

**Presentation Outline: Common Ground 11/19/14**  
**FTC Action against sub-prime auto lender Consumer Portfolio Services**

- I. Brief background about CPS and FTC investigation (3 minutes)
  - A. Methods
    - 1. CIDs
    - 2. Cooperative counsel
  - B. Initial complaints and review
  - C. Survey sample
  - D. Other evidence considered
  - E. Findings
    - 1. Loan Servicing issues
    - 2. Collection Practices
    - 3. Furnisher Rule
  
- II. Complaint Allegations (2 minutes)
  - A. Loan Servicing issues
  - B. Collection Practices
  - C. Furnisher Rule
  
- III. Order Provisions (5 minutes)
  - A. Loan Servicing issues
    - 1. Data integrity provision
  - B. Collection Practices
    - 1. Location information provision
    - 2. No further calls provision
  - C. Furnisher Rule
  - D. Redress/Civil Penalties
  
- IV. Lessons learned & Questions (5 minutes)

Documents: FTC Complaint and Order, Press Release



FEDERAL TRADE COMMISSION  
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# Auto Lender Will Pay \$5.5 Million to Settle FTC Charges It Harassed Consumers, Collected Amounts They Did Not Owe

FOR RELEASE

May 29, 2014

**TAGS:** [Fair Credit Reporting Act \(FCRA\)](#) | [Automobiles](#) | [Bureau of Consumer Protection](#) | [Consumer Protection](#) | [Credit and Finance](#) | [Debt Collection](#)

A national subprime auto lender will pay more than \$5.5 million to settle Federal Trade Commission charges that the company used illegal tactics to service and collect consumers' loans, including collecting money consumers did not owe, harassing consumers and third parties, and disclosing debts to friends, family, and employers.

Consumer Portfolio Services, Inc. (CPS), headquartered in Irvine, Calif., agreed to refund or adjust 128,000 consumers' accounts more than \$3.5 million and forebear collections on an additional 35,000 accounts to settle charges the company violated the FTC Act. CPS will pay another \$2 million in civil penalties to settle FTC charges that the company violated the Fair Debt Collection Practices Act (FDCPA) and the Fair Credit Reporting Act (FCRA)'s Furnisher Rule.

"At the FTC, we hold loan servicers responsible for knowing their legal obligations and abiding by them," said Jessica Rich, director, FTC's Bureau of Consumer Protection. "The law is very clear: Loan servicers can't charge consumers more than they owe. And they can't threaten and harass consumers about delinquent debts."

The [order settling the charges requires CPS to change its business](#) practices to comply with the requirements of the appropriate laws. In addition, the company is required to establish and maintain a comprehensive data integrity program to ensure the accuracy, integrity and completeness of its loan servicing processes, and the data and other information it services, collects or sells. CPS must also provide the FTC with periodic independent assessments of its data integrity program for 10 years.

According to the [FTC's complaint](#), CPS' [loan-servicing violations](#) include:

- Misrepresenting fees consumers owed in collection calls, monthly statements, pay-off notices, and bankruptcy filings;
- Making unsubstantiated claims about the amounts consumers owed;
- Improperly assessing and collecting fees or other amounts;
- Unilaterally modifying contracts by, for example, increasing principal balances;
- Failing to disclose financial effects of loan extensions;
- Misrepresenting that consumers must use particular payment methods requiring service fees; and
- Misrepresenting that the company audits verified consumer accounts balances.

The company's collection violations include disclosing the existence of debts to third parties; calling consumers at work when not permitted or inconvenient; calling third parties repeatedly with intent to harass; making unauthorized debits from consumer bank accounts; falsely threatening car repossession; and deceptively manipulating Caller ID. Because for many of its accounts CPS is a creditor, the complaint charges these practices violated Section 5 of the FTC Act. For those accounts where CPS is a debt collector, the complaint charges these practices violated the FDCPA.

CPS is also charged with failure to establish and implement reasonable written procedures and failure to reasonably investigate and respond timely to consumer disputes under the Furnisher Rule.

Under the order, the company will begin sending refunds to consumers and adjusting affected account balances within 90 days. Consumers with questions about their eligibility for a refund or account adjustment should contact CPS directly via telephone at 1-888-806-2367, email [FTCsettlement@consumerportfolio.com](mailto:FTCsettlement@consumerportfolio.com), or visit the [company's website](#).

The FTC provides information for businesses regarding [debt collection](#) and the [Furnisher Rule](#). For consumers, the FTC has resources on [credit and loans](#) and [dealing with debt](#).

The Commission vote to authorize the staff to refer the complaint to the Department of Justice, and to approve the proposed consent decree, was 4-0-1, with Commissioner Terrell McSweeney not participating. The DOJ filed the complaint and proposed consent decree on behalf of the Commission in the Central District of California on May 28, 2014. The proposed consent decree is subject to court approval.

**NOTE:** The Commission authorizes the filing of a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. Consent decrees have the force of law when signed by the District Court judge.

The Federal Trade Commission works for consumers to prevent fraudulent, deceptive, and unfair business practices and to provide information to help spot, stop, and avoid them. To file a complaint in English or Spanish, visit the FTC's online [Complaint Assistant](#) or call 1-877-FTC-HELP (1-877-382-4357). The FTC enters complaints into Consumer Sentinel, a secure, online database available to more than 2,000 civil and criminal law enforcement agencies in the U.S. and abroad. The FTC's website provides [free information on a variety of consumer topics](#). Like the FTC on [Facebook](#), follow us on [Twitter](#), and [subscribe to press releases](#) for the latest FTC news and resources.

## CONTACT INFORMATION

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### Media Contact

Cheryl Warner  
*Office of Public Affairs*  
(202) 326-2480

### Staff Contact

Tracy Thorleifson  
*Northwest Regional Office*

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

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

11 UNITED STATES OF AMERICA, 12 Plaintiff, 13 14 v. 15 CONSUMER PORTFOLIO 16 SERVICES, INC. 17 Defendant.	SACV14-00819 ABC (RNBx) Case No. <b>COMPLAINT FOR CIVIL PENALTIES, INJUNCTIVE, AND OTHER RELIEF</b>
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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

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CENTRAL DISTRICT OF CALIF.  
SAN FRANCISCO, CALIF.

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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).  
27  
28

1 8. In connection with servicing of and collecting on automobile  
2 finance contracts, CPS furnishes information to consumer reporting agencies.  
3 As such, CPS is a “furnisher” as that term is defined in the Furnisher Rule, 16  
4 C.F.R. § 660.2(c) and 12 C.F.R. § 1022.41(c). CPS is also a “person” as that  
5 term is defined in the FCRA, 15 U.S.C. §1681a(b).

6  
7 **COMMERCE**

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

11 **DEFENDANT’S BUSINESS PRACTICES**

12 **Defendant’s Unlawful Loan Servicing Practices**

13  
14 10. As a loan servicer, CPS collects monies owed by consumers  
15 pursuant to automobile finance contracts. It receives and processes consumer  
16 payments, assesses fees, including, e.g., late fees and NSF fees, and tracks  
17 outstanding balances owed by consumers on these fixed rate, simple-interest  
18 contracts.

19  
20 11. As a loan servicer, CPS may only collect fees and other amounts  
21 authorized by the consumer’s contract or permitted by law. It may not  
22 unilaterally change the contract’s terms and conditions, including increasing the  
23 amount of principal owed by the consumer or extending the duration of the  
24 contract.

25 12. In connection with its servicing of automobile finance contracts,  
26 CPS routinely makes representations to consumers in monthly statements,  
27 collection calls, repossession notices, bankruptcy filings, and elsewhere. This  
28

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  
27  
28



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  
28

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.  
20

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 of dollars from such fees because Western Union and MoneyGram remitted a  
2 portion of each fee to it.

3         24. Consumers benefit from accurate information about the range of  
4 payment options available to them, and their associated costs. In some  
5 circumstances, it may be less expensive for a consumer to pay the convenience  
6 fee than to be assessed a late fee; in other circumstances, such as when the  
7 consumer's payment is already late, it would be cheaper for the consumer to  
8 mail in payment than to pay the convenience fee.

### 10                                 **Defendant's Unlawful Collection Practices**

11         25. In addition, CPS, in numerous instances, has engaged in harassing,  
12 abusive, unfair, and deceptive practices in connection with attempts to collect  
13 from delinquent consumers.

14         26. Collectors, in numerous instances, have called third parties,  
15 including references, friends, family members, co-workers, and employers,  
16 whenever a consumer's payment was late. Collectors have placed these calls  
17 even when they knew the consumer's location and had been in contact with the  
18 consumer. For example, collectors have routinely asked neighbors to place  
19 notes on consumers' doors asking consumers to contact CPS.

20         27. In numerous of these instances, CPS collectors have revealed the  
21 existence of the debt to these third parties, disclosing the consumer's private  
22 financial information to them without the consumer's authorization. When this  
23 happens, consumers suffer substantial injury. For instance, when collectors have  
24 disclosed the debt to co-workers or employers, consumers' workplace  
25 relationships and employment have suffered. Consumers could not avoid this  
26 harm because they could not control the information that CPS released about  
27 them to third parties or prevent CPS from doing so. Any countervailing benefits  
28

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.  
25  
26  
27  
28

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.

22  
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.

9  
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).  
26  
27  
28

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  
27  
28

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.

1           55.    CPS’s actions have caused and are likely to cause substantial injury  
2 to consumers. This injury is not reasonably avoidable by consumers and not  
3 outweighed by countervailing benefits to consumers or competition.

4           56.    CPS’s acts or practices constitute unfair acts or practices in or  
5 affecting commerce in violation of Section 5(a) of the Federal Trade  
6 Commission Act, 15 U.S.C. § 45(a).

7  
8                                   **Count IV**

9                                   **Unfair Modifications of Retail Installment Sales Contracts**

10           57.    Plaintiff incorporates by reference all the foregoing paragraphs.

11           58.    In the course and conduct of its loan servicing and collection  
12 activities, defendant, in numerous instances, has increased the principal balances  
13 owed by consumers, or otherwise modified the terms of consumers’ automobile  
14 finance contracts, without consumers’ written authorization.

15           59.    On numerous occasions, such increases or other modifications  
16 made without written consumer authorization were not allowed under the  
17 automobile finance contract or permitted by law. CPS’s actions have caused and  
18 are likely to cause substantial injury to consumers. This injury is not reasonably  
19 avoidable by consumers and not outweighed by countervailing benefits to  
20 consumers or competition.

21           60.    CPS’s acts or practices constitute unfair practices in or affecting  
22 commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15  
23 U.S.C. § 45(a).  
24  
25

26                                   **Count V**

27                                   **Deceptive Failure to Disclose Effects of an Extension**

28           61.    Plaintiff incorporates by reference all the foregoing paragraphs.

1 62. In the course and conduct of its loan servicing and collection  
2 activities, defendant, in numerous instances, has represented, expressly or by  
3 implication, that delinquent consumers may defer loan payment and receive a  
4 one-month extension of the loan term if they pay an extension fee.

5 63. In numerous instances in which it has made the representations in  
6 Paragraph 62, CPS has failed to disclose to consumers that, in addition to  
7 collecting the extension fee, CPS would increase their principal balance.  
8 Additionally, CPS has failed to explain that an extension of the loan would not  
9 stop the ongoing assessment of late fees on delinquent accounts. These facts  
10 would be material to some consumers' decision to pay an extension fee to defer  
11 payment on the loan for one month.

12 64. Defendant's failure to disclose the material information described  
13 in Paragraph 63, in light of the representations and practices in Paragraph 62,  
14 constitutes a deceptive act or practice in violation of Section 5(a) of the FTC  
15 Act, 15 U.S.C. § 45(a).  
16

17 **Count VI**

18 **Deceptive Claims About Required Payment Methods**

19 65. Plaintiff incorporates by reference all the foregoing paragraphs.  
20

21 66. In the course and conduct of its loan servicing and collection  
22 activities, defendant, in numerous instances, has represented, expressly or by  
23 implication, that consumers were required to pay by a particular method, such as  
24 Western Union or MoneyGram, that costs consumers additional service fees.

25 67. In truth and in fact, consumers were not required to pay by a  
26 particular method, such as Western Union or MoneyGram, that costs consumers  
27 additional service fees and CPS would accept other forms of payment from  
28 consumers, including fee-free payment options.

1 68. Therefore, defendant's representations as set forth in paragraph 66  
2 are false or misleading and constitute deceptive acts or practices in violation of  
3 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

4 **Count VII**

5 **Unfair Collection Practices**

6 69. Plaintiff incorporates by reference all the foregoing paragraphs.  
7

8 70. In connection with the collection of consumers' payments on  
9 automobile retail installment sales contracts, CPS has, in numerous instances,  
10 engaged in unfair collection practices, including but not limited to:

11 A. disclosing the existence of a debt to third parties without the  
12 consumer's consent;

13 B. calling consumers at their places of employment after  
14 knowing or having reason to know that such calls were inconvenient or  
15 not permitted;

16 C. calling third parties repeatedly with the intent to harass,  
17 oppress, or abuse; and

18 D. debiting funds from consumers' bank accounts without the  
19 consumers' express authorization.  
20

21 71. CPS's actions have caused or were likely to cause substantial injury  
22 to consumers and third parties that was not reasonably avoidable by consumers  
23 or third parties and not outweighed by countervailing benefits to consumers or  
24 third parties or competition.  
25

26 72. CPS's practices constitute unfair acts or practices in or affecting  
27 commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15  
28 U.S.C. § 45(a).

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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           82. In numerous instances, in connection with the collection of debts,  
2 CPS, directly or indirectly, has communicated with someone other than the  
3 consumer for the purpose of acquiring location information about the consumer  
4 and has:

5                   A.     stated that the consumer about whom they are attempting to  
6 acquire location information owes a debt, in violation of Section 804(2) of  
7 the FDCPA, 15 U.S.C. § 1692b(2); and

8                   B.     communicated more than once with persons other than the  
9 consumer for the purpose of obtaining location information about the  
10 consumer without a reasonable belief that the earlier response of the  
11 person was erroneous or incomplete and that the person then had correct  
12 or complete location information, in violation of Section 804(3) of the  
13 FDCPA, 15 U.S.C. § 1692b(3).  
14

15           83. The acts and practices alleged in Paragraph 82 constitute violations  
16 of Section 804(2) and (3) of the FDCPA, 15 U.S.C. § 1692b(2) and (3).  
17 Pursuant to Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), the acts and  
18 practices alleged in Paragraph 82 also constitute unfair or deceptive acts or  
19 practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).  
20

21                                   **Count X**

22                                   **Violations of Section 805**

23           84. Plaintiff incorporates by reference all the foregoing paragraphs.

24           85. Section 805 of the FDCPA, 15 U.S.C. § 1692c, governs  
25 communications in connection with debt collection generally. Section 805(a)  
26 prohibits, without the prior consent of the consumer or the express permission of  
27 a court of competent jurisdiction, debt collectors from communicating with a  
28 consumer in connection with the collection of any debt at, *inter alia*, any

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 B. causing a telephone to ring or engaging any person in  
2 telephone conversation repeatedly or continuously with intent to annoy,  
3 abuse, or harass any person at the called number, in violation of Section  
4 806(5) of the FDCPA, 15 U.S.C. § 1692d(5).

5 91. The acts and practices alleged in Paragraph 90 constitute violations  
6 of Section 806 of the FDCPA, 15 U.S.C. § 1692d. Pursuant to Section 814(a) of  
7 the FDCPA, 15 U.S.C. § 1692l(a), the acts and practices alleged in Paragraph 90  
8 also constitute unfair or deceptive acts or practices in violation of Section 5(a) of  
9 the FTC Act, 15 U.S.C. § 45(a).

## 11 **Count XII**

### 12 **Violations of Section 807**

13 92. Plaintiff incorporates by reference all the foregoing paragraphs.

14 93. Section 807 of the FDCPA, 15 U.S.C. § 1692e, prohibits debt  
15 collectors from using any false, deceptive, or misleading representation or means  
16 in connection with the collection of any debt. Section 807(2)(A), 15 U.S.C.  
17 § 1692e(2)(A), specifically prohibits the false representation of the character,  
18 amount, or legal status of any debt, while Section 807(4), 15 U.S.C. § 1692e(4),  
19 prohibits representing or implying that nonpayment of any debt will result in,  
20 among other things, the seizure or attachment of any property unless the debt  
21 collector or creditor intends to take such action, and Section 807(5), 15 U.S.C.  
22 § 1692e(5), prohibits threatening to take any action that cannot legally be taken  
23 or is not intended to be taken. Section 807(10), 15 U.S.C. § 1692(e)(10),  
24 prohibits using false representations or deceptive means to collect or attempt to  
25 collect any debt or to obtain information concerning a consumer.

26  
27 94. In numerous instances, in connection with the collection of debts,  
28 CPS, directly or indirectly, has used false, deceptive, or misleading

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 amended, the Bureau republished the Furnisher Rule as an interim final rule at  
2 12 C.F.R. § 1022.40 et seq., effective December 30, 2011. The republished  
3 Furnisher Rule contains technical and conforming changes to reflect the transfer  
4 of authority and certain other changes made by the Dodd-Frank Act, but does  
5 not alter the substantive obligations imposed on persons subject to the Furnisher  
6 Rule.

7           102. Section 621 of the FCRA, 15 U.S.C. § 1681s, authorizes the  
8 Commission to use all of its functions and powers under the FTC Act to enforce  
9 compliance with the requirements imposed by the FCRA on all persons subject  
10 thereto except to the extent that enforcement specifically is committed to some  
11 other governmental agency, irrespective of whether the person is engaged in  
12 commerce or meets any other jurisdictional tests set forth by the FTC Act.  
13

14           103. A description of the Rule's requirements regarding written policies  
15 and procedures, as well as those relating to investigations of disputes, appears  
16 above, at paragraphs 35 - 42.

17                               **Count XIV**

18                               **No Established Policies and Procedures**

19           104. Plaintiff incorporates by reference all the foregoing paragraphs.  
20

21           105. During the applicable time period CPS failed to:

22                       A.     establish and implement reasonable written policies and  
23 procedures regarding the accuracy and integrity of the information  
24 relating to consumers that it furnishes to a consumer reporting agency;

25                       B.     consider and incorporate the applicable guidelines set forth in  
26 Appendix A to 16 C.F.R. Part 660 and Appendix E to 12 C.F.R. Part 1022  
27 in developing such policies and procedures; and  
28



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                                    **CIVIL PENALTIES FOR VIOLATIONS OF THE FDCPA**

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

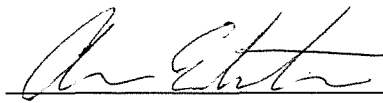
18 **OF COUNSEL:**

19  
20 TRACY S. THORLEIFSON  
21 Attorney  
22 tthorleifson@ftc.gov  
23 Federal Trade Commission  
24 915 Second Avenue, Suite 2896  
25 Seattle, WA 98174  
26 Phone: (206) 220-6350  
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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1 STUART F. DELERY  
2 Assistant Attorney General  
3 MICHAEL S. BLUME  
4 ANDREW E. CLARK  
5 ANN ENTWISTLE  
6 U.S. Department of Justice, Civil Division  
7 P.O. Box 386  
8 Washington, D.C. 20044  
9 Telephone: (202) 305-3630  
10 Fax: (202) 514-8742  
11 Email: Ann.F.Entwistle@usdoj.gov

**FILED**  
CLERK, U.S. DISTRICT COURT  
  
June 11, 2014  
  
CENTRAL DISTRICT OF CALIFORNIA  
BY: ljw for AB DEPUTY

JS-6

12 **UNITED STATES DISTRICT COURT**  
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

<p>14 UNITED STATES OF AMERICA, 15 Plaintiff,</p> <p>16 v.</p> <p>17 CONSUMER PORTFOLIO SERVICES, INC. 18 Defendant.</p>	<p>Case No. <u>SACV14-00819 ABC (RNBx)</u></p> <p><b>STIPULATED ORDER FOR PERMANENT INJUNCTION AND CIVIL PENALTY JUDGMENT</b></p>
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19 Plaintiff, the United States of America, acting upon notification and  
20 authorization to the Attorney General by the Federal Trade Commission  
21 (“Commission”) filed its Complaint for permanent injunction, civil penalties,  
22 and other equitable relief in this matter, pursuant to Sections 13(b) and 16(a)(1)  
23 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and  
24 56(a)(1). Defendant Consumer Portfolio Services, Inc., has waived service of  
25 the summons and the Complaint. Plaintiff and Defendant stipulate to the entry  
26  
27  
28

1 of this Order for Permanent Injunction and Civil Penalty Judgment to resolve all  
2 matters in dispute in this action between them.

3 THEREFORE, IT IS ORDERED as follows:  
4

5 **FINDINGS**

6 1. This Court has jurisdiction over this matter.

7 2. The Complaint charges that CPS participated in acts or practices in  
8 violation of Section 5(a)(1) of the Federal Trade Commission Act (“FTC Act”),  
9 15 U.S.C. § 45(a)(1); the Fair Debt Collection Practices Act (“FDCPA”), 15  
10 U.S.C. §§ 1692 - 1692p; and Section 621(a) of the Fair Credit Reporting Act  
11 (“FCRA”), 15 U.S.C. § 1681s(a), in connection with the servicing and collection  
12 of subprime motor vehicle loan accounts.  
13

14 3. CPS neither admits nor denies any of the allegations in the  
15 Complaint, except as specifically stated in this Order. Only for purposes of this  
16 action, CPS admits the facts necessary to establish jurisdiction.

17 4. CPS waives any claim that it may have under the Equal Access to  
18 Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through  
19 the date of this Order, and agrees to bear its own costs and attorney fees.

20 5. CPS and Plaintiff waive all rights to appeal or otherwise challenge  
21 or contest the validity of this Order.  
22

23 **DEFINITIONS**

24 For purposes of the Order, the following definitions shall apply:

25 1. “Consumer” means any person who is or has been obligated or  
26 allegedly obligated on a loan that the CPS is servicing or has serviced.  
27  
28



1           2.     “Debt” includes any obligation or alleged obligation of a consumer  
2 to pay money arising out of a transaction in which the money, property,  
3 insurance, or services which are the subject of the transaction are primarily for  
4 personal, family, or household purposes, whether or not such obligation has been  
5 reduced to judgment. For purposes of this Order, “debt” specifically includes  
6 the obligation of a consumer to repay a loan for a motor vehicle.  
7

8           3.     “Defendant” means Consumer Portfolio Services, Inc., and its  
9 successors and assigns.

10          4.     “Fees” includes all fees, charges, and penalties, including but not  
11 limited to fees for insufficient funds payments, late payments, loan extensions,  
12 collection and legal service activities, repossession, bankruptcy claims, and any  
13 other fees or charges that CPS or any other person assesses a consumer in  
14 connection with the servicing or collection of any loan.

15          5.     “Loan” means a contract secured by a lien on a motor vehicle taken  
16 as security for repayment of the loan.

17          6.     “Servicing” means receiving and applying payments made on a  
18 consumer’s account pursuant to the terms of the loan agreement, including  
19 payments of principal, interest, and fees. “Servicing” also means any related  
20 loan servicing activity such as the administration of loan accounts, providing  
21 periodic billing statements to consumers, maintaining records of the status of  
22 consumers’ loan accounts, providing information to and resolving disputes with  
23 consumers regarding loan accounts, collecting loan payments, repossessing  
24 property, filing bankruptcy claims, calculating deficiency judgments, using  
25 consumer reports and furnishing information to consumer reporting agencies,  
26 and collecting or assessing fees in relation to any of the foregoing.  
27  
28

ORDER

LOAN SERVICING

**I. NO DECEPTIVE LOAN SERVICING PRACTICES**

IT IS THEREFORE ORDERED that CPS, and its officers, agents, servants, and employees, and all other persons or entities in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with loan servicing and collection activities, are hereby permanently restrained and enjoined from:

A. Misrepresenting, expressly or by implication, the amount, nature, or terms of any fee or other condition or requirement of any loan, specifically including the amount owing on any loan, the amount owing for any fee, the principal balance, or accrued interest;

B. Misrepresenting, expressly or by implication, that any payment or fee due on any loan is allowed under the terms of the loan agreement or permitted by law;

C. Misrepresenting, expressly or by implication, that an account balance has been audited or verified, or is accurate;

D. Failing to disclose, when requesting payment by a method requiring a transaction fee, the costs and availability of all payment methods available to consumers; and

E. Making any representation, expressly or by implication, about the amount of any loan payment or fee, the due date of any loan payment or fee, the outstanding balance owed on a loan, or any other information regarding the terms, conditions, or status of a loan, unless the representation is not misleading

1 and, at the time such representation is made, CPS possesses and relies on  
2 competent and reliable evidence that substantiates the representation. For  
3 purposes of this provision, “competent and reliable evidence” means audits,  
4 tests, analyses, research, studies, or other evidence, including a data integrity  
5 program that complies with Section IV of this Order, based on the expertise of  
6 accounting and other professionals in the relevant area, that have been conducted  
7 and evaluated in an objective manner by persons qualified to do so, using  
8 procedures generally accepted in the profession to yield accurate and reliable  
9 results.  
10

11  
12 **II. NO UNLAWFUL ASSESSMENT OR COLLECTION OF FEES OR**  
13 **OTHER AMOUNTS**

14 IT IS FURTHER ORDERED that CPS, and its officers, agents, servants,  
15 and employees, and all other persons or entities in active concert or participation  
16 with any of them who receive actual notice of this Order, whether acting directly  
17 or indirectly, in connection with loan servicing and collection activities, are  
18 hereby permanently restrained and enjoined from assessing or collecting any fee  
19 or other amount unless it is:  
20

- 21 A. Authorized and clearly and prominently disclosed by the loan  
22 agreement or amendments thereto and not prohibited by law;  
23 B. Expressly permitted by law and not prohibited by the loan  
24 agreement or amendments thereto; or  
25 C. A reasonable fee or other amount for a specific service requested by  
26 a consumer that is assessed and/or collected only after clear and prominent  
27 disclosure of the fee or other amount is provided to the consumer and explicit  
28

1 consent is obtained from the consumer to pay the fee or other amount in  
2 exchange for the service, such fee or other amount is not otherwise prohibited by  
3 law or the loan agreement or amendments thereto, and the service is actually  
4 rendered.  
5

6 **III. NO UNILATERAL CONTRACT MODIFICATIONS**

7  
8 IT IS FURTHER ORDERED that CPS, and its officers, agents, servants,  
9 and employees, and all other persons or entities in active concert or participation  
10 with any of them who receive actual notice of this Order, whether acting directly  
11 or indirectly, in connection with loan servicing and collection activities, are  
12 hereby permanently restrained and enjoined from modifying the terms and  
13 conditions of any consumer's loan agreement, through an extension of the loan  
14 term or otherwise, without express, informed consent, in writing, from the  
15 consumer. For purposes of this provision, "express informed consent" includes:

- 16 A. Disclosing, clearly and conspicuously, all fees and costs; and  
17 B. Disclosing, clearly and conspicuously, whether the modification  
18 will reduce or eliminate the ongoing assessment of any fees, including but not  
19 limited to late fees.  
20

21  
22 **IV. DATA INTEGRITY REQUIREMENT**

23 IT IS FURTHER ORDERED that CPS, in connection with loan servicing  
24 and collection activities, shall, no later than ninety (90) days after the date of  
25 entry of this Order, establish and maintain a comprehensive data integrity  
26 program ("Program") designed to ensure the accuracy, integrity, and  
27 completeness of CPS's loan servicing processes, and the data and other  
28

1 information about accounts that CPS services, collects, or sells. The Program,  
2 the content and implementation of which must be fully documented in writing,  
3 shall contain administrative, technical, and physical safeguards appropriate to  
4 the nature, size, complexity, and scope of CPS's loan servicing activities, and  
5 shall include:

6       A. The designation of an employee or employees to be accountable for  
7 the Program;

8       B. The identification of material internal and external risks to the  
9 accuracy and integrity of loan servicing data that could result in errors to  
10 consumers' accounts, and assessment of the sufficiency of any safeguards in  
11 place to control these risks. At a minimum, this risk assessment should include  
12 consideration of risks in each area of relevant operation, including, but not  
13 limited to, (1) employee training and management, (2) information systems,  
14 including network and software design, information processing, storage,  
15 transmission, and disposal, and (3) prevention, detection, and response to any  
16 systems failure;

17       C. The design and implementation of reasonable safeguards to control  
18 the risks identified through risk assessment, and regular testing or monitoring of  
19 the effectiveness of the safeguards' key controls, system, and procedures;

20       D. The regular auditing, testing, or monitoring of the effectiveness of  
21 the Program; and

22       E. The evaluation and adjustment of the Program in light of the results  
23 of the required auditing, testing, or monitoring, and any material changes to  
24 CPS's operations or business arrangements that may significantly impact the  
25 Program, or any other circumstances that CPS knows or has reason to know may  
26  
27  
28

1 have a material impact on the integrity, accuracy and completeness of CPS's  
2 loan servicing processes, or data and other information about accounts that CPS  
3 services, collects, or sells.  
4

5 **V. ASSESSMENT**

6 IT IS FURTHER ORDERED that:

7  
8 A. CPS shall, within two hundred seventy (270) days after the date of  
9 entry of the Order, and biennially thereafter for ten (10) years after entry of the  
10 Order, obtain an assessment and report ("Assessment") from a qualified,  
11 objective, independent, third-party professional, the identity of which is agreed  
12 to by a representative of the Commission, that, using procedures and standards  
13 generally accepted in the profession:

- 14 1. Sets forth the specific data integrity program that CPS has  
15 implemented and maintained during the reporting period;
- 16 2. Explains how the data integrity program is appropriate to  
17 CPS's size and complexity, and the nature and scope of CPS's activities;
- 18 3. Explains how the data integrity program meets or exceeds the  
19 protections required by Section IV of this Order; and
- 20 4. Certifies that the data integrity program is operating with  
21 sufficient effectiveness to provide reasonable assurance of the accuracy,  
22 integrity, and completeness of CPS's loan servicing processes and  
23 records.  
24

25 B. CPS shall provide a copy of the first Assessment to the Commission  
26 within ten (10) days after the Assessment is delivered to CPS. CPS shall, within  
27 thirty (30) days of a request, provide the Commission with a copy of all plans,  
28

1 reports, studies, reviews, audits, audit trails, policies, training materials, and  
2 assessments, whether prepared by or on behalf of CPS, relied upon to prepare  
3 such Assessment. All subsequent biennial Assessments shall be retained by CPS  
4 and a copy provided to the Commission within thirty (30) days of request.  
5

6 **COLLECTION PRACTICES**

7  
8 **VI. LIMITATIONS ON CALLS TO THIRD PARTIES AND**  
9 **CONSUMERS**

10 IT IS FURTHER ORDERED that CPS, and its officers, agents, servants,  
11 and employees, and all other persons or entities in active concert or participation  
12 with any of them who receive actual notice of this Order, whether acting directly  
13 or indirectly, in connection with loan servicing and collection activities, are  
14 hereby permanently restrained and enjoined from:  
15

16 A. Disclosing the existence of a debt to any third party other than the  
17 consumer's spouse, parent (if the consumer is a minor), guardian, executor, or  
18 administrator, including employers, co-workers, family members, neighbors,  
19 references, and friends, without the consumer's consent;

20 B. Communicating with any person at a time or place that CPS knows  
21 or should know is inconvenient to the person, including but not limited to  
22 communicating with a person at the person's place of employment if CPS knows  
23 or has reason to know that the person's employer prohibits the person from  
24 receiving such communication;  
25

26 C. Communicating, except when seeking to acquire location  
27 information in compliance with Sections VI.D, E, and F, below, with any third  
28

1 party other than the consumer's spouse, parent (if the consumer is a minor),  
2 guardian, executor, administrator, the consumer's attorney, a consumer reporting  
3 agency if otherwise permitted by law, or CPS's attorney(s), unless CPS has the  
4 prior consent of the consumer given directly to CPS or the express permission of  
5 a court of competent jurisdiction, or CPS can show that such communication is  
6 reasonably necessary to secure its collateral or effectuate a post-judgment  
7 judicial remedy;

9 D. Communicating with any third party for the purpose of acquiring  
10 location information about the consumer unless CPS possesses a reasonable  
11 belief that it does not currently possess the consumer's location information;  
12 ***provided that*** for purposes of this subsection CPS shall have a reasonable belief  
13 that it cannot locate the consumer when, for example: 1) it receives mail directed  
14 to the consumer's last known address returned as undeliverable; 2) the  
15 consumer's known telephone number(s) have been disconnected; 3) at each  
16 number known to belong to the consumer the voice mail box is full or does not  
17 accept messages; or 4) a third party at the consumer's last known telephone  
18 number claims that the consumer is no longer using the telephone number;

20 E. Communicating more than once with any third party for the  
21 purpose of obtaining location information about the consumer unless such third  
22 party requests that CPS communicate with him or her again or CPS reasonably  
23 believes that the third party's earlier response was erroneous or incomplete and  
24 the third party now has correct or complete location information;

25 F. Contacting any third party at a telephone number after that third  
26 party or anyone at that telephone number has informed CPS, orally or in writing,  
27 that 1) the consumer CPS is trying to contact cannot be reached at that telephone  
28



1 number; 2) the third party does not have location information for the consumer  
2 the CPS is trying to reach, unless CPS has a reasonable belief that the third  
3 party's earlier statements were erroneous or incomplete, and that such third party  
4 now has correct or complete location information; or 3) the third party wishes  
5 CPS to cease further communication with the third party;

6 G. Failing to create and maintain, for at least three (3) years from the  
7 date of last contact with the third party, records documenting that a third party at  
8 a particular telephone number has informed CPS, orally or in writing, that the  
9 consumer CPS is trying to contact cannot be reached at that telephone number or  
10 the third party does not have location information for that consumer;

11 H. Failing to create and maintain, for at least three (3) years from the  
12 date of last contact with the third party, records documenting that CPS had a  
13 reasonable belief that 1) at the time of the call CPS did not have the consumer's  
14 current location information and 2) a third party's statements that the consumer  
15 CPS is trying to contact cannot be reached at that telephone number or that the  
16 third party does not have location information about that consumer were  
17 erroneous, incomplete, or out of date, before calling that telephone number  
18 again; *provided that*, for purposes of this subsection, to have a "reasonable  
19 belief" that a third party's earlier statements were erroneous or incomplete and  
20 that such third party now has correct or complete location information, CPS  
21 must have: 1) conducted a thorough review of all applicable records, documents,  
22 and database entries for the consumer that CPS is trying to reach to search for  
23 any notations indicating that the consumer cannot be reached at that telephone  
24 number or that the third party does not have location information about the  
25 consumer CPS is trying to reach; and 2) obtained and considered information or  
26  
27  
28

1 evidence from a new or different source other than the information or evidence  
2 previously relied upon by CPS in attempting to contact that consumer, and such  
3 information or evidence substantiates CPS's belief that the third party's earlier  
4 statements were erroneous or incomplete and that such third party now has  
5 correct or complete location information; and

6 I. Engaging in conduct the natural consequence of which is to harass,  
7 oppress, or abuse a person, including, but not limited to, causing a telephone to  
8 ring, or engaging a person in telephone conversation, repeatedly or continuously  
9 with the intent to annoy, abuse, or harass the person at the called number. For  
10 purposes of this subsection, there shall exist a rebuttable presumption of an  
11 intent to annoy, harass, or abuse if CPS places more than one call to any  
12 consumer after that consumer has notified CPS, either orally in writing, that the  
13 consumer does not wish to be contacted telephonically; *provided that* any oral  
14 request that telephone contact stop shall be invalid after thirty (30) days if:  
15 1) CPS, within seven (7) days of the consumer's oral request, sends the  
16 consumer a written notice to the consumer's last known mailing address,  
17 advising that the consumer must confirm his or her request in writing by sending  
18 a notice to an address specified in the CPS notice or by submitting a request to  
19 CPS online at its website; and 2) the consumer fails to provide CPS with  
20 confirmation of his or her request in writing or through the CPS website;  
21 *provided further that* CPS shall create and make available on its website an  
22 electronic form through which consumers may submit written requests to stop  
23 further telephonic communications.  
24  
25  
26

27 **VII. UNAUTHORIZED DEBITS PROHIBITED**  
28

1 IT IS FURTHER ORDERED that CPS, and its officers, agents, servants,  
2 and employees, and all other persons or entities in active concert or participation  
3 with any of them, who receive actual notice of this Order, whether acting  
4 directly or indirectly, in connection with its loan servicing and collection  
5 activities, are hereby permanently restrained and enjoined from debiting funds  
6 from any bank account without the accountholder's express authorization.  
7

8  
9 **VIII. DECEPTIVE COLLECTION PRACTICES PROHIBITED**

10 IT IS FURTHER ORDERED that CPS, and its officers, agents, servants,  
11 and employees, and all other persons or entities in active concert or participation  
12 with any of them who receive actual notice of this Order by personal service or  
13 otherwise, whether acting directly or indirectly, in connection with loan  
14 servicing and collection activities, are hereby permanently restrained and  
15 enjoined from using any false, deceptive, or misleading representation or means  
16 including, but not limited to:

17 A. Misrepresenting, expressly or by implication, that nonpayment of  
18 the debt will result in adverse consequences, such as immediate repossession of  
19 the vehicle securing the consumer's loan; and  
20

21 B. Misrepresenting, expressly or by implication, the nature and  
22 purpose of any collection call to a consumer, including by disguising or  
23 concealing the telephone number from which the call is made.  
24

25 **IX. FDCPA VIOLATIONS PROHIBITED**

26 IT IS FURTHER ORDERED that CPS, and its officers, agents, servants,  
27 and employees, and all other persons or entities in active concert or participation  
28

1 with any of them who receive actual notice of this Order, whether acting directly  
2 or indirectly, when acting as a debt collector within the meaning of the FDCPA,  
3 are hereby permanently restrained and enjoined from taking the following  
4 actions:

5       A.     Stating to any person from whom CPS is trying to acquire location  
6 information about a consumer that the consumer owes a debt;

7       B.     Communicating more than once with any person for the purpose of  
8 obtaining location information about the consumer unless requested to do so by  
9 the person or unless CPS reasonably believes that the person's earlier response  
10 was erroneous or incomplete and that the person now has correct or complete  
11 location information;

12       C.     Communicating with a consumer in connection with the collection  
13 of a debt:

14           1.     At times or places known to be inconvenient to the  
15 consumer, without the consumer's prior consent; and

16           2.     At the consumer's place of employment when CPS knows or  
17 has reason to know that the consumer's employer prohibits the consumer  
18 from receiving such communications;

19       D.     Communicating about the debt with persons other than the  
20 consumer, the consumer's spouse, parent (if the consumer is a minor), guardian,  
21 executor, or administrator, the consumer's attorney, a consumer reporting  
22 agency, the creditor, the creditor's attorney, or its own attorneys without the  
23 consumer's prior consent given directly to CPS or the express permission of a  
24 court of competent jurisdiction, or as reasonably necessary to effectuate a post-  
25 judgment judicial remedy;  
26  
27  
28

1 E. Engaging in conduct the natural consequence of which is to harass,  
2 oppress, or abuse any person in connection with the collection of any debt,  
3 including, among other things, causing a telephone to ring or engaging any  
4 person in telephone conversation repeatedly or continuously with intent to  
5 annoy, abuse, or harass any person at the called number;

6 F. Falsely representing the character, amount, or legal status of a debt;

7 G. Falsely representing that nonpayment of a debt will result in  
8 seizure, garnishment, attachment or sale of any property or wages of a person  
9 unless the action is lawful and CPS intends to take such action;

10 H. Falsely threatening to take any action that cannot legally be taken or  
11 that is not intended to be taken;

12 I. Using false information or deceptive means to collect or attempt to  
13 collect a debt or to obtain information concerning a consumer; and

14 J. Using unfair or unconscionable means to collect or attempt to  
15 collect a debt, including, but not limited to, the following:

16 1. Posting payments to or debiting funds from a consumer's  
17 bank account without the consumer's express consent and authorization;

18 2. Collecting amounts not expressly authorized by the  
19 agreement creating the debt or permitted by law; and

20 3. Threatening to take any nonjudicial action to effect  
21 dispossession or disablement of property where there was no present  
22 intent to take possession of the property.  
23  
24  
25

26 **X. FURNISHER RULE VIOLATIONS PROHIBITED**  
27  
28

1 IT IS FURTHER ORDERED that CPS, and its officers, agents, servants,  
2 and employees, and all other persons or entities in active concert or participation  
3 with any of them, who receive actual notice of this Order, whether acting  
4 directly or indirectly, for the duration of any period that CPS furnishes  
5 information to a consumer reporting agency, are hereby permanently restrained  
6 and enjoined from:

7  
8 A. Failing to:

9 1. Establish and implement reasonable written policies and  
10 procedures regarding the accuracy and integrity of the information  
11 relating to consumers that it furnishes to a consumer reporting agency, as  
12 required by Section 623(e) of the FCRA, 15 U.S.C. § 1681s-2(e); 16  
13 C.F.R. § 660.3; and 12 C.F.R. § 1022.42;

14 2. Consider and incorporate the applicable guidelines set forth  
15 in Appendix A to 16 C.F.R. Part 660 and Appendix E to 12 C.F.R. Part  
16 1022 in developing such policies and procedures; and

17 3. Review such policies and procedures periodically and update  
18 them as necessary to ensure their continued effectiveness; and

19  
20 B. Failing to:

21 1. Comply with Section 623(b) of the FCRA, 15 U.S.C.  
22 § 1681s-2(b), when consumer reporting agencies refer disputes to it  
23 pursuant to Section 611(a)(2), 15 U.S.C. § 1681i(a)(2); and comply with  
24 Section 623(a)(8)(E) of the FCRA, 15 U.S.C. § 1681s-2(a)(8)(E), 16  
25 C.F.R. § 660.4, and 12 C.F.R. § 1022.43, when consumers dispute  
26 directly, by failing to conduct reasonable investigations of disputes,  
27 including but not limited to, when the dispute relates to payments, fees, or  
28

1 balances owed, failing to a) check that assessed fees or other amounts  
2 were calculated properly and permitted by contract or state law, b) check  
3 that all assessments, payments, and payment reversals were correctly  
4 applied, and c) check that the principal balance was not increased  
5 improperly;

6 2. Review all relevant information provided by the consumer  
7 with the dispute notice as required under Section 623(a)(8)(E)(ii) of the  
8 FCRA, 15 U.S.C. § 1681s-2(a)(8)(E)(ii); 16 C.F.R. § 660.4(e)(2); 12  
9 C.F.R. § 1022.43(e)(2), and in accordance with the provisions of this  
10 Order;

11 3. Complete its investigation of the dispute and report the  
12 results of the investigation to the consumer before the expiration of the  
13 period prescribed by Section 611(a)(1) of the FCRA, 15 U.S.C.  
14 § 1681i(a)(1); 16 C.F.R. § 660.4(e)(3); and 12 C.F.R. § 1022.43(e)(3);

15 4. Provide notice of a determination that a dispute is frivolous  
16 or irrelevant within the time period specified by Section 623(a)(8)(F)(ii)  
17 of the FCRA, 15 U.S.C. § 1681s-2(a)(8)(F)(ii); 16 C.F.R. § 660.4(f)(2);  
18 and 12 C.F.R. § 1022.43(f)(2); and

19 5. Include the reasons for its determination that a dispute is  
20 frivolous or irrelevant and identify any information required to investigate  
21 the disputed information as required under Section 623(a)(8)(F)(iii) of the  
22 FCRA, 15 U.S.C. § 1681s-2(a)(8)(F)(iii); 16 C.F.R. § 660.4(f)(2); and 12  
23 C.F.R. § 1022.43(f)(3).  
24  
25  
26

27 **MONETARY RELIEF**

1 **XI. EQUITABLE MONETARY RELIEF**

2 IT IS FURTHER ORDERED that CPS shall provide redress to all  
3 consumers with covered accounts as follows:

4 A. **Covered Accounts**: The class of consumers eligible for redress  
5 shall include individuals 1) whose accounts were serviced by CPS at any time  
6 between January 1, 2008 and June 30, 2013, and 2) who were charged an  
7 amount exceeding the amount allowed by the contract or permitted by law  
8 (“overcharges”) in any of the following categories:  
9

- 10 1. Non-sufficient funds (“NSF”) fees;
- 11 2. Late payment fees;
- 12 3. Legal fees;
- 13 4. Field chase fees;
- 14 5. Finance charges that accrued on principal balance increases related  
15 to loan extensions;
- 16 6. Finance charges that accrued on principal balance increases related  
17 to bankruptcy filings; or
- 18 7. Payoff overages in excess of \$1.00.

19  
20 CPS shall identify covered accounts in the manner specified in Attachment A to  
21 this Order and Section XI.H, below;

22 B. **Refunds for Paid Accounts**: Within ninety (90) days of entry of  
23 the Order, CPS shall provide a refund in the amount of the overcharge to each  
24 consumer with a covered account who overpaid more than one dollar (\$1.00)  
25 and whose loan was paid in full as of the date thirty (30) days prior to the date  
26 on which CPS mails the refund;  
27  
28



1           1.     CPS shall mail, by first class mail, address correction service  
2 requested, a check for the full amount of the overcharge. The face of each  
3 check shall clearly and conspicuously state, "Please cash or deposit this  
4 check within 180 days or it will no longer be good." The check shall be  
5 accompanied by a letter describing the purpose of the refund check, the  
6 text of which has been approved by a representative of the Commission,  
7 and include no other material; prior to mailing, CPS shall make  
8 reasonable efforts to obtain current location information for any consumer  
9 due a cash refund, including by consulting with the Postal Service's  
10 National Change of Address database;

12           2.     For any letter returned to CPS within sixty (60) days of  
13 mailing, CPS shall make further reasonable efforts to identify a current  
14 address for the consumer, and, within thirty (30) days of receipt of the  
15 returned letter, remail the check to the corrected address, if any;

17           3.     CPS shall retain, in a segregated account, all funds from  
18 uncashed checks for three hundred sixty (360) days from date of issuance  
19 of the last check issued pursuant to Section XI.B.2, above. All funds from  
20 uncashed checks remaining after this period shall be disgorged  
21 immediately to the U.S. Treasury pursuant to the payment instructions in  
22 Section XII.B;

23     C.     **Adjusted Account Balances for Active Accounts:** Within sixty  
24 (60) days of entry of the Order, CPS shall reduce, by the amount of the  
25 overcharge, the outstanding balance owed on any covered account that is active  
26 as of the date thirty (30) days prior to the date on which the balance is so  
27  
28

1 reduced, and advise each consumer of the reduction of his or her balance in the  
2 next monthly statement after the adjustment has been made;

3 D. **Adjusted Account Balances for Charged-Off Accounts:** Within  
4 sixty (60) days of entry of the Order, CPS shall reduce, by the amount of the  
5 overcharge, the outstanding balance owed on any covered account that has been  
6 charged off as of the date thirty (30) days prior to the date on which the balance  
7 is so reduced; *provided that*, in lieu of adjusting the outstanding balance on any  
8 covered charged-off account, CPS may elect to permanently forebear collection  
9 on the account including by never 1) reporting the account to a consumer  
10 reporting agency, 2) seeking to collect a deficiency balance on the account, or  
11 3) selling the account;

12  
13 E. **Sold Accounts:** Within ninety (90) days of entry of the Order, CPS  
14 shall provide each purchaser of any covered account identified pursuant to  
15 Section XI.A, above, with written notice of the identity of each such covered  
16 account and the amount of any required balance adjustment;

17  
18 F. **Credit Reporting:** Within sixty (60) days of entry of the Order, for  
19 any covered account the balance of which was adjusted pursuant to Sections XI.  
20 B, C, or D, above, and that CPS has reported to any consumer reporting agency,  
21 CPS shall furnish corrected account information to that consumer reporting  
22 agency or cease reporting the account;

23 G. **Information for Consumers:** CPS shall, within five (5) days of  
24 entry of the Order, post on its website, clearly and prominently, a toll-free  
25 number and email address dedicated to responding to inquiries about this Order  
26 and the redress process. CPS shall timely respond to consumer inquiries about  
27 this Order and the redress process, including whether the consumer 1) has a  
28

1 covered account; 2) the amount of any overcharge(s) identified, and 3) the  
2 method and date of any payment or account adjustment. CPS shall post and  
3 maintain the toll-free number and email address at least until such time as CPS  
4 remits unclaimed funds to the U.S. Treasury pursuant to Section XI.B.3, above;

5 H. **Errors and Omissions:** If, at any time prior to the date that CPS  
6 remits unclaimed funds to the U.S. Treasury pursuant to Section XI.B.3, above,  
7 CPS learns about a covered account for which CPS has not taken any action  
8 required by Sections XI.B - F, above, whether CPS learns of the account through  
9 its own internal processes or receives information from a third party, such as the  
10 third party monitor appointed pursuant to Section XI.I, below, a Commission  
11 representative, or a consumer, CPS shall, within thirty (30) days of learning of  
12 the account, take curative steps, including 1) taking the required action as to that  
13 account; 2) conducting a reasonable search for any similarly situated accounts;  
14 and 3) taking the required action as to any accounts so located. CPS shall also  
15 give written notice to the third party monitor appointed pursuant to Section XI.I,  
16 below, and any other party from which it learned of such an account. The notice  
17 must identify each such account, explain what action, if any, was required and  
18 taken, and the relevant dates; and

19 I. **Third Party Monitor:** Within thirty (30) days of entry of the  
20 Order, CPS shall retain, at its expense, a qualified, objective, independent, third-  
21 party professional, the identity of which is agreed-to by a representative of the  
22 Commission, and with which CPS fully cooperates, to monitor and audit CPS's  
23 compliance with Sections XI.B-H above. The management letter between CPS  
24 and the third party monitor shall grant Commission staff access to the third party  
25 monitor's staff, work papers, and other materials prepared in the course of the  
26  
27  
28

1 third party's monitoring and auditing of CPS's compliance with Sections XI.B-  
2 H above, upon request by a representative of the Commission, for one year after  
3 receipt by the Commission of the final audit. Such third party monitor shall:

4 1. Provide, to both CPS and the Commission, within thirty (30)  
5 days after each action is required to be completed pursuant to Sections B –  
6 G, above, an interim written report verifying whether CPS was in  
7 compliance with that action; and  
8

9 2. Provide, to both CPS and the Commission, a final audit  
10 verifying the extent of CPS's compliance with Sections B-H, above,  
11 within thirty (30) days after CPS completes the last required action of  
12 those provisions, but in no event more than two (2) years after entry of  
13 the Order.  
14

15 **XII. MONETARY JUDGMENT FOR CIVIL PENALTY**

16 IT IS FURTHER ORDERED that:

17 A. Judgment in the amount of two million dollars (\$2,000,000) is  
18 entered in favor of Plaintiff against CPS as a civil penalty. This amount  
19 represents a penalty of one million dollars (\$1,000,000) for Defendant's alleged  
20 violations of the FDCPA and one million dollars (\$1,000,000) for Defendant's  
21 alleged violations of the Furnisher Rule;  
22

23 B. CPS is ordered to pay to Plaintiff, by making payment to the  
24 Treasurer of the United States, two million dollars (\$2,000,000), which, as  
25 Defendant stipulates, its undersigned counsel holds in escrow for no purpose  
26 other than payment to Plaintiff. Such payment must be made within seven (7)  
27  
28

1 days of entry of this Order by electronic fund transfer in accordance with  
2 instructions previously provided by a representative of Plaintiff; and

3 C. CPS relinquishes dominion and all legal and equitable right, title,  
4 and interest in all assets transferred pursuant to this Order and may not seek the  
5 return of any assets.  
6

7 **COMPLIANCE AND REPORTING**

8  
9 **XIII. ORDER, FDCPA & FURNISHER RULE ACKNOWLEDGMENTS**

10 IT IS FURTHER ORDERED that CPS shall deliver copies of this Order,  
11 the FDCPA, and the Furnisher Rule (attached hereto as Attachments B and C)  
12 and obtain acknowledgments of receipt as directed below:  
13

14 A. Submit to the Commission an acknowledgment of receipt of this  
15 Order, the FDCPA, and the Furnisher Rule, sworn under penalty of perjury,  
16 within seven (7) days of entry of this Order;

17 B. For a period of three (3) years after date of entry of this Order,  
18 deliver:

- 19 1. A copy of this Order, the FDCPA, and the Furnisher Rule to:  
20 (a) all principals, officers, directors, and managers and members who  
21 formulate, direct, or control CPS's policies and practices relating to loan  
22 servicing, collection and credit reporting activities; and (b) any business  
23 entity resulting from any change in structure as set forth in the Section  
24 titled Compliance Reporting;  
25  
26  
27  
28

1           2.     A copy of this Order and the FDCPA to all employees,  
2 agents, and representatives of CPS who participate in loan servicing and  
3 collection activities; and

4           3.     A copy of this Order and the Furnisher Rule to all employees,  
5 agents, and representatives of CPS who participate in credit reporting  
6 activities;

7  
8 Delivery must occur within seven (7) days of entry of this Order for current  
9 personnel. To all others, delivery must occur before they assume their  
10 responsibilities; and

11           C.     Obtain from each individual or entity to which CPS delivered a  
12 copy of this Order, the FDCPA, or the Furnisher Rule, within thirty (30) days, a  
13 signed and dated acknowledgment of receipt of this Order, the FDCPA, and the  
14 Furnisher Rule.

15  
16 **XIV. COMPLIANCE REPORTING**

17           IT IS FURTHER ORDERED that CPS shall make timely submissions to  
18 the Commission:

19  
20           A.     One year after entry of this Order, CPS must submit a compliance  
21 report, sworn under penalty of perjury. CPS must 1) identify the primary  
22 physical, postal, and email address and telephone number as designated points of  
23 contact, which representatives of the Commission and Plaintiff may use to  
24 communicate with CPS; 2) identify all of CPS's businesses by all of their names,  
25 telephone numbers, and physical, postal, email, and Internet addresses;  
26 3) describe the activities of each business, including the goods and services  
27 offered, and the means of advertising, marketing, and sales; 4) describe in detail  
28

1 whether and how CPS is in compliance with each Section of this Order; and  
2 5) provide a copy of each Order Acknowledgment obtained pursuant to this  
3 Order, unless previously submitted to the Commission;

4 B. For twelve (12) years after entry of this Order, CPS must submit a  
5 compliance notice, sworn under penalty of perjury, within fourteen (14) days of  
6 any change in the following: 1) any designated point of contact; or 2) the  
7 structure of CPS or any entity that CPS has any ownership interest in or controls  
8 directly or indirectly that may affect compliance obligations arising under this  
9 Order, including: creation, merger, sale, or dissolution of the entity or any  
10 subsidiary, parent, or affiliate that engages in any acts or practices subject to this  
11 Order;

12 C. CPS must submit to the Commission notice of the filing of any  
13 bankruptcy petition, insolvency proceeding, or any similar proceeding by or  
14 against CPS within fourteen (14) days of its filing;

15 D. Any submission to the Commission required by this Order to be  
16 sworn under penalty of perjury must be true and accurate and comply with 28  
17 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under  
18 the laws of the United States of America that the foregoing is true and correct.  
19 Executed on: \_\_\_\_\_" and supplying the date, signatory's full name, title (if  
20 applicable), and signature; and

21 E. Unless otherwise directed by a Commission representative in  
22 writing, all submissions to the Commission pursuant to this Order must be  
23 emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal  
24 Service) to: Associate Director for Enforcement, Bureau of Consumer  
25 Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW,  
26  
27  
28

1 Washington, DC 20580. The subject line must begin: U.S. v. Consumer  
2 Portfolio Services, Inc.

3  
4 **XV. RECORDKEEPING**

5 IT IS FURTHER ORDERED that, in addition to records required to be  
6 created and maintained pursuant to Sections IV, V, VI, and XIV, above, CPS  
7 must create certain records for twelve (12) years after entry of the Order, and  
8 retain each such record for five (5) years, unless otherwise indicated.

9 Specifically, CPS must create and retain the following records:  
10

11 A. Accounting records that reflect the revenues from all goods and  
12 services sold, and specifically including revenues from:

- 13 1. Loan servicing fees and fees paid by or imposed on  
14 consumers;
- 15 2. Payments of principal and interest received on active  
16 accounts;
- 17 3. Costs incurred in generating the revenues reported in 1 and 2,  
18 above; and
- 19 4. Disbursement of the revenues reported in 1 and 2 above;

20 B. Personnel records showing, for each person involved in loan  
21 servicing or collection, that person's name, address, and telephone numbers; job  
22 title or position; dates of service; and, if applicable, the reason for termination;

23 C. Copies of all scripts, training materials, and policy manuals related  
24 to loan servicing and collection activities; and

25 D. All records necessary to demonstrate full compliance with each  
26 provision of this Order, including all submissions to the Commission.  
27  
28



1  
2 **XVI. COMPLIANCE MONITORING**

3 IT IS FURTHER ORDERED that, for the purpose of monitoring CPS's  
4 compliance with this Order:

5 A. Within fourteen (14) days of receipt of a written request from a  
6 representative of the Commission or Plaintiff, CPS must submit additional  
7 compliance reports or other requested information, which must be sworn under  
8 penalty of perjury; appear for depositions; and produce documents for inspection  
9 and copying. The Commission and Plaintiff are also authorized to obtain  
10 discovery, without further leave of court, using any of the procedures prescribed  
11 by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions),  
12 31, 33, 34, 36, 45, and 69;

13  
14 B. For matters concerning this Order, the Commission and Plaintiff are  
15 authorized to communicate directly with CPS. CPS must permit representatives  
16 of the Commission and Plaintiff to interview any employee or other person  
17 affiliated with CPS who has agreed to such an interview. The person  
18 interviewed may have counsel present; and

19  
20 C. The Commission and Plaintiff may use all other lawful means,  
21 including posing, through its representatives, as consumers, suppliers, or other  
22 individuals or entities, to CPS or any individual or entity affiliated with CPS,  
23 without the necessity of identification or prior notice. Nothing in this Order  
24 limits the Commission's lawful use of compulsory process, pursuant to Sections  
25 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.  
26  
27  
28

1 **XVII. RETENTION OF JURISDICTION**

2 IT IS FURTHER ORDERED that this Court retains jurisdiction of this  
3 matter for purposes of construction, modification, and enforcement of this  
4 Order.  
5

6 SO ORDERED this 11<sup>TH</sup> day of June, 2014:  
7

8   
9  
10 Audrey B. Collins  
11 UNITED STATES DISTRICT JUDGE  
12  
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1 **STIPULATED AND AGREED:**

2 **FOR PLAINTIFF:**

3 **THE UNITED STATES OF AMERICA**

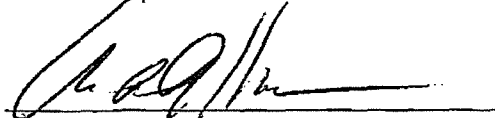
4  
5 STUART F. DELERY  
6 Assistant Attorney General  
7 Civil Division

8 MICHAEL S. BLUME  
9 Director  
10 ANDREW E. CLARK  
11 Assistant Director

12   
13 \_\_\_\_\_

14 ANN ENTWISTLE  
15 Trial Attorney  
16 Consumer Protection Branch  
17 U.S. Department of Justice  
18 P.O. Box 386  
19 Washington, D.C. 20044  
20 Telephone: (202) 305-3630  
21 Fax: (202) 514-8742  
22 Ann.F.Entwistle@usdoj.gov  
23  
24  
25  
26  
27  
28

1 **FOR THE FEDERAL TRADE**  
2 **COMMISSION:**

3 

4 **CHARLES A. HARWOOD**  
5 Director, Northwest Region

6 

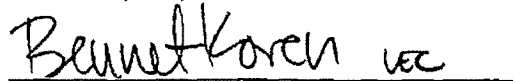
7 **TRACY S. THORLEIFSON**  
8 Attorney  
9 tthorleifson@ftc.gov  
10 Federal Trade Commission  
11 915 Second Avenue, Suite 2896  
12 Seattle, WA 98174  
13 Phone: (206) 220-6350

14 Date: April 29, 2014

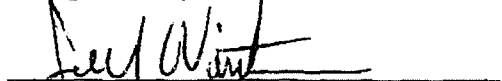
**FOR DEFENDANT CONSUMER**  
**PORTFOLIO SERVICES, INC:**



Michael Lavin, CA Bar No. 199423  
Senior Vice President-General Counsel  
Michael@consumerportfolio.com  
Consumer Portfolio Services, Inc.  
1950 Jamboree Road  
Irvine, CA 92612  
Phone: (888) 224-8881



**BENNET S. KOREN**  
bkoren@mcglinchey.com  
**LAUREN E. CAMPISI**  
lcampisi@mcglinchey.com  
McGlinchey Stafford PLLC  
601 Poydras St., 12th Floor  
New Orleans, LA 70130  
Telephone: (504) 586-1200



**JOEL WINSTON**  
jwinston@hudco.com  
Hudson Cook, LLC  
1020 19th Street, N.W., Suite 700  
Washington DC 20036  
Telephone: (202) 327-9716

Date: December 13, 2013

1 ATTACHMENT A

2 CPS shall use the following procedures to identify consumers whose accounts  
3 were serviced by CPS at any time between January 1, 2008, and June 30, 2013,  
4 and were charged the following types of fees or other amounts in an amount  
5 exceeding the amount allowed by the contract or permitted by law  
6 (“overcharges”):

7 **DEFINITIONS**

8 For purposes of this Attachment A, the following definitions shall apply:  
9

- 10 1. **“Non-sufficient funds (NSF) fees”** shall mean fees assessed to an  
11 account when a check, draft or other instrument is dishonored because there are  
12 not sufficient funds in the consumer’s account to pay the check, draft or other  
13 instrument.
- 14 2. **“Late payment fees”** shall mean fees assessed to an account when a  
15 payment is not made on the payment due date or within any applicable grace  
16 period provided in the contract and/or state law.
- 17 3. **“Legal fees”** shall mean expenses incurred by CPS and assessed to an  
18 account when CPS hires a third party to perform legal services in connection  
19 with the account.
- 20 4. **“Field chase fees”** shall mean expenses incurred by CPS and assessed to  
21 an account when CPS hires a third party to make a personal visit to the  
22 consumer’s residence on behalf of CPS.
- 23 5. **“Finance charges accrued on principal balance increases related to**  
24 **loan extensions”** shall mean additional finance charges that accrued on an  
25 account when the consumer paid an extension fee and an extension fee was  
26 collected from a prior principal payment.

1 6. **“Finance charges accrued on principal balance increases related to**  
2 **bankruptcy filings”** shall mean additional finance charges that accrued when  
3 the principal balance of an account was increased in connection with the  
4 consumer’s filing of a petition for bankruptcy.

5 7. **“Payoff overages”** shall mean any portion of a payoff payment that  
6 exceeded the actual full balance owed as of the date the payoff payment was  
7 received.

8 **METHODOLOGY FOR REDRESS**

9 1. **Non-sufficient funds (NSF) fees:** Run a customized query of CPS’s  
10 Liberty accounting system to compare the amount of each NSF fee assessed to  
11 an account against the NSF fee routine that was assigned to that account when  
12 the account was boarded based on state law, and identify all NSF fees that  
13 exceeded the NSF fee routine.

14 2. **Late payment fees:** Run customized queries of the Liberty system to  
15 identify overcharges of late fee assessments on an account as follows:

16 A. For each active and paid-off account:

- 17 (i) Recalculate the late fee based on the late fee parameters  
18 coded on the account at the time the contract was boarded,  
19 (ii) Where applicable, recalculate the late fee based on the late  
20 fee routine for the applicable state, and  
21 (iii) Identify all late fees that exceeded the lower of the  
22 recalculations conducted under Steps A(i) and (ii).  
23

24 B. For each charged-off account, review its historic month-end records  
25 from the Liberty system and recalculate the amount of each late fee that was  
26 assessed on an account to identify all late fees that exceeded the amounts  
27 permitted by contract and state law.  
28

1 3. **Legal fees:** Run customized queries of the Liberty system to identify  
2 overcharges of legal fees as follows:

3 A. Determine the date of the assessment of each legal fee;

4 B. Compare the date of the assessment to the dates of the following  
5 four events:

6 (i) the repossession date,

7 (ii) the bankruptcy filing date,

8 (iii) the date of assignment to an attorney to institute a legal  
9 action against the consumer,

10 (iv) the charge-off date; and  
11

12 C. Identify all legal fees assessed prior to any of the events in Steps  
13 B(i) – B(iv).  
14

15 4. **Field chase fees:** Run customized queries of the Liberty system to  
16 identify all accounts to which field chase fees were charged under the general  
17 collection expenses transaction code, and those fees:

18 A. Were between \$40.00 and \$50.00, and  
19

20 B. Were assessed to an account originated in one of the following  
21 states: Colorado, Idaho, Indiana, Iowa, Maine, Michigan, New Jersey,  
22 Oklahoma, Pennsylvania, South Carolina, West Virginia, Wisconsin, or  
23 Wyoming.

24 5. **Finance charges accrued on principal balance increases related to**  
25 **loan extensions:** Run customized queries of the Liberty System to:

26 A. Identify all accounts where, on the same day,

27 (i) an extension fee transaction code was applied to the account,  
28

1 (ii) a debit of \$50.00 or less was posted to the account, and

2 (iii) an amount of \$50.00 or less was applied to principal.

3 B. For each account identified in Step A, determine the amounts of  
4 additional payments accountholders may have made as a result of the extension  
5 process by:

6 (i) for paid-off accounts, calculating the finance charges that  
7 accrued on the higher principal balance at the contract rate from the  
8 date of the principal balance increase to the payoff date,

9 (ii) for active accounts, calculating the finance charges that  
10 accrued on the higher principal balance at the contract rate from the  
11 date of the principal balance increase to June 30, 2013, and

12 (iii) for charged-off accounts, calculating the finance charges that  
13 accrued on the higher principal balance at an interest rate of 20.0%  
14 per annum from the date of the principal balance increase to the  
15 charge-off date.  
16

17 **6. Finance charges that accrued on principal balance increases related**  
18 **to bankruptcy filings:** Run customized queries of the Liberty System to:

19 A. Identify all accountholders who filed a Chapter 13 bankruptcy  
20 petition between January 1, 2008, and June 30, 2013,

21 B. Identify any of the accounts identified in Step A for which the  
22 principal balance increased after the bankruptcy filing date, and

23 C. Calculate the finance charges that accrued on the increased  
24 principal balance at an interest rate of 6.0% per annum.  
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26 **7. Payoff overages:** Run customized queries of the Liberty system to  
27 identify all accounts as to which all of the following occurred:  
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- A. The accountholder made a payoff payment,
- B. The payoff payment exceeded the actual full balance owed as of the date the payoff payment was received,
- C. CPS retained some or all of the excess payment, and
- D. The amount of the excess payment retained by CPS exceeded \$1.00.