

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

MITCHELL HICKS, JR., an individual)

PLAINTIFF,)

v.)

EXPERIAN INFORMATION SOLUTIONS,)

INC., a corporation; EQUIFAX)

INFORMATION SERVICES, LLC, a)

corporation; CAPITAL ONE BANK, a)

corporation; WACHOVIA BANK,)

NATIONAL ASSOCIATION, a corporation;)

Fictitious Defendant A, whether singular or)

plural, Plaintiff hereby intending to)

designate the corporation or legal entity)

which prepared a consumer or credit report)

on Plaintiff and which investigated disputes)

from Plaintiff regarding his Capital One)

and/or Wachovia accounts as set forth in this)

Complaint; Fictitious Defendant B, whether)

singular or plural, Plaintiff hereby intending)

to designate the corporation or legal entity)

doing business as or known as Capital One)

Bank and/or Wachovia Bank, N.A. and who)

furnished information to consumer reporting)

agencies and carried out the other acts set)

forth in this Complaint; Fictitious Defendant)

C, whether singular or plural, Plaintiff)

hereby intending to designate the)

corporation or legal entity which is a)

successor company or legal entity,)

predecessor company or legal entity, or a)

related company or legal entity to any of the)

named or fictitiously described Defendants in)

this Complaint; Plaintiff avers that the)

identity of the fictitious party Defendants is)

otherwise unknown to Plaintiff at this time,)

but their true names will be substituted by)

amendment when the aforesaid lack of)

knowledge is ascertained,

CIVIL ACTION NO. _____

DEFENDANTS.

COMPLAINT

COMES NOW the Plaintiff, by and through counsel, in the above styled cause, and for his Complaint against the Defendants¹ states as follows:

1. This is an action brought by a consumer for violations of the Fair Credit Reporting Act (15 U.S.C. § 1681 et seq. [hereinafter “FCRA”]) regarding inaccurate entries on Plaintiff’s credit reports with Experian and Equifax.
2. This action is also brought under Alabama state law.
3. The Plaintiff, MITCHELL HICKS, JR. [“Plaintiff” or “Hicks”], is a natural person who resides within Jefferson County, Alabama.
4. Defendant EXPERIAN INFORMATION SOLUTIONS, INC. [“Experian”] is a foreign company that engages in the business of maintaining and reporting consumer credit information and does business in Jefferson County, Alabama.
5. Defendant EQUIFAX INFORMATION SERVICES, LLC [“Equifax”] is a foreign company that engages in the business of maintaining and reporting consumer credit information and does business in Jefferson County, Alabama.
6. Defendant CAPITAL ONE BANK [“Capital One”] is a foreign company that engages in business in Jefferson County, Alabama.
7. Defendant WACHOVIA BANK, NATIONAL ASSOCIATION [“Wachovia”] is a foreign company doing business in Jefferson County, Alabama.

¹ Any reference to Defendant or Defendants refers to both singular and plural and any reference to any of the named Defendants includes the appropriate fictitiously described Defendants which are set forth in the caption, expressly adopted and incorporated as if fully set forth in the body of this Complaint.

Facts Supporting Each Claim Presented In Chronological² Order

8. In or about late May or early June 2004 Hicks sent in a payment on his Capital One credit card but mistakenly sent his mortgage payment check (made out to US Bank in the amount of \$1258.16) to Capital One. A copy of the check is attached hereto as Exhibit “A”. All Exhibits are included in a separate Exhibit Book which is incorporated as if fully set forth herein.
9. When Hicks realized his mistake, he contacted Capital One to make sure the check would not be negotiated or deposited by Capital One.
10. Despite the fact that the check did not list Capital One as the payee, Capital One still deposited or otherwise negotiated the check on or about June 4, 2004³, which resulted in the removal of \$1258.16 from Hicks’ bank account.
11. Hicks was able to convince Capital One to return the money to his account, or so he thought.
12. On or about June 10, 2004, Capital One ran the check through for a second time in the amount of \$1,258.16.
13. This time, it took months to get the matter straightened out and to have the money returned to Hicks’ bank account.
14. Because of the action of Capital One, Hicks suffered numerous NSF charges to his bank account.⁴
15. Hicks was forced to get a second job taking time from his family and causing emotional distress, because of the wrongful actions of Capital One in converting his funds.

² All dates are approximate dates and reflect the mailing dates, not the date each document was received.

³ This may have been on May 28, 2004, according to a recent letter (May 11, 2006) from Capital One discussed *infra*.

⁴ These were credited back by Hick’s bank as it realized it was not Hicks’ fault that his account was overdrawn.

16. Capital One refused to properly apply charges and credits to the Capital One account and instead apparently charged Hicks over \$1,200.00 as some type of penalty for having to return, for a second time, the \$1,258.16.
17. On December 9, 2005, Capital One sued Hicks for \$1,998.21 in the Small Claims of Jefferson County, SM 2005-12292. This is attached as Exhibit "B."
18. On December 28, 2005, Experian provided a report⁵ (Number 2264940105) which showed a Capital One balance with a past due amount of \$2,249.00. This is attached as Exhibit "C." The Experian report listed the following monthly balances:
 - 11/2005 – \$2,224
 - 10/2005 – \$2,199
 - 9/2005 – \$2,174
 - 8/2005 – \$2,149
 - 7/2005 – \$2,124
 - 6/2005 – \$2,099
 - 5/2005 – \$2,074
 - 1/2005⁶ – \$1,998
 - 12/2004 – \$1,944
 - 11/2004 – \$1,892
 - 10/2004 – \$1,781
 - 9/2004 – \$1,731
 - 8/2004 – \$425
 - 7/2004 – \$362

⁵ All of these reports are referred to as "consumer" or "credit" reports, meaning the same thing.

⁶ The months of February, March, and April 2005 were not listed.

- 6/2004 – \$340
 - 5/2004 – \$249
 - 4/2004 - \$217
19. On December 30, 2005, Hicks filed an answer to the lawsuit and denied owing the amount claimed by Capital One. This is attached as Exhibit “D.”
 20. On January 5, 2006, TransUnion issued a credit report showing the Capital One account with a balance of \$2,249.00 and a Wachovia account with a balance of \$12,696.00. This is attached as Exhibit “E.”
 21. On January 6, 2006, Equifax issued a report with a confirmation number of 6006028500 which listed the Capital One account as past due with a balance of \$2,249.00 and the Wachovia account as past due with a balance of \$12,696.00. This is attached as Exhibit “F.”
 22. On January 6, 2006, Hicks sent dispute letters to Equifax and TransUnion with copies going to Wachovia and Capital One. These dispute letters are attached as Exhibits “G” and “H.” Hicks disputed the balance listed on Capital One and denied that the Wachovia account was his. Hicks also denied he had ever lived at a “Snellville, Georgia” address.
 23. On January 13, 2006, Wachovia sent Hicks a letter acknowledging his multiple disputes⁷ but claiming that the account belonged to Hicks and including the signed document opening the account that reflects the account was opened in Georgia. This letter (and its attachments) is attached hereto as Exhibit “I.”
 24. On January 13, 2006, Anchor Receivables Management, a collection agency for Wachovia, sent a collection letter offering Hicks the opportunity to only pay “80% of the balance”. This is attached as Exhibit “J.”

⁷ There were disputes made in writing and/or orally which have not been attached as Exhibits but the disputes or records thereof are in the possession of Wachovia.

25. On January 21, 2006, TransUnion completed its investigation and deleted the Capital One and the Wachovia accounts. This is attached as Exhibit “K.”
26. On January 23, 2006, Hicks sent a dispute letter to Experian⁸ with a copy to Capital One. This is attached as Exhibit “L.”
27. On January 25, 2006, Hicks sent a dispute letter to Anchor Receivables Management. This is attached as Exhibit “M.”
28. On January 25, 2006, Hicks sent a dispute letter to Wachovia in response to its January 13, 2006, letter and copied his letter to Anchor Receivables Management; TransUnion; and Equifax. This letter is attached as Exhibit “N.”
29. On January 25, 2006, Hicks also sent a separate letter to TransUnion advising it that the Wachovia account and an account listed as “First Union Recovery” were the same and both were due to be deleted. This letter is attached as Exhibit “O.”
30. On January 30, 2006, Capital One (through a Joel D. Amey) wrote Hicks and said his balance was \$249.50 as of June 2004 and that it was written off on January 17, 2005. This letter is attached as Exhibit “P.”
31. On February 6, 2006, TransUnion wrote to say that no Wachovia account exists on the credit report of Hicks. This is attached as Exhibit “Q.”
32. On February 8, 2006, Equifax sent its investigation results, confirmation number 6012014191, which deleted a “Snellville, Georgia”⁹ address, updated the Capital One balance, and verified the Wachovia or First Union account. This is attached as Exhibit “R.”
33. On February 14, 2006, the Capital One lawsuit against Hicks was dismissed with prejudice. This was done by a corrected order dated March 1, 2006. This order is attached as Exhibit “S.”

⁸ An earlier letter (January 6, 2006) came back as not accepted at the address so this January 23, 2006, letter was essentially the same letter sent to a different address.

⁹ According to the Wachovia documents, a Mitchell Hicks, Jr., residing at 1905 Scenic Highway, Building 640-153, Snellville, Georgia, 30078, opened the Wachovia account. See Exhibit “I.”

34. On February 21, 2006, Hicks sent a dispute letter to Equifax, Experian, and Capital One (Joel D. Amey), with copies going to each company. These letters are attached as Exhibits "T," "U," and "V."
35. On February 22, 2006, Equifax sent a report, confirmation number 6033050923, which lists the Capital One account with a balance of \$2,433.00 and the Wachovia account with a balance of \$12,696.00. This is attached as Exhibit "W."
36. On February 25, 2006, Experian wrote and said its investigation was complete, report number 0389004145, and updated the Capital One balance to \$2,433.00 with the same monthly balances as listed in the December 28, 2005, report number 2264940105. This is attached as Exhibit "X."
37. On March 6, 2006, Experian issued a report numbered 0794388444 with virtually the same information as the previous report. This is attached as Exhibit "Y."
38. On March 10, 2006, Capital One (through Joel D. Amey) wrote to Hicks to inform him that the account has been "thoroughly researched" and that the balance as of May 28, 2004 was \$340.22. It also stated that the account was written off on January 17, 2006, and that the current balance was \$2,462.46. Finally the letter invited Hicks to contact Capital One (or a "DNW") to make payment arrangements. This letter is attached as Exhibit "Z."
39. On March 11, 2006, Experian sent the results of its investigation, report number 4149837052, updating the balance of the Capital One account and noting that the March 2006 balance was now \$2,463.00. The monthly balances remained unchanged from earlier reports. This report is attached as Exhibit "AA."
40. On April 10, 2006, Equifax issued a report, confirmation number 6100052398, which listed the Capital One account with a balance of \$2,476.00. The Wachovia account was not listed on the report. This report is attached as Exhibit "BB."

41. On May 11, 2006, Capital One (through Joel D. Amey) wrote Hicks in response to “your recent inquiry.”¹⁰ The letter went on to say “We apologize for any confusion or inconvenience caused by this matter.” The letter then continues as follows: “Payments received in our payment – processing center are processed by automated methods. This payment of \$1,258.16 was applied to your account on May 28, 2004; I have enclosed a copy of your billing statement for your review.” This letter is attached as Exhibit “CC.”
42. On May 25, 2006, Equifax issued another credit report, confirmation number 6145042058, which showed essentially the same thing as the previous reports, and the Capital One balance was listed as \$2,476.00. This is attached as Exhibit “DD.”
43. All of the Defendants failed to properly investigate and/or reinvestigate the Capital One and Wachovia accounts or, in the alternative, conducted no investigation of these accounts.
44. Capital One and Wachovia received notification from the consumer reporting agencies¹¹ of the disputes submitted by Hicks.
45. Capital One and Wachovia did not receive¹² notification from the consumer reporting agencies of the disputes submitted by Hicks.
46. Capital One and Wachovia did not receive from any consumer reporting agency the supporting documents submitted by Hicks in his disputes.
47. Capital One and Wachovia did receive from the consumer reporting agency the supporting documents submitted by Hicks in his disputes.
48. Equifax and Experian merely “parroted” what they were told by Capital One and/or Wachovia and failed to conduct any investigation outside of merely parroting the information from the furnishers.

¹⁰ Hicks had not made any recent inquiry except to the extent noted in the complaint.

¹¹ This term “consumer reporting agencies” includes Experian, Equifax, and TransUnion.

¹² Hicks is aware this is contradictory to the last paragraph but this is pled pursuant to Rule 8, particularly in light of this knowledge only being held by the Defendants and TransUnion, a non-party.

49. Equifax and Experian failed to follow reasonable procedures to assure maximum possible accuracy of Plaintiff's credit report, codified at 15 U.S.C. § 1681e(b), at all times until Equifax deleted, if it has been deleted¹³, the Wachovia account by the time of the April 10, 2006, report.
50. Hicks has applied for credit and been turned down by mortgage brokers or companies before and after his disputes chronicled above. Part of the reason for denial has been the inaccurate portions of his credit reports.
51. The conduct of the Defendants has proximately caused Hicks past and future monetary loss, past and future damage to his credit and credit worthiness, past and future mental distress and emotional anguish, past and future health problems, and other damages that will be presented to the trier of fact.
52. It is a practice of all of the Defendants to maliciously, willfully, recklessly, wantonly and/or negligently ignore and refuse to follow the requirements of the FCRA and state law.
53. All actions taken by employees, agents, servants, or representatives of any type for the Defendants were taken in the line and scope of such individual's (or entities') employment, agency or representation.
54. All actions taken by the Defendants were done with malice, were done willfully, and were done with either the desire to harm Hicks and/or with the knowledge that their actions would very likely harm Hicks and/or that their actions were taken in violation of the FCRA.
55. All Defendants have engaged in a pattern and practice of wrongful and unlawful behavior with respect to accounts and consumer reports and as such all Defendants are subject to

¹³ Plaintiff does not know the reason why Equifax finally deleted this account or if this account has merely been "cloaked" or "masked" or may otherwise still be reported to other users of information concerning Plaintiff.

punitive damages and statutory damages and all other appropriate measures to punish and deter similar future conduct by these Defendants and similar companies.

FIRST CLAIM FOR RELIEF

Violating the Fair Credit Reporting Act

56. All paragraphs of this Complaint are expressly adopted and incorporated herein as if fully set forth herein.
57. Hicks is a “consumer,” as codified at 15 U.S.C. § 1681a(c).
58. Equifax, Experian, and TransUnion are each a “consumer reporting agency,” as codified at 15 U.S.C. § 1681a(e).
59. Capital One and Wachovia are entities who, regularly and in the course of business, furnish information to one or more consumer reporting agencies about their transactions or experiences with any consumer and Capital One and Wachovia constitute “furnishers,” as codified at 15 U.S.C. § 1681s-2.
60. Hicks notified Equifax, Experian, and TransUnion directly of a dispute on the Capital One and Wachovia accounts’ completeness and/or accuracy, as reported.
61. Equifax and Experian either failed to delete information found to be inaccurate or reinserted the information without following the dictates of the FCRA.
62. Neither Capital One, Wachovia, Equifax, Experian, nor Trans Union ever notified Hicks that his disputes were frivolous or irrelevant, or that he had failed to provide sufficient information to investigate the disputed information.
63. Hicks alleges that at all times Equifax and Experian failed to maintain and failed to follow reasonable procedures to assure maximum possible accuracy of his credit report, violating 15 U.S.C. § 1681e(b).
64. Hicks alleges that all Defendants failed in all respects to conduct a proper and lawful reinvestigation from start to finish.
65. All actions taken by the Defendants were done with malice, were done willfully, and were done with either the desire to harm Hicks and/or with the knowledge that their

actions would very likely harm Hicks and/or that their actions were taken in violation of the FCRA.

66. All of the violations of the FCRA proximately caused the injuries and damages set forth in this Complaint.

SECOND CLAIM FOR RELIEF

State Law Claims

67. All paragraphs of this Complaint are expressly adopted and incorporated herein as if fully set forth herein.
68. Defendants published false information about Hicks by reporting the Capital One account with a false balance and the Wachovia account at all when it did not belong to Hicks.
69. Equifax published the Account trade lines to others who read the false information regarding the Account and attributed it to Hicks, which injured his credit reputation and caused the harm described in this Complaint.
70. Hicks alleges that the publication was done maliciously, without privilege, and with a willful intent to injure Hicks.
71. The Defendants acted with negligence, malice, wantonness, recklessness, and/or intentional conduct in their dealings with and about Hicks as set forth in this complaint. This includes the initial reporting of the Capital One and Wachovia accounts; the handling of the investigations on the accounts; the opening and handling of the Wachovia account; the handling of the Capital One account; and all other aspects as set forth in this Complaint.
72. Such negligence, malice, wantonness, recklessness, and/or intentional conduct proximately caused the damages set forth in this complaint.
73. The Defendants invaded the privacy of Hicks as set forth in Alabama law.
74. Defendant Capital One has breached its contract with Hicks by refusing and failing to properly apply and maintain accurate account balances and the accurate handling of payments.

RELIEF SOUGHT

75. An award of statutory, actual, compensatory and punitive damages, and costs of the action including expenses, together with reasonable attorney's fees.
76. Hicks also requests all further relief to which he is entitled, whether of a legal or equitable nature.

Respectfully Submitted,

John G. Watts
Attorney for Plaintiff

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DEMAND FOR JURY TRIAL

Please take notice that the Plaintiff demands a trial by jury in this action.

SERVE DEFENDANTS BY CERTIFIED MAIL AT:

**Experian Information Solutions, Inc.
c/o The Corporation Company
2000 Interstate Park Drive
Suite 204
Montgomery, Alabama 36109**

**Equifax Information Services, LLC
c/o CSC Lawyers Incorporating Services, Inc.
150 South Perry Street
Montgomery, Alabama 36104**

**Wachovia Bank, National Association
c/o CSC Lawyers Incorporating Services, Inc.
150 South Perry Street
Montgomery, Alabama 36104**

**Capital One Bank
6356 Corley Road
Norcross, Georgia 30091**