

Rodrick J. Coffey, Esq.
STINSON MORRISON HECKER LLP
1850 North Central Avenue, Suite 2100
Phoenix, Arizona 85004
Tel: (602) 212-8572
Fax: (602) 240-6925
E-Mail: rcoffey@stinsonmoheck.com

G. John Cento, Esq.
KILPATRICK STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4530
Tel: (404) 815-6447
Fax: (404) 541-4632
E-Mail: jcento@kilpatrickstockton.com

Attorneys for defendant, EQUIFAX
INFORMATION SERVICES LLC

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

KYLE AZUL CARDENAS,)	
)	Case No. CV051300 PHX SRB
)	
Plaintiff,)	
)	EQUIFAX INFORMATION
v.)	SERVICES LLC'S ANSWER
)	AND AFFIRMATIVE DEFENSES
EQUIFAX CREDIT)	TO PLAINTIFF'S FIRST AMENDED
INFORMATION SERVICES, INC.,)	COMPLAINT
)	
Defendant.)	

Defendant Equifax Information Services LLC (successor in interest to Equifax Credit Information Services, Inc.) ("**Equifax**"), through its undersigned counsel, and for its Answer and Affirmative Defenses to Plaintiff's First Amended Complaint (the "**Amended**

1 **Complaint**”), states as follows:

2 **ANSWER**

3 **INTRODUCTION**

4
5 1. Defendant continues to report erroneous information (the merging of
6 derogatory information from Plaintiff’s sister’s credit history) on Plaintiff’s credit report.
7 Despite numerous dispute letters, telephone calls and other efforts by Kyle, Equifax refuses to
8 correct the error. Plaintiff brings this action to remedy Defendant’s violations of the Fair
9 Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (hereinafter referred to as “FCRA”) and the
10 Arizona Fair Credit Reporting Act (“AzFCRA”).
11

12 **ANSWER:** Equifax admits that Plaintiff purports to bring this action under the FCRA
13 and the AzFCRA.¹ Equifax denies the remaining allegations contained in Paragraph 1 of
14 Plaintiff’s Amended Complaint.
15

16 **JURISDICTION**

17
18 2. This Court has jurisdiction over this matter pursuant to the FCRA, 15 U.S.C.
19 § 1681(p).
20

21 **ANSWER:** Equifax admits the allegations contained in Paragraph 2 of Plaintiff’s
22 Amended Complaint.
23

24 **PARTIES**

25 3. Plaintiff Kyle Azul Cardenas (“Kyle”) is a natural person and a permanent
26
27
28

1 and, therefore, denies the same.

2 12. Nevertheless, Equifax (but not TransUnion or Experian) merged Kyle's
3 derogatory credit information into Kyle's credit history.

4 **ANSWER:** Equifax denies that it merged Kyle's credit information into Kyle's
5 credit history. Equifax is without knowledge or information sufficient to form a belief as to
6 the truth of the remaining allegations contained in Paragraph 12 of Plaintiff's Amended
7 Complaint and, therefore, denies the same.
8

9
10 13. Equifax also reported Kyle's names (maiden and married) as AKAs used by
11 Kyle.

12 **ANSWER:** Equifax denies the allegations contained in Paragraph 13 of Plaintiff's
13 Amended Complaint.
14

15 14. On April 24, 2004, Kyle applied for a loan at Desert Schools Federal Credit
16 Union ("DSFCU").
17

18 **ANSWER:** Equifax is without knowledge or information sufficient to form a belief
19 as to the truth of the allegations contained in Paragraph 14 of Plaintiff's Amended Complaint
20 and therefore, denies the same.
21

22 15. He was denied.

23 **ANSWER:** Equifax is without knowledge or information sufficient to form a belief
24 as to the truth of the allegations contained in Paragraph 15 of Plaintiff's Amended Complaint
25 and therefore, denies the same.
26
27
28

1 as to the truth of the allegations contained in Paragraph 20 of Plaintiff's Amended Complaint
2 and, therefore, denies the same.

3 21. With the exception of the address at 1462 Sierra Madre and a 2004-04-24
4 inquiry by DSFCU, none of the accounts reported in the credit report belonged to Kyle.
5

6 **ANSWER:** Equifax is without knowledge or information sufficient to form a belief
7 as to the truth of the allegations contained in Paragraph 21 of Plaintiff's Amended Complaint
8 and, therefore, denies the same.
9

10 22. Instead, they belonged to Kylene.

11 **ANSWER:** Equifax is without knowledge or information sufficient to form a belief
12 as to the truth of the allegations contained in Paragraph 22 of Plaintiff's Amended Complaint
13 and therefore, denies the same.
14

15 23. Kyle then called Equifax twice in an attempt to correct his credit report.
16

17 **ANSWER:** Equifax is without knowledge or information sufficient to form a belief
18 as to the truth of the allegations contained in Paragraph 23 of Plaintiff's Amended Complaint
19 and therefore, denies the same.
20

21 24. Each time, Kyle gave Equifax's telephone representative his name, social
22 security number and address.

23 **ANSWER:** Equifax is without knowledge or information sufficient to form a belief
24 as to the truth of the allegations contained in Paragraph 24 of Plaintiff's Complaint and
25 therefore, denies the same.
26
27
28

1 and therefore, denies the same.

2 38. They explained that they are brother and sister with different names, birth dates,
3 and social security numbers.

4 **ANSWER:** Equifax is without knowledge or information sufficient to form a belief
5 as to the truth of the allegations contained in Paragraph 38 of Plaintiff's Amended Complaint
6 and therefore, denies the same.
7

8 39. They also enclosed a copy of their respective driver's licenses.

9 **ANSWER:** Equifax is without knowledge or information sufficient to form a belief
10 as to the truth of the allegations contained in Paragraph 39 of Plaintiff's Amended Complaint
11 and therefore, denies the same.
12

13 40. Equifax did not respond to the letter.

14 **ANSWER:** Equifax is without knowledge or information sufficient to form a belief
15 as to the truth of the allegations contained in Paragraph 40 of Plaintiff's Amended Complaint
16 and therefore, denies the same.
17

18 41. On August 12, 2004, Kyle again applied for a loan with DSFCU.

19 **ANSWER:** Equifax is without knowledge or information sufficient to form a belief
20 as to the truth of the allegations contained in Paragraph 41 of Plaintiff's Amended Complaint
21 and therefore, denies the same.
22

23 42. DSFCU again denied the loan based on derogatory information from Equifax.

24 **ANSWER:** Equifax is without knowledge or information sufficient to form a belief
25

1 as to the truth of the allegations contained in Paragraph 42 of Plaintiff's Amended Complaint
2 and therefore, denies the same.

3 43. Again, Equifax provided Kyle's credit history in response to DSFCU's
4 inquiry on Kyle's credit history.
5

6 **ANSWER:** Equifax is without knowledge or information sufficient to form a belief
7 as to the truth of the allegations contained in Paragraph 43 of Plaintiff's Amended Complaint
8 and therefore, denies the same.
9

10 44. On August 19, 2004, Kyle sent a detailed letter of dispute to Equifax with
11 exhibits (including a copy of Kyle's driver's license and United States Military ID card)
12 showing the mistake by Equifax.
13

14 **ANSWER:** Equifax is without knowledge or information sufficient to form a belief
15 as to the truth of the allegations contained in Paragraph 44 of Plaintiff's Amended Complaint
16 and therefore, denies the same.
17

18 45. The letter was sent via certified mail, return receipt requested.

19 **ANSWER:** Equifax is without knowledge or information sufficient to form a belief
20 as to the truth of the allegations contained in Paragraph 45 of Plaintiff's Amended Complaint
21 and therefore, denies the same.
22

23 46. The return receipt shows "Sheldon Brown" as the recipient.

24 **ANSWER:** Equifax is without knowledge or information sufficient to form a belief
25 as to the truth of the allegations contained in Paragraph 46 of Plaintiff's Amended Complaint
26
27
28

1 and therefore, denies the same.

2 47. “Sheldon Brown” was an employee of Innosource, Equifax’s third party mail
3 vendor.

4 **ANSWER:** Equifax admits that Innosource is Equifax’s third party mail vendor.
5
6 Equifax is without knowledge or information sufficient to form a belief as to the truth of the
7 remaining allegations contained in Paragraph 47 of Plaintiff’s Amended Complaint and
8 therefore, denies the same.

9
10 48. “Sheldon Brown” was authorized to receive mail on Equifax’s behalf.

11 **ANSWER:** Equifax is without knowledge or information sufficient to form a belief
12 as to the truth of the allegations contained in Paragraph 48 of Plaintiff’s Amended Complaint
13 and therefore, denies the same.

14
15 49. Equifax again did not respond to the letter.

16 **ANSWER:** Equifax is without knowledge or information sufficient to form a belief
17 as to the truth of the allegations contained in Paragraph 49 of Plaintiff’s Amended Complaint
18 and therefore, denies the same.

19
20 50. On November 9, 2004, Kyle again sent a dispute letter to Equifax and included
21 a copy of the June 2, 2004 dispute letter.

22 **ANSWER:** Equifax is without knowledge or information sufficient to form a belief
23 as to the truth of the allegations contained in Paragraph 50 of Plaintiff’s Amended Complaint
24 and therefore, denies the same.
25
26
27
28

1 maintain reasonable procedures with which to filter and verify disputed information in
2 Plaintiff's credit file; and by relying upon verification from a source it has reason to know is
3 unreliable.

4 **ANSWER:** Equifax denies the allegations contained in Paragraph 55 of Plaintiff's
5 Amended Complaint.

6 56. Equifax violated 15 U.S.C. § 1681e(b) by failing to follow reasonable
7 procedures to assure maximum possible accuracy of the information concerning about whom
8 the report relates.
9

10 **ANSWER:** Equifax denies the allegations contained in Paragraph 56 of Plaintiff's
11 Amended Complaint.
12

13 57. As a result of this conduct, action and inaction of Equifax, Plaintiff has suffered
14 actual damages in an amount to be determined by this Court.
15

16 **ANSWER:** Equifax denies the allegations contained in Paragraph 57 of Plaintiff's
17 Amended Complaint.
18

19 58. Equifax's conduct, action and inaction was willful, rendering it liable for
20 punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n.
21

22 **ANSWER:** Equifax denies the allegations contained in Paragraph 58 of Plaintiff's
23 Amended Complaint.
24

25 59. In the alternative, it was negligent entitling the Plaintiff to recover under 15
26 § 1681o.
27

1 8. Equifax has acted in good faith and without malice or intent to injure Plaintiff.

2 9. Plaintiff's claim for punitive damages is barred by the provisions of 15 U.S.C.
3 §1681n.

4 10. Plaintiff's Amended Complaint seeks the imposition of punitive damages.
5 Equifax adopts by reference the defenses, criteria, limitations, standards and constitutional
6 protections mandated or provided by the United States Supreme Court in the following cases:
7 BMW v. Gore, 517 U.S. 559 (1996); Cooper Indus., Inc. v. Leatherman Tool Group, Inc.,
8 532 U.S. 923 (2001) and State Farm v. Campbell, 538 U.S. 408 (2003).

9 11. Any allegation of the Amended Complaint not expressly admitted is denied.

10 12. Equifax reserves the right to plead additional defenses that it learns of through
11 the course of discovery.

12 WHEREFORE, having fully answered Plaintiff's Amended Complaint, Defendant
13 Equifax prays for judgment as follows: (1) Plaintiff's Amended Complaint be dismissed in its
14 entirety and with prejudice, with costs taxed against Plaintiff; (2) that Equifax be dismissed as
15 a party to this action; (3) that Equifax recover from Plaintiff its expenses of litigation,
16 including attorneys' fees; and (4) that Equifax recover such other and additional relief as the
17 Court deems proper.
18
19
20
21
22
23
24
25
26
27
28
29

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Respectfully submitted,

s/ Rodrick J. Coffey
Rodrick J. Coffey, Esq.
STINSON MORRISON HECKER LLP
1850 North Central Avenue, Suite 2100
Phoenix, Arizona 85004
Tel: (602) 212-8572
Fax: (602) 240-6925
E-Mail: rcoffey@stinsonmoheck.com

G. John Cento, Esq.
KILPATRICK STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4530
Tel: (404) 815-6447
Fax: (404) 541-4632
E-Mail: jcento@kilpatrickstockton.com

Attorneys for Defendant, EQUIFAX
INFORMATION SERVICES LLC

Dated: January 23, 2006

CERTIFICATE OF SERVICE

1 This is to certify that I have this day served a true and correct copy of the foregoing
2 EQUIFAX INFORMATION SERVICES LLC'S ANSWER AND AFFIRMATIVE
3 DEFENSES TO PLAINTIFF'S FIRST AMENDED COMPLAINT by depositing same in the
4 United States mail, properly addressed with sufficient postage affixed thereto to ensure
5 delivery to:
6

7 Hyung S. Choi
8 Choi & Fabian, PLC
9 401 W. Baseline Road
10 Suite 210
11 Tempe, Arizona 85283

12 Dated: January 23, 2006.

13 s/ Kathleen Kaupke
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29