

1 WILLIAM BLUMENTHAL
General Counsel
2
3 DEBORAH MATTIES
PATRICIA POSS
Federal Trade Commission
4 600 Pennsylvania Avenue, NW, H-286
Washington, DC 20580
5 (202) 326-2047, 2413
(202) 326-3395 (fax)

6 JOHN D. JACOBS
7 Cal. Bar No. 134154
Federal Trade Commission
8 10877 Wilshire Boulevard
Suite 700
9 Los Angeles, CA 90024
(310) 824-4360
10 (310) 824-4380 (fax)

11 *Attorneys for Plaintiff*

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

14 FEDERAL TRADE COMMISSION,
15
16 Plaintiff,

17 v.

18 NEOVI, INC., d/b/a NEOVI DATA
CORPORATION and QCHEX.COM;

19 G7 PRODUCTIVITY SYSTEMS, INC.,
d/b/a QCHEX.COM;

20 JAMES M. DANFORTH, individually, and
as an officer of Neovi, Inc. and G7
21 Productivity Systems, Inc.; and

22 THOMAS VILLWOCK, individually, and as
an officer of Neovi, Inc.,

23 Defendants.
24

CIVIL NO.
06 CV 1952 JQH-RMA

[Proposed]
JOINT STIPULATION AND
ORDER THEREON FOR
TEMPORARY
RESTRAINING ORDER
WITH OTHER EQUITABLE
RELIEF AND ORDER TO
SHOW CAUSE

25 This matter comes before the Court on stipulation of Plaintiff Federal Trade
26 Commission ("FTC" or the "Commission") and Defendants Neovi, Inc., d/b/a Neovi Data

1 Corporation and Qchex.com (“Neovi”); G7 Productivity Systems, Inc., d/b/a Qchex.com
2 (“G7”); James M. Danforth (“Danforth”); and Thomas Villwock (“Villwock”) (collectively,
3 “Defendants”). On September 19, 2006, the Commission filed a Complaint for Injunctive and
4 Other Equitable Relief in this matter pursuant to Section 13(b) of the Federal Trade Commission
5 Act (“FTC Act”), 15 U.S.C. § 53(b), and moved for a temporary restraining order and for an
6 order to show cause why a preliminary injunction should not be granted pursuant to Rule 65 of
7 the Federal Rules of Civil Procedure. The Court, having been advised that the parties have
8 stipulated hereto and having considered the pleadings, declarations, exhibits, and memoranda of
9 law filed in this action, finds that:

10 1. This Court has jurisdiction over the subject matter of this case, and there is good
11 cause to believe that it has jurisdiction over all parties hereto.

12 2. Defendants, by agreeing to this Order, make no admissions as to the truth of
13 Plaintiff’s allegations. In addition, the stipulation and entry of this Order is not to be construed
14 or deemed a waiver of any claims or defenses that may be raised in this action.

15 3. There is good cause to believe that Defendants have engaged and are likely to
16 engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that
17 Plaintiff is therefore likely to prevail on the merits of this action.

18 4. Weighing the equities and considering Plaintiff’s likelihood of ultimate success
19 on the merits, a temporary restraining order restraining Defendants’ conduct and providing other
20 equitable relief is in the public interest.

21 5. Fed. R. Civ. P. 65(c) does not require security of the United States or an agency
22 thereof for the issuance of a restraining order.

1 or has the authority of the account holder to draw funds from the financial account on which the
2 check is to be drawn.

3 **PROVIDED**, however, that, Defendants will not be in violation of this Section if
4 Defendants, prior to creating or delivering any check for any person, perform one of these two
5 verification procedures:

6 A. Perform "Micro-Deposit Verification" by:

7 1. Requiring the person requesting the check to confirm access to the
8 financial account on which the person wishes to request checks by making two deposits
9 between \$0.01 and \$0.99 each in randomly generated amounts into such financial
10 account;

11 2. Requiring the person to report back to Defendants, either in writing or
12 electronically, the amount of each deposit;

13 3. Confirming that the two numbers provided by that person match the
14 amounts of the two deposits made by Defendants into the person's financial account; and

15 4. At least ten (10) days before creating or delivering the first check drawn
16 on a particular financial account, mailing a written statement to the mailing address
17 provided by the person and listed on the check stating that a check will be created to be
18 drawn on the financial account listed on the check and delivered to a payee, providing
19 the payee's name, date, amount of the check, a working telephone number for persons to
20 use to contact Defendants during regular business hours regarding the check; **or**

21 B. Perform "Financial Institution Verification" by:

22 1. Obtaining written consent from the person requesting the creation or
23 delivery of the check to contact the financial institution that holds the financial account
24 on which the check is to be drawn;

1 C. Failing to suspend use of any of Defendants' products or services upon notice
2 that the product or service is alleged to be involved in the unauthorized use of a person's
3 financial account information. After suspending use of the product or service, Defendants shall
4 conduct a reasonable investigation of the allegation that Defendants' products or services have
5 resulted in the unauthorized use of a person's financial account information. Defendants shall
6 permanently suspend access by the Qchex account holder to any of Defendants' products or
7 services if such product or service was involved in the unauthorized use of a person's financial
8 account information. Defendants shall complete their investigation of and respond to persons
9 making such allegations within five (5) business days after Defendants have become aware of
10 them. In responding to such allegations, Defendants shall use either the same method that the
11 person alleging such unauthorized use used to contact Defendants or an alternate method
12 explicitly requested by the person. Such response shall, at a minimum, inform the person of the
13 following:

14 1. Whether the person's financial account information was used to create or
15 deliver one or more checks and a list of all check numbers, dates, and amounts of any
16 checks issued;

17 2. If any of Defendants' products or services were involved in the alleged
18 unauthorized use of a person's financial account information, when use of such product
19 or service was suspended;

20 3. A telephone number and contact person that the person may call during
21 normal business hours to discuss the matter; and

22 4. A statement that informs the person that he or she should visit
23 www.consumer.gov/idtheft or call 1-877-ID-THEFT if the person suspects that he or she
24 has been a victim of identity theft and should call his or her financial institution to have
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1 the his or her financial account suspended or closed if the person suspects unauthorized
2 activity on his or her financial account.

3 **III.**

4 **MAINTENANCE OF CURRENT BUSINESS RECORDS**

5 **IT IS FURTHER ORDERED** that Defendants, their officers, agents, servants,
6 employees, attorneys, and those persons in active concert or participation with them who receive
7 actual notice of this Order by personal service or otherwise, are hereby temporarily restrained
8 and enjoined from:

9 A. Failing to create and maintain documents that, in reasonable detail, accurately,
10 fairly, and completely reflect Qchex accounts and any checks created or delivered by
11 Defendants;

12 B. Creating, operating, or exercising any control over any business entity, including
13 any partnership, limited partnership, joint venture, sole proprietorship or corporation, without
14 first notifying counsel for Plaintiff by written statement disclosing: (a) the name of the business
15 entity; (b) the address and telephone number of the business entity; (c) the names of the business
16 entity's officers, directors, principals, managers and employees; and (d) a detailed description of
17 the business entity's intended activities; and

18 C. Creating, operating, or exercising any control over any new domain name or
19 website, without first notifying counsel for Plaintiff by written statement disclosing: (a) the
20 name of the domain name or website; (b) the identity of the registrant or account holder,
21 including the mailing address and telephone number; (c) the name and address of the person or
22 entity to whom such registration was submitted; and (d) the purpose of the domain name or
23 website.

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IV.

MONITORING OF COMPLIANCE

IT IS FURTHER ORDERED that during the pendency of this litigation, Plaintiff FTC is authorized to monitor Defendants' compliance with this Order. For purposes of the compliance monitoring authorized by this Section, the FTC may use representatives posing as members of the public to test Defendants' practices with regard to Section I and II of this Order. When posing as members of the public, the FTC's representatives are authorized to communicate directly with Defendants, Defendants' employees, any entity managed or controlled in whole or in part by any of Defendants, or any entity acting as an agent of any of Defendants, without the necessity of identification, prior notice, or authorization by Defendants or their counsel.

If the FTC should detect an alleged violation of this Order, it shall notify counsel for Defendants in writing. Defendants shall have five (5) business days from receipt of such notice to respond to the FTC in writing and state whether Defendants will cure the alleged violation or dispute that the observed condition exists or is a violation. If Defendants agree to cure, they shall have ten (10) business days from receipt of the FTC's written notice to effect such cure and, if at the end of the ten days, the FTC is dissatisfied, the FTC may move this Court for corrective action. If Defendants dispute that the observed condition exists or is a violation and the FTC is dissatisfied with Defendants' explanation, the FTC may move this Court for corrective action.

V.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall: (A) immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, salesperson, agent, attorney, and representative of

1 any defendant; and (B) within seven (7) days from the date of entry of this Order, provide the
2 Commission with a sworn statement detailing the manner in which Defendants have complied
3 with this provision of the Order, which shall include the names and addresses of each such
4 person or entity who received a copy of the Order.

5 **VI.**

6 **DURATION OF TEMPORARY RESTRAINING ORDER**

7 **IT IS FURTHER ORDERED** that the Temporary Restraining Order granted herein
8 shall expire on 10/26/06, 2006 at 11:59 p.m., unless within such time, the Order, for
9 good cause shown, is extended for an additional period not to exceed ten (10) days, or unless it
10 is further extended pursuant to Federal Rule of Civil Procedure 65.

11 **VII.**

12 **ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION**

13 **IT IS FURTHER ORDERED**, pursuant to Federal Rule of Civil Procedure 65, that
14 each Defendant shall appear before this Court on the 26 day of October, 2006, at
15 3:30 o'clock p.m., at the United States District Court House, Courtroom 4,
16 Southern District of California, to show cause, if there is any, why this Court should not enter a
17 preliminary injunction, pending final ruling on the complaint against Defendants, enjoining
18 them from further violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) and imposing
19 such additional relief as may be appropriate.

20 **PROVIDED** that, if any party to this action intends to present the testimony of any
21 witness at the hearing on a preliminary injunction in this matter, that party shall, at least 14 days
22 prior to the scheduled date and time of hearing, file with this Court and serve on all other parties
23 a statement disclosing the name, address, and telephone number of any such witness, and either
24 a summary of the witness' expected testimony, or the witness' affidavit revealing the substance
25 of such witness' expected testimony. The parties must also file with this Court and serve on all
26

1 other parties any affidavits and other evidence upon which they intend to rely in connection with
2 the Plaintiff's request for a preliminary injunction no later than 14 days before the time
3 scheduled for the preliminary injunction hearing.

4 **PROVIDED FURTHER** that Defendants must file with the Clerk's Office and deliver
5 to counsel for Plaintiff any brief responding to the order to show cause why a preliminary
6 injunction should not be entered no later than 14 days before the time scheduled for the hearing.

7 **PROVIDED FURTHER** that Plaintiff shall file with the Clerk's Office and deliver to
8 counsel for Defendants any reply brief responding to Defendants' opposition to the order to
9 show cause why a preliminary injunction should not be entered no later than 7 days before the
10 time scheduled for the hearing. Notwithstanding the above provisions, Plaintiff may file any
11 additional affidavits, witness summaries, or other evidence upon which Plaintiff intends to rely
12 to reply to Defendants' opposition no later than 7 days before the time scheduled for the hearing.

13 **VIII.**

14 **SERVICE UPON PARTIES**

15 **IT IS FURTHER ORDERED** that, with regard to any correspondence or pleadings
16 related to this Order, service on the parties shall be performed by overnight mail delivery or
17 facsimile to the attention of:

18 For Plaintiff:
19 DEBORAH MATTIES
20 PATRICIA POSS
21 Federal Trade Commission
22 600 Pennsylvania Avenue, NW, H-286
23 Washington, DC 20580
24 (202) 326-3395 (fax)

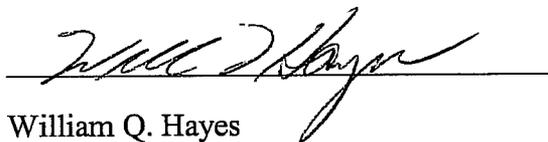
25 For Defendants:
26 JAMES C. STEVENS
402 West Broadway, Suite 400
San Diego, CA 92101
(619) 934-2844 (fax)

IX.

RETENTION OF JURISDICTION

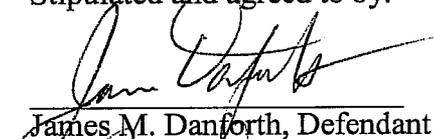
IT IS FURTHER ORDERED, that this Court shall retain jurisdiction of this matter for all purposes.

IT IS SO ORDERED, this 22 day of September, 2006 at San Diego, California.

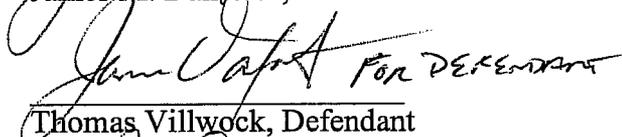


William Q. Hayes
United States District Judge
District of Southern California

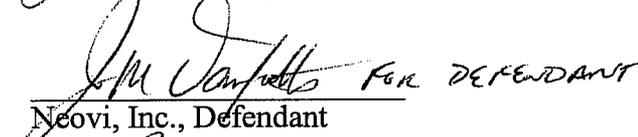
Stipulated and agreed to by:


James M. Danforth, Defendant

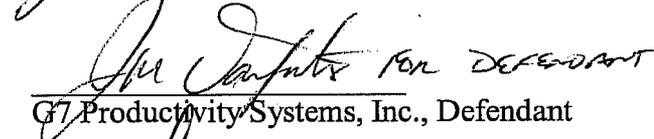
Dated: 9-22-06


Thomas Villwock, Defendant

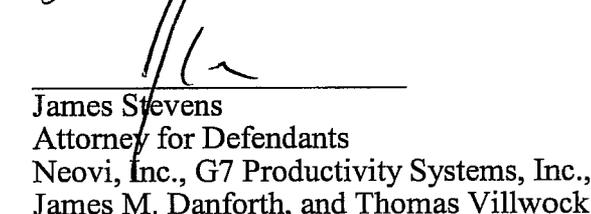
Dated: 9-22-06


Neovi, Inc., Defendant

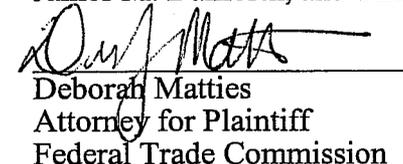
Dated: 9-22-06


G7 Productivity Systems, Inc., Defendant

Dated: 9-22-06


James Stevens
Attorney for Defendants
Neovi, Inc., G7 Productivity Systems, Inc.,
James M. Danforth, and Thomas Villwock

Dated: 9/22/06


Deborah Matties
Attorney for Plaintiff
Federal Trade Commission

Dated: Sept. 22, 2006