



To Be Actionable, Credit Reports Must Be Flawed

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In *Farmer v. The Phillips Agency*, the U.S. District Court for the Northern District of Georgia denied a plaintiff's motion to certify a class action, under the Fair Credit Reporting Act, consisting of all individuals who had been the subject of an adverse criminal-background report, whether accurate or inaccurate, generated by defendant The Phillips Agency. In doing so, the Northern District of Georgia became the first court to explicitly state that a plaintiff bringing claims under the FCRA must establish that the underlying consumer report was not "complete and up to date."

The defendant, The Phillips Agency, is a small, family-owned consumer reporting agency. It has an impressive record for accuracy — over a five-year period, The Phillips Agency generated nearly 15,000 consumer reports that contained some adverse information, ranging from serious felony convictions to minor traffic and other summary infractions. During the same period, the agency received just four consumer disputes, and each of these was promptly resolved.

In December 2010, plaintiff Cynthia Gale Hamilton Farmer's employer engaged the agency to conduct a criminal background search on her for employment purposes. The search disclosed three "possible" matches, including one individual with the same first and maiden name as the plaintiff. That individual had been convicted of two felonies and one misdemeanor. The Phillips Agency followed its established quality-control procedures to ensure that the information was complete and up to date, and released the "possible match" report to Farmer's employer. The employer notified Farmer of the adverse information and Farmer ultimately resolved the matter with her employer and suffered no loss of pay.

Despite this resolution, Farmer filed a putative class action against The Phillips Agency under the FCRA. Farmer sought \$1,000 for every individual who in the past five years had been the subject of a consumer report that contained any adverse criminal or public-record information — which would have been some number less than the 15,000 adverse reports generated during that time. Farmer sought to certify an expansive class that included individuals who had been the subject of adverse reports involving matters including bankruptcies, civil judgments or tax liens, as well as criminal reports. She also sought to include individuals who had been the subject of accurate consumer reports and made no attempt to limit her class to people who had been the subject of inaccurate consumer reports.

In a decision of first impression, the court rejected the plaintiff's argument, holding that the FCRA section required a threshold showing of "inaccuracy." The court first looked to the statute's text

section required a threshold showing of inaccuracy. The court first looked to the statute's text. According to the court, the very fact that the statute included language establishing a standard for when a consumer report is "complete and up to date" suggested that the consumer report must be inaccurate to establish a cause of action.

The court's decision not only clarifies the essential elements of a cause of action under the FCRA section, it makes it considerably more difficult for plaintiffs to certify class actions under the provision. Whereas plaintiffs previously relied on the supposed uniformity of a consumer reporting agency's procedures alone to satisfy Rule 23, they can no longer do so. Under *Farmer*, the parties must instead conduct "a highly individualized inquiry into the content of each consumer's report in order to determine if the adverse information is complete and up to date." In nearly every instance, this will prevent plaintiffs from satisfying the typicality and predominance requirements necessary to certify a class under Rule 23.

The effects of the *Farmer* decision likely will be felt well outside the Northern District of Georgia and, in the absence of any contrary authority, restrict plaintiffs' ability to maintain class action lawsuits under Section 1681k of the FCRA.

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