

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairman**
 Jon Leibowitz
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

In the Matter of)	
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)	DOCKET NO. C-4387
EQUIFAX INFORMATION SERVICES LLC,)	
a limited liability company.)	
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COMPLAINT

The Federal Trade Commission, having reason to believe that Equifax Information Services LLC (“Equifax” or “Respondent”) has violated provisions of the Federal Trade Commission Act (“FTC Act”) and the Fair Credit Reporting Act (“FCRA”), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Equifax Information Services LLC is a limited liability company organized, existing, and doing business under the laws of the State of Georgia. Respondent is a wholly-owned subsidiary of Equifax Inc. and has its principal place of business at 1550 Peachtree Street, N.W., Atlanta, Georgia 30309.
2. The acts and practices of Respondent, as alleged herein, have been in or affecting commerce, as “commerce” is defined in section 4 of the Federal Trade Commission Act.
3. Equifax is, and at all times relevant to this complaint, has been a “consumer reporting agency” (“CRA”) as that term is defined in section 603(f) of the FCRA, 15 U.S.C. § 1681a(f). Equifax regularly sells in interstate commerce information on consumers that it assembles for the purpose of furnishing consumer reports to third parties.
4. Equifax sells “prescreened lists,” which are lists of consumers that meet certain pre-selected criteria such as consumers who were, among other things, 30, 60, or 90 days late on their mortgage payments. Such prescreened lists are “consumer reports” as defined in section 603(d) of the FCRA, 15 U.S.C. § 1681a(d). Information such as whether a consumer is 30, 60, or 90 days late on a mortgage payment bears on, among other things,

a consumer's credit worthiness and credit standing and is used or expected to be used as a factor in determining a consumer's eligibility for credit.

5. Section 604 of the FCRA, 15 U.S.C. § 1681b, prohibits consumer reporting agencies from furnishing consumer reports to any person other than those they have reason to believe have a specified "permissible purpose."
6. The only permissible purpose for using a prescreened list is to make a "firm offer of credit or insurance." A "firm offer" is one that will be honored (subject to certain exceptions) if the consumers continue to meet the pre-selected criteria used to select them for the offer. 15 U.S.C. § 1681a(l). Using prescreened lists to send solicitations for general marketing is not a permissible purpose.
7. Section 607(a) of the FCRA, 15 U.S.C. § 1681e(a), requires CRAs to maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed under section 604 of the FCRA, 15 U.S.C. § 1681b, including making reasonable efforts to verify the identity of each new prospective user of consumer report information and the uses certified by each prospective user prior to furnishing such user a consumer report.

RESPONDENT'S BUSINESS PRACTICES

8. From January 1, 2008 through early 2010, Equifax sold prescreened lists containing the consumer report information of millions of consumers to Direct Lending Source, Inc. or its affiliates, Bailey & Associates Advertising, Inc. and Virtual Lending Source, LLC (collectively "Direct Lending"). These lists included, among other things, consumers' credit scores and whether they were 30, 60, or 90 days late on their mortgage payments. In many instances, Direct Lending did not have a permissible purpose to obtain consumer reports under the FCRA but rather, Direct Lending used and sold these lists for the purpose of marketing products and services to consumers in financial distress.
9. Direct Lending sold the prescreened lists it obtained from Equifax to third parties, many of which did not have a permissible purpose to receive them under the FCRA. For example, it sold lists to marketers for the purpose of targeting consumers in financial distress for loan modification, debt relief, and foreclosure relief services.
10. Equifax did not maintain reasonable procedures to limit the furnishing of the prescreened lists it sold to Direct Lending so that prescreened lists would only be used for a permissible purpose. Equifax failed to investigate promptly or fully on certain occasions when it learned that Direct Lending was violating Equifax's internal policies relating to prescreening. Moreover, Equifax knew or should have known that in multiple instances Direct Lending resold the prescreened lists without identifying the end user to Equifax. Given Direct Lending's failures, Equifax had reason to believe that the entities to whom

its prescreened lists were being sold did not have a permissible purpose for obtaining the lists. Nonetheless, Equifax continued to sell prescreened lists to Direct Lending.

11. Equifax provided prescreened lists to Direct Lending through an online portal. Equifax also provided access to the portal to third parties in connection with Direct Lending's prescreening operations. Equifax did not make reasonable efforts to verify the identity of these entities, and accordingly could not ensure that these entities would only use the lists for a permissible purpose.
12. Equifax's failure to employ reasonable and appropriate measures to control access to the sensitive consumer financial information it maintains and sells for prescreening services resulted in prescreened lists being sold to a number of entities that were ultimately the subject of actions or warnings by law enforcement. Equifax's lack of reasonable procedures caused or is likely to cause substantial consumer injury that is not reasonably avoidable by consumers and is not outweighed by benefits to consumers or competition.

VIOLATIONS OF THE FCRA

13. As described in Paragraphs 8 through 12, in multiple instances, Respondent furnished consumer reports to persons that it did not have reason to believe had a permissible purpose to obtain a consumer report. By and through the acts and practices described in Paragraphs 8 through 12, Respondent has violated section 604(c) of the FCRA, 15 U.S.C. § 1681b(c).
14. As described in Paragraphs 8 through 12, Respondent has failed to maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed under section 604(c) of the FCRA, has failed to make reasonable efforts to verify the identity of each new prospective user of consumer report information, and has failed to make reasonable efforts to verify the uses certified by each prospective user prior to furnishing such user a consumer report. By and through the acts and practices described in Paragraphs 8 through 12, Respondent has violated section 607(a) of the FCRA, 15 U.S.C. § 1681e(a).
15. By its violation of sections 604(c) and 607(a) of the FCRA, and pursuant to section 621(a), 15 U.S.C. § 1681s, Respondent has engaged in unfair and deceptive acts and practices in or affecting commerce in violation of section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE FTC ACT

16. As described in Paragraphs 8 through 12, in numerous instances, Respondent has failed to employ reasonable and appropriate measures to control access to the sensitive consumer financial information it maintains and sells for prescreening services.
17. Respondent's actions caused or were likely to cause substantial injury to consumers that was not offset by countervailing benefits to consumers or competition and was not reasonably avoidable by consumers. The acts and practices of Respondent as alleged in

this complaint constitute unfair acts or practices in or affecting commerce in violation of section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THEREFORE, the Federal Trade Commission this fifth day of March, 2013, has issued this complaint against the respondent.

By the Commission, Commissioners Leibowitz and Wright not participating.

Richard C. Donohue
Acting Secretary

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Edith Ramirez, Chairman
Jon Leibowitz
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright**

<i>In the Matter of</i>)	
)	
)	DECISION AND ORDER
EQUIFAX INFORMATION)	
SERVICES LLC, a <i>limited liability</i>)	
<i>company.</i>)	
)	DOCKET NO. C-4387
)	

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Respondent named in the caption hereof, and the Respondent having been furnished thereafter with a copy of a draft Complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the Respondent with violation of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.* and the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq.*

The Respondent, Respondent’s attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), an admission by the Respondent of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that the Respondent has violated the Fair Credit Reporting Act and the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons, now in further conformity with the procedure described in Section 2.34 of its Rules, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and enters the following Order:

1. Respondent Equifax Information Services LLC is a Georgia limited liability company with its principal office at 1550 Peachtree Street, N.W., Atlanta, Georgia 30309.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, “respondent” shall mean: Equifax Information Services LLC, its successors and assigns, and its officers, agents, representatives, and employees.
2. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
3. The definitions set forth in the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681a, *et seq.*, which is attached as Appendix A to this order, shall apply.
4. “Debt relief product or service” means any product, service, plan, or program represented, expressly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt or obligation, including but not limited to a tax debt or obligation, between a person and one or more unsecured creditors or debt collectors, including but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector by any person other than the unsecured creditor who holds the debt at issue. Debt relief product or service does not include the creation of a new loan to consolidate debts of a consumer.
5. “Mortgage assistance relief product or service” means any product, service, plan, or program, offered or provided to the consumer in exchange for consideration, by any person other than the dwelling loan holder, that is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:
 - a. stopping, preventing, or postponing any mortgage or deed of trust foreclosure sale for the consumer’s dwelling, any repossession of the consumer’s dwelling, or otherwise saving the consumer’s dwelling from foreclosure or repossession;
 - b. negotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees;

- c. obtaining any forbearance or modification in the timing of payments from any dwelling loan holder or servicer on any dwelling loan;
 - d. negotiating, obtaining, or arranging any extension of the period of time within which the consumer may: (1) cure his or her default on a dwelling loan, (2) reinstate his or her dwelling loan, (3) redeem a dwelling, or (4) exercise any right to reinstate a dwelling loan or redeem a dwelling; or
 - e. obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling; or
 - f. negotiating, obtaining, or arranging: (1) a short sale of a dwelling, (2) a deed-in-lieu of foreclosure, or (3) any other disposition of a dwelling loan other than a sale to a third party that is not the dwelling loan holder.
6. “Prescreening” or “prescreened list” shall refer to the process and the resulting lists covered by sections 603(l), 604(c), 604(e), and 615(d) of the FCRA, 15 U.S.C. §§ 1681a(l), 1681b(c), 1681b(e), and 1681m(d).

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, website, or other device, in connection with the compilation, creation, sale, or dissemination of any prescreened list, is hereby prohibited from:

- A. Furnishing a prescreened list to any person which respondent does not have reason to believe has a permissible purpose under section 604(c) of the FCRA, 15 U.S.C. § 1681b(c).
- B. Failing to maintain reasonable procedures designed to limit the furnishing of prescreened lists to the purposes listed under section 604(c) of the FCRA, 15 U.S.C. § 1681b(c), as set forth in section 607(a) of the FCRA, 15 U.S.C. § 1681e(a), including:
 - 1. Failing to require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose;
 - 2. Failing to make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a prescreened list; and
 - 3. Furnishing a prescreened list to any person respondent has reasonable grounds for believing will use it for a purpose not listed in section 604(c) of the FCRA, 15 U.S.C. § 1681b(c).

- C. Furnishing consumer reports pursuant to section 604(c) of the FCRA, 15 U.S.C. 1681b(c), in connection with solicitations for debt relief products or services, or mortgage assistance relief products or services, offered by entities that respondent has reasonable grounds for believing charge advance fees for such services, *i.e.*, fees collected prior to the provision of such services. This prohibition shall not apply to solicitations for refinancing of a dwelling loan, or services offered by attorneys.

II.

IT IS FURTHER ORDERED that respondent shall pay \$392,803 to the Federal Trade Commission, as follows:

- A. Within seven (7) days of service of this order, respondent shall transfer the sum to the Commission by electronic funds transfer in accordance with instructions previously provided by a representative of the Commission. These funds will be deposited in the United States Treasury as disgorgement.
- B. In the event of any default on any obligation to make payment under this order, which default continues for ten (10) days beyond the due date of the payment, interest shall accrue, computed pursuant to 28 U.S.C. § 1961, from the date of default to the date of payment.
- C. Respondent relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Respondent shall make no claim to or demand return of the funds, directly or indirectly, through counsel or otherwise.
- D. This order for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

III.

IT IS FURTHER ORDERED that, for five (5) years after the date of issuance of this order, respondent, and its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission business records demonstrating compliance with the terms and provisions of this order, including but not limited to:

- A. Files containing the names, addresses, telephone numbers, and all certifications made by persons seeking to obtain prescreened lists from respondent in order to finance the product or service provided by a third party, and all materials considered by respondent in connection with its verification of the identity of those persons and verification of the certifications made by those persons;

- B. Copies of all training materials and marketing materials that relate to respondent's prescreening activities as alleged in the complaint and respondent's compliance with the provisions of this order; and
- C. All records necessary to demonstrate full compliance with each provision of this order, including all submissions to the Commission.

IV.

IT IS FURTHER ORDERED that, for five (5) years after the date of issuance of this order, respondent, and its successors and assigns, shall deliver a copy of this order to: (1) all current and future principals, officers, and directors; and (2) all current and future managers, employees, agents and representatives who have responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order, with any electronic signatures complying with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.* Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of the order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in respondent that may affect compliance obligations arising under this order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in respondent's name or address. *Provided, however,* that with respect to any proposed change about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line: In the Matter of Equifax Information Services LLC. *Provided, however,* that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at DEbrief@ftc.gov.

VI.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall, within sixty (60) days after the date of service of this order, file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which respondent has complied with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondent shall submit additional true and accurate written reports.

VII.

This order will terminate on March 5, 2033, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part of this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that this order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioners Leibowitz and Wright not participating.

Richard C. Donohue
Acting Secretary

SEAL

ISSUED: March 5, 2013