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1 STUART F. DELERY
Assistant Attorney General
2 MICHAEL S. BLUME
3 ANDREW E. CLARK
4 ANN ENTWISTLE
U.S. Department of Justice, Civil Division
5 P.O. Box 386
6 Washington, D.C. 20044
7 Telephone: (202) 305-3630
8 Fax: (202) 514-8742
9 Email: Ann.F.Entwistle@usdoj.gov

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CENTRAL DISTRICT OF CALIF.
SAN FRANCISCO, CALIF.

FILED

10 **UNITED STATES DISTRICT COURT**
FOR THE CENTRAL DISTRICT OF CALIFORNIA

<p>11 UNITED STATES OF AMERICA, 12 Plaintiff, 13 14 v. 15 CONSUMER PORTFOLIO 16 SERVICES, INC. 17 Defendant.</p>	<p>SACV14-00819 ABC (RNBx) Case No. COMPLAINT FOR CIVIL PENALTIES, INJUNCTIVE, AND OTHER RELIEF</p>
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18 Plaintiff, the United States of America, acting upon notification and
19 authorization to the Attorney General by the Federal Trade Commission
20 (“Commission”), pursuant to Section 16(a)(1) of the Federal Trade Commission
21 Act (FTC Act), 15 U.S.C. § 56(a)(1), by its undersigned attorneys, for its
22 Complaint, alleges as follows:
23

24 1. This is an action arising under Sections 5(a), 5(m)(1)(A), 13(b), and
25 16(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a),
26 45(m)(1)(A), 53(b), and 56(a); the Fair Debt Collection Practices Act
27 (“FDCPA”), 15 U.S.C. §§ 1692-1692p; and Section 621(a) of the Fair Credit
28 Reporting Act (“FCRA”), 15 U.S.C. § 1681s(a), to obtain monetary civil

1 penalties, a permanent injunction, restitution, disgorgement, and other equitable
2 relief for Defendant's violations of Section 5 of the FTC Act; Sections 804-808
3 of the FDCPA, 15 U.S.C. §§ 1692b-1692f; Section 623 of the FCRA, 15 U.S.C.
4 § 1681s-2; and the Rule Regarding Duties of Furnishers of Information to
5 Consumer Reporting Agencies ("Furnisher Rule"), 16 C.F.R. § 660.1 *et seq.*,
6 issued pursuant to Section 623(a)(8) and (e) of the FCRA, 15 U.S.C. § 1681s-
7 2(a)(8) and (e), and republished at 12 C.F.R. § 1022.40 *et seq.*

8 9 **JURISDICTION AND VENUE**

10 2. This Court has jurisdiction over this matter under 28 U.S.C.
11 §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(a)(1),
12 45(m)(1)(A), 53(b), 56(a), 1681s(a), and 1692l.

13 3. Venue is proper in the United States District Court for the Central
14 District of California under 28 U.S.C. §§ 1391(b)-(c), 1395(a), and 15 U.S.C.
15 § 13(b).

16 17 **PLAINTIFF**

18 4. This action is brought by the United States of America on behalf of
19 the Federal Trade Commission. The Commission is an independent agency of
20 the United States government given statutory authority and responsibility by the
21 FTC Act, 15 U.S.C. §§ 41-58. The Commission is charged, *inter alia*, with
22 enforcing Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair
23 or deceptive acts or practices in or affecting commerce; the FDCPA, 15 U.S.C.
24 §§ 1692-1692p, which imposes duties upon debt collectors; and the FCRA, 15
25 U.S.C. §§ 1681-1681x, which imposes duties upon consumer reporting agencies
26 and those who furnish information to a consumer reporting agency or use
27 information obtained from a consumer reporting agency.

DEFENDANT

1
2 5. Defendant Consumer Portfolio Services, Inc. (“CPS”), is a
3 California corporation that purchases and services subprime automobile finance
4 contracts for new and late model used cars originated from automobile dealers
5 throughout the United States. CPS conducts its loan servicing operations from
6 its Irvine, California, headquarters and three field offices in Virginia, Florida,
7 and Illinois. CPS funds its contract purchases on a long-term basis primarily
8 through securitization, and services the contract accounts over their lives. In
9 2012, CPS serviced a portfolio of 103,021 active accounts valued at \$761
10 million, and had an additional 462,000 charged off accounts valued at \$2 billion.

11
12 6. CPS earns revenue from the difference, or “spread,” between the
13 effective interest rate it receives on the automobile finance contracts it purchases
14 and the interest rates it pays on the money it borrows to purchase the contracts.
15 Additional revenue comes from fees paid by consumers, including, e.g., late
16 fees, nonsufficient funds (“NSF”) fees, collection fees, and legal fees. CPS also
17 receives income from “convenience fees” remitted to it by Western Union and
18 MoneyGram for loan and fee payments made by CPS customers using those
19 services.

20 7. In addition to servicing contracts purchased directly from auto
21 dealers, CPS occasionally purchases portfolios of automobile finance contracts
22 from other lenders, and provides third-party servicing of contracts for a small
23 portfolio of automobile finance contracts owned by other lenders. When
24 collecting on accounts that were delinquent or charged off at the time that CPS
25 purchased them or acquired servicing rights, CPS is a “debt collector” as defined
26 by Section 803(6) of the FDCPA, 15 U.S.C. § 1692a(6).
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1 includes representations about pay-off amounts, outstanding accrued interest, the
2 principal balance owed, fees, and delinquency status.

3 13. In numerous instances in connection with servicing automobile
4 finance contracts, CPS has misrepresented amounts owed by consumers,
5 including the loan's principal balance and the amount of fees owed.

6 14. For example, in numerous instances, CPS has imposed NSF fees in
7 amounts higher than that permitted by contract or law. In numerous instances, it
8 has assessed other fees, including late fees, in amounts higher than that
9 permitted by contract or law or when it has no basis to assess the fee.

10 15. In other instances, because of human error, inadequate quality
11 control, or faulty computer programming, CPS has wrongly increased the
12 principal balance it claims that consumers owe. For example, in numerous
13 instances, CPS incorrectly reversed NSF transactions and wrongly increased the
14 consumer's principal balance. Because of the cascading effect of daily interest
15 charges, which are computed based on the outstanding principal balance, the
16 harm from improper principal balance increases compounds over time.

17 16. Consumers who have paid wrongly assessed fees or improperly
18 inflated balances have suffered direct financial harm. Consumers who have
19 defaulted on their loans also have been harmed, because the amount of the
20 deficiency judgment assessed against them was calculated based in part on
21 erroneous information and was higher than it should have been. In numerous
22 instances, CPS has sought to collect these deficiency balances from consumers,
23 and also reported the inaccurate balance information to consumer reporting
24 agencies.

25 17. In numerous instances, CPS has lacked a reasonable basis for its
26 representations to consumers because it failed to adopt adequate policies and
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1 procedures to ensure the accuracy of its representations. It imposed unlawfully
2 inflated fee amounts and assessed fees improperly on many consumers'
3 accounts. Moreover, its inadequate loan servicing policies and procedures
4 caused it, in numerous instances, to increase the principal amount owed without
5 basis, which in turn caused improper increases in the resulting interest owed.

6 18. In numerous instances when a consumer has disputed the accuracy
7 of the balance CPS claims was owed, whether directly with CPS or in a
8 complaint letter to the Better Business Bureau or a state regulator, CPS has
9 responded that it had conducted an "audit" of the account and verified the
10 balance. In numerous instances, however, CPS had not performed a complete
11 audit of the account. Among other things, CPS had failed to check that assessed
12 fees were permitted by contract or law, or that NSF checks were reversed
13 properly. Consumers thus have been misled into believing that the account
14 balances were accurate and have not challenged them further.
15

16 19. CPS offers customers having trouble making a monthly payment
17 the option of a contract extension. An extension waives the consumer's
18 delinquent payment and moves that payment's due date to thirty days after the
19 loan contract's original maturity date. An extension does not defer accrued
20 interest or fees, and does not stop monthly late fees from accruing on a
21 delinquent account in the month that the extension is granted. Often, in
22 connection with the extension transaction, CPS has changed the consumer's
23 monthly payment date.
24

25 20. CPS requires that consumers pay a fee to obtain an extension.
26 Typically, CPS has credited that fee to accrued interest owed by the consumer.
27 In numerous instances in connection with the extension fee transaction, due to
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1 accounting errors, CPS has increased the consumer's principal balance in the
2 amount of the fee.

3 21. In many of the instances in which CPS has extended the maturity
4 date of the consumer's loan, it has not obtained a signed agreement from the
5 consumer consenting to the extension and has failed to fully inform consumers
6 about the costs and benefits of an extension, including that the consumer's
7 principal balance will be increased and that late fees will continue to accrue.
8

9 22. When CPS has extended a consumer's loan without written
10 authorization, or increased the principal owed by consumers without notice to or
11 consent from the consumer, it has modified the terms of the consumer's contract.
12 Many consumers' contracts and some state laws require that such contractual
13 changes be agreed to in writing. In addition to violating the consumers'
14 contracts and/or state law, such unilateral contract modifications have harmed
15 consumers. Consumers need correct information about the cost of changes to
16 their loans to evaluate accurately the costs and benefits of the transactions. They
17 also need correct information about the terms and conditions of their loans,
18 including due dates, pay-off amounts, and outstanding principal, interest, and
19 fees owed to understand and monitor their financial obligations.
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21 23. In numerous instances in connection with collecting loan payments,
22 CPS has told consumers that they must remit their loan payments through
23 Western Union or MoneyGram via electronic account debit, electronic check, or
24 credit card via telephone, text message, online, or in person at a Western Union
25 or MoneyGram location. Consumers who used these payment methods have
26 been charged a convenience fee by Western Union or MoneyGram, often as
27 much as \$12. In fact, however, CPS has accepted payment from consumers by
28 cheaper methods, e.g., checks or certified funds checks. CPS collected millions

1 to consumers or competition do not outweigh the harm that resulted from them
2 because legitimate means existed to collect the debts owed.

3 28. In numerous instances, CPS collectors have called consumers'
4 places of employment when they knew that such calls were inconvenient or not
5 permitted. Such calls cause substantial injury to consumers. For example, these
6 calls have interfered with employers' ability to conduct business, and have
7 adversely affected consumers' employment. Consumers have been formally and
8 informally disciplined for receiving personal calls at work and some have lost
9 their jobs. Consumers could not avoid this harm because CPS ignored their
10 requests to stop calling their workplace. Any countervailing benefits to
11 consumers or competition do not outweigh the harm that resulted from them
12 because other ways to contact consumers existed.

14 29. In numerous instances, CPS collectors have called consumers and
15 third parties repeatedly with the intent to harass or abuse. CPS collectors have
16 placed calls daily or more often to both consumers and third parties after being
17 asked to stop calling. This volume and pattern of repeated unwanted calling
18 evidences CPS's intent to annoy, abuse, or harass. In addition to the sheer
19 number of unwanted calls placed by CPS, its intent to harass or abuse is
20 demonstrated by CPS collectors' coercive threats that calls will continue until
21 the consumer pays. Collectors used these and other threats to try to convince
22 third parties to contact consumers on CPS's behalf and ask them to call CPS.

23 30. CPS's harassing or abusive conduct has also included, in some calls
24 to consumers and third parties, the use of obscene or profane language, or
25 language the natural consequence of which is to abuse the hearer. For example,
26 CPS collectors have called consumers and third parties derogatory names, called
27 them "liars," and used profanity.
28

1 31. CPS's repeated calls to third parties after the third parties have
2 requested no further contact cause substantial injury. Third parties with no
3 relationship to CPS have been harmed repeatedly by CPS collectors who have
4 made multiple unwanted calls to homes, cell phones, and places of employment.
5 In numerous instances such calls have been placed several times weekly or even
6 daily. In addition, collectors routinely called consumers' current and former
7 employers and co-workers. Such ongoing unwanted calls have disrupted
8 business, distracted workers, tied up phone lines and staff, and resulted in lost
9 productivity and money. Third parties could not avoid the repeated, harassing
10 calls made by CPS because CPS did not honor their requests to stop calling.
11 Any countervailing benefits to consumers or competition do not outweigh the
12 harm that resulted from them because other, legitimate, means exist to collect
13 these debts.
14

15 32. In numerous instances, CPS has debited consumers' checking
16 accounts without authorization. On some occasions, collectors with access to
17 consumer account information have processed payments without the consumer's
18 knowledge or consent. On other occasions, collectors have processed post-dated
19 checks prior to the date that the consumer authorized, or after express
20 instructions not to go forward with posting the check. This practice harms
21 consumers financially. Unauthorized withdrawals are often returned for
22 insufficient funds, causing the consumer unnecessary bank fees, and can also
23 interfere with the consumer's ability to pay other important bills, such as rent or
24 utilities. Consumers could not reasonably avoid such unauthorized debits
25 because they did not know about them. No countervailing benefits to consumers
26 or competition outweigh the harm that resulted from them because valid
27 methods exist to collect consumer payments.
28

1 33. In numerous instances in connection with attempts to collect from
2 delinquent consumers, CPS has falsely threatened that it will repossess the
3 consumer's automobile. On some occasions, collectors have made statements
4 like "the tow truck is around the corner," or "we're coming to get your car,"
5 even when repossession was neither imminent nor likely. Collectors also have
6 implied that CPS intended to repossess the car by asking consumers questions
7 about its location and condition.

8 34. In numerous instances, collectors have misrepresented the nature
9 and purpose of collection calls by using special cell phones, dedicated phone
10 lines, or other technology that changes CPS's number as it appears on
11 consumers' telephone caller identification screens. Typically, calls from CPS
12 collectors have identified CPS as the caller and/or showed the telephone number
13 that the collector was calling from, either a toll-free number or a number with
14 the area code of the collection office in California, Illinois, Florida, or Virginia.
15 Consumers have learned to recognize these numbers as calls from CPS, and use
16 the information on their caller ID screens to choose to accept or ignore the calls.
17 To make it more likely that consumers will answer their calls, in some instances
18 collectors have hidden the fact that calls were originating from CPS by using
19 special cell phones, landlines, or other technology that causes a different number
20 to appear in the consumer's caller identification screen, often a number with an
21 area code local to the consumer. Consumers have relied on caller ID to help
22 them manage when and how they will communicate with callers, including
23 collectors. CPS's purposeful manipulation of caller ID information has deceived
24 consumers and deprived them of that choice.
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1 **Defendant’s Furnisher Rule Violations**

2 35. The Furnisher Rule (the “Rule”), 16 C.F.R. § 660.1 *et seq.*,
3 republished at 12 C.F.R. § 1022.40 *et seq.*, which became effective July 1, 2010,
4 requires a company that furnishes information to a consumer reporting agency
5 (“CRA”) to do two things: establish and implement reasonable written policies
6 regarding the accuracy and integrity of information about consumers that it
7 furnishes to CRAs, and conduct reasonable investigations of disputes submitted
8 to it directly by consumers.
9

10 36. The Rule requires that furnishers establish and implement
11 reasonable written policies and procedures regarding the accuracy and integrity
12 of the information relating to consumers that it furnishes to a CRA. 16 C.F.R.
13 § 660.3, republished at 12 C.F.R. § 1022.42. In establishing these policies and
14 procedures, Section 1022.42(b) requires each furnisher to consider the
15 guidelines set forth in Appendix E to the Rule. Among other things, Section
16 I(b)(3) of the Appendix states that one of the objectives of a furnisher’s policies
17 should be to “conduct reasonable investigations of consumer disputes and take
18 appropriate actions based on the outcome of such investigations.”
19

20 37. Following the promulgation of the Rule until early 2013 (“the
21 applicable time period”), CPS failed to create specific policies and procedures
22 regarding the furnishing of accurate information to consumer reporting agencies,
23 and took no steps to review and update its existing policies in light of the
24 guidelines, or to develop any additional written policies.

25 38. Moreover, CPS’s policies and procedures for responding to
26 consumer disputes during the applicable time period did not require an adequate
27 investigation and were not reasonable. CPS required simply that the consumer’s
28 identifying account information and payment history be checked against what

1 was reported by the consumer reporting agency. It is a not a reasonable process
2 for a loan servicer to respond to a consumer's dispute by simply verifying that
3 the account balance it previously reported to the CRA is accurately reflected in
4 the consumer's credit report. Such an "investigation" catches only any
5 technological or clerical errors in the transmission of data that caused a
6 discrepancy, and does not identify any substantive errors in the customer's
7 account as maintained by CPS. This pro forma approach to investigation is
8 especially unreasonable when, as here, the loan servicer did not maintain
9 policies and procedures designed to ensure accuracy in its loan servicing
10 processes, and consumer disputes about fees or account balances likely, in
11 numerous instances, had substantive merit.

12
13 39. The Rule also requires that the furnisher review and update its
14 policies as necessary to ensure their continued effectiveness. 16 C.F.R.
15 § 660.3(c), republished at 12 C.F.R. § 1022.42(c). During the applicable time
16 period, CPS engaged in no such review. Indeed, CPS failed to implement
17 systems that would have allowed it to conduct such a review. Among other
18 things, CPS failed to track direct disputes about credit reports that it received.
19 CPS could not evaluate the effectiveness of its system for responding to direct
20 disputes – and thus could not accurately update the CRAs with results from the
21 investigations of these disputes – when it was not keeping track of them.

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23 40. The Rule requires that furnishers conduct a reasonable investigation
24 of direct consumer disputes concerning the accuracy of reported credit
25 information, including disputes about the accuracy of the consumer's account
26 balance. 16 C.F.R. § 660.4, republished at 12 C.F.R. § 1022.43. After receiving
27 a direct dispute, a furnisher must: 1) conduct a reasonable investigation;
28 2) review all relevant information provided by the consumer; 3) timely complete

1 its investigation and report the results to the consumer; and 4) update the
2 consumer reporting agencies and correct any inaccurate information.

3 41. Even if the furnisher determines that the consumer's dispute is
4 frivolous and that no investigation is required, the furnisher must provide the
5 consumer with notice that it has determined the consumer's dispute to be
6 frivolous and provide the consumer with reasons why the dispute was
7 determined frivolous, along with what additional information is required to
8 investigate the dispute.

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10 42. During the applicable time period, CPS failed to reasonably or
11 adequately investigate direct disputes about the accuracy of account balance
12 information it submitted to consumer reporting agencies. In numerous instances,
13 not only did CPS fail to conduct a reasonable investigation, it failed to respond
14 to the consumer, or respond adequately to the consumer, either with specific
15 findings or with a notice that CPS determined the dispute frivolous or irrelevant.

16 **VIOLATIONS OF THE FTC ACT**

17
18 43. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or
19 deceptive acts and practices in or affecting commerce."

20 44. Misrepresentations or deceptive omissions of material fact
21 constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.
22 An act or practice is unfair if it "causes or is likely to cause substantial injury to
23 consumers which is not reasonably avoidable by consumers themselves and not
24 outweighed by countervailing benefits to consumers or to competition." 15
25 U.S.C. § 45(n).
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1 **DECEPTIVE AND UNFAIR LOAN SERVICING AND COLLECTION**

2 **Count I**

3 **Misrepresentations about Fees, Amounts Owed and that Audits**
4 **Verify the Accuracy of Those Amounts**

5 45. Plaintiff incorporates by reference all the foregoing paragraphs.

6 46. In the course and conduct of its loan servicing and collection
7 activities, defendant in numerous instances has represented, expressly or by
8 implication, that:
9

10 A. fees assessed and collected by CPS are allowed under the
11 automobile finance contract or permitted by law;

12 B. consumers owe the amounts specified in defendant's
13 communications; and

14 C. CPS audited or otherwise reviewed a consumer's loan
15 account and the audit or review verified the accuracy of the balances CPS
16 claimed were owed.

17 47. In truth and in fact, in numerous instances:

18 A. fees assessed and collected by CPS were not allowed under
19 the automobile finance contract or permitted by law;

20 B. consumers did not owe the amounts specified in defendant's
21 communications because, for example: (1) fees included in the amounts
22 specified were not allowed under the retail installment sales contract or
23 permitted by law; or (2) CPS inaccurately assessed or calculated the
24 amounts specified; and

25 C. the audit or review did not verify the accuracy of the
26 balances CPS claimed were owed because CPS did not evaluate whether
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1 fees were correctly assessed and did not perform a complete audit or
2 review of the consumer's account for errors.

3 48. Therefore, defendant's representations as set forth in paragraph 46
4 are false or misleading and constitute deceptive acts or practices in violation of
5 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

6
7 **Count II**

8 **Deceptive Reasonable Basis Claims**

9 49. Plaintiff incorporates by reference all the foregoing paragraphs.

10 50. In the course and conduct of its loan servicing and collection
11 activities, defendant, in numerous instances, has represented, expressly or by
12 implication, that it possessed and relied on a reasonable basis substantiating its
13 representations about the amounts it claimed consumers owed.

14
15 51. In truth and in fact, in numerous instances, defendant did not
16 possess and rely on a reasonable basis substantiating its representations about
17 the amounts it claimed consumers owed.

18 52. Therefore, defendant's representations as set forth in paragraph 50
19 are false or misleading and constitute deceptive acts or practices in violation of
20 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

21
22 **Count III**

23 **Unfair Assessment and Collection of Fees or Other Amounts**

24 53. Plaintiff incorporates by reference all the foregoing paragraphs.

25 54. In the course and conduct of its loan servicing and collection
26 activities, defendant in numerous instances has assessed and collected fees or
27 other amounts that are not allowed under the retail installment sales contract or
28 permitted by law.

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Count VIII

Deceptive Collection Practices

73. Plaintiff incorporates by reference all the foregoing paragraphs.

74. In connection with the collection of consumers' payments on automobile retail installment sales contracts, CPS has, in numerous instances represented, expressly or by implication, that:

A. nonpayment of the debt would result in immediate repossession of the vehicle securing the consumer's loan; and

B. the nature and purpose of the call was something other than a collection call originating from CPS, by manipulating the caller ID displayed on the consumer's telephone.

75. In truth and in fact, in numerous instances:

A. nonpayment of the debt would not result in immediate repossession of the vehicle securing the consumer's loan; and

B. the nature and purpose of the call was a collection call originating from CPS.

76. Therefore, CPS's representations as set forth in paragraph 74 are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

FAIR DEBT COLLECTION PRACTICES ACT

77. In 1977, Congress passed the FDCPA, 15 U.S.C. §§ 1692-1692p, which became effective on March 20, 1978, and has been in force since that date. Section 814 of the FDCPA, 15 U.S.C. § 1692l, authorizes the Commission to use all of its functions and powers under the FTC Act to enforce compliance with the FDCPA by any debt collector, irrespective of whether that debt

1 collector is engaged in commerce or meets any other jurisdictional tests set by
2 the FTC Act. The authority of the Commission in this regard includes the power
3 to enforce the provisions of the FDCPA in the same manner as if the violations
4 of the FDCPA were violations of a Federal Trade Commission trade regulation
5 rule.

6 78. Section 803(3) of the FDCPA defines the term “consumer” as
7 meaning “any natural person obligated or allegedly obligated to pay any debt.”
8

9 79. Section 803(7) of the FDCPA defines the term “location
10 information” as meaning a consumer’s place of abode and the consumer’s
11 telephone number at such place, or the consumer’s place of employment. 15
12 U.S.C. § 1692a(7).

13 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

14 **Count IX**

15 **Violations of Section 804**

16 80. Plaintiff incorporates by reference all the foregoing paragraphs.
17

18 81. Section 804 of the FDCPA, 15 U.S.C. § 1692b, governs the manner
19 in which debt collectors may communicate with any person other than the
20 consumer for purposes of acquiring location information about the consumer.
21 Section 804(2) prohibits debt collectors from stating that a consumer about
22 whom they are attempting to acquire location information owes any debt, and
23 Section 804(3) prohibits debt collectors from communicating with any person
24 about a consumer more than once unless requested by the person or unless the
25 debt collector reasonably believes that the earlier response of such person is
26 erroneous or incomplete and that such person now has correct or complete
27 information.
28

1 unusual time or place or a time or place known or which should be known to be
2 inconvenient to the consumer (Section 805(a)(1)), or at the consumer's place of
3 employment if the debt collector knows or has reason to know that the
4 consumer's employer prohibits the consumer from receiving such
5 communications (Section 805(a)(3)). Section 805(b) governs communications
6 with third parties, and specifically prohibits communications about a debt with
7 any person other than the consumer, a consumer reporting agency, the creditor,
8 or their attorneys except as allowed by Section 804 or with the permission of the
9 consumer, or a court of competent jurisdiction, or as reasonably necessary to
10 effectuate post judgment relief.

11 86. In numerous instances, in connection with the collection of debts,
12 CPS has:

13 A. communicated with consumers in connection with the
14 collection of a debt:

15 1. at times or places known or which should be known by
16 CPS to be inconvenient to the consumer, without the consumer's
17 prior consent, in violation of Section 805(a)(1) of the FDCPA, 15
18 U.S.C. § 1692c(1); and

19 2. at the consumer's place of employment when CPS
20 knew or had reason to know that the consumer's employer
21 prohibited the consumer from receiving such communications in
22 violation of Section 805(a)(3) of the FDCPA, 15 U.S.C.
23 § 1692c(a)(3); and

24 B. communicated about the debt with persons other than the
25 consumer, a consumer reporting agency, the creditor, or their attorneys
26 without the permission of the consumer, or as otherwise allowed by
27
28

1 Section 804, in violation of Section 805(b) of the FDCPA, 15 U.S.C.
2 § 1692c(b).

3 87. The acts and practices alleged in Paragraph 86 constitute violations
4 of Section 805(a)(1) and (3), and (b) of the FDCPA, 15 U.S.C. § 1692c(a)(1)
5 and (3) and (b). Pursuant to Section 814(a) of the FDCPA, 15 U.S.C. §
6 1692l(a), the acts and practices alleged in Paragraph 86 also constitute unfair or
7 deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.
8 § 45(a).

9
10 **Count XI**

11 **Violations of Section 806**

12 88. Plaintiff incorporates by reference all the foregoing paragraphs.

13 89. Section 806 of the FDCPA, 15 U.S.C. § 1692d, prohibits debt
14 collectors from engaging in any conduct the natural consequence of which is to
15 harass, oppress, or abuse any person in connection with the collection of any
16 debt. Section 806(5), 15 U.S.C. § 1692d(5), specifically prohibits causing a
17 telephone to ring or engaging any person in telephone conversation repeatedly or
18 continuously with intent to annoy, abuse, or harass any person at the called
19 number.
20

21 90. In numerous instances, in connection with the collection of debts,
22 CPS, directly or indirectly, has engaged in conduct the natural consequence of
23 which is to harass, oppress, or abuse any person in connection with the
24 collection of any debt, including:

25 A. using obscene or profane language or language the natural
26 consequence of which is to abuse the hearer, in violation of Section
27 806(2) of the FDCPA, 15 U.S.C. § 1692d(2); and
28

1 representations or means, in violation of Section 807 of the FDCPA, 15 U.S.C.
2 § 1692e, including, but not limited to, the following:

3 A. falsely represented that CPS audited or otherwise reviewed a
4 consumer's loan account and the audit or review verified the accuracy of
5 the balances CPS claimed were owed, , in violation of Section 807 of the
6 FDCPA, 15 U.S.C. § 1692e;

7 B. falsely represented that consumers are required to pay by a
8 particular method, such as Western Union or MoneyGram, that costs
9 consumers additional service fees, in violation of Section 807 of the
10 FDCPA, 15 U.S.C. § 1692e;

11 C. falsely represented the character, amount, or legal status of a
12 debt, in violation of Section 807(2)(A) of the FDCPA, 15 U.S.C.
13 § 1692e(2)(A);

14 D. falsely represented that nonpayment of a debt would result in
15 the seizure or attachment of a vehicle when CPS did not intend to take
16 such action, in violation of Section 807(4), of the FDCPA, 15 U.S.C.
17 § 1692e(4);

18 E. falsely threatened to repossess vehicles, in violation of
19 Section 807(5) of the FDCPA, 15 U.S.C. § 1692e(5); and

20 F. used false representations or deceptive means to collect or
21 attempt to collect any debt or to obtain information concerning a
22 consumer in violation of Section 807(10) of the FDCPA, 15 U.S.C.
23 § 1692e(10).

24 95. The acts and practices alleged in Paragraph 94 constitute violations
25 of Section 807 of the FDCPA, 15 U.S.C. § 1692e. Pursuant to Section 814(a) of
26 the FDCPA, 15 U.S.C. § 1692i(a), the acts and practices alleged in Paragraph 94
27
28

1 also constitute unfair or deceptive acts or practices in violation of Section 5(a) of
2 the FTC Act, 15 U.S.C. § 45(a).

3 **Count XIII**

4 **Violations of Section 808**

5 96. Plaintiff incorporates by reference all the foregoing paragraphs.

6
7 97. Section 808 of the FDCPA, 15 U.S.C. § 1692f, prohibits debt
8 collectors from using any unfair or unconscionable means to collect or attempt
9 to collect any debt. Section 808(1), 15 U.S.C. § 1692f(1), specifically prohibits
10 the collection of any amount (including any interest, fee, charge, or expense
11 incidental to the principal obligation) unless such amount is expressly authorized
12 by the agreement creating the debt or permitted by law. Section 808(6)(B), 15
13 U.S.C. § 1692f(6)(B), specifically prohibits taking or threatening to take any
14 nonjudicial action to effect dispossession or disablement of the property if there
15 is no present intent to take possession of the property.

16 98. In numerous instances, in connection with the collection of debts,
17 CPS, directly or indirectly, has used unfair or unconscionable means to collect or
18 attempt to collect a debt, in violation of Section 808 of the FDCPA, 15 U.S.C.
19 § 1692f, including, but not limited to, the following:

20
21 A. debiting funds from consumers' bank accounts without the
22 consumers' express consent and authorization in violation of Section 808
23 of the FDCPA, 15 U.S.C. §1692f;

24 B. collecting amounts not expressly authorized by the
25 agreement creating the debt or permitted by law, in violation of Section
26 808(1) of the FDCPA, 15 U.S.C. § 1692f(1); and

27 C. threatening to take any nonjudicial action to effect
28 dispossession or disablement of property where there was no present

1 intent to take possession of the property, in violation of Section 808(6)(B)
2 of the FDCPA, 15 U.S.C. § 1692f(6)(B).

3 99. The acts and practices alleged in Paragraph 98 constitute violations
4 of Section 808 of the FDCPA, 15 U.S.C. § 1692e. Pursuant to Section 814(a) of
5 the FDCPA, 15 U.S.C. § 1692l(a), the acts and practices alleged in Paragraph 98
6 also constitute unfair or deceptive acts or practices in violation of Section 5(a) of
7 the FTC Act, 15 U.S.C. § 45(a).
8

9 **VIOLATIONS OF THE FCRA AND THE FURNISHER RULE**

10 100. Section 623(a)(8) of the FCRA, 15 U.S.C. § 1681s-2(a)(8), requires
11 a furnisher of information to a consumer reporting agency to investigate a
12 dispute concerning the accuracy of information contained in a consumer report
13 after receiving a notice of dispute from the consumer, and directs the
14 Commission to prescribe regulations identifying the circumstances under which
15 such investigation is required. Section 623(e) of the FCRA, 15 U.S.C. § 1681s-
16 2(e), directs the Commission to establish and maintain guidelines for use by
17 furnishers of information to a consumer reporting agency regarding the accuracy
18 and integrity of the information relating to consumers that such entities furnish
19 and to prescribe regulations requiring each person that furnishes information to a
20 consumer reporting agency to establish reasonable policies and procedures for
21 implementing such guidelines.
22

23 101. The Commission's Furnisher Rule, 16 C.F.R. § 660.1 et seq., took
24 effect on July 1, 2010. The Dodd-Frank Wall Street Reform and Consumer
25 Protection Act ("Dodd-Frank Act"), Pub. L. 111-203, 124 Stat. 1376 (July 21,
26 2010), transferred rulemaking authority for most provisions of the FCRA to the
27 Bureau of Consumer Financial Protection ("Bureau"). Sections 1061 and 1088
28 of the Dodd-Frank Act. Pursuant to the Dodd-Frank Act and the FCRA, as

1 C. review such policies and procedures periodically and update
2 them as necessary to ensure their continued effectiveness.

3 These failures violate the Furnisher Rule's accuracy and integrity regulations, 16
4 C.F.R. § 660.3 and 12 C.F.R. § 1022.42.

5 106. Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C.
6 § 1681s(a)(1), CPS's violations of the Furnisher Rule constitute unfair or
7 deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.
8 § 45(a).
9

10 107. The acts and practices described in paragraphs 35 - 42 constitute a
11 pattern or practice of knowing violations, as set forth in Section 621(a)(2)(A) of
12 the FCRA, 15 U.S.C. § 1681s(a)(2)(A).

13 **Count XV**

14 **No Reasonable Investigation of or Response to Direct Disputes**

15 108. Plaintiff incorporates by reference all the foregoing paragraphs.
16

17 109. In numerous instances, CPS, after receiving direct disputes from
18 consumers, as that term is defined in the Furnisher Rule, 16 C.F.R. § 660.2(b)
19 and 12 C.F.R. § 1022.41(b), has failed to:

20 A. conduct reasonable investigations of direct disputes;

21 B. review all relevant information provided by the consumer
22 with the dispute notice;

23 C. either complete its investigation of the dispute and report the
24 results of the investigation to the consumer before the expiration of the
25 period prescribed by Section 611(a)(1) of the FCRA, 15 U.S.C.
26 §1681i(a)(1), or provide notice of a determination that a dispute is
27 frivolous or irrelevant within the time period specified by Section
28

1 623(a)(8)(F)(ii), 15 U.S.C. § 1681s-2(a)(8)(F)(ii), 16 C.F.R. § 660.4(f)(2),
2 and 12 C.F.R. § 1022.43(f)(2); and

3 D. in instances where it has determined that a dispute was
4 frivolous or irrelevant, include the reasons for its determination and
5 identify any information required to investigate the disputed information.

6 These failures are in violation of Section 623(a)(8) of the FCRA, 15 U.S.C.
7 § 1681s-2(a)(8), and the Furnisher Rule's direct dispute provisions, 16 C.F.R.
8 § 660.4 and 12 C.F.R. § 1022.43.

9 110. Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C.
10 §1681s(a)(1), CPS's violations of the Furnisher Rule constitute unfair or
11 deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.
12 § 45(a).

13 111. The acts and practices described in paragraphs 35-42 constitute a
14 pattern or practice of knowing violations, as set forth in Section 621(a)(2)(A) of
15 the FCRA, 15 U.S.C. § 1681s(a)(2)(A).

16
17 **CONSUMER INJURY**

18
19 112. Consumers have suffered and will continue to suffer substantial
20 injury as a result of defendant's violations of the FTC Act, the FDCPA, and the
21 Furnisher Rule. In addition, defendant has been unjustly enriched as a result of
22 its unlawful acts or practices. Absent injunctive relief by this Court, defendant
23 is likely to continue to injure consumers, reap unjust enrichment, and harm the
24 public interest.

1 **INJUNCTIVE AND EQUITABLE RELIEF FOR**
2 **VIOLATIONS OF THE FTC ACT, THE FDCPA, AND THE FCRA**

3 113. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Section
4 621(a) of the FCRA, 15 U.S.C. § 1681s(a), empower this Court to grant
5 injunctive and such other relief as the Court may deem appropriate to halt and
6 redress violations of any provision of law enforced by the FTC. The Court, in
7 the exercise of its equitable jurisdiction, may award ancillary relief, including
8 rescission or reformation of contracts, restitution, the refund of monies paid, and
9 the disgorgement of ill-gotten monies, to prevent and remedy any violation of
10 any provision of law enforced by the FTC.

11 114. Section 13 of the FTC Act, 15 U.S.C. § 13(b), and Section 621(a)
12 of the FCRA, 15 U.S.C. § 1681s(a), authorize this Court to grant such relief as
13 the Court finds necessary to redress injury to consumers resulting from
14 defendant's violations of the FTC Act, the FDCPA, the Furnisher Rule, and the
15 FCRA, including the rescission or reformation of contracts, and the refund of
16 money.

17
18 **CIVIL PENALTIES FOR VIOLATIONS OF THE FDCPA**

19 115. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), and
20 Section 814(a) of the FDCPA, 15 U.S.C. § 1692l, authorize the Court to award
21 monetary civil penalties for violations of the FDCPA when such violations were
22 committed with actual knowledge or knowledge fairly implied on the basis of
23 objective circumstances as set forth in Section 5(m)(1)(A) of the FTC Act, 15
24 U.S.C. § 45(m)(1)(A). CPS's violations of the FDCPA, as alleged in this
25 Complaint, were made with actual knowledge or knowledge fairly implied on
26 the basis of objective circumstances. As specified by the Federal Civil Penalty
27 Inflation Adjustment Act of 1990, 28 U.S.C. § 2861, as amended, the Court is
28

1 authorized to award a penalty of not more than \$11,000 for each violation of the
2 FDCPA before February 10, 2009, and not more than \$16,000 for each violation
3 of the FDCPA after that date.

4 116. Each instance in which CPS has failed to comply with the FDCPA
5 in one or more of the ways described above constitutes a separate violation of
6 the FDCPA for the purpose of assessing monetary civil penalties. Plaintiff seeks
7 monetary civil penalties for every separate violation of the FDCPA.
8

9 **CIVIL PENALTIES FOR VIOLATIONS OF THE FURNISHER RULE**

10 117. Section 621(a)(2)(A) of the FCRA, 15 U.S.C. § 1681s(a)(2)(A), as
11 adjusted by 16 C.F.R. § 1.98(m), authorizes the Court to award monetary civil
12 penalties of not more than \$3,500 for each knowing violation of the FCRA that
13 constitutes a pattern or practice of violations of the statute.
14

15 118. Each instance in which CPS has failed to comply with Section
16 623(a)(8) of the FCRA, 15 U.S.C. § 1681s-2(a)(8), and the Furnisher Rule's
17 direct dispute provisions, 16 C.F.R. § 660.4 and 12 C.F.R. § 1022.43, constitutes
18 a separate violation of the FCRA for the purpose of assessing monetary civil
19 penalties under Section 621(a)(2)(A) of the FCRA, 15 U.S.C. § 1681s(a)(2)(A).
20 Each instance in which CPS has failed to comply with the Furnisher Rule's
21 accuracy and integrity regulations, 16 C.F.R. § 660.3 and 12 C.F.R. § 1022.42,
22 also constitutes a separate violation of the FCRA for the purpose of assessing
23 monetary civil penalties.
24

25 **PRAYER FOR INJUNCTIVE AND MONETARY RELIEF**

26 WHEREFORE, Plaintiff, pursuant to 15 U.S.C. §§ 45(m)(1)(A), 53(b),
27 1692l, 1681s(a), and the Court's own equitable powers, respectfully requests
28 that the Court:

1 A. Enter judgment against CPS and in favor of Plaintiff for each
2 violation alleged in this Complaint;

3 B. Enter a permanent injunction to prevent future violations of the
4 FTC Act, the FDCPA, the FCRA and the Furnisher Rule by CPS;

5 C. Award such relief as the Court finds necessary to redress injury to
6 consumers resulting from CPS's violations of the FTC Act, the FDCPA, and the
7 FCRA, including but not limited to, rescission or reformation of contracts,
8 restitution, the refund of monies paid, and the disgorgement of ill-gotten gains;

9 D. Award Plaintiff monetary civil penalties from CPS for each
10 violation of the FDCPA, the FCRA and the Furnisher Rule alleged in this
11 Complaint; and

12 E. Award Plaintiff the costs of bringing this action, as well as such
13 other and additional relief as the Court may determine to be just and proper.
14

15
16 Dated: May 22, 2014

17 Respectfully submitted,

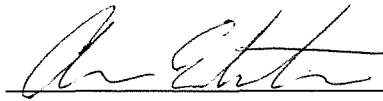
18 **OF COUNSEL:**

19 TRACY S. THORLEIFSON
20 Attorney
21 tthorleifson@ftc.gov
22 Federal Trade Commission
23 915 Second Avenue, Suite 2896
24 Seattle, WA 98174
25 Phone: (206) 220-6350
26
27
28

THE UNITED STATES OF AMERICA

STUART F. DELERY
Assistant Attorney General
Civil Division

MICHAEL S. BLUME
Director
ANDREW E. CLARK
Assistant Director



ANN ENTWISTLE

JAMES HARLOW

Trial Attorneys

Consumer Protection Branch

U.S. Department of Justice

P.O. Box 386

Washington, D.C. 20044

Telephone: (202) 305-3630

Fax: (202) 514-8742

Ann.F.Entwistle@usdoj.gov

James.W.Harlow@usdoj.gov

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