

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AQUA FINANCE, INC.,

A Wisconsin Corporation,

Defendant.

Case No. _____

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its Complaint alleges:

1. The FTC brings this action for Defendant’s violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); the Truth in Lending Act (“TILA”), 15 U.S.C. §§ 1601–1666j; and section 621(a) of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681s(a), to obtain injunctive or other relief for Defendant’s violations of the FTC Act, 15 U.S.C. § 45(a); TILA and its implementing Regulation Z, 12 C.F.R. § 1026; the FCRA, 15 U.S.C. §§ 1681–1681x; and the Duties of Furnishers of Information to Consumer Reporting Agencies Rule, 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 (“Furnisher Rule”). For these violations, the FTC seeks relief, including a permanent injunction and other relief, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b).

SUMMARY OF CASE

2. Aqua Finance Inc., (“AFI”) underwrites, funds, services, and collects on credit agreements consumers use to fund the purchase of home water treatment systems. In

furtherance of its business, AFI contracts with hundreds of sales companies, known as water treatment dealers (“dealers”). AFI’s dealers offer its financing door-to-door across the United States as a means for consumers to purchase the dealers’ water treatment systems.

3. However, AFI dealers engage in widespread deceptive sales practices, and AFI underwrites, funds, services, and collects on credit agreements that it knows or should know result from these practices. Many AFI dealers misrepresent the terms of AFI’s financing to make it appear less costly to consumers than it truly is. AFI exacerbates its dealers’ deceptive practices by requiring they use contracts that fail to disclose, or adequately disclose, its financing terms in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); and failing to clearly and conspicuously disclose its financing terms, in violation of TILA and Regulation Z. AFI also fails to disclose, or adequately disclose, that the terms of its financing contain a provision that AFI relies on to file a UCC fixture filing on the water treatment system being financed. This filing impedes many consumers’ ability to sell or refinance their homes unless consumers fully pay AFI’s deceptively marketed financing. AFI also knowingly reports inaccurate information about consumers’ water treatment financing to consumer reporting agencies (“CRAs”) in violation of the FCRA. Additionally, in numerous instances, the consumers harmed by the practices alleged in this paragraph, have been Latino or older adults.

4. In connection with its home water treatment system business and other lines of financing, AFI also fails to maintain reasonable policies and procedures regarding the accuracy and integrity of the information it furnishes to CRAs. As a result, AFI improperly handles identity theft reports and both verbal and written direct disputes it receives from consumers in violation of the FCRA and the Furnisher Rule.

JURISDICTION AND VENUE

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

6. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(1), (b)(2), (c)(2), and (d), and 15 U.S.C. § 53(b).

PLAINTIFF

7. The FTC is an independent agency of the United States Government created by the FTC Act, which authorizes the FTC to commence this district court civil action by its own attorneys. 15 U.S.C. §§ 41–58. The FTC enforces 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. The FTC also enforces TILA, §15 U.S.C. §§ 1601–1666j, the FCRA, 15 U.S.C. §§ 1681–1681x, and the Furnisher Rule, 12 C.F.R. § 1022, subpart E.

DEFENDANT

8. Defendant AFI is a Wisconsin corporation with its principal place of business at 1 Corporate Dr, Ste. 300 in Wausau, Wisconsin. AFI transacts or has transacted business in this district and throughout the United States. At all times relevant to this Complaint, acting alone or in concert with others, AFI has underwritten, funded, serviced, and collected on credit agreements made to consumers for home water treatment systems sold by AFI dealers throughout the United States. As part of its servicing and collection practices for these credit agreements, and for credit agreements for other products AFI finances, AFI regularly furnishes consumer account information to CRAs.

9. During almost all times alleged in this Complaint, AFI was primarily owned by one of two entities. In August 2018, funds affiliated with Blackstone Group Inc. acquired a

majority ownership stake in AFI alongside AFI's founders and management. In November 2021, the Blackstone affiliated funds agreed to sell a majority of their ownership stake to entities affiliated with Athene Holding Ltd. Athene Holding Ltd. subsequently merged with Apollo Global Management. The remaining ownership stake in AFI has been split between different individuals, trusts, and limited liability corporations.

COMMERCE

10. At all times relevant 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.

DEFENDANT'S BUSINESS ACTIVITIES

AFI'S DECEPTIVE SALES PRACTICES

11. AFI describes itself as "a finance company, similar to a bank, which provides loans to our customers so that they may purchase Water Treatment Equipment from dealership[s]." AFI extends credit to consumers that make purchases through its dealers, primarily through purported revolving or open-end credit plans. Since at least January 2018, AFI has underwritten, funded, serviced, and collected on more than 297,000 credit agreements, totaling over \$1 billion for water treatment systems sold by its dealers. The average credit agreement amount is approximately \$5,750, although consumers typically pay thousands of dollars more in interest.

12. Potential dealers must apply and be approved by AFI to become an AFI dealer. In many instances, AFI fails to adequately screen and vet dealers it works with, overlooks discrepancies or red flags in applications dealers submit to it, and ignores warnings from third parties about dealers' dishonest, fraudulent, or deceptive conduct.

13. AFI trains dealers on how to use its online portal and complete its required paperwork. It then independently reviews the first five applications submitted by a new dealer to ensure its paperwork is completed properly. AFI's control, however, is not limited to its paperwork. For example, AFI prohibits dealers from offering consumers rebates, or similar payments, without first obtaining its approval. AFI has the authority to withhold payment from dealers if, before funding a credit agreement, it learns of issues associated with the installation of the water treatment system. If a dealer and a consumer subsequently want to make a repeat purchase on a purported revolving credit line, as discussed in detail herein, AFI generally prohibits that sale from happening. AFI also requires dealers to adopt certain policies, obtain certain licenses, and make service calls to consumers' homes without assessing a charge to consumers. AFI can even require dealers to serve as its collection agents. Given their relationship, many consumers mistakenly believe AFI and its dealers are one and the same company.

14. Dealers must also sign a Master Dealer Agreement ("MDA"), pursuant to which AFI retains "full authority to accept or reject any credit application or require any additional information." Under the MDA, if a dealer engages in "false, misleading, deceptive, discriminatory or abusive act or practices" in connection with a sale, AFI can require the dealer to purchase the credit agreement(s) at issue from AFI. In reality, however, AFI rarely exercises its rights to reject credit transactions or require dealers to purchase credit agreements, even when AFI is notified of illegal marketing and sales practices, including the misrepresentations described in this complaint.

15. AFI's efforts to prevent misconduct by its dealers are inadequate. AFI has authority pursuant to the MDA to subject dealers to enhanced monitoring and restrictions on the

financing terms those dealers can offer but such authority is limited and AFI rarely exercises it. For example, AFI's enhanced monitoring authority is not triggered by consumer complaints about dealer misconduct or other evidence of misrepresentations by dealers. Rather, this authority is triggered if dealers' delinquency and write-off rates are too high. AFI also does not provide any compliance training, or training on how its financing practically works, such as how interest accrues, how long it might take consumers to pay off, or how much it will cost consumers if they only make the required minimum monthly payments. Dealers are also not provided any scripts, talking points, or other guidance from AFI on how to explain the terms of its financing to consumers. Thus, dealers often begin promoting AFI's credit agreements having received no training concerning the details of those credit agreements whatsoever.

16. By contrast, AFI provides dealers with guidance, or talking points, on how to "close sales," and monetary incentives to extend AFI financing to consumers. The amount AFI pays a dealer for securing AFI financing for a consumer is based, in part, on the amount of financing. If a dealer sends AFI a contract to finance within 30 days of being approved as an AFI dealer, AFI issues the dealer several "Aqua Bucks," each of which has a monetary value of up to 5% of what AFI pays the dealer for the financing contract, or \$500, whichever is less. The dealer can collect on each "Aqua Bucks" it receives by sending a new contract to AFI to finance within 120 days. In some cases, AFI provides additional "Aqua Bucks" to dealers who generate high business volume.

Misrepresenting the Terms of AFI's Financing

17. AFI's dealers frequently misrepresent the terms of AFI's financing, in particular misrepresenting that the financing is less costly than it truly is. Because of these misrepresentations, many consumers agree to AFI's financing, only to find themselves paying significantly more than they anticipated or can afford.

18. AFI encourages dealers to use the promotional financing terms it offers for its purported revolving or open-end credit plans. Since at least January 2018, AFI's most popular promotion has been its "Step-Up Promotion," which offers an introductory annual percentage rate ("APR") of either 5.9% or 6.9% and a 1% payment factor for the first 12 months of the credit agreement. After 12 months, the APR increases to 13.99%, and the payment factor increases to 1.5%. These increases nearly double the amount of interest accruing on the principal daily, and the minimum monthly payment a consumer must make to AFI by 50%.

19. AFI dealers frequently mislead consumers to believe that the Step-Up Promotion's lower temporary APR and minimum monthly payment are permanent. In fact, as described above, these terms increase dramatically after 12 months. Over the life of the financing, the surprise increase in APR costs the average AFI consumer thousands of dollars more than if the APR had remained at the rate that AFI's dealers had represented was permanent. Moreover, the APR increase raises the minimum monthly payment beyond what many consumers can afford, leading many to miss payments and be reported as delinquent to CRAs.

20. AFI also offers a "Deferred Payment Promotion." Under this promotion, the first payment is not due for three months, but interest begins to accrue as soon as the water treatment system is installed, and the consumer confirms that the work was completed.

21. Many AFI dealers also mislead consumers into believing that interest, like their first payment, is deferred for the first three months of the Deferred Payment Promotion. In truth, interest begins to accrue on the day after the consumer confirms that the water treatment system was installed. For these consumers, this equates to, on average, hundreds of dollars in unanticipated interest accrual during those first three months. This unanticipated interest needs

to then be paid off. As a result, consumer payments that otherwise would go toward principal are instead diverted to pay off this unanticipated interest, leading to further interest accruing, and a higher cost for the consumer.

22. Between January 1, 2018, and June 30, 2021, AFI funded at least 58,000 credit agreements that included a Step-Up Promotion and 27,000 credit agreements that included a Deferred Payment Promotion.

23. In many instances, AFI dealers tell consumers that if they make their minimum monthly payments their financing will be paid off after a set time period, typically five or six years. In truth, AFI's credit agreements require, on average, nine to ten years to pay off if consumers make only the minimum monthly payments. As a result of this misrepresentation, consumers' financing through AFI accrue more interest than what the AFI dealer led them to believe, and consumers incur a higher overall cost.

24. As with AFI's Deferred Payment Promotion, many AFI dealers tell consumers that AFI's non-promotional credit agreements never accrue interest when in fact interest starts accruing the day after the water treatment system is installed. Finally, many AFI dealers tell consumers that interest is included in the water treatment system sales price when it is not.

25. Many dealers present AFI's credit agreements to the consumer on a handheld tablet-like device—with a small screen that adds difficulty to reviewing and understanding the documents. In many cases, the process is rushed, with the dealer waiting inside the consumer's home, adding pressure to review the documents quickly. Once the consumer starts the DocuSign signature process, the screen jumps to the first spot where a signature is required, which is highlighted. This interface allows the entire lengthy agreement to be fully executed in a matter of minutes, if not seconds, leaving many consumers believing that what

they signed is what the dealer verbally represented.

26. As discussed in more detail within, since January 2018, AFI has received thousands of consumer complaints that its dealers misrepresented the terms of its financing. Notwithstanding knowledge of these misrepresentations, and despite contacting some consumers before financing is extended, AFI does not verify that consumers understand the terms of its financing.

27. After a dealer installs a water treatment system in a consumer's home, but before financing is extended, AFI conducts a "verification call" with less than half of the consumers to whom it provides financing. AFI verifies the consumer's identity, contact information, and monthly income; inquires whether the consumer has a copy of their contract; and informs them of their first payment due date and amount due at that time. AFI, however, generally does not verify that the consumer understands the terms of its financing. For instance, the scripts AFI provides to its employees who make these calls do not require those employees to verify that consumers who sign up for a Step-Up Promotion understand what their minimum monthly payment will be after that promotion expires. Likewise, in numerous cases, AFI employees do not inquire on these calls whether the consumer is aware that their APR will increase when such is the case. In numerous instances, AFI employees do not explain on these calls how and when interest accrues; or how long or at what cost the financing will take to pay off if only minimum monthly payments are made. AFI also typically does not inquire on these calls about representations, if any, its dealers may have made.

Other AFI Dealer Deceptive Practices

28. AFI dealer misrepresentations are not limited to the terms of AFI's financing. For instance, in many instances AFI dealers attempt to entice consumers into purchasing water

treatment equipment with promises that they, the dealers, will make initial financing payments, provide cash rebates, or supplies of free products, such as soaps or detergents. In many instances dealers never provide the promised payment, rebate, or free product, or fail to provide the full promised payment, rebate, or product. In many instances, AFI has known about these dealer practices but has not terminated or otherwise disciplined the dealer in question.

29. In many other instances, AFI dealers sell equipment that does not function as represented, negatively impacting the quality of water in the consumer's home. Many AFI dealers ignore consumers' requests for maintenance or try to charge consumers hundreds of dollars to service a malfunctioning system, despite some dealers representing at the time of sale that the equipment has a lifetime warranty or that service is included in the equipment's purchase price. In many instances, AFI has known about these dealer practices but has not terminated or otherwise disciplined the dealer in question.

AFI Knew of its Dealers' Deceptive Sales Practices

30. In July 2020, AFI's Vice President of Compliance wrote to the company's CEO that "Two systemic issues we see repeatedly [in consumer complaints]; lack of understanding of how interest works/thinks they are being over charged and a dissatisfaction with the product." Despite knowing of these systemic issues, AFI took no meaningful action to address them.

31. AFI knows about these "systemic issues" because its employees document their conversations with consumers in an internal database. Since at least January 2018, thousands of consumers have verbally complained to AFI about its dealers' sales practices. The overwhelming majority of these complaints relate to dealer misrepresentations of the terms of AFI's financing, dealers not honoring agreements or promises, and equipment not functioning as represented. AFI often ignores these complaints.

32. AFI also receives written complaints from consumers directly or through third-

party intermediaries, such as the Better Business Bureau Serving Wisconsin (“BBB”) or governmental agencies. Since at least January 2018, AFI has received hundreds of written complaints from consumers about dealer misconduct. For instance, in February 2020, a compliance assistant wrote to AFI’s Vice President of Compliance that a written complaint AFI had received was “a normal complaint that we *always hear* (old people, they were taken advantage of, they have declining mental health etc [sic])”(emphasis added). Despite “always” hearing about dealers taking advantage of consumers, AFI rarely takes any corrective or remedial action. Rather, AFI continues to permit those dealers to promote, offer and sell AFI financing.

33. In April 2021, the BBB notified AFI of “a pattern of complaints” from consumers, including from consumers who did not understand billing and payment practices, particularity related to AFI’s interest rate, and from “customers paying for products that are not representative of what they contracted for.”

34. AFI has also received warnings about dealers from other third parties. As with consumer complaints, AFI often ignores warnings from third parties. For example, in 2015, shortly after it approved a Houston-based dealer that sells primarily to Spanish-speaking consumers, AFI’s national marketing manager received an email from the former employer of the owner of the dealer that stated the dealer’s owner was untruthful, had a history of inflating consumers’ income on financing applications, and that his “sales tactics are not the most honorable.”

35. AFI failed to heed the warning and, between January 2018 and March 2021, AFI documented in its internal database hundreds of consumer complaints about this dealer. AFI also repeatedly noted in its internal database instances of this dealer inflating consumers’ income on

financing applications.

36. In another instance, AFI agreed to work with a dealer whose owner was previously convicted of fraud and ordered to pay over \$100,000 in restitution to victims, which he had failed to do. Throughout 2018 and 2019 AFI received dozens of complaints from consumers about this dealer misrepresenting the terms of AFI's financing, consumers not receiving promised products, and faulty water treatment systems. AFI did not conduct any thorough investigation into the dealer, and continued to underwrite, fund, and collect on financing obtained through the dealer. In September 2019, AFI was notified by an employee of the dealer about the owner's prior fraud convictions. Despite this, AFI continued to do business with the dealer, even having the dealer sign a new MDA the following month to formally renew their relationship. AFI only terminated its relationship with this dealer after learning that a state's attorney general's office was investigating the dealer.

37. Since 2018, along with its dealers, AFI has been named in at least 25 different civil lawsuits that allege deceptive sales practices by dealers. For example, between 2018 and 2020, AFI and an Irvine, California-based dealer were sued by five different consumers who alleged that they: were "unsophisticated low-income seniors" who were targeted and misled about the terms of AFI's financing; did not receive the requisite TILA disclosures; or were sold water treatment systems that did not function as represented. With knowledge of these lawsuits and allegations, AFI continued to underwrite, fund, service, and collect on credit agreements for this dealer until November 2022.

AFI'S CREDIT AGREEMENTS

38. Out of the more than 188,000 credit agreements for water treatment systems funded by AFI between January 2018 and March 31, 2021, 92% of them or at least 173,000,

used AFI's Open-End or "Revolving Credit Agreement" ("Credit Plan documents").

39. AFI's eight-page Credit Plan documents consist of a credit application, credit agreement and disclosure statement, sales slip, a document entitled "Other Important Terms of Your Contract," a Notice of Cancellation form, and a Certificate of Completion. When a promotion is offered, a one-page "Promotional Credit Plan Addendum" is added to the end of this paperwork.

40. Despite styling its Credit Plan documents to make it appear as if it is just an assignee of its own credit agreements, AFI is really the creditor of the Credit Plan documents. AFI regularly extends consumer credit subject to a finance charge and is the entity to whom the obligation is initially payable.

41. AFI dictates all financing terms such as APR, first payment due date, and payment amounts. Before it funds a credit agreement, AFI tells some consumers on the telephone when their first payment is due. In many instances, when signing the Credit Plan documents, consumers also sign an authorization agreement that permits AFI to withdraw payments from their bank accounts. AFI then provides the consumer's billing statement approximately three weeks prior to the first payment due date. First payments are to be paid directly to AFI. If a consumer mistakenly makes a payment to a dealer, the MDA require dealers to forward payment to AFI.

42. AFI supplies dealers the Credit Plan documents, which contain AFI's identifying information on the footer of each page. AFI's web-based platform is used by dealers to generate the Credit Plan documents. Dealers then present the documents to the consumer and AFI requires that its dealers submit the consumer credit applications to AFI using AFI's online portal, or by emailing or faxing the documents to AFI in Wisconsin.

43. After AFI analyzes the credit application portion of the Credit Plan documents and determines the consumer's creditworthiness, AFI offers to pay the dealer either the full amount of financing requested or a reduced amount, known as a risk-based buy rate. If the dealer is satisfied with the amount AFI offers, the dealer procures the consumer's executed credit agreement and financing is extended. In some instances when AFI declines a consumer for creditworthiness or insufficient income, it instructs the dealer on how to reapply to get the consumer approved, such as by lowering the amount financed, which in turn can result in the dealer lowering the sales price of the water treatment system.

44. When e-signing the financing paperwork, the consumer receives an AFI email stating, "Funding Department @ AFI Finance sent you a document to review and sign." After the document is e-signed by the consumer, another AFI email is sent saying "All parties have completed AFI Finance Documents... Thank you for using AFI Finance."

AFI's Credit Plan is Really a Closed-End Extension of Credit

45. AFI's Credit Plan documents create the appearance of an open-end extension of credit, as opposed to closed-end extension of credit, as those terms are defined under TILA. As a result, AFI does not make many of the disclosures that TILA requires of closed-end extensions of credit, such as:

- a) the identity of the creditor making the disclosures;
 - b) the amount financed;
 - c) the finance charge (the dollar amount that the credit will cost the consumer);
 - d) the number, amounts, and timing of payments scheduled to repay the obligation;
- and

- e) the total of payments (the amount the consumer will pay after making all scheduled payments).

46. Nevertheless, AFI's credit transactions with consumers are in fact closed-end credit transactions. AFI's Credit Plan documents even use terms that are used only in closed-end credit transactions, such as "downpayment" and "amount financed."

47. Open-end credit requires (1) the creditor to reasonably contemplate repeat transactions, and (2) credit generally be made available to consumers to the extent that any outstanding balance on their financing is repaid. 12 C.F.R. § 1026.2(a)(20)(i) and (iii).

However, neither AFI nor its dealers can reasonably contemplate repeat transactions under AFI's purported open-end or revolving credit plan because, as alleged within, AFI's business practices, including restrictions on consumers' use of available credit ensure that repeat transactions are remarkably rare, and in many cases prohibited entirely by AFI. AFI, therefore, systematically engages in spurious open-end credit transactions by characterizing credit as open-end when it is in fact closed-end credit.

48. Out of all the water treatment credit agreements AFI has funded using its Credit Plan documents between January 2018 and March 31, 2021, at least 58,000 included AFI's Step-Up Promotion. AFI unfairly prohibits consumers subject to this promotional financing from using available credit to make a repeat transaction under their existing Credit Plan documents. If a consumer with a promotion wants to make an additional purchase, AFI requires them, even if they have available credit, to complete a new credit application and agree to have their credit report repulled to requalify for a new extension of credit, even if they have available credit. This is likely to negatively impact some consumers' credit scores. If the consumer again meets AFI's criteria for creditworthiness and requalifies, which may not happen, the consumer will then have two separate AFI credit accounts—not one—and both are reported to CRAs.

These two credit agreements are typically for different amounts with different financing terms. These are therefore distinct credit transactions, or lines of credit, not repeat transactions under the Credit Plan documents.

49. AFI requires dealers use its Credit Plan documents but prohibits them from editing or modifying these documents beyond entering consumer and dealer identifying information. AFI's Credit Plan documents fail to disclose that repeat purchases are prohibited if a Step-Up Promotion is used. Dealers and consumers learn of this prohibition only after the fact, when AFI denies their attempts to make repeat purchases. For instance, in March 2020, a consumer who purchased water treatment equipment that was financed through AFI contacted their dealer to make a repeat purchase, sometimes referred to as an add-on purchase, and the dealer submitted the request to AFI. AFI denied the repeat purchase, stating that the consumer "cannot do an add on [sic] due to 6.9+1% promotion – promo is not eligible [sic] for add ons [sic]".

50. Further, AFI credit agreements that include a Step-Up Promotion do not adequately disclose the APR. For example, they do not segregate the APR and other required disclosures from other information included in the document. 12 C.F.R. § 1026.17. In addition, the two different APRs buried within the Credit Plan documents are also inaccurate because how the APR is calculated differs depending upon whether the credit is open-end or closed-end, the latter of which can only have one APR for a transaction, not two. 12 C.F.R. §§ 1026.14 and 1026.22. The Credit Plan documents with a Step-Up promotion also fail to disclose the finance charge, the total of payments, the number of payments, and the payment amounts.

51. The failure to disclose or adequately disclose these terms provides no benefit to consumers or competition. Rather, AFI's failures only exacerbate dealers' deceptive practices of

misleading consumers about the terms of AFI's financing.

52. AFI also restricts consumers with non-promotional financing from using available credit for repeat transactions. These consumers can use available credit only (1) within the first two years of AFI's credit agreement; (2) with the dealer who sold the consumer the water treatment equipment AFI financed; and (3) if the consumer's account is in good standing with AFI.

53. AFI's initial extension of credit is almost always for the purchase of a single product, a water treatment system. In many instances, this extension of credit is equal to the total price of the water treatment equipment being sold. Therefore, consumers will not have available credit to use until they pay down their financing for the water treatment equipment. AFI's deceptive practices of misrepresenting its financing to be less costly than it truly is, described above, cause additional interest to accrue, in turn diminishing any available credit consumers could use for a repeat purchase. As a result, most consumers cannot make a repeat purchase during the first two years of the credit agreement.

54. Even consumers who have available credit during the first two years can be denied use of that credit by dealers. AFI informs dealers that they are not required to make repeat transactions, but they "may," and "[i]t is always [the dealer's] choice if [they] want to go through with the sale." In fact, most AFI's dealers have never had a customer use available credit to make a repeat purchase, and, as already referenced, AFI has denied use of available credit for some who have tried.

55. When providing dealers with its Credit Plan documents, AFI does not inquire about past repeat transaction rate, or if they intend to allow future repeat transactions. AFI also does not inquire as to whether its dealers understand the legal requirements of using the open-

end credit paperwork that AFI is providing them. It conducts no consumer marketing toward repeat transactions, nor does it require dealers do so.

56. As a result of AFI's practices, repeat purchases are extremely rare. From January 1, 2018, until March 31, 2021, only 0.53% of AFI's customers made a repeat purchase pursuant to AFI's Credit Plan documents.

AFI'S INADEQUATELY DISCLOSED UCC FILINGS IMPEDE CONSUMERS' ABILITY TO SELL OR REFINANCE THEIR HOMES

57. Even though it knows that its dealers frequently misrepresent its financing terms, AFI nevertheless goes to great lengths to force consumers to pay the cost of the financing. In particular, AFI takes a security interest in the financed water treatment equipment. When recorded, this security interest impairs the marketability of consumers' homes, forcing them to pay AFI, no matter its dealers' misrepresentations. In many cases, consumers do not see or understand that AFI's credit agreements permit it to record such an interest, and only learn of this encumbrance when AFI attempts to collect on its deceptively marketed financing.

58. Buried within the eight pages of AFI's Credit Plan documents is a single paragraph titled "Security Agreement" that states, in part, "You grant [AFI] a purchase money security interest under the Uniform Commercial Code in each household good purchased on account to the full extent permitted by law."

59. Most consumers do not see or understand the significance of this sentence. It is insufficiently clear and conspicuous, in indistinct font, buried in the middle of the documents, and written in legalese. Consumers are not required to review or acknowledge this paragraph separately from the rest of the financing disclosures. Moreover, AFI does not require its dealers to specifically call consumers' attention to or explain this security interest. This is consistent with AFI's general dealer practices to downplay the severity of AFI's financing

terms.

60. When consumers sign the Credit Plan documents, AFI relies on this single sentence to file a UCC fixture filing on the water treatment equipment located in a consumer's home. AFI typically takes this action if a consumer is more than 30 days late with the first payment or an account is 60 days past due. In many instances, AFI also files a UCC fixture filing when a consumer is retired, disabled, self-employed, refuses to pay, is selling the home, or dies with an outstanding balance due to AFI. In many cases, AFI makes this filing even when it knows or should know that a consumer originally signed the credit agreement pursuant to an AFI dealer misrepresentation about the financing terms, and even when it knows or should know that a consumer disputes owing an outstanding balance, in part or in whole.

61. Many consumers learn about these filings only when AFI tries to collect on its financing. In their disputes with AFI, consumers are often shocked and infuriated to learn of a fixture filing recorded as part of AFI's debt collection tactics.

62. While AFI's fixture filings are not technically liens, in many instances, they function like liens. AFI typically only lends to homeowners. When those homeowners seek to sell or refinance their homes, many banks, mortgage, and title companies will not proceed with these homeowners' sale or refinancing unless AFI's fixture filing is terminated. AFI will generally not terminate these filings unless the consumer pays off their financing in full. This essentially ensures AFI will collect on even deceptively marketed credit agreements, as most consumers will eventually sell or refinance their home and have no choice but to pay AFI in full to terminate the filing. AFI's fixture filings have caused delays in selling and refinancing consumers' homes.

AFI'S CREDIT REPORTING PRACTICES

AFI's Policies and Procedures Regarding Consumer Information it Furnishes to CRAs

63. In connection with its home water treatment system business and other lines of financing, AFI regularly furnishes consumer account information to CRAs. The Furnisher Rule expressly requires furnishers, like AFI, to consider the guidelines in Appendix E of the Rule and establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information they furnish to CRAs. 12 C.F.R. § 1022.42(a) and (b).

64. Since at least January 19, 2016, AFI's written policies and procedures regarding the accuracy and integrity of the consumer information it furnishes to CRAs have not been compliant with the Furnisher Rule.

65. From January 19, 2016, through June 1, 2021, AFI had a policy titled "E-OSCAR," which addressed disputes AFI received from CRAs, and a policy titled "Disputed Accounts," which addressed direct disputes AFI received from consumers.

66. On June 2, 2021, after becoming aware that the Commission was investigating its credit reporting practices, AFI updated these policies, currently titled "Fair Credit Reporting Act Policy" and "Disputed Accounts."

67. In establishing and implementing both its prior and current written policies, AFI failed to consider and incorporate the appropriate guidelines from Appendix E of the Furnisher Rule, as further alleged within.

AFI's Policies and Procedures for Dispute Investigations

68. AFI's policies and procedures provide limited and inadequate guidance to employees tasked with responding to direct and indirect disputes. AFI's policies and procedures do not address training staff that handle dispute investigations about how to implement AFI's

furnishing policies or about AFI's responsibilities related to furnishing information. Nor does AFI have policies or procedures providing for monitoring of employees who participate in dispute investigations.

69. AFI's "Disputed Accounts" policy, which was in effect until June 1, 2021, provided limited guidance to employees engaged in direct dispute investigations. The policy failed to provide instructions for responding to certain types of direct disputes that it specifically identified. For example, the policy stated that a dispute may include an account where a consumer disputed the amount owed, a common dispute consumers raise with AFI because the terms of AFI's financing are often misrepresented and requisite TILA disclosures are not provided. But AFI's policy provided no guidance to AFI's employees about how to handle or investigate these, or any other type of dispute. The policy did not even instruct employees to review and consider the supporting documentation, if any, submitted by consumers.

70. The policy also failed to provide any guidance on:

- a) notifying consumers of the results of any investigation in every case involving a FCRA-qualifying dispute;
- b) taking appropriate actions based on the outcome of an investigation; and
- c) maintaining records related to direct disputes for a reasonable time period.

71. AFI's current policies, in effect since June 1, 2021, still do not provide instructions for responding to certain types of disputes that these policies specifically identify as detailed in Paragraph 70, nor do they specify for how long records should be maintained. AFI therefore has failed to consider the guidelines in Appendix E of the Furnisher Rule and establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information they furnish to CRAs as required by 12 C.F.R. § 1022.42(a) and (b).

AFI Knowingly Reports Inaccurate Information to CRAs

72. Every month, since at least January 2018, AFI has inaccurately furnished information to CRAs indicating that tens of thousands of consumers who financed a water treatment system with AFI have revolving, or open-end credit, with available credit, or a credit limit above their outstanding balance. However, as detailed in this complaint, these customers really have closed-end credit. This reporting of inaccurate information violates Section 623 (a)(1)(A) of the FCRA, 15 U.S.C. § 1681s-2(a)(1)(A).

73. AFI knows, or has reasonable cause to believe, that the information it has been furnishing to CRAs about consumers having open-end credit plans with available credit, or a credit limit above their outstanding balance, is inaccurate. AFI controls the terms of the credit it extends. It informs dealers that open-end credit differs from closed-end credit because open-end has available credit that can be used for repeat purchases, whereas closed-end does not. Yet AFI prohibits or restricts consumers' use of available credit for its open-end credit, as detailed in Paragraphs 45-56. Despite these facts, AFI continues report to CRAs that these accounts are open-end.

74. AFI's credit department also has acknowledged that it reports inaccurate information to the CRAs. In November 2018, AFI's credit department informed a dealer that a consumer could not use available credit for a repeat purchase because AFI does not allow repeat purchases when promotions are used. AFI further explained to the dealer that AFI reports "the credit limit [available credit] this way for the customer's benefit for the cb [credit bureau] report" but acknowledged that such a report was inaccurate because "it doesn't show them maxing out their credit." In fact, such inaccurate reports can negatively affect some consumers' ability to access other credit.

AFI's Mishandling of Direct Disputes

75. In numerous instances, AFI has received dispute letters from consumers but has failed to investigate or report the results of its investigations to those consumers before the expiration of the period prescribed by Section 611(a)(1) of the FCRA, 15 U.S.C. § 1681i(a)(1).

76. For example, AFI documented receipt of a direct dispute from a consumer in November 2020. Having never received a response the consumer called and inquired about the dispute status with AFI in February 2021. AFI told this consumer that it never received a dispute from him, which was inaccurate, and therefore that it did not investigate or send him any response.

77. AFI has in its possession numerous dispute letters from consumers like this that it has received but never investigated or responded to. Frustrated by the lack of investigation or response, consumers have alleged in lawsuits against AFI that it has failed to investigate and respond to disputes they have sent.

78. AFI has attempted to record on a "Dispute Tracker" all direct disputes it has received and responded to. But AFI has in its possession numerous dispute letters that were never recorded on its "Dispute Tracker" and that AFI never investigated or responded to. In numerous other instances, AFI has recorded disputes on its "Dispute Tracker," but it has otherwise failed to maintain records of the dispute, its investigation, or any response sent.

79. AFI therefore is not only failing to investigate and respond to direct disputes, but it also fails to properly track or maintain records of direct disputes. In many instances it would therefore be impossible for AFI to audit its files to determine whether its employees are properly, or timely, investigating and responding to consumer disputes.

AFI Frequently Fails to Notify CRAs of Disputes

80. Since January 2018, AFI has recorded in its internal database at least hundreds of instances of consumers verbally disputing the details of their credit agreements that were reported to CRAs.

81. From January 19, 2016, through at least June 1, 2021, AFI's "Disputed Accounts" policy stated that "employees must report any dispute [to the Administrative Assistant in charge of furnishing information to CRAs], including an oral dispute, received from the consumer concerning a debt that has been reported to a [CRA]." AFI, however, ignores most oral disputes, did not follow this policy, and furnishes information to CRAs without notice that such information is disputed by the consumer as required by Section 623(a)(3) of the FCRA, 15 U.S.C. § 1681s-2(a)(3).

82. AFI's current policies, in effect since June 2021, do not require oral disputes be reported to anyone within AFI or to CRAs. As a result, AFI still furnishes information to CRAs without notice that such information is disputed by the consumer.

AFI Continues Furnishing Information After Receipt of Identity Theft Reports

83. In numerous instances, AFI has received via mail at its regular address for consumer correspondence, or via email at the instruction of AFI employees, police reports or other official reports filed by consumers with a federal or state law enforcement agency. Consumers make these reports subject to criminal penalties for the filing of false information. In these reports, consumers have alleged that their AFI accounts, which were being reported to CRAs, were the result of identity theft or fraud. These documents are "identity theft reports" under FCRA § 603(q)(4) and 12 C.F.R. 1022.3(i).

84. In numerous instances, despite receiving identity theft reports from consumers

relating to account information furnished by AFI to a CRA, AFI continues to furnish information concerning such accounts before or without determining that the account was not the result of identity theft or fraud and, therefore, without knowing that the information was correct. AFI does this despite having a written policy stating that if a consumer submits an identity theft report, AFI “will not furnish information that purports to relate to the consumer to any [CRA] unless [AFI] subsequently knows or is informed by the consumer that the information is correct.”

85. As an example, AFI received a police report alleging identity theft from a consumer in March 2020, but AFI did not begin to investigate the dispute until February 2021. AFI reported to CRAs during this eleven-month period that the consumer owed a balance to AFI and was at times delinquent in making payment. AFI therefore furnishes information that is the subject of an identity theft report without subsequently knowing it was correct in violation of both its own internal policy and § 623(a)(6)(B) of the FCRA, 15 U.S.C. § 1681s-2(a)(6)(B).

For Over Five Years, AFI Did Not Review or Update Its Furnishing Policies

86. The Furnisher Rule also requires furnishers to review their policies and procedures periodically. 12 C.F.R. § 1022.42(c).

87. From at least January 19, 2016, through at least June 1, 2021, AFI failed to conduct any evaluation of its policies, practices, 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.

88. Between 2018 and 2020, the number of direct disputes AFI tracked receiving increased by over 100%. In July 2020, AFI’s Vice President of Compliance informed the company’s CEO that there had been an increase in consumer complaints about credit reporting. Despite the increase in both direct disputes and consumer complaints about credit reporting, AFI

undertook no examination of the root cause(s), nor did it seek to reevaluate its own furnishing policies in light of its nature, size, complexity, and scope of its furnishing activities.

89. AFI has not evaluated whether its policies lead employees to conduct reasonable investigations of indirect or direct disputes. Specifically, AFI has not audited the work of its dispute-handling employees to determine whether they were following AFI policies, or whether they were conducting reasonable investigations of disputes. Further, AFI has not audited the work of its employees to determine whether they are complying with the FCRA.

90. Based on the facts and violations of law alleged in this Complaint, the FTC has reason to believe that AFI is violating or is about to violate laws enforced by the Commission.

VIOLATIONS OF THE FTC ACT

91. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

92. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

93. Acts or practices are unfair under Section 5 of the FTC Act if they cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

COUNT I

Misrepresentations - Terms of Financing

94. In numerous instances, in connection with the promotion, offering for sale, or sale of water treatment systems, AFI represents, directly or indirectly, expressly or by implication, that:

- a) the interest rate and minimum monthly payment stay the same for the term of the financing;
- b) accrual of interest on the financing is deferred for a certain period;
- c) a consumer who makes only the minimum monthly payments will repay the financing in six years or less;
- d) the financing is interest free; or
- e) interest on the financing is included in the sales price.

95. In fact, in numerous instances in which AFI makes the representations set forth in Paragraph 94:

- a) the interest rate and minimum monthly payment do not stay the same for the term of the financing, but instead increase after 12 months;
- b) interest is not deferred for a certain period, but instead accrues immediately;
- c) a consumer who makes only the minimum monthly payments will not repay the financing in, six years or less, but rather, typically, in nine to ten years;
- d) the financing is not interest-free; and
- e) interest on the financing is not included in the sales price.

96. Therefore, Defendant's representations as set forth in Paragraph 94 are false or misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

Failing to Adequately Disclose UCC Fixture Filing and Its Implications

97. In numerous instances, in connection with the promotion, offering for sale, or sale of water treatment systems, AFI represents directly or indirectly, expressly or by implication, that it is offering consumers financing to purchase water treatment systems.

98. In numerous instances in which AFI makes the representation set forth in Paragraph 97, AFI fails to disclose or disclose adequately to consumers that AFI's Credit Plan documents allow AFI to record a UCC fixture filing which, in many instances, has the practical effect of impeding the consumer's ability to sell or refinance their home. This fact would be material to consumers in deciding to finance a water treatment system.

99. In light of the representations described in Paragraph 98, AFI's failure to disclose adequately the material information as set forth in Paragraph 97 constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III
Unfairness

100. In numerous instances, AFI has underwritten, serviced, and funded credit agreements that it knew or should have known were marketed through deceptive sales practices, including misrepresenting and failing to disclose the credit agreements' material terms and failing to monitor dealers' deceptive trade practices.

101. AFI's acts or practices cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

102. Therefore, AFI's acts or practices as set forth in Paragraph 100 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), (n).

COUNT IV
Unfairness

103. In numerous instances, in connection with marketing, underwriting, servicing, and funding credit agreements that prohibit consumers from using available credit for repeat purchases, AFI has required dealers to use contracts that fail to disclose, or fail to disclose

adequately, the:

- a) prohibition on repeat purchases;
- b) requirements that if consumers want to make a repeat purchase, they must complete a new credit application and have their credit report repulled to requalify for a new extension of credit;
- c) APR;
- d) finance charge;
- e) total of payments;
- f) number of payments; and
- g) payment amount.

104. AFI's acts or practices cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

105. Therefore, AFI's acts or practices as set forth in Paragraph 103 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), (n).

TILA AND REGULATION Z

106. The purpose of the Truth in Lending Act is to "assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices." 15 U.S.C. § 1601(a).

107. Under TILA, 15 U.S.C. §§ 1601-1666j, and its implementing Regulation Z, 12 C.F.R. Part 1026, creditors who extend "closed-end credit," as defined in 12 C.F.R. § 1026.2(a)(10), must comply with the applicable disclosure provisions of TILA and Regulation Z, including but not limited to, Sections 1026.17 and 1026.18 of Regulation Z, 12 C.F.R. §§ 1026.17 and 1026.18.

108. "Creditor" means a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not

including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no contract. 12 C.F.R. § 1026.2(a)(17). AFI is a creditor under TILA and Regulation Z because it extends consumer credit subject to a finance charge and the obligation is initially payable to AFI.

109. “Closed-end credit” means consumer credit other than open-end credit. “Open-end credit” is defined as “consumer credit extended by a creditor under a plan in which: (i) the creditor reasonably contemplates repeated transactions; (ii) the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and (iii) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.” 12 C.F.R. §§ 1026.2(a)(10) and (a)(20). AFI extends closed-end credit (as opposed to open-end credit) to consumers under TILA and Regulation Z because its credit agreements do not meet the requirements for open-end credit.

110. Sections 121(a) and (b) and 128 of TILA, 15 U.S.C. §§ 1631(a), (b) and 1638, and Sections 1026.17(a) and 1026.18 of Regulation Z, 12 C.F.R. §§ 1026.17(a) and 1026.18, require creditors of closed-end consumer credit transactions to clearly and conspicuously disclose in writing, among other things, the following about the credit agreements:

- a) the identity of the creditor making the disclosures;
- b) the amount financed (“using that term and a brief description such as ‘the amount of credit provided to you on your behalf’”);
- c) the finance charge (“using that term, and a brief description such as ‘the dollar amount the credit will cost you’”);
- d) the annual percentage rate (“using that term, and a brief description such as ‘the

cost of your credit as a yearly rate”);

- e) the payment schedule (“the number, amounts and timing of payments scheduled to repay the obligation”); and
- f) the total of payments (“using that term, and a descriptive explanation . . . such as ‘the amount you will have paid when you have made all scheduled payments’”).

111. These disclosures must reflect the terms of the legal obligations between the parties. 12 C.F.R. § 1026.17(c).

112. Pursuant to Section 108(c) of TILA, 15 U.S.C. § 1607(c), violation of TILA and Regulation Z constitutes a violation of the FTC Act.

COUNT V
Violations of TILA and Regulation Z

113. In the course of extending credit to consumers who purchase home water treatment systems, AFI violates the requirements of TILA and Regulation Z by failing to clearly and conspicuously disclose in writing the following information so that the consumer can make an informed decision regarding the credit being offered:

- a. the identity of the creditor making the disclosures;
- b. the amount financed (“using that term and a brief description such as ‘the amount of credit provided to you on your behalf’”);
- c. the finance charge (“using that term, and a brief description such as ‘the dollar amount the credit will cost you’”);
- d. the annual percentage rate (“using that term, and a brief description such as ‘the cost of your credit as a yearly rate’”);
- e. the payment schedule (“the number, amounts and timing of payments scheduled to repay the obligation”); and

- f. the total of payments (“using that term, and a descriptive explanation such as ‘the amount you will have paid when you have made all scheduled payments’”).

114. Therefore, AFI’s practices set forth in Paragraph 113 of this Complaint violate Sections 121 and 128 of TILA, 15 U.S.C. §§ 1631 and 1638, and Sections 1026.17 and 1026.18 of Regulation Z, 12 C.F.R. §§ 1026.17 and 1026.18.

FAIR CREDIT REPORTING ACT

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

116. 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.

117. The FCRA imposes obligations on 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, the 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.

118. As part of its servicing and collection practices for its credit agreements for

water treatment systems, and for other products AFI finances, including, but not limited to, home improvement projects, boats, and recreational vehicles, AFI regularly furnishes consumer account information to CRAs, including Experian, TransUnion, Equifax and Innovis.

Accordingly, it is a “furnisher” under 12 C.F.R. 1022.41(c) and is required to comply with the Furnisher Rule.

119. 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, 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).

120. The Rule expressly requires furnishers to consider the guidelines in Appendix E of the Rule and review their policies and procedures periodically. 12 C.F.R. § 1022.42(b) and (c).

121. Section 623 (a)(1)(A) of the FCRA specifies that a “A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.”

122. Section 623(a)(3) of the FCRA provides that if the completeness or accuracy of any information furnished by any person to any CRA is disputed to such person by any consumer, the information must be noted as disputed in the information reported by such person to any CRA. This provision does not require consumer disputes to be in writing.

123. Section 623(a)(6)(B) of the FCRA specifies that a furnisher, upon receipt of an identity theft report sent to the address specified by the furnisher for receiving such reports, “may not furnish such information that purports to relate to the consumer to any consumer reporting

agency, unless the furnisher subsequently knows or is informed by the consumer that the information is correct.”

124. Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), a violation of the FCRA constitutes an unfair or deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE FAIR CREDIT REPORTING ACT

COUNT VI

Lack of Reasonable Written Policies and Procedures

125. As described in Paragraphs 63 through 71 and 86 through 90, in numerous instances, AFI 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 CRA;
- b) consider and incorporate the appropriate guidelines set forth in 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.

126. By and through the acts and practices described in Paragraphs 63 through 71 and 86 through 90, AFI violates 12 C.F.R. §1022.42. Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices described in Paragraphs 63 through 71 and 86 through 90, 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 VII
Failing to Investigate and Report Results of Investigations

127. Through the acts and practices described in Paragraphs 75 through 79, after receiving direct disputes, as that term is defined in the Furnisher Rule at 12 C.F.R. § 1022.41(b), in numerous instances, AFI 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).

128. By and through the acts and practices described in Paragraphs 75 through 79, AFI violates Section 623(a)(8)(E)(iii) of the FCRA, 15 U.S.C. § 1681s-2(a)(8)(iii), and 12 C.F.R. § 1022.43(e)(3). Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices described in Paragraphs 75 through 79 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 VIII
Failing to Notify CRAs of Disputed Information

129. In numerous instances in which consumers have informed AFI, over the telephone and/or in writing, that they dispute the completeness or accuracy of information furnished by AFI to a CRA, AFI continues to furnish the information to CRAs without providing notice that such information is disputed by the consumer.

130. The acts and practices alleged in Paragraphs 80 through 82, violate Section 623(a)(3) of the FCRA, 15 U.S.C. § 1681s-2(a)(3). Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices alleged in Paragraphs 80 through 82, 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 IX

Failing to Cease Furnishing Information After Receipt of Identity Theft Reports

131. In numerous instances, AFI has received identity theft reports from consumers relating to information AFI furnished concerning that consumer's account with AFI. AFI continues furnishing information about those accounts before investigating the accuracy of the information it was furnishing. As a result, AFI has furnished such information without knowing whether it was correct.

132. By and through the acts and practices described in Paragraphs 83 through 85, AFI violates § 623(a)(6)(B) of the FCRA, 15 U.S.C. § 1681s-2(a)(6)(B). Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices described in Paragraphs 83 through 85 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 X

Knowingly Furnishing Inaccurate Information

133. In numerous instances, described in Paragraphs 72 through 74 in connection with furnishing information relating to a consumer to a consumer reporting agency, AFI has furnished such information while knowing or having reasonable cause to believe that the information was inaccurate.

134. The acts and practices alleged in Paragraphs 72 through 74, violate Section 623(a)(1)(A) of the FCRA, 15 U.S.C. § 1681s-2(a)(1)(A). Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices alleged in Paragraphs 72 through 74, 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

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

PRAYER FOR RELIEF

WHEREFORE, the FTC requests that this Court:

- (1) Enter a permanent injunction to prevent future violations of the FTC Act; TILA and its implementing Regulation Z; the FCRA and Furnisher Rule, as alleged herein; and
- (2) Award any additional relief as this Court determines to be just and proper.

Dated: May 1, 2024

FOR THE FEDERAL TRADE COMMISSION:

/s/Edward Hynes

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