

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Civil Action No. 2:20-cv-859

v.

KOHL'S DEPARTMENT STORES, INC.,

Defendant.

**COMPLAINT FOR PERMANENT INJUNCTION, OTHER EQUITABLE RELIEF, AND
CIVIL PENALTIES**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC"), pursuant to Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 56(a)(1), for its Complaint alleges:

1. Plaintiff brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and Section 621(a) of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681s(a), to obtain injunctive and other equitable relief and monetary civil penalties for Defendant's acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the Section 609(e) of the FCRA, 15 U.S.C. § 1681g(e).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355.

3. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(1)-(d) and 1395(a), and 15 U.S.C. § 53(b).

PLAINTIFF

4. This action is brought by the United States of America on behalf of the FTC. The FTC is an independent agency of the United States government given statutory authority and responsibility by, *inter alia*, the FTC Act, 15 U.S.C. §§ 41-58, and the FCRA, 15 U.S.C. §§ 1681-1681x. The FTC is charged, *inter alia*, with enforcing Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce, and the FCRA, which imposes duties on businesses that have provided credit, goods, or services to, accepted payment from, or otherwise entered into a transaction with someone who is believed to have fraudulently used another person's identification.

DEFENDANT

5. Defendant Kohl's Department Stores, Inc. ("Kohl's") is a Delaware corporation with its principal place of business at N56 W17000 Ridgewood Drive, Menomonee Falls, Wisconsin 53051. Kohl's transacts or has transacted business in this District and throughout the United States.

COMMERCE

6. At all times material to this Complaint, Defendant has maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

FAIR CREDIT REPORTING ACT

7. The FCRA was enacted in 1970, became effective on April 25, 1971, and has been in force since that date. The Fair and Accurate Credit Transactions Act amended the FCRA in December 2003, and the Dodd-Frank Act amended the FCRA in July 2010.

8. Section 621 of the FCRA, 15 U.S.C. § 1681s, authorizes the Commission to use all of its functions and powers under the FTC Act to enforce compliance with the FCRA by all persons subject thereto except to the extent that enforcement specifically is committed to some other governmental agency, irrespective of whether the person is engaged in commerce or meets any other jurisdictional tests set forth by the FTC Act.

9. Section 609(e)(1) of the FCRA, 15 U.S.C. § 1681g(e)(1), requires a “business entity” to provide an identity theft “victim” with “application and business transaction records” evidencing any transaction that the victim alleges to be the “result of identity theft.” The business entity must provide such records “not later than 30 days after the date of receipt of a request from a victim.”

10. For purposes of Section 609(e)(1), a “business entity” is an entity that has “provided credit to, provided for consideration products, goods, or services to, accepted payment from, or otherwise entered into a commercial transaction for consideration with, a person who has allegedly made unauthorized use of the means of identification of the victim[.]” 15 U.S.C. § 1681g(e)(1).

11. Section 609(e)(11), 15 U.S.C. § 1681g(e)(11), defines a “victim” as:

a consumer whose means of identification or financial information has been used or transferred (or has been alleged to have been used or transferred) without the

authority of that consumer, with the intent to commit, or to aid or abet, an identity theft or a similar crime.

12. To obtain application and business transaction records of the alleged identity theft, the victim must make the request for records in writing and mail it to an address specified by the business entity. 15 U.S.C. § 1681g(e)(3). The records must be provided to the victim or, if specified or authorized by the victim, a law enforcement agency.

13. Prior to providing the records, a business entity can require that the victim provide:

- A. proof of his or her identity, such as a copy of the victim's government-issued identification card, 15 U.S.C § 1681g(e)(2)(A); and
- B. proof of the claim of identity theft, by providing a police report and a completed affidavit, 15 U.S.C. § 1681g(e)(2)(B).

14. The FTC also has issued guidance on multiple occasions to businesses seeking to comply with FCRA Section 609(e). Each guidance document states that businesses must provide records directly to victims upon request.

DEFENDANT'S BUSINESS ACTIVITIES

15. Kohl's is a large national department store chain with a significant online retail presence through the website, www.kohls.com ("Kohl's Website"). Among other things, the company sells clothing, accessories, beauty goods, and home products.

16. Prior to February 2017, Kohl's policy for handling requests for application and business transaction records from victims of identity theft, pursuant to Section 609(e) of the

FCRA (“609(e) Requests”), was to provide all such records to the victim within 30 days of the receipt of a request, after proper verification.

17. In February 2017, Kohl’s changed its policy for responding to 609(e) Requests related to Website orders. Under the new policy (“February 2017 Policy”), Kohl’s would only share information identifying the identify thief with law enforcement or with a victim’s attorney, upon their direct request.

18. In August 2018, Kohl’s further revised its policy for responding to 609(e) Requests. Under the new policy (“August 2018 Policy”), Kohl’s would provide customers with a Kohl’s charge account with a more expansive list of business and transaction records (such as statements, receipts, and applications), but Kohl’s continued to refuse to provide detailed order information (such as the address and phone number listed on a fraudulent application or the shipping address used for fraudulent orders) directly to any customers. In addition, under the August 2018 Policy, Kohl’s would no longer provide such detailed information about fraudulent orders to victims’ attorneys. According to this policy, victims had a single recourse for obtaining such information from Kohl’s: a request directly from law enforcement.

19. As a result of Kohl’s February 2017 and August 2018 Policies, many victims of identity theft were unable to obtain application and business transaction records related to the identity theft they suffered. Specifically, Kohl’s informed victims that it was not permitted to share such information with anyone other than law enforcement.

20. In addition, on several occasions, Kohl’s failed to respond to victims—even to issue a denial of their request—within 30 days.

21. Victims, who expended significant amounts of time submitting and following up on 609(e) Requests, repeatedly complained to Kohl's about its failure to grant their requests. Several victims also sent Kohl's the language of Section 609(e) of the FCRA as well as copies of the FTC's business guidance about 609(e) Requests in an effort to persuade the company to grant their requests. None of these efforts prompted any change in Kohl's policies, despite the fact that victims experienced (and repeatedly reported to Kohl's) significant frustration as a result of them.

22. The August 2018 Policy remained in place until April 2019, when Kohl's finally implemented a policy that required it to provide victims of identity theft with the application and business transaction records they requested.

23. Based on the facts and violations of law alleged in this Complaint, Plaintiff has reason to believe that Defendant is violating or is about to violate laws enforced by the Federal Trade Commission because, among other things, Kohl's knowingly engaged in its unlawful acts and practices for more than two years (February 2017 through March 2019), Kohl's continued its unlawful acts or practices despite knowledge of numerous complaints from victims of identity theft, and Kohl's only stopped its unlawful conduct six months after it received a Civil Investigative Demand from the FTC.

VIOLATIONS OF THE FCRA

Count I (Failure to Provide Records)

24. As described in paragraphs 15-22, in numerous instances, Kohl's entered into commercial transactions with persons who made unauthorized use of the means of identification

of victims and failed to provide the required application and business transaction records to victims upon request.

25. By and through the acts and practices described in paragraph 24, Kohl's has violated Section 609(e) of the FCRA, 15 U.S.C. § 1681g(e).

26. Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices alleged in paragraph 24 also constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count II (Failure to Respond Within 30 Days)

27. As described in paragraphs 15-22, on multiple occasions, Kohl's entered into commercial transactions with persons who made unauthorized use of the means of identification of victims and refused to provide the required application and business transaction records not later than 30 days after the date of receipt of a request from a victim.

28. By and through the acts and practices described in paragraph 27, Kohl's has violated Section 609(e) of the FCRA, 15 U.S.C. § 1681g(e).

29. Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices alleged in paragraph 27 also constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

30. Consumers have suffered and will continue to suffer substantial injury as a result of Defendant's violations of the FCRA and the FTC Act. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

31. Section 621(a) of the FCRA, 15 U.S.C. § 1681s(a), and Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empower this Court to grant injunctive and such other relief as the Court may deem appropriate in the enforcement of the FTC Act and the FCRA. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

32. Section 621(a)(2)(A) of the FCRA, 15 U.S.C. § 1681s(a)(2)(A), authorizes the Court to award monetary civil penalties in the event of a knowing violation, which constitutes a pattern or practice of violations. Kohl's violations of Section 609(e) of the FCRA, as alleged in this Complaint, were knowing and constituted a pattern or practice of violations. As specified by the Federal Civil Penalty Inflation Adjustment Act of 1990, 28 U.S.C. § 2461(a), as amended, the Court is authorized to award a penalty of not more than \$3,993 per violation for penalties assessed after February 14, 2019.

33. Each instance in which Kohl's has failed to comply with the FCRA in one or more of the ways described above constitutes a separate violation of the FCRA for the purpose of assessing monetary civil penalties under Section 621 of the FCRA. Plaintiff seeks monetary civil penalties for every separate violation of the FCRA.

PRAYER FOR RELIEF

Wherefore, Plaintiff, pursuant to Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b), and Section 621(a) of the FCRA, 15 U.S.C. § 1681s(a), and the Court's own equitable powers, requests that the Court:

A. Enter judgment against Defendant and in favor of Plaintiff for each law violation alleged in this Complaint;

B. Enter a permanent injunction to prevent future violations of the FTC Act and the FCRA by Defendant;

C. Award Plaintiff monetary civil penalties from Defendant for each violation of the FCRA as alleged in this Complaint; and

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: June 8, 2020

**FOR THE FEDERAL TRADE
COMMISSION:**

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