

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA

Plaintiff,

v.

Sprint Corporation,

Defendant.

Case No. 2:15-cv-9340-CM-TJJ

**STIPULATED ORDER FOR
PERMANENT INJUNCTION AND
CIVIL PENALTY JUDGMENT**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Civil Penalties, Permanent Injunction, and Other Equitable Relief (“Complaint”) pursuant to Sections 13(b) and 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 56(a)(1). Defendant has waived service of the summons and the Complaint. Plaintiff and Defendant stipulate to the entry of this Stipulated Order for Permanent Injunction and Civil Penalty Judgment (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendant participated in acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and Section 621(a) of the Fair Credit Reporting Act

(“FCRA”), 15 U.S.C. § 1681s(a) in offering credit for charges on consumers’ wireless service accounts.

3. Defendant neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendant admits the facts necessary to establish jurisdiction.

4. Defendant waives any claim that it may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear its own costs and attorney fees.

5. Defendant and Plaintiff waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

A. “**Consumer report**” means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living 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 credit or insurance to be used primarily for personal, family, or household purposes.

B. “**Consumer reporting agency**” means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other

information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

C. “**Credit**” means the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.

D. “**Creditor**” means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity that regularly extends, renews, or continues credit or regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.

E. “**Credit score**” means a numerical value or a categorization derived from a statistical tool or modeling system used by any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity that makes or arranges a loan to predict the likelihood of certain credit behaviors, including default (and the numerical value or the categorization derived from such analysis may also be referred to as a “risk predictor” or “risk score”).

F. “**Defendant**” means Sprint Corporation and its successors and assigns.

G. “**Material terms**” means the financial term that varies based on information in a consumer report and that has the most significant financial impact on consumers, such as a deposit required in connection with credit extended by a telephone company or utility or an annual membership fee for a charge card.

H. **“Materially less favorable”** means, when applied to material terms, that the terms granted, extended, or otherwise provided to a consumer differ from the terms granted, extended, or otherwise provided to another consumer from or through the same individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity, such that the cost of credit to the first consumer would be significantly greater than the cost of credit granted, extended, or otherwise provided to the other consumer. For purposes of this definition, factors relevant to determining the significance of a difference in cost include the type of credit product, the term of the credit extension, if any, and the extent of the difference between the material terms granted, extended, or otherwise provided to the two consumers.

ORDER

I. INJUNCTION REQUIRING RISK-BASED PRICING NOTICES

IT IS ORDERED that Defendant and Defendant’s subsidiaries, affiliates, officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are hereby permanently restrained and enjoined from:

A. Failing to send a consumer a Risk-Based Pricing Notice by the earlier of either five (5) days after the consumer activates service with Defendant or a date that gives the consumer a reasonable opportunity to avoid incurring any future financial obligation to Defendant, where Defendant:

1. Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to that consumer that is primarily for personal, family, or household purposes; and
 2. Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to that consumer on material terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers from or through Defendant.
- B. Failing to include in any Risk-Based Pricing Notice:
1. A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;
 2. A statement that the terms offered, such as the annual percentage rate, have been set based on information from a consumer report;
 3. A statement that the terms offered may be less favorable than the terms offered to consumers with better credit histories;
 4. A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;
 5. The identity of each consumer reporting agency that furnished a consumer report used in the credit decision;
 6. A statement that federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;

7. A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;
8. A statement directing consumers to the Web site of the Consumer Financial Protection Bureau to obtain more information about consumer reports; and
9. If a credit score of the consumer to whom Defendant grants, extends, or otherwise provides credit is used in setting the material terms of credit:
 - a. A statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;
 - b. The credit score used in making the credit decision;
 - c. The range of possible credit scores under the model used to generate the credit score;
 - d. All of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five;
 - e. The date on which the credit score was created; and
 - f. The name of the consumer reporting agency or other individual, partnership, corporation, trust, estate, cooperative, association, government

or governmental subdivision or agency, or other entity that provided the credit score.

C. Failing to, within fifteen (15) days of entry of this Order, provide a Risk-Based Pricing Notice containing all information listed in Section I.B to any current customer to whom Sprint did not send such a Notice between November 8, 2013 and June 11, 2014 or during the three-month period prior to the date of entry of this Order.

D. Violating Section 615(h) of the Fair Credit Reporting Act, 15 U.S.C. § 1681m(h), attached hereto as Exhibit 1, or any provision of the Risk-Based Pricing Rule, 12 C.F.R. § 1022.70 *et seq.*, attached hereto as Exhibit 2.

II. MONETARY JUDGMENT FOR CIVIL PENALTY

IT IS FURTHER ORDERED that:

A. Judgment in the amount of two million, nine hundred-fifty thousand dollars (\$2,950,000) is entered in favor of Plaintiff against Defendant as a civil penalty.

B. Defendant is ordered to pay to Plaintiff, by making payment to the Treasurer of the United States, two million, nine hundred-fifty thousand dollars (\$2,950,000). Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of Plaintiff.

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

D. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order.

E. Defendant acknowledges that its Employer Identification Number, which Defendant must submit to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

III. ORDER ACKNOWLEDGMENTS

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

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

B. For 5 years after entry of this Order, Defendant must deliver a copy of this Order to: (1) all current and future principals, officers, directors, managers and other employees who have primary responsibilities relating to Risk-Based Pricing or consumer credit evaluation or granting; and (2) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

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

IV. COMPLIANCE REPORTING

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

A. One year after entry of this Order, Defendant must submit a compliance report, sworn under penalty of perjury. Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the

Commission and Plaintiff may use to communicate with Defendant; (b) identify all of Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including whether it uses consumer reports in connection with applications for, or grants, extensions, or other provisions of, credit; (d) describe in detail whether and how Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

B. For 10 years after entry of this Order, Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following: (a) any designated point of contact; or (b) the structure of Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

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

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

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

V. RECORDKEEPING

IT IS FURTHER ORDERED that Defendant must create certain records for 10 years after entry of the Order, and retain such records for 5 years. Specifically, Defendant must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each person involved in Risk-Based Pricing Notices, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. records of all consumer complaints related to Defendant's use of consumer reports or credit scores, whether received directly or indirectly, such as through a third party, and any response;
- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. a copy of each Risk-Based Pricing Notice sent by Defendant to any consumer.

VI. COMPLIANCE MONITORING

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

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

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

C. The Commission and Plaintiff may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendant or any individual or entity affiliated with Defendant, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

VII. RETENTION OF JURISDICTION

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

SO ORDERED this _____ day of _____, 2015.

JUDGE CARLOS MURGUIA
United States District Judge
District of Kansas

SO STIPULATED AND AGREED:

FOR PLAINTIFF, THE UNITED STATES OF AMERICA

BARRY R. GRISSOM
United States Attorney

CHRISTOPHER ALLMAN
Assistant United States Attorney
District of Kansas
500 State Avenue, Suite 360
Kansas City, KS 66101
Telephone: (913) 551-6684
Facsimile: (913) 551-6541
Email: Chris.Allman@usdoj.gov

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
Civil Division

JONATHAN F. OLIN
Deputy Assistant Attorney General

MICHAEL S. BLUME
Director
Consumer Protection Branch

ANDREW E. CLARK
Assistant Director



KERALA T. COWART
California Bar No. 284519
Trial Attorney
Consumer Protection Branch
U.S. Department of Justice
P.O. Box 386
Washington, DC 20044
Telephone: (202) 353-3881
Facsimile: (202) 514-8742
Email: Kerala.T.Cowart@usdoj.gov

FEDERAL TRADE COMMISSION



Matthew James Wilshire, Attorney
Duane Pozza, Attorney
Federal Trade Commission
600 Pennsylvania Ave., N.W., Mailstop CC10232
Washington, DC 20580
202-326-2976
202-326-3768
mwilshire@ftc.gov

FOR DEFENDANTS:

J.E. Villafranco

John E. Villafranco
Alysa Z. Hutnik
Matthew Sullivan
Kelley Drye & Warren LLP
3050 K Street, NW
Washington, DC 20007-5108
202-342-8400
jvillafranco@kelleydrye.com

Date: 7/10/15

DEFENDANT SPRINT CORPORATION

Ron Kolund

AS AN OFFICER OF SPRINT CORPORATION

Date: 7/13/15