

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS
KANSAS CITY-LEAVENWORTH DIVISION

UNITED STATES OF AMERICA,
) Plaintiff, vs. Defendant.
Case No. 17-1001, 2017 WL 623.8597 Tm0 Tc()Tj6 -2IKAN1(24

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), 56(a), 1681s(a), and 1692*l*.
3. Venue is proper in this district under 28 U.S.C. § 1391(b)(1), (b)(2), and (c)(2), and

COMMERCE

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

THE FAIR CREDIT REPORTING ACT

8. The FCRA was enacted in 1970, became effective on April 25, 1971, and has been in force since that date. The Fair and Accurate Credit Transactions Act (“FACT Act”) amended the FCRA in December 2003, Public Law No. 108-159, 117 Stat. 1952, and the Dodd Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended the FCRA in July 2010, Pub. L. No. 111-203, 124 Stat. 1376.

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

THE RISK-BASED PRICING RULE

things, any credit score used by the company and the key factors that adversely affected that score. 15 U.S.C. § 1681m(h)(5)(E). Consumers need disclosure of the key factors adversely affecting their credit scores to determine whether those scores are based on errors in their consumer reports and whether they should contact consumer reporting agencies to correct those errors.

11. The Dodd-Frank Act transferred rulemaking authority for most provisions of the FCRA to the Consumer Financial Protection Bureau; the FTC remains vested with enforcement authority. *See* Sections 1061 and 1088 of the Dodd-Frank Act. Pursuant to the Dodd-Frank Act and the FCRA, as amended, the Consumer Financial Protection Bureau republished the Risk-Based Pricing Rule at 12 C.F.R. § 1022.70 *et seq.*, effective December 30, 2011.

12. The FCRA defines a “consumer report” as “any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for (A) credit or insurance to be used primarily for personal, family, or household purposes” 15 U.S.C. § 1681a(d)(1).

13. The Risk-Based Pricing Rule applies to any person who uses a consumer report in connection with an application for or grant of credit, and who grants to a consumer, based in whole or in part on the consumer report, credit on terms that are materially less favorable than those available to a substantial proportion of consumers. 12 C.F.R. § 1022.72.

14. The Risk-Based Pricing Rule defines “credit” as “the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.” 12 C.F.R. § 1022.71(h).

15. The Risk-Based Pricing Rule, defines “material terms” to include, “[i]n the case of credit for which there is no annual percentage rate, the financial term that varies based on information in a consumer report and that has the most significant financial impact on consumers,

- F. A statement that Federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;
- G. A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number,

- vi) The name of the consumer reporting agency or other person that provided the credit score.

See 12 C.F.R. § 1022.73(a).

17. The Risk-Based Pricing Rule provides that a business providing closed-end credit must provide consumers with a Risk-Based Pricing Notice before “consummation of the

22. Sprint provides notification to consumers enrolled in the ASL Program, but that notification has not contained the key factors in those reports that adversely impact consumers' credit scores. Because Sprint has omitted those factors, the notification has failed to provide consumers with information necessary for them to determine whether their credit scores are based on errors in their consumer reports. The notification also does not contain an explanation of the information contained in consumer reports, and language encouraging consumers to verify the accuracy of the information contained in consumer reports and advising that consumers can access the Consumer Financial Protection Bureau's website to obtain more information about consumer reports. In some instances, Sprint provides the notification after a consumer has become contractually obligated and is subject to additional fees.

VIOLATIONS OF THE RISK-BASED PRICING RULE

Count I

23. Sprint has provided credit to consumers on material terms that are materially less favorable terms than those offered to a substantial proportion of other consumers, based on information in consumer reports.

24. In numerous instances, Sprint has failed to provide a notice with all the information required by the Risk-Based Pricing Rule before consummation of the transaction.

25. Sprint's

enforce compliance with the requirements imposed by the FCRA on all persons subject thereto except to the extent that enforcement specifically is committed to some other governmental agency, irrespective of whether the person is engaged in commerce or meets any other jurisdictional tests set forth by the FTC Act.

THIS COURT’S POWER TO GRANT RELIEF

26. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC.

CIVIL PENALTIES FOR VIOLATIONS OF THE RISK-BASED PRICING RULE

27. Section 621(a)(2)(A) of the FCRA, 15 U.S.C. § 1681s(a)(2)(A), as adjusted by 16 C.F.R. § 1.98(m), authorizes the Court to award monetary civil penalties of not more than \$3,500 for each knowing violation of the FCRA that constitutes a pattern or practice of violations of the statute.

28. Each instance in which Sprint has failed to comply with Section 615(h)(1) of the FCRA, 15 U.S.C. § 1681m(h)(1), and the Risk-Based Pricing Rule, 12 C.F.R. § 1022.70 *et seq.*, constitutes a separate violation of the FCRA for the purpose of assessing monetary civil penalties under Section 621(a)(2)(A) of the FCRA, 15 U.S.C. § 1681s(a)(2)(A).

PRAYER FOR RELIEF

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

1. Enter judgment against Sprint and in favor of Plaintiff for each violation alleged in this Complaint;

2. Enter a permanent injunction to prevent future violations of the FCRA and the Risk-Based Pricing Rule by Sprint;

3. Award such relief as the Court finds necessary to redress injury to consumers

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