

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CHRISTINE DRONEY &
TIMOTHY DRONEY
7330 Clubhouse Circle
Egg Harbor City, NJ 08215

Plaintiffs

vs.

VIVINT SOLAR
3301 N. Thanksgiving Way, Suite 500
Lehi, UT 84043

Defendant

NO. 18-CV-00849-RBK-KMW

AMENDED COMPLAINT

I. INTRODUCTION

1. This is an action for damages and other relief for willful invasion of credit privacy brought by consumers pursuant to the federal Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681, *et seq.* The FCRA restricts access to consumer credit reports except for specific, statutorily enumerated purposes under 15 U.S.C. §1681b.

2. Defendant Vivint Solar, without notice or permission accessed Plaintiffs’ consumer reports under false pretenses, without any permissible purpose or authorization.

3. Vivint Solar, as a part of its routine business practice, regularly procures from the credit bureaus consumer credit reports on consumers in New Jersey and elsewhere under the false pretense that the consumer has authorized it. Dozens of previous complaints and lawsuits over this statutory invasion of privacy – a criminal act under the law – have not convinced Vivint Solar to follow the Act’s strict requirements.

II. JURISDICTION

4. Jurisdiction arises under the FCRA, 15 U.S.C. §1681p, and 28 U.S.C. §1337.

III. PARTIES

5. Plaintiffs are Christine Droney and Timothy Droney, husband and wife. They are consumers who reside in Egg Harbor City, NJ at the address captioned. The Drones formerly lived in Linwood, NJ.

6. Defendant Vivint Solar is a Delaware corporation with a principal office in Lehi, Utah as captioned.

IV. STATEMENT OF CLAIM

Vivint Solar Obtained the Drones' Credit Reports Under False Pretenses

7. On January 21, 2016, Plaintiff Christine Droney was solicited by a door-to-door salesperson from Vivint Solar at her (then) home at 201 Morris Ave, Linwood, NJ.

8. Plaintiff Timothy Droney, Christine's husband, was not home at the time.

9. Jeremy, Vivint Solar's salesman, rang the doorbell at the Drones' home and, when greeted by Christine, stated he was working in concert with Atlantic City Energy to do a "roof survey."

10. Jeremy asked Christine's permission to go onto her roof to see if she qualified for a government plan for free solar panels in conjunction with their electric supplier, Atlantic City Energy.

11. Jeremy stated to Christine that in order to “survey the roof,” “his office needed” Ms. Droney’s signature to “confirm you own the property.”

12. Ms. Droney complied by signing electronically on an iPad that Jeremy could go on the roof. Jeremy never asked or suggested to Christine that he or Vivint Solar would pull Plaintiffs’ credit reports and Christine did not consent to Vivint Solar obtaining her credit report.

13. Ms. Droney was not shown, did not see, nor was she given opportunity to review any information on Jeremy’s iPad.

14. Ms. Droney did not check any boxes on Jeremy’s iPad.

15. Ms. Droney only saw a signature pad that Jeremy pointed to on the device, as he stated he needed her to sign to “survey the roof” and “confirm [they] own[ed] the property.”

16. The very next day, January 22, 2016, Ms. Droney was shocked to receive an alert that there was an inquiry made to her consumer credit reports made by Vivint Solar.

17. An inquiry was also made by Vivint Solar to the credit bureaus for the credit reports of Timothy Droney. Mr. Droney was not even home at the time of Vivint Solar’s visit, had no knowledge of it, and did not consent to Vivint Solar obtaining his credit reports.

18. Plaintiffs never provided any authorization to have their credit reports pulled by Vivint Solar.

19. At no point did Jeremy mention obtaining a consumer credit report, nor ask permission to do the same.

20. Plaintiffs were not provided, nor given the opportunity to review, any paperwork or documents, paper or electronic.

21. Vivint Solar surreptitiously and intentionally obtained both Plaintiffs’ consumer reports from the consumer reporting agencies.

22. Vivint Solar engaged in a calculated attempt to mislead Christine in order to obtain a consumer report.

23. Plaintiffs did not authorize Vivint Solar to obtain their consumer reports at any time.

Vivint Solar Admits its Deceptive Conduct

24. Furious over Defendant's conduct, the Drones contacted the Linwood, NJ police and filed a police report over Vivint Solar's unauthorized pull of their credit reports.

25. On January 22, 2018, Plaintiff Christine Droney called Vivint Solar.

26. Christine spoke with a Vivint representative named Tanner Baumgarten and told him Vivint's representative pulled her credit without consent and that she filed a police report.

27. Upon information and belief, Vivint Solar possesses telephone recordings of this call, and possibly others.

28. Tanner stated that he was very sorry and that Vivint Solar will write the credit bureaus to delete the inquiry. Christine wanted Vivint Solar's letter FedEx'd to her that day, and Tanner complied.

29. On that day, Vivint Solar sent letters to the credit bureaus asking them to delete their inquiry to the Drones' consumer reports.

30. The Drones also filed a Better Business Bureau complaint that was forwarded to Vivint Solar.

31. The Drones also filed a Federal Trade Commission complaint with a reference number 68996047.

32. Upon information and belief, after these complaints were filed, Baumgarten or another representative at Vivint Solar investigated and then agreed to write to the credit bureaus asking for the record of its inquiries to be deleted from Plaintiffs' credit reports.

33. Vivint Solar received and possessed Plaintiffs' sensitive and private credit and personal data.

34. Pursuant to 15 U.S.C. §1681b, a consumer report can be obtained only for the specific purposes stated thereunder, including for use in connection with a credit transaction that the consumer initiated, a firm credit offer, employment purposes, or a business transaction in which an individual has accepted personal liability for business credit.

35. Vivint Solar never had a permissible purpose to obtain Plaintiffs' credit report.

36. Vivint Solar obtained Plaintiffs' consumer report under false pretenses to the credit bureaus because Plaintiffs never provided authorization for a credit pull, nor sought any extension of credit.

37. Defendant knew or should have known that Plaintiffs did not authorize any inquiry into their credit information at any time, nor initiated any credit transaction.

Vivint Solar's Pattern and Practice of Impermissible Invasions of Credit Privacy

38. Vivint Solar, as a pattern and routine business practice, regularly obtains consumer reports on consumers without a permissible purpose and under false pretenses.

39. Consumers across New Jersey and across the country have complained to Vivint Solar and to government and private agencies that Vivint's agents pulled their consumer credit reports without consent or authorization.

40. Consumers across New Jersey and across the country have complained to Vivint Solar that Vivint's agents obtained credit reports upon false pretenses.

41. This is a federal crime, punishable by fine and imprisonment for not more than two years.

42. Some of these other irate consumers have filed lawsuits against Vivint.

43. Despite ample notice of this problem, Vivint Solar continued to allow its salespeople to routinely invade the privacy of consumers and violate the Act by pulling credit reports without a permissible purpose, and under false pretense.

44. Even after the Droneys' complaints and police report, Vivint Solar and its salespersons continued to prey on New Jersey consumers, obtaining credit reports without a permissible purpose, and under false pretense.

Invasion of Consumer Privacy

45. As a result of Defendant's willful, wanton, reckless, and/or negligent action, Plaintiffs have been damaged.

46. The consumer reports obtained by Vivint Solar included a trove of sensitive personal and private information about Plaintiffs, such as their birthdates, credit history profile, pay histories, employer information and the like.

47. Plaintiffs' privacy has been invaded as a result of the willful, wanton, reckless and/or negligent conduct of Defendant.

48. Plaintiffs have lost trust and are suspicious, and have been constrained to monitor their credit nearly every day to prevent unauthorized access to their sensitive credit information.

49. Plaintiffs have suffered mental and emotional distress, worry, and aggravation as a result of Defendant's actions.

Unbeknownst to them, Vivint Fraudulently Placed the Drones into a Contract for Solar Panels

50. After this case was filed in federal court, Defendant Vivint Solar produced a document called “Residential Solar Power Purchase Agreement” (“PPA”) in the name of Christine Droney.

51. Prior to March 4, 2018, the Drones had never seen this document.

52. This document was never provided to them in paper or electronic form.

53. Vivint Solar does not provide paper copies of contract documents to consumers during door-to-door sales visits.

54. This document was never emailed to the Drones. The document itself reflects no email address for the Drones.

55. The so-called “PPA” has no effect on the Drones, nor are the Drones bound by any of its terms. This document is a fraud.

56. Vivint Solar fraudulently executed this document without the Drones’ knowledge or consent.

57. Vivint Solar never provided the Drones a copy of this document in order to conceal its fraud.

58. Upon information and belief, this “PPA” was voided by Vivint Solar itself on or around January 22, 2016.

59. Upon information and belief, this “PPA” was voided by Tanner Baumgarten or another Vivint Solar representative upon receiving the Drones’ complaints.

60. Upon information and belief, Vivint Solar voided the alleged “PPA” after conducting its own investigation into Plaintiffs’ allegation that their credit reports were fraudulently obtained on false pretense.

61. Upon information and belief, Vivint Solar voided its alleged “PPA” after receipt of, inter alia, Plaintiffs’ complaints.

62. Upon information and belief, Vivint Solar voided the alleged “PPA” after notice of, inter alia, Plaintiffs’ police report filed with the Linwood, NJ police department.

63. Upon information and belief, Vivint Solar voided the alleged “PPA” after receipt of, inter alia, Plaintiffs’ complaint to the BBB.

64. Upon information and belief, Vivint Solar voided the alleged “PPA” after receipt of, inter alia, Plaintiffs’ complaint to the Federal Trade Commission.

65. Upon information and belief, the fraudulent PPA was voided by Vivint Solar on or about January 22, 2018.

66. Upon information and belief, Vivint Solar’s Mercury system or other computer system will reflect that this alleged PPA was cancelled or voided.

67. Upon information and belief, Vivint Solar’s Mercury system or other computer system will reflect that this alleged PPA was never acted upon by either Vivint Solar or the Droneys.

68. Upon information and belief, Vivint Solar’s Mercury system or other computer system will reflect that this alleged PPA was never sent to the Droneys.

69. Vivint Solar never emailed or mailed a copy of the PPA to the Droneys’ in the effort to hide and conceal its illegal credit pull and fraud.

70. Had Vivint Solar ever indicated to the Droneys that it surreptitiously enrolled them in a bogus finance contract for solar services they never wanted, needed, nor asked for, it would have further escalated the nature of the Droneys’ complaints – to the BBB, FTC, and local police.

71. Vivint Solar chose to conceal its fraudulent business practices by hiding the evidence thereof from these consumers.

72. Incredibly, on March 2, 2018, Vivint Solar moved to compel the Droneys to dismiss this lawsuit and arbitrate their claims on the basis of this bogus so-called “PPA” document – a document the Droneys have never seen, and that Vivint Solar itself admitted through its own actions and inactions was fraudulently executed, then in any event agreed to be voided and of no effect.

COUNT I
FAIR CREDIT REPORTING ACT

73. Plaintiffs repeat the allegations contained above as if the same were here set forth at length.

74. Defendant has violated the Fair Credit Reporting Act by willfully and/or negligently obtaining the Plaintiffs’ consumer credit reports without a statutorily permissible purpose. 15 U.S.C. § 1681b; 1681n and §1681o.

WHEREFORE, Plaintiffs Christine Droney and Timothy Droney demand judgment against Defendant Vivint Solar for:

- (a) Actual and compensatory damages;
- (b) Punitive damages;
- (c) A declaration that the conduct complained of violates the provisions of the Fair Credit Reporting Act, 15 U.S.C. § 1681b;
- (d) An Order requiring return of Plaintiffs’ confidential consumer report and destruction of any copies;
- (e) Attorney’s fees and costs; and
- (f) Such other and further relief as the Court shall deem just and proper.

V. **DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury as to all issues so triable.

Respectfully submitted:

Date: March 23, 2018

/s/ Andrew M. Milz
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CERTIFICATE OF SERVICE

I, ANDREW M. MILZ, do hereby certify that a copy of the foregoing was served upon all counsel of record by CM/ECF electronic filing.

DATED: March 23, 2018

/s/ Andrew M. Milz
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