  
 )  
**EQUIFAX INFORMATION SERVICES, LLC** )  
 )  
**Defendant.** )

**CIVIL ACTION NO.  
3:10cv-00107-REP**

**SECOND AMENDED CLASS COMPLAINT**

COMES NOW, the Plaintiff, DONNA K. SOUTTER, on behalf of herself and all similarly situated individuals, and alleges the following claim:

**INTRODUCTION**

1. This is a consumer class action brought against Defendant Equifax Information Services LLC ("Equifax") for willful violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681e(b) ("FCRA"). This lawsuit challenges the manner in which Equifax reports Virginia General District Court civil judgments and the procedures it fails to follow to ensure the maximum possible accuracy of those judgments that are satisfied or similarly dismissed.

2. Specifically, Equifax does not follow reasonable procedures to gather information from the courts when the civil judgments are satisfied, vacated, appealed or similarly dismissed, with the same rigor and process that it employs to gather information initially when those judgments are initially entered in favor of various judgment creditors, many of which include its paying subscribers.

3. The Plaintiff and each putative class member were each the subject of a consumer report sold to a third party which inaccurately reflected that the underlying judgment against them was still due and owing at such time when it was not.

4. Further, Plaintiff and each putative class member previously placed Equifax on actual notice that the judgment had been satisfied, vacated, appealed or similarly dismissed before Equifax then, nonetheless, sold a consumer report to a third party when the consumer report still contained the inaccurate notation of an unpaid judgment.

#### **JURISDICTION**

4. The Court has jurisdiction under the FCRA, 15 U.S.C. § 1681p and 28 U.S.C. § 1331.

#### **PARTIES**

5. Plaintiff resides in Virginia and is a “consumer” as protected and governed by the FCRA.

6. Equifax is a Georgia corporation, doing business in Virginia. At all times relevant hereto, it was a “user” of the consumer reports of the Plaintiff, as governed by the FCRA.

7. Equifax is a “consumer reporting agency” as governed by the FCRA.

#### **FACTS**

8. Donna Soutter is currently a self-employed court reporter and previously was a Senior Dispatcher for the Virginia State Police.

9. In June 2007, Ms. Soutter became sick and unable to work and thereafter fell behind on a credit card with her bank.

10. The Bank sued her in Richmond General District Court.

11. Almost immediately, Soutter made direct payment arrangements with the Bank. In fact, she has since paid the debt.

12. However, there was thereafter a miscommunication between the Bank and its attorney. Without Ms. Soutter's knowledge, the Bank's attorney obtained a default civil judgment against her on January 29, 2008 in the amount of \$14,403.79.

13. The Plaintiff then learned about the mistake when she received a mailed copy of the judgment. She immediately contacted the Bank to get the matter corrected. Internally, Bank employees documented this contact.

14. On February 25, 2008, the Bank's attorney caused the vacatur and dismissal of the mistaken judgment. The Bank's motion to vacate and set aside was granted on March 20, 2008.

15. Shortly thereafter, Plaintiff received advice from the Bank or its attorney to check with the credit bureaus and make sure that the credit bureaus understood that the judgment was no longer in effect.

16. On or about April 11, 2008, Plaintiff wrote to Equifax to put it on notice of the judgment dismissal and to ensure that it did not report the judgment in her credit reports.

17. By letter to the Plaintiff dated May 23, 2008, Equifax acknowledged that it had received Plaintiff's notice and informed Ms. Soutter that it was not then reporting the judgment.

18. Equifax has maintained a computer record and archived document of this notice and its response within its files and can retrieve such records if necessary or ordered to do so.

19. Notwithstanding this express notice and Equifax's acknowledgment of same, by July 2008, the Defendant was reporting the judgment, and specifically was reporting it as unpaid, and as not vacated, dismissed or satisfied.

20. The Plaintiff's Equifax file was not corrected until December 30, 2008.

21. Between the date that Equifax added the judgment on or before July 1, 2008 and December 30, 2008 when it later corrected the judgment, Equifax furnished and sold at least three (3) "hard inquiry" credit reports with the inaccurate judgment reporting. It also furnished three "account review" credit reports to Plaintiff's existing creditors.

22. All six of these reports were "consumer reports" as governed by the FCRA, 15 U.S.C. § 1681a and all six were furnished using the Plaintiff's credit file containing the inaccurate judgment.

23. Virginia's court records are maintained in a uniform and centralized manner. As the Fourth Circuit explained in summarizing the record on appeal:

The court records are managed by the Office of Executive Secretary of the Supreme Court of Virginia, which operates a shared case management system for the state's courts. The clerk of each local court uses a uniform system for recording judgments, and the judgment sheet available in the case management system lists only the most recent case disposition. For example, if a case is vacated and then later dismissed, the system would record the case simply as dismissed.

*Soutter*, 11-1564, 2012 WL 5992207.

24. Unlike credit accounts, Equifax affirmatively seeks out and purchases public records data, including Virginia civil judgments, to report to the world about Virginians when it sells their credit files. It proactively gathers and disseminates this derogatory information even though there is nothing in the FCRA that affirmatively requires it to do so. The reporting of

Virginia civil judgments primarily benefits Equifax's customer base who rely on the credit reporting of these judgments as a collection tool.

25. Equifax has used a series of different vendors over the years. Originally, these vendors relied on in-person manual reviews of civil courthouse records. Typically, clerk's offices would make available copies of termination records – satisfactions, dismissals, vacates and appeals. Weekly update reports were made available. Docket books were examined. A careful, in person review was conducted.

26. However, sometime after 2006, Equifax and its vendors stopped this more careful process and began collection of judgment information solely from automated resources.

27. According to Equifax, there was a material distinction in the manner that it and its vendor collected judgment and disposition information prior to May 2009, versus after that time.

On appeal, the Court of Appeals accepted that representation and stated:

LexisNexis used several different collection methods for capturing the court records. It used in-person review for all circuit courts through independent contractors. These in-person reviews have some variety as well-some clerks provide a weekly summary printout to the reviewer, some let the reviewer peruse paper records, and some permit the reviewer use of the computer and case management system. For the general district courts, the Supreme Court provided LexisNexis with bulk data feeds until May 2009.

*Soutter*, 11-1564, 2012 WL 5992207.

28. Still, Equifax's claim is demonstrably and completely false. It never once picked up anything beyond some satisfactions until the filing of this lawsuit. And the only "in person" review to verify the automated data was attempted only after a consumer made a formal dispute, and even then only rarely. In short, Equifax was publishing judgment data that it knew would be inaccurate if a satisfaction, dismissal, vacatur or appeal had occurred – relying on consumers to

clean up their own files via the dispute process after learning of the inaccuracy, rather than paying to have these “dispositions” collected with the same vigor that it collected records of the initial entry of judgment.

29. The methods and processes used by Equifax and its vendor to gather Virginia General District Court satisfactions, vacatur, appeals and other dismissals was materially the same from January 2008 through June 2014.

30. Under the terms of its contract with Equifax, LexisNexis was obligated to collect and provide all affirmative judgments. However, in contrast, Lexis Nexis was only obligated to collect judgment terminations if Lexis Nexis determined it was “commercially reasonable” to do so.

31. Equifax has been fully aware of the procedures used by LexisNexis to gather Virginia judgment records. Its contract with the vendor states:

LexisNexis will provide Equifax with its procedures for collecting dispositions. Changes to these procedures must be provided to Equifax 10 business days prior to implementation by LexisNexis. If the proposed change adversely affects any Equifax businesses, or puts Equifax in a position of non-compliance with any local, state or federal legislation, Equifax reserves the right to reject the procedure change with stated reasons. Equifax will not unreasonably withhold its’ approval from LexisNexis.

*Equifax/LexisNexis Agreement*, Exhibit “A” to Agreement, ¶C.3.d.

32. At all times pertinent hereto, Defendant's conduct was willful and carried out in reckless disregard for a consumer's rights as set forth under the FCRA. By example only and without limitation, the conduct is willful, as it was intentionally accomplished through intended procedures; these procedures have continued despite the fact that Equifax has already been subject to court decisions in other states critical of its similar conduct; and as Equifax’s diligence

in collecting and reporting derogatory information is believed by it to be of greater economic value to its paying customers than “disposition” information that demonstrated that the debt was no longer owed to those customers.

33. At all times pertinent hereto, Defendant was acting by and through its agents, servants, and/or employees who were acting within the course and scope of their agency or employment, and under the direct supervision and control of the Defendant herein.

**COUNT ONE: FAIR CREDIT REPORTING ACT**  
**CLASS ACTION CLAIM**  
**15 U.S.C. § 1681e(b) – DONNA K. SOUTTER**

**(Systemic failure to report satisfactions, dismissals, vacatures and appeals of  
civil judgments in the Virginia General District Courts)**

34. Plaintiff restates each of the allegations in the preceding paragraphs as if set forth at length herein.

35. Plaintiff Soutter brings this action individually and as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of the following Class:

All natural persons who meet every one of the following definitional requirements:

- a. the computer database of the Executive Secretary of the Supreme Court of Virginia shows that the person was the defendant in a Virginia General District Court civil action or judgment;
- b. the computer database of the Executive Secretary of the Supreme Court of Virginia shows that as of the date 20 days after the Court’s certification of this class, the civil action or judgment was dismissed, satisfied, appealed, or vacated on or before April 1, 2009 ("the disposition date");
- c. Equifax's records note receipt of a communication or dispute from that person about the accuracy of Equifax's reporting of that civil action or judgment status; and

d. Equifax's records note that a credit report regarding the person was furnished to a third party who requested the credit report, other than for an employment purpose: (1.) no earlier than February 17, 2008, (2.) no later than February 21, 2013, (3.) after the date that Equifax's records note its receipt of the consumer's dispute regarding the judgment status, and (4.) at least thirty (30) days after the disposition date but before the judgment was corrected by Equifax to report that it has been dismissed, satisfied, appealed, or vacated.

36. Numerosity. Fed. R. Civ. P. 23(a)(1). Defendant has stipulated that the proposed class is numerous and has at least 300 members. Thus, the Class is so numerous that joinder of the claims of all class members is impractical. The names and addresses of the Class members are identifiable through documents maintained by the Defendant and through publically available court records, and the Class members may be notified of the pendency of this action by published and/or mailed notice.

37. Existence and Predominance of Common Questions of Law and Fact. FED. R. CIV. P. 23(a)(2). Common questions of law and fact exist as to all members of the Class. These questions predominate over the questions affecting only individual members. These common legal and factual questions include by example only and without limitation:

- a. Whether Equifax adopted procedures that collected and reported updates to public record civil judgments that were less systematic and effective than those it used to collect and report the underlying judgments;
- b. Whether Equifax's uniform procedure for collecting judgment dispositions (including those of its agent) was a reasonable procedure to ensure maximum possible accuracy in the credit reports it furnished;
- c. Whether Equifax did so recklessly, knowingly, or intentionally in conscious disregard of the rights of the consumer class members; and



d. Whether Equifax's conduct constituted violations of the FCRA.

38. Typicality. Fed. R. Civ. P. 23(a)(3)). Plaintiff's claims are typical of the claims of each Class member. Plaintiff is entitled to relief under the same cause of action as the other members of the class. The procedures for both credit reporting and collecting the judgment dispositions were the same. The willfulness evidence is the same. Each class member provided written notice to Equifax about the status of the judgment. And the time period within which all actions relevant to this class claim took place is the same.

39. Adequacy. Fed. R. Civ. P. 23(a)(4)). Plaintiff Soutter is an adequate representative of the Class, because her interests coincide with and are not antagonistic to the interests of the members of the class she seeks to represent; she has retained counsel competent and experienced in such litigation; and she has prosecuted this action vigorously. Plaintiff and her counsel will fairly and adequately protect the interests of members of the Class.

40. Superiority. Fed. R. Civ. P. 23(b)(3). As alleged above, questions of law and fact common to the Class members predominate over questions affecting only individual members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy. Further, individual prosecution would prove burdensome and expensive given the complex and extensive litigation necessitated by Defendant's conduct and the limited availability of legal representation for such prosecutions. It would be virtually impossible for the members of the Class individually to redress effectively the wrongs done to them. And in fact, not a single putative class member has filed or attempted the class claim. Even if the members of the Class themselves could afford such individual litigation, it would be an unnecessary burden on the Court. In fact, it is also likely that a large number of class members may not even know of the

underlying inaccuracy, not having yet discovered the uncorrected public record or otherwise reviewed their current credit report. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the complex legal and factual issues raised by Defendant's conduct. By contrast, the Class action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in a case.

41. Defendant violated 15 U.S.C. § 1681e(b) as to the Plaintiff and to the Class by failing to establish or to follow reasonable procedures to assure maximum possible accuracy in the preparation of the consumer reports it furnished regarding the Plaintiff and other class members.

42. Defendant's violation of 15 U.S.C. § 1681e(b) was willful, rendering the Defendant liable pursuant to 15 U.S.C. § 1681n.

43. The Plaintiff and each class member suffered an actual injury and loss because of Defendant's violation of 15 U.S.C. § 1681e(b) as alleged herein.

44. The Plaintiff and each Class member is entitled to recover statutory damages up to \$1,000, punitive damages, costs, and attorney's fees from the Defendant in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n.

WHEREFORE, Plaintiff moves for class certification and for judgment against the Defendant, as a class as alleged for statutory damages and punitive damages; and for attorney's fees and costs, and such other specific or general relief the Court does find just and appropriate.

**TRIAL BY JURY IS DEMANDED.**

**DONNA K. SOUTTER,**  
*for herself and on behalf of all*  
*similarly situated individuals.*

By: \_\_\_\_\_/s/\_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of August 2014, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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/s/

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