

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF TEXAS
3 AUSTIN DIVISION

4 David A. Perrill, Gregory Perrill, *and all*
5 *others similarly situated,*

6 Plaintiffs,

7 v.

8 Equifax Information Services LLC,

9 Defendant.

Case No.: 1:14-cv-00612-SS

**FIRST AMENDED COMPLAINT
AND
JURY DEMAND**

10
11 **PRELIMINARY STATEMENT**

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13 1. This is a consumer class action against Equifax Information Services, LLC
14 (Equifax) for invasion of privacy by willfully violating the Fair Credit Reporting Act
15 (FCRA), 15 U.S.C. §1681 *et seq.* It furnished tens of thousands of consumer reports to the
16 Texas Comptroller of Public Accounts (the Comptroller) when it knew or should have
17 known that the Comptroller lacked a permissible purpose to get those reports. This mass
18 invasion of consumer privacy occurred because Equifax willfully violated numerous
19 provisions of the FCRA.
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21 2. One of the primary protections of the FCRA is the requirement that users
22 have a permissible purpose when they obtain or use a consumer report. §1681b(a) and (f).
23 The furnishing of a consumer report to a user that lacks a permissible purpose is an invasion
24 of the consumer's privacy. Furnishing a consumer report to a user who lacks a permissible
25 purpose violates the confidentiality of the consumer's sensitive personal information. The
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1 harm to the consumer’s privacy is real and concrete and it is particularized because it
2 happened to the plaintiffs and each person in the class. The FCRA’s prohibition on
3 furnishing consumer reports in the absence of a permissible purpose is a substantive
4 provision. Congress included various requirements in the FCRA that were designed to
5 prevent consumer reporting agencies from furnishing consumer reports to users who lack
6 a permissible purpose. Equifax’s willful decision to disregard these FCRA requirements
7 resulted in Equifax furnishing consumer reports to the Comptroller when it lacked a
8 permissible purpose to obtain the reports, thus invading the class members’ privacy.
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11 3. The Comptroller’s purpose in obtaining the consumer reports was to collect
12 taxes. A tax collection agency does not have a general permissible purpose to use consumer
13 reports to collect taxes and thus its use of the reports was a mass invasion of the class
14 members’ privacy. This invasion of privacy was the result of Equifax’s willful violation of
15 the requirements of the FCRA to protect the confidentiality of the information contained
16 in consumer reports.
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18 **PARTIES**

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20 4. Plaintiffs David Perrill and Gregory Perrill are “consumers” as defined by 15
21 U.S.C. § 1681a(c). They reside in Minnesota.

22 5. Equifax is a “consumer reporting agency” as defined in §§1681a(f) & (p).
23

24 **JURISDICTION AND VENUE**

25 6. This court has jurisdiction under 28 U.S.C. § 1331.

26 7. Some of the activities alleged herein occurred in this district.

1 **FACTS**

2 **Facts Relating to the Named Plaintiffs**

3 8. On February 5, 2013, Wand Corporation (Wand) entered into a settlement
4 agreement with the Comptroller to resolve outstanding taxes allegedly owed by Wand to
5 the State of Texas. Wand and the Comptroller settled on the amount that Wand would pay
6 and a schedule for the payments. David Perrill and Gregory Perrill were employees and
7 officers of Wand, but neither plaintiff signed the settlement agreement.
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10 9. Subsequently Wand missed some tax filings in Texas.

11 10. In July 2013, shortly after Wand missed its tax filings, Equifax furnished the
12 plaintiffs' consumer reports to the Comptroller. When the Comptroller obtained Equifax's
13 consumer reports on David Perrill and Gregory Perrill the Comptroller had not filed a lien
14 against either plaintiff, nor had it obtained a judgment against either plaintiff. Neither
15 plaintiff had entered into an agreement with the Comptroller to pay taxes according to a
16 timetable.
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18 11. The Comptroller did not have a permissible purpose to obtain or use David
19 Perrill's consumer report.
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21 12. The Comptroller did not have a permissible purpose to obtain or use Gregory
22 Perrill's consumer report.
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24 **Facts Relating to the Equifax, CSC Credit Services, Inc. and the Comptroller.**

25 13. In 1988 Equifax entered into an agreement with CSC Credit Services (a
26 regional consumer reporting agency) whereby Equifax put CSC's consumer data files into

1 Equifax's computer system. Thereafter Equifax furnished all the consumer reports for both
2 entities from its computer system and shared the revenue with CSC. Equifax and CSC
3 agreed that they were not creating a joint venture, a partnership, or an agency relationship.
4 They also agreed that their arrangement could not be changed except in writing, which has
5 never occurred.
6

7 14. From the enactment of the FCRA until 2011, the Federal Trade Commission
8 (FTC) was empowered to administer and enforce the FCRA. In the early 1990's, the FTC
9 issued its Official Staff Commentary explaining the provisions of the FCRA. *See* 16 C.F.R.
10 § 600 app. (1993). The FTC's interpretation of the Act should be given considerable weight
11 unless it conflicts with the statutory language or Congressional intent. *Estiverne v. Sak's*
12 *Fifth Ave.*, 9 F.3d 1171, 1173 (5th Cir. 1993). The Official Commentary explained that tax
13 collection agencies do not have a generalized permissible purpose to obtain consumer
14 reports.
15

16
17 ***Section 604(3)(A)--***

18 ***

19 **4. Tax Obligations**

20 *A tax collection agency has no general permissible purpose to obtain a*
21 *consumer report to collect delinquent tax accounts, because this subsection*
22 *applies only to collection of "credit" accounts.* However, if a tax collection
23 agency acquired a tax lien having the same effect as a judgment or obtained a
24 judgment, it would be a judgment creditor and would have a permissible purpose
25 for obtaining a consumer report on the consumer who owed the tax. Similarly, if a
26 consumer taxpayer entered an agreement with a tax collection agency to pay taxes
according to some timetable, that agreement would create a debtor-creditor
relationship, thereby giving the agency a permissible purpose to obtain a consumer
report on that consumer.

1 6 C.F.R. § 600 app. (1993), italics added.

2 15. In early 2008, in the wake of several court decisions concerning the use of
3 credit reports to collect debts that were unrelated to credit, Equifax wrote a letter to its
4 collections customers in which Equifax explained the limitations on the use of credit
5 reports for collections. It said “consumer reports should only be used for collection
6 purposes when the collection activity is in connection with a ‘credit transaction’ in which
7 a consumer has participated directly and voluntarily.” Equifax warned that if its customer
8 was collecting a debt that was not “a credit-related account of the consumer, then consumer
9 consent or an appropriate court order is required.”
10

12 16. CSC sent a similar letter to its collection customers in 2008.

13 17. In 2009, the Comptroller solicited bids for a consumer reporting agency to
14 furnish consumer reports to the Comptroller. The Comptroller’s invitation for bids said the
15 Comptroller would use the information to collect taxes. CSC submitted a proposal and then
16 negotiated the terms of the contract with the Comptroller’s lawyer. During the negotiations,
17 the Comptroller reiterated that it would use the consumer reports to collect taxes and said
18 it was a “non-credit granting government agency.”
19

21 18. In 2009, shortly after CSC and the Comptroller finalized their contract,
22 Equifax began furnishing consumer reports to the Comptroller from its computer system.

23 19. When Equifax began furnishing consumer reports to the Comptroller in
24 2009:
25

- 26 a. Equifax had not received any information about the Comptroller’s intended use of consumer reports.

- 1 b. Equifax had not received the contract between CSC and the Comptroller
2 or any of the related documents.
- 3 c. Equifax had not had any communications with the Comptroller.
- 4 d. Equifax had not required the Comptroller to certify the purposes for
5 which the consumer reports were sought.
- 6 e. Equifax had not required the Comptroller to certify that it would not use
7 the reports for any purpose other than permissible purposes it had
8 certified.
- 9 f. Equifax had not made a reasonable effort to verify the Comptroller's
 intended use of consumer reports.

10 20. From 2009 through the end of 2012, Equifax furnished consumer reports to
11 the Comptroller even though it had no information concerning the Comptroller's use of
12 those reports. During that period

- 13 a. Equifax did not have the Comptroller's contract with CSC or any of the
14 related documents;
- 15 b. Equifax did not have any certification of permissible purpose from the
16 Comptroller;
- 17 c. Equifax did not have a certification from the Comptroller that it would
18 use the consumer reports only for the permissible purposes it specified
19 and no others;
- 20 d. Equifax made no effort to learn how the Comptroller was using the
 consumer reports o
- 21 e. Equifax made no effort to learn whether the Comptroller had a
22 permissible purpose to obtain and use consumer reports.

23 21. In late 2012, Equifax acquired the consumer reporting business of CSC. Soon
24 after that, CSC delivered to Equifax the contract with the Comptroller and related
25 documents. Subsequent to that, Equifax sent two "audit requests" to the Comptroller.
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1 22. Equifax’s two audit requests and the Comptroller’s responses thereto are the
2 only communications Equifax has ever had with the Comptroller concerning its use of
3 consumer reports.
4

5 23. In the audit requests Equifax asked the Comptroller to explain its permissible
6 purpose for obtaining reports on certain consumers. Additionally, Equifax asked the
7 Comptroller to provide documents that would support its permissible purpose. In its
8 responses the Comptroller said it was using the reports to collect taxes and it submitted
9 documents that showed it was pulling credit reports on individuals who were employees,
10 officers or directors of businesses that owed taxes. None of its documents suggested that
11 any of the individuals had applied for credit, employment, insurance or any other
12 transaction that would give the Comptroller a permissible purpose to obtain consumer
13 reports. None of the documents indicated that any of the individuals had liens or judgments
14 against them in favor of the Comptroller or that they had entered an agreement with the
15 Comptroller to pay taxes according to some timetable.
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18 24. After receiving the contract documents from CSC and the audit responses
19 from the Comptroller, Equifax continued to furnish consumer reports to the Comptroller.
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21 25. Equifax furnished consumer reports on David Perrill and Greg Perrill to the
22 Comptroller in July 2013. David Perrill and Greg Perrill filed this lawsuit in December
23 2013. After that, Equifax continued to furnish consumer reports to the Comptroller.
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25 26. As of the date of this Amended Complaint, Equifax is furnishing consumer
26 reports to the Comptroller and still has not sought to ensure that the Comptroller obtains

1 reports only on consumers for whom it has a permissible purpose.

2 **CLASS ACTION ALLEGATIONS**

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4 27. Plaintiffs bring this action individually and as a class action pursuant to Rule
5 23(a) and 23(b) of the Federal Rules of Civil Procedure. The Class consists of:

6 All consumers whose consumer reports were furnished by Equifax to the
7 Comptroller from December 4, 2011 to the date of class certification, excluding (i)
8 every consumer against whom the Comptroller had filed a lien or obtained a
9 judgment prior to obtaining that consumer's report and (ii) every consumer who had
entered an agreement with the Comptroller to pay taxes according to some
timetable prior to the date when the Comptroller pulled that consumer's report.

10 28. The Class is so numerous that joinder of all members is impracticable. The
11 Comptroller's records indicate that Equifax furnished it with consumer reports on more
12 than 35,000 consumer reports between December 2011 and February 2014. The vast
13 majority of those consumers did not have liens or judgments entered against them in favor
14 of the Comptroller and had not entered into agreements to pay taxes according to some
15 timetable. Plaintiffs are able to identify and remove from the class list each consumer who,
16 prior to the Comptroller's pull of his/her report, had a lien or judgment entered against
17 him/her by the Comptroller or who had entered into an agreement with the Comptroller to
18 pay taxes according to a schedule.

19 29. Questions of law and fact common to the Class predominate over any
20 questions affecting only individual Class members. The principal questions are:

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22 a. Does the FCRA provide the Comptroller a generalized permissible purpose to
23 obtain consumer reports to collect taxes?
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- 1 b. Did Equifax willfully violate §1681b of the FCRA by furnishing consumer
2 reports to the Comptroller when it had no reason to believe that the Comptroller
3 had a permissible purpose to get the reports?
- 4 c. Did Equifax willfully violate §1681e(a)
- 5 i. by failing to maintain reasonable procedures to limit the furnishing of
6 consumer reports to permissible purposes listed under §1681b;
- 7 ii. by furnishing consumer reports to the Comptroller without first
8 requiring it to certify the purposes for which the information was sought
9 and to certify that it would not use the information for any other purpose;
- 10 iii. by failing to make a reasonable effort to verify the Comptroller’s uses
11 of consumer reports the prior to furnishing such reports to the
12 Comptroller; or
- 13 iv. by furnishing the Comptroller with consumer reports when it had
14 reasonable grounds for believing that the consumer reports would not
15 be used for a permissible purpose?
- 16 d. If Equifax willfully violated the FCRA, was its violation of the Act a cause of
17 the invasion of the class members’ privacy?
- 18 e. If so, what is amount of statutory damages should be awarded to each class to
19 compensate them for the violation of their privacy?
- 20 f. If Equifax willfully violated the FCRA and caused the invasion of the class
21 members’ privacy, what amount should be awarded as punitive damages?
- 22 30. Plaintiffs’ claims are typical of the claims of the Class, which all arise from
23 the same operative facts and are based on the same legal theories.
- 24 31. Plaintiffs will fairly and adequately protect the interests of the Class.
25 Plaintiffs are committed to vigorously litigating this matter and have retained counsel
26 experienced in handling FCRA claims and class actions. Neither plaintiffs nor their counsel
have any interests that might cause them not to vigorously pursue this claim.
32. This action should be maintained as a class action because the prosecution of

1 separate actions by individual members of the Class would create a risk of inconsistent or
2 varying adjudications with respect to individual members that would establish
3 incompatible standards of conduct for the parties opposing the Class, as well as a risk of
4 adjudications with respect to individual members that would as a practical matter be
5 dispositive of the interests of other members not parties to the adjudications or substantially
6 impair or impede their ability to protect their interests.
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8 33. Equifax has business records that identify each person whose consumer
9 report it furnished to the Comptroller during the relevant period. Plaintiffs can eliminate
10 from that list all persons against whom the Comptroller filed a lien or obtained a judgment
11 prior to pulling the consumer's report because that information is recorded in the public
12 record and in Equifax's files for these consumers. Plaintiffs can eliminate from the list all
13 persons who entered into a settlement agreement or payment plan with the Comptroller
14 prior to its pull of their reports because the Comptroller is producing all such agreements
15 in response to plaintiffs' open records request.
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18 34. A class action is a superior method for the fair and efficient adjudication of
19 this controversy. The interest of the Class members in individually controlling the
20 prosecution of their individual claims is slight because the maximum statutory damages
21 are limited to between \$100 and \$1,000 under the FCRA. Management of the Class claims
22 is likely to present significantly fewer difficulties than those presented in many individual
23 claims.
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1 **CLAIMS FOR RELIEF**

2 35. Plaintiffs reallege ¶¶1-34 as though fully set forth herein.

3 36. Equifax furnished consumer reports on the named plaintiffs and the Class to
4 the Comptroller for its use in collecting taxes.

5 37. Equifax willfully violated §1681b because it furnished plaintiffs' and the
6 class members' consumer reports to the Comptroller without having reason to believe that
7 the Comptroller had a permissible purpose to receive those consumer reports.

8 38. Equifax willfully violated §1681e(a) by failing to have reasonable
9 procedures to limit the furnishing of consumer reports to permissible purposes; by failing
10 to require the Comptroller to certify the purposes for which it was seeking the reports; by
11 failing to require the Comptroller to certify that it would use the information contained in
12 the reports for certified permissible purposes and no others; by failing to make a reasonable
13 effort to verify the Comptroller's permissible purpose prior to furnishing any reports; and
14 by furnishing consumer reports to the Comptroller when Equifax had reasonable grounds
15 for believing that the Comptroller was using the reports for impermissible purposes.

16 39. Equifax's willful violation of §1681b was a cause of and resulted in the
17 invasion of the plaintiffs' and class members' privacy.

18 40. Equifax's willful violation of §1681e(a) was a cause of and resulted in the
19 invasion of the plaintiffs' and class members' privacy.

20 41. Plaintiffs seek statutory and punitive damages for Equifax's willful
21 violations of the FCRA pursuant to 15 USC §§1681n(a)(1)(A) and 1681n(a)(2).
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DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues.

By: s/ Andrew J Ogilvie
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Attorneys for Plaintiffs