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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
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12 **UNITED STATES DISTRICT COURT**
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

14 UNITED STATES OF AMERICA, 15 Plaintiff,	Case No. SACV14-00819 ABC (RNBx)
16 v.	STIPULATED ORDER FOR
17 CONSUMER PORTFOLIO 18 SERVICES, INC. 19 Defendant.	PERMANENT INJUNCTION AND
	CIVIL PENALTY JUDGMENT

20 Plaintiff, the United States of America, acting upon notification and
21 authorization to the Attorney General by the Federal Trade Commission
22 ("Commission") filed its Complaint for permanent injunction, civil penalties,
23 and other equitable relief in this matter, pursuant to Sections 13(b) and 16(a)(1)
24 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and
25 56(a)(1). Defendant Consumer Portfolio Services, Inc., has waived service of
26 the summons and the Complaint. Plaintiff and Defendant stipulate to the entry
27
28

1 of this Order for Permanent Injunction and Civil Penalty Judgment to resolve all
2 matters in dispute in this action between them.

3 THEREFORE, IT IS ORDERED as follows:
4

5 **FINDINGS**

6 1. This Court has jurisdiction over this matter.

7 2. The Complaint charges that CPS participated in acts or practices in
8 violation of Section 5(a)(1) of the Federal Trade Commission Act ("FTC Act"),
9 15 U.S.C. § 45(a)(1); the Fair Debt Collection Practices Act ("FDCPA"), 15
10 U.S.C. §§ 1692 - 1692p; and Section 621(a) of the Fair Credit Reporting Act
11 ("FCRA"), 15 U.S.C. § 1681s(a), in connection with the servicing and collection
12 of subprime motor vehicle loan accounts.
13

14 3. CPS neither admits nor denies any of the allegations in the
15 Complaint, except as specifically stated in this Order. Only for purposes of this
16 action, CPS admits the facts necessary to establish jurisdiction.

17 4. CPS waives any claim that it may have under the Equal Access to
18 Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through
19 the date of this Order, and agrees to bear its own costs and attorney fees.

20 5. CPS and Plaintiff waive all rights to appeal or otherwise challenge
21 or contest the validity of this Order.
22

23 **DEFINITIONS**

24 For purposes of the Order, the following definitions shall apply:

25 1. "Consumer" means any person who is or has been obligated or
26 allegedly obligated on a loan that the CPS is servicing or has serviced.
27
28

1 2. “Debt” includes any obligation or alleged obligation of a consumer
2 to pay money arising out of a transaction in which the money, property,
3 insurance, or services which are the subject of the transaction are primarily for
4 personal, family, or household purposes, whether or not such obligation has been
5 reduced to judgment. For purposes of this Order, “debt” specifically includes
6 the obligation of a consumer to repay a loan for a motor vehicle.
7

8 3. “Defendant” means Consumer Portfolio Services, Inc., and its
9 successors and assigns.

10 4. “Fees” includes all fees, charges, and penalties, including but not
11 limited to fees for insufficient funds payments, late payments, loan extensions,
12 collection and legal service activities, repossession, bankruptcy claims, and any
13 other fees or charges that CPS or any other person assesses a consumer in
14 connection with the servicing or collection of any loan.

15 5. “Loan” means a contract secured by a lien on a motor vehicle taken
16 as security for repayment of the loan.
17

18 6. “Servicing” means receiving and applying payments made on a
19 consumer’s account pursuant to the terms of the loan agreement, including
20 payments of principal, interest, and fees. “Servicing” also means any related
21 loan servicing activity such as the administration of loan accounts, providing
22 periodic billing statements to consumers, maintaining records of the status of
23 consumers’ loan accounts, providing information to and resolving disputes with
24 consumers regarding loan accounts, collecting loan payments, repossessing
25 property, filing bankruptcy claims, calculating deficiency judgments, using
26 consumer reports and furnishing information to consumer reporting agencies,
27 and collecting or assessing fees in relation to any of the foregoing.
28

LOAN SERVICING

IT IS THEREFORE ORDERED that CPS, and its officers, agents, servants, and employees, and all other persons or entities in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with loan servicing and collection activities, are hereby permanently restrained and enjoined from:

B. Misrepresenting, expressly or by implication, that any payment or fee due on any loan is allowed under the terms of the loan agreement or permitted by law;

D. Failing to disclose, when requesting payment by a method requiring a transaction fee, the costs and availability of all payment methods available to consumers; and

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1 and, at the time such representation is made, CPS possesses and relies on
2 competent and reliable evidence that substantiates the representation. For
3 purposes of this provision, "competent and reliable evidence" means audits,
4 tests, analyses, research, studies, or other evidence, including a data integrity
5 program that complies with Section IV of this Order, based on the expertise of
6 accounting and other professionals in the relevant area, that have been conducted
7 and evaluated in an objective manner by persons qualified to do so, using
8 procedures generally accepted in the profession to yield accurate and reliable
9 results.
10

11
12 **II. NO UNLAWFUL ASSESSMENT OR COLLECTION OF FEES OR**
13 **OTHER AMOUNTS**

14 IT IS FURTHER ORDERED that CPS, and its officers, agents, servants,
15 and employees, and all other persons or entities in active concert or participation
16 with any of them who receive actual notice of this Order, whether acting directly
17 or indirectly, in connection with loan servicing and collection activities, are
18 hereby permanently restrained and enjoined from assessing or collecting any fee
19 or other amount unless it is:
20

21 A. Authorized and clearly and prominently disclosed by the loan
22 agreement or amendments thereto and not prohibited by law;

23 B. Expressly permitted by law and not prohibited by the loan
24 agreement or amendments thereto; or

25 C. A reasonable fee or other amount for a specific service requested by
26 a consumer that is assessed and/or collected only after clear and prominent
27 disclosure of the fee or other amount is provided to the consumer and explicit
28

1 consent is obtained from the consumer to pay the fee or other amount in
2 exchange for the service, such fee or other amount is not otherwise prohibited by
3 law or the loan agreement or amendments thereto, and the service is actually
4 rendered.
5

6 **III. NO UNILATERAL CONTRACT MODIFICATIONS**

7
8 IT IS FURTHER ORDERED that CPS, and its officers, agents, servants,
9 and employees, and all other persons or entities in active concert or participation
10 with any of them who receive actual notice of this Order, whether acting directly
11 or indirectly, in connection with loan servicing and collection activities, are
12 hereby permanently restrained and enjoined from modifying the terms and
13 conditions of any consumer's loan agreement, through an extension of the loan
14 term or otherwise, without express, informed consent, in writing, from the
15 consumer. For purposes of this provision, "express informed consent" includes:

16 A. Disclosing, clearly and conspicuously, all fees and costs; and

17 B. Disclosing, clearly and conspicuously, whether the modification
18 will reduce or eliminate the ongoing assessment of any fees, including but not
19 limited to late fees.
20
21

22 **IV. DATA INTEGRITY REQUIREMENT**

23 IT IS FURTHER ORDERED that CPS, in connection with loan servicing
24 and collection activities, shall, no later than ninety (90) days after the date of
25 entry of this Order, establish and maintain a comprehensive data integrity
26 program ("Program") designed to ensure the accuracy, integrity, and
27 completeness of CPS's loan servicing processes, and the data and other
28

1 information about accounts that CPS services, collects, or sells. The Program,
2 the content and implementation of which must be fully documented in writing,
3 shall contain administrative, technical, and physical safeguards appropriate to
4 the nature, size, complexity, and scope of CPS's loan servicing activities, and
5 shall include:

6 A. The designation of an employee or employees to be accountable for
7 the Program;
8

9 B. The identification of material internal and external risks to the
10 accuracy and integrity of loan servicing data that could result in errors to
11 consumers' accounts, and assessment of the sufficiency of any safeguards in
12 place to control these risks. At a minimum, this risk assessment should include
13 consideration of risks in each area of relevant operation, including, but not
14 limited to, (1) employee training and management, (2) information systems,
15 including network and software design, information processing, storage,
16 transmission, and disposal, and (3) prevention, detection, and response to any
17 systems failure;
18

19 C. The design and implementation of reasonable safeguards to control
20 the risks identified through risk assessment, and regular testing or monitoring of
21 the effectiveness of the safeguards' key controls, system, and procedures;

22 D. The regular auditing, testing, or monitoring of the effectiveness of
23 the Program; and

24 E. The evaluation and adjustment of the Program in light of the results
25 of the required auditing, testing, or monitoring, and any material changes to
26 CPS's operations or business arrangements that may significantly impact the
27 Program, or any other circumstances that CPS knows or has reason to know may
28

1 have a material impact on the integrity, accuracy and completeness of CPS's
2 loan servicing processes, or data and other information about accounts that CPS
3 services, collects, or sells.
4

5 **V. ASSESSMENT**

6 IT IS FURTHER ORDERED that:

7
8 A. CPS shall, within two hundred seventy (270) days after the date of
9 entry of the Order, and biennially thereafter for ten (10) years after entry of the
10 Order, obtain an assessment and report ("Assessment") from a qualified,
11 objective, independent, third-party professional, the identity of which is agreed
12 to by a representative of the Commission, that, using procedures and standards
13 generally accepted in the profession:

14 1. Sets forth the specific data integrity program that CPS has
15 implemented and maintained during the reporting period;

16 2. Explains how the data integrity program is appropriate to
17 CPS's size and complexity, and the nature and scope of CPS's activities;

18 3. Explains how the data integrity program meets or exceeds the
19 protections required by Section IV of this Order; and
20

21 4. Certifies that the data integrity program is operating with
22 sufficient effectiveness to provide reasonable assurance of the accuracy,
23 integrity, and completeness of CPS's loan servicing processes and
24 records.

25 B. CPS shall provide a copy of the first Assessment to the Commission
26 within ten (10) days after the Assessment is delivered to CPS. CPS shall, within
27 thirty (30) days of a request, provide the Commission with a copy of all plans,
28

1 reports, studies, reviews, audits, audit trails, policies, training materials, and
2 assessments, whether prepared by or on behalf of CPS, relied upon to prepare
3 such Assessment. All subsequent biennial Assessments shall be retained by CPS
4 and a copy provided to the Commission within thirty (30) days of request.
5

6 COLLECTION PRACTICES

7 8 **VI. LIMITATIONS ON CALLS TO THIRD PARTIES AND** 9 **CONSUMERS**

10 IT IS FURTHER ORDERED that CPS, and its officers, agents, servants,
11 and employees, and all other persons or entities in active concert or participation
12 with any of them who receive actual notice of this Order, whether acting directly
13 or indirectly, in connection with loan servicing and collection activities, are
14 hereby permanently restrained and enjoined from:
15

16 A. Disclosing the existence of a debt to any third party other than the
17 consumer's spouse, parent (if the consumer is a minor), guardian, executor, or
18 administrator, including employers, co-workers, family members, neighbors,
19 references, and friends, without the consumer's consent;

20 B. Communicating with any person at a time or place that CPS knows
21 or should know is inconvenient to the person, including but not limited to
22 communicating with a person at the person's place of employment if CPS knows
23 or has reason to know that the person's employer prohibits the person from
24 receiving such communication;
25

26 C. Communicating, except when seeking to acquire location
27 information in compliance with Sections VI.D, E, and F, below, with any third
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1 party other than the consumer's spouse, parent (if the consumer is a minor),
2 guardian, executor, administrator, the consumer's attorney, a consumer reporting
3 agency if otherwise permitted by law, or CPS's attorney(s), unless CPS has the
4 prior consent of the consumer given directly to CPS or the express permission of
5 a court of competent jurisdiction, or CPS can show that such communication is
6 reasonably necessary to secure its collateral or effectuate a post-judgment
7 judicial remedy;
8

9 D. Communicating with any third party for the purpose of acquiring
10 location information about the consumer unless CPS possesses a reasonable
11 belief that it does not currently possess the consumer's location information;
12 ***provided that*** for purposes of this subsection CPS shall have a reasonable belief
13 that it cannot locate the consumer when, for example: 1) it receives mail directed
14 to the consumer's last known address returned as undeliverable; 2) the
15 consumer's known telephone number(s) have been disconnected; 3) at each
16 number known to belong to the consumer the voice mail box is full or does not
17 accept messages; or 4) a third party at the consumer's last known telephone
18 number claims that the consumer is no longer using the telephone number;
19

20 E. Communicating more than once with any third party for the
21 purpose of obtaining location information about the consumer unless such third
22 party requests that CPS communicate with him or her again or CPS reasonably
23 believes that the third party's earlier response was erroneous or incomplete and
24 the third party now has correct or complete location information;

25 F. Contacting any third party at a telephone number after that third
26 party or anyone at that telephone number has informed CPS, orally or in writing,
27 that 1) the consumer CPS is trying to contact cannot be reached at that telephone
28

1 number; 2) the third party does not have location information for the consumer
2 the CPS is trying to reach, unless CPS has a reasonable belief that the third
3 party's earlier statements were erroneous or incomplete, and that such third party
4 now has correct or complete location information; or 3) the third party wishes
5 CPS to cease further communication with the third party;

6 G. Failing to create and maintain, for at least three (3) years from the
7 date of last contact with the third party, records documenting that a third party at
8 a particular telephone number has informed CPS, orally or in writing, that the
9 consumer CPS is trying to contact cannot be reached at that telephone number or
10 the third party does not have location information for that consumer;

11 H. Failing to create and maintain, for at least three (3) years from the
12 date of last contact with the third party, records documenting that CPS had a
13 reasonable belief that 1) at the time of the call CPS did not have the consumer's
14 current location information and 2) a third party's statements that the consumer
15 CPS is trying to contact cannot be reached at that telephone number or that the
16 third party does not have location information about that consumer were
17 erroneous, incomplete, or out of date, before calling that telephone number
18 again; *provided that*, for purposes of this subsection, to have a "reasonable
19 belief" that a third party's earlier statements were erroneous or incomplete and
20 that such third party now has correct or complete location information, CPS
21 must have: 1) conducted a thorough review of all applicable records, documents,
22 and database entries for the consumer that CPS is trying to reach to search for
23 any notations indicating that the consumer cannot be reached at that telephone
24 number or that the third party does not have location information about the
25 consumer CPS is trying to reach; and 2) obtained and considered information or
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1 evidence from a new or different source other than the information or evidence
2 previously relied upon by CPS in attempting to contact that consumer, and such
3 information or evidence substantiates CPS's belief that the third party's earlier
4 statements were erroneous or incomplete and that such third party now has
5 correct or complete location information; and

6 I. Engaging in conduct the natural consequence of which is to harass,
7 oppress, or abuse a person, including, but not limited to, causing a telephone to
8 ring, or engaging a person in telephone conversation, repeatedly or continuously
9 with the intent to annoy, abuse, or harass the person at the called number. For
10 purposes of this subsection, there shall exist a rebuttable presumption of an
11 intent to annoy, harass, or abuse if CPS places more than one call to any
12 consumer after that consumer has notified CPS, either orally in writing, that the
13 consumer does not wish to be contacted telephonically; *provided that* any oral
14 request that telephone contact stop shall be invalid after thirty (30) days if:
15

16 1) CPS, within seven (7) days of the consumer's oral request, sends the
17 consumer a written notice to the consumer's last known mailing address,
18 advising that the consumer must confirm his or her request in writing by sending
19 a notice to an address specified in the CPS notice or by submitting a request to
20 CPS online at its website; and 2) the consumer fails to provide CPS with
21 confirmation of his or her request in writing or through the CPS website;
22 *provided further that* CPS shall create and make available on its website an
23 electronic form through which consumers may submit written requests to stop
24 further telephonic communications.
25
26

27 **VII. UNAUTHORIZED DEBITS PROHIBITED**

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1 IT IS FURTHER ORDERED that CPS, and its officers, agents, servants,
2 and employees, and all other persons or entities in active concert or participation
3 with any of them, who receive actual notice of this Order, whether acting
4 directly or indirectly, in connection with its loan servicing and collection
5 activities, are hereby permanently restrained and enjoined from debiting funds
6 from any bank account without the accountholder's express authorization.
7

8
9 **VIII. DECEPTIVE COLLECTION PRACTICES PROHIBITED**

10 IT IS FURTHER ORDERED that CPS, and its officers, agents, servants,
11 and employees, and all other persons or entities in active concert or participation
12 with any of them who receive actual notice of this Order by personal service or
13 otherwise, whether acting directly or indirectly, in connection with loan
14 servicing and collection activities, are hereby permanently restrained and
15 enjoined from using any false, deceptive, or misleading representation or means
16 including, but not limited to:
17

18 A. Misrepresenting, expressly or by implication, that nonpayment of
19 the debt will result in adverse consequences, such as immediate repossession of
20 the vehicle securing the consumer's loan; and

21 B. Misrepresenting, expressly or by implication, the nature and
22 purpose of any collection call to a consumer, including by disguising or
23 concealing the telephone number from which the call is made.
24

25 **IX. FDCPA VIOLATIONS PROHIBITED**

26 IT IS FURTHER ORDERED that CPS, and its officers, agents, servants,
27 and employees, and all other persons or entities in active concert or participation
28

1 with any of them who receive actual notice of this Order, whether acting directly
2 or indirectly, when acting as a debt collector within the meaning of the FDCPA,
3 are hereby permanently restrained and enjoined from taking the following
4 actions:

5 A. Stating to any person from whom CPS is trying to acquire location
6 information about a consumer that the consumer owes a debt;

7 B. Communicating more than once with any person for the purpose of
8 obtaining location information about the consumer unless requested to do so by
9 the person or unless CPS reasonably believes that the person's earlier response
10 was erroneous or incomplete and that the person now has correct or complete
11 location information;

12 C. Communicating with a consumer in connection with the collection
13 of a debt:

14 1. At times or places known to be inconvenient to the
15 consumer, without the consumer's prior consent; and

16 2. At the consumer's place of employment when CPS knows or
17 has reason to know that the consumer's employer prohibits the consumer
18 from receiving such communications;

19 D. Communicating about the debt with persons other than the
20 consumer, the consumer's spouse, parent (if the consumer is a minor), guardian,
21 executor, or administrator, the consumer's attorney, a consumer reporting
22 agency, the creditor, the creditor's attorney, or its own attorneys without the
23 consumer's prior consent given directly to CPS or the express permission of a
24 court of competent jurisdiction, or as reasonably necessary to effectuate a post-
25 judgment judicial remedy;
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1 E. Engaging in conduct the natural consequence of which is to harass,
2 oppress, or abuse any person in connection with the collection of any debt,
3 including, among other things, causing a telephone to ring or engaging any
4 person in telephone conversation repeatedly or continuously with intent to
5 annoy, abuse, or harass any person at the called number;

6 F. Falsely representing the character, amount, or legal status of a debt;

7 G. Falsely representing that nonpayment of a debt will result in
8 seizure, garnishment, attachment or sale of any property or wages of a person
9 unless the action is lawful and CPS intends to take such action;

10 H. Falsely threatening to take any action that cannot legally be taken or
11 that is not intended to be taken;

12 I. Using false information or deceptive means to collect or attempt to
13 collect a debt or to obtain information concerning a consumer; and

14 J. Using unfair or unconscionable means to collect or attempt to
15 collect a debt, including, but not limited to, the following:

16 1. Posting payments to or debiting funds from a consumer's
17 bank account without the consumer's express consent and authorization;

18 2. Collecting amounts not expressly authorized by the
19 agreement creating the debt or permitted by law; and

20 3. Threatening to take any nonjudicial action to effect
21 dispossession or disablement of property where there was no present
22 intent to take possession of the property.
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26 **X. FURNISHER RULE VIOLATIONS PROHIBITED**
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1 IT IS FURTHER ORDERED that CPS, and its officers, agents, servants,
2 and employees, and all other persons or entities in active concert or participation
3 with any of them, who receive actual notice of this Order, whether acting
4 directly or indirectly, for the duration of any period that CPS furnishes
5 information to a consumer reporting agency, are hereby permanently restrained
6 and enjoined from:

7 A. Failing to:

8 1. Establish and implement reasonable written policies and
9 procedures regarding the accuracy and integrity of the information
10 relating to consumers that it furnishes to a consumer reporting agency, as
11 required by Section 623(e) of the FCRA, 15 U.S.C. § 1681s-2(e); 16
12 C.F.R. § 660.3; and 12 C.F.R. § 1022.42;

13 2. Consider and incorporate the applicable guidelines set forth
14 in Appendix A to 16 C.F.R. Part 660 and Appendix E to 12 C.F.R. Part
15 1022 in developing such policies and procedures; and

16 3. Review such policies and procedures periodically and update
17 them as necessary to ensure their continued effectiveness; and

18 B. Failing to:

19 1. Comply with Section 623(b) of the FCRA, 15 U.S.C.
20 § 1681s-2(b), when consumer reporting agencies refer disputes to it
21 pursuant to Section 611(a)(2), 15 U.S.C. § 1681i(a)(2); and comply with
22 Section 623(a)(8)(E) of the FCRA, 15 U.S.C. § 1681s-2(a)(8)(E), 16
23 C.F.R. § 660.4, and 12 C.F.R. § 1022.43, when consumers dispute
24 directly, by failing to conduct reasonable investigations of disputes,
25 including but not limited to, when the dispute relates to payments, fees, or
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1 balances owed, failing to a) check that assessed fees or other amounts
2 were calculated properly and permitted by contract or state law, b) check
3 that all assessments, payments, and payment reversals were correctly
4 applied, and c) check that the principal balance was not increased
5 improperly;

6 2. Review all relevant information provided by the consumer
7 with the dispute notice as required under Section 623(a)(8)(E)(ii) of the
8 FCRA, 15 U.S.C. § 1681s-2(a)(8)(E)(ii); 16 C.F.R. § 660.4(e)(2); 12
9 C.F.R. § 1022.43(e)(2), and in accordance with the provisions of this
10 Order;
11

12 3. Complete its investigation of the dispute and report the
13 results of the investigation to the consumer before the expiration of the
14 period prescribed by Section 611(a)(1) of the FCRA, 15 U.S.C.
15 § 1681i(a)(1); 16 C.F.R. § 660.4(e)(3); and 12 C.F.R. § 1022.43(e)(3);
16

17 4. Provide notice of a determination that a dispute is frivolous
18 or irrelevant within the time period specified by Section 623(a)(8)(F)(ii)
19 of the FCRA, 15 U.S.C. § 1681s-2(a)(8)(F)(ii); 16 C.F.R. § 660.4(f)(2);
20 and 12 C.F.R. § 1022.43(f)(2); and

21 5. Include the reasons for its determination that a dispute is
22 frivolous or irrelevant and identify any information required to investigate
23 the disputed information as required under Section 623(a)(8)(F)(iii) of the
24 FCRA, 15 U.S.C. § 1681s-2(a)(8)(F)(iii); 16 C.F.R. § 660.4(f)(2); and 12
25 C.F.R. § 1022.43(f)(3).
26

27 **MONETARY RELIEF**
28

1 **XI. EQUITABLE MONETARY RELIEF**

2 IT IS FURTHER ORDERED that CPS shall provide redress to all
3 consumers with covered accounts as follows:

4 A. **Covered Accounts:** The class of consumers eligible for redress
5 shall include individuals 1) whose accounts were serviced by CPS at any time
6 between January 1, 2008 and June 30, 2013, and 2) who were charged an
7 amount exceeding the amount allowed by the contract or permitted by law
8 (“overcharges”) in any of the following categories:
9

- 10 1. Non-sufficient funds (“NSF”) fees;
- 11 2. Late payment fees;
- 12 3. Legal fees;
- 13 4. Field chase fees;
- 14 5. Finance charges that accrued on principal balance increases related
15 to loan extensions;
- 16 6. Finance charges that accrued on principal balance increases related
17 to bankruptcy filings; or
- 18 7. Payoff overages in excess of \$1.00.

19
20 CPS shall identify covered accounts in the manner specified in Attachment A to
21 this Order and Section XI.H, below;

22 B. **Refunds for Paid Accounts:** Within ninety (90) days of entry of
23 the Order, CPS shall provide a refund in the amount of the overcharge to each
24 consumer with a covered account who overpaid more than one dollar (\$1.00)
25 and whose loan was paid in full as of the date thirty (30) days prior to the date
26 on which CPS mails the refund;
27
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1 1. CPS shall mail, by first class mail, address correction service
2 requested, a check for the full amount of the overcharge. The face of each
3 check shall clearly and conspicuously state, "Please cash or deposit this
4 check within 180 days or it will no longer be good." The check shall be
5 accompanied by a letter describing the purpose of the refund check, the
6 text of which has been approved by a representative of the Commission,
7 and include no other material; prior to mailing, CPS shall make
8 reasonable efforts to obtain current location information for any consumer
9 due a cash refund, including by consulting with the Postal Service's
10 National Change of Address database;

11
12 2. For any letter returned to CPS within sixty (60) days of
13 mailing, CPS shall make further reasonable efforts to identify a current
14 address for the consumer, and, within thirty (30) days of receipt of the
15 returned letter, remail the check to the corrected address, if any;

16
17 3. CPS shall retain, in a segregated account, all funds from
18 uncashed checks for three hundred sixty (360) days from date of issuance
19 of the last check issued pursuant to Section XI.B.2, above. All funds from
20 uncashed checks remaining after this period shall be disgorged
21 immediately to the U.S. Treasury pursuant to the payment instructions in
22 Section XII.B;

23 C. **Adjusted Account Balances for Active Accounts:** Within sixty
24 (60) days of entry of the Order, CPS shall reduce, by the amount of the
25 overcharge, the outstanding balance owed on any covered account that is active
26 as of the date thirty (30) days prior to the date on which the balance is so
27
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1 reduced, and advise each consumer of the reduction of his or her balance in the
2 next monthly statement after the adjustment has been made;

3 D. **Adjusted Account Balances for Charged-Off Accounts:** Within
4 sixty (60) days of entry of the Order, CPS shall reduce, by the amount of the
5 overcharge, the outstanding balance owed on any covered account that has been
6 charged off as of the date thirty (30) days prior to the date on which the balance
7 is so reduced; *provided that*, in lieu of adjusting the outstanding balance on any
8 covered charged-off account, CPS may elect to permanently forebear collection
9 on the account including by never 1) reporting the account to a consumer
10 reporting agency, 2) seeking to collect a deficiency balance on the account, or
11 3) selling the account;

12 E. **Sold Accounts:** Within ninety (90) days of entry of the Order, CPS
13 shall provide each purchaser of any covered account identified pursuant to
14 Section XI.A, above, with written notice of the identity of each such covered
15 account and the amount of any required balance adjustment;

16 F. **Credit Reporting:** Within sixty (60) days of entry of the Order, for
17 any covered account the balance of which was adjusted pursuant to Sections XI.
18 B, C, or D, above, and that CPS has reported to any consumer reporting agency,
19 CPS shall furnish corrected account information to that consumer reporting
20 agency or cease reporting the account;

21 G. **Information for Consumers:** CPS shall, within five (5) days of
22 entry of the Order, post on its website, clearly and prominently, a toll-free
23 number and email address dedicated to responding to inquiries about this Order
24 and the redress process. CPS shall timely respond to consumer inquiries about
25 this Order and the redress process, including whether the consumer 1) has a
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1 covered account; 2) the amount of any overcharge(s) identified, and 3) the
2 method and date of any payment or account adjustment. CPS shall post and
3 maintain the toll-free number and email address at least until such time as CPS
4 remits unclaimed funds to the U.S. Treasury pursuant to Section XI.B.3, above;

5 H. **Errors and Omissions:** If, at any time prior to the date that CPS
6 remits unclaimed funds to the U.S. Treasury pursuant to Section XI.B.3, above,
7 CPS learns about a covered account for which CPS has not taken any action
8 required by Sections XI.B - F, above, whether CPS learns of the account through
9 its own internal processes or receives information from a third party, such as the
10 third party monitor appointed pursuant to Section XI.I, below, a Commission
11 representative, or a consumer, CPS shall, within thirty (30) days of learning of
12 the account, take curative steps, including 1) taking the required action as to that
13 account; 2) conducting a reasonable search for any similarly situated accounts;
14 and 3) taking the required action as to any accounts so located. CPS shall also
15 give written notice to the third party monitor appointed pursuant to Section XI.I,
16 below, and any other party from which it learned of such an account. The notice
17 must identify each such account, explain what action, if any, was required and
18 taken, and the relevant dates; and

19 I. **Third Party Monitor:** Within thirty (30) days of entry of the
20 Order, CPS shall retain, at its expense, a qualified, objective, independent, third-
21 party professional, the identity of which is agreed-to by a representative of the
22 Commission, and with which CPS fully cooperates, to monitor and audit CPS's
23 compliance with Sections XI.B-H above. The management letter between CPS
24 and the third party monitor shall grant Commission staff access to the third party
25 monitor's staff, work papers, and other materials prepared in the course of the
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1 third party's monitoring and auditing of CPS's compliance with Sections XI.B-
2 H above, upon request by a representative of the Commission, for one year after
3 receipt by the Commission of the final audit. Such third party monitor shall:

4 1. Provide, to both CPS and the Commission, within thirty (30)
5 days after each action is required to be completed pursuant to Sections B –
6 G, above, an interim written report verifying whether CPS was in
7 compliance with that action; and
8

9 2. Provide, to both CPS and the Commission, a final audit
10 verifying the extent of CPS's compliance with Sections B-H, above,
11 within thirty (30) days after CPS completes the last required action of
12 those provisions, but in no event more than two (2) years after entry of
13 the Order.
14

15 **XII. MONETARY JUDGMENT FOR CIVIL PENALTY**

16 IT IS FURTHER ORDERED that:

17 A. Judgment in the amount of two million dollars (\$2,000,000) is
18 entered in favor of Plaintiff against CPS as a civil penalty. This amount
19 represents a penalty of one million dollars (\$1,000,000) for Defendant's alleged
20 violations of the FDCPA and one million dollars (\$1,000,000) for Defendant's
21 alleged violations of the Furnisher Rule;
22

23 B. CPS is ordered to pay to Plaintiff, by making payment to the
24 Treasurer of the United States, two million dollars (\$2,000,000), which, as
25 Defendant stipulates, its undersigned counsel holds in escrow for no purpose
26 other than payment to Plaintiff. Such payment must be made within seven (7)
27
28

1 days of entry of this Order by electronic fund transfer in accordance with
2 instructions previously provided by a representative of Plaintiff; and

3 C. CPS relinquishes dominion and all legal and equitable right, title,
4 and interest in all assets transferred pursuant to this Order and may not seek the
5 return of any assets.
6

7 COMPLIANCE AND REPORTING

9 **XIII. ORDER, FDCPA & FURNISHER RULE ACKNOWLEDGMENTS**

10 IT IS FURTHER ORDERED that CPS shall deliver copies of this Order,
11 the FDCPA, and the Furnisher Rule (attached hereto as Attachments B and C)
12 and obtain acknowledgments of receipt as directed below:
13

14 A. Submit to the Commission an acknowledgment of receipt of this
15 Order, the FDCPA, and the Furnisher Rule, sworn under penalty of perjury,
16 within seven (7) days of entry of this Order;

17 B. For a period of three (3) years after date of entry of this Order,
18 deliver:

- 19 1. A copy of this Order, the FDCPA, and the Furnisher Rule to:
20 (a) all principals, officers, directors, and managers and members who
21 formulate, direct, or control CPS's policies and practices relating to loan
22 servicing, collection and credit reporting activities; and (b) any business
23 entity resulting from any change in structure as set forth in the Section
24 titled Compliance Reporting;
25
26
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1 2. A copy of this Order and the FDCPA to all employees,
2 agents, and representatives of CPS who participate in loan servicing and
3 collection activities; and

4 3. A copy of this Order and the Furnisher Rule to all employees,
5 agents, and representatives of CPS who participate in credit reporting
6 activities;

7 Delivery must occur within seven (7) days of entry of this Order for current
8 personnel. To all others, delivery must occur before they assume their
9 responsibilities; and

10 C. Obtain from each individual or entity to which CPS delivered a
11 copy of this Order, the FDCPA, or the Furnisher Rule, within thirty (30) days, a
12 signed and dated acknowledgment of receipt of this Order, the FDCPA, and the
13 Furnisher Rule.
14

15
16 **XIV. COMPLIANCE REPORTING**

17 IT IS FURTHER ORDERED that CPS shall make timely submissions to
18 the Commission:
19

20 A. One year after entry of this Order, CPS must submit a compliance
21 report, sworn under penalty of perjury. CPS must 1) identify the primary
22 physical, postal, and email address and telephone number as designated points of
23 contact, which representatives of the Commission and Plaintiff may use to
24 communicate with CPS; 2) identify all of CPS's businesses by all of their names,
25 telephone numbers, and physical, postal, email, and Internet addresses;
26 3) describe the activities of each business, including the goods and services
27 offered, and the means of advertising, marketing, and sales; 4) describe in detail
28

1 whether and how CPS is in compliance with each Section of this Order; and
2 5) provide a copy of each Order Acknowledgment obtained pursuant to this
3 Order, unless previously submitted to the Commission;

4 B. For twelve (12) years after entry of this Order, CPS must submit a
5 compliance notice, sworn under penalty of perjury, within fourteen (14) days of
6 any change in the following: 1) any designated point of contact; or 2) the
7 structure of CPS or any entity that CPS has any ownership interest in or controls
8 directly or indirectly that may affect compliance obligations arising under this
9 Order, including: creation, merger, sale, or dissolution of the entity or any
10 subsidiary, parent, or affiliate that engages in any acts or practices subject to this
11 Order;
12

13 C. CPS must submit to the Commission notice of the filing of any
14 bankruptcy petition, insolvency proceeding, or any similar proceeding by or
15 against CPS within fourteen (14) days of its filing;
16

17 D. Any submission to the Commission required by this Order to be
18 sworn under penalty of perjury must be true and accurate and comply with 28
19 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under
20 the laws of the United States of America that the foregoing is true and correct.
21 Executed on: _____" and supplying the date, signatory's full name, title (if
22 applicable), and signature; and

23 E. Unless otherwise directed by a Commission representative in
24 writing, all submissions to the Commission pursuant to this Order must be
25 emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal
26 Service) to: Associate Director for Enforcement, Bureau of Consumer
27 Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW,
28

1 Washington, DC 20580. The subject line must begin: U.S. v. Consumer
2 Portfolio Services, Inc.
3

4 **XV. RECORDKEEPING**

5 IT IS FURTHER ORDERED that, in addition to records required to be
6 created and maintained pursuant to Sections IV, V, VI, and XIV, above, CPS
7 must create certain records for twelve (12) years after entry of the Order, and
8 retain each such record for five (5) years, unless otherwise indicated.
9

10 Specifically, CPS must create and retain the following records:

11 A. Accounting records that reflect the revenues from all goods and
12 services sold, and specifically including revenues from:

- 13 1. Loan servicing fees and fees paid by or imposed on
14 consumers;
- 15 2. Payments of principal and interest received on active
16 accounts;
- 17 3. Costs incurred in generating the revenues reported in 1 and 2,
18 above; and
- 19 4. Disbursement of the revenues reported in 1 and 2 above;

20 B. Personnel records showing, for each person involved in loan
21 servicing or collection, that person's name, address, and telephone numbers; job
22 title or position; dates of service; and, if applicable, the reason for termination;
23

24 C. Copies of all scripts, training materials, and policy manuals related
25 to loan servicing and collection activities; and

26 D. All records necessary to demonstrate full compliance with each
27 provision of this Order, including all submissions to the Commission.
28

1
2 **XVI. COMPLIANCE MONITORING**

3 IT IS FURTHER ORDERED that, for the purpose of monitoring CPS's
4 compliance with this Order:

5 A. Within fourteen (14) days of receipt of a written request from a
6 representative of the Commission or Plaintiff, CPS must submit additional
7 compliance reports or other requested information, which must be sworn under
8 penalty of perjury; appear for depositions; and produce documents for inspection
9 and copying. The Commission and Plaintiff are also authorized to obtain
10 discovery, without further leave of court, using any of the procedures prescribed
11 by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions),
12 31, 33, 34, 36, 45, and 69;

13
14 B. For matters concerning this Order, the Commission and Plaintiff are
15 authorized to communicate directly with CPS. CPS must permit representatives
16 of the Commission and Plaintiff to interview any employee or other person
17 affiliated with CPS who has agreed to such an interview. The person
18 interviewed may have counsel present; and
19

20 C. The Commission and Plaintiff may use all other lawful means,
21 including posing, through its representatives, as consumers, suppliers, or other
22 individuals or entities, to CPS or any individual or entity affiliated with CPS,
23 without the necessity of identification or prior notice. Nothing in this Order
24 limits the Commission's lawful use of compulsory process, pursuant to Sections
25 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.
26
27
28

1 **XVII. RETENTION OF JURISDICTION**

2 IT IS FURTHER ORDERED that this Court retains jurisdiction of this
3 matter for purposes of construction, modification, and enforcement of this
4 Order.
5

6 **SO ORDERED** this _____ day of _____, 2014:
7
8
9

10 _____
11 UNITED STATES DISTRICT JUDGE
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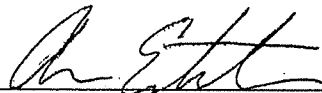
1 **STIPULATED AND AGREED:**

2 **FOR PLAINTIFF:**

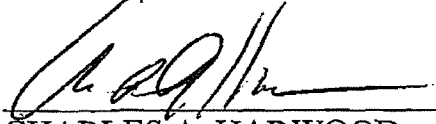
3 **THE UNITED STATES OF AMERICA**

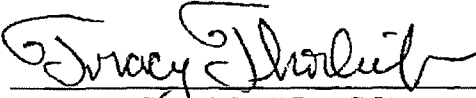
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5 **STUART F. DELERY**
6 Assistant Attorney General
7 Civil Division

8 **MICHAEL S. BLUME**
9 Director
10 **ANDREW E. CLARK**
11 Assistant Director

12 
13 **ANN ENTWISTLE**
14 Trial Attorney
15 Consumer Protection Branch
16 U.S. Department of Justice
17 P.O. Box 386
18 Washington, D.C. 20044
19 Telephone: (202) 305-3630
20 Fax: (202) 514-8742
21 Ann.F.Entwistle@usdoj.gov

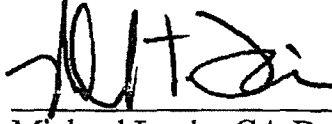
1 **FOR THE FEDERAL TRADE**
2 **COMMISSION:**

3 
4 CHARLES A. HARWOOD
5 Director, Northwest Region

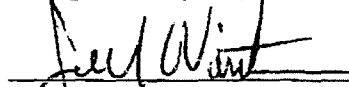
6 
7 TRACY S. THORLEIFSON
8 Attorney
9 tthorleifson@ftc.gov
10 Federal Trade Commission
11 915 Second Avenue, Suite 2896
12 Seattle, WA 98174
13 Phone: (206) 220-6350

14 Date: April 29, 2014
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FOR DEFENDANT CONSUMER
PORTFOLIO SERVICES, INC:


Michael Lavin, CA Bar No. 199423
Senior Vice President-General Counsel
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JOEL WINSTON
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1020 19th Street, N.W., Suite 700
Washington DC 20036
Telephone: (202) 327-9716

Date: December 13, 2013

ATTACHMENT A

CPS shall use the following procedures to identify consumers whose accounts were serviced by CPS at any time between January 1, 2008, and June 30, 2013, and were charged the following types of fees or other amounts in an amount exceeding the amount allowed by the contract or permitted by law (“overcharges”):

DEFINITIONS

For purposes of this Attachment A, the following definitions shall apply:

1. **“Non-sufficient funds (NSF) fees”** shall mean fees assessed to an account when a check, draft or other instrument is dishonored because there are not sufficient funds in the consumer’s account to pay the check, draft or other instrument.
2. **“Late payment fees”** shall mean fees assessed to an account when a payment is not made on the payment due date or within any applicable grace period provided in the contract and/or state law.
3. **“Legal fees”** shall mean expenses incurred by CPS and assessed to an account when CPS hires a third party to perform legal services in connection with the account.
4. **“Field chase fees”** shall mean expenses incurred by CPS and assessed to an account when CPS hires a third party to make a personal visit to the consumer’s residence on behalf of CPS.
5. **“Finance charges accrued on principal balance increases related to loan extensions”** shall mean additional finance charges that accrued on an account when the consumer paid an extension fee and an extension fee was collected from a prior principal payment.

1 6. **“Finance charges accrued on principal balance increases related to**
2 **bankruptcy filings”** shall mean additional finance charges that accrued when
3 the principal balance of an account was increased in connection with the
4 consumer’s filing of a petition for bankruptcy.

5 7. **“Payoff overages”** shall mean any portion of a payoff payment that
6 exceeded the actual full balance owed as of the date the payoff payment was
7 received.

8 **METHODOLOGY FOR REDRESS**

9 1. **Non-sufficient funds (NSF) fees:** Run a customized query of CPS’s
10 Liberty accounting system to compare the amount of each NSF fee assessed to
11 an account against the NSF fee routine that was assigned to that account when
12 the account was boarded based on state law, and identify all NSF fees that
13 exceeded the NSF fee routine.

14 2. **Late payment fees:** Run customized queries of the Liberty system to
15 identify overcharges of late fee assessments on an account as follows:

16 A. For each active and paid-off account:

17 (i) Recalculate the late fee based on the late fee parameters
18 coded on the account at the time the contract was boarded,

19 (ii) Where applicable, recalculate the late fee based on the late
20 fee routine for the applicable state, and

21 (iii) Identify all late fees that exceeded the lower of the
22 recalculations conducted under Steps A(i) and (ii).
23

24 B. For each charged-off account, review its historic month-end records
25 from the Liberty system and recalculate the amount of each late fee that was
26 assessed on an account to identify all late fees that exceeded the amounts
27 permitted by contract and state law.
28

1 3. **Legal fees:** Run customized queries of the Liberty system to identify
2 overcharges of legal fees as follows:

3 A. Determine the date of the assessment of each legal fee;

4 B. Compare the date of the assessment to the dates of the following
5 four events:

6 (i) the repossession date,

7 (ii) the bankruptcy filing date,

8 (iii) the date of assignment to an attorney to institute a legal
9 action against the consumer,

10 (iv) the charge-off date; and
11

12 C. Identify all legal fees assessed prior to any of the events in Steps
13 B(i) – B(iv).
14

15 4. **Field chase fees:** Run customized queries of the Liberty system to
16 identify all accounts to which field chase fees were charged under the general
17 collection expenses transaction code, and those fees:

18 A. Were between \$40.00 and \$50.00, and
19

20 B. Were assessed to an account originated in one of the following
21 states: Colorado, Idaho, Indiana, Iowa, Maine, Michigan, New Jersey,
22 Oklahoma, Pennsylvania, South Carolina, West Virginia, Wisconsin, or
23 Wyoming.

24 5. **Finance charges accrued on principal balance increases related to**
25 **loan extensions:** Run customized queries of the Liberty System to:

26 A. Identify all accounts where, on the same day,

27 (i) an extension fee transaction code was applied to the account,
28

1 (ii) a debit of \$50.00 or less was posted to the account, and

2 (iii) an amount of \$50.00 or less was applied to principal.

3 B. For each account identified in Step A, determine the amounts of
4 additional payments accountholders may have made as a result of the extension
5 process by:

6 (i) for paid-off accounts, calculating the finance charges that
7 accrued on the higher principal balance at the contract rate from the
8 date of the principal balance increase to the payoff date,

9 (ii) for active accounts, calculating the finance charges that
10 accrued on the higher principal balance at the contract rate from the
11 date of the principal balance increase to June 30, 2013, and
12

13 (iii) for charged-off accounts, calculating the finance charges that
14 accrued on the higher principal balance at an interest rate of 20.0%
15 per annum from the date of the principal balance increase to the
16 charge-off date.

17 6. **Finance charges that accrued on principal balance increases related**
18 **to bankruptcy filings:** Run customized queries of the Liberty System to:

19 A. Identify all accountholders who filed a Chapter 13 bankruptcy
20 petition between January 1, 2008, and June 30, 2013,

21 B. Identify any of the accounts identified in Step A for which the
22 principal balance increased after the bankruptcy filing date, and
23

24 C. Calculate the finance charges that accrued on the increased
25 principal balance at an interest rate of 6.0% per annum.

26 7. **Payoff overages:** Run customized queries of the Liberty system to
27 identify all accounts as to which all of the following occurred:
28

- 1 A. The accountholder made a payoff payment,
2 B. The payoff payment exceeded the actual full balance owed as of the
3 date the payoff payment was received,
4 C. CPS retained some or all of the excess payment, and
5 D. The amount of the excess payment retained by CPS exceeded
6 \$1.00.
7