

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

THE AMERICAN INSTITUTE OF CERTIFIED  
PUBLIC ACCOUNTANTS,

Plaintiff,

v.

FEDERAL TRADE COMMISSION,

Defendant.

Civil Action No. 09-2116 (RBW)

**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

More than twenty days having passed since the commencement of this action, Plaintiff, the American Institute of Certified Public Accountants (the "AICPA"), respectfully moves for summary judgment on Count I of its Complaint for Declaratory and Injunctive Relief pursuant to Rule 56(a) of the Federal Rules of Civil Procedure. As set forth more fully in the Memorandum of Points and Authorities in Support of Plaintiff's Motion for Partial Summary Judgment, Defendant, Federal Trade Commission (the "FTC"), has exceeded its statutory authority by seeking to apply identity theft regulations commonly known as the "Red Flags Rule" to certified public accountants engaged in the practice of public accountancy ("CPAs") in violation of 5 U.S.C. § 706(2)(C). There exists no genuine issue of material fact regarding the FTC's violation of its statutory authority.

Pursuant to Local Civil Rule 7(f), the AICPA requests oral argument on this motion. As required by Local Civil Rules 7(h) and 56.1, Plaintiff's Statement of Material Facts Not in Dispute is attached hereto. In accordance with Local Civil Rules 7(c), (h) and 56.1, a proposed order granting the relief requested herein is also attached hereto. Consultation with opposing counsel pursuant to Local Civil Rule 7(m) is not required because this is a dispositive motion.

Dated: January 7, 2010

Respectfully submitted,

FRIED, FRANK, HARRIS, SHRIVER  
& JACOBSON LLP

By:                   /s/ Daniel E. Loeb                    
Daniel E. Loeb (D.C. Bar # 386098)  
Bernard A. Nigro, Jr. (D.C. Bar #412357)  
1001 Pennsylvania Avenue, N.W., Suite 800  
Washington, DC 20004  
Telephone: 202-639-7000  
Fax: 202-639-7003  
daniel.loeb@friedfrank.com  
barry.nigro@friedfrank.com

*Of Counsel:*  
Richard I. Miller  
General Counsel  
The American Institute of Certified  
Public Accountants  
1211 Avenue of the Americas  
New York, NY 10036-8775  
Telephone: 212-596-6200  
Fax: 212-596-6213  
rmiller@aicpa.org

*Counsel for*  
*The American Institute of Certified Public Accountants*