FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

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CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

Consumer Financial Protection Bureau; State of North Carolina, *ex rel.* Roy Cooper, Attorney General; and Commonwealth of Virginia, *ex rel.* Mark R. Herring, Attorney General,	)	
Plaintiffs,	)	
v.	)	
Freedom Stores, Inc., Freedom Acceptance Corporation, Military Credit Services LLC, John F. Melley, and Leonard B. Melley, Jr.,	)	CIVIL ACTION NO. 2:14cv643 ANA/TEM
Defendants.	)	

Complaint for Injunctive Relief and Damages

The Consumer Financial Protection Bureau ("Bureau"), the State of North Carolina, *ex rel.* Roy Cooper, Attorney General ("North Carolina"), and the Commonwealth of Virginia, *ex rel.* Mark R. Herring, Attorney General ("Virginia") (together, "States"), allege the following against Freedom Stores, Inc. ("Freedom"), Freedom Acceptance Corporation ("FAC"), Military Credit Services LLC ("MCS"), John F. Melley, and Leonard B. Melley, Jr.:

Introduction

1. The Bureau brings this action under section 1054 of the Consumer Financial Protection Act of 2010 ("CFPA"), 12 U.S.C. § 5564, section 918 of the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. § 1693o, and section 108 of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1607, based on Defendants' unfair and abusive practices in violation of the CFPA, 12 U.S.C. §§ 5531, 5536, and their violations of EFTA's implementing regulation, Regulation E, 12

C.F.R. § 1005.10(b), and TILA's implementing regulation, Regulation Z, 12 C.F.R. § 1026.6(b), in connection with providing credit to and collecting debts from members of the United States military and other consumers.

2. The States bring this action against FAC, MCS, John Melley, and Leonard Melley based on their violations of the state and federal laws enumerated below.

(a) North Carolina brings this action against FAC, MCS, John Melley, and Leonard Melley under the North Carolina Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1, and the North Carolina Debt Collection Act,, which prohibits debt collectors from bringing debt-collection lawsuits against the debtor in any county other than (i) where the debt was incurred or (ii) where the debtor resides if the distances and amounts involved would make it impractical for the debtor to defend the claim, N.C. Gen. Stat. § 75-55, and from publicizing or communicating the debtor's indebtedness to third parties, N.C. Gen. Stat. § 75-53.

(b) North Carolina and Virginia bring this action against FAC, MCS, John Melley, and Leonard Melley under section 1042 of the CFPA, 12 U.S.C. § 5552, which authorizes state attorneys general to bring civil actions to enforce provisions of the CFPA, based on Defendants' unfair and abusive practices in violation of sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531, 5536.

Jurisdiction and Venue

3. This Court has subject-matter jurisdiction over this action because it is brought under Federal consumer-financial law, 12 U.S.C. §§ 5552(a)(1), 5565(a)(1), presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345.

4. This Court has supplemental jurisdiction over North Carolina's state law claims because they are so related to the federal claims that they form part of the same case or controversy. 28 U.S.C. § 1367(a).

5. Venue is proper in this district because Freedom, FAC, and MCS are located, reside, and do business here, John Melley resides and does business here, and Leonard Melley does business here. 28 U.S.C. §1391(b); 12 U.S.C. § 5564(f).

Parties

6. The Bureau is an agency of the United States created by the CFPA. 12 U.S.C. § 5491(a). It has independent litigating authority, including the authority to enforce the regulations promulgated under EFTA, 15 U.S.C. § 1693o, and TILA, 15 U.S.C. § 1607. 12 U.S.C. § 5564(a)-(b); *see also* 12 U.S.C. 5481(12), (14) (defining "Federal consumer financial law" to include EFTA and TILA).

7. The States have independent authority to enforce provisions of the CFPA. 12 U.S.C. § 5552. The State of North Carolina has authority to bring suit to enforce its state consumer-protection laws and acts through its Attorney General, Roy Cooper, pursuant to authority granted by Chapters 75 and 114 of the North Carolina General Statutes.

8. Freedom is a Delaware corporation that is located, resides, and does business in this district. Freedom sells consumer goods and electronics and provides financing for those purchases.

9. FAC is a Virginia corporation that is located, resides, and does business in this district. FAC acquires, purchases, or services extensions of credit to consumers made by Freedom. FAC also collects debts owed under consumers' contracts with Freedom or MCS. Therefore, FAC offers or provides a consumer-financial product or service that is covered by the

CFPA. 12 U.S.C. § 5481(15)(A)(i), (15)(A)(x). FAC is a "covered person" under the CFPA. 12 U.S.C. § 5481(6)(A).

10. MCS is a Virginia limited-liability company that is located, resides, and does business in this district. MCS extends credit to consumers and collects debts owed under consumers' contracts with MCS. Therefore, MCS offers or provides a consumer-financial product or service that is covered by the CFPA. 12 U.S.C. § 5481(15)(A)(i). MCS is a "covered person" under the CFPA. 12 U.S.C. § 5481(6)(A).

11. John Melley is the president and chief executive officer of FAC, the president and chief executive officer of MCS, and the vice president and chief operating officer of Freedom. Given his status as an officer, John Melley is a "related person" to FAC and MCS under the CFPA. 12 U.S.C. § 5481(25)(C)(i). Because he is a related person, John Melley is deemed a "covered person" for purposes of the CFPA. 12 U.S.C. § 5481(25)(B).

12. Leonard Melley is the president and chief executive officer of Freedom and the chief operating officer of both FAC and MCS. Given his status as an officer, Leonard Melley is a "related person" to FAC and MCS under the CFPA. 12 U.S.C. § 5481(25)(C)(i). Because he is a related person, Leonard Melley is deemed a "covered person" for purposes of the CFPA. 12 U.S.C. § 5481(25)(B).

Goods and Services Provided to Consumers by Freedom, FAC, and MCS

13. Freedom is a nationwide retailer of consumer goods, including household appliances, jewelry, furniture, electronics, airline tickets, and stereo equipment. The company sells merchandise online at http://www.shopfreedom.com and at its fourteen retail stores, which are all located near military bases, including in North Carolina and Virginia.

14. From January 1, 2010, to November 1, 2013, Freedom financed its customers' retail purchases through retail-installment contracts, which established monthly payments that were typically due on the second of each month. Many of the consumers who obtained credit from Freedom were current or former members of the United States military or their family members.

15. Freedom immediately assigned the retail-installment contracts it issued to FAC, which was responsible for servicing and collecting consumers' Freedom-related debts.

16. From January 1, 2010, to November 1, 2013, MCS extended credit to consumers who purchased retail goods at over 300 independent retailers ("MCS Dealers") within MCS's dealer network, some of which were located in North Carolina and Virginia.

17. MCS's credit contracts were revolving-credit agreements. The MCS agreements disclosed a "maximum" annual percentage rate ("APR") but not each periodic rate actually used to compute the finance charge and the corresponding nominal annual percentage rate. The MCS account-opening disclosures were not provided in the form of a table.

18. Like the Freedom contracts, MCS's revolving-credit agreements typically required payment by the second of each month. Also like Freedom, MCS Dealers catered to consumers on or near military bases. Most of MCS's customers were current or former members of the United States military or their family members. MCS and FAC both collected consumers' MCS-related debts.

Companies' "Double Payment" Practices

19. Many military members elected to repay their Freedom- and MCS-related debts by allotment, or automatic deductions from their pay.

20. When military consumers obtained credit from Freedom or MCS, employees of Freedom, MCS, or the MCS Dealers directed these consumers to an in-store computer terminal where they could log into a Department of Defense ("DoD") website to set up a recurring direct transfer of funds from their pay to Freedom, FAC, or MCS.

21. In addition, when consumers elected to repay their Freedom- or MCS-related debts by allotment, Freedom, MCS, or the MCS Dealers gave consumers the forms required to establish a bank account with a third-party military-allotment-processing bank ("Allotment-Processing Bank").

22. Once the forms were completed, Freedom, MCS, or the MCS Dealers forwarded them to the Allotment-Processing Bank.

23. The Allotment-Processing Bank arranged for the DoD to transfer funds directly from servicemembers' pay to the Allotment-Processing Bank twice each month. The bank, in turn, paid the consumers' monthly allotment to FAC or MCS on the contract due date.

24. The amount of the monthly allotment equaled the consumers' monthly payment obligation under the credit agreements.

25. The companies allowed servicemembers at the time of contracting to provide FAC and MCS an alternative payment method in the event their allotments ceased.

26. Specifically, FAC's and MCS's credit applications contained the following provisions regarding ACH authorizations ("ACH Pre-Authorization"):

a. "I (we) hereby authorize [FAC/MCS] to use my Credit Card . . . or my Visa/MasterCard Check Card, or my (our) checking or savings account (identified below) to pull my (our) monthly payment if my allotment does not start on time or is stopped for any reason. The depository named below is also

authorized to charge the same to my (our) account. . . . Payments must be drafted on or before the contractual due date and may be subject to a $25.00 service charge for all non-sufficient funds pursuant to state law[;]" and

b. "[T]his authority is to remain in full force and effect until [FAC/MCS] has received written notice from the authorized party(s) to terminate in such a manner as to afford FAC reasonable opportunity to act on it."

27. Through the ACH Pre-Authorization form, FAC and MCS obtained routing and account numbers for consumers' checking or savings accounts ("Back-Up Accounts").

28. On or about the 26th of each month, the Allotment-Processing Bank gave FAC and MCS reports ("Look-Ahead Reports") that identified consumer accounts the Allotment-Processing Bank predicted had stopped allotments or had insufficient allotments to cover the amount due to FAC or MCS.

29. Collectors reviewed the Look-Ahead Reports in an attempt to identify the consumers whose next allotment payment may fail to come through or fall short because of stopped or partial allotments.

30. To protect against the risk of a missed payment, collectors initiated electronic-funds transfers out of the Back-Up Accounts of the consumers identified on the Look-Ahead Reports before the payment was due.

31. The companies did not require that the collectors contact consumers before taking money from Back-Up Accounts.

32. Sometimes the Look-Ahead Reports incorrectly predicted that the allotments would not go through or would be insufficient to make a full payment. In those cases, the allotments would be paid in full on the due date, but because the companies required the

collectors to preemptively withdraw funds from the Back-Up Accounts without waiting to see if the allotments actually failed, FAC and MCS would end up collecting more than – and sometimes double – what the consumers actually owed in a single billing cycle ("Double Payment").

33. In other cases, the Look-Ahead Reports correctly predicted that the allotments would cease, but the consumers took steps to make timely payments by other means. The conduct of FAC and MCS resulted in Double Payments in these cases because the collectors preemptively withdrew from Back-Up Accounts without waiting for the consumers' payment to come in when due.

34. Many consumers, including those deployed overseas, did not know that FAC and MCS: (i) had access to Look-Ahead Reports that revealed the Allotment-Processing Bank's predictions related to their allotments or (ii) in reliance on the Look-Ahead Reports, had electronically withdrawn funds from their Back-Up Accounts before the allotment came due.

35. Sometimes consumers became aware of the Double Payment after it occurred and contacted FAC and MCS to complain. In some instances, FAC and MCS issued refunds to consumers. However, the companies did not issue any refunds until after the allotment posted, which typically occurred two to five days after they pulled the Double Payment.

36. FAC's and MCS's practice of debiting Back-Up Accounts before the payment due date was likely to cause affected consumers to overdraw their bank accounts, incur insufficient-funds fees, or otherwise experience disruptions to their household finances and cash flow.

Companies' Practice of Taking Unauthorized Payments from Third Parties

37. Collectors handling FAC- and MCS-related debts withdrew funds from checking or credit card accounts of consumers' parents, significant others, or other payors ("Related Payors") without prior authorization.

38. From time to time, a Related Payor would authorize a one-time payment on behalf of a consumer. Despite the fact that the authorization was for one-time use, the payment processor used by FAC and MCS retained this payment information in its system.

39. The companies permitted and encouraged their collectors to withdraw funds from any account for which a card number was "on file" in the companies' records. As a result, collectors withdrew payments using the stored information without additional authorization beyond the initial authorization for one-time use.

40. This practice caused a risk of substantial financial harm to Related Payors, including a risk of: overdrawing bank accounts, incurring insufficient-funds and bounced-check fees, and higher credit-card interest payments.

41. Collectors were awarded monthly bonuses based on the number of delinquent accounts that became current.

42. This bonus structure, coupled with strict deadlines and heavy workloads, created little incentive for collectors to ensure that the monies they pulled from Related Payors' accounts or consumers' Back-Up Accounts were authorized and appropriate at the time of the withdrawals.

43. Moreover, collectors were not required to inform the Related Payor – either before or after the funds were debited – of the electronic funds transfers. Related Payors did not know that any charges – beyond the one that was authorized – would occur and often never

learned that the charges had occurred. As a result, Related Payors were unknowingly subjected to unauthorized withdrawals from their checking or credit-card accounts and could not reasonably avoid the harm caused by the practice.

Companies' Practice of Contacting Third Parties, Including Chain-of-Command

44. Collectors for FAC and MCS debts called or sent written communications to third party references, including the chain-of-command of consumers who were servicemembers. By phone or in writing, FAC and MCS revealed the existence of servicemembers' debts and delinquencies and requested that the chain-of-command intervene so that FAC and MCS could receive payments from their subordinates.

45. Disclosing consumers' debts to their military employers was likely to cause substantial injury to those consumers. For members of the military, consumer-credit problems can result in disciplinary proceedings, lead to loss of supervisory authority or promotion potential, tarnish a soldier's reputation or honor, erode the trust of leadership, and trigger revocation of a security clearance.

46. Buried in FAC's and MCS's credit contracts was a provision that purported to secure servicemembers' permission for the companies to contact their chain-of-command if they fell behind on payments.

47. When consumers signed the contracts, they were given a very brief opportunity to scroll through multiple pages of dense contract language set out in small font on a computer screen and were instructed to sign and initial the relevant blanks using an electronic signing pad.

48. The companies did not require store employees to explain to consumers that by agreeing to accept financing, FAC or MCS would be allowed to call the consumer's chain-of-command to discuss delinquencies.

49. Many consumers did not know that the contracts contained a provision regarding chain-of-command contact, and consumers had no ability to bargain or negotiate to remove the provision.

Companies' Practice of Filing Collection Suits in a Distant Forum

50. FAC and MCS filed debt-collection lawsuits against consumers when their accounts fell behind by 60 days. Staff members in the "legal department" of FAC's and MCS's collections unit prepared warrant-in-debt actions to be filed in Virginia courts.

51. The FAC and MCS credit contracts contained a non-negotiable, venue-selection clause that designated the state or federal courts of Virginia.

52. Although no one in the legal department was a lawyer, the companies tasked employees in that department with determining whether the debt was time-barred under applicable state statutes of limitation, calculating the amounts due, and preparing lost-note affidavits with those amounts for John Melley's signature.

53. John Melley signed the lost-note affidavits but did not verify, or require others to verify, that the amounts reported were actually owed or that the debts were not eligible for debt-cancellation under policies purchased by many consumers at the time of sale.

54. From January 1, 2010, through November 1, 2013, FAC and MCS filed all of their debt-collection lawsuits in Norfolk General District Court, even against consumers who lived far away from Norfolk, Virginia, at the time of the suit, rather than in a judicial district where the consumers lived or where the consumers were physically present when they executed the financing contracts. FAC, MCS, Freedom, and the MCS Dealers did not require their staff to inform consumers, at the time of contract, that they would be sued in Virginia if they became delinquent.

55. Many consumers were sued in Virginia without actual knowledge of the lawsuit.

56. Whether or not they had actual notice of the lawsuit, consumers who lived far away from Norfolk, Virginia, found it difficult or impossible to travel to defend FAC's and MCS's actions.

57. From July 21, 2011 to December 31, 2013, FAC and MCS filed over 3,500 lawsuits in Norfolk, Virginia, against consumers who lived in distant venues and who were not physically present in Norfolk, Virginia, when they executed the underlying financing contract; almost all of the lawsuits resulted in a default judgment.

58. Upon obtaining those default judgments, FAC and MCS attempted to garnish consumers' wages or impose liens on their bank accounts.

59. Certain consumers did not learn they had been sued until they unsuccessfully attempted to withdraw cash from their bank accounts, which had been garnished.

Activities of John Melley and Leonard Melley

60. John and Leonard Melley delegated all responsibilities concerning the collection of FAC- and MCS-related debts to their vice president of collections ("VP-Collections"). John and Leonard Melley were aware that: (i) consumers were systematically sued in Virginia courts no matter where they resided or were physically present when the lawsuit was filed or when the contract was signed; (ii) the collectors routinely contacted military chain-of-command to get assistance with delinquent accounts; and (iii) FAC and MCS charged Double Payments by relying on Look-Ahead Reports and surreptitiously pulling funds from Back-Up Accounts. As owners and executive officers of the companies, they had the authority to control these practices and the collections staff charged with implementing them.

61. John and Leonard Melley also delegated to the VP-Collections all responsibilities concerning compliance, including the review of consumer contracts, applications, and authorizations to conform to applicable consumer-protection laws. They knew or should have known that: (i) the boilerplate contracts used by FAC and MCS included non-negotiable venue-selection clauses and non-negotiable provisions purportedly permitting collection agents to contact commanders about servicemembers' debts; (ii) the MCS form contracts omitted the actual APR charged; and (iii) FAC and MCS obtained routing and checking account numbers for Back-Up Accounts using the ACH Pre-Authorization. As owners and executive officers of the companies, they had the authority to ensure that their contracts complied with federal and state laws governing the consumer-finance industry.

Count One
(Violations of the Consumer Financial Protection Act)
Distant Forum Unfairness Claim – Asserted by the Bureau, North Carolina, and Virginia Against FAC and MCS

62. The allegations in paragraphs 1-61 are incorporated here by reference.

63. Section 1036(a)(1)(B) of the CFPA prohibits "unfair, deceptive, or abusive acts or practices." 12 U.S.C. § 5536(a)(1)(B). An act or practice is unfair if it "causes or is likely to cause substantial injury to consumers" that "is not reasonably avoidable by consumers[] and . . . is not outweighed by countervailing benefits to consumers or to competition." 12 U.S.C. § 5531(c)(1).

64. In the course of extending credit and collecting on credit contracts from July 21, 2011, to November 1, 2013, FAC and MCS filed debt-collection lawsuits in Norfolk, Virginia, against consumers who (i) had signed contracts far away from Norfolk, Virginia, and (ii) resided far away from Norfolk, Virginia, when the lawsuits were commenced.

65. Many consumers were unaware that the credit contracts contained a venue-selection clause; they had little opportunity to review the credit contracts at the time of signing.

66. Even if the consumers read and understood the venue-selection clause, there was no opportunity to bargain for its removal because the clause was non-negotiable.

67. The practice of filing debt-collection lawsuits in a distant forum when the consumer does not live in that forum and was not physically present in that forum when the contract was executed is likely to cause substantial injury that is not reasonably avoidable by consumers and is not outweighed by any countervailing benefit.

68. FAC's and MCS's practice of filing debt-collection lawsuits in a distant forum when the consumers did not live in that forum and were not physically present in that forum when they executed the financing contract is unfair. Because FAC and MCS are "covered persons," their conduct is unlawful under sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

Count Two
(Violations of the Consumer Financial Protection Act)
Distant Forum Unfairness Claim – Asserted by the Bureau, North Carolina, and Virginia Against John Melley and Leonard Melley

69. The allegations in paragraphs 1-61 and 63-68 are incorporated here by reference.

70. John Melley is a "related person" to FAC and MCS and a "covered person." 12 U.S.C. § 5481(25). He is liable for FAC's and MCS's unfair practice of filing debt-collection lawsuits in a distant forum, in violation of sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

71. Leonard Melley is a "related person" to FAC and MCS and a "covered person." 12 U.S.C. § 5481(25). He is liable for FAC's and MCS's unfair practice of filing debt-collection

lawsuits in a distant forum, in violation of sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

Count Three
(Violations of the Consumer Financial Protection Act)
Distant Forum Abusiveness Claim – Asserted by the Bureau, North Carolina, and Virginia Against FAC and MCS

72. The allegations in paragraphs 1-61 are incorporated here by reference.

73. Section 1036(a)(1)(B) of the CFPA prohibits "unfair, deceptive, or abusive acts or practices." 12 U.S.C. § 5536(a)(1)(B). An act or practice is abusive if it "takes unreasonable advantage of . . . the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service." 12 U.S.C. § 5531(d)(2)(B).

74. In the course of extending credit and collecting on credit contracts from July 21, 2011, to November 1, 2013, FAC and MCS filed debt-collection lawsuits in Virginia courts against consumers who (i) had signed contracts far away from Norfolk, Virginia, and (ii) resided far away from Norfolk, Virginia, when the lawsuits were commenced.

75. Many consumers were unaware that the credit contracts contained a venue-selection clause; they had little opportunity to review the credit contracts at the time of signing.

76. Even if consumers read and understood the venue-selection clause, there was no opportunity to bargain for its removal because the clause was non-negotiable.

77. The practice of filing debt-collection lawsuits based on the venue-selection clause at issue was almost certain to produce default judgments and lead to garnishments against consumers who were unable to appear and assert a defense. This practice took unreasonable advantage of the inability of consumers to protect their interests while using or choosing credit agreements.

78. FAC's and MCS's practice of filing debt-collection suits in a distant forum is abusive. Because FAC and MCS are "covered persons," their conduct is unlawful under sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

Count Four
(Violations of the Consumer Financial Protection Act)
Distant Forum Abusiveness Claim – Asserted by the Bureau, North Carolina, and Virginia Against John Melley and Leonard Melley

79. The allegations in paragraphs 1-61 and 73-78 are incorporated here by reference.

80. John Melley is a "related person" to FAC and MCS and a "covered person." 12 U.S.C. § 5481(25). He is liable for FAC's and MCS's abusive practice of filing debt-collection lawsuits in a distant forum, in violation of sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

81. Leonard Melley is a "related person" to FAC and MCS and a "covered person." 12 U.S.C. § 5481(25). He is liable for FAC's and MCS's abusive practice of filing debt-collection lawsuits in a distant forum, in violation of sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

Count Five
(Violation of the Consumer Financial Protection Act)
Improper Third-Party Contacts Unfairness Claim – Asserted by the Bureau, North Carolina, and Virginia Against FAC and MCS

82. The allegations in paragraphs 1-61 are incorporated here by reference.

83. Section 1036(a)(1)(B) of the CFPA prohibits "unfair, deceptive, or abusive acts or practices." 12 U.S.C. § 5536(a)(1)(B). An act or practice is unfair if it "causes or is likely to cause substantial injury to consumers" that "is not reasonably avoidable by consumers[] and . . .

is not outweighed by countervailing benefits to consumers or to competition." 12 U.S.C. § 5531(c)(1).

84. In the course of extending credit and collecting on credit contracts from July 21, 2011, to November 1, 2013, FAC and MCS contacted third parties, including consumers' military chain-of-command, to discuss the delinquency of consumers.

85. Many consumers were unaware that the credit contracts contained a waiver regarding third-party contacts, and they had little opportunity to review the credit contracts at the time of signing.

86. Among consumers who had read and understood the third-party contacts clause, there was no opportunity to bargain for its removal because the clause was non-negotiable.

87. Under these circumstances, contacting third parties, including military chain-of-command, to discuss the debts owed by consumers is likely to cause substantial injury that is not reasonably avoidable by consumers and is not outweighed by any countervailing benefit.

88. Accordingly, FAC and MCS committed unfair acts or practices. Because FAC and MCS are "covered persons," their conduct is unlawful under sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

Count Six
(Violations of the Consumer Financial Protection Act)
Improper Third-Party Contacts Unfairness Claim – Asserted by the Bureau, North Carolina, and Virginia Against John Melley and Leonard Melley

89. The allegations in paragraphs 1-61 and 83-88 are incorporated here by reference.

90. John Melley is a "related person" to FAC and MCS and a "covered person." 12 U.S.C. § 5481(25). He is liable for FAC's and MCS's unfair practice of contacting third parties, including military chain-of-command, to discuss the debts owed by consumers, in violation of sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

91. Leonard Melley is a "related person" to FAC and MCS and a "covered person." 12 U.S.C. § 5481(25). He is liable for FAC's and MCS's unfair practice of contacting third parties, including military chain-of-command, to discuss the debts owed by consumers, in violation of sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

Count Seven
(Violations of the Consumer Financial Protection Act)
Withdrawing Payments from a Related Payor without Authorization Unfairness Claim – Asserted by the Bureau, North Carolina, and Virginia Against FAC and MCS

92. The allegations in paragraphs 1-61 are incorporated here by reference.

93. Section 1036(a)(1)(B) of the CFPA prohibits "unfair, deceptive, or abusive acts or practices." 12 U.S.C. § 5536(a)(1)(B). An act or practice is unfair if it "causes or is likely to cause substantial injury to consumers" that "is not reasonably avoidable by consumers[] and . . . is not outweighed by countervailing benefits to consumers or to competition." 12 U.S.C. § 5531(c)(1).

94. In the course of extending credit and collecting on credit contracts from July 21, 2011, to November 1, 2013, FAC and MCS withdrew payments from Related Payors' credit cards and checking accounts without authorization.

95. Although the Related Payors previously had provided their account information for a one-time payment, the companies accessed their accounts for subsequent payments without getting the Related Payors' authorization to do so.

96. The Related Payors were given no notice that payments would be taken and thus could not take steps to avoid the charges.

97. The practice of withdrawing payments from Related Payors' accounts without authorization is likely to cause substantial injury that is not reasonably avoidable by consumers and is not outweighed by any countervailing benefit.

98. The practice by FAC and MCS of withdrawing payments from Related Payors' accounts without authorization is unfair. Because FAC and MCS are "covered persons," their conduct is unlawful under sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

Count Eight
(Violations of the Consumer Financial Protection Act)
Withdrawing Payments from a Related Payor without Authorization Unfairness Claim – Asserted by the Bureau, North Carolina, and Virginia Against John Melley and Leonard Melley

99. The allegations in paragraphs 1-61 and 93-98 are incorporated here by reference.

100. John Melley is a "related person" to FAC and MCS and a "covered person." 12 U.S.C. § 5481(25). He is liable for FAC's and MCS's unfair practice of withdrawing payments from Related Payors' accounts without authorization, in violation of sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

101. Leonard Melley is a "related person" to FAC and MCS and a "covered person." 12 U.S.C. § 5481(25). He is liable for FAC's and MCS's unfair practice of withdrawing payments from Related Payors' accounts without authorization, in violation of sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

Count Nine
(Violation of the Consumer Financial Protection Act)
Double Payments Unfairness Claim – Asserted by the Bureau, North Carolina, and Virginia Against FAC and MCS

102. The allegations in paragraphs 1-61 are incorporated here by reference.

103. Section 1036(a)(1)(B) of the CFPA prohibits "unfair, deceptive, or abusive acts or practices." 12 U.S.C. § 5536(a)(1)(B). An act or practice is unfair if it "causes or is likely to cause substantial injury to consumers" that "is not reasonably avoidable by consumers[] and . . .

is not outweighed by countervailing benefits to consumers or to competition." 12 U.S.C. § 5531(c)(1).

104. In the course of extending credit and collecting on credit contracts from July 21, 2011, to November 1, 2013, FAC and MCS collected more than – sometimes double – what was owed in a single billing cycle.

105. Many consumers were unaware that FAC and MCS were pulling funds from their Back-Up Accounts at the time the electronic funds transfers were made.

106. There was no meaningful opportunity for consumers to avoid a double payment before it occurred.

107. The practice of electronically withdrawing more than the payment owed in a single billing cycle without notice to consumers is likely to cause substantial injury that is not reasonably avoidable by consumers and is not outweighed by any countervailing benefit.

108. The practice by FAC and MCS of electronically withdrawing more than the payment owed in a single billing cycle without notice to consumers is unfair. Because FAC and MCS are "covered persons," their conduct is unlawful under sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

Count Ten
(Violations of the Consumer Financial Protection Act)
Double Payments Unfairness Claim – Asserted by the Bureau, North Carolina, and Virginia Against John Melley and Leonard Melley

109. The allegations in paragraphs 1-61 and 103-108 are incorporated here by reference.

110. John Melley is a "related person" to FAC and MCS and a "covered person." 12 U.S.C. § 5481(25). He is liable for FAC's and MCS's unfair practice of electronically

withdrawing more than the payment owed in a single billing cycle without notice to consumers, in violation of sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

111. Leonard Melley is a "related person" to FAC and MCS and a "covered person." 12 U.S.C. § 5481(25). He is liable for FAC's and MCS's unfair practice of electronically withdrawing more than the payment owed in a single billing cycle without notice to consumers, in violation of sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

Count Eleven
(Violations of the Electronic Fund Transfer Act)
Asserted by the Bureau Against Freedom

112. The allegations in paragraphs 1-61 are incorporated here by reference.

113. In the course of extending credit and collecting on credit contracts from January 1, 2010, to November 1, 2013, Freedom used ACH Authorization forms that did not comply with the requirements of EFTA and Regulation E.

114. For consumers whose allotments failed, FAC withdrew funds from the consumers' Back-Up Accounts.

115. The transfers of funds made by FAC out of consumers' Back-Up Accounts are electronic-funds transfers authorized in advance to recur at substantially regular intervals; the transfers are preauthorized electronic-fund transfers ("Preauthorized EFTs"). 12 C.F.R. § 1005.2(k).

116. Because transfers from the Back-Up Accounts are Preauthorized EFTs, EFTA and Regulation E require that the ACH Authorization be valid; to be valid, the terms of the ACH Authorization must be clear and readily understandable. 15 U.S.C. § 1693c; 12 C.F.R. pt. 1005, Supp. I, Official Staff Interpretation, § 1005.10(b)-6.

117. FAC routinely used Look-Ahead Reports, which were received at month-end, before the next due date, to determine which allotments will fail in whole or in part.

118. The ACH Authorization, however, does not state when the debits from the Back-Up Accounts will be made. Instead, it merely states that the debit will be made "on or before" the contractual due date.

119. Many consumers were unaware that FAC was electronically withdrawing funds from their Back-Up Accounts at the time the electronic-funds transfers were made.

120. Accordingly, the ACH Authorization did not explain the preauthorized transfer in clear and readily understandable terms. Freedom, which obtained the ACH Authorization, failed to disclose requisite information to consumers, in violation of EFTA and Regulation E. 15 U.S.C. §§ 1693c, 1693e; 12 C.F.R. § 1005.10(b).

Count Twelve
(Violations of the Truth in Lending Act)
Asserted by the Bureau Against MCS

121. The allegations in paragraphs 1-61 are incorporated here by reference.

122. In the course of extending open-end credit from January 1, 2010, to November 1, 2013, MCS used revolving-credit agreements that omitted the account-opening disclosures required by TILA in the form required by Regulation Z.

123. TILA specifies that material terms must be disclosed to the consumer before an open-end credit account is opened. 15 U.S.C. § 1637(a). "Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding nominal annual percentage rate" must be disclosed. 15 U.S.C. § 1637(a)(4).

124. Regulation Z requires certain account-opening disclosures, including each APR, to be provided "in the form of a table with the headings, content, and format substantially similar to any of the applicable tables in [] appendix G." 12 C.F.R. § 1026.6(b)(1). The APR must be in at least 16-point type. 12 C.F.R. § 1026.6(b)(2)(i).

125. The MCS credit agreements disclose only a "maximum" APR, and it is not in the required 16-point type. The actual APR is not disclosed at all. The finance charge, range of balances to which the periodic rate is applicable, and corresponding nominal APR are not disclosed in a manner that comports with Regulation Z.

126. The MCS credit agreements violate TILA and Regulation Z. 15 U.S.C. § 1637(a); 12 C.F.R. § 1026.6(b)(1)-(2).

Count Thirteen
(Violations of the North Carolina Debt Collection Act)
Distant Forum Claim – Asserted by North Carolina Against FAC and MCS

127. The allegations in paragraphs 1-61 are incorporated here by reference.

128. Section 75-55 of the North Carolina General Statutes prohibits a debt collector from collecting or attempting to collect any debt from a North Carolina consumer "by use of any unconscionable means." Such unconscionable means include, but are not limited to "[b]ringing suit against the debtor in a county other than that in which the debt was incurred or in which the debtor resides if the distances and amounts involved would make it impractical for the debtor to defend the claim." N.C. Gen. Stat. § 75-55(4).

129. In the course of extending credit and collecting on credit contracts from January 1, 2010, to November 1, 2013, FAC and MCS filed debt-collection lawsuits in Virginia courts against North Carolina consumers who (i) had signed contracts outside of Virginia and (ii) did not reside in Virginia when the lawsuits were commenced.

130. FAC's and MCS's practice of filing debt-collection lawsuits in Virginia courts, rather than in the county of North Carolina consumers' residence or where the debts were incurred is unlawful under the North Carolina Debt Collection Act, N.C. Gen. Stat. § 75-55(4).

131. As the president and chief executive officer of FAC, president and chief executive officer of MCS, and chief operating officer of Freedom, John Melley directed, managed, and is responsible for, the illegal acts of FAC and MCS, including FAC's and MCS's violations of the North Carolina Debt Collection Act, N.C. Gen. Stat. § 75-55(4), and is liable thereunder.

132. As the chief operating officer of both FAC and MCS, and the president and chief executive officer of Freedom, Leonard Melley directed, managed, and is responsible for, the illegal acts of FAC and MCS, including FAC's and MCS's violations of the North Carolina Debt Collection Act, N.C. Gen. Stat. § 75-55(4), and is liable thereunder.

Count Fourteen
(Violations of the North Carolina Debt Collection Act)
Unreasonable Publication Claim – Asserted by North Carolina
Against FAC and MCS

133. The allegations in paragraphs 1-61 are incorporated here by reference.

134. Section 75-53 of the North Carolina General Statutes prohibits a debt collector from unreasonably publicizing information regarding a North Carolina consumer's debt. Such unreasonable publication includes, but is not limited to "any communication with any person other than the debtor or his [or her] attorney," except in very limited circumstances, such as a communication with a debtor's spouse, or a communication "for the sole purpose of locating the debtor, if no indication of indebtedness is made." N.C. Gen. Stat. § 75-53(1). Unreasonable publication also includes "using any form of communication which ordinarily would be seen or heard by any person other than the consumer that displays or conveys any information about the

alleged debt other than the name, address and phone number of the debt collector." N.C. Gen. Stat. § 75-53(2).

135. In the course of extending credit and collecting on credit contracts from January 1, 2010, to November 1, 2013, FAC and MCS contacted third parties, including North Carolina consumers' military chain-of-command, to discuss the delinquency of North Carolina consumers.

136. FAC's and MCS's practice of contacting third parties, including military chain-of-command, to discuss debts owed by North Carolina consumers is unlawful under the North Carolina Debt Collection Act, N.C. Gen. Stat. § 75-53.

137. As the president and chief executive officer of FAC, president and chief executive officer of MCS, and chief operating officer of Freedom, John Melley directed, managed, and is responsible for, the illegal acts of FAC and MCS, including FAC's and MCS's violations of the North Carolina Debt Collection Act, N.C. Gen. Stat. § 75-53, and is liable thereunder.

138. As the chief operating officer of both FAC and MCS, and the president and chief executive officer of Freedom, Leonard Melley directed, managed, and is responsible for, the illegal acts of FAC and MCS, including FAC's and MCS's violations of the North Carolina Debt Collection Act, N.C. Gen. Stat. § 75-53, and is liable thereunder.

Count Fifteen
(Violations of the North Carolina Unfair and Deceptive Practices Act)
Asserted by North Carolina Against FAC, MCS,
John Melley and Leonard Melley

139. The allegations in paragraphs 1-61 are incorporated here by reference.

140. North Carolina's Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1(a), prohibits "unfair or deceptive acts or practices in or affecting commerce" in the State of North

Carolina. "Commerce," for purposes of the Act, "includes all business activities, however denominated." N.C. Gen. Stat. § 75-1.1(b).

141. FAC and MCS have engaged in unfair or deceptive acts and practices in or affecting commerce in connection with their debt collection activities in North Carolina, including, but not limited to, the following:

a. Engaging in violations of North Carolina's Debt Collection Act, N.C. Gen. Stat. § 75-55, by filing debt collection lawsuits in Virginia against North Carolina consumers, which, pursuant to N.C. Gen. Stat. § 75-56(a), constitute violations of N.C. Gen. Stat. § 75-1.1.

b. Engaging in violations of North Carolina's Debt Collection Act, N.C. Gen. Stat. § 75-53, by unreasonably publicizing information regarding North Carolina consumers' debts through FAC's and MCS's practice of contacting third parties, including military chain-of-command, to discuss the debts owed by consumers, which, pursuant to N.C. Gen. Stat. § 75-56(a), constitute violations of N.C. Gen. Stat. § 75-1.1.

c. Withdrawing payments from Related Payors' accounts in North Carolina without obtaining the Related Payors' authorization to do so, and failing to provide Related Payors in North Carolina with notice that payments would be taken from their accounts.

d. Withdrawing Double Payments from the accounts of North Carolina consumers, and failing to provide North Carolina consumers with notice of such practice.

142. As the president and chief executive officer of FAC, president and chief executive officer of MCS, and chief operating officer of Freedom, John Melley directed, managed, and is responsible for, the illegal acts of FAC and MCS, including FAC's and MCS's violations of the North Carolina Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1, and is liable thereunder.

143. As the chief operating officer of both FAC and MCS, and the president and chief executive officer of Freedom, Leonard Melley directed, managed, and is responsible for, the illegal acts of FAC and MCS, including FAC's and MCS's violations of the North Carolina Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1, and is liable thereunder.

Demand for Relief

Wherefore, the Bureau and the States request that the Court:

1. permanently enjoin FAC and MCS from committing future violations of the CFPA, 12 U.S.C. §§ 5531, 5536, N.C. Gen. Stat. § 75-50, *et seq.*, including N.C. Gen. Stat. §§ 75-53 and 75-55; and N.C. Gen. Stat. § 75-1.1;

2. permanently enjoin Freedom from committing future violations of EFTA, 15 U.S.C. § 1693, *et seq.*,

3. permanently enjoin MCS from committing future violations of TILA, 15 U.S.C. § 1631, *et seq.*;

4. permanently enjoin John Melley and Leonard Melley from engaging in future violations of the CFPA, 12 U.S.C. §§ 5531, 5536, N.C. Gen. Stat. § 75-50, *et seq.*, and N.C. Gen. Stat. § 75-1.1;

5. grant additional injunctive relief as the Court may deem to be just and proper;

6. award restitution against all Defendants in the amount of all unlawfully obtained or collected judgments, interest, and fees and all unlawfully collected debts;

7. award damages or other monetary relief against all Defendants;

8. order disgorgement of ill-gotten gains against all Defendants;

9. award civil-money penalties against all Defendants;

10. award costs against all Defendants; and

11. award additional relief as the Court may determine to be just and proper.

Respectfully submitted,

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