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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT KENTUCKY  
BOWLING GREEN DIVISION

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DISTRICT CLERK  
2004 JAN -7 AM 11:28

SALLY BROESSEL,  
On Behalf of Herself And All  
Others Similarly Situated,

CASE NO. 1:04 CV-4-M

Plaintiff,

CLASS REPRESENTATION

vs.

TRIAD GUARANTY INSURANCE CORP.,  
P.O. Box 2300  
Winston Salem, North Carolina 27102

SERVE: Process Agent  
101 South Stratford Road  
Suite 500  
Winston Salem, North Carolina 27104

Kentucky Secretary of State  
Commonwealth of Kentucky  
152 State Capitol Building  
700 Capitol Avenue  
Frankfort, Kentucky 40601-3493

Defendant.

**CLASS ACTION COMPLAINT**

Comes now the Plaintiff, Sally Broessel, by and through counsel, and on behalf of herself and all others similarly situated, states as follows:

1. This is a class action brought pursuant to Rule 23, Federal Rules of Civil Procedure.
2. Plaintiff Sally Broessel is a resident of Campbellsville, Taylor County, Kentucky.

3. Defendant Triad Guaranty Insurance Corporation is headquartered in Winston-Salem, North Carolina and conducts business in Kentucky and throughout the United States. Triad Guaranty Insurance Corporation is a subsidiary of Triad Guaranty, Inc., one of the largest mortgage insurers in the country with total revenues of \$118 million in the year ending December 2002.

4. Defendant issues private mortgage insurance policies involving the consumer in connection with residential mortgage loans.

5. Private mortgage insurance is generally required of the consumer when the consumer borrows more than 80% of the value of a home. The consumer pays the insurance premiums for the mortgage insurance and the premiums are set by the mortgage insurer based in whole or in part on the information about the consumer contained in a consumer report.

6. This Court has jurisdiction to consider claims brought pursuant to the FCRA, including class actions to enforce its provisions. 15 U.S.C. § 1681p.

#### **THE FAIR CREDIT REPORTING ACT**

7. The Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681 - 1681t, is a federal statute first enacted in 1971. The FCRA is a consumer protection statute that regulates the activities of credit reporting agencies and users of credit reports, and provides certain rights to consumers affected by use of their credit reports. As a consumer protection statute, the provisions of the FCRA are to be interpreted in such a way as to benefit the consumer, not the mortgage insurance industry.

8. In 1996, the FCRA was amended to expand the rights of consumers who are adversely affected by use of their consumer report information. Congress is currently contemplating providing even more protection to the consumer than was afforded in the expansive 1996 amendments.

9. The term "consumer report" means 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 the underwriting of insurance involving the consumer. Consumer reports include credit reports and credit scores obtained from credit reports. 15 U.S.C. § 1681a(d).

10. The FCRA provides that if the user of a consumer report takes any adverse action with respect to a consumer based in whole or in part on any information contained in the consumer report, the user of the report must provide notice to the consumer of the adverse action, together with the identity of the consumer agency providing the consumer report and other specific information. 15 U.S.C. § 1681m.

11. In a report dated July 31, 2003, the General Accounting Office (G.A.O.) of Congress stated that the accuracy of this nation's credit reporting system is vital to the proper functioning of our economy, and that consumers' access to their credit reports and credit scores is the single greatest factor in improving the accuracy of the credit reporting system.

12. The FCRA adverse action notice provisions are meant to provide consumers warning that *their consumer reports have been used adversely to their interests*.

13. The July 31, 2003, G.A.O. Report noted that 84% of the disclosures of credit reports to consumers occurred following receipt by the consumer of an adverse action notice, underscoring the importance of adverse action notices in improving the accuracy of credit reports nationwide. Where adverse action notice is not provided, the consumer is left without this important legislative protection from errors in such reports.

14. Information contained in consumer reports changes constantly, making it vital to proper operation of the FCRA that contemporaneous notice be given of adverse action. By not providing contemporaneous notice to the consumer, the user of the report makes it difficult, if not impossible, to determine at a later date what potentially erroneous information might have been contained in the consumer report.

15. The FCRA provides for civil remedies to consumers for violations of the act, including actual damages, statutory damages, punitive damages, costs and attorneys fees. 15 U.S.C. § 1681n.

#### INDIVIDUAL FACTUAL ALLEGATIONS

16. Sally Broessell resides in Campbellsville, Taylor County, Kentucky.

17. Plaintiff purchased her home on March 31, 2003 and financed 100% of the value.

18. Based in whole or in part upon the information contained in Plaintiff's consumer report, Defendant set the mortgage insurance premium for Plaintiff's mortgage at \$342.60 per month, which premium was not the lowest premium available from the Defendant.

19. Plaintiff was required to pay the mortgage insurance premium for the mortgage insurance policy.

20. Plaintiff inquired of the lender at the closing about the inflated insurance premium and was told by the lender that the mortgage insurance carrier based the premium rates for a consumer on the original loan value and the consumer's credit score.

21. Plaintiff was given no further information regarding this adverse action, including the name, address and telephone number of the consumer reporting agency from which the consumer

report was obtained, and their rights under the Fair Credit Reporting Act to obtain a copy, dispute any entries therein, and correct mistakes in their report.

22. Defendant's regular business practice is to use consumer reports to underwrite mortgage insurance premiums involving the consumer. These procedures are uniformly engaged in by the electronic underwriting systems of the Defendant, rather than through individual decisions by human underwriters.

23. These uniform electronic underwriting procedures are used by the Defendant throughout the United States. Further, Defendant knows and intends that the consumer will pay the full amount of the premiums for the mortgage insurance.

24. Defendant herein was a user of consumer reports and took adverse action against Plaintiff in connection with the underwriting of insurance with respect to Plaintiff by using her consumer report in whole or in part to set mortgage insurance premiums that Plaintiff would pay at a rate higher than Defendant's lowest available rate.

25. Defendant failed to provide Plaintiff with any notification, oral, written or electronic, advising Plaintiff of the adverse action, the identity of the consumer reporting agency that generated the consumer report, or her right to obtain a free copy of her consumer reports.

26. Defendant does not as a matter of practice and procedure provide any notice to consumers that the information obtained from a consumer report has been used in determining the premiums charged by the Defendant for private mortgage insurance and involving the consumer, nor are such consumers told the identity of the furnisher of the consumer report, nor any of their rights under the FCRA as required by law.

27. As the user of the credit report in connection with underwriting insurance premiums involving the consumer, the Defendant has the obligation under the FCRA to ensure that Plaintiff receive actual adverse action notice. Defendant failed to do so, and failed to make arrangements for anyone else to provide such notice.

### **CLASS REPRESENTATION ALLEGATIONS**

28. Plaintiff seeks to represent a class of victims against Defendant as follows:

All consumers throughout the United States for whom the Defendant made underwriting decisions for private mortgage insurance, based in whole or in part upon information contained in a consumer report on the consumer, where the consumer was required to pay for such private mortgage insurance policy from the Defendant at more than the lowest available rate offered by the Defendant.

#### **Rule 23 Allegations**

29. Pursuant to Rule 23, this action may be maintained as a class action because all procedural elements are satisfied, as set forth below:

##### **1. Numerosity**

30. Defendant is a provider of residential mortgage insurance throughout the United States. The number of consumers nationwide with respect to whom the Defendant took an adverse action under the FCRA and failed to provide the information and notices required under the FCRA is in excess of several thousand. The exact number and identity of Class members is unknown to Plaintiff but can be determined from the records of the Defendant.

31. The Class is so numerous that it would be impractical to join all of the members of the Class within the meaning of Rule 23(a)(1).

## 2. Commonality

32. On behalf of the Class, the representative Plaintiff brings claims which raise questions of law and fact common to all members of the Class, as contemplated by Rule 23(a)(2). Common issues include:

- (a) Whether the Defendant violated the FCRA when it took adverse actions against consumers based in whole or in part on information contained in consumer reports, failed to properly advise the consumers that adverse actions had been taken against them, and failed to properly provide the consumers with the information and notices required under the FCRA;
- (b) Whether the Defendant violated the FCRA when it took adverse actions against consumers based in whole or in part on information contained in consumer reports without providing the notices required under the FCRA;
- (c) Whether the Defendant is a user of consumer reports when it underwrote insurance involving the consumers and set premiums paid by consumers based upon information obtained about consumers from consumer reports;
- (d) Whether the actions of the Defendant in failing or refusing to provide adequate notice as required by the FCRA were willful;
- (e) Whether the actions of the Defendant in failing or refusing to provide adequate notice as required by the FCRA were done in reckless disregard of the consumers' rights;
- (f) Whether the actions of the Defendant in failing or refusing to provide adequate notice as required by the FCRA were done in conscious disregard of the consumers' rights;
- (g) Whether the actions of the Defendant in failing or refusing to provide adequate notice as required by the FCRA were negligent; and
- (h) Whether members of the Class are entitled to recover damages as a result of the Defendant's actions in violating the notice requirements of the FCRA.

## 3. Typicality

33. In accordance with the requirements of Rule 23(a)(3), the representative Plaintiff's claims are typical of the claims of all other members of the Class, and the representative Plaintiff has

no interests which are adverse or antagonistic to the interests of the Class. The representative Plaintiff's claims are typical of the claims of the Class because all such claims arise from a series of identical business practices, or a common course of conduct, involving the failure of the Defendant to notify consumers that adverse actions have been taken against them, and of their failure to provide other required information to consumers, in violation of the FCRA.

#### **4. Adequacy**

34. In accordance with the requirements of Rule 23(a)(4), the representative Plaintiff and her counsel will fairly and adequately represent and protect the interests of each member of the Class. The representative Plaintiff and the Class share common interests, and the representative Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in class action litigation.

#### **Rule 23(b)(3) Allegations**

35. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent a class action, Class members will continue to suffer damages, and will continue to be harmed by the failure of Defendant to provide adverse notice as required by law. The violations of law by the Defendant will proceed without remedy while the Defendant continues to ignore its legal obligations under the law, and consumers will be left unaware of the violation of their rights on a daily basis.

36. Most individual Class members have little ability to prosecute an individual action due to the complexity of the issues involved in this litigation, the significant costs attendant to litigation on this scale, and the comparatively small, although significant, damages suffered by individual Class members.



37. This action will result in an orderly and expeditious administration of Class claims. Economies of time, effort, and expense will be fostered and uniformity of decisions will be insured.

38. This action presents no difficulty that would impede its management by the Court as a class action. When the liability of Defendant has been adjudicated, the damages of each Class member can be administratively determined. In addition, a willful violation of the law may be remedied by the Court through imposition of a fine based upon each violation of the FCRA. A class action is superior to other available methods for the fair and efficient adjudication of each class member's claim.

39. The questions of fact common to the claims of each member of the Class, relating to the uniform failure to provide notice to consumers by Defendant, predominate over any facts affecting only individual members of the Class. Individual reliance is not a requirement to establish liability under the FCRA.

40. The questions of law common to the claims of each member of the Class, relating to the adequacy of any notice provided by the Defendant, or the complete lack of any notification by it, predominate over any questions of law affecting only individual members of the Class.

#### **COUNT ONE - WILLFUL VIOLATION OF FCRA**

41. Plaintiff realleges and incorporates herein the allegations of paragraphs 1 to 40.

42. The Defendant has instituted a corporate policy of using consumer reports in connection with the underwriting of insurance involving the consumer.

43. When the Defendant determines for itself that information contained in the consumer report of a consumer is derogatory for any reason, Defendant has instituted a corporate policy of setting a higher premium for private mortgage insurance premiums paid by the consumer.

44. In setting the mortgage insurance premiums Plaintiff paid for insurance at \$342.60 per month, based in whole or in part upon the consumer report or credit score of Plaintiff, the Defendant was a user of consumer reports and took adverse action against Plaintiff. The Defendant was obligated to provide a notice to Plaintiff pursuant to 15 U.S.C. § 1681m, and failed to do so in violation of the FCRA.

45. Defendant has failed to institute reasonable procedures to ensure compliance with the requirements of the FCRA.

46. In taking adverse action based in whole or in part upon information contained in a consumer report, the Defendant has willfully ignored the requirements of the FCRA, and has made a corporate decision to fail or refuse to provide adequate notice to such consumers of such adverse action. Instead, the Defendant has willfully chosen to attempt to place upon the consumer the burden of finding out whether adverse action has been taken, by whom, and the extent of their rights under the Fair Credit Reporting Act.

47. The actions of the Defendant constitute willful noncompliance with the requirements of the FCRA. 15 U.S.C. § 1681n(a).

48. Plaintiff and Class members have suffered damages as a result of Defendant's willful violation of the FCRA, including actual damages or statutory damages and punitive damages, costs and their attorneys' fees herein.

#### **COUNT TWO - NEGLIGENT VIOLATION OF FCRA**

49. Plaintiff realleges and incorporates herein the allegations of paragraphs 1 to 40.

50. In setting the mortgage insurance premiums for Plaintiff's at \$342.60 per month, based in whole or in part upon the consumer report or credit score of Plaintiff, the Defendant was

a user of consumer reports and took adverse action against Plaintiff. The Defendant was obligated to provide a notice to Plaintiff pursuant to 15 U.S.C. § 1681m, and failed to do so in violation of the FCRA.

51. In failing to provide notice to consumers when they use a consumer report to charge higher premiums for private mortgage insurance, the Defendant has been negligent in failing to comply with the requirements imposed by the FCRA.

52. Defendant has failed to institute reasonable procedures to ensure compliance with the requirements of the FCRA.

53. The actions of the Defendant constitute negligent noncompliance with the requirements of the FCRA. 15 U.S.C. § 1681o.

54. Plaintiff and Class members have suffered damages as a result of Defendant's negligent violation of the FCRA, including actual damages, costs and their attorneys' fees herein.

#### **PRAYER FOR RELIEF**

*WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, demands judgment against Defendant, as follows:*

(a) Certify this action as a class action and designate Plaintiff as the representative thereof;

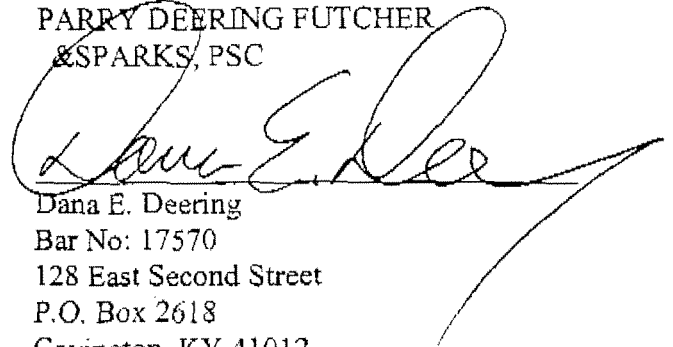
(b) Award Plaintiff and members of the Class either (i) the actual damages sustained by such Plaintiff or members of the Class as a result of the Defendant's willful failure to comply with the FCRA, or (ii) damages within the Court's discretion of not more than \$1,000 for each separate violation;

- c) Award Plaintiff and members of the Class the actual damages sustained by them as a result of the Defendant's negligent failure to comply with the FCRA;
- (d) Award Plaintiff reasonable attorneys' fees, prejudgment interest, and the costs and expenses incurred in this action, including experts' fees; and
- (e) Grant such other relief as may be appropriate under the circumstances.

**Trial by Jury**

Plaintiff demands trial by jury of all issues so triable in this action.

PARRY DEERING FUTCHER  
& SPARKS, PSC



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