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9 UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA – PHOENIX DIVISION

10
11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 DIRECT MARKETING ASSOCIATES, CORP .,)
and JOHN M. RAINEY, JR.)

15 Defendants.)

Civil Action No.

16
17 **COMPLAINT FOR CIVIL PENALTIES, PERMANENT
INJUNCTION, AND OTHER EQUITABLE RELIEF**

18 Plaintiff, the United States of America, acting upon notification and authorization
19 to the Attorney General by the Federal Trade Commission (“FTC” or “Commission”), for
20 its Complaint alleges as follows:

21 1. Plaintiff brings this action under sections 5(a), 13(b), and 16(a) of the
22 Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), and 56(a), and
23 the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681-1681x, to obtain monetary
24 civil penalties and injunctive or other relief for Defendants’ violations of the FTC Act and
25 the FCRA.

26 **JURISDICTION AND VENUE**

27 2. This Court has subject matter jurisdiction over this matter under 28 U.S.C.
28 §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(a), 53(b), and 56(a).

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DEFENDANTS' COURSE OF CONDUCT

9. DMA is a marketing company that provides, *inter alia*, direct mail marketing services to automobile dealers located throughout the United States. DMA contracts with the automobile dealers to mail one or more solicitations for the purchase of automobiles to consumers who meet certain demographic and/or credit history criteria. These solicitations are intended to induce consumers to visit the dealers' showrooms to purchase vehicles.

10. DMA is responsible for the content of the solicitations that are used in the marketing programs that it offers to dealers. Each dealer, working with DMA, selects the solicitation or solicitations to be used in DMA's mailings for that dealer.

11. The solicitations prepared and disseminated by DMA state that a named finance entity, such as "Evergreen Automotive Acceptance," has "pre-approved" the consumer receiving the solicitation for a loan to purchase a vehicle at the automobile dealer identified in the solicitation. In numerous instances these solicitations are signed by Defendant Rainey. The solicitations instruct consumers to contact or visit the automobile dealers identified in the solicitations.

12. DMA, in consultation with the dealers, establishes the number of consumers to receive solicitations and the demographic and/or credit history criteria by which the consumers are selected to receive the solicitations. DMA obtains names and addresses of consumers who meet those criteria, prints the sales solicitations for the dealers, stuffs the envelopes, and mails the solicitations to the consumers according to the schedule established with each dealer.

13. In many instances, DMA has obtained the names of consumers who meet the selected criteria to receive solicitations from a "consumer reporting agency" as that term is defined in section 603(f) of the FCRA, 15 U.S.C. § 1681a(f). The information provided by the consumer reporting agency constitutes a "consumer report" as defined by section 603(d)(1) of the FCRA, 15 U.S.C. § 1681a(d)(1).

1 **COUNT I**

2 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

3 14. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or
4 deceptive acts or practices in or affecting commerce, including false or misleading
5 statements or representations in advertising or sales solicitations.

6 15. Through the means described in Paragraphs 9 to 13, Defendants have
7 represented, expressly or by implication, that the consumers receiving the solicitations
8 have been pre-approved for automobile financing.

9 16. In truth and in fact, the consumers receiving the solicitations have not been
10 pre-approved for automobile financing. The finance companies identified in DMA's
11 solicitations, such as "Evergreen Automotive Acceptance," are not functioning finance
12 companies, are not registered or licensed as required by law in numerous states where
13 DMA has disseminated solicitations, and have not made financing available to the
14 consumers who received the solicitations. Defendants had no arrangement or agreement
15 with any other party to pre-approve the consumers for automobile financing.

16 17. Therefore, the representations set forth in Paragraph 15 were, and are, false
17 or misleading, and constitute deceptive acts or practices in or affecting commerce in
18 violation of section 5(a) of the FTC Act 15 U.S.C. § 45(a).

19 **COUNT II**

20 **VIOLATIONS OF THE FAIR CREDIT REPORTING ACT**

21 18. Section 604 of the FCRA, 15 U.S.C. § 1681b, prohibits consumer reporting
22 agencies from providing consumer reports to third parties except for certain enumerated
23 "permissible purposes." Section 604(c) of the FCRA, 15 U.S.C. § 1681b(c), establishes a
24 permissible purpose in connection with the making of a "firm offer of credit or
25 insurance." That term, also known as a "prescreened offer," is defined in section 603(l)
26 of the FCRA, 15 U.S.C. § 1681a(l), as an offer that will be honored (subject to certain
27 exceptions) if the consumer, based on information in his or her consumer report, is
28 determined to meet the criteria pre-specified by the offeror.

1 19. Section 604(f) of the FCRA, 15 U.S.C. § 1681b(f), prohibits any person
2 from using or obtaining consumer reports from a consumer reporting agency unless (a)
3 the reports are obtained for a permissible purpose, *i.e.*, a purpose for which the consumer
4 reporting agency is authorized to provide reports under the FCRA, and (b) each such
5 purpose is certified in accordance with section 607 of the FCRA, 15 U.S.C. § 1681e.

6 20. In the course of their business, Defendants have obtained consumer reports
7 from a consumer reporting agency by representing that they have a permissible purpose
8 under section 604(c) of the FCRA, 15 U.S.C. § 1681b, to obtain those reports, namely,
9 that DMA would serve as the processor of the information received from the consumer
10 reporting agency on behalf of a finance company, which would use that information to
11 make firm offers of credit to consumers.

12 21. Defendants did not have a permissible purpose to obtain consumer reports.
13 The reports were not used to make firm offers of credit as set forth in section 604(c) of
14 the FCRA, 15 U.S.C. § 1681b(c). DMA does not provide financing, and the finance
15 companies identified by Defendants were not functioning finance businesses, did not
16 provide loans to consumers receiving the solicitations, and were unable to honor the
17 offers made to consumers in the solicitations. Defendants had no arrangement or
18 agreement with any other party to ensure that consumers who met pre-set criteria would
19 receive an offer of credit.

20 22. By obtaining information from a consumer reporting agency without having
21 a permissible purpose for which the information was authorized to be furnished,
22 Defendants have violated section 604(f) of the FCRA, 15 U.S.C. § 1681b(f).

23 23. Pursuant to section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the
24 acts and practices alleged herein also constitute unfair or deceptive acts or practices in
25 violation of section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

26 **INJUNCTIVE RELIEF FOR FTC ACT VIOLATIONS**

27 24. Defendants have violated section 5 of the FTC Act as described above.
28 Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive

1 relief and such other relief as the Court may deem appropriate to halt and redress
2 violations of the FTC Act.

3 **CIVIL PENALTIES AND INJUNCTIVE RELIEF**
4 **FOR VIOLATIONS OF THE FAIR CREDIT REPORTING ACT**

5 25. Section 621(a)(2)(A) of the FCRA, 15 U.S.C. § 1681s(a)(2)(A), authorizes
6 the Court to award monetary civil penalties of not more than \$2,500 per violation of the
7 FCRA in the event of a knowing violation, which constitutes a pattern or practice of
8 violations. Defendants' violations of the FCRA, as alleged in the Complaint, were
9 knowing and constitute a pattern or practice of violations.

10 26. Each instance in which Defendants procured a consumer report in violation
11 of section 604(f) of the FCRA, 15 U.S.C. § 1681b(f), constitutes a separate violation of
12 the FCRA for the purposes of assessing monetary civil penalties under section 621 of the
13 FCRA, 15 U.S.C. § 1681s. Plaintiff seeks monetary civil penalties for every separate
14 violation of the FCRA.

15 27. Under section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is
16 authorized to issue a permanent injunction prohibiting Defendants from violating the
17 FCRA.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff respectfully requests that this Court, pursuant to 15
20 U.S.C. §§ 45(a), 53(b), 1681s, and 1691c, and pursuant to this Court's own equitable
21 powers:

- 22 1. Enter judgment against Defendants and in favor of Plaintiff for each law
23 violation alleged in this Complaint;
- 24 2. Enter a permanent injunction to prevent future violations of the FCRA and
25 the FTC Act by Defendants;
- 26 3. Award Plaintiff monetary civil penalties from Defendants for each violation
27 of the FCRA as alleged in this Complaint;
- 28 4. Order Defendants to pay the costs of this action; and

1 5. Award Plaintiff such additional relief as the Court deems just and proper.

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Dated: March 25, 2010

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