

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

NCB MANAGEMENT SERVICES, INC. )  
One Allied Drive )  
Trevose, PA 19053 )

Plaintiff )

v. )

Civil Case No. 1:14-cv-04853

HSBC CONSUMER LENDING (USA), )  
INC. )  
26525 North Riverwoods Boulevard )  
Mettawa, IL, 60045, and )

BENEFICIAL FINANCIAL I, INC. )  
26525 North Riverwoods Boulevard )  
Mettawa, IL, 60045 )

Defendants. )  
\_\_\_\_\_ )

**COMPLAINT**

NCB Management Services, Inc. (“NCB”) files this Complaint against HSBC Consumer Lending (USA), Inc. and Beneficial Financial I, Inc. and alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for breach of contract and fraud perpetrated by HSBC Consumer Lending (USA) Inc. and its affiliate Beneficial Financial I, Inc. (collectively referred to as “HSBC”) against NCB Management Services, Inc. (NCB). It arises from HSBC’s sale of delinquent consumer loan accounts to NCB and HSBC’s knowing failure to provide NCB with critical consumer account data. Between December 2011 and February 2013, NCB purchased from HSBC consumer loan accounts through five separate Agreements with the intent to collect the debt outstanding in the purchased accounts.

2. Each of the five Agreements contains representations, warranties and covenants that require, among other things, that HSBC provide certain “materially accurate” account data, including date of first delinquency (DOFD) data. These Agreement provisions exist because NCB has no independent way of verifying the integrity of the data accompanying the consumer loan files it purchases from a debt seller, such as HSBC. But in contravention of each Agreement, HSBC knowingly provided inaccurate DOFD data for the consumer accounts that NCB purchased.

3. Date of first delinquency data describes information that is defined by a provision in the Fair Credit Reporting Act (FCRA), 15 U.S.C. §1681 *et seq.* that defines the start of the seven-year period when a credit reporting agency may report the existence of a delinquent consumer account. The FCRA also permits collectors, such as NCB, to report a consumer’s delinquent account status, provided this is done within the seven-year period mandated by that statute. Accurate DOFD data is important for NCB’s business model and for the efficient and proper collection of the debt.

4. As early as December 2011, when NCB executed the first purchase Agreement, HSBC knowingly supplied inaccurate DOFD data. HSBC, however, did not inform NCB about the inaccurate DOFD data until November 2013, well after NCB had executed each of the five Agreements. Even more recently, admitting the falsity of its representations, HSBC has stated that it can never provide NCB with accurate DOFD data for any of the delinquent consumer loan accounts that NCB purchased.

5. If NCB had known at the time it executed each purchase Agreement that HSBC was not able to provide accurate DOFD data – or any DOFD data, for that matter – NCB would have paid substantially less for the consumer accounts or possibly not have purchased any of the

consumer accounts. Furthermore, HSBC affirmatively concealed its obvious breach of each purchase Agreement by providing NCB with inaccurate DOFD data instead of acknowledging its inability to provide NCB with accurate DOFD data. Thus, NCB also has suffered damages stemming from HSBC's deliberate concealment of its inability to provide accurate DOFD data.

6. As a direct and proximate result of HSBC's breach of contract and fraudulent conduct, NCB has suffered no less than \$14 million in damages.

### **JURISDICTION AND VENUE**

7. This Court has diversity subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and is completely between citizens of different States.

8. Personal jurisdiction exists over the Defendants pursuant to the forum selection clause in the Agreements between the parties whereby each of the parties consented to the exclusive jurisdiction of any Illinois court. Defendants also have their principal offices in Illinois and transact a significant amount of business in this state.

9. Venue is proper in this judicial district pursuant to the forum selection clause in the Agreements between the parties whereby any dispute arising out of the Agreements at issue in this complaint is to be brought in Illinois.

### **PARTIES**

10. NCB Management Services, Inc. is a Pennsylvania corporation that provides a full range of accounts receivable management services. The majority of NCB's business is focused on the purchase and collection on delinquent consumer loan accounts. NCB purchases a bundle of delinquent consumer accounts for a percentage of the outstanding balance on the accounts and then collects on the debt outstanding in the purchased accounts.

11. HSBC Consumer Lending (USA) Inc. is a Delaware Corporation and a subsidiary of HSBC Finance Corp, one of the world's largest banking and financial services companies. HSBC has originated and serviced consumer loans in the United States through its subsidiaries. HSBC Consumer Lending's principal offices are located in Mettawa, Illinois.

12. Beneficial Financial I, Inc. is a California corporation with its principal offices located in Mettawa, Illinois and is an affiliate of HSBC Consumer Lending (USA) Inc. Beneficial Financial I has originated and serviced consumer loans in the United States through its subsidiaries.

## **BACKGROUND**

### **I. The Date of First Delinquency**

13. Date of First Delinquency is an industry term derived from the language of the Fair Credit Reporting Act (FCRA). The FCRA regulates the manner in which consumer credit is reported and is designed to ensure that consumer credit reporting relies on data that is accurate and complete. To this end, the FCRA requires that a credit reporting agency may not report on "[a]ccounts placed for collection . . . which antedate the report by more than seven years," and that this seven-year period "shall begin, with respect to any delinquent account that is placed for collection . . . upon the expiration of the 180-day period *beginning on the date of the commencement of the delinquency which immediately preceded the collection activity.*" 15 U.S.C. §§ 1681c(a)(4), (c)(1) (emphasis added).

14. As part of its debt collection operations, NCB is permitted by law to report delinquent consumer accounts to credit reporting agencies for the seven-year collections and reporting period, defined in the FCRA. The DOFD data determines the date from which this seven-year period runs and defines the time when NCB is able to report delinquent consumer

accounts.

15. The national credit reporting agencies maintain consumer credit bureau reports and generate credit scores. When a delinquent account holder pays off a delinquent account owned by NCB, the company notifies the credit reporting agencies about the updated status of the account. Thus, in order to report delinquent consumer accounts to credit reporting agencies, NCB needs the DOFD data associated with each consumer account.

## **II. NCB's Purchase of Unsecured Consumer Debt From HSBC**

16. HSBC has originated millions of loans to consumers through its affiliates and subsidiaries. Inevitably, a certain percentage of consumers fail to timely repay these loans. After a certain period of delinquency, HSBC and its affiliates typically remove the unpaid balances of these delinquent loans from their books and then sell bundles of these removed or "charged-off" loans to third parties at a fraction of the total amount outstanding in the bundle of delinquent accounts.

17. Between December 2011 and February 2013, HSBC sold more than 23,000 delinquent consumer loan accounts to NCB for a total purchase price of more than \$27 million. These sales were set forth in the following five Agreements (Exhibit Nos. 1-5):

- a. December 9, 2011 Account Purchase and Sale Agreement.
- b. March 26, 2012 Account Purchase and Sale Agreement.
- c. April 30, 2012 Account Purchase and Sale Agreement.
- d. June 29, 2012 Account Purchase and Sale Agreement.
- e. February 12, 2013 Account Purchase and Sale Agreement.

18. These five Agreements contain substantively the same language with nearly identical provisions and terms. For example, under the terms of each Agreement, HSBC is

obligated to provide NCB with an electronic file for each consumer loan account that contains “at a minimum” certain “materially accurate” information, including DOFD data.

19. Each of the Agreements also contains materially similar representations, warranties, and covenants from HSBC relating to the account information provided in the electronic files on each account purchased. These material representations, warranties, and covenants include a statement that the account information transferred to NCB by means of the electronic file is materially accurate and includes, at a minimum, date of first delinquency data.

20. The March, April, June 2012 and February 2013 Agreements each contain a Covenant of Seller provision that explicitly concerns credit reporting and the importance of DOFD data:

Seller agrees to provide Purchaser in the Sale file the Date of First Delinquency for each Account and other basic information that is contained in the Sale File so as to permit Purchaser to begin reporting each Account to the credit reporting agencies.

21. The materiality of HSBC’s representations, warranties, covenants and assurances is further emphasized in ¶12 of the Agreements, titled “Remedy for Breach of Seller Representation, Warranty, or Covenant: Repurchase or Substitution of Account” which provides a non-exclusive remedy that:

In the event that Purchaser identifies, provides written notice and returns to Seller within one hundred and eighty (180) days of the Closing Date . . . any Account where Seller is in breach of Seller’s Representations and Warranties in Paragraph 4 or Seller’s Covenants in Paragraph 5, then Seller shall repurchase the Account for cash in the amount of the purchase price for that Account within forty-five (45) days.

22. The necessity of accurate DOFD data is explicitly set forth in each Agreement.

### **III. HSBC Deliberately Provided Inaccurate DOFD Data**

23. HSBC was able to extract a significantly higher price for the more than 23,000 accounts because of its representations, warranties and covenants in the Agreements which promise that HSBC's DOFD data is accurate. If HSBC had informed NCB at the time that each of the Agreements was negotiated – or even shortly thereafter – that the correct DOFD data was unavailable, NCB would have made different purchasing decisions.

24. In December 2011 when HSBC executed the first Agreement, its representatives likely knew then - or shortly thereafter - that HSBC had no DOFD data, let alone accurate DOFD data, for the consumer files it sold to NCB at that time.

25. In December 29, 2011 correspondence following execution of the December 2011 Agreement, NCB explained to HSBC that the DOFD “information is necessary before we can start reporting information to consumers’ CBR [Credit Bureau Report].” In response, on December 30, 2011, HSBC provided some account information and assured NCB that “the date of first delinquency will be [provided] next week.”

26. HSBC continued to promise NCB that it would provide accurate DOFD data for the consumer loan accounts purchased in December 2011.

27. NCB, thus, reasonably relied on HSBC's promises and also on the parties' long-time business relationship, which spans twenty years. NCB executed two more purchase Agreements in March and April of 2012. HSBC executed those two Agreements with the full knowledge that it could never provide accurate DOFD data to NCB. Nevertheless, in each of these Agreements, HSBC promised to provide accurate DOFD data.

28. In early May 2012, HSBC had still not provided any DOFD data for the consumer loan accounts purchased in December 2011, and March and April 2012. NCB again wrote to

HSBC stating “we need the Date of First Delinquency on all 3 of these sales files [December 2011, March 2012, and April 2012]. We are unable to report the accounts without this information.” On May 11, 2012, HSBC replied that it expected “to have the delinquency information early next week.”

29. On May 17, 2012 after stalling for a number of months, HSBC finally responded by providing purportedly accurate DOFD data for all of the consumer loan accounts that NCB had purchased to date.

30. HSBC, however, deliberately provided inaccurate DOFD data for these accounts. HSBC did so with the knowledge that NCB had relied on HSBC’s representations that it was providing accurate DOFD data. HSBC also knew that NCB’s decision to purchase the consumer loan accounts was based on HSBC’s promise that it would provide accurate consumer loan account information, including accurate DOFD data.

31. In June 2012, NCB again relied on the parties’ long-standing business relationship and also on HSBC’s representation that it had provided accurate DOFD data for the consumer loan accounts that NCB had previously purchased. NCB executed another purchase Agreement on June 29, 2012.

32. Again, NCB had to make a follow-up request for DOFD data. On July 23, 2012, a few weeks after the June 2012 Agreement was executed, HSBC supplied purportedly accurate DOFD data for those consumer accounts.

33. Here, too, it is clear that HSBC deliberately provided inaccurate DOFD data for the consumer loan accounts purchased in June 2012.

34. At the beginning of 2013, NCB considered purchasing additional consumer accounts, as it relied on the parties' long-standing business relationship and on representations that HSBC had previously made about the accuracy of the DOFD data already supplied.

35. Shortly thereafter, HSBC provided a draft of the February 2013 purchase Agreement that included an "alternative" DOFD data definition.

36. HSBC deliberately added an Agreement provision that states that DOFD means "the date that is one hundred eighty (180) days prior to the date of Charge off." This "alternative" DOFD definition is at odds with the industry's customary definition, which is based on the FCRA. *See infra* at ¶13. None of the parties' prior purchase Agreements include any DOFD definition, because that term is statutorily defined and customarily used.

37. Except for the purported alternative DOFD definition, the February 2013 Agreement is nearly identical to the language in each of the three purchase Agreements executed in 2012. In addition, HSBC had previously represented to NCB that it had furnished accurate DOFD data as that term is defined under the FCRA. Thus, NCB did not take particular notice of HSBC's "alternative" DOFD definition at the time it executed the February 2013 purchase Agreement. And this was HSBC's clear intention.

38. HSBC deliberately inserted this purported alternative DOFD definition, because it knew that the DOFD data it had previously provided to NCB was inaccurate DOFD data, as that term is statutorily defined and customarily used. HSBC hoped to argue that the DOFD data it was providing pursuant to the February 2013 Agreement was accurate data, by virtue of relying on a made-up DOFD definition.

39. In November 2013, HSBC finally informed NCB that the DOFD data it had repeatedly supplied to NCB over the preceding two years was inaccurate.

40. Even more recently, HSBC has informed NCB that it does not have access to any accurate DOFD data for the purchased consumer loan accounts, and that, accordingly, HSBC cannot supply NCB with accurate DOFD data for the consumer loan accounts.

41. NCB has previously informed HSBC about the damages that stem from HSBC's deliberate breach of each Agreement. NCB has requested payment to this end. In response, HSBC has refused NCB's demand, notwithstanding HSBC's clear knowledge that it never provided NCB with accurate DOFD data, as required by the five Agreements and with the knowledge that it deliberately misled NCB about the availability of accurate DOFD data.

42. All conditions precedent to the maintenance of this action have been performed, satisfied, or otherwise discharged in accordance with the terms of each of the five Agreements.

## COUNT I

### **Breach of Contract (December 9, 2011 Purchase Account and Sale Agreement)**

43. Plaintiff repeats and re-alleges the allegations contained in paragraph 1 through 42 as if fully set forth herein.

44. This is a claim for breach of contract against HSBC.

45. On or about December 9, 2011, NCB and HSBC entered into a valid and enforceable Account Purchase and Sale Agreement. (Exhibit No.1).

46. Per the December 2011 Agreement, HSBC was obligated to provide NCB with an electronic file containing detailed information on each account purchased including accurate DOFD data. This material obligation was memorialized in the representations, warranties, and covenants made by HSBC in the Agreement, including the following:

- a. in ¶4(G) that: "the Account data transferred to [NCB] by means of the Electronic File is materially accurate," and

- b. in Exhibit B that: "The Account Schedule will contain at a minimum the following information: Account number, Borrower Name, Borrower Social Security Number, Account Balance, Borrower Address, date of last payment, Date of Delinquency, Interest Rate, and Charge off Date."

47. The materiality of HSBC's representations, warranties, covenants is further emphasized in ¶12 of the Agreements' titled "Remedy for Breach of Seller Representation, Warranty, or Covenant: Repurchase or Substitution of Account" which provides a non-exclusive remedy that:

In the event that Purchaser identifies, provides written notice and returns to Seller within one hundred and eighty (180) days of the Closing Date . . . any Account where Seller is in breach of Seller's Representations and Warranties in Paragraph 4 or Seller's Covenants in Paragraph 5, then Seller shall repurchase the Account for cash in the amount of the purchase price for that Account within forty-five (45) days.

48. HSBC provided NCB with inaccurate DOFD data in material breach of the December 2011 Agreement and the representations, warranties and covenants provided by HSBC therein.

49. As a direct result of HSBC's material breach and its failure to timely notify NCB of this breach, HSBC also intended to cause NCB to lose its opportunity to exercise the remedy provided for in ¶12.

50. If NCB had known that HSBC did not have and was not intending to provide accurate DOFD data, NCB would have purchased the delinquent consumer loan accounts at a significantly lower price or not purchased them at all. HSBC compounded the resulting damages by taking deliberate steps to conceal the fact that the DOFD data it provided was inaccurate data.

51. In total, as a direct result of HSBC's material breach of this Agreement as well as its breach of the four other Agreements, NCB has suffered no less than \$14 million in damages.

**COUNT II**  
**Breach of Contract**  
**(March 26, 2012 Purchase Account and Sale Agreement)**

52. Plaintiff repeats and re-alleges the allegations contained in paragraph 1 through 51 as if fully set forth herein.

53. This is a claim for breach of contract against HSBC.

54. On or about March 26, 2012, NCB and HSBC entered into a valid and enforceable Agreement. (Exhibit No. 2).

55. Per the March 2012 Agreement, HSBC was obligated to provide NCB with an electronic file containing detailed information on each account purchased including accurate DOFD data. This material obligation was memorialized in the representations, warranties, and covenants made by HSBC in the Agreement, including the following:

- a. in ¶4(G) that: “the Account data transferred to [NCB] by means of the Electronic File is materially accurate,” and
- b. in ¶5(b) that: HSBC “agrees to provide [NCB] in the Sale file the date of first delinquency for each Account and any other basic information that is required for Purchaser to begin reporting each Account to the credit reporting agencies.”

56. The materiality of HSBC’s representations, warranties, covenants is further emphasized in ¶12 of the Agreements’ titled “Remedy for Breach of Seller Representation, Warranty, or Covenant: Repurchase or Substitution of Account” which provides a non-exclusive remedy that:

In the event that Purchaser identifies, provides written notice and returns to Seller within one hundred and eighty (180) days of the Closing Date . . . any Account where Seller is in breach of Seller’s Representations and Warranties in Paragraph 4 or Seller’s Covenants in Paragraph 5, then Seller shall repurchase the Account for cash in the amount of the purchase price for that Account within forty-five (45) days.

57. HSBC provided NCB with inaccurate DOFD data in material breach of the March 2012 Agreement and the representations, warranties and covenants provided by HSBC therein.

58. As a direct result of HSBC's material breach and its failure to timely notify NCB of this breach, HSBC also intended to cause NCB to lose its opportunity to exercise the remedy provided for in ¶12.

59. If NCB had known that HSBC did not have and was not intending to provide accurate DOFD data, NCB would have purchased the delinquent consumer loan accounts at a significantly lower price or not purchased them at all. HSBC compounded the resulting damages by taking deliberate steps to conceal the fact that the DOFD data it provided was inaccurate data.

60. In total, as a direct result of HSBC's material breach of this Agreement as well as its breach of the four other Agreements, NCB has suffered no less than \$14 million in damages.

### **COUNT III**

#### **Breach of Contract (April 30, 2012 Purchase Account and Sale Agreement)**

61. Plaintiff repeats and re-alleges the allegations contained in paragraph 1 through 60 as if fully set forth herein.

62. This is a claim for breach of contract against HSBC.

63. On or about April 30, 2012, NCB and HSBC entered into a valid and enforceable Account Purchase and Sale Agreement. (Exhibit No. 3).

64. Per the April 2012 Agreement, HSBC was obligated to provide NCB with an electronic file containing detailed information on each account purchased including accurate

DOFD data. This material obligation was memorialized in the representations, warranties, and covenants made by HSBC in the Agreement, including the following:

- a. in ¶4(G) that: “the Account data transferred to [NCB] by means of the Electronic File is materially accurate,” and
- b. in ¶5(b) that: HSBC “agrees to provide [NCB] in the Sale file the date of first delinquency for each Account and any other basic information that is required for Purchaser to begin reporting each Account to the credit reporting agencies.”

65. The materiality of HSBC’s representations, warranties, covenants is further emphasized in ¶12 of the Agreements’ titled “Remedy for Breach of Seller Representation, Warranty, or Covenant: Repurchase or Substitution of Account” which provides a non-exclusive remedy that:

In the event that Purchaser identifies, provides written notice and returns to Seller within one hundred and eighty (180) days of the Closing Date . . . any Account where Seller is in breach of Seller’s Representations and Warranties in Paragraph 4 or Seller’s Covenants in Paragraph 5, then Seller shall repurchase the Account for cash in the amount of the purchase price for that Account within forty-five (45) days.

66. HSBC provided NCB with inaccurate DOFD data in material breach of the April 2012 Agreement and the representations, warranties and covenants provided by HSBC therein.

67. As a direct result of HSBC’s material breach and its failure to timely notify NCB of this breach, HSBC also intended to cause NCB to lose its opportunity to exercise the remedy provided for in ¶12.

68. If NCB had known that HSBC did not have and was not intending to provide accurate DOFD data, NCB would have purchased the delinquent consumer loan accounts at a significantly lower price or not purchased them at all. HSBC compounded the resulting damages

by taking deliberate steps to conceal the fact that the DOFD data it provided was inaccurate data.

69. In total, as a direct result of HSBC's material breach of this Agreement as well as its breach of the four other Agreements, NCB has suffered no less than \$14 million in damages.

#### **COUNT IV**

##### **Breach of Contract (June 29, 2012 Purchase Account and Sale Agreement)**

70. Plaintiff repeats and re-alleges the allegations contained in paragraph 1 through 69 as if fully set forth herein.

71. This is a claim for breach of contract against HSBC.

72. On or about June 29, 2012, NCB and HSBC entered into a valid and enforceable Agreement. (Exhibit No. 4).

73. Per the June 2012 Agreement, HSBC was obligated to provide NCB with an electronic file containing detailed information on each account purchased including accurate DOFD data. This material obligation was memorialized in the representations, warranties, and covenants made by HSBC in the Agreement, including the following:

- a. in ¶4(G) that: "the Account data transferred to [NCB] by means of the Electronic File is materially accurate," and
- b. in ¶5(b) that: HSBC "agrees to provide [NCB] in the Sale file the date of first delinquency for each Account and any other basic information that is required for Purchaser to begin reporting each Account to the credit reporting agencies."

74. The materiality of HSBC's representations, warranties, covenants is further emphasized in ¶12 of the Agreements' titled "Remedy for Breach of Seller Representation,

Warranty, or Covenant: Repurchase or Substitution of Account” which provides a non-exclusive remedy that:

In the event that Purchaser identifies, provides written notice and returns to Seller within one hundred and eighty (180) days of the Closing Date . . . any Account where Seller is in breach of Seller’s Representations and Warranties in Paragraph 4 or Seller’s Covenants in Paragraph 5, then Seller shall repurchase the Account for cash in the amount of the purchase price for that Account within forty-five (45) days.

75. HSBC provided NCB with inaccurate DOFD data in material breach of the June 2012 Agreement and the representations, warranties and covenants provided by HSBC therein.

76. As a direct result of HSBC’s material breach and its failure to timely notify NCB of this breach, HSBC also intended to cause NCB to lose its opportunity to exercise the remedy provided for in ¶12.

77. If NCB had known that HSBC did not have and was not intending to provide accurate DOFD data, NCB would have purchased the delinquent consumer loan accounts at a significantly lower price or not purchased them at all. HSBC compounded the resulting damages by taking deliberate steps to conceal the fact that the DOFD data it provided was inaccurate data.

78. In total, as a direct result of HSBC’s material breach of this Agreement as well as its breach of the four other Agreements, NCB has suffered no less than \$14 million in damages.

## COUNT V

### **Breach of Contract (February 12, 2013 Purchase Account and Sale Agreement)**

79. Plaintiff repeats and re-alleges the allegations contained in paragraph 1 through 78 as if fully set forth herein.

80. This is a claim for breach of contract against HSBC.

81. On or about February 12, 2013, NCB and HSBC entered into a valid and enforceable Account Purchase and Sale Agreement. (Exhibit No. 5).

82. Per the February 2013 Agreement, HSBC was obligated to provide NCB with an electronic file containing detailed information on each account purchased including accurate DOFD data. This material obligation was memorialized in the representations, warranties, and covenants made by HSBC in the Agreement, including the following:

- a. in ¶4(G) that: “the Account data transferred to [NCB] by means of the Electronic File is materially accurate,” and
- b. in ¶5(B) that: HSBC “agrees to provide [NCB] in the Sale file the Date of First Delinquency for each Account and any other basic information that is contained in the Sale File so as to permit Purchaser to begin reporting each Account to the credit reporting agencies.”

83. The materiality of HSBC’s representations, warranties, covenants is further emphasized in ¶12 of the Agreements’ titled “Remedy for Breach of Seller Representation, Warranty, or Covenant: Repurchase or Substitution of Account” which provides a non-exclusive remedy that:

In the event that Purchaser identifies, provides written notice and returns to Seller within one hundred and eighty (180) days of the Closing Date . . . any Account where Seller is in breach of Seller’s Representations and Warranties in Paragraph 4 or Seller’s Covenants in Paragraph 5, then Seller shall repurchase the Account for cash in the amount of the purchase price for that Account within forty-five (45) days.

84. HSBC provided NCB with inaccurate DOFD data in material breach of the February 2013 Agreement and the representations, warranties and covenants provided by HSBC therein.

85. As a direct result of HSBC's material breach and its failure to timely notify NCB of this breach, HSBC also intended to cause NCB to lose its opportunity to exercise the remedy provided for in ¶12.

86. If NCB had known that HSBC did not have and was not intending to provide accurate DOFD data, NCB would have purchased the delinquent consumer loan accounts at a significantly lower price or not purchased them at all. HSBC compounded the resulting damages by taking deliberate steps to conceal the fact that the DOFD data it provided was inaccurate data.

87. In total, as a direct result of HSBC's material breach of this Agreement as well as its breach of the four other Agreements, NCB has suffered no less than \$14 million in damages.

**COUNT VI**  
**Fraud**

88. Plaintiff repeats and realleges the allegations contained in paragraph 1 through 87 as if fully set forth herein.

89. This is a claim against HSBC for fraud.

90. HSBC knowingly and recklessly made false statements of material fact to NCB when it promised to supply accurate DOFD data for the consumer loan accounts that NCB purchased between December 2011 and February 2013.

91. HSBC's false statements that it would supply accurate DOFD data were material statements, as accurate DOFD data is important to NCB's business model. DOFD data determines the date from which the seven-year collections and reporting period defined by the FCRA runs, and it defines the time when NCB is able to report delinquent consumer accounts.

92. HSBC knew that it was making false statements about the accuracy of the DOFD data it supplied to NCB.

93. HSBC has acknowledged that it knew for many months prior to November 2013 that its DOFD data was inaccurate and that it chose not to disclose this fact to NCB.

94. HSBC intentionally delayed informing NCB that it could not supply accurate DOFD data and that none of the DOFD data provided to NCB was actually DOFD data, as that term is defined by custom and statute.

95. By intentionally providing inaccurate DOFD data and then failing to timely notify NCB about this inaccurate DOFD data, HSBC intended to and did in fact induce NCB into executing additional purchase Agreements.

96. HSBC also intended to induce and did in fact induce NCB not to exercise the non-exclusive remedy in paragraph 12 of the Agreements.

97. NCB's reliance on HSBC's promise to supply accurate DOFD data was reasonable and justified. NCB relied on the parties' long-time business relationship, which spans twenty years. NCB also relied on HSBC's repeat representations that it would be supplying or that it had supplied NCB with accurate DOFD data for the purchased consumer loan accounts.

98. HSBC knew that NCB relied on HSBC's false statements of material fact.

99. HSBC knew that NCB's purchase price for all of the delinquent consumer loan accounts relied on HSBC's promise to provide accurate account data, including and especially accurate DOFD data.

100. If NCB had known that HSBC did not have and was not intending to provide accurate DOFD data, NCB would have purchased the delinquent consumer loan accounts at a significantly lower price or not purchased them at all. HSBC compounded the resulting damages

by taking deliberate steps to conceal the fact that the DOFD data it provided was inaccurate data.

101. As a direct and proximate cause of HSBC's fraud, NCB has suffered no less than \$14 million in damages, and is also entitled to punitive damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court enter judgment in its favor as follows:

- A. Pursuant to Count I, award NCB damages and all costs and reasonable attorneys' fees incurred in bringing this action, pursuant to ¶27 of the December 2011 Agreement; and
- B. Pursuant to Count II, award NCB damages and all costs and reasonable attorneys' fees incurred in bringing this action, pursuant to ¶27 of the March 2012 Agreement; and
- C. Pursuant to Count III, award NCB damages and all costs and reasonable attorneys' fees incurred in bringing this action, pursuant to ¶27 of the April 2012 Agreement; and
- D. Pursuant to Count IV, award NCB damages and all costs and reasonable attorneys' fees incurred in bringing this action, pursuant to ¶27 of the June 2012 Agreement; and
- E. Pursuant to Count V, award NCB damages and all costs and reasonable attorneys' fees incurred in bringing this action, pursuant to ¶27 of the February 2013 Agreement; and
- F. Pursuant to Count VI, award NCB damages, all costs and reasonable attorneys' fees incurred in bringing this action, pursuant to ¶27 of each Agreement, and punitive damages in an amount the Court deems just and proper; and
- G. Grant such other relief that the Court may consider necessary.

Dated: June 26, 2014

Respectfully submitted,

/s/

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J. Douglas Baldrige

Allyson B. Baker (*pro hac vice application to be filed*)

Michael P. Bracken (*pro hac vice application to be filed*)

**VENABLE LLP**

575 7<sup>th</sup> Street, NW

Washington DC 20004

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*Counsel to NCB Management Services, Inc*

**EXHIBIT 1**  
**(filed under seal)**

**EXHIBIT 2**  
**(filed under seal)**

**EXHIBIT 3**  
**(filed under seal)**

**EXHIBIT 4**  
**(filed under seal)**

**EXHIBIT 5**  
**(filed under seal)**