

PLAINTIFF

4. This action is brought by the United States of America on behalf of the FTC. The FTC is an independent agency of the United States government given statutory authority and responsibility by the FTC Act, 15 U.S.C. §§ 41-58. The FTC is charged with enforcing Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce; and the FCRA, 15 U.S.C. §§ 1681-1681x, which imposes duties upon consumer reporting agencies and those who furnish information to a consumer reporting agency or use information obtained from a consumer reporting agency. Pursuant to the FCRA, the FTC promulgated and enforces the Furnisher Rule, 16 C.F.R. § 660, effective August 1, 2005, recodified as promulgated by the Consumer Financial Protection Bureau (“CFPB”) at 12 C.F.R. § 1022, Subpart E, effective July 21, 2011.

DEFENDANT

5. Defendant Credit Protection Association, LP (“CPA”), is a Texas limited partnership with its principal place of business at 13355 Noel Road, Suite 2100, Dallas, Texas 75240. CPA transacts or has transacted business in this district.

COMMERCE

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

THE FAIR CREDIT REPORTING ACT AND THE FURNISHER RULE

7. The FCRA was enacted in 1970, became effective on April 25, 1971, and has been in force since that date. The Fair and Accurate Credit Transactions Act, Pub. L. No. 108-159, 117 Stat. 1952, amended the FCRA in December 2003, and the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376, amended the FCRA in July 2010.

8. Section 621 of the FCRA, 15 U.S.C. § 1681s, authorizes the Commission to use all of its functions and powers under the FTC Act to enforce compliance with the FCRA by all persons subject thereto except to the extent that enforcement specifically is committed to some

other governmental agency, irrespective of whether the person is engaged in commerce or meets any other jurisdictional tests set forth by the FTC Act.

9. The FCRA imposes obligations on consumer reporting agencies (“CRAs”) that assemble and evaluate consumer reports, furnishers of information to CRAs, and those that obtain information from CRAs. The FCRA required the Commission to establish regulations to implement requirements for furnishers. The Commission published regulations related to furnishers at 16 C.F.R. § 660 (“Furnisher Rule”). In July 2011, the Dodd-Frank Act transferred rulemaking authority under the FCRA to the CFPB, and the CFPB republished the Part 660 regulations at 12 C.F.R. § 1022, at Subpart E and Appendix E to part 1022. The Commission enforces the CFPB regulations with respect to entities over which the Commission has jurisdiction under the FCRA.

10. The Furnisher Rule requires furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of consumer information they furnish to a CRA, 16 C.F.R. § 660.3, recodified at 12 C.F.R. § 1022.42. This provision of the Furnisher Rule was intended to “promote the accuracy of information reported to consumer reporting agencies.” H.R. REP. NO. 108-263, at 44 (2003).

11. The Furnisher Rule requires furnishers to conduct a reasonable investigation of disputes they receive from consumers concerning the accuracy of reported credit information (“direct disputes”) and report the results of the investigation to consumers within a specified time period, 16 C.F.R. § 660.4(e)(1) and (e)(3), recodified at 12 C.F.R. § 1022.43(e)(1) and (e)(3).

DEFENDANT’S BUSINESS PRACTICES

12. CPA is a third-party debt collector that primarily collects on behalf of cable service providers. It contacts consumers throughout the United States to attempt to collect unpaid balances for cable services and to recover unreturned cable equipment. As part of its practices, CPA regularly furnishes consumer account information to major CRAs, including Experian, TransUnion, and Equifax. Accordingly, it is a “furnisher of information” under the FCRA, 15 U.S.C. § 1681s-2(a)(2)(A), and is required to comply with the Furnisher Rule.

CPA's Written Accuracy and Integrity Policies and Procedures

13. The Furnisher Rule states that furnishers must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the consumer information that they furnish to a CRA. 16 C.F.R. § 660.3(a), recodified at 12 C.F.R. § 1022.42(a). The Rule expressly requires furnishers to consider the guidelines in Appendix E of the Rule, and review their policies and procedures periodically. 16 C.F.R. § 660.3(b) and (c), recodified at 12 C.F.R. § 1022.42(b) and (c).

14. In June 2010, CPA adopted a three page document that is entitled “Consumer Information Reported to Consumer Reporting Agencies” and describes policies that were intended to comply with CPA’s obligations under the Furnisher Rule. In establishing and implementing its written policies, CPA failed to consider and incorporate the appropriate guidelines from Appendix E of the Furnisher Rule. Specifically, CPA failed to:

- a) adopt policies reasonably designed to promote the objective of conducting reasonable investigations of consumer disputes and taking appropriate actions based on the outcome of such investigations. 12 C.F.R Part 1022, Appendix E, Section I, Subsection (b)(3); and
- b) address the following specific, appropriate components in developing its policies and procedures:
 - i) maintaining records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute. Appendix E, Section III, subsection (c);
 - ii) training staff that participates in activities related to the furnishing of information about consumers to consumer reporting agencies to implement the policies and procedures. Appendix E, Section III, subsection (e);
 - iii) conducting reasonable investigations of disputes. Appendix E, Section III, subsection (i); and

iv) conducting a periodic evaluation of its own practices, consumer reporting agency practices of which the furnisher is aware, investigations of disputed information, corrections of inaccurate information, means of communication, and other factors that may affect the accuracy or integrity of information furnished to consumer reporting agencies. Appendix E, Section III, subsection (I).

15. In addition to failing to establish and implement reasonable written policies and procedures regarding the accuracy or integrity of furnished information, CPA also failed to review its existing policies and procedures periodically and update them as necessary to ensure their effectiveness. CPA's failures could lead to CPA reporting inaccurate information to CRAs.

CPA's Policies and Procedures for Direct Dispute Investigations

16. CPA publishes an address at which consumers can file direct disputes regarding the accuracy of account information CPA has furnished to the CRAs, and regularly receives dispute notices from consumers. CPA has employees in its "dispute resolution" department that have the authority to resolve disputes by modifying or deleting account information if the consumer submits supporting documentation that the employees deem suitable (*e.g.* canceled checks showing payments). These employees receive insufficient training about the FCRA or CPA's duty to conduct reasonable investigations of direct disputes.

17. If disputes are not resolved by employees at the initial processing stage, CPA transmits the dispute information to its clients, the original creditors, for handling and resolution. CPA uses an information system known as "E-Tech" to transmit dispute information to clients and track its debt collection accounts. Employees assign an E-Tech dispute code to the account, such as Code 2 ("Debt Paid"), Code 4 ("Items Returned"), Code 5 ("Denial of Service"), or Code 6 ("Amount Due is Incorrect"). The employee may also enter notes describing the dispute into a notes field. The notes vary in terms of the level of detail but are typically brief. Employees receive insufficient training about how to choose appropriate dispute codes other than a basic introduction to the codes, and insufficient training about the level of detail to use in the notes field.

18. E-Tech does not have the capability of linking scanned documents to accounts, so CPA does not transmit copies of dispute letters or other written documents submitted by consumers through E-Tech. In many instances the only information a client will have about a direct dispute are the dispute codes and the E-Tech notes. CPA routinely destroys dispute letters and other documentation submitted by consumers, even when the dispute has not been resolved.

19. CPA employees who process written disputes have authority to refer a dispute to a client services representative (“CSR”). CSRs are designated to interact with clients, and sometimes help resolve disputes. CPA has no written policies specifying when its employees should involve CSRs. Employees also occasionally transmit dispute letters or other documents to the CSRs outside the E-Tech system, but receive insufficient guidance or training about when to do so. CPA does not require employees to document when they transmit documents outside of E-Tech or refer cases to CSRs, and does not require CSRs to document their interactions with clients.

20. Other than sometimes providing CSRs to assist, CPA relies on its clients to conduct investigations and resolve disputes. In many instances CPA will not know what, if any, steps its client took to investigate disputes or the basis for the client’s determination; the client will simply inform CPA that the account information has been validated, or should be modified or deleted.

21. Although CPA managers occasionally review dispute files, CPA has no systematic auditing program to determine whether its employees are properly handling disputes. Because of CPA’s document destruction and lack of file documentation requirements, in most instances it would be impossible for CPA to determine whether the dispute codes and notes fairly reflected the consumer’s dispute, or to reconstruct what, if any, steps its employees took outside of the E-Tech system to transmit information to clients or investigate disputes.

22. Because of CPA’s failure to consider the guidelines in Appendix E to the Furnisher Rule when establishing and implementing its written policies regarding the accuracy and integrity of furnished information, CPA’s actual policies and procedures for investigations of direct disputes are inadequate and unreasonable given the nature, size, complexity, and scope of

its furnishing activities. CPA's policies and procedures do not provide for adequate training or monitoring of employees who participate in direct dispute investigations, and its routine destruction of documents related to disputes and failure to implement reasonable file documentation policies prevent it from conducting meaningful review of its investigation practices.

23. In numerous instances, consumers contacted by CPA have disputed the balances the company is trying to collect. Consumers have told CPA that they paid the account balances, that account balances were inaccurate for various reasons, or that they never had the services in the first place. Moreover, consumers have complained that CPA continued to attempt to collect on inaccurate account information despite multiple disputes.

Post-Investigation Notification of Consumers

24. The Furnisher Rule requires furnishers to complete direct dispute investigations and notify consumers of the results within the same time period as mandated for CRA investigations of disputes, 30 days. 16 C.F.R. § 660.4(e)(3), recodified at 12 C.F.R. § 1022.43(e)(3). CPA has no policy in place to comply with this requirement. Once CPA is notified by the creditor-client that disputed account information has been confirmed, or should be modified or deleted, CPA's practice is to update its internal records accordingly, and the system is supposed to then automatically provide updates to CRAs. In some instances, when required by state law or in cases where the account has been escalated to CPA's legal department because of involvement of an attorney or the threat of a lawsuit, CPA will send a letter notifying the consumer of the action taken. However, CPA has no policy requiring that consumers be notified about the results of the investigation in every case involving an FCRA-qualifying dispute. In numerous instances, CPA has simply deleted account information after a dispute, without informing the consumer of the action or the results of the investigation. Because consumers are not notified about the results of their dispute investigations, they may not know to avail themselves of their additional rights under the FCRA, including the option to dispute inaccurate or incomplete information directly to CRAs and to add statements of dispute to their credit files and future credit reports.

COUNT I

Lack of Reasonable Written Policies and Procedures

25. As described in paragraphs 14-23, CPA has failed to:

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

b) consider and incorporate the appropriate guidelines set forth in Appendix A to 16 C.F.R. Part 660 and Appendix E to 12 C.F.R. Part 1022 in developing such policies and procedures; and

c) review such policies and procedures periodically and update them as necessary to ensure their continued effectiveness.

26. By and through the acts and practices described in paragraphs 14-23 and 25, CPA has violated 16 C.F.R. § 660.3, recodified at 12 C.F.R. §1022.42.

27. Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices described in paragraphs 14-23 and 25 also constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

Failure to Report Results of Investigation

28. Through the acts and practices described in paragraph 24, CPA, after receiving direct disputes from consumers, as that term is defined in the Furnisher Rule at 16 C.F.R. § 660.2(b) and 12 C.F.R. § 1022.41(b), has failed to complete its investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period prescribed by Section 611(a)(1) of the FCRA, 15 U.S.C. § 1681i(a)(1).

29. By and through the acts and practices described in paragraphs 24 and 28, CPA has violated Section 623(a)(8)(E)(iii) of the FCRA, 15 U.S.C. § 1681s-2(a)(8)(iii), and 16 C.F.R. § 660.4(e)(3), recodified at 12 C.F.R. § 1022.43(e)(3).

30. Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices described in paragraphs 24 and 27 also constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

31. Consumers have suffered and will continue to suffer substantial injury as a result of Defendant's violations of the FCRA and the FTC Act. In addition, Defendant has been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

INJUNCTION FOR VIOLATIONS OF THE FCRA AND THE FTC ACT

32. Under Section 621(a) of the FCRA, 15 U.S.C. § 1681s(a), and Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction to prevent continued violations of the FCRA or the FTC Act.

EQUITABLE RELIEF FOR VIOLATIONS OF THE FCRA AND THE FTC ACT

33. Under Section 621(a) of the FCRA, 15 U.S.C. § 1681s(a), and Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue all equitable and ancillary relief as it may deem appropriate in the enforcement of the FCRA and the FTC Act, including the ability to order rescission or reformation of contracts, restitution, the refund of monies paid, and disgorgement to deprive a wrongdoer of ill-gotten gain.

CIVIL PENALTIES FOR VIOLATIONS OF THE FCRA

34. Section 621(a)(2)(A) of the FCRA, 15 U.S.C. § 1681s(a)(2)(A), authorizes the Court to award monetary civil penalties in event of a knowing violation, which constitutes a pattern or practice of violations. CPA's violations of Section 623 of the FCRA and the Furnisher Rule, as alleged in this Complaint, were knowing and constituted a pattern or practice of violations. As specified by the Federal Civil Penalty Inflation Adjustment Act of 1990, 28 U.S.C. § 2861, as amended, the Court is authorized to award a penalty of not more than \$3500 per violation.

35. Each instance in which CPA has failed to comply with the FCRA and the Furnisher Rule in one or more of the ways described above constitutes a separate violation of the FCRA for the purpose of assessing monetary civil penalties under Section 621 of the FCRA. Plaintiff seeks monetary civil penalties for every separate violation of the FCRA.

PRAYER FOR INJUNCTIVE AND MONETARY RELIEF

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

- 1) Enter judgment against Defendant and in favor of Plaintiff for each law violation alleged in this Complaint;
- 2) Enter a permanent injunction against Defendant to prevent future violations of the FCRA and the FTC Act, as alleged herein;
- 3) Award Plaintiff monetary civil penalties from Defendant for each violation of the FCRA as alleged in this Complaint;
- 4) Order Defendant to pay the costs of this action; and
- 5) Award Plaintiff such additional relief as the Court may deem just and proper.

Dated: May 9, 2016

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