

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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**TRINA PATTERSON, on behalf of herself and
on behalf of her minor son KEVIN BARNABY JR.,**

Index No. 1:17-cv-10110

COMPLAINT

Plaintiff,

-against-

**EQUIFAX INFORMATION SERVICES, LLC;
TRANS UNION LLC; EXPERIAN INFORMATION
SOLUTIONS, INC.; CHEX SYSTEMS, INC.;**
and KEVIN BARNABY SR.

Defendants.

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The plaintiff Trina Patterson, brings this action on behalf of herself and on behalf of her minor son Kevin Barnaby Jr., against defendants Equifax Information Services, LLC (“Equifax”); Trans Union LLC (“Trans Union”); Experian Information Solutions, Inc. (“Experian”); Capital One Bank (USA) N.A.; and Kevin Barnaby Sr., and alleges as follows, upon information and belief:

PRELIMINARY STATEMENT

1. This action is brought on behalf of a minor child born in 2013 and his mother for legal violations stemming from a number of credit cards which were opened in Kevin Barnaby Jr.’s (“KJ”) name by his estranged father when he was 15 months old and subsequently placed on his credit reports. In addition to those credit cards, the various credit reporting agencies placed a federal tax lien on KJ’s credit reports and issued those reports to numerous creditors seeking to

open up additional credit accounts in KJ's name, and failed to correct KJ's file after being notified that he was a minor.

2. Upon these facts the Plaintiff brings this case for actual and punitive damages along with a request for injunctive relief pursuant to 15 USC § 1681 *et seq.* ("Fair Credit Reporting Act" or "FCRA"), and New York General Business Law § 380 *et seq.* (the "New York Fair Credit Reporting Act" or "NY FCRA").

3. Additionally, Plaintiff seeks equitable relief requiring Defendants to implement and maintain procedures to comply with the NY FCRA.

JURISDICTION AND VENUE

4. The jurisdiction of this Court is conferred by 15 U.S.C. § 1681(p). This Court has diversity jurisdiction over the state law claims under 28 USC § 1332 as well as supplemental jurisdiction of those state law claims asserted herein under 28 U.S.C. § 1367(a). Venue is properly laid pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Plaintiff is a New York resident and "consumer" within the meaning of the FCRA [15 U.S.C. § 1681a(c)].

6. Defendant Equifax is a Georgia corporation, duly licensed, qualified to do business in the State of New York and a "consumer reporting agency" within the meaning of the FCRA [15 U.S.C. § 1681a(f)].

7. Defendant Trans Union is a Delaware corporation, duly licensed, qualified to do business in the State of New York and a "consumer reporting agency" within the meaning of the FCRA [15 U.S.C. § 1681a(f)].

8. Defendant Experian is an Ohio corporation, duly licensed, qualified to do business in the State of New York and a “consumer reporting agency” within the meaning of the FCRA [15 U.S.C. § 1681a(f)].

9. Defendant Chex Systems, Inc. is a Minnesota Corporation, duly authorized and qualified to do business in the State of New York. Chex Systems is a “consumer reporting agency” within the meaning of the FCRA [15 U.S.C. § 1681a(f)] and the NY FCRA [NY GBL § 380-a(e)].

10. Defendant Kevin Barnaby Sr. is an individual and resident of New York.

FACTUAL BACKGROUND

11. Plaintiff Trina Patterson and Defendant Kevin Barnaby Sr. had a child on November 8, 2013 named Kevin Barnaby Jr. (referred to hereafter as “KJ”). KJ and his father were estranged from birth, and apart from a custody hearing Defendant Barnaby has never met his son. In or around April 2015 Defendant Barnaby was ordered to begin making child support payments to Ms. Patterson.

12. Unbeknownst to Ms. Patterson, around that time Defendant Barnaby – who had bad credit - obtained his son’s social security number and began applying for credit using his son’s identifying information. Defendant Barnaby was able to successfully open, at a minimum, two Capital One credit cards when KJ was approximately 15 months old.

13. Defendant Barnaby was convicted of First Degree Identity Theft in Westchester County Supreme Court in or around July 2017 for opening the subject accounts in his son’s name.

14. Sometime in or around March 2016 Plaintiff Trina Patterson received a phone call from Defendant Barnaby’s wife asking about a possible Macy’s credit card account that she believed Defendant Barnaby might have opened in KJ’s name. At that point, Ms. Patterson began her

attempts to see if KJ had any open credit accounts in his name.

15. On March 14, 2016 Ms. Patterson mailed a letter to Equifax explaining that she was requesting a copy of any credit file Equifax had on her two her two-year-old son. The letter further requested that a fraud alert be added to his file and that Equifax delete any inaccurate information from KJ's file. Ms. Patterson included copies of KJ's birth certificate and social security card along with a copy of her own birth certificate.

16. On May 17, 2016 Equifax mailed a letter addressed to KJ refusing to provide him with a copy of his report, explaining that the "proof of your identity does not match the information we currently have on your credit file." Equifax further failed to investigate Ms. Patterson's dispute on her son's behalf or add a fraud alter to KJ's file as requested.

17. In or around sometime in April 2016 Ms. Patterson made phone calls to both Trans Union and Experian to request copies of any files they had on KJ, to add fraud alerts to his files, and to dispute any inaccurate information on his credit reports.

18. Ms. Patterson further mailed copies of KJ's social security card and birth certificate to both Trans Union and Experian and also requested the correction of any inaccurate items on KJ's reports.

19. Experian sent two letters addressed to KJ on April 18, 2018. The first letter notified KJ that Experian had added a fraud alert to his credit file.

20. The second Experian letter dated April 18, 2016 was sent in response to Ms. Patterson's dispute and included an updated consumer disclosure for KJ. The letter indicated that the consumer statement Ms. Patterson requested had been added to KJ's report – stating that the individual named in the report was a minor born on 11/8/2013 and that no accounts should be

opened in his name.

21. The attached Experian report also added KJ's year of birth as 2013 – yet Experian refused to remove the two Capital One credit card accounts on KJ's file which the Experian report tacitly acknowledged were opened when KJ was less than two years old. The report also stated that KJ was employed or had been employed by the Dept. of Corrections, contained a number of addresses belonging to Defendant Barnaby and not to KJ, and further indicated that copies of the report had been sent to at least six different potential creditors in response to credit applications over the prior two years.

22. Trans Union mailed a letter address to KJ on May 9, 2016. The letter contained a copy of KJ's Trans Union report. That report correctly indicated KJ's date of birth at November 3, 2013, yet contained a negative Capital One credit card account which indicated that it was opened when KJ was 15 months old, and stated that a Federal Tax lien had been filed against KJ when he was 15 months old. The report also listed two addresses that belonged to Defendant Barnaby Sr. Finally, the report indicated that the social security number on file for KJ was "likely not issued prior to June 2011."

23. Sometime in April or May 2016 Ms. Patterson also requested a copy of KJ's file with Defendant Chex Systems (which specialized in reporting activity on bank checking accounts). Chex Systems sent a letter addressed to KJ on May 5, 2016 that contained a partial Chex Systems report. However the letter also stated that it possessed further information belonging to someone with "similar" information to KJ but refused to provide that information to Ms. Patterson until she sent them KJ's driver's license – which was not possible for obvious reasons.

24. Defendants' conduct as described above has caused substantial damage to KJ's name and

reputation, and has the potential to have a substantial negative impact on KJ's life in the future. Defendants' conduct has also caused Ms. Patterson significant emotional distress, frustration and loss of time and enjoyment with both of her children as she has been forced to try and rectify the problems proximately caused by Defendants.

FIRST CAUSE OF ACTION
VIOLATION OF THE FCRA

Against Equifax Information Services, LLC; Trans Union LLC;
Experian Information Solutions, Inc.; And Chex Systems, Inc.

25. The plaintiff repeats and realleges each and every allegation set forth above as if reasserted and realleged herein.

26. Defendants Experian, Equifax, Trans Union and Chex Systems prepared, compiled, issued, assembled, transferred, published and otherwise reproduced numerous consumer reports regarding the plaintiff, as that term is defined in 15 U.S.C. § 1681a(d).

27. Such reports contained erroneous information with Defendants knew or should have known was not accurate.

28. Defendants Equifax, Trans Union, Experian and Chex Systems willfully (or, in the alternative, negligently) failed to maintain and/or follow reasonable procedures to assure maximum possible accuracy of the information it reported to numerous third parties pertaining to KJ or in credit reports supplied to third parties, in violation of 15 U.S.C. § 1681e(b).

29. Defendants Equifax, Trans Union, Experian and Chex Systems willfully (or, in the alternative, negligently) violated 15 U.S.C. § 1681i by failing to conduct reasonable reinvestigations of the plaintiff's disputes of the erroneous information on KJ's reports as described above.

30. Defendants Equifax, Trans Union, Experian and Chex Systems willfully (or, in the

alternative, negligently) violated 15 U.S.C. § 1681i(a)(2)(A) and (B) by failing to forward all relevant information provided to them by plaintiff regarding the subject disputes to all of the relevant furnishers.

31. Defendants Equifax and Chex Systems violated 15 U.S.C. § 1681g by failing to, upon the plaintiff's request, disclose to the plaintiff all information in KJ's file, and the sources of the information.

32. Defendants Equifax, Trans Union, Experian and Chex Systems willfully (or, in the alternative, negligently) violated 15 USC § 1681b(a) by providing third parties with KJ's consumer reports when defendants had reason to know that those users did not have permissible purposes to obtain those reports.

33. Defendants Equifax, Trans Union, Experian and Chex Systems willfully (or, in the alternative, negligently) violated 15 USC § 1681e(a) by failing to adopt and maintain reasonable procedures designed to limit the furnishing of consumer reports to the permissible purposes listed in 15 USC § 1681b.

34. Ms. Patterson and Kevin Barnaby Jr. were damaged by Defendants' conduct as described above, and Defendants are thus liable to the plaintiff for actual and punitive damages in an amount to be determined by the trier of fact, as well as the plaintiff's reasonable attorney's fees pursuant to 15 U.S.C. §§ 1681o and 1681n.

SECOND CAUSE OF ACTION
VIOLATION OF The NY FCRA
Against All Defendants

35. The plaintiff repeats and realleges each and every allegation set forth above as if reasserted and realleged herein.

36. Defendants Equifax, Trans Union, Experian and Chex Systems maintained, prepared, compiled, issued, assembled, transferred, published and otherwise reproduced numerous consumer reports regarding the plaintiff, as that term is defined in NY GBL §380-a(c)(2).

37. Such reports contained numerous items of erroneous information. Defendants knew, or should have known, that the reports contained erroneous information in violation of NY GBL § 380-j(e).

38. Defendants Equifax, Trans Union, Experian and Chex Systems maintained credit information on the minor Kevin Barnaby Jr. in their files which they knew or had reason to know was inaccurate in violation of NY GBL § 380-j(a)(3).

39. Defendants Equifax, Trans Union, Experian and Chex Systems willfully (or, in the alternative, negligently) violated NY GBL § 380-f by failing to conduct a reasonable reinvestigation of the Plaintiff's disputes.

40. Defendants are thus liable to the plaintiff for actual and punitive damages in an amount to be determined by the trier of fact, as well as the plaintiff's reasonable attorney's fees pursuant to NY GBL §§ 380-l and 380-m.

41. Furthermore, Defendants each maintain a regular business practice of creating consumer files and consumer reports regarding minors who do not have the capacity to obtain credit or legally incur debts. Plaintiff is thus entitled to an injunction requiring Defendants to implement and maintain reasonable procedures designed to insure that they do not continue to create or maintain consumer files and consumer reports on behalf of minors lacking the legal capacity to obtain credit or legally incur consumer debts.

42. Defendant Kevin Barnaby Sr. willfully violated N.Y. GBL § 380-s by knowingly using

the Kevin Barnaby Jr.'s name and personal identifying information to obtain credit.

43. Plaintiff and Kevin Barnaby Jr. suffered damages as a result of Defendants' unlawful conduct, including, *but not limited to*, damage to reputation, potential future damage to his credit, loss of time from work, expenditure of time and resources, economic damages and damage to reputation, in addition to significant emotional distress, annoyance, aggravation, and frustration.

44. Accordingly, Defendant Barnaby Sr. is liable to Plaintiff and Kevin Barnaby Jr. for actual and punitive damages in an amount to be determined by the trier of fact, as well as for the Plaintiff's costs and reasonable attorney's fees incurred as a result of Defendants' NY FCRA violations, pursuant to N.Y. GBL §§ 380-l and 380-m.

THE PLAINTIFF DEMANDS A JURY TRIAL ON ALL CAUSES OF ACTION ASSERTED HEREIN.

Dated: December 27, 2017

Respectfully submitted,



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