

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**COMPLAINT 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 (“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

## **Plaintiff**

4. This action is brought by the United States of America on behalf of the Federal Trade Commission. The Commission is an independent agency of the United States government given statutory authority and responsibility by, *inter alia*, the FTC Act, *as amended*, 15 U.S.C. §§ 41-58, and the FCRA, 15 U.S.C. §§ 1681-1681x. The Commission is charged, *inter alia*, with enforcing section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce; and the FCRA, which imposes duties upon consumer reporting agencies.

## **Defendants**

5. Defendant InfoTrack Information Services, Inc. (“InfoTrack” or “Defendant”) is an Illinois corporation with its principal place of business in Deerfield, Illinois. Defendant transacts or has transacted business in this district.

6. Defendant Steve Kaplan is the sole owner and officer of InfoTrack and at all times material to this complaint, acting alone or in concert with others, has formulated, directed, or controlled the acts or practices of InfoTrack, including the various acts or practices alleged in this complaint. His principal office or place of business is that of InfoTrack.

## **The Fair Credit Reporting Act (“FCRA”)**

7. The FCRA was enacted in 1970, became effective on April 25, 1971, and has been in force since that date. The Fair and Accurate Credit Transactions Act amended the FCRA in December 2003, and the Dodd-Frank Act amended the FCRA in July 2010.

8. Section 621 of the FCRA, 15 U.S.C. § 1681s, authorizes the Commission to use all of its functions and powers under the FTC Act to enforce compliance with the FCRA by all persons subject thereto except to the extent that enforcement specifically is committed to some

other governmental agency, irrespective of whether the person is engaged in commerce or meets any other jurisdictional tests set forth by the FTC Act.

9. Defendants are now and have been a “consumer reporting agency,” as defined in

histories of individuals.

12. The background screening reports that Defendants provide to employers are “consumer reports” as defined in section 603(d) of the FCRA, 15 U.S.C. § 1681a(d). That section defines a “consumer report” as

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

Offender Registry. The employer would provide the applicant's first and last name, and date of birth, to assist Defendants in conducting their searches of the National Sex Offender Registry.

16. Prior to the fall of 2011, for many records, no date of birth was available in the National Sex Offender Registry. In these instances, if Defendants' search identified more than one individual with the searched first and last name who had a record in the registry, Defendants reported "possible matches" to employers. Defendants would forward reports that included names and pictures of several different people with the same name who were convicted sex offenders and listed in the National Sex Offender Registry. Defendants' practice and procedure resulted in furnishing consumer reports to employers that included National Sex Offender Registry records of individuals who could not have been the subject of the inquiry.

17. In many instances, these failures led to reports that necessarily included consumer report information about individuals other than the prospective employees and, in some instances, may have led to denied employment opportunities.

### **FCRA Notification Requirements**

18. Section 607(d)(1) of the FCRA, 15 U.S.C. § 1681e(d)(1), requires that a consumer reporting agency provide, to any person who regularly and in the ordinary course of business furnishes information about any consumer to the consumer reporting agency ("furnisher"), a "Notice To Furnishers of Information: Obligations of Furnishers Under the FCRA" ("Furnisher Notice"), the acceptable content of which is set forth in 16 CFR Parts 601 and 608, Appendix G, *recodified* at 12 CFR 1022, Appendix M. Section 607(d)(2) of the FCRA, 15 U.S.C. § 1681e(d)(2). It also requires that a consumer reporting agency provide, to any person to whom it provides a consumer report ("user"), a "Notice To Users of Consumer Reports: Obligations of Users Under the FCRA" ("User Notice"), the acceptable content of which is set forth in 16 CFR

Parts 601 and 608, Appendix H, *recodified* at 12 CFR 1022, Appendix N. Since at least July 1, 2009 and continuing until at least January 2012, Defendants failed to provide these prescribed notices to the furnishers and users of their reports.

19. Section 613(a) of the FCRA, 15 U.S.C. § 1681k(a), contains special requirements for consumer reporting agencies that furnish consumer reports containing public record information for employment purposes if that information is likely to have an adverse effect upon a consumer's ability to obtain employment. These consumer reporting agencies must either (1) notify the consumer, at the time that such information is reported, of the fact that public record information is being reported, or (2) maintain "strict procedures" designed to ensure the reported public record information is complete and up to date. For consumer reports containing information concerning sex offender registry information, Defendants neither provided the notice prescribed, nor did they maintain "strict procedures" designed to ensure that public record information it reported was complete and up to date.

#### **Count I – Violations of Section 607(b) of the FCRA**

20. As described in Paragraphs 14, 15 and 16, in multiple instances, Defendants failed to use reasonable procedures to assure maximum possible accuracy of consumer report information from sex offender registry records.

21. By and through the acts and practices described in Paragraph 20, Defendants have violated section 607(b) of the FCRA, 15 U.S.C. § 1681e(b).

22. Pursuant to section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices alleged in Paragraph 20 also constitute unfair or deceptive acts or practices in violation of section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**Count II – Violations of 607(d) of the FCRA**

23. As described in Paragraph 18, Defendants have failed to provide the prescribed User Notice and Furnisher Notice required by the FCRA.

24. By and through the acts and practices described in Paragraph 23, D1( N)-2(o)-4(t--3(A)be)4(d)-1

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specified by the Federal Civil Penalty Inflation Adjustment Act of 1990, 28 U.S.C. § 2861, as amended by the Debt Collection Improvements Act of 1996, Pub. L. 104-134, § 31001(s)(1), 110 Stat. 1321-373, the Court is authorized to award a penalty of not more than \$2,500 per violation for violations occurring before February 10, 2009, and \$3,500 per violation for violations occurring on or after that date.

30. Each instance in which Defendants have failed to comply with the FCRA constitutes a separate violation of the FCRA for the purpose of assessing monetary civil penalties under section 621(A)(2) of the FCRA, 15 U.S.C. § 1681s. Plaintiff seeks monetary civil penalties for every separate violation of the FCRA.

31. Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s, and Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction prohibiting Defendants from violating the FTC Act and the FCRA.

### **Prayer for Relief**

WHEREFORE, Plaintiff requests that this Court, pursuant to 15 U.S.C. §§ 45(a), 45(m)(1)(a), 53(b), and 1681s, and pursuant to the Court's own equitable powers:

(1) Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in this Complaint;

(2) Enter a permanent injunction against Defendants to prevent further violations of the FCRA and the FTC Act, as alleged herein;

(3) Award Plaintiff monetary civil penalties from Defendants for each violation of the FCRA alleged in this Complaint;

(4) Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper. The parties, by their counsel,



hereby consent to the terms and conditions of the Stipulated Final Judgment and Order for Civil Penalties, Permanent Injunction, and Other Equitable Relief as set forth above and consent to the entry thereof.

**FOR THE FEDERAL TRADE  
COMMISSION:**

MANEESHA MITHAL  
Associate Director  
Division of Privacy and Identity Protection

ROBERT SCHOSHINSKI  
Assistant Director  
Division of Privacy and Identity Protection

MELINDA CLAYBAUGH  
Division of Privacy and Identity Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
(202) 326-2203 (voice)  
(202) 326-3062 (fax)

MEGAN COX  
Division of Privacy and Identity Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
(202) 326-2283 (voice)  
(202) 326-3062 (fax)

**FOR PLAINTIFF  
THE UNITED STATES OF AMERICA:**

STUART F. DELERY  
Assistant Attorney General  
Civil Division  
U.S. Department of Justice

MAAME EWUSI-MENSAH FRIMPONG  
Deputy Assistant Attorney General  
Civil Division

MICHAEL S. BLUME  
Director  
Consumer Protection Branch

ANDY CLARK  
Assistant Director  
Consumer Protection Branch

ANN ENTWISTLE  
Trial Attorney  
Consumer Protection Branch

Respectfully submitted,

ZACHARY T. FARDON  
United States Attorney

By: s/ Donald R. Lorenzen  
DONALD R. LORENZEN  
Assistant United States Attorney  
219 South Dearborn Street  
Chicago, Illinois 60604  
(312) 353-5330  
Donald.lorenzen@usdoj.gov

Dated: March 24, 2014

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet