

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No.</b>
	)	
v.	)	
	)	
<b>TALX Corporation,</b>	)	
	)	
<b>Defendant.</b>	)	

**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 (“FTC” or “Commission”), is concurrently filing its Complaint herein, which alleges that Defendant TALX Corporation (“TALX”) 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 been represented by the attorney whose name appears hereafter. The parties have agreed to entry of this Stipulated Final Judgment and Order for Civil Penalties, Permanent Injunction, and Other Equitable Relief (“Order”) to resolve all matters in dispute in this action without trial or adjudication of any issue of law or fact herein and without Defendant admitting the truth of, or liability for, any of the matters alleged in the Complaint. Defendant has waived service of the Summons and Complaint.

**THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as

follows:

**FINDINGS**

1. This Court has jurisdiction over the subject matter of this case and over Defendant TALX.
2. Venue in this district is proper under 28 U.S.C. §§ 1391(b) - (c), and 15 U.S.C. § 53(b).
3. The Complaint states claims upon which relief may be granted against Defendant under sections 5(a), 13(b), and 16(a) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a), 53(b), and 56(a); and under sections 607(d) and 621 of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681e and 1681s.
4. Defendant makes no admissions to, and denies, the allegations in the Complaint, other than the jurisdictional facts in paragraph 4 of the Complaint.
5. Defendant waives: (a) all rights to seek appellate review or otherwise challenge or contest the validity of this Order; (b) any claim Defendant may have against the Commission, its employees, representatives, or agents that relate to the matter stated herein; (c) all claims 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); and (d) any rights to attorneys' fees that may arise under said provision of law.
6. Entry of this Order is in the public interest.
7. For the purpose of this Order:

- a. “Defendant” shall mean TALX, its subsidiaries and operating companies, and their successors and assigns, officers, agents, representatives, and employees.
- b. The definitions set forth in the FCRA, 15 U.S.C. §§ 1681a, *et seq.*, shall apply.
- c. “Clear and prominent” shall mean that, in an electronic medium the disclosure shall be: (a) unavoidable; (b) of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it; (c) easily printable; and (d) presented on the principal screen or landing page where the disclosure is relevant.
- d. “Employment history” and “Income history” are verifications of employment or income that are created by searching more than one employer-client file.

## **ORDER**

### **I. CIVIL PENALTY**

**IT IS ORDERED** that Defendant shall pay to Plaintiff, pursuant to section 621(a) of the FCRA, 15 U.S.C. § 1681s(a), a civil penalty in the amount of three hundred and fifty thousand dollars (\$350,000).

A. Defendant shall make this payment within seven (7) business days of the date of service of this Order to the Treasurer of the United States by electronic fund transfer in accordance with instructions provided by the Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. 20530, for appropriate disposition.

B. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the entire unpaid penalty, 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.

C. This judgment represents a civil penalty owed to the United States Government and is not compensation for actual pecuniary loss, and, therefore, it is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7). Defendant agrees that the facts as alleged in the Complaint filed in this action shall be taken as true, without further proof, in any subsequent litigation filed by or on behalf of the Commission to collect any unpaid amount or otherwise enforce its rights pursuant to this Order.

D. Proceedings initiated under this Part are in addition to, and not in lieu of, any other civil or criminal penalties that may be provided by law, including any other proceedings Plaintiff may initiate to enforce this Order.

E. Defendant relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendant shall make no claim to or demand return of the funds, directly or indirectly, through counsel or otherwise.

## **II. PROHIBITED BUSINESS ACTIVITIES**

**IT IS FURTHER ORDERED** that Defendant, when operating as a consumer reporting agency as defined in section 603(f) of the FCRA, 15 U.S.C. § 1681a(f), and all other persons or entities within the 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. Failing to provide the “User Notice” required by section 607(d) of the FCRA, 15 U.S.C. § 1681e(d), to all users of Defendant’s employment history and income history reports and any other consumer reports. *Provided, however,* that Defendant may provide an electronic copy of this notice to a user if (i) in the ordinary course of business, the user obtains consumer report information from Defendant in electronic form, and (ii) the notice is clear and prominent.

B. Failing to provide the “Furnisher Notice” required by section 607(d) of the FCRA, 15 U.S.C. § 1681e(d), to all furnishers of consumer report information to Defendant. *Provided, however,* that Defendant may provide an electronic copy of this notice to a furnisher if (i) in the ordinary course of business, the furnisher provides consumer report information to Defendant in electronic form, and (ii) the notice is clear and prominent.

### **III. COMPLIANCE MONITORING**

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

A. Within ten business (10) days of receipt of written notice from a representative of the Commission, Defendant shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in Defendant’s possession or direct or indirect control, to inspect the business operation; provided that, Defendant, after attempting to resolve a dispute without court action and for good cause shown may file a motion with this Court seeking an order including one or more of the protections set forth in Fed. R. Civ. P. 26(c).

B. In addition, the Commission is authorized to use all other lawful means, including but not limited to:

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, 45, and 69;
2. posing as consumers and suppliers to Defendant, its employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice; and

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, and 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)) or to any violation of the FCRA.

#### **IV. 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 five (5) years from the date of service of this Order, Defendant shall notify the Commission of any changes in structure of Defendant or any other business entity that Defendant directly or indirectly controls, or has an ownership interest in, that may affect

compliance obligations arising under this Order, including but not limited to incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the business entity 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 and annually thereafter for a period of three (3) years, Defendant shall provide a written report to the Commission, which is true and accurate and 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.

C. For a period of five (5) years from the date of service of this Order, Defendant shall notify the Commission of the filing of a bankruptcy petition within fifteen (15) days of filing.

D. For purposes of this Order, Defendant shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Order to the Commission, to the following address:

Associate Director, Division of Enforcement  
Bureau of Consumer Protection  
Federal Trade Commission  
Washington, D.C. 20580  
RE: FTC v. TALX, Inc.

*Provided* that, in lieu of overnight courier, Defendant may send such reports or notifications by first-class mail, but only if the Defendant contemporaneously sends an electronic version of such reports or notifications to the Commission at: [DEBrief@ftc.gov](mailto:DEBrief@ftc.gov).

E. For purposes of the compliance reporting and monitoring required by this Order if the undersigned counsel no longer represents Defendant, the Commission is authorized to communicate directly with the General Counsel of TALX. Provided, however, nothing in this provision shall limit the Commission's authority to pose as a consumer or supplier pursuant to Subsection B.2 of the section titled "Compliance Monitoring."

#### **V. RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of six (6) years from the date of entry of this Order, Defendant and its agents, employees, officers, corporations, 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/or retain the following records:

A. Files containing the names, addresses, telephone numbers, of all users and furnishers of consumer report information that received the section 607(d) User Notice and Furnisher Notice, and all materials considered by Defendant to demonstrate compliance with section 607(d) of the FCRA.

B. 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.

C. 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 the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order."

## **VI. DISTRIBUTION OF ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of service of this Order, Defendant shall deliver copies of this Order as directed below:

A. Defendant must deliver a copy of this Order to (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, and representatives who engage in conduct related to the subject matter of this Order; and (3) any business entity resulting from any change in structure set forth in Subsection A of the Section titled "Compliance Reporting." For current personnel, delivery shall be within ten (10) days of service of this order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

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

## **VII. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

**IT IS FURTHER ORDERED** that Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

## **VIII. 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.

**IX. 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.

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 \_\_\_\_\_, 2009

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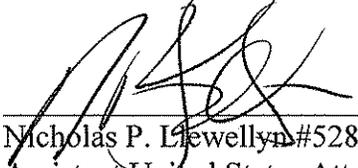
UNITED STATES DISTRICT JUDGE

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.

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

TONY WEST  
Assistant Attorney General  
Civil Division  
United States Department of Justice

MICHAEL W. REAP  
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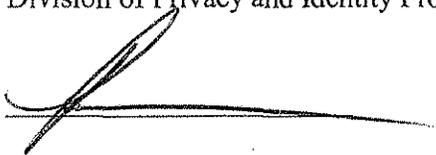
A handwritten signature in black ink, appearing to read "Alan J. Phelps", written over a horizontal line.

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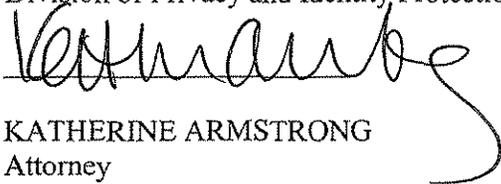
FOR THE FEDERAL TRADE COMMISSION:



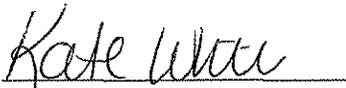
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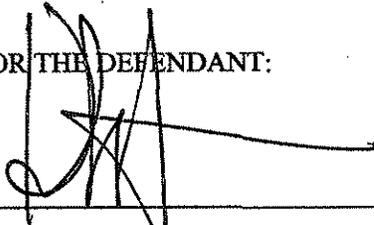


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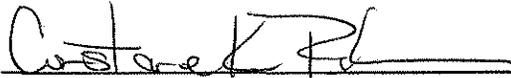
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