

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CONSUMER DATA INDUSTRY
ASSOCIATION,
Plaintiff,

v.

STATE OF TEXAS THROUGH KEN
PAXTON, IN HIS OFFICIAL CAPACITY
AS ATTORNEY GENERAL OF THE
STATE OF TEXAS
Defendant.

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No. 1:19-CV-00876-RP

**DEFENDANT'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT**

Defendant files this Answer to Plaintiff's First Amended Complaint. Dkt. 36. Pursuant to Federal Rule of Civil Procedure 8(b), Defendant denies each and every allegation contained in the Complaint except for those expressly admitted herein. The headings and paragraphs below directly correlate to the sections and numbered paragraphs of the Complaint. Those titles are reproduced in this Answer for organizational purpose only, Defendant does not admit any matter contained therein.

Defendant responds to the specifically numbered allegations of the Complaint as follows:

I. PARTIES

1. Defendant is without information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore denies them.
2. Defendant admits that it can be served by delivering service to attorney general Paxton. Otherwise, denied.

II. JURISDICTION AND VENUE

3. Defendant admits that this Court has jurisdiction pursuant to 28 U.S.C. § 1331 and otherwise denies the allegations made in this paragraph.

4. Defendant admits that venue is proper.

III. FACTUAL BACKGROUND

5. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegation contained in this paragraph and reserves the right to raise all available jurisdictional arguments and affirmative defenses to Plaintiff's claims.

6. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegation contained in this paragraph and reserves the right to raise all available jurisdictional arguments and affirmative defenses to Plaintiff's claims.

7. Defendant denies the allegation made in this paragraph.

8. Defendant denies the allegation as written in this paragraph.

9. Defendant admits that this action seeks a declaration related to 15 U.S.C. § 1681t(b)(1) as applied to the Texas Law. Defendant otherwise denies the allegations in this paragraph.

10. Defendant is without information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore denies them.

A. TEXAS SENATE BILL 1307

11. Defendant admits the allegations in this paragraph.

12. Defendant admits that Senate Bill 1037 amended the Texas Fair Credit Reporting Act ("Texas FCRA") to add Tex. Bus. & Com. Code § 20.05(a)(5), which states that except as provided

by § 20.05(b) of the Texas FCRA, a credit reporting agency may not furnish a consumer report containing information related to:

a collection account with a medical industry code, if the consumer was covered by a health benefit plan at the time of the event giving rise to the collection and the collection is for an outstanding balance, after copayments, deductibles, and coinsurance, owed to an emergency care provider or a facility-based provider for an out-of-network benefit claim.

Tex. Bus. & Com. Code § 20.05(a)(5). Otherwise, denied.

B. FCRA PROVISIONS AND FEDERAL PREEMPTION

13. Defendant admits this paragraph accurately states 15 U.S.C. § 1681.

14. Defendant admits that the FCRA imposes certain limitations on the extent to which States may regulate consumer reports and admits that a portion of 15 U.S.C. § 1681t(b) has been accurately quoted. Defendant otherwise denies the allegations made in this paragraph.

15. Defendant admits that SB 1037 amended § 20.05 of the Tex. Bus. & Com. Code as stated in this paragraph.

16. Defendant denies the allegations in this paragraph.

17. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendant admits the allegation contained in this paragraph.

18. Defendant is without information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore denies them.

19. Defendant is without information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore denies them.

20. Defendant is without information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore denies them.

C. DEFENDANT'S ENFORCEMENT ACTIONS AGAINST CDIA MEMBERS

21. Defendant admits the allegations made in this paragraph.

22. Defendant admits that in 2015, the Texas Attorney General, along with the attorneys general, Departments of Justice, or Offices of Consumer Protection of 30 other states investigated Experian, Equifax, and Trans Union for violations of the federal FCRA and related state laws.

23. Defendant is without information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore denies them.

24. Defendant admits the allegations made in this paragraph.

25. Defendant admits that Plaintiff accurately quotes from Assurance of Voluntary Compliance/Assurance of Voluntary Discontinuance

26. Defendant denies that “Collection Furnishers” are defined as alleged in this paragraph.

27. Defendant is without information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore denies them.

28. Defendant is without information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore denies them.

29. Defendant is without information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore denies them.

30. Defendant is without information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore denies them.

31. Defendant admits that NCAP included a requirement regarding the use of two special comment codes related to certain medical debt as set forth in paragraph IV(3)(b) of the NCAP.

32. Defendant is without information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore denies them.

33. Defendant is without information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore denies them.

34. Defendant is without information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore denies them.

35. Defendant admits the allegations made in this paragraph.

IV. CAUSE OF ACTION

Count I: Declaratory Judgment

36. Defendant does not admit or deny this paragraph as no response is required.

37. This paragraph contains legal conclusions to which no response is required. To the extent a response is required Defendant denies the allegation contained in this paragraph and reserves the right to raise all available jurisdictional arguments and affirmative defenses to Plaintiff's claims.

38. Defendant is without information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore denies them.

39. This paragraph and its subparts contain legal conclusions to which no response is required. To the extent a response is required Defendant denies the allegation contained in this paragraph and its subparts and reserves the right to raise all available jurisdictional arguments and affirmative defenses to Plaintiff's claims.

40. Defendant is without information sufficient to form a belief as to the truth of the allegations made in the first sentence of this paragraph and therefore denies them. Defendant denies the remainder of the allegations in this paragraph.

41. Defendant denies the allegations in this paragraph.

42. Defendant is without information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore denies them.

Count II: Permanent Injunctive Relief

43. Defendant does not admit or deny this paragraph as no response is required.

44. Defendant denies the allegations in this paragraph.

CONDITIONS PRECEDENT

45. Defendant is without information sufficient to form a belief as to the truth of the allegations made in this paragraph and therefore denies them.

PRAYER for RELIEF

Defendant denies that Plaintiff is entitled to any relief.

AFFIRMATIVE AND OTHER DEFENSES

Pleading further, Defendant asserts that it is entitled to the following affirmative and other defenses:

1. Plaintiff's First Amended Complaint fails, in whole or in part, to state a cause of action against Defendants upon which relief can be granted and should therefore be dismissed pursuant to Fed. R. Civ. P. 12(b)(6);
2. Defendants assert the defense of Eleventh Amendment immunity to all claims to which that defense applies;
3. Defendants assert the defense of sovereign immunity to all claims to which that defense applies;
4. Plaintiff lacks standing;
5. This matter is not ripe or is otherwise not justiciable;
6. The Court should abstain from adjudicating Plaintiff's claims; and
7. Defendants assert the right to amend these affirmative and other defenses and to assert additional defenses as they may become known to Defendants.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court dismiss Plaintiff's claims with prejudice and issue a take-nothing judgment in favor of Defendant.

Respectfully submitted,

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Attorney General

BRENT WEBSTER
First Assistant Attorney General

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Deputy First Assistant Attorney General

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/s/Taylor Gifford

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that that on October 13, 2023, this document was filed electronically via the Court's CM/ECF system, causing electronic service upon all counsel of record.

/s/Taylor Gifford

TAYLOR GIFFORD
Assistant Attorney General