

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROANNE HOLMAN; NARCISCO NAVARRO  
HERNANDEZ; MIGUEL A. ALVAREZ; and  
all others similarly situated,

No. C 11-0180 CW

Plaintiffs,

ORDER GRANTING  
PLAINTIFFS' MOTION  
FOR CLASS  
CERTIFICATION  
(Docket No. 68)

v.

EXPERIAN INFORMATION SOLUTIONS,  
INC.,

Defendant.

Plaintiffs Roane Holman, Narcisco Navarro Hernandez and Miguel A. Alvarez move for class certification, to be appointed as class representatives and for their counsel to be appointed as class counsel. Defendant Experian Information Solutions, Inc. opposes Plaintiffs' motion. Having considered the papers filed by the parties and their oral arguments at the hearing, the Court GRANTS Plaintiffs' motion.

BACKGROUND

This action arises from Experian's purported disclosure of the credit reports of putative class members to Finex Group, LLC in violation of the Fair Credit Reporting Act (FCRA). Plaintiffs seek statutory damages under the FCRA for Experian's alleged willful violation of the statute by furnishing consumer reports to Finex and failing to verify that Finex was using those reports for a permissible purpose, even though Experian had reason to believe that Finex was not doing so.

United States District Court  
For the Northern District of California

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1 I. Experiences of the named Plaintiffs

2 A. Roane Holman

3 On August 8, 2009, Holman was driving his Toyota car and was  
4 stopped and arrested on suspicion of drunk driving. Holman Decl.

5 ¶ 2. The police had a towing company tow Holman's car from the  
6 scene. Id. They did not ask him if he wanted the car towed. Id.  
7 Holman was unable to pay the towing company for towing and storage  
8 fees for his car. Id. at ¶ 3. The towing company subsequently  
9 sold his car in a lien sale. Id. Holman later received bills  
10 from Finex seeking to collect the balance owed for towing and  
11 storage. Id.

12 Plaintiffs allege that Experian provided Finex with a  
13 consumer report regarding Holman, including his credit  
14 information, on September 14, 2009. First Am. Compl. (1AC) ¶ 15.  
15 Experian admits that it did. Answer ¶ 15.

16 B. Narcisco Navarro Hernandez

17 Navarro formerly owned a LeBaron car. He traded it for a  
18 truck, and subsequently completed a form at the DMV to record the  
19 transfer of the car. Navarro Depo. Tr. 22:18-23:19, 25:1-5.<sup>1</sup>

20 Plaintiffs allege that later on, in August 2009, a law  
21 enforcement officer directed a towing company to tow the car. 1AC  
22 ¶ 8. The towing company sent him a bill, which he did not pay.  
23 Id. The company subsequently sold the car at an auction and  
24 claimed he was liable for the deficiency. Id. When Navarro  
25 failed to pay the deficiency, the towing company retained Finex to  
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27 <sup>1</sup> Although Experian suggests that Navarro in fact did not  
28 trade away the car, Experian offers no evidence to contradict  
Navarro's testimony.

1 collect it. Id. On September 1, 2010, Experian furnished a  
2 consumer information report with his credit information to Finex  
3 for use in collecting the debt. Id. at ¶ 17.

4 C. Miguel A. Alvarez

5 Alvarez formerly owned a 1985 VW Jetta. Alvarez Decl. ¶ 2.  
6 He sold the car on September 11, 2009 and subsequently filed a  
7 Notice of Transfer and Release of Liability with the California  
8 Department of Motor Vehicles. Id.<sup>2</sup>

9 Alvarez subsequently received a bill from a towing company  
10 for towing and storage of the Jetta, which had taken place after  
11 he sold the car. Id. at ¶ 3. Alvarez did not initiate the  
12 towing. Id. He alleges that a law enforcement officer directed  
13 the towing company to tow the car. 1AC ¶ 7.

14 After Alvarez refused to pay the bill, the towing company  
15 sent him a notice, stating that the car had been sold at a lien  
16 sale and asking him to pay the towing deficiency. Alvarez Decl.  
17 ¶ 4. Finex subsequently sent Alvarez bills for towing and  
18 storage. Id.

19 Plaintiffs allege that Experian furnished Finex with a  
20 consumer report regarding Alvarez, including his credit  
21 information, on June 29, 2010. 1AC ¶ 16.

22 II. Appeal in Pintos v. Pacific Creditors Association and  
23 Experian's related actions

24 In Pintos v. Pacific Creditors Association, Case No. C 03  
25 5471 CW (N.D. Cal.), this Court granted summary judgment in favor  
26 of the defendants, Pacific Creditors Association (PCA) and

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27 <sup>2</sup> Although Experian suggests that Alvarez did not sell his  
28 car, Experian has not produced any evidence to contradict  
Alvarez's sworn declaration.

1 Experian, concluding that the law permitted Experian to furnish  
2 Maria Pintos's credit report to PCA for the purpose of collecting  
3 her towing related debt. Experian had maintained that this  
4 purpose fell within the scope of 15 U.S.C. § 1681b(a)(3)(A), which  
5 authorizes a consumer reporting agency to furnish a consumer  
6 credit report to a person it has reason to believe "intends to use  
7 the information in connection with a credit transaction involving  
8 the consumer on whom the information is to be furnished and  
9 involving the extension of credit to, or review or collection of  
10 an account of, the consumer." Pintos appealed. While the alleged  
11 events in the current case occurred, proceedings on Pintos's  
12 appeal were ongoing.

13 The Pintos appeal generated two opinions by the Ninth  
14 Circuit. In the first, issued September 21, 2007, the Ninth  
15 Circuit concluded that the Fair and Accurate Credit Transactions  
16 Act of 2003 (FACTA), Pub. L. No. 108-159, 117 Stat. 1952, amended  
17 the FCRA to define "credit" as a "'right . . . to defer payment,'"  
18 and, as a result, a "'credit transaction' is a transaction in  
19 which the consumer directly participates and voluntarily seeks  
20 credit." Pintos v. Pac. Creditors Ass'n, 504 F.3d 792, 798 (9th  
21 Cir. 2007) (citing Stergiopoulos v. First Midwest Bancorp, Inc.,  
22 427 F.3d 1043, 1047 (7th Cir. 2005)). It also held that PCA's  
23 blanket certification to Experian that it would use the credit  
24 reports for permissible purposes did not absolve Experian of  
25 responsibility, because "the reporting agency must make 'a  
26 reasonable effort' to verify the certifications and may not  
27 furnish reports if 'reasonable grounds' exist to believe that  
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1 reports will be used impermissibly." Id. at 800 (citing 15 U.S.C.  
2 § 1681e(a)).

3 In response to this decision, in October 2007, Experian  
4 distributed a "Talk Track" memorandum to its employees outlining  
5 the Ninth Circuit's holding and the company's position regarding  
6 the case, and instructing its employees to use the information in  
7 the memorandum when speaking with collections customers. Henke  
8 Decl. ¶ 4; Anderson Decl., Ex. 7, at 1. In the memorandum,  
9 Experian stated that it was "seeking court review and rehearing of  
10 [the] decision" and would "notify its clients regarding compliance  
11 procedures after the final outcome of the court's review."  
12 Anderson Decl., Ex. 7, at 1. Experian directed its employees to  
13 tell "clients to consult with their company's legal counsel for  
14 guidance in this matter" if the clients asked a question regarding  
15 the Pintos decision. Id.; Henke Depo. Tr. 105:13 106:4.

16 On April 30, 2009, the Ninth Circuit withdrew its first  
17 opinion and issued a superseding decision. The second Pintos  
18 opinion excised the previous references to the FACTA, but reached  
19 the same conclusion: collection of a towing-related debt did not  
20 provide a permissible purpose to obtain or furnish a credit report  
21 where it did not constitute "a transaction initiated by [the  
22 consumer]" and was not a judicially-established debt. Pintos v.  
23 Pac. Creditors Ass'n, 565 F.3d 1106, 1114 (9th Cir. 2009). The  
24 Ninth Circuit did not alter its holding or analysis regarding  
25 Experian's liability for PCA's FCRA violations. Id. at 1114-15.

26 In response to the second decision, Experian distributed a  
27 second Talk Track memorandum to its employees in May 2009. Henke  
28 Decl. ¶ 4; Anderson Decl., Ex. 7, at 2. The memorandum provided

1 staff with an update regarding the more recent decision, and  
2 included the same description of the company's position as that  
3 contained in the previous memorandum. Anderson Decl., Ex. 7, at  
4 2. Experian again stated that it was "seeking court review and  
5 rehearing of [the] decision" and would "notify its clients  
6 regarding compliance procedures after the final outcome of the  
7 court's review." Id. Experian again directed its employees to  
8 tell "clients to consult with their company's legal counsel for  
9 guidance in this matter." Id.

10 Experian petitioned for rehearing en banc, which was denied;  
11 seven circuit judges dissented from the denial. See Pintos v.  
12 Pac. Creditors Ass'n, 605 F.3d 665, 670-72 (9th Cir. 2010).

13 Following the denial of the petition, on May 21, 2010, the Ninth  
14 Circuit panel amended the second Pintos opinion to clarify what  
15 arguments Experian and Pacific Creditors Association could raise  
16 on remand to this Court. Id. at 670. This amendment did not  
17 alter the analysis or holding of the April 2009 opinion. Id.

18 In June 2010, Experian issued a third Talk Track memorandum  
19 to its sales employees describing the recent denial of the motion  
20 for rehearing en banc and the holding of the earlier decisions.  
21 Henke Decl. ¶ 4; Anderson Decl., Ex. 7, at 3. In the memorandum,  
22 Experian stated that it would "notify its clients in the coming  
23 weeks regarding new compliance policies, possibly including  
24 re-certification, updated membership documents, and audits."  
25 Anderson Decl., Ex. 7, at 3. It again stated that it "urges all  
26 clients to consult with their companies' legal counsel for  
27 guidance in this matter." Id.

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1 In September or October 2010, Experian mailed a document  
2 titled "Important Notice" to all of its subscribers. Henke Decl.  
3 ¶ 5, Ex. A; Anderson Decl., Ex. 5. In the notice, Experian  
4 described the Pintos case and the Ninth Circuit's holding.  
5 Experian also stated that

6 Experian will be contacting all pertinent customers to  
7 discuss this issue. We expect to confirm with you that  
8 you are in compliance with this interpretation of the  
9 FCRA. Until then, unless you advise otherwise, we are  
10 relying upon you to comply with your contract with  
11 Experian and this interpretation of the law. This means  
12 that you may obtain Experian reports for collection  
13 purposes only when collecting an obligation arising from  
14 a transaction voluntarily initiated by the consumer or  
15 patient or an obligation that has been judicially  
16 established by a court order or judgment.

17 Anderson Decl., Ex. 5.

18 Experian began a process to have its collections clients  
19 "re-certify their permissible purpose of collections." Anderson  
20 Decl., Ex. 8, at 1. On December 15, 2010, Experian held a  
21 training for its staff, in which it reviewed the impacted client  
22 accounts and taught staff about an online process that it created  
23 for the re-certification process, and had a webinar for staff who  
24 could not attend. Id. at 2. Experian set July 1, 2011 as the  
25 deadline for re-certification of clients. Id. at 1.

26 On January 10, 2011, the United States Supreme Court denied  
27 Experian's petition for a writ of certiorari. Subsequently, in  
28 January 2011, Experian issued a fourth and final Talk Tracks  
memorandum to its staff, describing the case. Henke Decl. ¶ 6;  
Anderson Decl., Ex. 7, at 4. Experian also sent a second notice  
to its clients, which was largely identical to the first mailed  
notice. Henke Decl. ¶ 7, Ex. B.

## 1 III. Experian's relationship with Finex

2 Paul Price and Antonia Sainz-Blas founded Finex, a collection  
3 agency specializing in collecting towing deficiency claims for  
4 towing companies, in late 2007. Price Decl. ¶ 1. Finex began its  
5 collection activities in late 2007 or early 2008. Id. at ¶ 3.

6 Finex began discussing Experian's services with Experian in  
7 late 2007. Blas Decl. ¶ 5. Finex's primary contact at Experian  
8 for the duration of its relationship with Experian was Scot  
9 Levine, an Account Executive. Levine Decl. ¶ 3. On Finex's  
10 applications for services with Experian in December 2007 and  
11 January 2008, Finex described itself as a collection agency and  
12 call center, and listed its permissible purpose for obtaining  
13 credit information as follows: "We are a consumer & commercial 3rd  
14 party collection agency." Anderson Decl. ¶¶ 8-9, Exs. 2 and 3.  
15 During its process of approving Finex to report and receive credit  
16 information, an Experian employee noted that Finex's permissible  
17 purpose was "collections." Anderson Decl., Ex. 11. Experian  
18 employees printed pages from Finex's website that indicated that  
19 Finex provided collections for towing companies and placed these  
20 documents in Experian's file on Finex. Henke Depo. Tr. 49-50,  
21 64:22-66:10, 71-77; Anderson Decl., Ex. 9.

22 Finex entered into a Subscriber Agreement with Experian in  
23 January 2008, under which Finex received Collection Advantage  
24 reports from Experian, which contain credit information taken from  
25 Experian's consumer credit database. Blas Decl. ¶ 5; Levine Decl.  
26 ¶ 3. Finex began receiving these reports in early 2008. Price  
27 Decl. ¶ 20. The Collection Advantage reports contain a "Recovery  
28 Score," which Levine "described as a score that ranks accounts



1 based on the likelihood the debtors will pay the debt." Price  
2 Decl. ¶ 12.

3 Price and Blas state that they discussed the Pintos decisions  
4 with Levine on multiple occasions and that they told Levine  
5 repeatedly, including in their early conversations with him, that  
6 "Finex specialized in collecting on towing deficiency claims."  
7 Price Decl. ¶¶ 12-13; Blas Decl. ¶¶ 6, 9, 10. During their  
8 initial conversation with him, Price and Blas asked him whether in  
9 light of Pintos "there was any problem with Finex receiving the  
10 Recovery Scores for use in its towing claims collections," to  
11 which Levine responded that "there was no problem." Price Decl.  
12 ¶ 6. In June 2008, Price and Blas told Levine that "99% of our  
13 collections were for towing" and said they "wanted to be sure we  
14 were not getting FRCA information we should not be getting in  
15 light of Pintos." Id. at ¶ 9. Levine assured them that "Finex  
16 was not getting any information it should not be getting for those  
17 collections." Id. Also in June 2008, Price sent Levine an email  
18 stating that one type of debt that Finex collected was for towing.  
19 Anderson Reply Decl. ¶ 2, Ex. 18. Again in October 2008, Levine  
20 "assured" Blas that they "were not in violation of the Pintos  
21 decision in using the Collection Advantage reports, including the  
22 Recovery Scores." Blas Decl. ¶ 10.<sup>3</sup>

23 \_\_\_\_\_  
24 <sup>3</sup> While Experian argues that "Plaintiffs' claim that . . .  
25 Levine suggested to Finex's management that they need not worry  
26 about Pintos is simply false," Opp. at 5, n.1, the only evidence  
27 to which Experian points in support of this assertion is Levine's  
28 declaration that he does not "recall having conversations  
regarding the Pintos case," Levine Decl. ¶ 4. This does not  
contradict the statements of Price and Blas or raise a factual  
dispute.

1 Finex's account with Experian was discontinued in late 2010,  
2 and Finex last obtained a Recovery Score from Experian on November  
3 19, 2010. Levine Decl. ¶ 2; Price Decl. ¶ 25; Anderson Decl.  
4 ¶ 18. At that time, Experian had not yet sent Finex a  
5 re-certification request for compliance with the Pintos decision.  
6 Henke Decl. ¶¶ 7-8. During the course of their relationship from  
7 2008 to 2010, Experian furnished Finex with Collection Advantage  
8 reports on more than 40,000 consumers. Price Decl. ¶ 22.

9 IV. Background of this action

10 Holman initiated this action on January 12, 2011 as the sole  
11 Plaintiff, naming as Defendants Experian and Finex. See Docket  
12 No. 1. On May 25, 2011, this Court denied Experian's motion to  
13 dismiss the complaint. Docket No. 32.

14 On June 7, 2011, Finex sent Holman a settlement proposal,  
15 offering to cancel the debt he owed to Finex's client, the towing  
16 company, in full and not to pursue a separate legal action against  
17 him if he agreed to "cancel" his lawsuit against Finex by June 15,  
18 2011. Morgan Decl., Ex. 9. It appears that Finex did later  
19 initiate a lawsuit against Holman in state court seeking recovery  
20 of the outstanding debt.

21 Holman and Finex drafted a settlement agreement dated August  
22 15, 2011. Anderson Reply Decl., Ex. 72. Under the draft  
23 agreement, Holman would dismiss his claims against Finex with  
24 prejudice after Finex provided him with certain information and  
25 documents, including regarding Finex's relationship and  
26 communications with Experian. Id. The draft agreement did not  
27 contain any provision for resolving the towing claim against  
28 Holman. Id.

1 On September 2, 2011, Holman's counsel sent Finex's attorney  
2 an email stating that he had "sent the Finex settlement agreement  
3 to Roane Holman," and that Holman "want[s] an agreement that Finex  
4 will void the tow bill account." Anderson Reply Decl., Ex. 74.  
5 Holman's counsel asked if that could be arranged. Id.

6 On September 8, 2011, Holman and Finex signed a settlement  
7 agreement, in which Holman agreed to dismiss his individual claims  
8 against Finex with prejudice and those of the class without  
9 prejudice. Anderson Reply Decl., Ex. 78. In return, Finex agreed  
10 to cooperate with Holman in the prosecution of Holman's case  
11 against Experian. Id. They also agreed that "Holman shall pay  
12 the sum of \$200, . . . which sum shall be treated as full  
13 satisfaction of the debt that is allegedly owed by Holman to  
14 Finex's client." Id.

15 On September 15, 2011, Finex and Holman filed a stipulation  
16 dismissing Holman's claims against Finex with prejudice, and  
17 Holman filed a motion for leave to file an amended complaint  
18 removing the claims against Finex and adding Navarro and Alvarez  
19 as named Plaintiffs. Docket Nos. 40, 42. This Court granted the  
20 stipulation on September 16, 2011, dismissing the claims against  
21 Finex. Docket No. 44.

22 On October 4, 2011, Holman and Experian stipulated to allow  
23 the filing of the amended complaint. Docket No. 56. The Court  
24 granted the parties' stipulation on October 5, 2011. Docket No.  
25 57. Plaintiffs filed their first amended complaint, omitting the  
26 claims against Finex and adding Navarro and Alvarez as named  
27 Plaintiffs, on that day. Docket No. 59.

28

1 On December 1, 2011, Plaintiffs filed their motion for class  
2 certification. To prosecute their single claim for statutory  
3 damages for Experian's willful violation of the FCRA, Plaintiffs  
4 seek certification of a class consisting of "all consumers whose  
5 consumer reports were furnished by Experian to Finex in connection  
6 with Finex's efforts to collect on a towing deficiency claim from  
7 January 1, 2008 to the present." Mot. at 12.

8 LEGAL STANDARD

9 Plaintiffs seeking to represent a class must satisfy the  
10 threshold requirements of Rule 23(a) as well as the requirements  
11 for certification under one of the subsections of Rule 23(b).  
12 Rule 23(a) provides that a case is appropriate for certification  
13 as a class action if

- 14 (1) the class is so numerous that joinder of all  
members is impracticable;  
15 (2) there are questions of law or fact common to the  
class;  
16 (3) the claims or defenses of the representative  
17 parties are typical of the claims or defenses of the  
class; and  
18 (4) the representative parties will fairly and  
adequately protect the interests of the class.

19 Fed. R. Civ. P. 23(a). Rule 23(b) further provides that a case  
20 may be certified as a class action only if one of the following is  
21 true:

- 22 (1) prosecuting separate actions by or against  
23 individual class members would create a risk of:  
24 (A) inconsistent or varying adjudications with  
respect to individual class members that would  
25 establish incompatible standards of conduct for the  
party opposing the class; or  
26 (B) adjudications with respect to individual class  
27 members that, as a practical matter, would be  
dispositive of the interests of the other members  
28 not parties to the individual adjudications or

1 would substantially impair or impede their ability  
2 to protect their interests;

3 (2) the party opposing the class has acted or refused to  
4 act on grounds that apply generally to the class, so  
5 that final injunctive relief or corresponding  
6 declaratory relief is appropriate respecting the class  
7 as a whole; or

8 (3) the court finds that the questions of law or fact  
9 common to class members predominate over any questions  
10 affecting only individual members, and that a class  
11 action is superior to other available methods for fairly  
12 and efficiently adjudicating the controversy. The  
13 matters pertinent to these findings include:

14 (A) the class members' interests in individually  
15 controlling the prosecution or defense of separate  
16 actions;

17 (B) the extent and nature of any litigation  
18 concerning the controversy already begun by or  
19 against class members;

20 (C) the desirability or undesirability of  
21 concentrating the litigation of the claims in the  
22 particular forum; and

23 (D) the likely difficulties in managing a class  
24 action.

25 Fed. R. Civ. P. 23(b). Plaintiffs assert that the class qualifies  
26 for certification under subdivision (b)(3).

27 As the parties seeking class certification, the plaintiffs  
28 bear the burden of demonstrating that each element of Rule 23 is  
satisfied, and a district court may certify a class only if it  
determines that the plaintiffs have borne their burden. Gen. Tel.  
Co. of Sw. v. Falcon, 457 U.S. 147, 158-61 (1982); Doninger v.  
Pac. Nw. Bell, Inc., 564 F.2d 1304, 1308 (9th Cir. 1977). In  
general, the court takes the substantive allegations of the  
complaint as true. Blackie v. Barrack, 524 F.2d 891, 901 (9th  
Cir. 1975). However, the court must conduct a "rigorous  
analysis," which may require it "to probe behind the pleadings  
before coming to rest on the certification question." Wal-Mart  
Stores, Inc. v. Dukes, 131 S. Ct. 2541, 2551 (2011) (quoting

1 Falcon, 457 U.S. at 160-61). "Frequently that 'rigorous analysis'  
2 will entail some overlap with the merits of the plaintiff's  
3 underlying claim. That cannot be helped." Dukes, 131 S. Ct. at  
4 2551. To satisfy itself that class certification is proper, the  
5 court may consider material beyond the pleadings and require  
6 supplemental evidentiary submissions by the parties. Blackie, 524  
7 F.2d at 901 n.17. "When resolving such factual disputes in the  
8 context of a motion for class certification, district courts must  
9 consider 'the persuasiveness of the evidence presented.'" Aburto  
10 v. Verizon Cal., Inc., 2012 U.S. Dist. LEXIS 329, at \*6 (C.D.  
11 Cal.) (quoting Ellis v. Costco Wholesale Corp., 657 F.3d 970, 982  
12 (9th Cir. 2011)). Ultimately, it is in the district court's  
13 discretion whether a class should be certified. Molski v. Gleich,  
14 318 F.3d 937, 946 (9th Cir. 2003); Burkhalter Travel Agency v.  
15 MacFarms Int'l, Inc., 141 F.R.D. 144, 152 (N.D. Cal. 1991).

#### DISCUSSION

##### I. Class Definition

18 "[I]n order to maintain a class action, the class sought to  
19 be represented must be adequately defined and clearly  
20 ascertainable." DeBremaeker v. Short, 433 F.2d 733, 734 (5th Cir.  
21 1970) (citing Weisman v. MCA Inc., 45 F.R.D. 258 (D. Del. 1968)).  
22 "A class is ascertainable if it identifies a group of unnamed  
23 plaintiffs by describing a set of common characteristics  
24 sufficient to allow a member of that group to identify himself or  
25 herself as having a right to recover based on the description."  
26 Hanni v. Am. Airlines, Inc., 2010 U.S. Dist. LEXIS 3410, at \*24  
27 (N.D. Cal.) (quoting Moreno v. Autozone, Inc., 251 F.R.D. 417, 421  
28 (N.D. Cal. 2008)). "The identity of class members must be

1 ascertainable by reference to objective criteria." 5 James W.  
2 Moore, Moore's Federal Practice § 23.21[1] (2001). Thus, a class  
3 definition is sufficient if the description of the class is  
4 "definite enough so that it is administratively feasible for the  
5 court to ascertain whether an individual is a member." O'Connor  
6 v. Boeing N. Am., Inc., 184 F.R.D. 311, 319 (C.D. Cal. 1998).

7 Experian argues that Plaintiffs' proposed class definition is  
8 overly broad, because it encompasses consumers who cannot state a  
9 valid claim against Experian under Pintos. See Wolph v. Acer Am.  
10 Corp., 272 F.R.D. 477, 482-83 (N.D. Cal. 2011) (finding a class  
11 definition overbroad where the proposed class included persons who  
12 had already received a remedy and were not damaged); Mazur v.  
13 eBay, 257 F.R.D. 563, 567 (N.D. Cal. 2009) (rejecting a class  
14 definition as imprecise and overbroad where it included person who  
15 were not harmed).

16 In Pintos, the Ninth Circuit stated that "the FCRA permits  
17 [consumer reporting] agencies to furnish credit reports only for  
18 'certain statutorily enumerated purposes.'" 605 F.3d at 674. One  
19 such permissible purpose allows an agency to furnish a consumer  
20 report

21 [t]o a person which it had reason to believe . . .  
22 intends to use the information in connection with a  
23 credit transaction involving the consumer on whom the  
24 information is to be furnished and involving the  
25 extension of credit to, or review or collection of an  
26 account of, the consumer.

24 15 U.S.C. § 1681b(a)(3)(A). "To qualify under § 1681b(a), the  
25 'credit transaction' must both (1) be 'a credit transaction  
26 involving the consumer on whom the information is to be furnished'  
27 and (2) involve 'the extension of credit to, or review or  
28

1 collection of an account of, the consumer.'" Pintos, 605 F.3d at  
2 674. This section "can be relied upon by the party requesting a  
3 credit report 'only if the consumer initiates the transaction.'" Id.  
4 Id. at 675 (quoting Stergiopoulos v. First Midwest Bancorp, Inc.,  
5 427 F.3d 1043, 1047 (7th Cir. 2005)). It does not apply where a  
6 consumer "is 'oblige[d] to become associated' with the  
7 transaction." Id. (quoting Andrews v. TRW, Inc., 225 F.3d 1063,  
8 1067 (9th Cir. 2000)). However, "[i]f a debt has been judicially  
9 established, there is a 'credit transaction involving the  
10 consumer' no matter how it arose." Id. at 676.

11 Experian argues that the proposed class definition, which  
12 encompasses "all consumers whose consumer reports were furnished  
13 by Experian to Finex in connection with Finex's efforts to collect  
14 on a towing deficiency claim," is overbroad, because it includes  
15 consumers whose debts were either consumer-initiated or whose  
16 debts have been judicially established. Plaintiffs seem to argue  
17 that a "towing deficiency claim" is defined as containing only  
18 those that arise "when a vehicle is towed involuntarily." Reply,  
19 at 3. However, the law governing such deficiency claims does not  
20 support this definition.

21 California Civil Code § 3068.1 provides for liens "dependent  
22 upon possession for the compensation to which [a] person is  
23 legally entitled for towing, storage, or labor associated with  
24 recovery or load salvage of any vehicle subject to registration  
25 that has been authorized to be removed by a public agency, a  
26 private property owner . . . , or a lessee, operator, or registered  
27 owner of the vehicle." Cal. Civil Code § 3068.1(a). It "also  
28 allows for lien sales with varying procedures dependent on the



1 value of the vehicle towed and stored." Pintos, 605 F.3d at 673,  
2 n.1 (citing Cal. Civil Code §§ 3068.1(b)-3068.1(c)). California  
3 Civil Code § 3068.2 specifically provides that a tow truck  
4 operator with a lien on a vehicle pursuant to the previous code  
5 section "has a deficiency claim against the registered owner of  
6 the vehicle if the vehicle is not leased or leased with a driver  
7 for an amount equal to the towing and storage charges, not to  
8 exceed 120 days of storage, . . . less the amount received from  
9 the sale of the vehicle." Cal. Civil Code § 3068.2(a). Thus, a  
10 towing deficiency claim may arise under California law when the  
11 tow has been authorized by the registered owner of the vehicle and  
12 was thus consumer-initiated.

13 Furthermore, though Price and Blas stated in their  
14 declarations that "[v]irtually all of the towing claims that Finex  
15 has been retained to collect resulted from involuntary tows,"  
16 Price Decl. ¶ 5, Blas Decl. ¶ 13, Price acknowledges that Finex  
17 did in fact pursue at least some claims involving "consensual"  
18 tows and claims that were reduced to a judgment during the class  
19 period. Price Reply Decl. ¶¶ 5-7 (describing how he removed these  
20 individuals from the class list he provided to Plaintiffs'  
21 counsel).

22 Accordingly, the Court agrees that the proposed class  
23 definition is facially overbroad. "District courts are permitted  
24 to limit or modify class definitions to provide the necessary  
25 precision." In re Monumental Life Ins. Co., 365 F.3d 408, 414  
26 (5th Cir. 2004). See also Robidoux v. Celani, 987 F.2d 931, 937  
27 (2d Cir. 1993) ("A court is not bound by the class definition  
28 proposed . . ."); Gonzales v. Comcast Corp., 2012 U.S. Dist. LEXIS

1 196, at \*63 (E.D. Cal.) ("the court has the power to modify the  
2 proposed class definitions to make them sufficiently definite").  
3 The Court thus modifies the proposed class definition to encompass  
4 only "consumers whose consumer reports were furnished by Experian  
5 to Finex . . . in connection with Finex's efforts to collect on a  
6 towing deficiency claim that was not reduced to a judgment and was  
7 not the result of a transaction that the consumer initiated."

8 The parties also dispute whether it will be administratively  
9 feasible to exclude individuals with consumer-initiated tows or  
10 judicially-established debts. These are objective criteria, and  
11 class members can easily discern whether or not they were involved  
12 in the initiation of the towing, and whether a court has confirmed  
13 the debt against them, and submit related evidence or  
14 declarations. See In re TFT-LCD Antitrust Litig., 267 F.R.D. 583,  
15 592 (N.D. Cal. 2010) ("The fact that class members will be  
16 required to submit some information in order to determine whether  
17 they are members of the class does not render the class definition  
18 unascertainable."). Even if the fact-finder must engage in  
19 individual determinations regarding these factors, these are both  
20 limited and discrete inquiries.

21 Accordingly, the Court rejects Experian's argument that the  
22 class cannot be certified because it is unascertainable.

## 23 II. Numerosity

24 Plaintiffs represent that Experian furnished Finex with  
25 Collection Advantage reports on 4,427 consumers in 2008, on 14,785  
26 consumers in 2009, and on 21,236 consumers in 2010. Price Decl.

27 ¶ 22. Experian does not dispute that Plaintiffs have satisfied  
28 the numerosity requirement. Accordingly, the Court finds that

1 Plaintiffs have fulfilled their burden to establish that this  
2 requirement is satisfied.

3 III. Commonality

4 Rule 23 contains two related commonality provisions. Rule  
5 23(a)(2) requires that there be "questions of law or fact common  
6 to the class." Fed. R. Civ. P. 23(a)(2). Rule 23(b)(3), in turn,  
7 requires that such common questions predominate over individual  
8 ones.

9 The Ninth Circuit has explained that Rule 23(a)(2) does not  
10 preclude class certification if fewer than all questions of law or  
11 fact are common to the class:

12 The commonality preconditions of Rule 23(a)(2) are less  
13 rigorous than the companion requirements of Rule  
14 23(b)(3). Indeed, Rule 23(a)(2) has been construed  
15 permissively. All questions of fact and law need not be  
16 common to satisfy the rule. The existence of shared  
17 legal issues with divergent factual predicates is  
18 sufficient, as is a common core of salient facts coupled  
19 with disparate legal remedies within the class.

20 Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998).

21 Experian contends that commonality cannot be found throughout  
22 the class period. Experian argues that its actions during this  
23 period, including issuing the Talk Tracks and sending letters to  
24 some customers, affect the determination of "the reasonableness of  
25 Experian's procedures for ensuring § 1681b compliance, or of  
26 Experian's belief that Finex was complying with § 1681b." Thus,  
27 Experian contends that the reasonableness of its procedures and  
28 beliefs may not be determined for the class period as a whole. At  
the hearing, Experian conceded that, if the class were divided  
into subclasses by time period, the reasonableness of its  
procedures would be a common question within each subclass.

1 Under Pintos, to hold a credit reporting agency liable for  
2 its subscriber's FCRA violation, after a potential subscriber  
3 certifies the purpose for which it is seeking credit information  
4 and certifies that it will use the information for no other  
5 purpose, "the reporting agency must make 'a reasonable effort' to  
6 verify the certification and may not furnish reports if  
7 'reasonable grounds' exist to believe that reports will be used  
8 impermissibly." Pintos, 605 F.3d at 677. Plaintiffs argue that  
9 Experian should have made a reasonable effort to verify Finex's  
10 certification, especially because Finex had repeatedly informed  
11 Experian that it collected towing deficiencies since the beginning  
12 of the relationship between Finex and Experian. While Experian  
13 says that "the reasonableness . . . of Experian's belief that  
14 Finex was complying with" the FCRA is "an issue for which the  
15 proposed class cannot be treated as unitary whole," Opp. at 13,  
16 Experian does not explain this argument. This determination does  
17 not depend on the facts surrounding the claim of any particular  
18 class members; instead, it turns on the interactions between  
19 Experian and Finex. As previously noted, there is evidence in the  
20 record that, prior to approving Finex to receive the Collection  
21 Advantage reports, Experian had information that Finex provided  
22 collections for towing companies, and that Experian continued to  
23 receive more information to this effect through October 2008.  
24 Thus, the reasonableness of Experian's belief that Finex was using  
25 the reports impermissibly is a question common to the class,  
26 especially because, as will be discussed below in connection with  
27 predominance, the Court will limit the class those consumers whose  
28 reports Experian furnished to Finex on or after January 12, 2009.

1 While "commonality only requires a single significant  
2 question of law or fact" that is common to the class, Mazza v.  
3 Amer. Honda Motor Co., 666 F.3d 581, 589 (9th Cir. 2012), the  
4 Court also finds the reasonableness of Experian's procedures for  
5 ensuring compliance with the FCRA after the Pintos decisions  
6 constitutes another such common question. Experian argues that  
7 the facts that it issued Talk Tracks to its employees in October  
8 2007, May 2009, June 2010 and January 2011, and that it sent  
9 "Important Notices" to clients like Finex in September or October  
10 2010 and January 2011 explaining the requirements of Pintos, will  
11 affect the determination of the reasonableness of its procedures  
12 for ensuring compliance with the FCRA, precluding a common  
13 determination for the whole class.

14 First, Finex stopped receiving credit information from  
15 Experian in November 2010, and thus the January 2011 Talk Tracks  
16 and Important Notice are irrelevant to whether Experian acted  
17 reasonably regarding disclosure of the putative class members'  
18 credit information. Similarly, Experian acknowledges that Finex  
19 was never contacted for re-certification or auditing, because it  
20 was no longer a customer by the time Experian began conducting  
21 these processes in January 2011; thus, the re-certification and  
22 audit process is not pertinent to the class's claims.

23 Nor do the Talk Track memoranda defeat the commonality of the  
24 determination. The first Talk Tracks memorandum went to employees  
25 in October 2007, before Finex began receiving credit information  
26 from Experian. The second and third Talk Tracks memoranda issued  
27 during the class period were largely identical to the first one  
28 and included almost the same directions to employees. More

1 importantly, none of these memoranda is relevant to whether  
2 Experian took reasonable efforts to verify Finex's certification;  
3 instead, they contain an explanation of the Pintos decision and  
4 its holding and directions to employees to tell clients who  
5 inquire about the case to consult with their own attorneys. While  
6 the memoranda note that Experian would eventually notify its  
7 clients about new compliance policies and that it would audit and  
8 re-certify clients in the future, they do not instruct employees  
9 to make any inquiries or take any steps to verify certifications.

10 Finally, the Important Notice sent to clients, including  
11 Finex, in September or October 2010 also does not defeat the  
12 commonality of this determination for those whose reports were  
13 disclosed before and after it was sent. In the Important Notice,  
14 Experian told its clients that it would contact the affected  
15 clients directly for re-certification and that, until then, it  
16 would be "relying upon you to comply," which meant that the  
17 customer would "obtain Experian reports for collection purposes  
18 only when collecting an obligation arising from a transaction  
19 voluntarily initiated by the consumer" or when the obligation "has  
20 been judicially established by a court order or judgment."

21 Anderson Decl., Ex. 5. However, under the holding of Pintos,  
22 reliance upon the clients' certification of compliance "cannot  
23 absolve the reporting agency of its independent obligation to  
24 verify the certification and determine that no reasonable grounds  
25 exist for suspecting impermissible use," especially where, as  
26 here, there was reason for Experian to suspect that a particular  
27 client was not complying with the certification. 605 F.3d at 677  
28 and n.3.

1           Experian also argues that there is no commonality throughout  
2 the entire class period, because the currently operative decision  
3 in Pintos was not issued until April 30, 2009, changing whether  
4 debt collection in certain circumstances was a permissible purpose  
5 under the FCRA and thus altering whether it could be held liable  
6 for "willfully" violating the statute. Experian argues that,  
7 until that time, it could have reasonably read the FCRA to allow  
8 it to make these disclosures by relying upon the Ninth Court's  
9 decision in Hasbun v. County of L.A., 323 F.3d 801, 802 (9th Cir.  
10 2003).

11           However, on September 21, 2007, prior to the start of  
12 Experian's relationship with Finex and prior to the disclosures at  
13 issue here, the Ninth Circuit issued its first decision and  
14 entered judgment in Pintos. This decision indicated that the  
15 collection of a towing-related debt did not constitute a  
16 permissible purpose for furnishing a credit report under FCRA,  
17 where the towing was not consumer-initiated and the debt had not  
18 been reduced to a judgment. Parties must obey "an order issued by  
19 a court with jurisdiction over the subject matter and person . . .  
20 until it is reversed by orderly and proper proceedings." United  
21 States v. United Mine Workers, 330 U.S. 258, 293 (1947). The  
22 "pendency of a petition for rehearing does not, in itself, destroy  
23 the finality of an appellate court's judgment." Wedbush, Noble,  
24 Cooke, Inc. v. SEC, 714 F.2d 923, 924 (9th Cir. 1983). Although  
25 the decision was subject to Experian's petitions for panel  
26 rehearing and rehearing en banc and for a writ of certiorari in  
27 the United States Supreme Court, the 2007 decision was  
28 "nevertheless final for such purposes as stare decisis, and full

1 faith and credit." Id. Thus, when Experian furnished the class  
2 members' reports to Finex, there was already binding Ninth Circuit  
3 authority that this type of debt collection did not constitute a  
4 permissible purpose. Further, while the 2009 decision changed the  
5 Ninth Circuit's reasoning, Experian does not dispute that the  
6 holding remained the same.

7 Accordingly, the Court finds that Plaintiffs have satisfied  
8 the commonality requirement.

#### 9 IV. Typicality

10 Rule 23(a)(3)'s typicality requirement provides that a "class  
11 representative must be part of the class and possess the same  
12 interest and suffer the same injury as the class members."

13 Falcon, 457 U.S. at 156 (quoting E. Tex. Motor Freight Sys., Inc.  
14 v. Rodriguez, 431 U.S. 395, 403 (1977)) (internal quotation marks  
15 omitted). The purpose of the requirement is "to assure that the  
16 interest of the named representative aligns with the interests of  
17 the class." Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th  
18 Cir. 1992). Rule 23(a)(3) is satisfied where the named plaintiffs  
19 have the same or similar injury as the unnamed class members, the  
20 action is based on conduct which is not unique to the named  
21 plaintiffs, and other class members have been injured by the same  
22 course of conduct. Id. Class certification is inappropriate,  
23 however, "where a putative class representative is subject to  
24 unique defenses which threaten to become the focus of the  
25 litigation." Id. (quoting Gary Plastic Packaging Corp. v. Merrill  
26 Lynch, Pierce, Fenner & Smith, Inc., 903 F.2d 176, 180 (2d Cir.  
27 1990)).  
28



1 Plaintiffs state that their claims are typical of the class,  
2 because each named Plaintiff had a vehicle towed involuntarily,  
3 which was sold at a lien sale, the towing company asserted a  
4 towing deficiency claim against each, and Finex tried to collect  
5 the claim by obtaining a Collection Advantage report from  
6 Experian.

7 Experian argues that the class representatives' claims are  
8 not typical of those of the class, because of the specific  
9 circumstances that led to the towing of the cars related to the  
10 class representatives. Experian contends that Navarro and Alvarez  
11 do not "have documents to prove that" they "did not own their cars  
12 when each was towed." Opp. at 15. However, the evidence in the  
13 record supports a finding that they sold their cars before their  
14 cars were towed and they were not liable for the towing  
15 deficiency. See Cal. Civil Code § 3068.2(d) ("A registered owner  
16 who has sold or transferred his or her vehicle prior to the  
17 vehicle's removal and who was not responsible for creating the  
18 circumstances leading to the removal of the vehicle is not liable  
19 for any deficiency . . . if that registered owner executes a  
20 notice . . . and submits the notice to the Department of Motor  
21 Vehicles.").

22 Experian also maintains that Holman initiated his tow by  
23 running from the police. However, in Pintos, the Ninth Circuit  
24 stated, "The requirement that the consumer initiate the  
25 transaction is not satisfied simply because the consumer did  
26 something that arguably led to the creditor's claim." 605 F.3d at  
27 675. The dissent argued that the plaintiff had initiated the  
28 transaction, because "refusing to pay required vehicle

1 registration fees and parking one's car on a public street is  
2 asking to have one's car towed." Id. at 680 (Bea, J., dissenting)  
3 (emphasis in original). The majority rejected this view and  
4 stated that the plaintiff "did not initiate the transaction that  
5 resulted in PCA requesting her credit report," because she "never  
6 asked to have the vehicle towed; P&S simply towed the car by  
7 direction of the police then tried to collect the charges." Id.  
8 at 675. Similarly, while Holman did something that arguably led  
9 to the creditor's claim against him, he did not ask for his car to  
10 be towed. Instead, the police had it towed without his permission  
11 or consent.

12 Experian also argues that Holman, Alvarez and Navarro do not  
13 have claims arising before the Pintos decision in 2009 or after  
14 Experian contacted Finex about the case in fall of 2010 by sending  
15 the Important Notice, and that this makes them atypical of the  
16 class members who do have claims in those time periods. However,  
17 this argument is unavailing for the reasons discussed previously.

18 Accordingly, the Court finds that Plaintiffs have met the  
19 typicality requirement.

20 V. Adequacy

21 Rule 23(a)(4) establishes as a prerequisite for class  
22 certification that "the representative parties will fairly and  
23 adequately protect the interests of the class." Fed. R. Civ. P.  
24 23(a)(4).

25 Experian argues that Holman cannot adequately represent the  
26 class, because Holman abandoned the claims against Finex to the  
27 detriment of the class in order to have his outstanding debt to  
28 Finex released. Experian similarly argues that both Alvarez and

1 Navarro are inadequate, because they did not even pursue claims  
2 against Finex.

3 Plaintiffs respond that the decision not to pursue Finex was  
4 strategic and did not evidence any inadequacy in their ability to  
5 represent the class. Plaintiffs state that they evaluated the  
6 claims against Finex and determined that they would have a  
7 difficult time proving that Finex had "willfully" violated FCRA.  
8 Given the difficult case and the fact that Finex was virtually  
9 judgment proof, Plaintiffs decided to gain Finex's cooperation in  
10 their case against Experian.

11 The decision to pursue only Experian does not demonstrate  
12 Plaintiffs' inadequacy. While Experian argues that "[a]ny  
13 plaintiff with a claim against Experian will . . . also have a  
14 claim against Finex," Opp. at 18, this is incorrect, because a  
15 plaintiff must prove that a defendant "willfully" failed to comply  
16 with the FCRA in order to recover against that defendant. See 15  
17 U.S.C. § 1681n. Further, Finex's cooperation with Plaintiffs has  
18 significantly improved their case against Experian; the testimony  
19 by Blas and Price regarding their communications with Experian  
20 strengthens Plaintiffs' evidence in support of a finding that  
21 Experian had "reasonable grounds" to know that Finex was not using  
22 the reports for a permissible purpose, making Experian liable for  
23 Finex's improper conduct under Pintos.

24 Although Holman did receive a financial benefit in the form  
25 of the settlement of the individual claim against him, this does  
26 not make him an inadequate class representative. Experian  
27 primarily relies on remarks made by Holman's mother to present  
28 Holman's settlement with Finex in a questionable light, but it

1 provides no evidence that she has any authority to speak or act on  
2 behalf of her adult son, and her statements are not relevant to  
3 the suitability of her son to serve as a class representative.  
4 Further, Experian presents many of her statements in a misleading  
5 manner. While Experian makes much of the fact that Holman did not  
6 obtain a release of all debts that putative class members owed to  
7 Finex, Holman could not have done so. He had no ability to  
8 promise on their behalf that they would make a partial payment, as  
9 he did for his debt. Further, the claims in this case center on  
10 the wrongful disclosure of class members' credit reports, and do  
11 not seek discharge of towing debts. Experian presents no evidence  
12 that Holman acted in bad faith or compromised the class claim  
13 against Finex for any reason other than to obtain a benefit for  
14 the class in the form of Finex's cooperation.

15 Experian also argues that Navarro cannot adequately represent  
16 the class, because Navarro does not know enough about the case or  
17 his duties toward the putative class.

18 "While class representatives must be familiar with the basics  
19 of, and 'understand the gravamen' of, their claims, it is not  
20 necessary that they be 'intimately familiar with every factual and  
21 legal issue in the case.'" In re Static Random Access Memory  
22 Antitrust Litig., 264 F.R.D. 603, 610 (N.D. Cal. 2009) (quoting  
23 Moeller v. Taco Bell Corp., 220 F.R.D. 604, 611 (N.D. Cal. 2004)).  
24 "A class representative will be deemed inadequate only if she is  
25 startlingly unfamiliar with the case." Id. (quoting Moeller, 220  
26 F.R.D. at 611) (internal quotation marks omitted).

27 While Navarro's deposition testimony shows some lack of  
28 familiarity with the case, it does not demonstrate that he is so

1 "startlingly unfamiliar" with it as to render him an inadequate  
2 class representative. The deposition transcript shows that much  
3 of Navarro's unfamiliarity was the result of confusion and his  
4 lower level of education and sophistication than the other  
5 proposed class representatives. See, e.g., Navarro Depo. Tr.  
6 112:10-113:4 (Navarro's testimony that he "did not go to school,"  
7 that he did not "understand many of the words" that were being  
8 used at the deposition and that, "at times, [he] didn't"  
9 understand the papers that he was being shown during the  
10 deposition). Navarro clearly expressed knowledge of the gravamen  
11 of the claim and of his duties as class representative, including  
12 that he was "representing others," "that it is important for all  
13 members of the class to benefit equally from this case" and that  
14 all class members should be treated fairly. Id. at 74:1-74:22.

15 Accordingly, the Court finds Plaintiffs have met their burden  
16 on this prong.

#### 17 VI. Predominance

18 "The predominance inquiry of Rule 23(b)(3) asks whether  
19 proposed classes are sufficiently cohesive to warrant adjudication  
20 by representation. The focus is on the relationship between the  
21 common and individual issues." In re Wells Fargo Home Mortgage  
22 Overtime Pay Litig., 571 F.3d 953, 957 (9th Cir. 2009) (internal  
23 quotation marks and citations omitted). "'When common questions  
24 present a significant aspect of the case and they can be resolved  
25 for all members of the class in a single adjudication, there is  
26 clear justification for handling the dispute on a representative  
27 rather than on an individual basis.'" Hanlon, 150 F.3d at 1022  
28 (quoting 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane,

1 Federal Practice & Procedure § 1777 (2d ed. 1986)). A court must  
2 make "some prediction as to how specific issues will play out in  
3 order to determine whether common or individual issues predominate  
4 . . . ." In re New Motor Vehicles Canadian Export Antitrust  
5 Litig., 522 F.3d 6, 20 (1st Cir. 2008) (citation and internal  
6 quotation marks omitted).

7 Plaintiffs argue that common questions of law and fact will  
8 predominate, because the central issues in the case revolve around  
9 Experian's actions following the Pintos decisions and what it knew  
10 about Finex, not about the actions of individual class members.  
11 In addition to the arguments already addressed when discussing  
12 commonality, Experian makes one additional argument against a  
13 finding of predominance, that some class members' claims may be  
14 barred by the statute of limitations.

15 Claims made under the FCRA must be brought, "not later than  
16 the earlier of--(1) 2 years after the date of discovery by the  
17 plaintiff of the violation that is the basis for such liability;  
18 or (2) 5 years after the date on which the violation that is the  
19 basis for such liability occurs." 15 U.S.C. § 1681p. Experian  
20 argues that the proposed class period starts on January 1, 2008,  
21 more than three years before the complaint in this case was  
22 originally filed on January 12, 2011, and that some of the class  
23 members may have discovered the violation more than two years  
24 before that date. Experian points out that federal law permits  
25 everyone free, annual access to their own Experian credit report,  
26 and that this report would have shown Finex's inquiry. See, e.g.,  
27 Anderson Reply Decl., Ex. A (Holman's Experian credit report,  
28 showing a credit inquiry by Finex). Further, Price stated in his

1 declaration that Finex employees routinely called debtors and told  
2 them that they could see their credit score, in order to ask them  
3 to pay their debt to maintain their score. Price Decl. ¶ 19.  
4 Thus, a substantial proportion of the class members may have been  
5 put on notice by Finex itself of the violation.

6 Experian is correct that, to assess its liability to those  
7 more than 4,000 putative class members whose credit reports were  
8 disclosed more than two years before January 12, 2011, would  
9 require a determination of whether the class member had accessed  
10 their credit report or otherwise learned of Experian's disclosure.  
11 For that time period, the Court finds that individual issues will  
12 predominate over the common issues. See also Molina v. Roskam  
13 Baking Co., 2011 U.S. Dist. LEXIS 136460, at \*13-15 (W.D. Mich.)  
14 (denying class certification in a FCRA case "because the question  
15 of Defendant's liability to a substantial portion of the class  
16 turns on the individual question of when certain class members  
17 'discovered' or 'should have discovered' Defendant's alleged  
18 misconduct").

19 Accordingly, the Court limits the class period to encompass  
20 only those consumers whose reports Experian furnished to Finex on  
21 or after January 12, 2009. Under this more limited class  
22 definition, the Court finds that the predominance requirement is  
23 satisfied.

#### 24 VII. Superiority

25 Plaintiffs argue that the superiority requirement has been  
26 met, because the economic value of each individual claim is small,  
27 between \$100 and \$1,000 each, plus punitive damages, and because  
28

1 many class members will not have any way to know that Experian has  
2 produced their information to Finex.

3       Experian responds that Plaintiffs have not met their burden  
4 because they have not proposed a workable trial plan. In support  
5 of their argument that this should preclude certification,  
6 Experian cites only to opinions in nation-wide class action suits  
7 in diversity cases in which the court found the trial plan  
8 unworkable because it would have to apply different substantive  
9 state law. See In re Paxil Litig., 212 F.R.D. 539, 546-548 (C.D.  
10 Cal. 2003) (mass tort case where the court would have to apply  
11 state law for claims of plaintiffs from fifty different states and  
12 would have to consider a number of individual issues, including  
13 causation and reliance); Lee v. ITT Corp., 275 F.R.D. 318, 324  
14 (W.D. Wash. 2011) (holding that, "until Plaintiffs establish what  
15 law should apply and provide the court with a manageable trial  
16 plan to adequately deal with the variances in state law, the Court  
17 cannot find that common issues predominate"). In the case at  
18 hand, the claims of all class members are based on the FCRA, not  
19 on differing state laws, and they do not involve the same level of  
20 individual issues as the cases cited by Experian.

21       Accordingly, the Court finds that Plaintiffs have satisfied  
22 the superiority requirement.

### 23 VIII. Appointment of Class Counsel

24       Rule 23(g)(1) of the Federal Rules of Civil Procedure  
25 provides in relevant part:

26       Unless a statute provides otherwise, a court that  
27 certifies a class must appoint class counsel. In  
28 appointing class counsel, the court:

(A) must consider:



1 (i) the work counsel has done in identifying or  
investigating potential claims in the action;

2 (ii) counsel's experience in handling class  
actions, other complex litigation, and the types of  
3 claims asserted in the action;

4 (iii) counsel's knowledge of the applicable law;  
and

5 (iv) the resources that counsel will commit to  
representing the class;

6 (B) may consider any other matter pertinent to counsel's  
ability to fairly and adequately represent the interests  
7 of the class;

8 (C) may order potential class counsel to provide  
information on any subject pertinent to the appointment  
and to propose terms for attorney's fees and nontaxable  
9 costs;

10 (D) may include in the appointing order provisions about  
the award of attorney's fees or nontaxable costs under  
11 Rule 23(h); and

12 (E) may make further orders in connection with the  
appointment.

13 Fed. R. Civ. P. 23(g)(1).

14 Plaintiffs' counsel have offered evidence that they are  
15 experienced in class action litigation and appeals. Further,  
16 counsel have substantial knowledge of the relevant law, having  
17 successfully litigated the Pintos case through the entire  
18 appellate process.

19 Experian argues that Plaintiffs' counsel have failed to act  
20 in the best interests of the class thus far in the litigation,  
21 because they ignored their fiduciary duties to the class in  
22 dismissing Finex. "[P]re-certification class counsel owe a  
23 fiduciary duty not to prejudice the interests that putative class  
24 members have in their class action litigation' because 'class  
25 counsel acquires certain limited abilities to prejudice the  
26 substantive legal interests of putative class members even prior  
27 to class certification.'" Harris v. Vector Marketing Corp., 2010  
28

1 WL 3743532, at \*4 (N.D. Cal.) (quoting Schick v. Berg, 2004 U.S.  
2 Dist. LEXIS 6842, at \*18 (S.D.N.Y.). See also Staton v. Boeing  
3 Co., 327 F.3d 938, 960 (9th Cir. 2003) (indicating that class  
4 attorneys purporting to represent a putative class owe the entire  
5 class a fiduciary duty once the class complaint is filed). As  
6 explained above, Plaintiffs' counsel did not violate their  
7 fiduciary obligations to the class by dismissing Finex in order to  
8 secure its cooperation in prosecuting the claim against Experian,  
9 a strategic decision made to benefit the class.

10       Experian also contends that Plaintiffs' counsel committed a  
11 tort against the putative class members by invading their privacy  
12 in obtaining a list of class members, including their names,  
13 contact information and Experian Recovery Score from Finex,  
14 without first obtaining permission from the class members, and  
15 that Plaintiffs' counsel have a conflict of interest precluding  
16 them from properly representing the class.

17       Experian argues that, under Pioneer Electronics, Inc. v.  
18 Superior Court, 40 Cal. 4th 360 (2007), Plaintiffs' counsel were  
19 required to approach the Court for permission to obtain the class  
20 list and that class members should have been notified prior to  
21 disclosure of the list. However, Pioneer Electronics guides a  
22 state court's analysis of a motion to compel when a defendant, who  
23 is the custodian of confidential customer information, asserts a  
24 right to privacy on behalf of the putative class members, when  
25 asked to disclose that information prior to class certification,  
26 and objects to disclosure. 40 Cal. 4th at 364-69. It does not  
27 state that Plaintiffs' counsel, as the recipient of the  
28 disclosure, must affirmatively approach the Court for permission

1 to receive records, where, as here, the records' custodian has not  
2 objected to disclosure and has provided the list voluntarily.  
3 Experian provides no case law that supports the proposition that a  
4 recipient of confidential information can be held liable for the  
5 supplier's improper disclosure. Further, this is a federal case,  
6 with jurisdiction in this Court based on a federal question, and  
7 discovery and privilege matters are governed by federal laws and  
8 rules. Numerous courts in the Northern District of California  
9 have allowed pre-certification discovery of putative class  
10 members' confidential information subject to a protective order,  
11 without requiring prior notice to the putative class members.  
12 See, e.g., Currie-White v. Blockbuster, Inc., 2010 U.S. Dist.  
13 LEXIS 47071, at \*4 (N.D. Cal.) (requiring disclosure of putative  
14 class members' contact information subject to a protective order);  
15 Babbit v. Albertson's Inc., 1992 U.S. Dist. LEXIS 19091, at \*6  
16 (N.D. Cal.) (defendant employer ordered to disclose names,  
17 addresses, telephone numbers and social security numbers of  
18 current and past employees, subject to a protective order); see  
19 also Putnam v. Eli Lilly & Co., 508 F. Supp. 2d 812, 814 (C.D.  
20 Cal. 2007)(recognizing that, in such a situation, "a protective  
21 order can strike the appropriate balance between the need for the  
22 information and the privacy concerns"). Here, the list was  
23 produced pursuant to a protective order that maintains the  
24 confidentiality of the list and restricts its use to the instant  
25 litigation. See Docket No. 29.

## CONCLUSION

27 For the reasons set forth above, the Court GRANTS Plaintiffs'  
28 motion for class certification (Docket No. 68). The Court

1 certifies a class, defined as "all consumers whose consumer  
2 reports were furnished by Experian to Finex in connection with  
3 Finex's efforts to collect on a towing deficiency claim from  
4 January 12, 2009 to the present." The Court appoints Plaintiffs  
5 Roane Holman, Narcisco Navarro Hernandez and Miguel A. Alvarez to  
6 serve as class representatives, and appoints Plaintiffs' counsel  
7 to serve as class counsel.

8 IT IS SO ORDERED.

9  
10 Dated: 4/27/2012

  
11 CLAUDIA WILKEN  
12 United States District Judge  
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United States District Court  
For the Northern District of California