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**THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

UNITED STATES OF AMERICA,

Plaintiff,

v.

VIVINT SMART HOME, INC., a corporation,

Defendant.

Case No. 2:21-cv-00267-TS

**COMPLAINT FOR CIVIL
PENALTIES, PERMANENT
INJUNCTION AND OTHER
RELIEF**

Judge Ted Stewart

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

1. Plaintiff brings this action under Sections 5(a), 13(b), and 16(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), and 56(a), and Section 621(a) of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681s(a), to obtain monetary civil penalties and permanent injunctive or other relief for Defendant’s violations of the FTC Act, 15 U.S.C. § 45(a); the FCRA, 15 U.S.C. §§ 1681-1681x; and the Duties Regarding the Detection,

Prevention, and Mitigation of Identity Theft (“Red Flags Rule”), 16 C.F.R. § 681.1, issued pursuant to Section 615(e) of the FCRA, 15 U.S.C. § 1681m(e).

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. § 1681s(a).

3. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(1), (b)(2), (c)(2), 1395(a), and 15 U.S.C. § 53(b).

DEFENDANT

4. Defendant Vivint Smart Home, Inc. (“Vivint” or the “Company”), is a Delaware corporation with its principal place of business at 4931 North 300 West, Provo, Utah 84604. Vivint transacts business in this District.

COMMERCE

5. At all times relevant to this Complaint, the 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.

DEFENDANT’S BUSINESS ACTIVITIES

6. Vivint sells smart home technology platforms, including home security devices and related monitoring services. The Company currently serves over 1.5 million customers in the United States and Canada. One of the channels through which Vivint acquires new customers is its door-to-door sales force, which includes young adults, often students on summer breaks. Vivint equips its sales representatives with iPads loaded with Vivint’s proprietary sales

system—Street Genie—which manages the new customer onboarding process, including customer credit verifications with Consumer Report Agencies (“CRAs”).

New Account Credit Financing

7. The typical Vivint smart home security and monitoring system costs approximately one thousand dollars or more, and thus most consumers finance the cost of the equipment with a loan.

8. Prior to 2017, Vivint offered its customers a package that included home security and automation equipment and monitoring services for a combined monthly fee. Under this product offering, customers were required to pass a credit check and agree to subscribe to Vivint’s services for a minimum contractual term, which usually ranged from 36 to 60 months.

9. Since 2017, Vivint has offered its customers the option of financing home security equipment with Vivint internally through its own loans, called Retail Installment Contracts (“RICs”). These internally-financed credit arrangements have made up a substantial portion of Vivint’s sales from 2017 through 2019.

10. In the second quarter of 2017, Vivint began offering an additional financing option to its customers, called “Vivint Flex Pay,” which connects the customer with a third-party bank for financing. If a customer declines or does not qualify for the third-party financing but meets Vivint’s minimum criteria, Vivint continues to offer its internal financing option through RICs.

11. RIC accounts made up approximately 32% of new accounts sold in 2017, approximately 20% of accounts sold in 2018, approximately 11% of new accounts sold in 2019,

and approximately 3% of accounts sold through the fall of 2020, in total amounting to hundreds of thousands of customer accounts over this time period.

12. For either type of approach to credit financing, Vivint requires that potential customers satisfy a certain threshold of creditworthiness in order to qualify for the loan. In connection with a RIC, the determination of creditworthiness is made through an inquiry to a CRA by the door-to-door Vivint sales representative through Vivint's custom software.

Misconduct by Sales Representatives

13. Vivint compensates its seasonal sales representatives entirely through commissions for the sales of new systems. These sales representatives are attracted to Vivint by the promise of a lucrative summer job. As with any commission-based occupation, this approach to payment incentivized the sales representatives to work hard and, occasionally, to cut corners. In Vivint's case, the compensation structure combined with the lack of effective oversight also incentivized the representatives to violate the law.

14. As part of the customer onboarding process, the Vivint sales representative must request and obtain from a CRA a consumer report to evaluate the potential customer's creditworthiness. The sales representative uses Vivint's Street Genie app on the Company-issued iPad to request and obtain the consumer's credit report from a CRA. Due to the size of the Vivint business and the size of its seasonal sales force—more than 4,000 in an average year—Vivint's sales representatives request thousands of consumer credit reports per day during its peak sales season from April through October each year, and continue to request numerous credit reports per day the rest of the year. For example, Vivint's sales representatives made more than 130,000 inquiries to a single CRA in a single month in 2016.

15. If a customer meets the credit requirement, the sales representative is able to complete the new customer registration and earn the commission. If a customer does not qualify, then the sales representative cannot proceed with the new customer registration. As a result, certain Vivint sales representatives developed two means by which to deceive the software to permit them to register a new customer who did not satisfy the credit requirement—the first is informally known as “white paging” and the second is adding impermissible co-signers.

16. Although the specifics could vary, “white paging” worked generally as follows: If a potential customer did not satisfy the credit requirement, the sales representative would use the white pages to identify an unrelated individual with a same or similar name to the customer who had just failed the credit check. The sales representative would then enter that unrelated customer’s address as a “previous address” in the Street Genie app, and re-run the credit check, pulling the credit score of the similarly-named third party. The sales representative would thereby trick Vivint’s system into approving a new account for the unqualified customer by unlawfully using the credit history of the unrelated individual. Vivint would then extend credit to this unqualified customer, based on the third party’s credit score.

17. Adding impermissible co-signers worked similarly, except the name unlawfully added to the account was not the same or similar to the primary account holder. For example, a Vivint sales representative might ask a consumer who had failed credit whether they knew of anyone else who might qualify (*e.g.*, a relative). The rep would then obtain a credit report for that individual without permission, add their address into “previous address” and thereby qualify the primary account holder. In other instances, the representative would add a co-signer on the account whom the primary account holder does not know, but is a person the representative

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