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21
22 *Attorney for Plaintiff*

1
2 **UNITED STATES DISTRICT COURT**
3 **NORTHERN DISTRICT OF CALIFORNIA**

4 **OAKLAND DIVISION**

5 UNITED STATES OF AMERICA,

Case No. 4:20-cv-110

6
7 Plaintiff,

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

8 v.

9 MORTGAGE SOLUTIONS FCS, INC., a
10 corporation, also d/b/a Mount Diablo
Lending,

11 and

12
13 RAMON WALKER, individually and as
an officer of Mortgage Solutions FCS, Inc.,

14 Defendants.
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16
17 Plaintiff, the United States of America, acting upon notification and authorization to the
18 Attorney General by the Federal Trade Commission (“FTC”), pursuant to Section 16(a)(1) of
19 the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 56(a)(1), for its Complaint
20 alleges:

21 1. Plaintiff brings this action under Section 13(b) of the Federal Trade Commission
22 Act (“FTC Act”), 15 U.S.C. §53(b), and Section 621(a) of the Fair Credit Reporting Act
23 (“FCRA”), 15 U.S.C. § 1681s(a), to obtain civil penalties, permanent injunctive relief, and other
24 equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15
25 U.S.C. § 45(a); in violation of the FCRA, 15 U.S.C. §§ 1681–1681x; in violation of the rule
26 regarding the Privacy of Consumer Financial Information (“Regulation P”), 12 C.F.R. Part
27 1016, issued pursuant to Title V, Subtitle A, of the Gramm-Leach-Bliley Act (“GLB Act”), 15
28 U.S.C. §§ 6801-6804; and in violation of the rule regarding the Standards for Safeguarding

1 Customer Information (“Safeguards Rule”), 16 C.F.R. Part 314, issued pursuant to Title V,
2 Subtitle A, of the Gramm-Leach-Bliley Act (“GLB Act”), 15 U.S.C. §§ 6801(b), 6805(b)(2).

3 **JURISDICTION AND VENUE**

4 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a),
5 1345, and 1355.

6 3. Venue is proper in this District under 28 U.S.C. § 1391(b)(1), (b)(2), (c)(1),
7 (c)(2), and 1395(a), and 15 U.S.C. § 53(b).

8 **INTRADISTRICT ASSIGNMENT**

9 4. The conduct at issue in this action took place in substantial part in Contra Costa
10 County.

11 **PLAINTIFF**

12 5. This action is brought by the United States of America on behalf of the FTC. The
13 FTC is an independent agency of the United States Government created by statute. 15 U.S.C.
14 §§ 41-58. The FTC is charged, *inter alia*, with enforcing Section 5(a) of the FTC Act, 15 U.S.C.
15 § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce, and the
16 FCRA, 15 U.S.C. §§ 1681-1681x, which protects the privacy of consumer financial information
17 by limiting the provision and use of consumer credit reports. The FTC also enforces the
18 Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809, and implementing regulations, including
19 the Safeguards Rule, 16 C.F.R. Part 314, and Regulation P, 12 C.F.R. Part 1016.

20 **DEFENDANTS**

21 6. Defendant Mortgage Solutions FCS, Inc. (“Mortgage Solutions”), also doing
22 business as Mount Diablo Lending, is a California corporation with its principal place of
23 business at 2700 Ygnacio Valley Road, Suite 255, Walnut Creek, California 94598. Mortgage
24 Solutions transacts or has transacted business in this District.

25 7. Defendant Ramon Walker is the owner and sole officer of Mortgage Solutions. At
26 all times material to this Complaint, acting alone or in concert with others, he has formulated,
27 directed, controlled, had the authority to control, or participated in the acts and practices of
28

1 Mortgage Solutions set forth in this Complaint. Defendant Walker resides in this District and, in
2 connection with the matters alleged herein, transacts or has transacted business in this District.

3 **COMMERCE**

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

7 **DEFENDANTS’ BUSINESS ACTIVITIES**

8 9. Mortgage Solutions is a mortgage broker, serving as an intermediary between
9 residential mortgage lenders and prospective borrowers. Consumers seeking to obtain mortgage
10 financing submit loan applications through Mortgage Solutions, which then shops the
11 applications around to various lenders. Lenders who choose to extend credit to a Mortgage
12 Solutions customer compensate Mortgage Solutions at rates ranging from 1% to 1.5% of the
13 amount of the offered loan.

14 10. Mortgage Solutions collects and maintains sensitive personal financial
15 information from its customers and prospective customers, including names, Social Security
16 numbers, dates of birth, income information, and credit history. Mortgage Solutions obtains
17 personal financial information directly from its customers and also by obtaining and reviewing
18 customers’ consumer credit reports.

19 11. Between approximately June 2015 and August 2016, Defendant Walker, on
20 behalf of Defendant Mortgage Solutions, published or caused to be published responses (the
21 “Yelp responses”) to negative consumer reviews about his services that appeared on the
22 consumer review website Yelp.com.

23 12. In numerous instances, the Yelp responses, which are publicly viewable on the
24 Yelp.com page for Mount Diablo Lending, contain personal information about the customers to
25 whose reviews Walker responded, including but not limited to information about the
26 consumers’ sources of income, debt-to-income ratios, credit history, taxes, family relationships,
27 and health. For example, the Yelp responses contain the following statements:
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- 1 a. “The truth of the matter is you didn’t have one late 2 years ago. Your credit report
2 shows 4 late payments from the Capital One account, 1 late from Comenity Bank
3 which is Pier 1, another late from Credit First Bank, 3 late payments from an
4 account named SanMateo. Not to mention the mortgage lates. All of these late
5 payments are having an enormous negative impact on your credit score. Ty could
6 not have known all of these negative items were on your credit report from the
7 initial conversation.”
- 8 b. “The high debt to income ratio was caused by this borrower cosigning on multiple
9 mortgages for his children. The borrower was also self employed and took high
10 deductions from his business.”
- 11 c. “His mother-in-law was on title but not on the new loan. The new loan was only
12 going to be in his and his wife’s name. This was a cash out loan, he was
13 supposedly using the funds to pay off his kids Med School bills. The notary that
14 sat down to sign was concerned the mother-in-law who was signing her rights off
15 of the property had dementia. This was never mentioned to us throughout the
16 whole process....The funny thing is he admitted to me in one of our final
17 conversations that his mother-in-law actually did have a ‘slight’ case of dementia.
18 OK SO WHAT THE NOTARY SAID IS TRUE!!!! The title company did try to
19 work with him by saying if he could get a letter from a doctor stating his mother-
20 in-law was aware of what she was signing we could proceed. He didn’t want to go
21 that route, evidently she doesn’t have the capacity to understand she is signing
22 away her rights to the property.... I know you feel entitled to the funds from your
23 mothers house as you clearly stated to me but unfortunately that is not the way the
24 law works and there is nothing my company can do about it.”

25 13. In numerous instances, in the Yelp responses, Defendants disclosed the reviewing
26 consumers’ first and last names. Even where Defendants did not disclose reviewing consumers’
27 first and last names, however, the consumers are readily identifiable by users of the site,
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1 including reviewers' friends, family, and acquaintances. Several reviewing consumers' Yelp
2 profiles include photographs and links to the consumers' other Yelp reviews.

3 14. As described below, Defendants' posting of negative financial information about
4 consumers on Yelp, and their failures to provide adequate privacy notices or data security,
5 violated their responsibilities under Regulation P, 12 C.F.R. § 1016.4(a), the Safeguards Rule,
6 16 C.F.R. Part 314, the Fair Credit Reporting Act, 15 U.S.C. § 1681b(f), and Section 5 of the
7 FTC Act, 15 U.S.C. § 45.

8 **REGULATION P**

9 15. The Privacy Rule, which implemented Sections 501-509 of the GLB Act, 15
10 U.S.C. §§ 6801-6809, was originally promulgated by the FTC on May 24, 2000, and became
11 effective on July 1, 2001. In 2010, the Dodd-Frank Act consolidated most Privacy Rule-related
12 rulemaking authority under the GLB Act in the Consumer Financial Protection Bureau
13 ("CFPB"). The CFPB then restated the implementing regulations in Regulation P, 12 CFR part
14 1016, in late 2011 ("Regulation P"). The GLB Act authorizes both the CFPB and the FTC to
15 enforce Regulation P. 15 U.S.C. § 6805.

16 16. Regulation P requires a financial institution to provide, no later than when a
17 customer relationship arises and annually for the duration of that relationship, a clear and
18 conspicuous notice to customers that accurately reflects the financial institution's privacy
19 policies and practices, including its security policies and practices. 12 C.F.R. §§ 1016.4-1016.6.

20 17. The privacy notice must include specified elements, including the categories of
21 nonpublic personal information the financial institution collects and discloses, the categories of
22 third parties to whom the financial institution discloses the information, and the security and
23 confidentiality policies of the financial institution. 12 C.F.R. § 1016.6

24 18. Mortgage Solutions is a "financial institution," as defined in Section 509(3)(A) of
25 the GLB Act, 15 U.S.C. § 6809(3)(A), and is subject to FTC enforcement of Regulation P
26 pursuant to Section 505 of the GLB Act, 15 U.S.C. § 6805(a)(7), and 12 C.F.R. § 1016.3(l)(3).
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1 19. From October 2012 until April 2018, Mortgage Solutions disseminated or caused
2 to be disseminated to its customers and prospective customers a privacy notice (the “2012
3 Notice”), attached hereto as Exhibit A.

4 20. The 2012 Notice omits or misstates significant information that is required to be
5 disclosed under Regulation P. Among other things, the 2012 Notice indicates that the only
6 personal information collected by Mortgage Solutions is customers’ Social Security numbers
7 and that Mortgage Solutions does not share this personal information with any third party for
8 any reason. Defendants’ posting of negative customer information on Yelp caused the 2012
9 Notice to be inaccurate, and thus, in violation of Regulation P.

10 21. Generally, Regulation P also prohibits a financial institution from disclosing to
11 any nonaffiliated third party any nonpublic personal information about a customer unless the
12 financial institution has provided the customer with an opt out notice, the financial institution
13 has given the consumer a reasonable opportunity to opt out of the disclosure, and the consumer
14 has not opted out. 12 C.F.R. § 1016.4 and 1016.10(a)(1).

15 22. Customers were not provided with any opportunity to opt out of disclosure of
16 their personal financial information in response to online consumer reviews, in violation of
17 Regulation P.

18 **USE OF CONSUMER REPORT INFORMATION**

19 23. The FCRA was enacted in 1970, became effective on April 25, 1971, and has
20 been in force since that date. The Fair and Accurate Credit Transactions Act (“the FACT Act”)
21 amended the FCRA in December 2003, and the Dodd-Frank Act amended the FCRA in July
22 2010.

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

1 25. Defendant Mortgage Solutions regularly obtains and uses “consumer reports” as
2 they are defined by section 603(d) of the FCRA, 15 U.S.C. § 1681a(d).

3 26. Section 604(a) of the FCRA enumerates the permissible purposes for which a
4 consumer report may be used. 15 U.S.C. § 1681b(a). Section 604(f) of the FCRA, as amended
5 by the FACT Act, makes it unlawful to use a consumer report for any purpose other than those
6 enumerated. 15 U.S.C. § 1681b(f). Nothing in the language of Section 604 contemplates or
7 permits the public dissemination of information obtained from a consumer report. *See* 15 U.S.C.
8 § 1681b.

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

12 28. Several of the Yelp responses contained information that was derived from a
13 consumer report within the meaning of section 603(d) of the FCRA. 15 U.S.C. § 1681a(d). For
14 instance, Defendant Walker made the following statements in response to a customer’s review:
15 “A lot of these charge offs were still on the clients credit profile which were discovered during
16 the underwriting process. If I would have known this from the outset we wouldn’t had
17 proceeded with her loan.”

18 29. None of the Yelp responses containing credit report information was
19 communicated in connection with any pending credit decision related to the reviewing
20 consumer, or for any other permissible purpose under the statute. Instead, Defendants revealed
21 customers’ sensitive, personal information on a publicly-viewable website.

INFORMATION-SECURITY PRACTICES

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23 30. The Safeguards Rule, which implements Section 501(b) of the GLB Act, 15
24 U.S.C. § 6801(b), was promulgated by the FTC on May 23, 2002, and became effective on May
25 23, 2003. The Rule requires financial institutions to protect the security, confidentiality, and
26 integrity of customer information by developing and implementing a comprehensive written
27 “information security program” containing reasonable administrative, technical, and physical
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1 safeguards, including safeguards used to access, collect, distribute, process, protect, store, use
2 transmit, dispose of, or otherwise handle customer information. 16 C.F.R. § 314.3.

3 31. Among other things, the Safeguards Rule requires that financial institutions, in
4 developing, implementing, and maintaining their information security programs, “regularly test
5 or otherwise monitor the effectiveness of the safeguards’ key controls, systems, and
6 procedures.” 16 C.F.R. § 314.4(c).

7 32. Mortgage Solutions is a “financial institution,” as defined in Section 509(3)(A) of
8 the GLB Act, 15 U.S.C. § 6809(3)(A), and is subject to FTC enforcement of the Safeguards
9 Rule pursuant to Section 505 of the GLB Act, 15 U.S.C. § 6805(a)(7), 16 C.F.R. § 314.1, 16
10 C.F.R. § 314.2, and 12 C.F.R. § 1016.3(l)(3).

11 33. Defendant Mortgage Solutions did not implement an information security
12 program until approximately September 2017.

13 34. Beginning in approximately September 2017, Defendant Mortgage Solutions
14 implemented an “Information Security Plan.” However, the Information Security Plan makes no
15 provision for regularly testing or assessing its own effectiveness, and in fact Defendants have
16 failed to engage in any regular testing or assessment of the effectiveness of the Information
17 Security Plan’s key controls, systems, and procedures.

18 **UNFAIR AND DECEPTIVE PRACTICES**

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

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

23 37. Acts or practices are unfair under Section 5 of the FTC Act if they cause or are
24 likely to cause substantial injury to consumers that consumers cannot reasonably avoid
25 themselves and that is not outweighed by countervailing benefits to consumers or competition.
26 15 U.S.C. § 45(n).

27 38. The Yelp responses cause or are likely to cause substantial consumer injury.
28 Because of Defendants’ disclosures, from the date of their posting until now, potentially

1 thousands of Yelp users have been able to discover the reviewing consumers' sensitive financial
2 information as well as details of their personal and family lives. Defendants' actions deprived
3 consumers of the ability to control whether and to whom they disclosed sensitive information,
4 ranging from the choice to seek mortgage financing to an elderly family member's illness.
5 Finally, the harm to consumers is compounded by the defendants' breach of a confidential
6 relationship, in which consumers should have enjoyed a heightened expectation of privacy.

7 39. Consumers cannot reasonably avoid the injury caused by the Yelp responses
8 because they had no way of knowing Defendants would publicly disclose their private financial
9 information. Consumers cannot access Defendants' services without providing the kinds of
10 sensitive information that Defendants disclosed. Having once provided such information,
11 consumers have no reasonable ability to control Defendants' disclosure of it. The injury caused
12 by the Yelp responses is not outweighed by countervailing benefits to consumers or
13 competition. Rather, Defendants' conduct has the potential to erode consumers' trust in
14 financial institutions and chill consumer speech about the quality of financial services they
15 receive.

16 40. Based on the facts and violations of law alleged in this Complaint, the FTC has
17 reason to believe that Defendants are violating or are about to violate laws enforced by the
18 Commission.

19 VIOLATIONS OF REGULATION P

20 **COUNT I**

21 **Failure to Provide Clear, Conspicuous, and Accurate Privacy Notices**

22 41. As described in Paragraphs 18 and 19, from approximately October 2012 until
23 approximately April 2018, Defendants failed to ensure that customers of Mortgage Solutions
24 were provided with clear, conspicuous, and accurate privacy notices.

25 42. Defendants' acts and practices set forth in Paragraph 40 constitute a violation of
26 Regulation P, 12 C.F.R. §§ 1016.4-1016.6.
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1 **COUNT II**

2 **Impermissible Disclosure of Nonpublic Personal Information**

3 43. As described in Paragraphs 10-12, between approximately June 2015 and August
4 2016, Defendants publicly disclosed nonpublic personal information about several Mortgage
5 Solutions customers by publishing this information in the Yelp responses.

6 44. As described in Paragraphs 18-21, during the time period when the Yelp
7 responses were published, Defendants provided Mortgage Solutions customers with neither
8 notice that their nonpublic personal information could be publicly disclosed nor an opportunity
9 to opt out of such disclosures.

10 45. Defendants' acts and practices set forth in Paragraphs 42 and 43 constitute
11 violations of Regulation P, 12 C.F.R. § 1016.10(a)(1).

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

13 **COUNT III**

14 **Impermissible Use of Consumer Reports**

15 46. In numerous instances, as described in Paragraphs 27 and 28, Defendants have
16 used consumer reports for an impermissible purpose.

17 47. Defendants' acts or practices, as set forth in Paragraph 45, violate section 604(f)
18 of the FCRA, 15 U.S.C. § 1681b(f).

19 48. Pursuant to section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and
20 practices alleged in Paragraph 46 also constitute unfair or deceptive acts or practices in violation
21 of section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

22 **VIOLATIONS OF THE SAFEGUARDS RULE**

23 **COUNT IV**

24 **Failure to Develop and Implement an Information Security Program**

25 49. As described in Paragraph 32, until approximately September 2017, Mortgage
26 Solutions failed to implement an information security program.

27 50. Defendants' acts and practices set forth in Paragraph 48 constitute a violation of
28 the Safeguards Rule, 16 C.F.R. § 314.3(a).

1 **COUNT V**

2 **Inadequacy of Information Security Program**

3 51. As described in Paragraph 33, in developing, implementing, and maintaining the
4 Mortgage Solutions “Information Security Plan,” Defendants have failed to regularly test or
5 otherwise monitor the effectiveness of the Information Security Plan’s key controls, systems,
6 and procedures.

7 52. Defendants’ acts and practices set forth in Paragraph 50 constitute a violation of
8 the Safeguards Rule, 16 C.F.R. § 314.4(c).

9 **VIOLATIONS OF THE FTC ACT**

10 **COUNT VI**

11 **Section 5 Deception**

12 53. As described in Paragraphs 18 and 19, in numerous instances in connection with
13 the offering or provision of mortgage brokering services, Defendants have represented, directly
14 or indirectly, expressly or by implication, that Mortgage Solutions would not publicly disclose
15 personal financial information collected from its customers.

16 54. In truth and in fact, as described in Paragraphs 10-12, in numerous instances in
17 which Defendants have made the representation set forth in Paragraph 52 of this Complaint,
18 Defendants have publicly disclosed customers’ personal financial information in response to
19 customers’ critical online reviews of Defendants’ services.

20 55. Therefore, Defendants’ representation as set forth in Paragraph 52 of this
21 Complaint is false or misleading and constitutes a deceptive act or practice in violation of
22 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

23 **COUNT VII**

24 **Section 5 Unfairness**

25 56. In numerous instances, as described in Paragraphs 10-12, Defendants have
26 publicly disclosed consumers’ sensitive financial information in responses to consumers’
27 critical online reviews of Defendants’ services.
28

1 57. As described in Paragraphs 37 and 38, Defendants' actions cause or are likely to
2 cause substantial injury to consumers that consumers cannot reasonably avoid themselves and
3 that is not outweighed by countervailing benefits to consumers or competition.

4 58. Therefore, Defendants' acts or practices as set forth in Paragraph 55 above
5 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a)
6 and 45(n).

7 **CONSUMER INJURY**

8 59. Consumers are suffering, have suffered, and will continue to suffer substantial
9 injury as a result of Defendants' violations of the FTC Act, the FCRA, and the GLB Act and
10 implementing regulations. Absent injunctive relief by this Court, Defendants are likely to
11 continue to injure consumers and harm the public interest.

12 **THIS COURT'S POWER TO GRANT RELIEF**

13 60. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
14 injunctive and such other relief as the Court may deem appropriate to halt and redress violations
15 of any provision of law enforced by the FTC. The Court, in the exercise of its equitable
16 jurisdiction, may award ancillary relief, including rescission or reformation of contracts,
17 restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and
18 remedy any violation of any provision of law enforced by the FTC.

19 61. Section 621(a)(2)(A) of the FCRA, 15 U.S.C. § 1681s(a)(2)(A), as modified by
20 Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, the
21 Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114-
22 74, sec. 701, 129 Stat. 599 (2015), and Section 1.98(m) of the FTC's Rules of Practice, 16
23 C.F.R. § 1.98(m), authorizes the Court to award civil penalties of not more than \$3,993 for each
24 knowing violation of the FCRA which constitutes a pattern or practice of violations.
25 Defendant's violations of the FCRA, as alleged in this Complaint, have been knowing and have
26 constituted a pattern or practice of violations.

27 62. Each instance in which Defendant has failed to comply with the FCRA constitutes
28 a separate violation of the FCRA for the purpose of assessing civil penalties under Section 621

1 of the FCRA, 15 U.S.C. § 1681s. Plaintiff seeks civil penalties for every separate violation of
2 the FCRA.

3 63. Under Section 621(a) of the FCRA, 15 U.S.C. § 1681s(a), and Section 13(b) of
4 the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction
5 prohibiting Defendant from violating the FTC Act, the FCRA, and the GLB Act and
6 implementing regulations.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. §§ 53(b),
9 section 621(a) of the FCRA, 15 U.S.C. § 1681s(a), and the Court's own equitable powers,
10 requests that the Court:

- 11 A. Enter a permanent injunction to prevent future violations of the FTC Act, the
12 FCRA, Regulation P, and the Safeguards Rule by Defendants;
- 13 B. Award Plaintiff civil penalties from Defendants for each violation of the FCRA as
14 alleged in this Complaint.
- 15 C. Order Defendant to pay the costs of this action; and
- 16 D. Award Plaintiff such additional relief as the Court may deem just and proper.

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19 Dated this 6th day of January, 2020.
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Respectfully submitted,

**FOR THE FEDERAL TRADE
COMMISSION:**

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**FOR THE UNITED STATES OF
AMERICA:**

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