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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, **Plaintiff,** **v.** **DIRECT LENDING SOURCE, INC., a corporation,** **BAILEY & ASSOCIATES ADVERTISING, INC., a corporation,** **VIRTUAL LENDING SOURCE, LLC, a limited liability company,** **ROBERT M. BAILEY, JR., individually and as an officer of DIRECT LENDING SOURCE, INC., BAILEY & ASSOCIATES ADVERTISING, INC., and VIRTUAL LENDING SOURCE, LLC, and** **LINDA GIORDANO, individually and as an officer of DIRECT LENDING SOURCE, INC., BAILEY & ASSOCIATES ADVERTISING, INC., and VIRTUAL LENDING SOURCE, LLC,** **Defendants.**	**Civil Action No.** **'12CV2441 DMS BLM** **COMPLAINT FOR CIVIL PENALTIES, PERMANENT INJUNCTION, AND OTHER EQUITABLE RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission"), for its Complaint alleges that:

1. Plaintiff brings this action under sections 5(a), 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a), 53(b), and 56(a); and section 621(a) of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681s(a), to obtain monetary civil penalties and injunctive or other relief from Defendants for engaging in violations of the FTC Act, 15 U.S.C. § 45(a), and the FCRA, 15 U.S.C. §§ 1681-1681x.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(a), 53(b), 56(a), and 1681s.

3. Venue is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b)-(c) and 1395(a).

PLAINTIFF

4. This action is brought by the United States of America on behalf of the Federal Trade Commission. The Commission is an independent agency of the United States government given statutory authority and responsibility by, *inter alia*, the FTC Act, *as amended*, 15 U.S.C. §§ 41-58, and the FCRA, 15 U.S.C. §§ 1681-1681x. The Commission is charged, *inter alia*, with enforcing Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce; and the FCRA, which imposes duties upon consumer reporting agencies, users of consumer reports, and those who procure consumer reports for resale.

DEFENDANTS

5. Direct Lending Source, Inc., ("Direct Lending") is a Florida corporation with its principal place of business in Key Largo, Florida. Direct Lending transacts or has transacted business in this district.

6. Bailey & Associates Advertising, Inc. ("Bailey & Associates") is a Florida corporation with offices in El Paso, Texas and San Diego, California. Bailey & Associates transacts or has transacted business in this district.

7. Virtual Lending Source, LLC ("Virtual Lending") is a Nevada limited liability company with its principal place of business in San Diego, California. Virtual Lending transacts or has transacted business in this district.

8. Robert M. Bailey, Jr. ("Bailey") is the Executive Vice President of Direct Lending, Bailey & Associates, and Virtual Lending. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices Direct Lending, Bailey & Associates, and Virtual Lending, including the acts and practices set forth in this Complaint. Defendant Bailey, in connection with the matters alleged herein, transacts or has transacted business in this district.

9. Linda Giordano ("Giordano") is the President of Direct Lending, Bailey & Associates, and Virtual Lending and an owner of Bailey & Associates and Virtual Lending. At all times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, had the authority to control, or participated in the acts and practices Direct Lending, Bailey & Associates, and Virtual Lending, including the acts and practices set forth in this Complaint. Defendant Giordano, in connection with the matters alleged herein, transacts or has transacted business in this district.

10. Defendants Direct Lending, Bailey & Associates, and Virtual Lending (collectively, "Corporate Defendants") have operated as a common enterprise while engaging in the unfair acts and practices and other violations of law alleged below. Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, business functions, employees, and office locations. Because these Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendants Bailey and Giordano have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants that constitute the common enterprise.

11. On June 22, 2011, Bailey & Associates filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 101 et seq., in the United States Bankruptcy Court for the Western District of Texas, El Paso Division, Case No. 11-31202-hcm.

12. The instant action against Defendant Bailey & Associates is not stayed by 11 U.S.C. § 362(a)(1),(2),(3) or (6) because it is an action brought by the United States pursuant to referral by the Commission, to enforce the Commission's police and regulatory power as a governmental unit pursuant to 11 U.S.C. § 362(b)(4), and thus falls within an exemption to the automatic stay.

COMMERCE

13. At all times relevant to this complaint, Defendants have 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

14. The FCRA was enacted in 1970, became effective on April 25, 1971, and has been in force since that date.

15. 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.

16. Defendants buy and sell "prescreened lists," which are lists of consumers that meet certain pre-selected credit criteria. For example, in this case, Defendants bought and sold "prescreened lists" of consumers who were, among other things, 30, 60, or 90 days late on their mortgage payments. Such prescreened lists are "consumer reports" as defined in section 603(d) of the FCRA, 15 U.S.C. §1681a(d). That section defines a "consumer report" as

> any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (A) credit or insurance to be used primarily

> for personal, family, or household purposes; (B) employment purposes; or (C) any other purpose authorized under section 604.

Information such as whether a consumer is 30, 60, or 90 days late on their mortgage bears on, among other things, a consumer's credit worthiness and credit standing and is used or expected to be used as a factor in determining a consumer's eligibility for credit.

17. Section 604(f) of the FCRA, 15 U.S.C. §1681b(f), prohibits persons from using or obtaining consumer reports in the absence of a "permissible purpose." In addition, Section 607(e) of the FCRA, 15 U.S.C. § 1681e(e), requires persons who procure consumer reports for resale to establish and comply with reasonable procedures designed to ensure that the consumer reports are only resold for a permissible purpose.

18. The only permissible purpose for using a prescreened list is to make a "firm offer of credit or insurance." A "firm offer" is one that will be honored (subject to certain exceptions) if the consumer continues to meet the pre-selected criteria used to select them for the offer. 15 U.S.C. § 1681a(l). Using prescreened lists to send solicitations for general marketing is not a permissible purpose.

SECTION 5 OF THE FTC ACT

19. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce." 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 is not outweighed by countervailing benefits to consumers or competition and that is not reasonably avoidable by consumers. 15 U.S.C. § 45(n).

DEFENDANTS' BUSINESS PRACTICES

20. From January 1, 2008 through early 2010, Defendants purchased over 17,000 prescreened lists containing the consumer report information of millions of consumers from Equifax. These lists included, among other things, consumers' credit scores and whether they were 30, 60, or 90 days late on their mortgage payments.

21. Defendants sold these prescreened lists to third parties. For example, Defendants sold over 2,400 lists to entities that target consumers in financial distress for loan modification,

debt relief, and foreclosure relief services. Some of the lists were sold to entities with names such as: "Save Me From Foreclosure," "SOS Modification," "Stop Your Lender," "Virginia Foreclosure Prevention," "Making Homes Affordable," "Fight Your Credit Co.," and "Debt Regret."

22. Defendants sold prescreened lists to a number of entities that have been the subject of actions or warnings by law enforcement, including Mason Capital Group LLC. In May 2010, the California Attorney General filed a criminal complaint alleging that Mason Capital and its principals obtained at least $2.3 million from a fraudulent loan modification operation. According to the California Attorney General, Mason Capital charged more than 1,500 homeowners up-front fees ranging from $1,000 to $5,000 and promised to obtain a loan modification from the consumer's lender. As alleged in the criminal complaint, in almost every case, no loan modification was completed as promised. The Attorney General further charged that homeowners were lured by misrepresentations contained in the solicitations and dissuaded from timely pursuing other legitimate options to modify their mortgage or stop foreclosures, and that, in some instances, homeowners realized they had been scammed too late to avoid the loss of their home.

23. Defendants also sold prescreened lists to Nova Key LLC. In December 2009, the Maryland Department of Labor, Licensing and Regulation ("DLLR") issued a cease-and-desist order to Nova Key LLC for violating Maryland law by collecting $1.2 million worth of up-front fees from Maryland homeowners who were behind in their mortgage payments. According to the Maryland DLLR, Nova Key LLC failed to obtain the promised loan modifications in the majority of cases, and yet refused to refund the up-front fees they collected from distressed homeowners.

24. In some cases, Defendants sold the prescreened lists at issue to list brokers and others, which in turn resold the lists to unidentified downstream entities. In these instances, Defendants cannot identify the entity or individual that ultimately obtained the list. Defendants did not identify to Equifax the end-user of these consumer reports.

25. Defendants did not make reasonable efforts to verify that the consumer reports would only be used in connection with permissible purposes under the FCRA. For example, they did not require that each person to whom the consumer reports were resold: (1) identify each end-user, (2) certify each purpose for which the consumer reports would be used, or (3) certify that the consumer reports would be used for no other purpose. Defendants did not otherwise make reasonable efforts to verify the identifications and certifications required by the FCRA.

26. Defendants assert that they were obtaining prescreened lists to make “firm offers of credit” because they were financing the fees charged to consumers for the loan modification or debt relief services described above. The offer to finance the fees was a sham used to engage in target marketing directed to financially distressed consumers, and, as such, is not a “firm offer of credit.”

27. Defendants’ failure to employ reasonable and appropriate measures to control access to the sensitive consumer financial information they sell resulted in prescreened lists being sold to a number of entities that have been the subject of actions or warnings by law enforcement. Defendants’ lack of reasonable procedures caused or is likely to cause substantial consumer injury that is not reasonably avoidable by consumers and is not outweighed by benefits to consumers or competition.

VIOLATIONS OF THE FCRA

COUNT I - VIOLATIONS OF SECTION 604(f) OF THE FCRA

28. Section 604(f) of the FCRA, 15 U.S.C. § 1681b(f), prohibits persons from using or obtaining consumer reports without a “permissible purpose.”

29. As described in Paragraphs 20 through 26, in multiple instances, Defendants obtained consumer reports without a permissible purpose.

30. By and through the acts and practices described in Paragraph 29 above, Defendants have violated section 604(f) of the FCRA, 15 U.S.C. § 1681b(f).

31. Pursuant to section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices alleged in Paragraph 29 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 - VIOLATIONS OF SECTION 607(e)(1) OF THE FCRA

32. Section 607(e)(1) of the FCRA, 15 U.S.C. § 1681e(e)(1), requires persons who procure consumer reports for purposes of reselling the reports to identify the end-user of the report.

33. As described in Paragraph 24, in multiple instances, Defendants failed to disclose to the consumer reporting agency that furnished the consumer report the identity of the end-user of the consumer report.

34. By and through the acts and practices described in Paragraph 33, Defendants have violated section 607(e)(1) of the FCRA, 15 U.S.C. § 1681e(e)(1).

35. Pursuant to section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices alleged in Paragraph 33 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 III - VIOLATIONS OF SECTION 607(e)(2) OF THE FCRA

36. Section 607(e)(2), 15 U.S.C. §1681e(e)(2), requires a person who procures consumer reports for purposes of reselling the reports establish and comply with reasonable procedures designed to ensure that the consumer reports are resold by the person only for a permissible purpose.

37. As described in Paragraph 25, Defendants failed to maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed under section 604 of the FCRA.

38. By and through the acts and practices described in Paragraph 37, Defendants have violated section 607(e)(2) of the FCRA, 15 U.S.C. § 1681e(e)(2).

39. Pursuant to section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices alleged in Paragraph 37 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 IV - VIOLATIONS OF SECTION 615(d)(3) OF THE FCRA

40. Section 615(d)(3) of the FCRA, 15 U.S.C. § 1681m(d)(3), requires persons who use a consumer report in connection with a firm offer of credit to maintain on file the criteria used to select the consumer to receive the offer for three years from the date the offer is made to the consumer.

41. To the extent that Defendants maintain that they made firm offers of credit to consumers, using prescreened lists purchased from Equifax prior to November 2009, they do not have the required criteria on file.

42. By and through the acts and practices described in Paragraph 41, Defendants have violated section 615(d)(3) of the FCRA, 15 U.S.C. § 1681m(d)(3).

43. Pursuant to section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices alleged in Paragraph 41 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 V - VIOLATIONS OF THE FTC ACT

44. As described in Paragraphs 20 through 27, Defendants have failed to employ reasonable and appropriate measures to control access to the sensitive consumer financial information they sell.

45. Defendants' actions caused or were likely to cause substantial injury to consumers that is not offset by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers.

46. Therefore, Defendants' practices as described in Paragraph 46 above constitute unfair acts or practices in violations of section 5 of the FTC Act, 15 U.S.C §§ 45(a) and 45(n).

THIS COURT'S POWER TO GRANT RELIEF

47. 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 the event of a knowing violation of the FCRA, which constitutes a pattern or practice. Defendants' violations of the FCRA, as alleged in this Complaint, have been knowing and have constituted a pattern or practice of violations. As specified by the Federal Civil Penalty Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as

amended by the Debt Collection Improvements Act of 1996, Pub. L. 104-134, § 31001(s)(1), 110 Stat. 1321-373, the Court is authorized to award a penalty of not more than $2,500 per violation for violations occurring before February 10, 2009, and $3,500 per violation for violations occurring on or after that date.

48. Each instance in which Defendants failed to comply with the FCRA constitutes a separate violation for the purpose of assessing monetary civil penalties under section 621 of the FCRA, 15 U.S.C. § 1681s. Plaintiff seeks monetary civil penalties for each separate violation of the FCRA.

49. 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 prohibiting Defendants from violating the FTC Act and the FCRA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court, pursuant to 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), 1681s, and 1691c, and pursuant to the Court's own equitable powers:

(1) Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in this Complaint;

(2) Enter a permanent injunction to prevent future violations of the FCRA and the FTC Act by Defendants;

(3) Award Plaintiff monetary civil penalties from Defendants for each violation of the FCRA alleged in this Complaint;

(4) Award Plaintiff the costs of this action; and

(5) Award Plaintiff such other and additional relief as the Court may deem just and proper.

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Dated October 9, 2012

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