

1 ERIC H. HOLDER, JR.  
 Attorney General  
 2 STEWART F. DELERY  
 Assistant Attorney General  
 3 Civil Division  
 MAAME EWUSI-MENSAH FRIMPONG  
 4 Deputy Assistant Attorney General  
 MICHAEL S. BLUME  
 5 Director  
 Consumer Protection Branch  
 6 ANDREW CLARK  
 Assistant Director  
 7 ANN ENTWISTLE  
 Trial Attorney  
 8 United States Department of Justice  
 P. O. Box 386  
 9 Washington, D.C. 20044  
 (202) 305-3630  
 10  
 LAURA E. DUFFY  
 11 United States Attorney  
 DOUGLAS KEEHN  
 12 Assistant United States Attorney  
 Cal. State Bar No. 233686  
 13 Southern District of California  
 880 Front Street, Room 6293  
 14 San Diego, CA 92101  
 (619) 546-7573  
 15

16 **UNITED STATES DISTRICT COURT**  
 17 **SOUTHERN DISTRICT OF CALIFORNIA**

<p>18 UNITED STATES OF AMERICA,          19          Plaintiff,          20 v.          21 INSTANT CHECKMATE, INC.,          22 Defendant.</p>	<p>Case No.: <b>'14CV0675 H JMA</b></p> <p><b>COMPLAINT</b></p>
--	---

23  
 24 Plaintiff, the United States of America, acting upon notification and authorization to  
 25 the Attorney General by the Federal Trade Commission (“FTC” or “Commission”), for its  
 26 Complaint alleges that:

27 1. Plaintiff brings this action under Section 5(a), 13(b), and 16(a) of the Federal  
 28 Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), and 56(a), and Section

1 621(a) of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681s(a), to obtain  
2 monetary civil penalties, and injunctive or other relief from Defendant for engaging in  
3 violations of the FTC Act, 15 U.S.C. § 45(a), and the FCRA, 15 U.S.C. §§ 1681 - 1681x.

4 **JURISDICTION AND VENUE**

5 2. This Court has subject matter jurisdiction over this matter under 28 U.S.C.  
6 §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(a), 53(b), 56(a), and 1681s.

7 3. Venue in the United States District Court for the Southern District of  
8 California is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b) - (d) and  
9 1395(a).

10 **PLAINTIFF**

11 4. This action is brought by the United States of America on behalf of the  
12 Federal Trade Commission. The Commission is an independent agency of the United  
13 States government given statutory authority and responsibility by, inter alia, the FTC Act,  
14 as amended, 15 U.S.C. §§ 41-58, and the FCRA, 15 U.S.C. §§ 1681 - 1681x. The  
15 Commission is charged, inter alia, with enforcing Section 5(a) of the FTC Act,  
16 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting  
17 commerce, and the FCRA, which imposes duties upon consumer reporting agencies.

18 **DEFENDANT**

19 5. Defendant Instant Checkmate, Inc. (“Instant Checkmate”) is a Delaware  
20 company doing business in Southern California. Instant Checkmate has its principal place  
21 of business at 4110 Mission Boulevard, Suite 200, San Diego, CA 92109. Instant  
22 Checkmate transacts or has transacted business in this district and throughout the United  
23 States.

24 **THE FAIR CREDIT REPORTING ACT (“FCRA”)**

25 6. The FCRA was enacted in 1970, became effective on April 25, 1971, and has  
26 been in force since that date. The Fair and Accurate Credit Transactions Act amended the  
27

1 FCRA in December 2003, and the Dodd-Frank Act amended the FCRA in July 2010.

2 7. Section 621 of the FCRA, 15 U.S.C. § 1681s, authorizes the Commission to  
3 use all of its functions and powers under the FTC Act to enforce compliance with the  
4 FCRA by all persons subject thereto except to the extent that enforcement specifically is  
5 committed to some other governmental agency, irrespective of whether the person is  
6 engaged in commerce or meets any other jurisdictional tests set forth by the FTC Act.

7 **DEFENDANT'S BUSINESS PRACTICES**

8 8. Since August 2010, Instant Checkmate has offered an online service allowing  
9 consumers to request background reports about any individual. In response to consumer  
10 requests, Instant Checkmate obtains public information from third party data providers  
11 and assembles it into detailed reports that it provides to the consumer. Such reports may  
12 contain up to fifteen information items relating to a particular individual, including:  
13 current and previous addresses; arrest and conviction records; marriage or divorce records;  
14 birth certificate records; and government-issued licenses (such as pilot licenses).  
15 Consumers may pay for each report separately or may purchase a subscription that grants  
16 unlimited searching for the duration of the subscription.

17 9. In its marketing and advertising, Instant Checkmate has promoted the use of  
18 its reports as a factor in establishing a person's eligibility for employment or housing. For  
19 example:

20 a. The company's website ([www.instantcheckmate.com](http://www.instantcheckmate.com)) has included the  
21 following statements:

- 22 • 5 GOOD REASONS to get instant criminal checks on anyone  
23 right now . . . (2) Check out tenants before they rent.
- 24 • Who should I perform a search on?  
25 Our lead background check analyst recommends you perform  
26 searches on the following people: . . .

1                                   o    Babysitter/Daycare Worker . . .

2                                   o    Gardener/Housecleaner . . .

3           b.    A blog maintained by the company, and included on the Instant  
4 Checkmate website, has featured posts in which the following statements were made:

- 5                   •    “Most of the time background checks are requested by an  
6 employer to get as much information on a potential job  
7 candidate.”
- 8                   •    “Some employers seek out background checkers concerning  
9 prospective employees. They are especially useful when  
10 employers are seeking candidates that require high security or a  
11 position of trust.”

12           c.    The company, through its Google Ad Words ad campaign, ran  
13 advertisements that would appear in search results when users sought background checks  
14 on “nannies,” “babysitters,” “maids,” and “housekeepers.”

15           d.    At least four banner advertisements distributed through the company’s  
16 affiliate advertising networks included the following statement:

- 17                   •    RUN A BACKGROUND CHECK ON ANYONE ONLINE IN  
18 SECONDS  
19 5 GOOD REASONS:  
20 . . . Check Out Tenants Before They Rent . . .

21                                   **DEFENDANT’S VIOLATIONS OF THE FCRA**

22           10.   The reports Instant Checkmate has provided to third parties are “consumer  
23 reports” as defined in Section 603(d) of the FCRA, 15 U.S.C. § 1681a(d):

24                   any written, oral, or other communication of any information by  
25 a consumer reporting agency bearing on a consumer’s  
26 creditworthiness, credit standing, credit capacity, character,  
27 general reputation, personal characteristics, or mode of living  
28 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 (A) credit or insurance to be used  
primarily for personal, family, or household purposes; (B)

1 employment purposes; or (C) any other purpose authorized  
2 under Section 604.

3 Section 604 states that consumer reporting agencies may furnish consumer reports  
4 to, among others, a person with “a legitimate business need for the information in  
5 connection with a business transaction that is initiated by the consumer.” 604(a)(3)(F)(i).

6 11. The reports Instant Checkmate has furnished are “consumer reports” because  
7 they bear on a consumer’s character, general reputation, personal characteristics, or mode  
8 of living and/or other attributes listed in Section 603(d), and were “used or expected to be  
9 used . . . in whole or in part” as a factor in determining the consumer’s eligibility for  
10 employment. Instant Checkmate also expected the reports to be used by landlords to  
11 evaluate prospective tenants’ applications for apartments, which qualifies under  
12 604(a)(3)(F)(i) as a “legitimate business need . . . in connection with a business  
13 transaction that is initiated by the consumer.” Instant Checkmate expected its reports to  
14 be used for FCRA purposes because it promoted its background screening product for use  
15 in employment and tenant screening.

16 12. In providing “consumer reports” Instant Checkmate has been a “consumer  
17 reporting agency” (“CRA”) as that term is defined in Section 603(f) of the FCRA,  
18 15 U.S.C. § 1681a(f). That section defines a CRA as:

19 any person which, for monetary fees, dues, or on a cooperative  
20 nonprofit basis, regularly engages in whole or in part in the  
21 practice of assembling or evaluating consumer credit  
22 information or other information on consumers for the purpose  
23 of furnishing consumer reports to third parties, and which uses  
24 any means or facility of interstate commerce for the purpose of  
25 preparing or furnishing consumer reports. Instant Checkmate  
26 has been a CRA because it has regularly assembled “information  
27 on consumers” into consumer reports that it has provided to  
28 third parties through interstate commerce.

1           13. Section 607(a) of the FCRA, 15 U.S.C. § 1681e(a), requires CRAs to  
2 “maintain reasonable procedures . . . to limit the furnishing of consumer reports to the  
3 purposes listed under Section 604.” These procedures require that CRAs, prior to  
4 furnishing users with consumer reports, require users to “identify themselves, certify the  
5 purposes for which the information is sought, and certify that the information will be used  
6 for no other purpose.” It also requires CRAs to “make a reasonable effort to verify the  
7 identity of a new prospective user and the uses certified by such prospective user prior to  
8 furnishing such user a consumer report.”

9           14. While acting as a CRA, Instant Checkmate failed to maintain any procedures  
10 required by Section 607(a).

11           15. Section 607(b) of the FCRA, 15 U.S.C. § 1681e(b), requires all CRAs to  
12 follow reasonable procedures to assure maximum possible accuracy of consumer report  
13 information.

14           16. While acting as a CRA, Instant Checkmate failed to follow any reasonable  
15 procedures to assure maximum possible accuracy of the information in reports that it  
16 prepared.

17           17. Section 607(d) of the FCRA, 15 U.S.C. § 1681e(d), requires CRAs to provide  
18 a “Notice to Users of Consumer Reports: Obligations of Users Under the FCRA” (“User  
19 Notice”) to any person to whom a consumer report is provided by the CRA. As required  
20 by Section 607(d), the Commission has prescribed the content of the User Notice through  
21 a model notice that is set forth in 16 C.F.R. 689, Appendix H. The User Notice provides  
22 users of consumer reports with important information regarding their obligations under the  
23 FCRA, including the obligation of the user to provide a notice to consumers who are the  
24 subject of an adverse action based in whole or in part on information contained in the  
25 consumer report.

1 18. While acting as a CRA, Instant Checkmate failed to provide the  
2 Section 607(d) User Notice to its clients who purchase consumer reports.

3 19. Section 604 of the FCRA, 15 U.S.C. § 1681b, prohibits CRAs from  
4 furnishing consumer reports to persons who the CRA does not have reason to believe have  
5 a “permissible purpose” to obtain them.

6 20. Instant Checkmate has regularly furnished consumer reports to persons that it  
7 did not have reason to believe had permissible purposes to obtain them. Moreover, Instant  
8 Checkmate has lacked procedures for ascertaining the permissible purpose for which users  
9 obtain reports.

10 21. Instant Checkmate included disclaimers on its website stating that it is not a  
11 CRA for purposes of the FCRA and that consumers may not use the company’s  
12 background reports for FCRA-covered purposes. Despite such disclaimers, Instant  
13 Checkmate has operated as a CRA because it promoted its consumer reports to users for  
14 use in determining eligibility for employment and housing and, thus, expected that those  
15 reports would be used in whole or in part for those purposes.

16 **COUNT 1**

17 **VIOLATIONS OF SECTION 607(A) OF THE FCRA**

18 22. Section 607(a) of the FCRA, 15 U.S.C. § 1681e(a), requires that every CRA  
19 maintain reasonable procedures to limit the furnishing of consumer reports to those with  
20 permissible purposes set forth in Section 604. These procedures require that CRAs, prior  
21 to furnishing a user with a consumer report, require the prospective users of the  
22 information identify themselves, certify the purpose for which the information is sought,  
23 and certify that the information will be used for no other purpose. The CRA must make a  
24 reasonable effort to verify the identity of each prospective user and the uses certified by  
25 each prospective user prior to furnishing such user with a consumer report.

26 23. Defendant has failed to maintain reasonable procedures required by  
27  
28



1 Section 607(a). For example, it has failed to require that prospective users identify  
2 themselves, certify the purposes for which the information is sought, and certify that the  
3 information will be used for no other purpose. It has also failed to make reasonable  
4 efforts to verify the identity of each prospective user and the uses certified by each  
5 prospective user prior to furnishing such user with a consumer report.

6 24. By and through the acts and practices described in Paragraph 23, Defendant  
7 has violated Section 607(a) of the FCRA, 15 U.S.C. § 1681e(a).

8 25. Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts  
9 and practices alleged in Paragraph 23 also constitute unfair or deceptive acts or practices  
10 in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

11 **COUNT 2**

12 **VIOLATIONS OF SECTION 607(B) OF THE FCRA**

13 26. Section 607(b) of the FCRA, 15 U.S.C. § 1681e(b), requires CRAs to follow  
14 reasonable procedures to assure maximum possible accuracy of the information  
15 concerning the individual about whom the report relates.

16 27. Defendant has failed to use reasonable procedures to assure maximum  
17 possible accuracy of consumer report information.

18 28. By and through the acts and practices described in Paragraph 27, Defendant  
19 has violated Section 607(b) of the FCRA, 15 U.S.C. § 1681e(b).

20 29. Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts  
21 and practices alleged in Paragraph 27 also constitute unfair or deceptive acts and practices  
22 in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

23 **COUNT 3**

24 **VIOLATIONS OF SECTION 607(D) OF THE FCRA**

25 30. Section 607(d) of the FCRA, 15 U.S.C. § 1681e(d) requires that a CRA  
26 provide a notice to users of information that states users' responsibilities under the FCRA.



1 31. Defendant has failed to provide a notice to users of information that states  
2 their respective responsibilities under the FCRA.

3 32. By and through the acts and practices described in Paragraph 31, Defendant  
4 has violated Section 607(d) of the FCRA, 15 U.S.C. § 1681e(d).

5 33. Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts  
6 and practices alleged in Paragraph 31 also constitute unfair or deceptive acts or practices  
7 in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

8 **COUNT 4**

9 **VIOLATIONS OF SECTION 604 OF THE FCRA**

10 34. Section 604 of the FCRA, 15 U.S.C. § 1681b prohibits a CRA from  
11 furnishing consumer reports to persons that it did not have reason to believe had a  
12 permissible purpose to obtain a consumer report.

13 35. Defendant has furnished consumer reports to persons that it did not have  
14 reason to believe had permissible purposes to obtain such reports. Indeed, Instant  
15 Checkmate has regularly provided consumer reports without knowing users' purposes for  
16 obtaining the reports and without employing procedures for requesting users' purposes for  
17 obtaining the reports.

18 36. By and through the acts and practices described in Paragraph 35, Defendant  
19 has violated Section 604 of the FCRA, 15 U.S.C. § 1681b.

20 37. Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts  
21 and practices alleged in Paragraph 35 also constitute unfair or deceptive acts or practices  
22 in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

23 **THIS COURT'S POWER TO GRANT RELIEF**

24 38. Section 621(a)(2) of the FCRA, 15 U.S.C. § 1681s(a)(2), authorizes the Court  
25 to award monetary civil penalties in the event of a knowing violation of the FCRA, which  
26 constitutes a pattern or practice. Instant Checkmate's violations of the FCRA, as alleged  
27  
28

1 in this Complaint, have been knowing and have constituted a pattern or practice of  
2 violations. As specified by the Federal Civil Penalty Inflation Adjustment Act of 1990,  
3 28 U.S.C. § 2461, as amended by the Debt Collection Improvements Act of 1996,  
4 Pub. L. 104-134, § 31001(s)(1), 110 Stat. 1321-373, the Court is authorized to award a  
5 penalty of not more than \$3,500 per violation.

6 39. Each instance in which Instant Checkmate has failed to comply with the  
7 FCRA constitutes a separate violation of the FCRA for the purpose of assessing monetary  
8 civil penalties under Section 621(a)(2) of the FCRA, 15 U.S.C. § 1681s(a)(2). Plaintiff  
9 seeks monetary civil penalties for every separate violation of the FCRA.

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

13 **PRAYER FOR RELIEF**

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

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

19 (2) Enter a permanent injunction to prevent future violations of the FCRA and  
20 the FTC Act by Defendant;

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

23 (4) Award Plaintiff such additional relief as the Court may determine to be just  
24 and proper. The parties, by their counsel, hereby consent to the terms and conditions of  
25 the Consent Order for civil penalties, permanent injunction, and other equitable relief as  
26 set forth above and consent to the entry thereof.

1 DATED: March 24, 2014

2  
3 **OF COUNSEL:**

4  
5 MANEESHA MITHAL  
6 Associate Director  
7 Division of Privacy and Identity  
8 Protection

9 ROBERT SCHOSHINSKI  
10 Assistant Director  
11 Division of Privacy and Identity  
12 Protection

13 JESSICA LYON  
14 Division of Privacy and Identity  
15 Protection  
16 Federal Trade Commission  
17 600 Pennsylvania Avenue, N.W.  
18 (202) 326-2344 (voice)  
19 (202) 326-3062 (fax)

20 MELINDA CLAYBAUGH  
21 Division of Privacy and Identity  
22 Protection  
23 Federal Trade Commission  
24 600 Pennsylvania Avenue, N.W.  
25 (202) 326-2203 (voice)  
26 (202) 326-3062 (fax)

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

ERIC H. HOLDER, JR.  
Attorney General

STUART F. DELERY  
Assistant Attorney General  
Civil Division

MICHAEL S. BLUME  
Director  
Consumer Protection Branch

ANDREW CLARK  
Assistant Director

/s/ Ann Entwistle  
ANN ENTWISTLE  
Trial Attorney  
United States Department of Justice  
Ann.F.Entwistle@usdoj.gov

LAURA E. DUFFY  
United States Attorney  
Southern District of California

/s/ Douglas Keehn  
DOUGLAS KEEHN  
Assistant United States Attorney  
Douglas.Keehn@usdoj.gov