



Georgia Puts Up Another Hurdle For Class Certification

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In *Farmer v. The Phillips Agency*, 285 F.R.D. 685 (N.D. Ga. 2012), 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 (FCRA) consisting of all individuals who had been the subject of an adverse criminal background report, whether accurate or inaccurate, generated by the 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 Section 1681k(a)(2) of the FCRA must establish that the underlying consumer report was not "complete and up to date." The court's decision not only clarifies the essential elements of a cause of action under Section 1681k(a)(2), but it also makes it considerably more difficult for plaintiffs to certify class actions under the provision going forward.

The *Farmer* decision not only clarifies the essential elements of a claim under Section 1681k(a)(2) of the FCRA, but it also makes it virtually impossible to establish a class action under Section 1681k going forward. Whereas plaintiffs previously relied on the supposed uniformity of a consumer reporting agency's procedures alone to satisfy Fed. R. Civ. P. 23 class certification standards, 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 almost every instance, this will prevent plaintiffs from satisfying the typicality and predominance requirements necessary to certify a class under Fed. R. Civ. P. 23.

While future plaintiffs may try to avoid the consequences of the *Farmer* decision by asserting class claims under Section 1681k(a)(1), rather than 1681k(a)(2), such artful pleading should not impact the underlying analysis. Indeed, a consumer reporting agency does not have to comply with the notice requirement in Section 1681k(a)(1) if it maintains strict procedures as set forth in Section 1681k(a)(2).

Accordingly, consumer reporting agencies should be able to successfully oppose class allegations under Section 1681k(a)(1) by arguing that they are in compliance with Section 1681k(a)(2), thus

triggering the individualized inquiry into Section 1681k(a)(2)'s accuracy requirements and rendering the allegations unsuitable for class treatment.

Given these implications, the effects of the Farmer decision will likely 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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