

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
ROCK HILL DIVISION

|  |   |                       |
|--|---|-----------------------|
| DAVID ROSBOTTOM, on behalf of              | ) |                       |
| himself and all others similarly situated, | ) | 0:16-2832-TLW         |
|  | ) | CLASS COMPLAINT       |
| Plaintiff,                                 | ) |                       |
|  | ) | (JURY TRIAL DEMANDED) |
| v.   | ) |                       |
|  | ) |                       |
| EXPERIAN INFORMATION                       | ) |                       |
| SOLUTIONS, INC.                            | ) |                       |
|  | ) |                       |
| Defendant.                                 | ) |                       |
|  | ) |                       |
|  | ) |                       |

On behalf of himself and all others similarly situated, Plaintiff David Rosbottom (“Plaintiff”), by and through his attorneys respectfully allege as follows:

**NATURE OF THE ACTION**

1. This is a consumer class action brought for violations of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681x (“FCRA”) against Experian Information Solutions, Inc. (“Defendant” or “Experian”), a national consumer reporting agency. In violation of the FCRA, Experian prepares and furnishes consumer reports that include South Carolina state tax liens that have been expunged after being paid, satisfied or released.

**PARTIES**

2. Plaintiff David Rosbottom is an adult individual and former resident of South Carolina, now residing in Venice, Florida and is a “consumer” as that term is defined by 15 U.S.C. § 1681a(c).

3. Defendant Experian is a “person” and “consumer reporting agency” as defined by 15 U.S.C. § 1681a(b). Defendant is authorized to do business in the State of South Carolina, has

substantial contacts in this District, and is headquartered at 475 Anton Boulevard, Costa Mesa, CA 92626.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this matter based upon 28 U.S.C. § 1331 and 15 U.S.C. § 1681p.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

### **STATEMENT OF FACTS**

6. Defendant is one of the “big three” credit reporting agencies (singular “CRA”) in the United States.

7. Defendant sells consumer reports (commonly called “credit reports”) about millions of consumers annually.

8. Defendant is regulated by the FCRA.

9. Defendant routinely reports information about tax liens on consumer reports and continues to report tax liens for a specified number of years after they have been paid, satisfied or released.

10. In an effort to assist consumers, South Carolina Department of Revenue, under S.C. CODE ANN. § 12-58-165, allows for consumers with a South Carolina state tax lien to request that the tax lien be expunged and removed from public record information after it has been fully paid and satisfied.

11. With respect to Mr. Rosbottom, on or about June 3, 2016, he applied to refinance his mortgage with Loan Depot, LLC (“Loan Depot”). Loan Depot obtained credit information from Defendant concerning Mr. Rosbottom, and informed him that Loan Depot was unable to

continue with the refinance process due to in whole or in part based on an unpaid tax lien reported by Defendant.

12. On or about June 6, 2016, Mr. Rosbottom requested and received copies of his “personal credit report” from Experian. The Experian reports contained inaccurate information, including but not limited to, reporting a South Carolina state tax lien in the amount of \$1,346 twice.

13. The tax lien information Experian included on Mr. Rosbottom’s report was woefully deficient. This South Carolina tax lien, which was filed in August of 2012, was paid in June 2013, and expunged by the South Carolina Department of Revenue on or about September 11, 2015.

14. Despite this satisfaction and expungement of the tax lien, as reflected on South Carolina public records, and pursuant to its usual and systemic practice, Defendant did not remove the tax lien public record from Plaintiff’s consumer reports, nor updated it to mark it as satisfied, released or paid. Instead, Defendant reported the same tax lien twice on Mr. Rosbottom’s consumer report. Defendant reported the lien once as paid and released, and reported the same lien a second time, not showing as paid or released. Neither listing should have appeared at all, however, as a result of the September 11, 2015 expungement.

15. Unlike paid tax liens, which can only remain on consumer reports for seven (7) years past the date the tax lien was paid, the FCRA does not impose any reporting requirements on consumer reporting agencies such as Experian for unpaid tax liens.

16. The FCRA provides: “Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.” 15 U.S.C. § 1681e(b).

17. At all times pertinent hereto, Defendant's conduct was a result of its deliberate policies and practices, was willful, intentionally accomplished through intended procedures, and carried out in reckless disregard for a consumer's rights as set forth in section 1681e(b) of the FCRA. Upon information and belief, Experian's collecting and reporting the initial entry of tax liens is believed by it to be of greater economic value than removing tax lien information from consumer reports after that information has been expunged from public record.

18. The failure to update, remove, and instead double reporting Mr. Rosbottom's tax lien by Experian was inaccurate, and occurred because Experian failed to follow reasonable procedures to assure maximum possible accuracy in the preparation of his consumer report. Specifically, Experian does not follow the same automated and systematically rigorous processes to obtain all satisfactions, releases, or other changes to the public record status of tax liens that it follows to obtain the original entry of tax lien information in the public record.

19. Indeed, Experian follows no procedure which assures that, when paid, satisfied or released tax liens are expunged under South Carolina law, the updated status is promptly obtained and reflected upon the consumer's credit report.

20. Instead, Experian continues to report the tax liens. In Plaintiff's case, Experian did not request, receive or report any updated information as to the status of the lien in 2016, despite the fact that the tax lien was paid in June 2013 and expunged in September 2015.

21. 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.

### **CLASS ACTION ALLEGATIONS**

22. Plaintiff incorporates by reference all preceding paragraphs as alleged above.

23. Plaintiff brings this action pursuant to the Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of the following Classes:

- a. Expungement Class: All natural persons with an address in the United States and its Territories who: (i) had a tax lien recorded in the State of South Carolina; (ii) the tax lien appeared on an Experian consumer report dated within two years prior to the filing of this Complaint and continuing through the resolution of this case; and (iii) the State of South Carolina Department of Revenue public record indicated that the tax lien had been expunged after being paid, satisfied, or released on a date prior to the date of the Experian consumer report.
  
- b. Failure to Update Class: All natural persons with an address in the United States and its Territories who: (i) had a tax lien recorded in the State of South Carolina; (ii) the tax lien appeared on an Experian consumer report dated within two years prior to the filing of this Complaint and continuing through the resolution of this case; (iii) the State of South Carolina public record indicated that the tax lien had been paid, satisfied, or released on a date prior to the date of the Experian consumer report, and (iv) the Experian consumer report identified the tax lien as unpaid or with an unpaid balance.
  
- c. Double Reporting Class: All natural persons with an address in the United States and its Territories who: (i) had a tax lien recorded in the State of South Carolina; and (ii) the same tax lien was listed twice on the same Experian consumer report dated within two years prior to the filing of this Complaint and continuing through the resolution of this case.

24. Plaintiff reserves the right to amend the definition of the Classes based on discovery or legal developments.

25. **Numerosity. FED. R. CIV. P. 23(a)(1).** The Class members are so numerous that

joinder of all is impractical. Although the precise number of Class members is known only to Experian, there are tens of thousands of recorded tax liens in South Carolina, and the names and addresses of the Class members are identifiable through documents maintained by Experian and through publicly available records.

26. **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, and predominate over the questions affecting only individual members. The common legal and factual questions include, among others:

a. Whether Defendant willfully violated the FCRA by reporting tax liens which, according to South Carolina public records, were paid and expunged; and

b. Whether Defendant willfully violated the FCRA by failing to follow reasonable procedures to assure the maximum possible accuracy of the South Carolina tax lien information it reported.

27. **Typicality. FED. R. CIV. P. 23(a)(3).** Plaintiff's claims are typical of the claims of each Class member, which all arise from the same operative facts and are based on the same legal theories. Experian reports tax liens that have been expunged by the State of South Carolina on consumer reports. Experian also reports tax liens that have been paid, satisfied or released without reporting their paid, satisfied or released status. Plaintiff has the same claims for statutory, actual and punitive damages that he seeks for absent class members.

28. **Adequacy. FED. R. CIV. P. 23(a)(4).** Plaintiff is an adequate representative of the Class. His interests are aligned with, and are not antagonistic to, the interests of the members of the Class they seek to represent. They have retained counsel competent and experienced in such litigation, and intend to prosecute this action vigorously. Plaintiff and his counsel will fairly and

adequately protect the interests of members of the Class.

29. **Predominance and Superiority. FED. R. CIV. P. 23(b)(3).** Questions of law and fact common to the Class members predominate over questions affecting only individual Class members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Experian's conduct described in this Complaint stems from common and uniform practices, resulting in common violations of the FCRA. Members of the Classes do not have an interest in pursuing separate actions against Experian, 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 Experian's practices. Moreover, management of this action as a class action will not likely present any 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.

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

#### **FOR A FIRST CAUSE OF ACTION**

31. Plaintiff incorporates by reference all preceding paragraphs as alleged above.

32. Experian failed to comply with 15 U.S.C. § 1681e(b) by failing to follow reasonable procedures to assure maximum possible accuracy of the tax lien information in the consumer reports it prepared regarding Plaintiff and the other Class members.

33. Pursuant to 15 U.S.C. §§ 1681n & o, Experian is liable to Plaintiff and all Class members for its failure to comply with FCRA Section 1681e(b), in an amount equal to the sum of: (1) damages of not less than \$100 and not more than \$1,000 per violation; (2) actual damages; (3) punitive damages in an amount to be determined by the jury; (4) attorneys' fees; and (5) litigation costs, as well as such further relief as may be permitted by law.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs and the Classes pray for relief as follows:

A. An order certifying the case as a class action on behalf of the proposed Classes under Federal Rule of Civil Procedure 23 and appointing Plaintiff and the undersigned counsel of record to represent same;

B. A permanent injunction requiring Defendant to: (1) cease reporting public record information about South Carolina consumers; (2) cease reporting public record information about South Carolina state tax liens; (3) regularly update the public record information it obtains and reports about South Carolina consumers on at least a monthly basis;

C. An award of statutory, actual and punitive damages for Plaintiff and the Classes;

D. An award of pre-judgment and post-judgment interest as provided by law;

E. An award of attorneys' fees and costs; and,

F. Such other relief as the Court deems just and proper.



**JURY DEMAND**

Plaintiff hereby requests and demands a trial by jury.

Respectfully submitted,

BY: s/Dave Maxfield

**Dave Maxfield, Attorney, LLC**  
DAVE MAXFIELD, Fed ID 6293  
5217 N. Trenholm Road, Suite B  
Columbia, SC 29206  
T: 803.509.6800  
F: 855.299.1656  
E: [dave@consumerlawsc.com](mailto:dave@consumerlawsc.com)

**FRANCIS & MAILMAN, P.C.**  
JAMES A. FRANCIS\*  
JOHN SOUMILAS\*  
Land Title Building, Suite 1902  
100 South Broad Street  
Philadelphia, PA 19110  
T: 215.735.8600  
F: 215.940.8000  
E: [jfrancis@consumerlawfirm.com](mailto:jfrancis@consumerlawfirm.com)  
E: [jsoumilas@consumerlawfirm.com](mailto:jsoumilas@consumerlawfirm.com)

\*application for admission  
*pro hac vice* forthcoming

Dated: August 12, 2016