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U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

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By: JAR DEP CLERK

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF ARKANSAS**

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| Bureau of Consumer Financial Protection and the State of Arkansas *ex rel.* Leslie Rutledge, Attorney General,<br><br>Plaintiffs,<br><br>v.<br><br>Alder Holdings, LLC,<br><br>Defendant. | Case Number: 4:20cv1445-KGB<br><br>**COMPLAINT**<br><br>This case assigned to District Judge Baker<br>and to Magistrate Judge Ray |

The Bureau of Consumer Financial Protection (Bureau) and the State of Arkansas *ex rel.* Leslie Rutledge, Attorney General (Arkansas), bring this action against Alder Holdings, LLC (Alder) under the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5564, 5565, and the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681s(b)(1)(H), to obtain permanent injunctive relief, a civil money penalty, consumer redress, and other relief for Alder's violation of FCRA, 15 U.S.C. § 1681m, and Regulation V's rule regarding Duties of Users Regarding Risk-Based Pricing (Risk-Based Pricing Rule), 12 C.F.R. § 1022.70 *et seq.*

## Jurisdiction and Venue

1. This Court has subject-matter jurisdiction over this action because it is brought under "Federal consumer financial law," 12 U.S.C. § 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.

2. Venue is proper because Alder is located, resides, and does business in this district. 12 U.S.C. § 5564(f).

**Parties**

3. The Bureau is an independent agency of the United States charged with regulating the offering and provision of consumer-financial products or services under "Federal consumer financial laws." 12 U.S.C. § 5491(a). The Bureau has independent litigating authority to enforce Federal consumer financial laws, including FCRA, Regulation V, and the CFPA. 12 U.S.C. §§ 5481(12)(F) & (14), 5564(a) & (b).

4. Alder is a Utah-based, privately held home-security company. At all times relevant to this Complaint, Alder has done business in this district. Alder sells home-security and alarm systems, primarily door-to-door, throughout the country and has sold its products and services to over 115,000 customers. Alder extends credit to consumers and is therefore a "creditor" under FCRA, 15 U.S.C. § 1681a(r)(5).

5. At all times relevant to this Complaint, Alder has obtained and used consumers' credit scores to determine the amount of activation fees for its products

and services but has not provided consumers with the notice required by FCRA and Regulation V.

**The Fair Credit Reporting Act and the Risk-Based Pricing Rule**

6. In 2003, the Fair and Accurate Credit Transactions Act, Public Law No. 108-159, 117 Stat. 1952, amended FCRA to add § 615(h), 15 U.S.C. § 1681m(h), which requires companies to give consumers notice when they provide consumers with less favorable credit terms based on a review of their credit reports, also known as risk-based pricing.

7. This notice requirement was designed to complement FCRA's already existing adverse-action-notice provisions and to improve the accuracy of consumer reports. *See* Fair Credit Reporting Risk-Based Pricing Regulations, 75 Fed. Reg. 2724 (January 15, 2010).

8. When consumers are alerted to the existence of negative information on their consumer reports, they can choose to check their consumer reports for accuracy and correct any inaccurate information that may affect their ability to obtain the product or service they are seeking or its price. *Id.*

9. And when consumers are informed that their credit score may increase the price of a product or service, they can comparison-shop.

10. FCRA and Regulation V's Risk-Based Pricing Rule requires that a "person" provide a consumer with a risk-based-pricing notice if the person "uses a

consumer report in connection with" an application for or extension of credit and, "based in whole or in part on the consumer report," extends "credit to that consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers." 15 U.S.C. § 1681m(h)(1); 12 C.F.R. § 1022.72(a).

11. 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 . . . credit or insurance to be used primarily for personal, family, or household purposes." 15 U.S.C. § 1681a(d)(l).

12. The Risk-Based Pricing Rule adopts the Equal Credit Opportunity Act's definition of credit: "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." 15 U.S.C. § 1691a(d); 12 C.F.R. § 1022.71(h).

13. The Risk-Based Pricing Rule defines "material terms" to mean "[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, such as a deposit required in connection with credit extended by a telephone company or utility." 12 C.F.R. § 1022.71(n)(3).

14. To comply with the rule's notice requirement, a company could opt to provide all consumers with a credit-score-disclosure notice regardless of credit score or whether the consumer may actually receive less favorable terms, instead of a risk-based-pricing notice.

15. For companies providing risk-based-pricing notices, the rule provides a number of methods companies may use to determine which consumers would receive "credit on terms that are materially less favorable than those available to a substantial proportion of consumers" and therefore must receive a notice. 12 C.F.R. § 1022.72(b).

16. A Risk-Based Pricing Notice must contain the following specified information to consumers receiving the materially less favorable terms under 12 C.F.R. § 1022.73(a):

a. a statement that a consumer report includes information about the consumer's credit history and the type of information included in that history;

b. a statement that the terms offered have been set based on information from a consumer report;

c. a statement that the terms offered may be less favorable than the terms offered to consumers with better credit histories;

d. a statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

e. the identity of each consumer reporting agency that furnished a consumer report used in the credit decision;

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, where applicable) specified by the consumer-reporting agency or agencies;

h. a statement directing consumers to the Consumer Financial Protection Bureau's website to obtain more information about consumer reports; and

i. if the creditor used a credit score,

   i. a statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;

   ii. the credit score used in making its credit decision;

   iii. the range of possible credit scores under the model used to generate the credit score;

   iv. all of the key factors that adversely affected the credit score, limited to four key factors unless one of the key factors was the number of enquiries to the consumer's report and in such instance listing five key factors;

   v. the date on which the credit score was created; and

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

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 transaction, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit, is

communicated to the consumer by the person required to provide the notice." 12 C.F.R. § 1022.73(c)(1)(i).

18. The Risk-Based Pricing Rule defines "consummation" as "the time that a consumer becomes contractually obligated on a credit transaction." 12 C.F.R. §§ 1022.71(e); 1026.2(a)(13).

**Alder's Business Activities**

19. Alder is a closed-end creditor that grants its customers the right to defer payment for its alarm and security-system equipment over the life of a long-term contract.

20. Customers receive security monitoring equipment when they agree to a long-term Home Security Contract, generally for 5 years, that requires monthly and other fees.

21. Customers are typically charged an activation fee, a material term, and then must pay the contract's monthly fees even if they cancel the monitoring service. Upon cancellation, the customer must pay 90% of the contract's remaining balance.

22. Customers may also pay the activation fee over time: they may repay the fee in 3 monthly installments, or the sales representative can raise the price for monitoring by $10 each month until the activation fee is paid off.

23. Alder's customer contracts list retail prices for the equipment that it provides. Alder then effectively uses activation fees, monthly fees, and long-term contracts to recoup, over time, the cost of equipment "given" to customers, and the terms of this deferral vary based on customers' credit scores.

24. Alder charges customers 90% of the remaining balance on the contract as a lump sum if they cancel the monitoring service, demonstrating that the residual value is attributed to the equipment, not ongoing monitoring or other services.

25. And Alder maintains a security interest in the equipment. If a customer does not fulfill his or her commitment to pay the monthly rate for the contract's full term, Alder retains the right to repossess the equipment and, in fact, does attempt to repossess equipment.

26. Alder uses a point-based-incentive system for sales representatives' commissions that penalizes sales representatives who give away too much equipment.

27. Because Alder allows customers to defer payment for the alarm and security-system equipment over the life of a long-term contract, Alder is extending credit to its customers.

## Alder Determines Pricing by Evaluating a Consumer's Credit Score.

28. Alder determines the amount of the activation fee that it charges consumers, which is a material term, by evaluating the consumer's credit score, without providing consumers notice that their credit scores are being used to determine pricing.

29. Alder's sales representatives run a credit check during their door-to-door sales presentations. Further, Alder's salespeople use tablets or smartphones during their sales pitches that reveal potential customers' credit scores at the outset of the sales presentation and before they negotiate the contract's activation fee and other key terms.

30. Alder's point-based-commissions program incentivizes the use of risk-based pricing. Sales affiliates lose points and may be penalized for failing to charge higher fees to customers with lower credit scores.

31. For example, an Alder training quiz explicitly states that sales representatives are "required" to collect different amounts of activation fees from customers based on their credit scores.

32. Credit-score and pricing data from Alder show an inverse correlation between customers' credit scores and the amount of the activation fee that Alder charged them, if Alder charged an activation fee at all.

33. In fact, Alder is more than twice as likely to charge customers with the lowest credit score an activation fee as those with the highest credit scores.

34. Customers with the worst credit or no credit score are charged substantially more in average activation fees than customers with the highest credit scores.

35. For example, 55% of customers with credit scores between 300 and 599 were required to pay activation fees, as opposed to only 19% of customers with credit scores over 800. Forty-nine percent of customers without a credit score or an invalid credit score (one where the credit-reporting agency has invalid or missing information) were also required to pay an activation fee.

36. The average activation fee paid by customers in the lowest credit-score bracket and without a credit score or with an invalid credit score are $46.18 and $41.15, respectively. But customers with the highest credit scores are, on average, charged only $14.71.

37. This shows how Alder uses credit scores, in whole or in part, to offer credit to customers on terms that are materially less favorable than those available to a substantial proportion of customers.

38. The activation fee is material under FCRA and Regulation V. It is essentially a deposit, disparately charged to customers with worse credit, and it has a significant financial impact on consumers.

39. Despite engaging in risk-based pricing when it extends credit and obtains and uses consumers' credit scores to determine the amount of activation fees, Alder does not provide a risk-based-pricing notice to customers informing them that their credit scores could impact whether they would be charged an activation fee and, if so, the amount of the fee.

**Count One (Asserted by the Bureau and Arkansas)**

40. Plaintiffs incorporate the allegations set for in 1-39 of this Complaint.

41. Alder 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.

42. Alder has failed to provide its customers receiving less favorable material terms based on their credit scores with a notice with all the information required by the Risk-Based Pricing Rule before consummation of the transaction.

43. Alder's acts or practices, as described above, violate the Risk-Based Pricing Rule.

**Count Two (Asserted by Arkansas)**

44. Arkansas incorporates the allegations set for in 1-39 of this Complaint.

45. Section 1036(a)(1)(A) of the CFPA makes it unlawful for covered person, such as Alder, to "commit any act or omission in violation of a Federal consumer financial law." 12. U.S.C. § 5536(a)(1)(A).

46. The FCRA is a "Federal consumer financial law." 12 U.S.C. § 5481(12)(F).

47. By violating the FCRA, as described in Count One, Alder violated the CFPA. 12 U.S.C. § 5536(a)(1)(A).

**Demand for Relief**

The Bureau and the State of Arkansas request that the Court:

a. enjoin Alder from violating the FCRA and Regulation V;

b. order Alder to pay damages, redress, and other monetary relief to consumers;

c. order Alder to pay disgorgement or compensation for unjust enrichment;

d. impose a civil money penalty under 12 U.S.C. § 5564(a) of the CFPA;

e. order Alder to pay the costs incurred in connection with prosecuting this action; and

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

Respectfully submitted,

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