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15-6
FILED - WESTERN DIVISION
CLERK, U.S. DISTRICT COURT
JUN 19 2012
CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]*

ANDRÉ BIROTTE, JR.
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Chief, Civil Division
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LODGED
CLERK, U.S. DISTRICT COURT
JUN -7 2012
CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

Attorneys for Plaintiff
THE UNITED STATES OF AMERICA
IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
SPOKEO, INC.,
Defendant.

Case No. CV 12-05001 MMM(SH)
CONSENT DECREE AND
ORDER FOR CIVIL
PENALTIES, INJUNCTION
AND OTHER 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

1 alleges that Defendant Spokeo, Inc. ("Spokeo") has engaged in violations of
2 the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681-1681x, and in
3 unfair or deceptive acts or practices in violation of Section 5 of the Federal
4 Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a). Defendant has been
5 represented by the attorneys whose names appear hereafter. The parties have
6 agreed to entry of this Stipulated Final Judgment and Order for Civil Penalties,
7 Permanent Injunction, and Other Equitable Relief ("Order") to resolve all
8 matters in dispute in this action without trial or adjudication of any issue of law
9 or fact herein and without Defendant admitting the truth of, or liability for, any
10 of the matters alleged in the Complaint. Defendant has waived service of the
11 Summons and Complaint.

12 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND**
13 **DECREED** as follows:

14 **FINDINGS**

- 15 1. This Court has jurisdiction over the subject matter of this case and over
16 the Parties.
- 17 2. Venue in this district is proper under 28 U.S.C. §§ 1391(b) - (c), 28
18 U.S.C. § 1395(a), and 15 U.S.C. § 53(b).
- 19 3. The Complaint states claims upon which relief may be granted against
20 Defendant under sections 5(a), 13(b), and 16(a) of the Federal Trade
21 Commission Act, 15 U.S.C. §§ 45(a), 53(b), and 56(a); and under
22 sections 604, 607(a), 607(d), and 621 of the Fair Credit Reporting Act,
23 15 U.S.C. §§ 1681b, 1681e(a), 1681e(d), and 1681s.
- 24 4. Defendant makes no admissions to the allegations in the Complaint,
25 other than the jurisdictional facts.
- 26 5. Defendant waives: (a) all rights to seek appellate review or otherwise
27 challenge or contest the validity of this Order; (b) any claims Defendant
28 may have against the Commission, its employees, representatives, or

1 agents that relate to the matter stated herein; (c) all claims under the
2 Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L.
3 104-121, 110 Stat. 847, 863-64 (1996); and (d) any rights to attorneys'
4 fees that may arise under said provision of law.

5 6. This action and the relief awarded herein are in addition to, and not in
6 lieu of, other remedies as may be provided by law, including both civil
7 and criminal remedies.

8 7. Entry of this Order is in the public interest.

9 8. For the purpose of this Order:

10 a. "Defendant" means Spokeo, Inc., and its successors and assigns;

11 b. "Permissible purpose" shall mean the circumstances under which a
12 consumer report may be furnished as described in Section 604 of
13 the Fair Credit Reporting Act, 15 U.S.C. § 1681b;

14 c. The definitions set forth in the FCRA, 15 U.S.C. §§ 1681a, *et seq.*,
15 shall apply;

16 d. "Material connection" shall mean any relationship that materially
17 affects the weight or credibility of any endorsement and that
18 would not be reasonably expected by consumers;

19 e. "Endorsement" shall mean as defined in the Commission's Guides
20 Concerning the Use of Endorsements and Testimonials in
21 Advertising, 16 C.F.R. § 255.0; and

22 f. "Clear and prominent" shall mean:

23 i. In textual communications (*e.g.*, printed publications or
24 words displayed on the screen of a computer), the required
25 disclosures are of a type, size, and location sufficiently
26 noticeable for an ordinary consumer to read and
27 comprehend them, in print that contrasts with the
28 background on which they appear;

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- ii. In communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
- iii. In communications disseminated through video means (*e.g.*, television or streaming video), the required disclosures are in writing in a form consistent with subparagraph (i) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and in the same language as the predominant language that is used in the communication;
- iv. In communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with subparagraph (i) of this definition, in addition to any audio or video presentation of them; and
- v. In all instances, the required disclosures are presented in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them.

ORDER

I. CIVIL PENALTY

IT IS ORDERED that:

- 1. Judgment in the amount of eight hundred thousand dollars (\$800,000) is hereby entered against Defendant, as a civil penalty for violations of the FCRA pursuant to section 621(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681s(a).
- 2. Defendant shall make this payment within seven (7) business days of the

1 date of service of this Order to the Treasurer of the United States by
2 electronic fund transfer in accordance with instructions provided by the
3 Consumer Protection Branch, Civil Division, U.S. Department of Justice,
4 Washington, D.C. 20530, for appropriate disposition.

5 3. In the event of any default in payment, which default continues for ten
6 (10) days beyond the due date of payment, the entire unpaid penalty,
7 together with interest, as computed pursuant to 28 U.S.C. § 1961 from
8 the date of default to the date of payment, shall immediately become due
9 and payable.

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

14 5. Prior to or concurrently with Defendant's execution of this Order,
15 Defendant shall turn over the full amount of the civil penalty, eight
16 hundred thousand dollars (\$800,000), to their attorneys, who shall hold
17 the entire sum for no purpose other than payment to the Treasurer of the
18 United States after entry of this Order by the Court. Within five (5) days
19 of service of this Order, Defendant's attorneys shall transfer such civil
20 penalty payment in the form of a wire transfer to the Treasurer of the
21 United States. Written confirmation of the wire transfer shall be
22 delivered in accordance with the procedures specified by the Consumer
23 Protection Branch, Civil Division, U.S. Department of Justice,
24 Washington, D.C. 20530.

25 6. Defendant agrees that the facts as alleged in the Complaint filed in this
26 action shall be taken as true, without further proof, in any subsequent
27 civil litigation filed by or on behalf of the Commission to enforce its
28 rights to any payment or money judgment pursuant to this Order.

1 **II. PROHIBITED BUSINESS ACTIVITIES - FCRA**

2 **IT IS FURTHER ORDERED** that Defendant, and all other persons or
3 entities within the scope of Fed. R. Civ. P. 65, whether acting directly or
4 through any sole proprietorship, partnership, limited liability company,
5 corporation, subsidiary, branch, division, device, or other business entity who
6 receive actual notice of this Order by personal service or otherwise, are hereby
7 permanently restrained and enjoined from violating the Fair Credit Reporting
8 Act, 15 U.S.C. §§1681-1681x, in particular:

- 9 1. Violating section 604 of the FCRA, 15 U.S.C. § 1681b, by furnishing a
10 consumer report to any person who does not have a permissible purpose
11 to receive the consumer report;
- 12 2. Failing to maintain reasonable procedures designed to limit the
13 furnishing of consumer reports to users that have a permissible purpose
14 to receive them under section 604 of the FCRA, 15 U.S.C. § 1681b, as
15 required by Section 607(a) of the FCRA, 15 U.S.C. § 1681e(a);
- 16 3. Failing to maintain reasonable procedures to assure the maximum
17 possible accuracy of the information concerning the individual about
18 whom a consumer report relates, as required by section 607(b) of the
19 FCRA, 15 U.S.C. § 1681e(b); and
- 20 4. Failing to provide the “Notice to Users of Consumer Reports:
21 Obligations of Users Under the FCRA” (“User Notice”) required by
22 section 607(d) of the FCRA, 15 U.S.C. § 1681e(d), to all users of
23 Defendant’s consumer reports. *Provided, however,* that Defendant may
24 provide an electronic copy of the User Notice to a user if: (a) in the
25 ordinary course of business, the user obtains consumer report
26 information from Defendant in electronic form, and (b) the notice is clear
27 and prominent.

1 **III. PROHIBITED BUSINESS ACTIVITIES - SECTION 5**
2 **(ENDORSEMENTS)**

3 **IT IS FURTHER ORDERED** that Defendant, and all other persons or
4 entities within the scope of Fed. R. Civ. P. 65, whether acting directly or
5 through any sole proprietorship, partnership, limited liability company,
6 corporation, subsidiary, branch, division, device, or other business entity who
7 receive actual notice of this Order by personal service or otherwise, are hereby
8 permanently restrained and enjoined from:

- 9 1. Misrepresenting, in any manner, expressly or by implication, the status
10 of any user or endorser of a product or service, including, but not limited
11 to, misrepresenting that the user or endorser is an independent user or
12 ordinary consumer of the product or service; and
13 2. Making any representation, in any manner, expressly or by implication,
14 about any user or endorser of such product or service unless they
15 disclose, clearly and prominently, a material connection, when one
16 exists, between such user or endorser and the respondent or any other
17 individual or entity manufacturing, advertising, labeling, promoting,
18 offering for sale, selling, or distributing such product or service.

19 Within seven (7) days of the date of service of this Order, Defendant shall take
20 all reasonable steps to remove any product review or endorsement, currently
21 viewable by the public, that does not comply with this Section.

22 **IV. ORDER ACKNOWLEDGMENTS**

23 **IT IS FURTHER ORDERED** that Defendant obtain acknowledgments
24 of receipt of this Order:

- 25 1. Defendant, within seven (7) days of entry of this Order, must submit to
26 the Commission an acknowledgment of receipt of this Order sworn
27 under penalty of perjury.
28 2. For five (5) years after entry of this Order, Defendant must deliver a

1 copy of this Order to: (a) all principals, officers, directors, and managers;
2 (b) all employees, agents, and representatives who participate in conduct
3 related to the subject matter of the Order; and (c) any business entity
4 resulting from any change in structure as set forth in the Section titled
5 Compliance Reporting. Delivery must occur within seven (7) days of
6 entry of this Order for current personnel. To all others, delivery must
7 occur before they assume their responsibilities.

- 8 3. From each individual or entity to which Defendant delivered a copy of
9 this Order, Defendant must obtain, within 30 days, a signed and dated
10 acknowledgment of receipt of this Order.

11 **V. COMPLIANCE REPORTING**

12 **IT IS FURTHER ORDERED** that Defendant make timely submissions
13 to the Commission:

- 14 1. One year after entry of this Order, Defendant must submit a compliance
15 report, sworn under penalty of perjury. Defendant must: (a) designate at
16 least one telephone number and an email, physical, and postal address as
17 points of contact, which representatives of the Commission and Plaintiff
18 may use to communicate with Defendant; (b) identify all of Defendant's
19 businesses by all of their names, telephone numbers, and physical,
20 postal, email, and Internet addresses; (c) describe in detail whether and
21 how Defendant is in compliance with each Section of this Order; and (d)
22 provide a copy of each Order Acknowledgment obtained pursuant to this
23 Order, unless previously submitted to the Commission;
- 24 2. For 20 years following entry of this Order, Defendant must submit a
25 compliance notice, sworn under penalty of perjury, within 14 days of any
26 change in the following: (a) any designated point of contact; or (b) the
27 structure of any entity that Defendant has any ownership interest in or
28 directly or indirectly controls that may affect compliance obligations

1 arising under this Order, including: creation, merger, sale, or dissolution
2 of the entity or any subsidiary, parent, or affiliate that engages in any acts
3 or practices subject to this Order.

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

7 4. Any submission to the Commission required by this Order to be sworn
8 under penalty of perjury must be true and accurate and comply with 28
9 U.S.C. § 1746, such as by concluding: "I declare under penalty of
10 perjury under the laws of the United States of America that the foregoing
11 is true and correct. Executed on: _____" and supplying the date,
12 signatory's full name, title (if applicable), and signature.

13 5. Unless otherwise directed by a Commission representative in writing, all
14 submissions to the Commission pursuant to this Order must be emailed
15 to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal
16 Service) to: Associate Director for Enforcement, Bureau of Consumer
17 Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW,
18 Washington, DC 20580. The subject line must begin: *FTC v. Spokeo,*
19 *Inc.*

20 VI. RECORDKEEPING

21 **IT IS FURTHER ORDERED** that Defendant must create certain
22 records for 20 years after entry of the Order, and retain each such record for
23 five (5) years. Specifically, Defendant must maintain the following records:

- 24 1. Accounting records showing the revenues from all goods or services
25 sold, all costs incurred in generating those revenues, and the resulting net
26 profit or loss;
- 27 2. Personnel records showing, for each person providing services, whether
28 as an employee or otherwise, that person's: name, addresses, and

- 1 telephone numbers; job title or position; dates of service; and, if
- 2 applicable, the reason for termination;
- 3 3. Copies of all training materials that relate to the collection and sale of
- 4 consumer report information;
- 5 4. Copies of all training materials that relate to Defendant's activities as
- 6 alleged in the Complaint and Defendant's compliance with the
- 7 provisions of this Order;
- 8 5. All records and documents necessary to demonstrate full compliance
- 9 with each provision of this Order, including but not limited to, copies of
- 10 acknowledgments of receipt of this Order, required by the Sections titled
- 11 "Distribution of Order" and "Acknowledgment of Receipt of Order" and
- 12 all reports submitted to the FTC pursuant to the Section titled
- 13 "Compliance Reporting";
- 14 6. Complaints and refund requests, whether received directly or indirectly,
- 15 such as through a third party, and any response;
- 16 7. A copy of each advertisement or other marketing material;
- 17 8. If operating as a consumer reporting agency, files containing the names,
- 18 addresses, telephone numbers, and permissible purpose of all entities to
- 19 whom Spokeo supplies consumer reports and all materials considered by
- 20 Defendant to ensure compliance with section 604 of the FCRA;
- 21 9. If operating as a consumer reporting agency, files containing the names,
- 22 addresses and telephone numbers of all users of consumer report
- 23 information and the certifications made by the user pursuant to section
- 24 607(a) of the FCRA, and all materials considered by Defendant in
- 25 connection with its verification of the identity of the user and
- 26 verification of the certifications made under section 607(a), to
- 27 demonstrate Defendant's compliance with section 607(a) of the FCRA;
- 28 and

1 10. If operating as a consumer reporting agency, files containing the names,
2 addresses, telephone numbers of all users of consumer report information
3 that received the section 607(d) User Notice, and all materials considered
4 by Defendant to demonstrate compliance with section 607(d) of the
5 FCRA.

6 **VII. COMPLIANCE MONITORING**

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

- 10 1. Within 14 days of receipt of a written request from a representative of
11 the Commission or Plaintiff, Defendant must: submit additional
12 compliance reports or other requested information, which must be sworn
13 under penalty of perjury; appear for depositions; and produce documents,
14 for inspection and copying. The Commission and Plaintiff are also
15 authorized to obtain discovery, without further leave of court, using any
16 of the procedures prescribed by Federal Rules of Civil Procedure 29, 30
17 (including telephonic depositions), 31, 33, 34, 36, 45, and 69, provided
18 that, Defendant, after attempting to resolve a dispute without court action
19 and for good cause shown, may file a motion with this Court seeking an
20 order including one or more of the protections set forth in Rule 26(c).
- 21 2. For matters concerning this Order, the Commission and Plaintiff are
22 authorized to communicate directly with Defendant. Defendant must
23 permit representatives of the Commission and Plaintiff to interview any
24 employee or other person affiliated with Defendant who has agreed to
25 such an interview. The person interviewed may have counsel present.
- 26 3. The Commission and Plaintiff may use all other lawful means, including
27 posing, through its representatives, as consumers, suppliers, or other
28 individuals or entities, to Defendant or any individual or entity affiliated

1 with Defendant, without the necessity of identification or prior notice.
2 Nothing in this Order limits the Commission's lawful use of compulsory
3 process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49,
4 57b-1.

5 **VIII. RETENTION OF JURISDICTION**

6 **IT IS FURTHER ORDERED** that this Court retains jurisdiction of this
7 matter for purposes of construction, modification, and enforcement of this
8 Order.

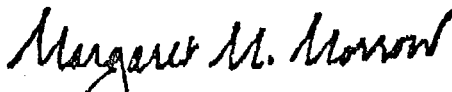
9 **IX. COSTS AND ATTORNEYS' FEES**

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

12 The parties hereby stipulate to the entry of the foregoing Order, which
13 shall constitute a final Order in this action.

14 **IT IS SO ORDERED:**

15
16 Dated this 19th day of JUNE, 2012

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18 _____
19 UNITED STATES DISTRICT JUDGE
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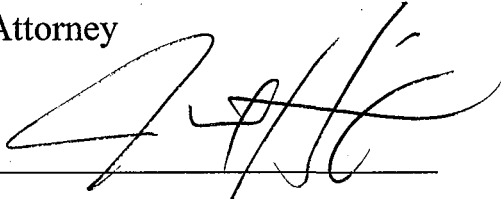
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FOR THE FEDERAL TRADE COMMISSION:



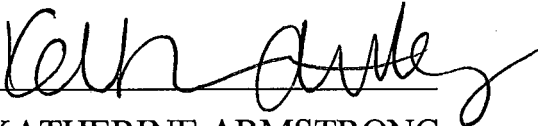
MONIQUE EINHORN

Attorney



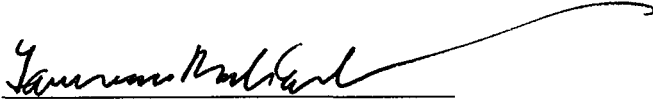
JAMIE HINE

Attorney



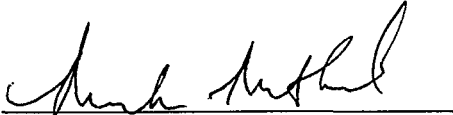
KATHERINE ARMSTRONG

Attorney



MARK EICHORN

Assistant Director



MANEESHA MITHAL

Associate Director

Division of Privacy and Identity Protection

Federal Trade Commission

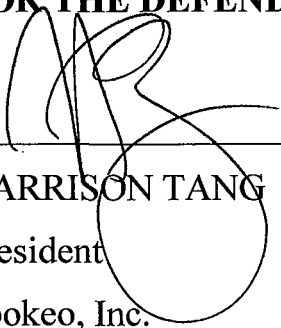
600 Pennsylvania Avenue, NW

Washington D.C. 20580

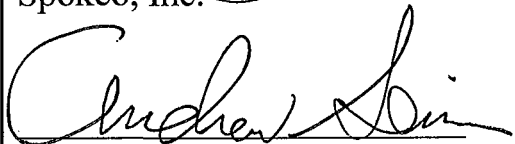
Tel: (202) 326-2252

Fax: (202) 326-3768

1 **FOR THE DEFENDANT:**

2 
3 _____

4 HARRISON TANG
5 President
6 Spokeo, Inc.

7 
8 _____

9 ANDREW SERWIN

10 ROBERT H. GRIFFITH

11 PETER F. MCLAUGHLIN

12 Attorneys

13 Foley & Lardner, LLP

14 3000 K Street, N.W., Suite 600

15 Washington, DC 20007-5109

16 Counsel for Spokeo, Inc.

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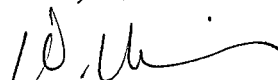
1 The parties, by their counsel, hereby consent to the terms and conditions
2 of the Order as set forth above and consent to the entry thereof.

3 FOR PLAINTIFF
4 THE UNITED STATES OF AMERICA:

5 STUART F. DELERY
6 Acting Assistant Attorney General,
7 Civil Division
8 U.S. DEPARTMENT OF JUSTICE


9 ANDRÉ BIROTTE, JR.
10 United States Attorney
11 Central District of California

12 LEE WEIDMAN, AUSA
13 Chief, Civil Division

14 
15 WENDY WEISS, AUSA
16 Chief, Civil Frauds Section
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24 MAAME EWUSI-MENSAH FRIMPONG
25 Acting Deputy Assistant Attorney General

26 MICHAEL S. BLUME
27 Director
28 Consumer Protection Branch

29  *by wew*
30 ALAN PHELPS *per telephone authorization*
31 Trial Attorney
32 Consumer Protection Branch
33 U.S. Department of Justice
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35 Washington, DC 20044-0386
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37 alan.phelps@usdoj.gov