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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

CLAYTON GLATT and
SHARMAN VEGER,

CASE NO. 2:03-cv326-FtM-29SPC

And All Others Similarly Situated,

CLASS REPRESENTATION

Plaintiffs,

vs.

THE PMI GROUP, INC,
PMI MORTGAGE INSURANCE COMPANY, and
CMG MORTGAGE INSURANCE COMPANY,

Defendants.

_____ /

AMENDED CLASS ACTION COMPLAINT

Plaintiffs CLAYTON GLATT and SHARMAN VEGER, sue Defendants THE PMI GROUP, INC., (hereinafter "PMI"), PMI MORTGAGE INSURANCE COMPANY, (hereinafter "PMI Mortgage"), and CMG MORTGAGE INSURANCE COMPANY (hereinafter "CMG Mortgage") and allege:

1. This is a class action brought pursuant to Rule 23, Federal Rules of Civil Procedure.
2. Plaintiffs are residents of Naples, Florida, and all of the transactions alleged herein occurred in the Middle District of Florida.
3. Defendant PMI is a holding company whose subsidiaries issue private mortgage insurance policies throughout the Middle District of Florida, the state of Florida, and the nation. Defendant PMI issues private mortgage insurance policies in connection with residential mortgages by and through its wholly owned subsidiaries.

4. CMG Mortgage, a wholly owned subsidiary of PMI, issues private mortgage insurance policies for which consumers pay insurance premiums.

5. PMI Mortgage, a wholly owned subsidiary of PMI, issues private mortgage insurance policies for which consumers pay insurance premiums.

6. Hereinafter, PMI, PMI Mortgage, and CMG Mortgage will be referred to jointly as “the PMI Defendants.”

7. The PMI Defendants are incorporated in Delaware and Arizona, and the principal offices of the PMI Defendants are in California. PMI is one of the nation’s leading private mortgage insurers, with over \$100 billion of insurance in force.

8. Defendants issue private mortgage insurance policies involving the consumer for which the consumer pays insurance premiums.

9. Private mortgage insurance is 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.

10. 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

11. 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.

12. 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.

13. 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 establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes. Consumer reports include credit reports and credit scores obtained from credit reports. 15 U.S.C. § 1681a(d).

14. 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.

15. 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.

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

17. 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.

18. 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.

19. 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.

FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

Fla. Stat. §§ 501.201 to 501.213

20. The Florida Legislature created the Florida Deceptive and Unfair Trade Practices Act (FDUTPA) to simplify, clarify and modernize the law governing consumer protection; to protect the consuming public from those who engage in unfair methods of competition, or unconscionable, deceptive or unfair acts in the conduct of any trade or commerce; and to make state consumer

protection and enforcement consistent with established policies of federal law relating to consumer protection. Fla. Stat. § 501.202.

21. A violation of FDUTPA may be based on the violation of federal consumer protection statutes. Fla. Stat. § 501.203(3).

22. Defendants' FCRA violations also violate FDUTPA.

23. In addition to paragraph 18 above, Defendants' secret use of consumer's private information found in consumer reports to make decisions adverse to the interests of consumers is in itself an unfair, deceptive and unconscionable trade practice that violates FDUTPA.

24. Defendants' failure to provide consumers with contemporaneous notice of the use of private consumer reporting information when the information is used to penalize the consumer or provide the consumer with other than the most favorable coverage at the most favorable rate and with the most favorable conditions is an unfair, deceptive and unconscionable trade practice that violates FDUTPA.

25. Defendants' refusal to assist consumers in locating or identifying the reasons for Defendants' adverse decision is an unfair, deceptive and unconscionable trade practice that violates FDUTPA.

26. Defendants' refusal to provide information to consumers about the origin of the "derogatory" information it used as a justification for providing the consumer less than the most favorable rate and conditions, even upon inquiry by consumers is an unfair, deceptive and unconscionable trade practice that violates FDUTPA.

27. By confronting Plaintiffs with high mortgage insurance premiums at or about the time of closing, after Plaintiffs had signed a contract with the sellers, and after Plaintiffs had made the

necessary arrangements to plan for a move to their new home and thus forcing Plaintiffs to make important decisions under extreme time pressure, Defendants were guilty of unfair, unconscionable and deceptive practices that violate FDUTPA.

28. The above described uniform practices and procedures aggrieved and injured Plaintiffs and the members of the class.

29. FDUTPA creates civil liability for those that violate the Act without regard to any other remedy or relief to which a person is entitled and provides for actual damages, declaratory and injunctive relief, costs and attorneys fees. Fla. Stat. §§ 501.211 and 501.2105.

INDIVIDUAL FACTUAL ALLEGATIONS

30. In September, 2002, Plaintiffs purchased a home located in Naples, Florida and financed 100% of the value of the home.

31. Based in whole or in part upon the information contained in Plaintiffs' consumer report, Defendants set the mortgage insurance premium for Plaintiffs' mortgage at \$604.06 per month, which was not the lowest premium available from said Defendants.

32. Plaintiffs were required to pay the mortgage insurance premium for the mortgage insurance policy.

33. Plaintiffs were given no 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.

34. Defendants' regular business practice is to use consumer reports to underwrite consumers' mortgage insurance premiums. These procedures are uniformly engaged in by the

electronic underwriting systems of the Defendants, rather than through individual decisions by human underwriters.

35. These uniform electronic underwriting procedures are used by the Defendants throughout the United States. Further, Defendants know and intend that the consumer will pay the full amount of the premiums for the mortgage insurance.

36. By taking adverse action against Plaintiff in charging her a higher premium for private mortgage insurance based in whole or in part upon information in a consumer report, Defendants herein were users of consumer reports and took adverse action against Plaintiff in connection with the underwriting of insurance with respect to Plaintiff.

37. Defendants 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 their right to obtain a free copy of their consumer reports.

38. Defendants do not as a matter of practice and procedure provide any notice to applicants and recipients of private mortgage insurance that the information obtained from a consumer report has been used in determining the premiums charged by the Defendant for private mortgage insurance and paid by 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.

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

CLASS REPRESENTATION ALLEGATIONS

40. Plaintiffs seek to represent the following classes of victims against Defendants as

follows:

All consumers throughout the United States for whom the Defendants made underwriting decisions for private mortgage insurance, based in whole or in part upon information contained in a consumer report on the insured or applicant, where the consumer was required to pay for such private mortgage insurance policy from the Defendants at less than the best available rate, and who received no contemporaneous notice from Defendants of such adverse action, including all of the information necessary under the Fair Credit Reporting Act, 15 U.S.C. § 1681m. Hereinafter referred to as "Class A."

All consumers throughout the State of Florida, for whom the Defendants made underwriting decisions for private mortgage insurance, based in whole or in part upon information contained in a consumer report on the insured or applicant, where the consumer was required to pay for such private mortgage insurance policy from the Defendants at less than the best available rate, and who received no contemporaneous notice from Defendants of such adverse action, including all of the information necessary under the Fair Credit Reporting Act, in violation of FDUTPA. Hereinafter referred to as "Class B."

To be excluded from each Class are all persons who have claims in excess of \$75,000.00; persons employed by or otherwise related to the Defendants, or their subsidiaries, their successors, or affiliates; and any and all members of the federal judiciary in the Middle District of Florida.

Rule 23 Allegations

41. 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

42. Defendants are providers of residential mortgage insurance throughout the United States. The number of consumers nationwide with respect to whom the Defendants took an adverse

action under the FCRA and failed to provide the information and notices required under the FCRA is in excess of several thousands. The exact number and identity of Class members is unknown to Plaintiffs but can easily be determined from the records of the Defendants.

43. 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

44. 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 Defendants violated the FCRA when they 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 Defendants violated the FCRA when they 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 Defendants are users of consumer reports when they underwrite insurance and charge premiums paid by consumers based upon information obtained about consumers from consumer reports;

(d) Whether the actions of the Defendants in failing or refusing to provide adequate notice as required by the FCRA were willful;

(e) Whether the actions of the Defendants 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 Defendants in failing or refusing to provide adequate notice as required by the FCRA were done in conscious disregard of the consumers' rights; and

(g) Whether members of the Class are entitled to recover damages as a result of the Defendants' actions in violating the notice requirements of the FCRA.

3. Typicality

45. 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 Defendants 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

46. 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 have retained competent counsel experienced in class action litigation.

Rule 23(b)(3) Allegations

47. 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 Defendants to provide adverse notice as required by law. The violations of law by the Defendants will proceed without remedy while the

Defendants continue to ignore their legal obligations under the law, and consumers will be left unaware of the violation of their rights on a daily basis.

48. 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.

49. 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.

50. This action presents no difficulty that would impede its management by the Court as a class action. When the liability of Defendants have 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.

51. 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.

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

COUNT ONE - WILLFUL VIOLATION OF FCRA

53. Plaintiffs reallege and incorporates herein the allegations of paragraphs 1 to 19 and 30-52.

54. The Defendants have instituted a corporate policy of using consumer reports in connection with the underwriting of insurance involving the consumer.

55. When the Defendants determine for themselves that information contained in the consumer report of a consumer is derogatory for any reason, Defendants have instituted a corporate policy of charging a higher premium for private mortgage insurance premiums paid by the consumer.

56. In setting the mortgage insurance premiums Plaintiffs paid for insurance at \$604.06 per month, based in whole or in part upon Plaintiffs' consumer reports or credit scores, the Defendants were users of consumer reports and took adverse action against Plaintiffs. The Defendants were obligated to provide a notice to Plaintiffs pursuant to 15 U.S.C. § 1681m, and failed to do so in violation of the FCRA.

57. Defendants have failed to institute reasonable procedures to ensure compliance with the requirements of the Fair Credit Reporting Act.

58. In taking adverse action based in whole or in part upon information contained in a consumer report, the Defendants have willfully ignored the requirements of the FCRA, and have made a corporate decision to fail or refuse to provide adequate notice to such consumers of such adverse action. Instead, the Defendant have 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.

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

60. Plaintiffs and Class members have suffered damages as a result of Defendants' willful violation of the FCRA, including costs and their attorneys' fees herein.

COUNT TWO - NEGLIGENT VIOLATION OF FCRA

61. Plaintiffs reallege and incorporate herein the allegations of paragraphs 1 to 19 and 30-52.

62. In setting the mortgage insurance premiums for Plaintiffs' at \$604.06 per month, based in whole or in part upon the Plaintiffs' consumer reports or credit scores, the Defendants were users of consumer reports and took adverse action against Plaintiff. The Defendants were obligated to provide a notice to Plaintiff pursuant to 15 U.S.C. § 1681m, and failed to do so in violation of the FCRA.

63. In failing to provide notice to applicants when they use a consumer report to charge higher premiums for private mortgage insurance, the Defendants have been negligent in failing to comply with the requirements imposed by the FCRA.

64. Defendants have failed to institute reasonable procedures to ensure compliance with the requirements of the Fair Credit Reporting Act.

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

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

COUNT THREE - VIOLATION OF FDUTPA AS TO CLASS B ONLY

67. Plaintiffs re-allege and incorporate paragraphs 1 to 66.

68. This is an action for declaratory and injunctive relief for violations of the Florida Deceptive and Unfair Trade Practices Act.

69. Plaintiffs and members of Class B are consumers and interested parties within the meaning of § 501.203 of FDUTPA.

70. Defendants are engaging in trade or commerce within the meaning of § 501.203 of FDUTPA.

71. Defendants used unfair and unconscionable acts or practices and deceptive acts or practices in failing to provide adequate adverse action notice as required by the FCRA.

72. Defendants' secret use of consumer's private information found in consumer reports to make decisions adverse to the interests of consumers is an unfair, deceptive and unconscionable trade practice that violates FDUTPA.

73. Defendants' failure provide consumers with contemporaneous notice of the use of private consumer reporting information when the information is used to penalize the consumer or provide the consumer with other than the most favorable services at the most favorable rate and with the most favorable conditions is an unfair, deceptive and unconscionable trade practice that violates FDUTPA.

74. Defendants' refusal to assist consumers in locating or identifying the reasons for Defendants' adverse decision is an unfair, deceptive and unconscionable trade practice that violates FDUTPA.

75. Defendants' refusal to provide information to consumers about the origin of the "derogatory" information it used a justification for providing the consumer less than the most favorable service, rate and conditions, even upon inquiry by consumers is an unfair, deceptive and unconscionable trade practice that violates FDUTPA.

76. The above described uniform practices and procedures aggrieved and injured Plaintiffs and the members of Class B, violate public policy and constitute unfair, unconscionable and deceptive acts within the meaning of Florida Statute § 501.204 and Plaintiffs and the members of Class B are aggrieved and entitled to declaratory and injunctive relief pursuant to § 501.211(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, 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 Plaintiffs as the representatives thereof;

(b) Award Plaintiffs and members of each Class either (i) the actual damages sustained by such Plaintiffs or members of each Class as a result of the Defendants' 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 Plaintiffs and members of each Class the actual damages sustained by them as a result of the Defendants' negligent failure to comply with the FCRA;

(d) Enter an order enjoining Defendants from continuing to violate the FDUTPA as described herein;

(e) Enter an order declaring the parties rights and obligations under the FDUTPA;

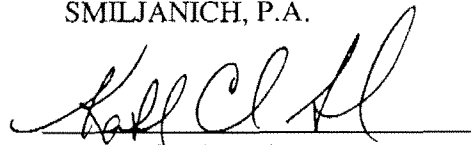
(f) Award Plaintiffs reasonable attorneys' fees, prejudgment interest, and the costs and expenses incurred in this action, including experts' fees; and

(g) Grant such other relief as may be appropriate under the circumstances.

Trial by Jury

Plaintiffs demand trial by jury of all issues so triable in this action.

JAMES, HOYER, NEWCOMER &
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing notice was served by U.S. Mail this 12th day of September, 2003 on:

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