

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,)	
)	
)	
Plaintiff,)	Civil Action No.
)	
v.)	
)	
CHOICEPOINT INC., a corporation,)	
)	
Defendant.)	

**STIPULATED FINAL JUDGMENT AND ORDER FOR CIVIL PENALTIES,
PERMANENT INJUNCTION, AND OTHER EQUITABLE RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the
Attorney General by the Federal Trade Commission (“F

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and over Defendant

1. “Fair Credit Reporting Act” or “FCRA” refers to 15 U.S.C. §§ 1681-1681x, as amended.

2. The terms “person,” “consumer,” “consumer report,” and “consumer reporting agency” mean as defined in Sections 603(b), (c), (d), and (f), respectively, of the FCRA, 15 U.S.C. §§ 1681a(b), 1681a(c), 1681a(d), and 1681a(f).

3. “Permissible purpose” means any of the purposes listed in Section 604 of the FCRA, 15 U.S.C. § 1681b, for which a consumer reporting agency may lawfully furnish a consumer report.

4. “Subscriber” means any person or entity, excluding consumers, that enters into an agreement with Defendant pursuant to which that person or entity may request or obtain a consumer report or other personal information from Defendant.

5. “Mixed-use subscriber” means a subscriber that in the ordinary course of business typically has both permissible and impermissible purposes for ordering consumer reports.

6. “Personal information” means individually identifiable information from or about an individual consumer including, but not limited to: (a) a first and last name or first initial and last name; (b) a home or other physical address, which includes at least street name and name of city or town; (c) an email address; (d) a telephone number; (e) a Social Security number; (f) credit and/or debit card information, including credit and/or debit card number with expiration date; (g) date of birth; (h) a driver’s license number; or (i) any other information from or about an individual consumer that is combined with (a) through (h) above.

7. “Signing” or “signed” means either a handwritten signature (including those subsequently transmitted by facsimile, .pdf files, or other digital or electronic means) or an

“electronic signature” as that term is defined in the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7006(5).

8. Unless otherwise specified, “Defendant” means ChoicePoint Inc., its subsidiaries

scope of Fed. R. Civ. P. 65, whether acting directly or through any sole proprietorship, partnership, limited liability company, corporation, subsidiary, branch, division, or other entity, who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

A. Violating Section 604 of the FCRA, 15 U.S.C. § 1681b, by furnishing a consumer report to any person who does not have a permissible purpose to receive a consumer report.

B. Failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to subscribers that have permissible purposes to receive them under Section 604 of the FCRA, 15 U.S.C. § 1681b, as required by Section 607(a) of the FCRA, 15 U.S.C. § 1681e(a). Such procedures shall include, but not necessarily be limited to:

1. With respect to prospective subscribers, before furnishing a consumer report to any such subscriber; with respect to current subscribers, within one hundred eighty (180) days after the date of service of this Order; and with respect to subscribers of companies acquired by Defendant after the date of service of this Order, within ninety (90) days after the closing of the acquisition transaction for acquired companies with five thousand (5000) or fewer subscribers and within one hundred eighty (180) days after the closing of the acquisition transaction for acquired companies with more than five thousand (5000) subscribers:

- (a) Obtaining from each subscriber a written certification, either in paper or electronic form, stating the nature of the subscriber's business and all purposes for which the subscriber plans to obtain

consumer reports from Defendant. Each certification under this provision: (1) must be dated and signed; (2) must bear the printed or typed name of the person signing it; and (3) must state that the person signing it has direct knowledge of the facts certified; *provided, however*, that for current subscribers, the certification may, in lieu of stating that the person signing it has direct knowledge of the facts certified, attest to the truth of the matters certified and the authority of the person to sign on behalf of the subscriber.

- (b) Determining, based on the information in the subscriber's certification under subparagraph (a) above, and any other factors of which Defendant is aware or, under the circumstances, should reasonably ascertain, that each subscriber has a permissible purpose under Section 604 of the FCRA for the types of reports the subscriber plans to obtain, or, where the subscriber is a reseller of consumer reports, that the subscriber complies with Section 607(e)(2) of the FCRA.
- (c) As to subscribers that are businesses, verifying (1) the business identity of the subscriber; and (2) that the subscriber is a legitimate business engaged in the business certified and has a permissible purpose for obtaining consumer reports. Defendant shall conduct an on-site visual inspection of the business premises of each

subscriber, or, in the case of a subscriber with multiple locations, the headquarters location of the subscriber, *provided, however*, that

(i) for a prospective subscriber, Defendant does not need to conduct a site visit if Defendant independently verifies that at the time of application:

(1) the applicant is a publicly held company under the regulatory authority of the United States Securities and Exchange Commission;

(2) the applicant is subject to the regulatory authority of any agency listed in Section 621(b) of the FCRA, 15 U.S.C. § 1681s(b);

(3) the applicant is an insurance agent sponsored by at least one insurance company that has been a subscriber of Defendant for at least one (1) year and has contractually agreed to assume financial responsibility for payment of the sponsored agent's acquisition of consumer reports from Defendant;

(4) the applicant has been approved by the Internal Revenue Service as a tax-exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and as a subscriber will not receive from Defendant, unless

first provided to Defendant by the subscriber, any of the following information about consumers:

untruncated Social Security numbers; untruncated dates of birth; untruncated drivers' license numbers; or untruncated credit card, debit card, bank account, or other financial account numbers;

(5) the applicant has been certified by the Small Business Administration for participation in an SBA-administered program, such as the Section 8(a) Business Development program and the Small Disadvantaged Business Program, 13 C.F.R. part 124, or the Historically Underutilized Business ("HUBZone") program, 13 C.F.R. parts 121, 125, and 126; or

(6) the applicant has been certified by the Department of Transportation for participation in the Department of Transportation's Disadvantaged Business Enterprise Program, 49 C.F.R. part 26.

(ii) for a current subscriber, Defendant does not need to conduct a site visit if:

(1) Defendant has independently verified that at least one of the elements set out in (c)(i) above is

present with respect to that subscriber; or

(2) Defendant conducted a site visit within the one-year period immediately prior to the date of service of this Order that confirmed the legitimacy of the business, and the subscriber has not subsequently changed its address.

(iii) Defendant does not need to conduct a site visit for subscribers that are Federal or State agencies or departments that obtain consumer reports solely under Section 608 of the FCRA, 15 U.S.C. § 1681f, or that certify a permissible purpose solely under Sections 604(a)(3)(B), 604(a)(3)(D), 604(a)(4), 604(a)(4i 0 rgBT288.0000 600.0000 TD0.0600 T

- (e) Providing to each subscriber to whom Defendant furnishes consumer reports a written copy of the “Notice to Users of Consumer Reports: Obligations of Users Under the FCRA,” 16 C.F.R. Pt. 601 Appendix C, as required by Section 607(d) of the FCRA, 15 U.S.C. § 1681e(d), *provided, however*, that Defendant may furnish an electronic copy of this notice if a subscriber obtains consumer reports from Defendant in electronic form.
2. Beginning within thirty (30) days of the date of service of this Order, with respect to both current and prospective subscribers, or, with respect to subscribers of companies acquired by Defendant after the date of service of this Order, within sixty (60) days after the closing of the acquisition transaction:
- (a) Each time any subscriber certifies a permissible purpose under Section 604(a)(3) of the FCRA, requiring the subscriber to identify and certify the specific subsection of Section 604(a)(3) (either by section or description, such as “insurance underwriting”) that provides the permissible purpose to obtain the report.
 - (b) Requiring each mixed-use subscriber that certifies a permissible purpose under Section 604(a)(3)(A) of the FCRA to further identify and certify with specificity the intended use under that subsection each time it requests a consumer report (e.g., an attorney subscriber who certifies a permissible purpose under Section 604(a)(3)(A)

would also specify that it is “collecting a debt”); *provided* that such certification may be made at log-on, rather than on a per consumer report basis, in cases where the subscriber orders consumer reports through an interactive electronic ordering system operated by Defendant, and the subscriber has contractually certified only one permissible purpose specified in Section 604(a)(3)(A) to obtain consumer reports.

- (c) Requiring, each time any subscriber certifies as its permissible purpose a “legitimate business need” pursuant to Section 604(a)(3)(F) of the FCRA, that the subscriber certify and identify with specificity that business need (e.g., “in connection with applications for apartment rentals” or “applications to open checking accounts”). In those cases where a subscriber has permissible purposes that encompass more than one “legitimate business need” under Section 604(a)(3)(F), then individual certification and identification with specificity must be obtained by Defendant each time the subscriber requests a consumer report.
- (d) Ensuring that the following message, or one substantially identical to it, is displayed clearly and conspicuously on the subscriber’s screen each time a subscriber transmits a request electronically for a consumer report: “The federal Fair Credit Reporting Act imposes criminal penalties – including a fine, up to two years in prison, or

both – against anyone who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses, and other penalties for anyone who obtains such consumer information without a permissible purpose,” *provided* that the recitation of penalties shall be adjusted for any change in applicable law pursuant to Section 619 of the F

(3) in the case of a report for which the purpose certified was the collection of a judgment, a copy of the court judgment;

(4) in the case of a report for which the purpose certified was the evaluation of an employee for promotion, reassignment, or retention, a copy of an official business record (e.g., a W-2 Form) clearly identifying the subscriber or the subscriber's principal as the employer of the consumer on whom the report was furnished;
or

(5) verification that the subscriber is a Federal or State agency or department that obtains consumer reports solely under Section 608 of the FCRA, 15 U.S.C. § 1681f, or that certifies a permissible purpose solely under Sections 604(a)(3)(B), 604(a)(3)(D), 604(a)(4), 604(a)(5), 626, or 627 of the FCRA, 15 U.S.C. §§ 1681b(a)(3)(B), (a)(3)(D), (a)(4), (a)(5); 1681u, and 1681v.

(f) Desisting from furnishing consumer reports to any subscriber as to which:

(1) Defendant learns, through the procedures described in subparagraph (e), or otherwise, has obtained, after the date of service of this Order, a consumer report for any purpose other than a permissible purpose, unless: (i) that subscriber obtained such report through inadvertent error, *i.e.*, a mechanical, electronic, or clerical error that the subscriber demonstrates was unintentional

B. Misrepresenting in any manner, expressly or by implication, the manner or extent to which Defendant maintains and protects the privacy, confidentiality, or security of any personal information collected from or about consumers.

IV. BIENNIAL ASSESSMENT REQUIREMENTS

IT IS FURTHER ORDERED that Defendant shall obtain initial and biennial assessments and reports (“Assessments”) from a qualified, objective, independent third-party professional who uses procedures and standards generally accepted in the profession. The reporting period for the Assessments shall cover: (1) the first one hundred and eighty (180) days after service of the Order for the initial Assessment, and (2) each two (2) year period thereafter for twenty (20) years after service of the Order for the biennial Assessments. Each Assessment shall:

A. set forth the specific administrative, technical, and physical safeguards that Defendant has implemented and maintained during the reporting period to comply with Paragraph III of this Order;

B. explain how such safeguards are appropriate to Defendant’s size and complexity, the nature and scope of Defendant’s activities, and the sensitivity of the personal information collected from or about consumers;

C. explain how the safeguards that have been implemented meet or exceed the protections required by Paragraph III of this Order; and

D. certify that Defendant’s security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of personal

information is protected and, for biennial reports, has so operated throughout the reporting period.

Each Assessment shall be prepared and completed within sixty (60) days after the end of the reporting period to which the Assessment applies by a person qualified as a Certified Information System Security Professional (CISSP) or as a Certified Information Systems Auditor (CISA); a person holding Global Information Assurance Certification (GIAC) from the SysAdmin, Audit, Network, Security (SANS) Institute; or a similarly qualified person or organization approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission.

Defendant shall provide the initial Assessment to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, within ten (10) business days after the Assessment has been prepared. All subsequent biennial Assessments shall be retained by Defendant until three years after completion of the final Assessment and provided to the Associate Director of Enforcement upon request within ten (10) business days after Defendant receives such request.

V. CONSUMER REDRESS

IT IS FURTHER ORDERED

continues for ten (10) days beyond the due date of payment, the amount due, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable.

B. All funds paid pursuant to this Paragraph shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. Any consumer redress distributed by the Commission pursuant to this Part shall be accompanied by a statement that provision of such redress by the Commission does not constitute an admission by Defendant of wrongdoing. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including information remedies) as it determines to be reasonably related to Defendant's practices alleged in the Complaint. Any funds not applied by the Commission for equitable relief shall be deposited to the United States Treasury. Defendant shall have no right to challenge the Commission's choice of remedies under this Paragraph.

No portion of any payments under this Paragraph shall be deemed a payment of any fine, penalty, punitive assessment, or forfeiture.

VI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order,

A. Within thirty (30) days of receipt of written notice from a representative of the

Commission, Defendant shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in Defendant's possession or direct or indirect control, to inspect the business operation.

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. Obtaining discovery from any person, without further leave of Court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45.
2. Posing as consumers and suppliers to Defendant, Defendant's employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice.

C. Defendant shall permit representatives of the Commission to interview any consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

VII. COMPLIANCE REPORTING BY DEFENDANT

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of twenty (20) years from the date of service of this Order, Defendant shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices that are subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of service of this Order, Defendant shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which it has complied and is complying with this Order. This report shall include, but not be limited to:

1. Any changes required to be reported pursuant to Paragraph VII.A.
2. A copy of each acknowledgment of receipt of this Order obtained pursuant to Paragraph IX.

C. For the purposes of this Order, Defendant shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director, Division of Enforcement
Bureau of Consumer Protection

Federal Trade Commission
Washington, D.C. 20580

D. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendant.

VIII. RECORD KEEPING

IT IS FURTHER ORDERED that:

A. For a period of six (6) years from the date of service of this Order, Defendant and its agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

1. Subscriber files containing the names, addresses, telephone numbers, all certifications made by the subscriber pursuant to Section 607(a) of the FCRA and Paragraph II.B.1(a)-(b) of this Order, and all materials considered by Defendant in connection with its verification of the identity of the subscriber and verification of the certifications made under Section 607(a), as required by Section 607(a) of the FCRA and Paragraph II.B.1(c) of this Order.
2. Consumer complaints (whether received in written or electronic form, directly, indirectly or through any third party), and any responses to those complaints, whether in written or electronic form, that relate to Defendant's activities as alleged in the Complaint and Defendant's

compliance with the provisions of this Order.

3. Copies of all training materials that relate to Defendant's activities as alleged in the Complaint and Defendant's compliance with the provisions of this Order.
4. Copies of all subpoenas and other communications with law enforcement entities or personnel, whether in written or electronic form, if such documents bear in any respect on Defendant's collection, maintenance, or furnishing of consumer reports or other personal information of consumers.
5. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order, required by Paragraph IX.B, and all reports submitted to the FTC pursuant to Paragraph VII.

B. For a period of three (3) years after the date of preparation of each biennial Assessment required under Paragraph IV of this Order: all plans, reports, studies, reviews, audits, audit trails, policies, training materials, work papers, and assessments, whether prepared by or on behalf of Defendant, relating to Defendant's compliance with Paragraph III of this Order for the compliance period covered by such biennial Assessment.

IX. DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of service of this Order, Defendant shall deliver copies of this Order as directed below:

A. Defendant shall deliver a copy of this Order to all of its officers and directors, and to all managers who have responsibility directly or indirectly for any matters covered by this Order. Defendant also shall deliver an accurate summary of this Order to all of its employees who are engaged in conduct related to Defendant's compliance with Section 607(a) of the FCRA, including but not limited to those employees who verify the identity of prospective users of consumer reports, those employees who verify the uses certified to Defendant by prospective users of consumer reports, and those employees who monitor or audit the continued compliance by Defendant's subscribers with their certification of permissible purposes. Defendant also shall deliver an accurate summary of this Order to all of its employees who are engaged in conduct related to Defendant's activities that are the subject of Paragraphs III and IV of this Order, including but not limited to those employees designated as information security program coordinators. For current personnel, delivery shall occur within ten (10) business days of the date of service of this Order upon Defendant. For new personnel, delivery shall occur no later than when they assume their job responsibilities.

B. Defendant shall secure a signed and dated statement acknowledging receipt of this Order, within thirty (30) days of delivery to such persons, from each person receiving a copy of the Order pursuant to this Paragraph IX.

X. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that Defendant, within five (5) business days of service of this Order, shall submit to the Commission a truthful sworn statement acknowledging receipt of this Order, in the form shown on Attachment A.

XI. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

XII. COSTS AND ATTORNEYS' FEES

IT IS FURTHER ORDERED that each party shall bear its own costs and attorneys' fees incurred in connection with this action.

XIII. NOTICE OF ENTRY OF ORDER

IT IS FURTHER ORDERED that entry in the docket of this Order by the Clerk of Court shall constitute notice to Defendant of the terms and conditions of this Order, and that Defendant waives all rights to contest in any future proceeding whether Defendant was properly served with this Order.

The parties hereby stipulate to the entry of the foregoing Order, which shall constitute a final Order in this action.

IT IS SO ORDERED:

Dated this _____ day of _____, 2006

UNITED STATES DISTRICT JUDGE

The parties, by their respective counsel, hereby consent to the terms and conditions of the Stipulated Order as set forth above and consent to the entry thereof. Defendant waives any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat., 847, 863-64 (1996).

FOR THE UNITED STATES OF AMERICA:

PETER D. KEISL

Joel Jankowsky
Daniel Ferrel McInnis
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
Attorney for Defendant

State of _____, City of _____

Subscribed and sworn to before me
this _____ day of _____, 2006.

Notary Public

My Commission Expires:
