

Stephanie R. Tatar (237792)
TATAR LAW FIRM, APC
3500 West Olive Avenue, Suite 300
Burbank, CA 91505
Telephone: (323) 744-1146
Facsimile: (888) 778-5695
Stephanie@TheTatarLawFirm.com

Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

)	Civil Action No. 8:15-cv-1480
ALEKSANDR PERSTIN)	
)	
Plaintiff,)	COMPLAINT FOR VIOLATION OF FAIR
)	CREDIT REPORTING ACT AND
v.)	CALIFORNIA CREDIT REPORTING
)	AGENCIES ACT
)	
EXPERIAN INFORMATION)	DEMAND FOR JURY TRIAL
SOLUTIONS, INC.)	
and)	
BANK OF AMERICA, NA)	
)	
Defendants.)	
)	
)	

Preliminary Statement

1. The Defendant Experian Information Solutions, Inc., (“Experian”) a consumer reporting agency (“CRA”), has been selling credit reports inaccurately marking Plaintiff as deceased. When it inaccurately reports a living consumer as deceased the Defendant makes it practically impossible for that consumer to access credit, as it did with Mr. Perstin. The Defendant’s practices also harm the businesses

1 that purchase its reports; as such companies cannot process credit applications due
2 to the applicant's lack of a credit score. There is no good faith rationale to explain
3 the Defendant's practice other than the generation of revenue. If the Defendant
4 actually believed that Mr. Perstin was deceased, it had no legally permissible basis
5 to sell his report. If the Defendant believed Mr. Perstin was alive, they knowingly
6 sold his report with a gross inaccuracy. Moreover, The Defendant knows that
7 identity thieves use the credit information of truly deceased persons to commit credit
8 fraud. The Defendant thus violated Plaintiff's rights under the Fair Credit Reporting
9 Act ("FCRA"), as set forth below.

10 **Jurisdiction and Venue**

11 2. Jurisdiction of this court arises under 15 U.S.C. § 1681p and 28 U.S.C.
12 §§ 1331 and 1337 and supplemental jurisdiction exists for the state law claims
13 pursuant to 28 U.S.C. § 1367.

14 3. Venue lies properly in this district pursuant to 28 U.S.C. § 1391 (b).

15 **Parties**

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17 4. Plaintiff Aleksandr Perstin is an adult individual residing in the State of
18 California.

19 5. Defendant Experian Information Solutions Inc. ("Experian") is a
20 consumer reporting agency that regularly conducts business in the Central District
21 of California, and which has a principle place of business located at 475 Anton
22 Boulevard, Costa Mesa, California 92626.

23 6. Defendant Bank of America NA ("BofA") is a business entity and a
24 furnisher of credit information that regularly conducts business in the Central
25 District of California, and which has a principal place of business located at 100
26 North Tryon Street, Charlotte, NC.

Factual Allegations

Defendant’s Practices Concerning the Sale of Reports on the “Deceased”

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3 7. Defendant Experian is regulated as “consumer reporting agency”
4 (“CRAs”) under the FCRA. 15 U.S.C. § 1681a(e).

5 8. Defendant BofA is regulated as a furnisher under the FCRA 15 U.S.C.
6 §1681 et seq. and under the California Credit Reporting Agencies Act (“CCRAA”)

7 9. Defendants sell millions of consumer reports (often called “credit
8 reports” or “reports”) per day, and also sell credit scores. 15 U.S.C. § 1681a(e).

9 10. Pursuant to the FCRA, Defendants must follow procedures which
10 assure that the reports they sell meet the standard of “maximum possible accuracy.”
11 15 U.S.C. § 1681e(b).

12 11. Pursuant to the FCRA, Defendants must maintain reasonable
13 procedures to assure that reports are sold only for legitimate “permissible purposes.”
14 15 U.S.C. §§ 1681e(a) & 1681b.

15 12. Defendants place a “deceased” notation or marking on reports when
16 they are advised from any of their many data furnishing sources that a given
17 consumer is deceased.

18 13. The furnishing sources identify “deceased” consumers by marking the
19 “status” of such consumer’s responsibility for any subject account with an “X” code
20 in the ECOA field of an electronic data input format used in the credit reporting
21 industry, known as Metro or Metro 2.

22 14. Defendants do not request or require a death certificate from any of
23 their data sources which advise that a consumer is “deceased” before placing a
24 “deceased” mark on that consumer’s report.

25 15. Defendants do not request or require proof from any data source which
26 advises that a consumer is “deceased” showing that the consumer is, in fact, deceased
27 before placing a “deceased” mark on that consumer’s report.

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16. Defendants do not independently verify with any source that a consumer is, in fact, deceased before placing a “deceased” mark on that consumer’s report.

17. A deceased notation is a very unusual marking upon a credit file or credit report.

18. In some cases, in order to assure accuracy, Defendants send letters and/or other communications to consumers when certain information that may be considered suspicious or unreliable is furnished about said consumers to be placed in their Experian credit files, such as in cases where consumers have a freeze or fraud alert on their credit report, or in accordance with certain state laws, such as the consumer laws of Colorado. But Defendants have no similar procedure to notify the consumers (such as a next of kin or executor or administrator of the consumer’s estate) when an “X” deceased code is furnished to Defendants to be placed in said consumer’s credit file or report.

19. Defendant Experian regularly receives the “Death Master File” from the Social Security Administration listing by social security number those consumers that the government believes to be deceased. But Experian do not cross-reference the “X” code received from furnishers with the Death Master File in order to determine whether any given consumer reported as deceased via a furnishing source is also on the Death Master File before selling a credit report about said consumer, or at any time.

20. Experian will only use the Death Master File to sell additional products for an additional fee which are designed to show whether a given consumer is truly deceased.

21. Indeed, Defendants employ no procedures *at all* which assure that a consumer with a “deceased” mark on his/her report is, in fact, deceased before placing the “deceased” mark on that consumer’s report and selling that report.

1 22. Even in instances where other data on the face of the consumer's report
2 indicates that he/she is not deceased, Defendants employ no procedures which assure
3 that a consumer with a "deceased" mark on his/her report is, in fact, deceased before
4 placing the "deceased" mark on that consumer's report.

5 23. Even in instances where the purportedly deceased consumer
6 communicates directly with the Defendants, Defendants employ no procedures
7 which assure that a consumer with a "deceased" mark on his/her report is, in fact,
8 deceased before placing the "deceased" mark on that consumer's report.

9 24. Once a "deceased" mark is placed upon a consumer's report,
10 Defendants will not calculate and will not provide a credit score for that consumer.

11 25. Nevertheless, Defendants routinely sell to third parties credit reports for
12 persons with a "deceased" mark on their reports with no credit score, despite a
13 request by the purchaser of the report for a credit score for that consumer.

14 26. Upon Defendant's reports with a "deceased" mark sold to third parties
15 Defendants never calculate or provide a credit score for that consumer.

16 27. Defendants know that third party credit issuers use a credit score in
17 order to process a given credit application.

18 28. Defendants know that many third party credit issuers require a credit
19 score in order to process a given credit application.

20 29. Defendants know that consumers without credit scores are unable to
21 secure any credit from most credit issuers.

22 30. Defendants know that living consumers are turned down for credit
23 specifically because Defendants are reporting them as "deceased" and without a
24 credit score.

25 31. Defendants have been put on notice for years through consumer
26 disputes and lawsuits that living consumers are turned down for credit specifically
27 because Defendants are reporting them as "deceased" and without a credit score.

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32. Defendants have received and documented thousands of disputes from consumers complaining that their Experian credit reports had them erroneously marked as “deceased.”

33. Defendants know that thousands of consumers are erroneously marked as “deceased” on their Experian credit reports via an erroneous furnishing of the “X” code, but said consumers are not on the Death Master File and are, in fact, alive.

34. Nevertheless, Defendants employ no procedures which assure that a consumer marked as “deceased” on one of the Defendant’s reports is, in fact, deceased.

35. Even consumers who dispute the erroneous “deceased” status on their Experian credit reports continue to be erroneously marked as deceased unless the furnishing source which provided the erroneous “X” code in the first instance decides to change the code.

36. Defendants have no independent procedure to change an erroneous deceased status on its own and will merely parrot their furnishing source in the case of a reinvestigation into the accuracy of the deceased status upon a consumer’s report, which reinvestigation was triggered by a consumer dispute.

37. Nor do Defendants employ any procedures to limit or stop the furnishing of reports to third parties for consumers which they have marked as “deceased” under any circumstances.

38. For years after a consumer’s actual death, Defendants will continue to sell credit reports about that consumer.

39. Defendants will only remove a deceased consumer’s file from their credit reporting database when it is no longer valuable to Experian – meaning that nobody is continuing to buy that report from Experian.

40. Defendants charge third parties a fee for reports with a mark that a consumer is deceased (“reports on the deceased”) as they would for any other report.

1 41. Defendants profit from the sale of reports on the deceased.

2 42. Defendants have in their credit reporting databases hundreds of
3 thousands of “deceased” trade lines corresponding to distinct credit files for
4 individual consumers that they have marked as “deceased.”

5 43. Defendants know that truly deceased consumers do not apply for credit.

6 44. Defendants know that the credit information and reports of truly
7 deceased persons are used by criminals to commit identity theft or credit fraud.
8 Indeed, identity theft using the personal identifying information of deceased
9 consumers is known to Experian to be a common and major source of identity theft.

10 45. Defendants know that identity theft and credit fraud are serious and
11 widespread problems in our society.

12 46. Defendants warn the relatives of truly deceased consumers that identity
13 theft can be committed using the credit reports and information of the deceased, and
14 require relatives to provide a death certificate or executorship papers, among other
15 proofs, before accessing the deceased consumer’s credit information or report.

16 47. Defendants have no similar death certificate, executorship paper, or any
17 other proof requirements for their data sources which report a consumer as deceased
18 or for the buyers of their reports which access the purportedly deceased consumer’s
19 information.

20 48. Indeed, Defendants sell reports on the deceased to third parties in an
21 automated fashion and without any specific or general certification that could
22 reasonably explain a “permissible purpose” for purchasing or using a (supposedly)
23 deceased consumer’s credit history and/or report.

24 49. For consumers who are deceased, there exists no permissible purpose
25 under the FCRA for Defendants to ever sell their credit reports, absent a court order.

26 50. Defendants know that such reports contain a vast amount of personal
27 identifying and credit account information on the supposedly deceased consumer,

1 information that can be used to commit identity theft or for other fraudulent
2 purposes.

3 *Case Specific Facts*

4 51. Plaintiff had been marked by Defendants as “deceased” on his Experian
5 credit reports since at least September 2014.

6 52. Plaintiff is not deceased.

7 53. Upon information and belief, Defendant Experian did not calculate or
8 provide any credit score for or on Plaintiff, even though it sold reports about him to
9 third parties marking him as “deceased.”

10 54. Notwithstanding Plaintiff’s efforts, Defendants continued to publish
11 and disseminate such inaccurate information to other third parties, persons, entities
12 and credit grantors. Defendants have repeatedly published and disseminated
13 consumer reports to such third parties from at least October 2014 through the
14 present.

15 55. As a result, Defendants made it practically impossible for Plaintiff to
16 obtain credit, and Plaintiff avoided attempting to obtain credit due to this inaccurate
17 reporting.

18 56. As a result of Defendant’s conduct, Plaintiff has suffered actual
19 damages in the form of lost credit opportunities, credit defamation and emotional
20 distress, including anxiety, frustration, embarrassment and, humiliation.

21 57. At all times pertinent hereto, Defendants were acting by and through
22 their agents, servants and/or employees who were acting within the course and scope
23 of their agencies or employment, and under the direct supervision and control of the
24 Defendants herein.

25 58. At all times pertinent hereto, the conduct of the Defendants, as well as
26 that of their agents, servants and/or employees, was intentional, willful, reckless, and
27 in grossly negligent disregard for federal law and the rights of the Plaintiff herein.

COUNT I – VIOLATIONS OF THE FCRA

(Plaintiff v. Experian)

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4 59. Plaintiff incorporates the foregoing paragraphs as though the same were
5 set forth at length herein.

6 60. At all times pertinent hereto, Defendants were “persons” and
7 “consumer reporting agencies” as those terms are defined by 15 U.S.C. § 1681a(b)
8 and (f).

9 61. At all times pertinent hereto, Plaintiff was a “consumer” as that term is
10 defined by 15 U.S.C. § 1681a(c).

11 62. At all times pertinent hereto, the above-mentioned credit reports were
12 “consumer reports” as that term is defined by 15 U.S.C. § 1681a(d).

13 63. Pursuant to 15 U.S.C. § 1681n and 15 U.S.C. § 1681o, EX and EQ are
14 liable to the Plaintiff for willfully and negligently failing to comply with the
15 requirements imposed on a consumer reporting agency of information pursuant to
16 15 U.S.C. § 1681e(b).

17 64. The conduct of Defendants was a direct and proximate cause, as well
18 as a substantial factor, in bringing about the serious injuries, actual damages and
19 harm to the Plaintiff that are outlined more fully above and, as a result, Defendants
20 are liable to the Plaintiff for the full amount of statutory, actual and punitive
21 damages, along with the attorney’s fees and the costs of litigation, as well as such
22 further relief, as may be permitted by law.

COUNT II – VIOLATIONS OF THE CCRAA

(PLAINTIFF V. EXPERIAN)

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24 65. Plaintiff incorporates the foregoing paragraphs as though the same were
25 set forth at length herein.
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73. As a consequence of these violations, Plaintiff has suffered both general and special damages according to proof, as well as punitive damages under the CCRAA statute, attorney’s fees and costs.

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Jury Trial Demand

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74. Plaintiff demands trial by jury on all issues so triable.

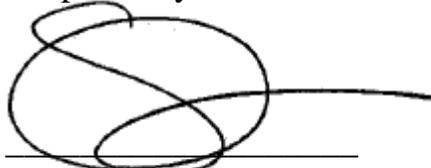
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Prayer for Relief

WHEREFORE, Plaintiff seeks judgment in Plaintiff’s favor and damages against the Defendants, based on the following requested relief:

- (a) Statutory damages;
- (b) Actual damages;
- (c) Punitive damages;
- (d) Costs and reasonable attorney’s fees pursuant to 15 U.S.C. §§ 1681n and 1681o, Cal.Civ.Code 1785 *et seq.*; and
- (e) Such other and further relief as may be necessary, just and proper.

Dated: September 14, 2015

Respectfully submitted,



Stephanie R. Tatar
Tatar Law Firm, APC
3500 West Olive Avenue
Suite 300
Burbank, CA 91505