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11
12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14 Heather Farrell,

15 Plaintiff,

16 vs.

17 Experian Information Solutions, Inc.,
and Apple Inc. dba Apple Card,

18 Defendants.
19

CASE NO.: 2:21-cv-01761-JCM-DJA

20 **STIPULATION AND PROPOSED ORDER**
21 **DISMISSING APPLE INC. & ALLOWING PLAINTIFF TO FILE FIRST AMENDED**
COMPLAINT

22 Plaintiff Heather Farrell and defendants Experian Information Solutions, Inc.
23 and Apple Inc. stipulate and agree as follows:

24 First, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), the parties stipulate that
25 Apple Inc. be dismissed from this action with prejudice and without costs or
26 attorneys' fees to any party.

27 Second, pursuant to Fed. R. Civ. P. 15(a)(2), and in the interest of judicial
28 economy, Farrell may file a First Amended Complaint ("FAC") naming Goldman

1 Sachs Bank USA in place of Apple Inc. A copy of the proposed FAC is attached as
 2 **Exhibit A.** The parties further stipulate that should the Court grant the parties'
 3 stipulation, Farrell shall file her FAC within 10 days, unless the Court orders
 4 otherwise.

5 Finally, except for Apple Inc.'s dismissal from this action, the parties agree that
 6 nothing in this stipulation shall be deemed to be a waiver of any claim or defense by
 7 any party.

8 **Dated:** December 10, 2021.

<p>9 FREEDOM LAW FIRM</p> <p>10</p> <p>11 By: <u>/s/ Gerardo Avalos</u> George Haines, Esq. Nevada Bar No. 9411 Gerardo Avalos, Esq. Nevada Bar No. 15171 8985 S. Eastern Ave, Suite 350 Las Vegas, Nevada 89123 (702) 880-5554 (702) 385-5518 (fax) Ghaines@freedomlegalteam.com Gavalos@freedomlegalteam.com Counsel for Plaintiff Heather Farrell</p>	<p>NAYLOR & BRASTER</p> <p>By: <u>/s/ Jennifer Braster</u> Jennifer Braster, Esq. Nevada Bar No. 9982 Benjamin B. Gordon Nevada Bar No. 15552 1050 Indigo Drive, Suite 200 Las Vegas, Nevada 89145 (702) 420-7000 (702) 420-7001 (fax) jbraster@nblawnv.com bgordon@nblawnv.com Counsel for Defendant Experian Information Solutions, Inc.</p>
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ORDER

Based on the above stipulation between the parties, and there being good cause, IT IS HEREBY ORDERED that:

1. Apple Inc. is dismissed from this action with prejudice and without costs or attorneys' fees to any party.
2. Plaintiff Heather Farrell may file the proposed First Amended Complaint attached to the parties' stipulation as **Exhibit A** within 10 days of this order.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

DATED: December 16, 2021

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EXHIBIT A

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17 **UNITED STATES DISTRICT COURT**
 18 **DISTRICT OF NEVADA**

19 Heather Farrell,
 20
 21 Plaintiff,
 22 v.
 23 Experian Information Solutions,
 24 Inc.; and Goldman Sachs Bank USA
 25
 26 Defendants.
 27

Case No.: 2:21-cv-01761-JCM-DJA

**First Amended Complaint for
 damages under the FCRA, 15 U.S.C.
 § 1681**

Introduction

1. The United States Congress has found the banking system is dependent up-on fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence, which is essential to the continued functioning of the banking system. Congress enacted the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. (“FCRA”), to ensure fair and accurate re-ported, promote efficiency in the banking system, and protect consumer privacy. The FCRA seeks to ensure consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer’s right to privacy because consumer reporting agencies have assumed such a vital role in assembling and evaluating consumer credit and other information on consumers. The FCRA also imposes duties on the sources that provide credit information to credit reporting agencies, called “furnishers.”
2. The FCRA protects consumers through a tightly wound set of procedural protections from the material risk of harms that otherwise flow from inaccurate reporting. Thus, through the FCRA, Congress struck a balance between the credit industry’s desire to base credit decisions on accurate information, and consumers’ substantive right to protection from damage to reputation, shame, mortification, and the emotional distress that naturally follows from inaccurate reporting of a consumer’s fidelity to his or her financial obligations.
3. Heather Farrell (“Plaintiff”), by counsel, brings this action to challenge the actions of Experian Information Solutions, Inc. (Experian); and Goldman Sachs Bank USA (“Goldman Sachs”) (jointly as “Defendants”), with regard to erroneous reports of derogatory credit information to national reporting agencies and Defendants’ failure to properly investigate Plaintiff’s disputes.

- 1 4. Plaintiff makes these allegations on information and belief, with the exception of
2 those allegations that pertain to Plaintiff, which Plaintiff alleges on personal
3 knowledge.
- 4 5. While many violations are described below with specificity, this Complaint
5 alleges violations of the statutes cited in their entirety.
- 6 6. Unless otherwise stated, all the conduct engaged in by Defendants took place in
7 Nevada.
- 8 7. Any violations by Defendants were knowing, willful, and intentional, and
9 Defendants did not maintain procedures reasonably adapted to avoid any such
10 violations.
- 11 8. Defendants failed to properly investigate Plaintiff's disputes, damaging Plaintiff's
12 creditworthiness.

13 **Jurisdiction and Venue**

- 14 9. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331 (federal question
15 jurisdiction); 15 U.S.C. § 1681.
- 16 10. This action arises out of Defendants' violations of the FCRA.
- 17 11. Venue is proper in the United States District Court for the District of Nevada
18 pursuant to 28 U.S.C. § 1391(b) because Plaintiff is a resident of Clark County,
19 Nevada and because Defendants are subject to personal jurisdiction in Clark
20 County, Nevada as they conduct business here. Venue is also proper because the
21 conduct giving rise to this action occurred in Nevada. 28 U.S.C. § 1391(b)(2).

22 **Parties**

- 23 12. Plaintiff is a natural person living in Clark County, Nevada. In addition,
24 Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1681a(c).
- 25 13. Defendants are each a corporation doing business in the State of Nevada.
26
27

1 14. Goldman Sachs is a furnisher of information as contemplated by 15 U.S.C. §
2 1681s-2(b) that regularly and in the ordinary course of business furnishes
3 information to a consumer credit reporting agency.

4 15. Experian regularly assembles and/or evaluates consumer credit information for
5 the purpose of furnishing consumer reports to third parties and uses interstate
6 commerce to prepare and/or furnish the reports. This entity is a “consumer
7 reporting agency” as that term is defined by 15 U.S.C. §1681a(f).

8 16. Unless otherwise indicated, the use of Defendants’ names in this Complaint
9 includes all agents, employees, officers, members, directors, heirs, successors,
10 assigns, principals, trustees, sureties, subrogees, representatives, and insurers of
11 the named Defendants.

12 **GENERAL ALLEGATIONS**

13 **Re: Bankruptcy Case No. 20-14065**

14 17. On or about Aug 20, 2020, Plaintiff filed for bankruptcy in the United States
15 bankruptcy Court for the District of Nevada pursuant to 11 U.S.C. §1301 et seq.
16 (the “bankruptcy”).

17 18. The obligations to each creditor-furnisher herein (as applicable) were scheduled
18 in the bankruptcy and each respective creditor, or its predecessor in interest,
19 received notice of the bankruptcy.

20 19. None of the creditor-furnishers named herein filed any proceedings to declare
21 their alleged debts “non-dischargeable” pursuant to 11 U.S.C. § 523 et seq.

22 20. No creditor-furnisher named herein obtained relief from the “automatic stay”
23 codified at 11 U.S.C. §362 et seq. while Plaintiff’s bankruptcy was pending to
24 pursue Plaintiff for any personal liability.

25 21. Further, while the automatic stay was in effect during the bankruptcy, it was
26 illegal and inaccurate for any creditor-furnisher named herein to report any
27 post-bankruptcy derogatory collection information, pursuant to the Orders

1 entered by the bankruptcy Court.

2 22. The accounts named herein (as applicable) were discharged through the
3 bankruptcy on Nov 23, 2020.

4 23. However, Defendants either reported or caused to be reported inaccurate
5 information as discussed below after Plaintiff's debts were discharged.

6 24. Additionally, Defendants' inaccurate reporting did not comply with the
7 Consumer Data Industry Association's Metro 2 reporting standards, which
8 provides guidance for credit reporting and FCRA compliance.

9 25. The Consumer Data Industry Association ("CDIA") publishes the Metro 2
10 ("Metro 2") reporting standards to assist furnishers with their compliance
11 requirements under the FCRA.

12 26. Courts rely on such guidance to determine furnisher liability. *See, e.g., In re*
13 *Helmes*, 336 B.R. 105, 107 (Bankr. E.D. Va. 2005) (finding that "industry
14 standards require that a debt discharged in bankruptcy be reported to a credit
15 reporting agency with the notation 'Discharged in bankruptcy' and with a zero
16 balance due").

17 27. On information and belief, Defendants adopted and at all times relevant
18 implemented the Metro 2 format.

19 28. On information and belief, each furnisher named herein adopted the Metro 2
20 reporting standards and at all times relevant implemented the Metro 2 format as
21 an integral aspect of their respective duties under the FCRA to have in place
22 adequate and reasonable policies and procedures to handle investigations of
23 disputed information.

24 29. Each furnisher named herein failed to conform to the Metro 2 Format when
25 reporting on Plaintiff's accounts after Plaintiff filed bankruptcy as further set
26 forth below.

27 30. In turn, each of the credit reporting agencies named herein, reported and re-

1 reported the inaccurate information, thus violating their duty to follow
2 reasonable procedures to assure maximum possible accuracy under 15 U.S.C. §
3 1681e(b) when preparing a consumer report.

4 31. To this end, the adverse reporting on Plaintiff’s consumer report departed from
5 the credit industry’s own reporting standards and was not only inaccurate, but
6 also materially misleading under the CDIA’s standards as well.

7 32. A “materially misleading” statement is concerned with omissions to credit
8 entries, that in context create misperceptions about otherwise may be factually
9 accurate data. *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1163 (9th
10 Cir. 2009).

11 **Experian and Goldman Sachs Misreported Consumer Information**
12 **and Failed to Investigate Plaintiff’s Dispute**
13 **Re: Goldman Sachs Account No. ***0001**

14 33. In Plaintiff’s consumer report from Experian dated Jan 8, 2021, Experian and
15 Goldman Sachs inaccurately reported that Plaintiff owed a past due balance on
16 the account even though the debt was discharged in bankruptcy. This was
17 inaccurate, misleading, and derogatory because Plaintiff filed for bankruptcy on
18 Aug 20, 2020 and Plaintiff received a discharge on Nov 23, 2020.

19 34. On Jan 22, 2021, Plaintiff disputed the inaccurate reporting pursuant to 15
20 U.S.C. § 1681i, by notifying Experian, in writing, of the inaccurate, misleading,
21 and derogatory information.

22 35. Specifically, Plaintiff sent a letter, certified, return receipt, to Experian,
23 requesting the above inaccurate information be updated, modified, or corrected.

24 36. Experian was required to conduct a reinvestigation into the disputed
25 information on Plaintiff’s consumer report pursuant to 15 U.S.C. §1681i.

26 37. Upon information and belief, Experian timely notified Goldman Sachs
27 regarding Plaintiff’s dispute, as required under 15 U.S.C. § 1681i(a)(2).

- 1 38. Upon information and belief, Experian provided Goldman Sachs with a notice
2 regarding Plaintiff's dispute under 15 U.S.C. § 1681i(a)(5)(A).
- 3 39. Upon information and belief, Experian provided all relevant information to
4 Goldman Sachs regarding Plaintiff's dispute, as required under 15 U.S.C. §
5 1681i(a)(2).
- 6 40. Plaintiff never received any notification from Experian that Experian and
7 Goldman Sachs investigated and reinvestigated Plaintiff's dispute, as required
8 under 15 U.S.C. § 1681i(a)(6).
- 9 41. A reasonable investigation by Experian and Goldman Sachs would have
10 determined that they were reporting the above disputed information
11 inaccurately.
- 12 42. Experian and Goldman Sachs failed to review all relevant information provided
13 by Plaintiff in Plaintiff's dispute, as required by and in violation of 15 U.S.C. §
14 1681i and 15 U.S.C. § 1681s-2(b), respectively.
- 15 43. Upon information and belief, Goldman Sachs continued to report the inaccurate
16 information.
- 17 44. In turn, Experian re-reported the inaccurate information, thus violating its duty
18 to follow reasonable procedures to assure maximum possible accuracy under 15
19 U.S.C. § 1681e(b) when preparing a consumer report.
- 20 45. Experian and Goldman Sachs, upon receipt of Plaintiff's dispute, failed to
21 conduct an investigation or reinvestigation with respect to the disputed
22 information as required by 15 U.S.C. § 1681i and 15 U.S.C. § 1681s-2(b),
23 respectively.
- 24 46. Due to Experian's and Goldman Sachs' failure to reasonably investigate, they
25 further failed to correct and update Plaintiff's information as required by 15
26 U.S.C. § 1681i and 15 U.S.C. § 1681s-2(b), thereby causing continued
27 reporting of inaccurate information in violation of 15 U.S.C. § 1681i and 15

1 U.S.C. § 1681s-2(b), respectively.

2 47. Experian's and Goldman Sachs' continued inaccurate, misleading, and
3 derogatory reporting was knowing and willful, in light of their knowledge of the
4 actual error. Plaintiff is, accordingly, eligible for statutory damages.

5 48. Also as a result of Experian's and Goldman Sachs' continued inaccurate,
6 misleading, and derogatory reporting, Plaintiff has suffered actual damages,
7 including without limitation, fear of credit denials, out-of-pocket expenses in
8 challenging the inaccurate reporting, damage to Plaintiff's creditworthiness, and
9 emotional distress.

10 49. By inaccurately reporting consumer information after notice and confirmation
11 of their errors, Experian and Goldman Sachs failed to take the appropriate
12 measures as required under 15 U.S.C. § 1681i and 15 U.S.C. § 1681s-2(b),
13 respectively.

14 **Plaintiff's damages**

15 50. In addition to Plaintiff's creditworthiness being negatively impacted, Plaintiff
16 suffered emotional distress and mental anguish as a result of Defendants'
17 actions described herein. In addition, Plaintiff incurred out-of-pocket costs and
18 time in attempts to dispute Defendants' actions. Plaintiff further suffered
19 humiliation and embarrassment.

20 **VIOLATION OF THE FAIR CREDIT REPORTING ACT**

21 **15 U.S.C. § 1681**

22 51. Plaintiff incorporates by reference all of the above paragraphs of this Complaint
23 as though fully stated herein.

24 52. The foregoing acts and omissions constitute numerous and multiple willful,
25 reckless, or negligent violations of the FCRA, including but not limited to each
26 and every one of the above-cited provisions of the FCRA, 15 U.S.C § 1681, et
27 seq.

1 53. As a result of each and every willful violation of the FCRA, Plaintiff is entitled
2 to actual damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(1);
3 statutory damages pursuant to 15 U.S.C. § 1681n(a)(1); punitive damages as the
4 Court may allow pursuant to 15 U.S.C. § 1681n(a)(2); and reasonable attorney’s
5 fees and costs pursuant to 15 U.S.C. § 1681n(a)(3) from Defendants.

6 54. As a result of each and every negligent noncompliance of the FCRA, Plaintiff is
7 entitled to actual damages as the Court may allow pursuant to 15 U.S.C. §
8 1681o(a)(1); and reasonable attorney’s fees and costs pursuant to 15 U.S.C. §
9 1681o(a)(2) from Defendants.

10 **Prayer for relief**

11 55. Plaintiff prays that judgment be entered against Defendants, and Plaintiff be
12 awarded damages from Defendants, as follows:

- 13 ● An award of actual damages pursuant to 15 U.S.C. § 1681n(a)(1);
- 14 ● An award of statutory damages pursuant to 15 U.S.C. § 1681n(a)(1);
- 15 ● An award of punitive damages as the Court may allow pursuant to 15 U.S.C.
16 § 1681n(a)(2);
- 17 ● An award of costs of litigation and reasonable attorney’s fees, pursuant to 15
18 U.S.C. § 1681n(a)(3), and 15 U.S.C. § 1681(o)(a)(1); and
- 19 ● Any other relief that this Court deems just and proper.

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Jury Demand

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56. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: December 10, 2021.

Respectfully submitted,

KIND LAW

/s/ Michael Kind

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FREEDOM LAW FIRM

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