

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**CERTEGY CHECK SERVICES, INC., a
Delaware corporation,**

Defendant.

Civil Action No. _____

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

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

1. Plaintiff brings this action under sections 5(a), 5(m)(1)(A), 13(b), 16(a)(1), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a)(1), and 57b; 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 for violations of the FTC Act, 15 U.S.C. §§ 45(a) and 57b; the FCRA, 15 U.S.C. §§ 1681–1681x, as amended by sections 211 and 312 of the Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159, 117 Stat. 1952 (2003) ("FACT Act") and by sections 1061 and 1088 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010) (codified in scattered sections of 12 U.S.C.) ("Dodd-Frank Act"); the Free Annual File Disclosures Rule, 16 C.F.R. § 610, issued pursuant to section 612(a)(1)(C)(i) of the FCRA, 15 U.S.C. § 1681j(a)(1)(C)(i), and recodified as Duties of Consumer Reporting Agencies Regarding Disclosures to Consumers, 12 C.F.R. § 1022, subpart N; and the Duties of Furnishers of

Information to Consumer Reporting Agencies Rule, 16 C.F.R. § 660, issued pursuant to section 623(e)(1) of the FCRA, 15 U.S.C. § 1681s-2(e)(1), and recodified as Duties of Furnishers of Information, 12 C.F.R. § 1022, subpart E.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(a), 45(m)(A), 53(b), 56(a), 1681s, and 1692l.

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

PLAINTIFF

4. This action is brought by the United States of America on behalf of the FTC. The FTC is an independent agency of the United States government given statutory authority and responsibility by, *inter alia*, the FTC Act, *as amended*, 15 U.S.C. §§ 41-58, and the FCRA, *as amended*, 15 U.S.C. §§ 1681-1681x. The FTC is charged 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. Pursuant to the FCRA, the FTC promulgated and enforces the Free Annual File Disclosures Rule, 16 C.F.R. § 610, effective December 1, 2004, recodified as promulgated by the CFPB as Duties of Consumer Reporting Agencies Regarding Disclosures to Consumers, 12 C.F.R. § 1022, subpart N, effective July 21, 2011; and the Duties of Furnishers of Information to Consumer Reporting Agencies Rule, 16 C.F.R. § 660, effective August 1, 2005, recodified as promulgated by the CFPB as Duties of Furnishers of Information, 12 C.F.R. § 1022, subpart E, effective July 21, 2011.

DEFENDANT

5. Defendant Certegy Check Services, Inc. ("Certegy") is a Delaware corporation with its principal place of business in St. Petersburg, Florida. Certegy transacts or has transacted business in this district.

COMMERCE

6. At all times material to this Complaint, Certegy 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.

FAIR CREDIT REPORTING ACT

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

8. Section 621 of the FCRA, 15 U.S.C. § 1681s, authorizes the FTC to use all of its functions and powers under the FTC Act to enforce compliance with the FCRA by all persons subject thereto except to the extent that enforcement specifically is committed to some other governmental agency, irrespective of whether the person is engaged in commerce or meets any other jurisdictional tests set forth by the FTC Act.

9. Section 612(a)(1)(C)(i) of the FCRA, 15 U.S.C. § 1681j(a)(1)(C)(i) required the FTC to prescribe regulations to require the establishment of a streamlined process for consumers to request consumer reports; and section 623(e)(1) of the FCRA, 15 U.S.C. § 1681s-2(e)(1) required the FTC to establish and maintain guidelines for furnishers regarding the accuracy and integrity of information, and to prescribe regulations requiring furnishers to establish reasonable policies and procedures to implement those guidelines. The FTC published those regulations, respectively, at 16 C.F.R. § 610 and 16 C.F.R. § 660. In July 2011, the Dodd-Frank Act

transferred this rulemaking authority to the Consumer Financial Protection Bureau ("CFPB"), and the CFPB republished those regulations at 12 C.F.R. § 1022, respectively at subparts N and E. The FTC enforces these CFPB regulations with respect to entities over which the FTC retains jurisdiction under the FCRA.

10.— Certegy is now and has been a consumer reporting agency ("CRA"), as defined in Section 603(f) of the FCRA, 15 U.S.C. § 1681a(f):

any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

Certegy regularly sells in interstate commerce consumer information it assembles for the purpose of furnishing consumer reports to its clients.

11. The FCRA imposes several obligations upon CRAs, including obligations to:
- a) follow reasonable procedures to assure the maximum possible accuracy of consumer report information; and
 - b) take certain steps when a consumer disputes information in his or her file, including: completing a reasonable reinvestigation within a set time period; providing prompt notice of disputes to furnishers; promptly deleting inaccurate, incomplete, or unverifiable information; promptly notifying the furnisher that information has been modified or deleted; maintaining reasonable procedures designed to prevent the

reappearance of deleted information; and promptly providing notice to the consumer of the results of its investigation.

Sections 607(b), 611 of the FCRA, 15 U.S.C. §§ 1681e(b), 1681i.

12. Certegy also is now and has been a “nationwide specialty consumer reporting agency,” which is defined in section 603(x) of the FCRA, 15 U.S.C. § 1681a(x), as “a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis relating to: (1) medical records or payments; (2) residential or tenant history; (3) check writing history; (4) employment history; or (5) insurance claims.” Certegy compiles and maintains files relating to, *inter alia*, the check-writing history of individuals who reside in most, if not all, of the fifty United States and the District of Columbia.

13. The FCRA imposes several obligations upon nationwide specialty CRAs, including an obligation to provide to each consumer a free annual disclosure of information in the consumer’s file (“annual file disclosure”). The FCRA further requires that nationwide specialty CRAs have a streamlined process for accepting and processing consumer requests for annual file disclosures that is designed, funded, implemented, maintained, and operated in manner that collects only as much personal information as is necessary to properly identify the consumer. 16 C.F.R. § 610.3, recodified at 12 C.F.R. § 1022.137.

14. Certegy also is now and has been a “furnisher of information” to CRAs, as described in section 623(a)(2)(A) of the FCRA, 15 U.S.C. § 1681s-2(a)(2)(A), because it “regularly and in the ordinary course of business furnishes information to one or more CRAs” about its “transactions or experiences” with consumers. Certegy regularly reports information to Equifax, which is another CRA, as defined in section 603(f) of the FCRA, 15 U.S.C. § 1681a(f).

15. The FCRA imposes several obligations upon furnishers of information to CRAs, including obligations to 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. 16 C.F.R. § 660.3, recodified at 12 C.F.R. § 1022.42.

DEFENDANT'S BUSINESS PRACTICES

16. Certegy provides check authorization recommendations to merchants throughout the United States as to whether to accept consumers' checks. These recommendations take into account the consumers' identification provided at the point of sale; any unpaid debts in the form of previous returned checks; and a variety of risk factors bearing on the likelihood that a check will be returned unpaid by the consumer's financial institution.

17. The check authorization recommendations that Certegy provides are designed to assist merchants in deciding whether to accept consumers' checks and are, therefore, consumer reports as defined in section 603(d) of the FCRA, 15 U.S.C. § 1681a(d):

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.

Certegy's reports are communicated to third parties; bear on, *inter alia*, consumers' credit worthiness, character, general reputation, or personal characteristics; and are used or expected to be used in connection with business transactions that a consumer has initiated.

Accuracy of Consumer Report Information

18. Section 607(b) of the FCRA, 15 U.S.C. § 1681e(b), requires CRAs to follow reasonable procedures to “assure the maximum possible accuracy of the information concerning the individual about whom the report relates.”

19. In numerous instances, Certegy failed to follow reasonable procedures to assure maximum possible accuracy of consumers’ report information. Among other things, Certegy failed to adequately track the handling and resolution of consumer disputes, resulting in its failure to promptly delete inaccurate or unverifiable information. This failure led to the retention and reporting of inaccurate consumer report information regarding consumers who may have been denied the ability to pay by check at the thousands of merchants who use Certegy’s check-authorization services.

Reinvestigations of Disputed Information

20. Section 611 of the FCRA, 15 U.S.C. § 1681i, requires CRAs to, *inter alia*, conduct reasonable reinvestigations to determine whether disputed information is inaccurate within thirty days or, if the period of time is extended, within forty-five days; to provide prompt notice of disputes to furnishers upon receipt of notice of the dispute from consumer; where appropriate, to notify consumers that a dispute is frivolous or irrelevant; to promptly delete inaccurate, incomplete, or unverifiable information; to promptly notify the furnisher that information has been modified or deleted; to maintain reasonable procedures designed to prevent the reappearance of deleted information in consumers’ files; and to promptly provide notice to consumers of the results of its investigations.

21. In many instances, when consumers notify Certegy that they dispute the accuracy or completeness of information in their file, Certegy attempts to shift the burden of conducting a

reinvestigation to consumers rather than fulfilling its legal obligation to reinvestigate disputed information. For example:

- a. If a consumer disputes that he has a returned check from a particular merchant, Certegy requires the consumer to contact the merchant himself to resolve the dispute;
- b. When the decline is the result of an "invalid" ID, Certegy requires that the consumer obtain and send driving records to Certegy to "prevent future declines"; and
- c. When the consumer disputes that the consumer's bank refused to honor a check, rather than accepting a bank statement as proof of the bank's payment, Certegy requires that the consumer obtain a letter from the bank, on bank letterhead, signed by a bank employee before it will resolve the dispute in the consumer's favor.

In many instances, if consumers do not comply with Certegy's requirements, Certegy does not independently pursue the reinvestigation and retains the disputed information in the consumer's file. These practices often result in reinvestigations not being completed within thirty to forty-five days and make it more difficult for consumers to have inaccurate or unverifiable information removed from their files.

22. In many instances, when Certegy reinvestigates disputed items in consumers' files, it:

- a) Fails to complete reinvestigations within thirty days or, if Certegy received information from the consumer during the thirty-day period that is relevant to the reinvestigation, within forty-five days;

- b) Fails to provide, before the expiration of the five-business-day period beginning on the date on which Certegy receives notice of a dispute from any consumer, notification of the dispute to any furnisher of disputed information, at the address and in the manner established with the person, including all relevant information regarding the dispute that Certegy has received from the consumer;
- c) Fails to notify the consumer, within five business days, by mail or other means authorized by the consumer for that purpose, when it has terminated a reinvestigation of information disputed by a consumer, because it reasonably determined that the consumer's dispute was frivolous or irrelevant;
- d) After conducting a reinvestigation of information disputed by a consumer and finding that an item of information is inaccurate, incomplete, or cannot be verified, fails to:
 - i. promptly delete or modify an item of information from the consumer's file, as appropriate; and/or
 - ii. promptly notify the furnisher of that information that the information has been modified or deleted from the consumer's file;
- e) Fails to maintain reasonable procedures designed to prevent the reappearance in a consumer's file, and in consumer reports on the consumer, of information that is deleted pursuant to a reinvestigation. As a result, if a merchant subsequently re-reports to Certegy

information that Certegy previously deleted, Certegy will include this information in its consumer file because it has no system or procedure to verify whether the information was previously determined to be inaccurate or unverifiable; and

- f) Fails to provide written notice to a consumer of the results of a reinvestigation not later than five business days after the completion of the reinvestigation.

Consumer File Disclosures and Streamlined Process

23. Section 612(a)(2) of the FCRA, 15 U.S.C. § 1681j(a)(2), requires CRAs to “provide a consumer report under paragraph (1) not later than 15 days after the date on which the request is received,” and paragraph (1), in turn, requires nationwide specialty CRAs to comply with the regulations prescribed pursuant to section 612(a)(1)(C) of the FCRA, 15 U.S.C. § 1681j(a)(1)(C).

24. The Free Annual File Disclosures Rule, 16 C.F.R. § 610, recodified as Duties of Consumer Reporting Agencies Regarding Disclosures to Consumers, 12 C.F.R. § 1022, subpart N, requires, *inter alia*, that nationwide specialty CRAs “have a streamlined process for accepting and processing consumer requests for annual file disclosures” that is “designed, funded, implemented, maintained, and operated in manner that . . . collects only as much personal information as is necessary to properly identify the consumer under the FCRA.” 16 C.F.R. § 610.3(a)(2), recodified at 12 C.F.R. § 1022.137(a)(2).

25. In many instances, consumers have difficulty obtaining their annual file disclosures from Certegy because Certegy, among other things requires consumers to submit more information than is reasonably necessary to properly identify the consumers before Certegy provides their annual file disclosures. As a result, in numerous instances, Certegy made it more

difficult for consumers to obtain their annual file disclosures, resulting in delays or the nonfulfillment of consumers' requests. In many instances, Certegy did not provide consumers with their annual file disclosures within fifteen days of receiving their requests.

Written Policies (Furnisher)

26. The Duties of Furnishers of Information to Consumer Reporting Agencies Rule, 16 C.F.R. § 660, recodified as Duties of Furnishers of Information, 12 C.F.R. § 1022, subpart E, states that furnishers must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to CRAs, must consider the guidelines in appendix E of that rule, and must review its policies and procedures periodically. 16 C.F.R. § 660.3, recodified at 12 C.F.R. § 1022.42.

27. Certegy has failed to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to CRAs, failed to consider the guidelines in appendix E of that rule, and failed to review its policies and procedures periodically.

28. Certegy's failures could lead to either the reporting of inaccurate information to CRAs or the retention of inaccurate information in CRAs' files, and in some instances to both.

VIOLATIONS OF THE FAIR CREDIT REPORTING ACT

COUNT I

Accuracy of Consumer Report Information

29. As described above in paragraph 19, Certegy failed to use reasonable procedures to assure maximum possible accuracy of consumer report information.

30. By and through the acts and practices described in paragraphs 19 and 29, Certegy has violated section 607(b) of the FCRA, 15 U.S.C. § 1681e(b).

31. Pursuant to section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices alleged in paragraph 30 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

Reinvestigations of Disputed Information

32. As described above in paragraphs 21 and 22, on numerous occasions, Certegy has failed to follow the steps required by section 611, including failing to complete the reinvestigation within thirty days or, if the period of time is extended, within forty-five days; failing to provide prompt notice of disputes to furnishers upon receipt of notice of the dispute from consumer; failing to, where appropriate, provide notice of a determination that a dispute is frivolous or irrelevant; failing to promptly delete inaccurate, incomplete, or unverifiable information; failing to promptly notify the furnisher that information has been modified or deleted; failing to maintain reasonable procedures designed to prevent the reappearance of deleted information in a consumer's file; and failing to promptly provide notice to the consumer of the results of its investigation.

33. By and through the acts and practices described in paragraphs 21, 22, and 32, Certegy has violated sections 611(a)(1), (2), (3), (5), and (6) of the FCRA, 15 U.S.C. §§ 1681i(a)(1), (2), (3), (5), and (6).

34. 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

Consumer File Disclosures and Streamlined Process

35. As described above in paragraph 25, Certegy has not established the streamlined process required by 16 C.F.R. § 610.3, recodified at 12 C.F.R. § 1022.137, for consumers to request free annual file disclosures. Among other things, Certegy does not have a process that is designed, implemented, or maintained to comply with the rule; it routinely collects more personal information than is reasonably necessary to identify the consumer requesting his or her report; and it often fails to provide consumer reports within fifteen days of receiving consumers' requests for their free reports.

36. By and through the acts and practices described in paragraphs 25 and 35, Certegy has violated section 612(a)(2) of the FCRA, 15 U.S.C. § 1681j(a)(2), and 16 C.F.R. § 610.3, recodified at 12 C.F.R. § 1022.137.

37. Pursuant to section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices alleged in paragraph 36 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

Written Policies (Furnishers)

38. As described in paragraph 27, Certegy has failed to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnish to CRAs, failed to consider the guidelines in appendix E of that rule, and failed to review its policies and procedures periodically as required by 16 C.F.R. § 660.3, recodified at 12 C.F.R. § 1022.42.

39. By and through the acts and practices described in paragraphs 27 and 38, Certegy has violated 16 C.F.R. § 660.3, recodified at 12 C.F.R. § 1022.42.

40. Pursuant to section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices alleged in paragraph 39 also constitute unfair or deceptive acts or practices in violation of section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

INJUNCTION FOR VIOLATIONS OF THE FTC ACT AND FCRA

41. Under section 621(a) of the FCRA, 15 U.S.C. § 1681s(a), and section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction to ensure that Certegy will not continue to violate the FTC Act, and the FCRA.

EQUITABLE RELIEF FOR VIOLATIONS OF THE FTC ACT AND FCRA

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

CIVIL PENALTIES FOR VIOLATIONS OF THE FCRA

43. 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, which constitutes a pattern or practice of violations. Certegy's violations of sections 607, 611, and 612, all as alleged in this Complaint, were knowing and constituted a pattern or practice of violations. As specified by the Federal Civil Penalty Inflation Adjustment Act of 1990, 28 U.S.C. § 2861, as amended, the Court is authorized to award a penalty of not more than \$2,500 per violation for violations occurring before February 10, 2009, and \$3,500 per violation for violations occurring on or after that date.

44. Each instance in which Certegy has failed to comply with the FCRA in one or more of the ways described above constitutes a separate violation of the FCRA for the purpose of

assessing monetary civil penalties under section 621 of the FCRA. Plaintiff seeks monetary civil penalties for every separate violation of the FCRA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court, pursuant to 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 1681s, and 1692l, and pursuant to the Court's own equitable powers:

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


Dated August 15, 2013

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