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Wayne Clifford

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX DIVISION

Wayne Clifford, Plaintiff, vs. LexisNexis Risk Data Management, LLC, a Florida limited liability company, Defendant.	Case No.: 2:21-cv-01145-DJH **FIRST AMENDED COMPLAINT** **JURY TRIAL DEMAND**

NOW COMES THE PLAINTIFF, WAYNE CLIFFORD, BY AND THROUGH COUNSEL, CY T. HAINEY, and for his First Amended Complaint against the Defendant, pleads as follows:

JURISDICTION

1. Jurisdiction of this court arises under 15 U.S.C. §1681p.

2. This is an action brought by a consumer for violation of the Fair Credit Reporting Act (15 U.S.C. §1681, *et seq*. [hereinafter "FCRA"]).

VENUE

3. The transactions and occurrences which give rise to this action occurred in the City of Mesa, Maricopa County, Arizona.

4. Venue is proper in the District of Arizona, Phoenix Division.

PARTIES

5. Plaintiff is a natural person residing in City of Mesa, Maricopa County, Arizona.

6. Defendant LexisNexis Risk Data Management, LLC ("LexisNexis") is a Florida limited liability company that conducts business in the State of Arizona.

GENERAL ALLEGATIONS

7. In January 2019, Plaintiff's wife, Kimberly Clifford, met Benson at a business networking conference. As they began to get to know each other, it was not long before they decided to do business together.

8. During Plaintiff and Mrs. Clifford's various conversations with Benson, the latter (mis)informed them that he was in the process of purchasing a residential home at 5702 South Beck Ave in Tempe, AZ. The Cliffords, who

professionally find residential parcels to purchase, repair and sell at a profit, were interested in Benson's purported project.

9. Benson never had any ownership interest in the South Beck property, but nevertheless, deceived the Plaintiff to pay Benson the sum of $12,500 to enter into a partnership in which Plaintiff would purportedly own one half of that property along with Benson.

10. During this purported partnership, Plaintiff invested an additional five thousand dollars which was used to improve the property.

11. One time, while visiting the property with Benson, the true owners of the property showed up. Benson engaged in a physical fight with them and was subsequently arrested and booked for assault. Plaintiff soon learned that he was conned and defrauded out of his money by Benson.

12. In April or May of 2019, Plaintiff began receiving paperwork from the United States Bankruptcy Court in Arizona, indicating that he had filed for Chapter 7 protection. Plaintiff never filed for bankruptcy. Benson had forged the Plaintiff's signature on a bankruptcy petition and used an equally bogus social security number therein.

13. Plaintiff confronted Benson who had admitted that he filed the bogus petition in Plaintiff's name as retaliation. Due to this fraudulent filed bankruptcy,

Plaintiff's ability to obtain financing for his business and personal ventures had come to a complete halt and his health has been severely damaged and has declined.

14. Equifax was reporting the fraudulent Chapter 7 bankruptcy filing ("Bogus Public Record") on Plaintiff's Equifax credit report.

15. Plaintiff has not filed for bankruptcy in over ten (10) years.

16. On March 6, 2019, Benson fraudulent filed a Chapter 7 Bankruptcy petition in Plaintiff's name in the United States District Court for the District of Arizona ("the Court").

17. On the bankruptcy petition, Benson placed an incorrect last four digits of Plaintiff's SSN as 9827. The last four of Plaintiff's SSN is actually 7375.

18. On the same day, the Court issued a Notice of Failure to Provide ID with the bankruptcy petition and a Notice of Incomplete Filings for failure to provide a list of creditors.

19. On March 18, 2019, the Court issued another Notice of Incomplete Filings for failure to provide income information and pay stubs.

20. On the same day, the Court issued an Order of Dismissal for the fraudulent filed Chapter 7 Bankruptcy filing.

21. Plaintiff received the notices from the Court and this is when he discovered the fraudulently filed for bankruptcy in his name.

22. Soon after, Plaintiff contacted Benson. During the telephone conversation, Benson admitted that he fraudulently filed the bankruptcy in Plaintiff's name. After this conversation, Plaintiff was unable to get in contact with Mr. Benson again due to Mr. Benson changing his phone number.

23. On May 1, 2020, Plaintiff filed a police report with the Maricopa County Sheriff's Office regarding the fraudulent bankruptcy filing.

24. On May 2, 2020, Plaintiff obtained his Equifax credit disclosure and noticed the Bogus Public Record reporting.

25. On or about September 8, 2020, Plaintiff submitted a letter to Equifax, disputing the Bogus Public Record. In his dispute letter, Plaintiff explained that he did not file Chapter 7 Bankruptcy. In support of this letter, he attached:

    a. the Equifax credit disclosure showing the error

    b. a copy of his police report.

    c. The fraudulent Bankruptcy Petition;

    d. Notification from the Bankruptcy Court showing that the purported bankruptcy that had been filed in his name was being rejected for want of positive identification of the Plaintiff;

e. Plaintiff's Declaration under penalty that he did not file the bankruptcy petition, pay any fee for its filing

26. In his dispute letter to Equifax, Plaintiff asked Equifax to remove the Bogus Public Record.

27. Equifax received Plaintiff's dispute letter and forwarded notification of his dispute to LexisNexis, the furnisher of this erroneous and financially damaging information to Equifax.

28. LexisNexis received the Plaintiff's dispute from Equifax and was required to perform a reasonable reinvestigation into the Plaintiff's dispute.

29. As is Equifax's practice, it also sent a copy of the Plaintiff's supporting documents to LexisNexis to consider while conducting its statutorily required reasonable reinvestigation.

30. LexisNexis ignored the supporting documents provided by the Plaintiff and failed to conduct reasonable reinvestigation into his dispute. Indeed, LexisNexis callously disregarded Plaintiff's supporting documents which plainly showed that he never filed bankruptcy and thus each of these defendants had willfully violated the Plaintiff's right to a reasonable reinvestigation.

31. At the time that it was supposed to have conducted a reasonable reinvestigation, LexisNexis had in its database, all of the information from the bankruptcy court showing that the fraudulent filed bankruptcy was not related to the Plaintiff.

32. In response to Plaintiff's dispute, LexisNexis wrongfully confirmed the accuracy the bankruptcy as belonging to the Plaintiff and informed Equifax as much, causing Equifax to continue to report the Bogus Public Record on Plaintiff's consumer credit file. This continued reporting of the fraudulent bankruptcy has caused the Plaintiff severe economic and emotional damages.

33. On or about October 3, 2020, Plaintiff received Equifax's investigation results, which showed that LexisNexis had verified the Bogus Public Record to Equifax refused to delete the Bogus Public Record.

34. As a direct and proximate cause of Equifax and LexisNexis' negligent and/or willful failure to comply with the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.*, Plaintiff has suffered:

a. Credit Damages. His livelihood depends upon him obtaining financing to acquire homes and the capital to improve them. After the bogus bankruptcy was reported on his credit report, Plaintiff has been turned down for loans that he had acquired before, due to the reported bankruptcy. One of his credit card lenders had terminated his use of his

credit card, making it even more difficult to meet not only expenses to pursue his vocation but to meet his day to day living expenses;

b. Lost credit opportunities. Mortgage rates have been at historical lows. Plaintiff desired to refinance his house but has been prevented from doing so because of this bogus bankruptcy reporting on his Equifax credit report.

c. Emotional damages. Plaintiff has also experienced undue stress and anxiety due to Defendant's failure to correct the errors in his credit file or improve his financial situation by obtaining new or more favorable credit terms as a result of the Defendant's violations of the FCRA. He has been humiliated having to borrow money from his adult children to meet his day to day living expenses as he cannot work in his vocation for want of financing;

d. Aggravation of preexisting medical conditions such as heart problems, blood pressure issues and more.

35. In this case LexisNexis acted as both a Credit Reporting Agency and a data furnisher.

36. 15 U.S.C. 1681a(f) defines a consumer reporting agency as :

> [A]ny person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to

third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

37. 15 U.S. C.§ 1681a(f). The FCRA defines a "consumer report" as:

> [A]ny written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for. .. credit or insurance to be used primarily for personal, family, or household purposes.

38. LexisNexis is a credit reporting agency in this case and furnished a Consumer Report to Equifax about the Plaintiff.

39. As a credit reporting agency, LexisNexis owed the Plaintiff a duty to assemble a credit report with policies and procedures to assure maximum possible accuracy. 15 U.S.C. 1681e(b).

40. Because LexisNexis also furnished information about the consumer to Equifax, also a credit reporting agency, it is also a furnisher and owes the Plaintiff a duty to conduct a reasonable reinvestigation when it receives a consumer dispute from him. 15 U.S.C. 1681s-2b.

COUNT I

NEGLIGENT VIOLATION OF THE FAIR CREDIT REPORTING ACT BY LEXISNEXIS 15 U.S.C. 1681s-2b

41. Plaintiff realleges the above paragraphs as if recited verbatim.

42. After being informed by Equifax of Plaintiff's consumer dispute of the Bogus Public Record, LexisNexis negligently failed to conduct a proper investigation of

Plaintiff's dispute as required by 15 U.S.C. § 1681s-2(b).

43. LexisNexis negligently failed to review all relevant information available to it and provided by Equifax in conducting its reinvestigation as required by 15 U.S.C. § 1681s-2(b).

44. During its purported reinvestigation, LexisNexis had available to it, in its own records, access to all of the Bankruptcy Court documents which proved that the bankruptcy was filed with an incorrect social security number and that that particular social security number was unverified and as a result, the Bankruptcy Court, on its own volitation, dismissed the bankruptcy.

45. During its purported reinvestigation, LexisNexis had available to it, in its own records, access to Plaintiff's true social security number. Despite having all of this information readily available to it, its investigators turned a blind eye to all of this information and wrongfully confirmed the accuracy of the fraudulent bankruptcy filing as belonging to the Plaintiff.

46. LexisNexis failed to direct Equifax to delete the Bogus Public Record from his credit files. The documents provided by the Plaintiff plainly showed that the social security number associated with the purported bankruptcy did not belong to Plaintiff.

47. The Bogus Public Record is inaccurate and creating a misleading impression to users of Plaintiff's consumer credit files with Equifax, causing him denial of credit, lost credit opportunities, lost income, emotional distress and aggravation of preexisting medical conditions.

48. As a further direct and proximate cause of LexisNexis negligent failure to perform its duties under the FCRA, Plaintiff has suffered economic and emotional damages, mental anguish, suffering, humiliation and embarrassment.

49. LexisNexis is liable to Plaintiff by reason of its violations of the FCRA in an amount to be determined by the trier of fact together with reasonable attorneys' fees pursuant to 15 U.S.C. § 1681o.

50. Plaintiff has a private right of action to assert claims against LexisNexis arising under 15 U.S.C. § 1681s-2(b).

WHEREFORE, PLAINTIFF PRAYS that this court grant him a judgment against the Defendant LexisNexis for damages, costs, interest and attorneys' fees.

COUNT II

WILLFUL VIOLATION OF THE FAIR CREDIT REPORTING ACT BY LEXISNEXIS

51. Plaintiff realleges the above paragraphs as if recited verbatim.

52. After being informed by Equifax that Plaintiff disputed the accuracy of the information it was providing, LexisNexis willfully failed to conduct a proper

reinvestigation of Plaintiff's dispute.

53. During its purported reinvestigation, LexisNexis had available to it, in its own records, access to all of the Bankruptcy Court documents which proved that the bankruptcy was filed with an incorrect social security number and that that particular social security number was unverified and as a result, the Bankruptcy Court, on its own volitation, dismissed the bankruptcy.

54. During its purported reinvestigation, LexisNexis had available to it, in its own records, access to Plaintiff's true social security number. Despite having all of this information readily available to it, its investigators turned a blind eye to all of this information and wrongfully confirmed the accuracy of the fraudulent bankruptcy filing as belonging to the Plaintiff.

55. LexisNexis willfully failed to review all relevant information available to it and provided by Equifax as required by 15 U.S.C. § 1681s-2(b). This willful failure is the result of LexisNexis' callous disregard for its duties under the FCRA to conduct a reasonable reinvestigation and as to the Plaintiff's right to have LexisNexis conduct such an investigation. A simple perusal of its own database would have revealed the bogus nature of the bankruptcy filing as LexisNexis had in its possession, at the time it was supposed to have conducted a reasonable reinvestigation, information showing the Plaintiff true social security number. It

also had available information showing that the Bankruptcy petition contained the wrong social security number.

56. In the Credit Reporting Industry, the credit reporting agencies use 3 bits of data to confirm the accuracy of information with a furnisher; the name, address and social security number. If these 3 bits of information do not agree as between the credit reporting agency and the furnisher, the credit reporting agencies do not consider the information to be accurate. LexisNexis ignored this industry standard and wrongfully confirmed a bogus bankruptcy as belonging to the Plaintiff. Had LexisNexis complied with this industry standard, it would have caused Equifax to have removed the bankruptcy notation from Plaintiff's credit report, saving him untold financial, emotional and health damages.

57. As a direct and proximate cause of LexisNexis' willful failure to perform its duties under the FCRA, Plaintiff has suffered economic and emotional damages, mental anguish, suffering, humiliation and embarrassment.

58. LexisNexis is liable to Plaintiff for either statutory damages or actual damages he has sustained by reason of its violations of the FCRA in an amount to be determined by the trier of fact, together with an award of punitive damages in the amount to be determined by the trier of fact, as well as for reasonable attorneys' fees and he may recover therefore pursuant to 15 U.S.C. § 1681n.

WHEREFORE, PLAINTIFF PRAYS that this court grant him a judgment against the Defendant LexisNexis for the greater of statutory or actual damages, plus punitive damages, along with costs, interest and attorneys' fees.

COUNT III

WILLFUL VIOLATION OF THE FAIR CREDIT REPORTING ACT BY LEXISNEXIS OF 15 U.S.C. 1692e(b)

59. Plaintiff realleges the above paragraphs as if recited verbatim.

60. LexisNexis prepared, compiled, issued, assembled, transferred, published a consumer report regarding the plaintiff as that term is defined in 15 USC 1681a and furnished it to Equifax as it related to the Plaintiff. That report was patently inaccurate.

61. LexisNexis regularly prepares these reports for Equifax and other credit reporting agencies for a fee and uses interstate commerce for the purpose of preparing these reports.

62. Such reports contained information about the Plaintiff that was false, misleading and inaccurate.

63. LexisNexis either negligently or willfully failed to maintain and/or follow reasonable procedures to assure maximum possible accuracy of the information it reported to Equifax pertaining to the Plaintiff, in violation of 15 USC 1681e(b).

64. After receiving the Plaintiff's consumer dispute to the Bogus Bankruptcy, LexisNexis negligently or willfully failed to conduct a reasonable reinvestigation as required by 15 U.S.C. 1681i. As noted above, LexisNexis had more than ample information in its own database at the time it was supposed to have conducted the reasonable reinvestigation, that proved that the bankruptcy filing it was reporting on behalf of Plaintiff to Equifax was purely bogus.

65. LexisNexis' failure to conduct a reasonable reinvestigation was willful as it showed a callous disregard for its duties under the law and a callous disregard for the Plaintiff's rights to a reasonable reinvestigation under the Fair Credit Reporting Act.

66. Alternatively, LexisNexis' failure to conduct a reasonable reinvestigation into the Plaintiff's dispute was at least negligent.

67. As a direct and proximate cause of LexisNexis' willful or negligent failure to perform its duties under the FCRA, the Plaintiff has suffered actual damages, statutory damages, financial and economic damages including loss of his livelihood, termination of lines of credit to run his business, severe mental anguish, aggravation of preexisting medical conditions necessitating hospital stay, and suffering, humiliation and embarrassment.

68. LexisNexis is liable to the plaintiff by reason of its violation of the FCRA in an

amount to be determined by the trier fact together with his reasonable attorneys' fees pursuant to 15 USC 1681o.

4.

WHEREFORE, PLAINTIFF PRAYS that this court grant him a judgment against the Defendant LexisNexis for the greater of statutory or actual damages, plus punitive damages, along with costs, interest and attorneys' fees.

JURY DEMAND

Plaintiff hereby demands a trial by Jury.

DATED: April 27, 2022

HILLTOP LAW FIRM

/s/ Cy T. Haney
Cy T. Haney
Attorneys for Plaintiff,
Wayne Clifford