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November 2, 2012

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex D)
600 Pennsylvania Avenue, NW
Washington DC 20580

Re: Proposed Consent Agreement In the Matter of In the Matter of Equifax Information Services LLC, FTC File No. 102 3252;

These comments on the proposed consent decree, In the Matter of Equifax Information Services LLC, are filed on my own behalf and not on behalf of any client. The consent decree appeared in the Federal Register at 77 Federal Register 63833 (October 17, 2012), http://www.ftc.gov/os/fedreg/2012/10/121017equifaxagreefrn.pdf.

I object to the settlement because neither the complaint nor the proposed consent decree explains how the Commission determined the amount that Equifax will pay.

Both the complaint and proposed consent decree are largely free of any facts that would permit the public to accurately assess or analyze the amount that Equifax agreed to pay. Nothing that reveals how the Commission determined that $392,803 was an appropriate amount. Why this amount and not $392,805? Why not $399,999? Why not $1,000,000? The public has no way to tell. Did Equifax obtain a "discount" because it hired a properly connected lawyer or because it gave a campaign contribution to the right candidate? No one knows because it is impossible to determine what a fair amount should be. The Commission has not offered a standard against which the amount may be objectively measured.

None of the documents released by the Commission reveals the meaningful information that the public needs to assess the consent decree properly. The facts *not* disclosed include:

- How much revenue did Equifax collect from the improper sale of lists?
- How much profit did Equifax earn from the improper sale of lists?
- How many lists did Equifax sell improperly?
- How many consumers were affected by the improper sale of lists?
- How many consumers were adversely affected by the improper sale of lists?
- What losses did consumers incur because of the improper sale of lists?

Interestingly, the Commission's *press release* contained more information than either the complaint or the proposed consent decree. The title of the October 10, 2010, press release is *FTC Settlements Require Equifax to Forfeit Money Made by Allegedly Improperly Selling*

Information about Millions of Consumers Who Were Late on Their Mortgages. http://www.ftc.gov/opa/2012/10/equifaxdirect.shtm.

The press release says that millions of consumers were affected. That is at least a small step in the right direction. But neither the press release nor any other document released by the Commission appears to identify the actual number of consumers. Was it two million or twenty million? The number makes a difference.

The press release also implies that the amount that Equifax will pay is the money made from the improper sale of lists. However, even if the press release is presumed to be accurate (and a press release is not the same as a document formally voted upon by the Commission and filed with a court), the release is far from clear. Does the fine represent the amount of revenue that Equifax collected from the sale of or just the profit from the sale of lists? The manner in which the Commission determined the amount makes a difference. Without any details, there is no way for the public to review the work of the Commission. Was there an error in the calculation? Did the Commission include or exclude any elements of company overhead in its calculation? Does the Commission itself even know how the amount was determined or was the decision left entirely to the staff without review of the details by appointed Members?

The absence of facts in Commission consent decrees is nothing new. The Commission routinely fails to inform the public the basis it uses to determine an appropriate payment or fine. From a perspective outside the Commission, the amounts paid by those who violate consumer laws are random numbers.

The Commission has an obligation to explain its actions to the public. I recognize that some information may be confidential business information, but those who break the law should not be allowed to hide their misdeeds behind a confidentiality screen. Nothing prevents the Commission from explaining in more specific ways how it determines the proper amount of a payment. The number of lists that a company sold illegally is not a proprietary number. The number of consumers affected is not a proprietary number. If the Commission recovered all the revenues earned illegally by a company, that revenue number is not proprietary.

I ask that the Commission reject this consent decree and order the staff to revise it to include more facts and to explain how the amount of the payment was determined. However, to be honest, I have no expectation that the Commission will do anything other than rubber stamp the consent decree regardless of public comments. The Commission's practice of soliciting comments in these cases borders on being fraudulent and deceptive because the Commission never seems to make any changes in privacy consent decrees in response to public comments.

Sincerely,

Robert Gellman