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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 FEDERAL TRADE COMMISSION,
14 Plaintiff,

15 v.

16 INSTANT CHECKMATE, LLC,
17 a limited liability company,

18 TRUTHFINDER, LLC,
19 a limited liability company,

20 THE CONTROL GROUP
21 MEDIA COMPANY, LLC,
22 a corporation,

23 INTELICARE DIRECT, LLC,
24 a limited liability company, and

25 PUBREC, LLC,
26 a limited liability company,

27 Defendants.
28

Case No.: [Case No.]

**COMPLAINT FOR PERMANENT
INJUNCTION, MONETARY
RELIEF, OTHER EQUITABLE
RELIEF, AND CIVIL PENALTIES**

1 Plaintiff, the Federal Trade Commission (“FTC”) for its Complaint alleges:

2 1. The FTC brings this action under Sections 5(a) and 13(b) of the Federal
3 Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a) and 53(b); and Section 621(a) of
4 the Fair Credit Reporting Act, 15 U.S.C. § 1681s(a), which together authorize the FTC to
5 seek, and the Court to order, permanent injunctive relief, monetary relief, civil penalties,
6 and other relief for the numerous acts and practices of Defendants in violation of Section
7 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Fair Credit Reporting Act (“FCRA”), 15
8 U.S.C. §§ 1681-1681x.

9 **SUMMARY OF CASE**

10 2. Defendants sell consumer background reports through subscriptions on their
11 websites InstantCheckmate.com and TruthFinder.com, which allow users of the websites
12 to run background searches using an individual’s name and, optionally, city and state of
13 residence.

14 3. Through their operation of the Instant Checkmate and TruthFinder services,
15 Defendants have violated the FTC Act and the FCRA by:

16 a. Deceptively claiming their background reports are the most accurate
17 reports available to the public, without substantiation;

18 b. Deceptively claiming an individual has criminal or arrest records
19 when the individual does not have criminal or arrest records or only has traffic violations;

20 c. Deceptively claiming that consumers can “Remove” or “Flag as
21 Inaccurate” information in background reports;

22 d. Deceptively failing to disclose that third-party reviews were
23 incentivized and that the reviewers had a material connection to TruthFinder; and

24 e. Failing to comply with the FCRA.

25 **JURISDICTION AND VENUE**

26 4. This Court has subject matter jurisdiction over this matter pursuant to 28
27 U.S.C. §§ 1331, 1337(a), 1345, and 1355.

28 5. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(d), 1395(a), and

1 15 U.S.C. § 53(b).

2 **PLAINTIFF**

3 6. The FTC is an independent agency of the United States Government created
4 by the FTC Act, which authorizes the FTC to commence this district court action by its
5 own attorneys. 15 U.S.C. §§ 41-58, and the FCRA, 15 U.S.C. §§ 1681-1681x. The FTC
6 enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or
7 deceptive acts or practices in or affecting commerce. The FTC also enforces the FCRA,
8 15 U.S.C. §§ 1681-1681x, which imposes duties upon consumer reporting agencies.

9 **DEFENDANTS**

10 7. Defendant Instant Checkmate, LLC (“Instant Checkmate”) is a Delaware
11 limited liability company, registered in California, with its principal office or place of
12 business at 375 Camino de la Reina, Suite 400, San Diego, CA 90218. Instant
13 Checkmate transacts or has transacted business in this District and throughout the United
14 States. In 2014, Instant Checkmate entered into a consent order to settle Plaintiff’s
15 allegations that Instant Checkmate failed to comply with requirements of the FCRA while
16 promoting its background screening products for use in employment and tenant
17 screening. *United States v. Instant Checkmate*, Case No. 3:14-cv-0675 (S.D. Cal. Apr. 1,
18 2014).

19 8. Defendant TruthFinder, LLC (“TruthFinder”) is a Delaware limited liability
20 company, registered in California, with its principal office or place of business at 375
21 Camino de la Reina, Suite 400, San Diego, CA 90218. TruthFinder transacts or has
22 transacted business in this District and throughout the United States.

23 9. Defendant Intelicare Direct, LLC (“Intelicare Direct”) is a Delaware limited
24 liability company, registered in California, with its principal place of business at 9596
25 Chesapeake Avenue, Suite A, San Diego, CA 92123, and its manager or member address
26 at 375 Camino de la Reina, Suite 400, San Diego, CA 90218. Intelicare Direct transacts
27 or has transacted business in this District and throughout the United States.

1 **COMMERCE**

2 14. At all times relevant to this Complaint, Defendants have maintained a
3 substantial course of trade in or affecting commerce, as “commerce” is defined in Section
4 4 of the FTC Act, 15 U.S.C. § 44.

5 **DEFENDANTS’ BUSINESS ACTIVITIES**

6 15. InstantCheckmate.com and TruthFinder.com feature search boxes allowing a
7 user to submit information pertaining to an individual about whom the user would like to
8 obtain a background report. A user initiates a search by submitting an individual’s first
9 and last name or initials, and, optionally, a city and state (collectively, a “User Query”).

10 16. Defendants use proprietary software to create, develop, and assemble
11 background reports by querying or “calling” third-party data providers. The third-party
12 data providers are called and recalled based on the existence of new criteria from other
13 providers. Once all third-party data providers have been exhausted, Defendants’ software
14 automatically runs a series of pre-programmed de-duplication, filtering, and sorting
15 processes on the results. The end-result of this process is a unique product—a
16 TruthFinder or Instant Checkmate background report. Instant Checkmate and
17 Truthfinder background reports generally include, among other things, name, date of
18 birth, home and cell phone numbers, address history, relatives, arrest and criminal
19 records, government license information, social media or dating profiles, and email
20 addresses.

21 17. Though the TruthFinder and Instant Checkmate websites allow users to
22 initiate searches and view and select from initial results for free, users cannot access full
23 background reports without subscribing to TruthFinder or Instant Checkmate.

24 18. Exact prices have varied between 2017 and the present, but Defendants have
25 generally sold Instant Checkmate recurring subscriptions for approximately \$34.00 per
26 month and TruthFinder recurring subscriptions for approximately \$27.00 per month.
27 Subscribers can conduct unlimited User Queries. Subscriptions to Instant Checkmate and
28 TruthFinder automatically renew each month unless the subscriber takes affirmative steps

1 to cancel. From 2017–2020, TruthFinder averaged approximately 523,000 subscribers in
2 any given month, with average net revenue of approximately \$120 million per year.
3 Instant Checkmate averaged approximately 368,000 subscribers in any given month, with
4 average net revenue of approximately \$75 million per year.

5 **I. THE FTC ACT**

6 19. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or
7 deceptive acts or practices in or affecting commerce.”

8 **Deceptive Claims of Accuracy**

9 20. Defendants have disseminated or have caused to be disseminated
10 advertisements and promotional materials, including online banner and search engine
11 advertisements and statements on the TruthFinder and Instant Checkmate websites,
12 touting the accuracy of TruthFinder and Instant Checkmate background reports. For
13 example, Defendants claim in advertisements that Instant Checkmate and TruthFinder
14 reports contain “the **MOST ACCURATE** information available to the public” (emphasis
15 in original) or “the Most Accurate Data Available to Civilians Online.”

16 21. Defendants’ accuracy claims have been displayed to consumers millions of
17 times, and in hundreds of thousands of instances consumers have clicked on these ads
18 and been directed to the TruthFinder or Instant Checkmate websites.

19 22. Defendants lack a reasonable basis for asserting that the information
20 available through Defendants’ background report services is accurate because, among
21 other things:

22 a. Defendants do not know, and have made no effort to verify, whether
23 the information they receive from their third-party data providers is accurate or current
24 when they include it in background reports that they provide to users;

25 b. Defendants’ third-party data providers explicitly disclaim any
26 warranty of the accuracy of the information and state that they provide data as-is;

27 c. Defendants have failed to take reasonable measures to test or assess
28 the accuracy of TruthFinder or Instant Checkmate reports; and

1 d. In numerous instances, when consumers have contacted Defendants to
2 report that Instant Checkmate or TruthFinder reports contained erroneous information,
3 Defendants have not verified, investigated, or corrected reported inaccuracies.

4 23. Additionally, from at least 2018 to 2020, many TruthFinder subscribers had
5 access to an additional service called Guardian Protection Suite, which allowed those
6 subscribers to “claim” TruthFinder reports about themselves and edit those reports by
7 removing any item except for criminal records and by adding additional information.
8 Defendants did not take any steps to ensure that the reports, as edited by Guardian
9 Protection Suite subscribers, were accurate.

10 24. Thousands of consumers have complained to Defendants about inaccuracies
11 in Defendants’ background reports. In numerous instances, consumers have stated that
12 they located inaccurate information about themselves in Defendants’ background reports.

13 **Deceptive Claims that an Individual has Criminal or Arrest Records**

14 25. Defendants have promoted their background reports by implicitly or
15 explicitly representing that searched-for individuals have criminal and/or arrest records
16 that can be discovered by purchasing TruthFinder or Instant Checkmate subscriptions.
17 Defendants have made these claims by multiple means, including on the TruthFinder and
18 Instant Checkmate websites, in automated messages that Defendants periodically cause to
19 appear on consumers’ computer or mobile device screens (“push notifications”), in
20 customized marketing emails to prospective customers, and in search-engine
21 advertisements.

22 26. For example, Defendants have represented that individuals have criminal or
23 arrest records that can be viewed by visiting the TruthFinder or Instant Checkmate
24 website in advertisements that have been displayed in response to Google and Bing
25 searches for proper names. For example, if a consumer searched for the name “John
26 Smith,” the consumer might have been shown an advertisement stating: “John Smith May
27 Have Arrests,” “Check John Smith’s Arrests,” or “Find criminal records, phone, address,
28

1 & more on John Smith.” Clicking on these ads directed consumers to the TruthFinder or
2 Instant Checkmate website.

3 27. In another example of Defendants’ criminal and arrest records claims, after
4 the submission of a User Query, but before the consumer is prompted to purchase a
5 subscription in order to access the requested report, Defendants have made statements on
6 the TruthFinder and Instant Checkmate websites such as:

7 a. “The arrest records sections of your report WILL SHOW arrest or
8 conviction records associated with the name [John Smith]”;

9 b. “Your report WILL REVEAL important court records and sensitive
10 legal information associated with the name [John Smith]. We’ll reveal arrest details from
11 case numbers [XXXXX-XXXXX]”; or

12 c. “We found [some number of] CRIMINAL RECORDS for people
13 associated with the name [John Smith] in [State].”

14 28. In numerous instances, Defendants’ representations that searched-for
15 individuals have or may have criminal and/or arrest records that can be obtained from
16 TruthFinder or Instant Checkmate have been false, including because the individuals’
17 TruthFinder or Instant Checkmate reports do not contain criminal or arrest records, or
18 contained only non-criminal traffic violations.

19 29. Only after purchasing a subscription to TruthFinder or Instant Checkmate
20 are consumers able to view the information in background reports.

21 30. In numerous instances, after seeing Defendants’ representation that an
22 individual’s background report contains criminal and/or arrest records, consumers have
23 purchased subscriptions to TruthFinder or Instant Checkmate only to discover that the
24 background report in question includes only traffic violations. Consumers have
25 submitted numerous complaints to Defendants about this deceptive practice.
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27
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1 38. To submit a response, the user must click on a green button labeled “FLAG
2 AS INACCURATE.” If a user clicks this button, a second pop-up is displayed stating
3 that the information “has been flagged for inaccurate data” and, for Instant Checkmate,
4 “Our data team will review this information.”

5 39. Defendants take no action to investigate the accuracy of flagged reports, to
6 modify the contents of the report, to indicate to other customers that the reports have been
7 “flagged,” or otherwise to correct the specific reports that have been flagged.

8 40. Defendants have directed customers to use the “Remove” and/or “Flag As
9 Inaccurate” buttons to remedy inaccuracies in TruthFinder and Instant Checkmate
10 reports, including during customer service communications.

11 41. In fact, neither the “Remove” nor the “Flag As Inaccurate” buttons remove
12 or correct information from background reports.

13 42. Millions of customers have interacted with the TruthFinder or Instant
14 Checkmate “Remove” or “Flag as Inaccurate” buttons, and numerous customers have
15 complained to the company that inaccurate information has reappeared in reports about
16 themselves or family members after the customers have clicked the “Remove” buttons, or
17 that reports were not corrected after the customers clicked the “Flag as Inaccurate”
18 buttons.

19 **Deceptive Failure to Disclose Incentivized Endorsements**

20 43. Defendants have attempted to increase the number of positive reviews of
21 Instant Checkmate and TruthFinder’s background reports on third-party consumer review
22 website HighYa. This would have the effect of reducing the prominence and percentage
23 of negative reviews.

24 44. HighYa’s website recommends that merchants not offer free products in
25 exchange for reviews because “this practice creates a feeling of obligation among
26 reviewers to only leave 5-star feedback,” and further advises consumers, “If a company is
27 offering to pay for a review, our experience has shown that this does not benefit
28 consumers in any way, and it also violates our Terms and Conditions. If a company

1 reaches out and offers to pay you for a review (using money or in exchange for services),
2 please report them using our contact form.”

3 45. Nevertheless, Defendants promised to provide consumers one free premium
4 report credit in exchange for posting a review of Defendants’ products on HighYa.

5 46. Each premium report credit could be redeemed for a “premium” TruthFinder
6 or Instant Checkmate report. A premium TruthFinder report cost approximately \$17.99.
7 A premium Instant Checkmate report cost approximately \$19.99.

8 47. Defendants did not advise customers to disclose, and few, if any disclosed,
9 that they were offered a premium report credit in exchange for posting a review.

10 **II. THE FAIR CREDIT REPORTING ACT**

11 48. The FCRA, 15 U.S.C. §§ 1681-1681x, imposes obligations on consumer
12 reporting agencies (“CRAs”) that assemble and evaluate consumer reports in order to
13 protect the confidentiality, accuracy, relevancy, and proper utilization of such
14 information. These include requirements to maintain reasonable procedures to ensure the
15 maximum possible accuracy of consumer reports, to limit the furnishing of consumer
16 reports to individuals who certify that they will use the reports only for certain
17 permissible purposes, to conduct reasonable reinvestigations when consumers dispute the
18 accuracy of information in their consumer reports, and to provide users of consumer
19 reports with notice of their own obligations under the FCRA.

20 49. Section 621 of the FCRA, 15 U.S.C. § 1681s, authorizes the FTC to enforce
21 compliance with the FCRA by all persons subject thereto except to the extent that
22 enforcement specifically is committed to some other governmental agency, irrespective
23 of whether the person is engaged in commerce or meets any other jurisdictional tests set
24 forth by the FTC Act. 15 U.S.C. § 1681s(a)(1).

25 50. Section 621(a)(2) of the FCRA, 15 U.S.C. § 1681s(a)(2), as adjusted by 16
26 C.F.R. § 1.98(m), authorizes this Court to award monetary civil penalties of not more
27 than \$4,705 per violation for each knowing violation of the FCRA which constitutes a
28 pattern or practice of violations of the statute. As specified by the Federal Civil Penalties

1 Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection
2 Improvement Act of 1996, Pub. L. 104-134, § 31001(s)(1), 110 Stat. 1321-373, the Court
3 is authorized to award the civil penalty.

4 51. Defendants’ violations of the FCRA have been knowing and have
5 constituted a pattern or practice of violations as required by Section 621 of the FCRA, 15
6 U.S.C. § 1681s(a)(2).

7 **Defendants are Consumer Reporting Agencies**

8 52. Defendants are CRAs because they regularly engage in whole or in part in
9 the practice of assembling or evaluating information on consumers into background
10 reports and, among other things, market, promote, and sell the background reports for
11 employment and tenant screening purposes.

12 53. Section 603(f) of the FCRA, 15 U.S.C. § 1681a(f), defines a CRA as:

13 [A]ny person which, for monetary fees, dues, or on a cooperative nonprofit basis,
14 regularly engages in whole or in part in the practice of assembling or evaluating
15 consumer credit information or other information on consumers for the purpose of
16 furnishing consumer reports to third parties, and which uses any means or facility
17 of interstate commerce for the purpose of preparing or furnishing consumer
18 reports.

19 54. FCRA Section 603(d), 15 U.S.C. § 1681a(d), defines a “consumer report”
20 as:

21 [A]ny written, oral, or other communication of any information by a consumer
22 reporting agency bearing on a consumer’s credit worthiness, credit standing, credit
23 capacity, character, general reputation, personal characteristics, or mode of living
24 which is used or expected to be used or collected in whole or in part for the purpose
25 of serving as a factor in establishing the consumer’s eligibility for (A) credit or
26 insurance to be used primarily for personal, family, or household purposes; (B)
27 employment purposes; or (C) any other purpose authorized under Section 604.

28 55. Among other things, Section 604 authorizes CRAs to provide consumer
reports to persons with “a legitimate business need in connection with a transaction
initiated by the consumer,” such as for tenant screening. 15 U.S.C. § 1681b(a)(3)(F)(i).

1 56. Defendants have regularly engaged in the assembly of information on
2 consumers into Instant Checkmate and TruthFinder background reports, which generally
3 include name, date of birth, phone numbers, address history, relatives, arrest and criminal
4 records, government license information, and social media profiles, and have sold those
5 reports to the public.

6 57. Since at least January 1, 2017, Defendants have used search engine
7 advertising keywords in their marketing and advertising to promote the use of both
8 Instant Checkmate and TruthFinder background reports for use in employment and tenant
9 screening.

10 58. As part of this advertising campaign, Defendants have purchased thousands
11 of Microsoft Advertising and Google Ads keywords that implicate employee or tenant
12 screening, directing Microsoft and Google to display Instant Checkmate and TruthFinder
13 advertisements when consumers have used the search engines Bing (operated by
14 Microsoft) or Google to search for these or conceptually-related words or phrases.

15 59. Defendants' search engine advertising keywords have included words and
16 phrases relating to employment, tenant, or credit screening. For example:

- 17 a. "nanny background check"
- 18 b. "pre employment screening"
- 19 c. "criminal background checks for employment"
- 20 d. "best background check for landlords"
- 21 e. "background check companies for landlords"
- 22 f. "tenant background check"
- 23 g. "consumer reporting agency background check"
- 24 h. "Mary Tenant"
- 25 i. "Kevin Job"
- 26 j. "Melissa Credit"
- 27 k. "free employee background check"
- 28 l. "how to check employee background"

- 1 m. “texaco employees”
- 2 n. “maryland nanny”
- 3 o. “trinidad job”
- 4 p. “+background +check +employment”
- 5 q. “+natalie +landlord”
- 6 r. “+employee +background +check +services”
- 7 s. “summer nanny”
- 8 t. “cesar hire”
- 9 u. “florida tenant”
- 10 v. “mason hire”

11 60. In addition, in numerous instances, Defendants selected the “broad” match
12 setting for Microsoft or Google advertising keywords containing terms that relate to
13 employment, tenant, or credit screening under the FCRA. The “broad” match setting
14 instructs Microsoft or Google to display advertisements when consumers search for not
15 only the keyword itself but also synonyms and related terms.

16 61. Since January 1, 2017, Defendants’ inclusion of keywords related to
17 employment, credit, and tenant screening in their ad campaigns have resulted in Instant
18 Checkmate or TruthFinder ads being displayed to consumers more than a million times.

19 62. Defendants were on notice that their use of these keywords implicated the
20 FCRA because, in 2014, Instant Checkmate entered into a consent agreement to settle
21 allegations that it failed to comply with requirements of the FCRA while promoting its
22 backgrounds screening products for use in employment and tenant screening, including
23 by using search engine advertising keywords that relate to employment and tenant
24 screening. *United States v. Instant Checkmate*, Case No. 3:14-cv-0675, ¶ 9.c. (S.D. Cal.
25 Mar. 24, 2014) (Complaint) (alleging that Instant Checkmate violated the FCRA by
26 promoting the use of its reports for employment or housing through search engine
27 advertising keywords).

1 63. Additionally, since at least January 1, 2017, Defendants have known that
2 their customers have regularly used Instant Checkmate and TruthFinder background
3 reports for employment and tenant screening.

4 64. In numerous instances, customers directly communicated to Defendants,
5 including by e-mail and phone calls, that they had used or were using Instant Checkmate
6 and TruthFinder background reports for employment or tenant screening.

7 65. In numerous instances, when a prospective customer contacted Defendants
8 and indicated an intent to use their background report services for employment or tenant
9 screening, Defendants have failed to take steps to prevent the prospective customer from
10 using Defendants' background report services.

11 66. In numerous instances, after a user disclosed past or present use of
12 Defendants' reports for employment or tenant screening, Defendants have failed to
13 disable the users' access to the background report services, instead allowing them to
14 continue using the product for the duration of their current subscriptions and to purchase
15 new subscriptions in the future should they choose to do so.

16 67. Because Defendants regularly engage in the practice of assembling or
17 evaluating information on consumers into background reports and, among other things,
18 market, promote, and sell the background reports for employment and tenant screening
19 purposes, Defendants are CRAs.

20 68. Despite Defendants' promotion of TruthFinder and Instant Checkmate
21 reports for employment and tenant screening, and their knowledge that their background
22 report services have regularly been used for such purposes, Defendants failed to comply
23 with the requirements of the FCRA as described below.

24 **Selling Consumer Reports Without a Permissible Purpose**

25 69. Section 604(a) of the FCRA, 15 U.S.C. § 1681b(a), permits a CRA to
26 furnish a consumer report for purposes authorized in the statute and for no other purpose.
27 These "permissible purposes" include, but are not limited to, using the consumer report in
28 connection with a credit transaction, for employment purposes, or for a legitimate

1 business need in connection with a transaction initiated by the consumer (e.g., for tenant
2 screening).

3 70. Section 607(a) of the FCRA, 15 U.S.C. § 1681e(a), requires CRAs to
4 maintain reasonable procedures to limit the furnishing of consumer reports only for
5 permissible purposes. The reasonable procedures mandated by Section 607(a) include:

6 a. Requiring the prospective user of the information to identify
7 themselves, certify the purposes for which the information is sought, and certify that the
8 information will be used for no other purposes;

9 b. Making a reasonable effort to verify the identity of a new prospective
10 user and the uses for the consumer report certified by that prospective user before
11 furnishing a consumer report; and

12 c. Limiting the furnishing of consumer reports to the purposes listed
13 under Section 604.

14 71. Defendants do not maintain any procedures to limit the furnishing of
15 consumer reports only for permissible purposes.

16 72. In numerous instances, Defendants have furnished Instant Checkmate or
17 TruthFinder background reports to individuals when Defendants did not have reason to
18 believe that the individuals intended to use the reports for permissible purposes.

19 73. Each instance in which Defendants have furnished a consumer report
20 without a permissible purpose, or without maintaining the procedures required by Section
21 607(a) of the FCRA, 15 U.S.C. § 1681e(a), constitutes a separate violation for which
22 Plaintiff may seek monetary penalties.

23 **Failure to Follow Requirements for Furnishing Consumer Reports for**
24 **Employment Purposes**

25 74. Section 604(b) of the FCRA, 15 U.S.C. § 1681b(b), requires CRAs that
26 furnish consumer reports for employment purposes to:

27 a. obtain a certification that the user has complied with certain consumer notice
28 requirements, including that the user (i) has provided a standalone written disclosure to

1 the consumer that a consumer report may be obtained, (ii) has obtained the written
2 consent of the consumer to obtain a consumer report, and (iii) will prior to taking any
3 adverse action based in whole or in part on the report, provide the consumer with a copy
4 of the consumer report and a written description of the consumer's rights under the
5 FCRA;

6 b. obtain a certification that the user will not use the information from the
7 consumer report in violation of any applicable Federal or State equal employment
8 opportunity law or regulation; and

9 c. provide with the report, or have previously provided, a summary of the
10 consumer's rights under the FCRA.

11 75. As described in Paragraphs 52-73 above, in numerous instances, Defendants
12 have sold consumer reports for employment purposes.

13 76. In selling consumer reports for employment purposes, Defendants have not
14 obtained the required certifications or provided a summary of the consumer's rights under
15 the FCRA.

16 77. Each instance in which Defendants have furnished a consumer report for
17 employment purposes without complying with the requirements of Section 604(b) of the
18 FCRA, 15 U.S.C. § 1681b(b), constitutes a separate violation for which Plaintiff may
19 seek monetary penalties.

20 **Failure to Follow Reasonable Procedures to Assure**

21 **Maximum Possible Accuracy**

22 78. FCRA Section 607(b), 15 U.S.C. § 1681e(b), requires CRAs to follow
23 reasonable procedures to assure the maximum possible accuracy of consumer report
24 information.

25 79. As described above in Paragraphs 22-24 and 31-42, Defendants do not
26 maintain reasonable procedures for assuring the maximum possible accuracy of
27 information in Instant Checkmate or TruthFinder background reports.

28 80. Each instance in which Defendants have furnished a consumer report

1 without following reasonable procedures to assure the maximum possible accuracy of
2 consumer report information as required by Section 607(b) of the FCRA, 15 U.S.C. §
3 1681e(b), constitutes a separate violation for which Plaintiff may seek monetary
4 penalties.

5 **Failure to Provide User Notice**

6 81. FCRA Section 607(d), 15 U.S.C. § 1681e(d), requires a CRA to provide a
7 Notice to Users of Consumer Reports (“User Notice”) to anyone who receives a
8 consumer report from the CRA. As required by Section 607(d), the Consumer Financial
9 Protection Bureau has prescribed the content of the User Notice through a model notice
10 that is set forth in 12 C.F.R. § 1022, Appendix N. The User Notice provides users of
11 consumer reports with important information regarding their legal obligations under the
12 FCRA, including the obligation of the user to provide a notice to consumers who are the
13 subject of an adverse action based in whole or in part on information contained in the
14 consumer report.

15 82. Defendants do not provide users of Defendants’ background report services
16 with the User Notice when they purchase reports.

17 83. Each instance in which Defendants have furnished a consumer report
18 without providing a User Notice as required by FCRA Section 607(d), 15 U.S.C. §
19 1681e(d), constitutes a separate violation for which Plaintiff may seek monetary
20 penalties.

21 **Failure to Conduct Reasonable Investigations of Consumer Disputes**

22 84. FCRA Section 611(a)(1)(A), 15 U.S.C. § 1681i(a)(1)(A), requires that, if the
23 completeness or accuracy of any item of information contained in a consumer’s file at a
24 CRA is disputed by the consumer and the consumer notifies the agency directly, or
25 indirectly through a reseller, of such dispute, the agency shall, free of charge, conduct a
26 reasonable reinvestigation to determine whether the disputed information is inaccurate
27 and record the current status of the disputed information, or delete the item from the file,
28

1 before the end of the 30-day period beginning on the date on which the agency receives
2 the notice of the dispute from the consumer or reseller.

3 85. As described above in Paragraphs 31-42, Defendants fail to conduct
4 reinvestigations of the completeness or accuracy of information contained within
5 TruthFinder or Instant Checkmate reports upon receipt of a notice of dispute from the
6 consumer.

7 86. Each instance in which Defendants have failed to conduct a reasonable
8 reinvestigation as required by FCRA Section 611(a)(1)(A), 15 U.S.C. § 1681i(a)(1)(A),
9 constitutes a separate violation for which Plaintiff may seek monetary penalties.

10 87. Based on the facts and violations of law alleged in this Complaint, Plaintiff
11 has reason to believe that Defendants are violating or are about to violate laws enforced
12 by the FTC because, among other things: Defendants have made the deceptive
13 representations described in Paragraphs 20-47, and have continued to promote their
14 services for employment and tenant screening without complying with the FCRA, as
15 described in Paragraphs 48-86, at least until the commencement of the FTC's
16 investigation.

17 **COUNT I**

18 **DECEPTIVE STATEMENTS**

19 **REGARDING ACCURACY**

20 88. Paragraphs 1 through 87 are incorporated as if set forth herein.

21 89. In numerous instances in connection with the advertising, promotion,
22 offering for sale, or sale of background reports, Defendants have represented, directly or
23 indirectly, expressly or by implication, that their background reports are highly accurate
24 or are “the most accurate information available to the public” and “the most accurate
25 information available to civilians.”

26 90. The representations set forth in Paragraph 89 were false or unsubstantiated at
27 the time the representations were made.
28

1 post those reviews on the HighYa website. This fact would be material to consumers in
2 evaluating the reviews in connection with a purchase or use decision.

3 107. Defendants' failure to disclose or disclose adequately the material
4 information described in Paragraph 106, in light of the representation set forth in
5 Paragraph 105, constitutes a deceptive act or practice in violation of Section 5(a) of the
6 FTC Act, 15 U.S.C. § 45(a).

7 **COUNT VI**

8 **FCRA SECTION 607(a)**

9 108. Paragraphs 1 through 87 are incorporated as if set forth herein.

10 109. As described in Paragraphs 69-73, Defendants failed to maintain reasonable
11 procedures to require users to identify themselves, certify the purposes for which the
12 information was sought, and certify that the information would be used for no other
13 purposes; make a reasonable effort to verify the identity of a new prospective user and
14 the uses for the consumer report certified by that prospective user before furnishing a
15 consumer report; and limit the furnishing of consumer reports to the purposes permitted
16 by FCRA Section 604, 15 U.S.C. § 1681b.

17 110. By and through the acts and practices described in Paragraph 109,
18 Defendants have violated Section 607(a) of the FCRA, 15 U.S.C. § 1681e(a).

19 111. Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts
20 and practices alleged in Paragraph 109 also constitute unfair or deceptive acts or practices
21 in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

22 **COUNT VII**

23 **FCRA SECTION 604(a)**

24 112. Paragraphs 1 through 87 are incorporated as if set forth herein.

25 113. As described in Paragraphs 69-73, Defendants have furnished consumer
26 reports, in the form of their background reports, to their subscribers without reason to
27 believe those subscribers have permissible purposes to obtain such reports.

28

1 114. By and through the acts and practices described in Paragraph 113,
2 Defendants have violated Section 604(a) of the FCRA, 15 U.S.C. § 1681b(a).

3 115. Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts
4 and practices alleged in Paragraph 113 also constitute unfair or deceptive acts or practices
5 in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

6 **COUNT VIII**

7 **FCRA SECTION 607(b)**

8 116. Paragraphs 1 through 87 are incorporated as if set forth herein.

9 117. As described in Paragraphs 22-42, and 78-80, in multiple instances,
10 Defendants have failed to follow reasonable procedures to assure maximum possible
11 accuracy of consumer report information.

12 118. By and through the acts and practices described in Paragraph 117,
13 Defendants have violated Section 607(b) of the FCRA, 15 U.S.C. § 1681e(b).

14 119. Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts
15 and practices alleged in Paragraph 117 also constitute unfair or deceptive acts or practices
16 in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

17 **COUNT IX**

18 **FCRA SECTION 604(b)**

19 120. Paragraphs 1 through 87 are incorporated as if set forth herein.

20 121. In selling consumer reports for employment purposes, Defendants have not
21 obtained the required certifications or provided a summary of the consumer's rights under
22 the FCRA.

23 122. By and through the acts and practices described in Paragraph 121,
24 Defendants have violated Section 604(b) of the FCRA, 15 U.S.C. § 1681b(b)(1)(A) and
25 (B).

1 **CONSUMER INJURY**

2 132. Consumers have suffered, and will continue to suffer, substantial injury as a
3 result of Defendants’ violations of the FTC Act and the FCRA. Absent injunctive relief
4 by this Court, Defendants are likely to continue to injure consumers and harm the public
5 interest.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff requests that the Court:

- 8 A. Enter a permanent injunction to prevent future violations of the FTC Act and
9 the FCRA by Defendants;
10 B. Award monetary civil penalties against Defendants for each violation of the
11 FCRA alleged in this Complaint; and
12 C. Award such other and additional relief as the Court may determine to be just
13 and proper.
14

15 Dated: September 11, 2023

16
17 Respectfully submitted,

18 **FOR THE FEDERAL TRADE COMMISSION:**

19 BENJAMIN WISEMAN

20 Associate Director

21 Division of Privacy and Identity Protection

22 TIFFANY GEORGE

23 Assistant Director

24 Division of Privacy and Identity Protection

25 /s/ Katherine E. McCarron

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