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

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

9 JURISDICTION AND VENUE

10 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a),
11 1345, and 1355, and 15 U.S.C. §§ 45(a), 53(b), 56(a), and 1681s.

12 3. Venue is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b)-(c) and
13 1395(a).

14 PLAINTIFF

15 4. This action is brought by the United States of America on behalf of the Federal
16 Trade Commission. The Commission is an independent agency of the United States government
17 given statutory authority and responsibility by, *inter alia*, the FTC Act, as amended 15 U.S.C.
18 §§ 41-58, and the FCRA, 15 U.S.C. §§ 1681-1681x. The Commission is charged, *inter alia*,
19 with enforcing Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and
20 deceptive acts or practices in or affecting commerce; and the FCRA, which imposes duties upon
21 consumer reporting agencies, users of consumer reports, and those who procure consumer
22 reports for resale.

23 DEFENDANTS

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

1 6. Bailey & Associates Advertising, Inc. ("Bailey & Associates") is a Florida
2 corporation with offices in El Paso, Texas and San Diego, California. Bailey & Associates
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1 11. On June 22, 2011, Bailey & Associates filed a voluntary petition for relief under
2 Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 101 et seq., in the United States Bankruptcy
3 Court for the Western District of Texas, Paso Division, Case No. 11-31202-hcm.

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

9 COMMERCE

10 13. At all times relevant to this complaint, Defendants have maintained a substantial
11 course of trade in or affecting commerce, as "commerce" is defined in section 4 of the FTC Act,
12 15 U.S.C. § 44.

13 THE FAIR CREDIT REPORTING ACT

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

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

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

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

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

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

6 17. Section 604(f) of the FCRA, 15 U.S.C. §1681b(f), prohibits persons from
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1 debt relief, and foreclosure relief services. Some of the lists were sold to entities with names
2 such as: "Save Me From Foreclosure," "SMF Modification," "Stop Your Lender," "Virginia

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1 31. Pursuant to section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and
2 practices alleged in Paragraph 29 also constitute unfair or deceptive acts or practices in violation
3 of section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

4 COUNT II - VIOLATIONS OF SECTION 607(e)(1) OF THE FCRA

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

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

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

13 35. Pursuant to section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and
14 practices alleged in Paragraph 33 also constitute unfair or deceptive acts or practices in violation
15 of section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

16 COUNT III - VIOLATIONS OF SECTION 607(e)(2) OF THE FCRA

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

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

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

26 39. Pursuant to section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and
27 practices alleged in Paragraph 37 also constitute unfair or deceptive acts or practices in violation
28 of section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

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

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

9 49. Under section 621(a) of the FCRA, 15 U.S.C. § 1681s(a), and section 13(b) of the
10 FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction prohibiting
11 Defendants from violating the FTC Act and the FCRA.

12 PRAYER FOR RELIEF

13 WHEREFORE, Plaintiff requests that this Court, pursuant to 15 U.S.C. §§ 45(a)(1),
14 45(m)(1)(A), 53(b), 1681s, and 1691c, and pursuant to the Court's own equitable powers:

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

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

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

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

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

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1 Dated October 9, 2012

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