

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

_____)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
v.)	Case No. 3:15-cv-3002-G
)	
TRICOLOR AUTO ACCEPTANCE, LLC, a)	
limited liability company,)	
Defendant.)	
_____)	

**STIPULATED FINAL JUDGMENT AND ORDER FOR CIVIL PENALTIES,
PERMANENT INJUNCTION, AND OTHER EQUITABLE RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“FTC” or “Commission”), filed its complaint, for civil penalties, permanent injunction and other equitable remedies in this matter, pursuant to Sections 5(a), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 56(a); and Section 621(a) of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681s(a).

Defendant has been represented by attorneys whose names appear hereafter. Defendant has waived service of the Summons and Complaint. Plaintiff and Defendant stipulate to the entry of this Stipulated Final Judgment and Order for Civil Penalties, Permanent Injunction, and Other Equitable Relief (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS HEREBY ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.

2. The Complaint charges that Defendant participated in acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45; the FCRA, 15 U.S.C. §§ 1681-1681x; the Duties of Furnishers of Information to Consumer Reporting Agencies (“Furnisher Rule”), 16 C.F.R. § 660, issued pursuant to Section 623(e)(1) of the FCRA, 15 U.S.C. §1681s-2(e)(1), and recodified as Duties of Furnishers of Information, 12 C.F.R. § 1022, subpart E.

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

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

5. The parties waive all rights to appeal or otherwise challenge or contest the validity of this Order.

6. Defendant waives any claim it may have against the Commission, its employees, representatives, or agents that relate to the matter stated herein.

7. Entry of this Order is in the public interest.

DEFINITIONS

For purpose of this Order:

(a) “Defendant” shall mean Tricolor Auto Acceptance, LLC, and its successors and assigns.

(b) The definitions set forth in the FCRA, 15 U.S.C. § 1681a, *et seq.*, shall apply, including but not limited to:

a. “Consumer” shall mean an individual.

- b. “Consumer Reporting Agency” or “CRA” shall mean any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.
- c. “Furnisher of Information” shall mean any person who regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person’s transactions or experiences with any consumer.

ORDER

I. PROHIBITED BUSINESS ACTIVITIES

IT IS ORDERED that Defendant, Defendant’s officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who received actual notice of this Order, whether acting directly or indirectly, are hereby permanently restrained and enjoined from:

A. failing to comply with 12 C.F.R. § 1022.42, a copy of which is attached as Attachment A, including by failing to establish and implement written policies and procedures regarding the accuracy and integrity of information relating to consumers that is furnished to any CRA; and

B. failing to comply with 12 C.F.R. § 1022.43, a copy of which is attached as Attachment B, including by failing to reasonably or adequately investigate direct disputes about the accuracy of account balance information it furnishes to any CRA.

II. MONETARY JUDGMENT FOR CIVIL PENALTY

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of eighty-two thousand seven hundred seventy-seven dollars (\$82, 777) is entered in favor of the Plaintiff against Defendant as a civil penalty pursuant to Section 621(a) of the FCRA, 15 U.S.C. § 1681s(a).
- B. Defendant is ordered to pay to the Plaintiff by making payment to the Treasurer of the United States, eighty-two thousand seven hundred seventy-seven dollars (\$82, 777), which, as Defendant stipulates, its undersigned counsel holds in escrow for no purpose other than payment to Plaintiff. Such payment must be made within seven (7) days of the entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of Plaintiff.

III. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

- A. If Defendant is in default on any obligation under this Section, then the judgment amount, together with interest computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, minus any payments previously made pursuant to this Section, becomes immediately due.
- B. Defendant relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.
- C. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order.

D. Defendant acknowledges that its Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendant must submit to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

IV. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendant obtain acknowledgments of receipt of this Order:

- A. Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 5 years after entry of this Order, Defendant must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which Defendant delivered a copy of this Order, Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

V. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendant make timely submissions to the Commission:

- A. One year after entry of this Order, Defendant must submit a compliance report, sworn under penalty of perjury.
1. Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission and Plaintiff may use to communicate with Defendant; (b) identify all of Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales; (d) describe in detail whether and how Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.
- B. For 20 years following entry of this Order, Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. Defendant must report any change in: (a) any designated point of contact; or (b) the structure of Defendant or any entity that the Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
- C. Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.

- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Tricolor Auto Acceptance, LLC (1423073).

VI. RECORDKEEPING PROVISIONS

IT IS FURTHER ORDERED that Defendant must create certain records for 20 years after entry of this Order, and retain each such record for 5 years. Specifically, in connection with furnishing information to any CRA, and receiving and investigating direct disputes related to Consumer Reports, Defendant must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. all employee training materials;
- D. customer files showing the names, addresses, telephone numbers, dollar amounts paid, and the quantity and description of goods or services purchased;

- E. records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- F. all records necessary to demonstrate full compliance with each provision of this Order, including but not limited to:
 - 1. all acknowledgments of receipt of this Order, required by the section titled “Order Acknowledgments”; and
 - 2. all reports submitted to the FTC pursuant to the Section titled “Compliance Reporting.”

VII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for purposes of monitoring Defendant’s compliance with this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission, Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission and Plaintiff are also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
- B. For matters concerning this Order, the Commission and Plaintiff are authorized to communicate directly with the Defendant. Defendant must permit representatives of the Commission and Plaintiff to interview any employee or other person affiliated with Defendant who has agreed to such an interview. The person interviewed may have counsel present.

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

VIII. RETENTION OF JURISDICTION

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

IX. COSTS AND ATTORNEYS' FEES

IT IS FURTHER ORDERED that each party shall bear its own costs and attorneys' fees incurred in connection with this action.

The parties hereby stipulate to entry of the foregoing Order, which shall constitute a final Order in this action.

IT IS SO ORDERED this _____ day of _____, 2015.

JUDGE A. JOE FISH
United States District Judge
Northern District of Texas

SO STIPULATED AND AGREED:

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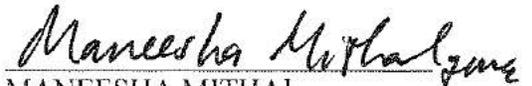
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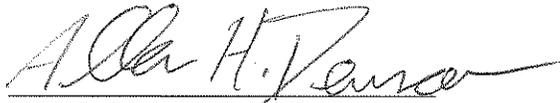

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