



August 17, 2016

## COURT APPROVES \$2.4 MILLION SETTLEMENT FOR ALLEGED IMPROPER HARD CREDIT INQUIRIES

A federal judge recently approved a \$2.4 million class action settlement involving Social Finance, Inc. ("SoFi"), a California-based online lender, in connection with allegations that SoFi improperly ran hard inquiries on credit reports in violation of the federal Fair Credit Reporting Act, the California Consumer Credit Reporting Agencies Act and the California Unfair Competition Law (prohibiting unfair acts or practices). Settlement Agreement, *Heaton v. Social Finance, Inc.*, No. 3:14-cv-05191-TEH (N.D. Ca. filed April 7, 2016).

The plaintiffs claimed to have been confused by disclosures on SoFi's website regarding consent to credit pulls. The plaintiffs asserted that (i) they were confused or misled with regard to whether SoFi would "ever" do a hard inquiry and (ii) SoFi obtained reports on a hard inquiry basis without the appropriate legal right to do so.

Each plaintiff had a slightly different experience. Both registered on the SoFi website and saw the phrase "this inquiry will not affect your credit score." When they proceeded to a "consents" page, they were given the option to click a hyperlink and view a "credit disclosure" which contained language authorizing SoFi "today for purposes of this loan application ... and from time to time ... to obtain credit information, including a consumer credit report ...." Both navigated away from the consents page and began different application processes. In one case, clicking "Request Amount" resulted in a hard inquiry; in the other, clicking a button for "Choose Now" or "Choose Later" in response to a prompt to choose a product from among options resulted in a hard inquiry. Both claimed to be misled by "assurance" that "any" inquiries would be only "soft credit pulls," contending further that defendants knew that the language on the website caused confusion because of numerous complaints on social media accounts and other channels. The plaintiffs contended that SoFi obtained hard inquiries under "false pretenses," the plaintiffs' confusion arguably tainting SoFi's hard inquiry.

SoFi denied the allegations and all liability with respect to any and all claims alleged in the action.

Even when seeking to provide a positive (simple, easy, low friction) consumer experience, clarity matters. Persons marketing credit products online should pay particular attention to website flow

and recognize that the threshold for potential claims of misleading or deceptive impressions is low. If just one consumer can (not unreasonably) be confused or misled, there is a risk that a an unfair or deceptive act or practice claim could arise. We can help review websites and processes to identify areas of potential concern. □

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