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

UNITED STATES OF AMERICA,
Plaintiff,
v.
INSTANT CHECKMATE, INC.,
Defendant.

Case No.: 14cv0675-H(JMA)

CONSENT ORDER

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“FTC” or “Commission”), filed its complaint for civil penalties, permanent injunction, and other equitable relief in this matter, alleging that Defendant, Instant Checkmate Inc. has (“Instant Checkmate”) has engaged in violations of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681 - 1681x, and in unfair or deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a). Defendant has waived service of the summons and the Complaint. Plaintiff and Defendant, through counsel, stipulate to the entry of this Consent Order for civil penalties, permanent injunction, and other relief (“Order”) to resolve all matters in dispute in this action between them.

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1 for an ordinary consumer to read and comprehend them, and in the same language as the
2 predominant language that is used in the communication;

3 4. in communications made through interactive media, such as the
4 Internet, online services, and software, the required disclosures are unavoidable and
5 presented in a form consistent with subparagraph (1) of this definition, in addition to any
6 audio or video presentation of them; and

7 5. in all instances, the required disclosures are presented in an
8 understandable language and syntax, and with nothing contrary to, inconsistent with, or in
9 mitigation of the disclosures used in any communication of them.

10 B. "Consumer Report" shall mean any written, oral, or other communication of
11 any information by a Consumer Reporting Agency bearing on a consumer's credit
12 worthiness, credit standing, credit capacity, character, general reputation, personal
13 characteristics, or mode of living which is used or expected to be used or collected in
14 whole or in part for the purpose of serving as a factor in establishing the consumer's
15 eligibility for:

16 1. credit or insurance to be used primarily for personal, family, or
17 household purposes;

18 2. employment purposes; or

19 3. any other Permissible Purpose.

20 C. "Consumer Reporting Agency" shall mean any Person which, for monetary
21 fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the
22 practice of assembling or evaluating consumer credit information or other information on
23 consumers for the purpose of furnishing Consumer Reports to third parties, and which
24 uses any means or facility of interstate commerce for the purpose of preparing or
25 furnishing Consumer Reports.

26 D. "Defendant" means Instant Checkmate Inc. and its successors and assigns;

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1 E. "Permissible Purpose" shall mean the circumstances under which a
2 Consumer Reporting Agency may furnish a Consumer Report, as set forth in Section 604
3 of the FCRA, 15 U.S.C. § 1681b, attached hereto as Attachment A to this Order.

4 F. "Person" shall mean any individual, partnership, corporation, trust, estate,
5 cooperative, association, government or governmental subdivision or agency, or other
6 entity.

7 **ORDER**

8 I. PROHIBITED BUSINESS ACTIVITIES

9 **IT IS ORDERED** that Defendant, Defendant's officers, agents, servants,
10 employees, and all other persons in active concert or participation with any of them, who
11 receive actual notice of this Order, whether acting directly or indirectly, in connection
12 with operating as a Consumer Reporting Agency, are hereby permanently restrained and
13 enjoined from:

14 A. furnishing a Consumer Report to any Person who Defendant does not have
15 reason to believe has a Permissible Purpose to receive the Consumer Report;

16 B. failing to maintain reasonable procedures designed to limit the furnishing of
17 Consumer Reports to Persons that have Permissible Purposes to receive them. Such
18 reasonable procedures shall require that: prospective users of the information identify
19 themselves, certify the purposes for which the information is sought, and certify that the
20 information will be used for no other purpose; and that Defendant make a reasonable
21 effort to verify the identity of a new prospective user and the uses certified by such
22 prospective user prior to furnishing such user a Consumer Report;

23 C. failing to maintain reasonable procedures to assure the maximum possible
24 accuracy of the information concerning the individual about whom a Consumer Report
25 relates; and

26 D. failing to provide a notice identical or substantially similar to the one
27 attached as Attachment B to this Order, to any person to whom a Consumer Report is
28 provided by Defendant, provided that Defendant may provide an electronic copy of the

1 notice to a user if: (a) in the ordinary course of business, the user obtains Consumer
2 Report information from Defendant in electronic form, and (b) the notice is Clear and
3 Prominent.

4 II. MONETARY JUDGMENT FOR CIVIL PENALTY

5 **IT IS FURTHERED ORDERED** that:

6 A. Judgment in the amount of Five Hundred Twenty-Five Thousand Dollars
7 (\$525,000) is hereby entered in favor of Plaintiff and against Defendant as a civil penalty
8 for violations of the FCRA pursuant to Section 621(a) of the FCRA, 15 U.S.C. 1681s(a).

9 B. Defendant is ordered to pay Plaintiff, by making payment to the Treasurer of
10 the United States, Five Hundred Twenty-Five Thousand Dollars (\$525,000), which, as
11 Defendant stipulates, its undersigned counsel holds for no purpose other than payment to
12 Plaintiff. Such payment must be made within seven (7) days of entry of this Order by
13 electronic fund transfer in accordance with instructions previously provided by a
14 representative of Plaintiff.

15 III. ADDITIONAL MONETARY PROVISIONS

16 **IT IS FURTHER ORDERED** that:

17 A. Defendant relinquishes dominion and all legal and equitable right, title, and
18 interest in all assets transferred pursuant to this Order and may not seek the return of any
19 assets.

20 B. The facts as alleged in the Complaint will be taken as true, without further
21 proof, in any subsequent civil litigation filed by or on behalf of the Commission to enforce
22 its rights to any payment or money judgment pursuant to this Order.

23 C. Defendant acknowledges that its Taxpayer Identification Numbers (Social
24 Security Numbers or Employer Identification Numbers), which Defendant previously
25 submitted to the Commission, may be used for collecting and reporting on any delinquent
26 amount arising out of this Order, in accordance with 31 U.S.C. §7701.

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1 IV. ORDER ACKNOWLEDGEMENTS

2 **IT IS FURTHER ORDERED** that Defendant obtain acknowledgements of receipt
3 of this Order:

4 A. Defendant, within seven (7) days of entry of this Order, must submit to the
5 Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

6 B. For three (3) years after entry of this Order, Defendant must deliver a copy of
7 this Order to: (1) all principals, officers, directors, and LLC managers and members; (2)
8 all employees, agents, and representatives who participate in conduct related to the subject
9 matter of the Order; and (3) any business entity resulting from any change in structure as
10 set forth in the Section titled "Compliance Reporting." Delivery must occur within seven
11 (7) days of entry of this Order for current personnel. To all others, delivery must occur
12 before they assume their responsibilities. This deadline may be modified on motion to the
13 Court for good cause shown.

14 C. From each individual or entity to which Defendant delivered a copy of this
15 Order, Defendant must obtain, within 30 days, a signed and dated acknowledgement of
16 receipt of this Order.

17 V. COMPLIANCE REPORTING

18 **IT IS FURTHER ORDERED** that Defendant make timely submissions to the
19 Commission:

20 A. One year after entry of this Order, Defendant must submit a compliance
21 report, sworn under penalty of perjury:

22 1. Defendant must: (a) identify the primary physical, postal, and email
23 address and telephone number, as designated points of contact, which representatives of
24 the Commission and Plaintiff may use to communicate with Defendant; (b) identify all of
25 Defendant's businesses by all of their names, telephone numbers, and physical, postal,
26 email, and internet addresses; (c) describe the activities of each business, including the
27 goods and services offered, and the means of advertising, marketing and sales; (d)
28 describe in detail whether and how Defendant is in compliance with each Section of this

1 Order; and (e) provide a copy of each Order Acknowledgement obtained pursuant to this
2 Order, unless previously submitted to the Commission.

3 2. For three (3) years following entry of this Order, Defendant must
4 submit a compliance notice, sworn under penalty of perjury, within 14 days of any change
5 in the following: (a) any designated point of contact; or (b) the structure of Defendant or
6 any entity that Defendant has any ownership interest in or controls directly or indirectly
7 that may affect compliance obligations arising under this Order, including: creation,
8 merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages
9 in any acts or practices subject to this Order. This deadline may be modified on motion to
10 the Court for good cause shown.

11 3. Defendant must submit to the Commission notice of the filing of any
12 bankruptcy petition, insolvency proceeding, or similar proceeding by or against Defendant
13 within 14 days of its filing.

14 4. Any submission to the Commission required by this Order to be sworn
15 under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746,
16 such as by concluding: “I declare under penalty of perjury under the laws of the United
17 States of America that the foregoing is true and correct. Executed on: _____” and
18 supplying the date, signatory’s full name, title (if applicable), and signature.

19 5. Unless otherwise directed by a Commission representative in writing,
20 all submissions to the Commission pursuant to this Order must be emailed to
21 Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate
22 Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission,
23 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The subject line must begin:
24 U.S. v. Instant Checkmate, File No. 1223221.

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1 VI. RECORDKEEPING

2 **IT IS FURTHER ORDERED** that Defendant must create and maintain certain
3 records for three (3) years after entry of the Order. Specifically, Defendant must maintain
4 the following records:

5 A. Accounting records showing the revenues from all goods or services sold, all
6 costs incurred in generating those revenues, and the resulting net profit or loss;

7 B. Personnel records showing each employee's: name, addresses, and telephone
8 numbers; job title or position; dates of service; and, if applicable, the reason for
9 termination;

10 C. All employee training materials;

11 D. Documents sufficient to demonstrate compliance with each provision of this
12 Order, including, but not limited to, copies of acknowledgments of receipt of this Order,
13 required by the Section titled "Compliance Reporting";

14 E. Complaints and refund requests, whether received directly or indirectly, and
15 any responses;

16 F. A copy of each unique advertisement or other marketing material;

17 G. Documents sufficient to demonstrate Defendant's compliance with
18 Section 604 of the FCRA;

19 H. Documents sufficient to demonstrate Defendant's compliance with Section
20 607(a) of the FCRA, including but not limited to:

21 1. the name, address, and telephone number of each Consumer Report
22 user;

23 2. each user's certification of the purposes for which the Consumer
24 Report information is sought; and

25 3. documents sufficient to demonstrate Defendant's efforts to verify the
26 identity of each user and the uses certified by such user; and

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1 I. Documents sufficient to demonstrate Defendant's compliance with Section
2 607(d) of the FCRA, including but not limited to:

3 1. a copy of each notice provided by Defendant to those who regularly
4 furnish information to Defendant with respect to any consumer;

5 2. a copy of each notice provided by Defendant to those to whom a
6 Consumer Report is provided by Defendant; and

7 3. the name, address, and telephone number of each person to whom
8 Defendant provided a notice described in Subsection I(1) and I(2).

9 J. This deadline may be modified on motion to the Court for good cause shown.

10 VII. COMPLIANCE MONITORING

11 **IT IS FURTHER ORDERED** that for the purpose of monitoring Defendant's
12 compliance with this Order, including any failure to transfer any assets as required by this
13 Order:

14 A. Within 14 days of receipt of a written request from a representative of the
15 Commission or Plaintiff, Defendant must: submit additional compliance reports or other
16 requested information, which must be sworn under penalty of perjury; appear for
17 depositions; and produce documents for inspection and copying. The Commission and
18 Plaintiff are also authorized to obtain discovery, without further leave of court, using any
19 of the procedures prescribed by Fed. R. Civ. P. 29, 30 (including telephonic depositions),
20 31, 33, 34, 36, 45, and 69.

21 B. For matters concerning this Order, the Commission and Plaintiff are
22 authorized to communicate directly with Defendant. Defendant must permit
23 representatives of the Commission and Plaintiff to interview any employee or other person
24 affiliated with Defendant who has agreed to such an interview. The person interviewed
25 may have counsel present.

26 C. The Commission and Plaintiff may use all other lawful means, including
27 posing, through its representatives, as consumers, suppliers, or other individuals or
28 entities, to Defendant or any individual or entity affiliated with Defendant, without the

1 necessity of identification or prior notice. Nothing in this Order limits the Commission's
2 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act,
3 15 U.S.C. §§ 49, 57b-1.

4 **VIII. RETENTION OF JURISDICTION**

5 **IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter for
6 purposes of construction, modification, and enforcement of this Order. The Court directs
7 the Clerk to close this case. The Court will re-open the case upon motion of a party for
8 good cause within three years of this order.

9 **IX. COSTS AND ATTORNEYS' FEES**

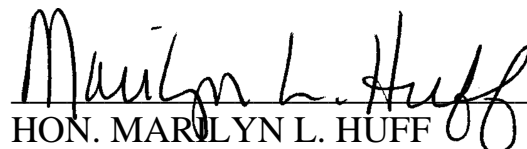
10 **IT IS FURTHER ORDERED** that each party shall bear its own costs and
11 attorneys' fees incurred in connection with this action.

12 **X. DEADLINES**

13 The deadlines set in this Order will only be modified on motion to the Court for
14 good cause shown.

15 **IT IS SO ORDERED.**

16 Dated: March 28, 2014

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18 HON. MARILYN L. HUFF
19 United States District Judge
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