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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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12 FEDERAL TRADE COMMISSION,

13 Plaintiff,

14 v.

15 INSTANT CHECKMATE, LLC, et al.,
16

17 Defendants.
18
19
20

Case No.: 00cv0000

**[PROPOSED] STIPULATED ORDER
FOR PERMANENT INJUNCTION,
CIVIL PENALTY JUDGMENT, AND
OTHER RELIEF AS TO
DEFENDANTS INSTANT
CHECKMATE, LLC,
TRUTHFINDER, LLC, THE
CONTROL GROUP MEDIA
COMPANY, LLC, INTELICARE
DIRECT, LLC, AND PUBREC, LLC**

21
22 Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its
23 Complaint for Permanent Injunction, Other Equitable Relief, and Civil Penalties and
24 Demand for Jury Trial (“Complaint”) in this matter, pursuant to Sections 13(b) and
25 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and
26 56(a)(1), and Section 621(a) of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §
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1 1681s(a). Defendants have waived service of the summons and the Complaint. Through
2 counsel, Plaintiff and Defendants Instant Checkmate, LLC, TruthFinder, LLC, The
3 Control Group Media Company, LLC, Intelicare Direct, LLC, and PubRec LLC
4 (“Settling Defendants”) stipulate to the entry of this Order for Permanent Injunction,
5 Civil Penalty Judgment, and Other Relief (“Order”) to resolve all matters in dispute in
6 this action between them.
7

8
9 THEREFORE, IT IS ORDERED as follows:

10 **FINDINGS**

- 11
- 12 1. This Court has jurisdiction over this matter.
 - 13 2. The Complaint charges that Defendants participated in deceptive and unfair
14 acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45 and in violation
15 of the FCRA, 15 U.S.C. §§ 1681-1681x, in the promotion and sale of background reports.
16
 - 17 3. Settling Defendants neither admit nor deny any of the allegations in the
18 Complaint, except as specifically stated in this Order. Only for purposes of this action,
19 Settling Defendants admit the facts necessary to establish jurisdiction.
20
 - 21 4. Settling Defendants waive any claim that they may have under the Equal
22 Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action
23 through the date of this Order, and agree to bear their own costs and attorney fees.
24
 - 25 5. Settling Defendants and Plaintiff waive all rights to appeal or otherwise
26 challenge or contest the validity of this Order.
27
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DEFINITIONS

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

A. **“Clear(ly) and Conspicuous(ly)”** means that a required disclosure is difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.

2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the

1 disclosure appears.

2 6. The disclosure must comply with these requirements in each medium
3 through which it is received, including all electronic devices and face-to-face
4 communications.
5

6 7. The disclosure must not be contradicted or mitigated by, or
7 inconsistent with, anything else in the communication.
8

9 8. When the representation or sales practice targets a specific audience,
10 such as children, the elderly, or the terminally ill, “ordinary consumers” includes
11 reasonable members of that group.
12

13 B. “**Close Proximity**” means that the disclosure is very near the triggering
14 representation. For example, a disclosure made through a hyperlink, pop-up, interstitial,
15 or other similar technique is not in close proximity to the triggering representation.
16

17 C. “**Consumer Report**” means any written, oral, or other communication of
18 any information by a Consumer Reporting Agency bearing on a consumer’s credit
19 worthiness, credit standing, credit capacity, character, general reputation, personal
20 characteristics, or mode of living, which is used or expected to be used or collected in
21 whole or in part for a Permissible Purpose.
22

23 D. “**Consumer Reporting Agency**” means any Person which, for monetary
24 fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in
25 the practice of assembling or evaluating consumer credit information or other information
26 on consumers for the purpose of furnishing Consumer Reports to third parties, and which
27
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1 uses any means or facility of interstate commerce for the purpose of preparing or
2 furnishing Consumer Reports.

3
4 E. **“Covered Record”** means any written or oral communication that includes
5 any of the following information from or about an individual consumer: (1) sex offender
6 status; (2) arrest records; (3) bankruptcy records; (4) liens; (5) eviction records; (6) civil
7 and criminal court record information; and (7) traffic tickets or citations.
8

9 F. **“Covered Report”** means any written, oral, or other communication of any
10 information on consumers that is assembled or evaluated in whole or in part by any
11 Person that bears on a consumer’s credit worthiness, credit standing, credit capacity,
12 character, general reputation, personal characteristics, or mode of living.
13

14 G. **“Permissible Purpose”** means:

15
16 1. In response to the order of a court having jurisdiction to issue such an
17 order, or a subpoena issued in connection with proceedings before a Federal grand jury;

18 or

19
20 2. In accordance with the written instructions of the consumer to whom
21 it relates; or

22
23 3. To a person which the Consumer Reporting Agency has reason to
24 believe:

25 a. intends to use the information in connection with a credit
26 transaction involving the consumer on whom the information is to be furnished and
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1 involving the extension of credit to, or review or collection of an account of, the
2 consumer; or

3
4 b. intends to use the information for employment purposes; or

5 c. intends to use the information in connection with the
6 underwriting of insurance involving the consumer; or

7
8 d. intends to use the information in connection with a
9 determination of the consumer's eligibility for a license or other benefit granted by a
10 governmental instrumentality required by law to consider an applicant's financial
11 responsibility or status; or

12
13 e. intends to use the information, as a potential investor or
14 servicer, or current insurer, in connection with a valuation of, or an assessment of the
15 credit or prepayment risks associated with, an existing credit obligation; or

16
17 f. otherwise has a legitimate business need for the information:

18 i. in connection with a business transaction that is initiated
19 by the consumer, including tenant screening; or

20
21 ii. to review an account to determine whether the consumer
22 continues to meet the terms of the account; or

23
24 g. executive departments and agencies in connection with the
25 issuance of government-sponsored individually-billed travel charge cards; or

26 4. In response to a request by the head of a State or local child support
27 enforcement agency (or a State or local government official authorized by the head of
28

1 such an agency), if the person making the request certifies to the Consumer Reporting
2 Agency that:

3
4 a. the Consumer Report is needed for the purpose of establishing
5 an individual's capacity to make child support payments, determining the appropriate
6 level of such payments, or enforcing a child support order, award, agreement, or
7 judgment;

8
9 b. the parentage of the consumer for the child to which the
10 obligation relates has been established or acknowledged by the consumer in accordance
11 with State laws under which the obligation arises (if required by those laws); and

12
13 c. the Consumer Report will be kept confidential, will be used
14 solely for a purpose described in subparagraph 4a. above, and will not be used in
15 connection with any other civil, administrative, or criminal proceeding, or for any other
16 purpose; or

17
18 5. To an agency administering a State plan under Section 454 of the
19 Social Security Act (42 U.S.C. § 654) for use to set an initial or modified child support
20 award; or

21
22 6. To the Federal Deposit Insurance Corporation or the National Credit
23 Union Administration as part of its preparation for its appointment or as part of its
24 exercise of powers, as conservator, receiver, or liquidating agent for an insured
25 depository institution or insured credit union under the Federal Deposit Insurance Act or
26 the Federal Credit Union Act, or other applicable Federal or State law, or in connection
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1 with the resolution or liquidation of a failed or failing insured depository institution or
2 insured credit union, as applicable.

3
4 H. **“Person”** means any individual, partnership, corporation, trust, estate,
5 cooperative, association, government or governmental subdivision or agency, or other
6 entity.

7
8 I. **“Settling Defendants”** means Instant Checkmate, LLC, TruthFinder, LLC,
9 The Control Group Media Company, LLC, Intelicare Direct, LLC, and PubRec, LLC,
10 individually, collectively, or in any combination, and their successors and assigns.

11
12 J. **“Unexpected Material Connection”** means any relationship that might
13 materially affect the weight or credibility of a review or endorsement and that would not
14 reasonably be expected by consumers.

15 16 **ORDER**

17 **I. FAIR CREDIT REPORTING ACT MONITORING PROGRAM**

18 IT IS ORDERED that Settling Defendants must not advertise, market, promote, or
19 offer for sale any Covered Report unless they first establish and implement, and
20 thereafter maintain, a comprehensive monitoring program (hereinafter, the “Monitoring
21 Program”) to regularly review, assess, and determine the extent to which each Settling
22 Defendant is operating in whole or in part as a Consumer Reporting Agency, and, if so, to
23 regularly review, assess, and determine the extent to which the Settling Defendant is
24 engaged in business activities prohibited by Section II of this Order, entitled “Prohibited
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1 Business Activities.” To satisfy this requirement, each Settling Defendant or Settling
2 Defendants together must, at a minimum:

3
4 A. Document in writing the content, implementation, and maintenance of the
5 Monitoring Program;

6 B. Designate a qualified employee or employees to coordinate and be
7 responsible for the Monitoring Program;

8
9 C. Assess and document, prior to the inception of the Monitoring Program and
10 at least once every twelve (12) months thereafter, the extent to which the Covered
11 Reports promoted or offered for sale by the Settling Defendants are Consumer Reports,
12 and the extent to which the Settling Defendants are acting as a Consumer Reporting
13 Agency, including the extent to which users regularly use Covered Reports provided by
14 the Settling Defendants for Permissible Purposes. Such assessment shall include, at a
15 minimum, a review of:

16
17
18 1. All products and services offered or sold;
19
20 2. Marketing and advertising materials used to promote, offer, or sell
21 those products and services (including but not limited to any website content,
22 advertisements, blog posts, testimonials, published statements, customer service scripts,
23 search engine advertising keywords, push notifications, and any method or device used to
24 direct Persons to a website);

25
26 3. Any measures to prevent users from using a Settling Defendant’s
27 products or services for Permissible Purposes (*e.g.*, disclaimers, certifications, account
28

1 terminations, user verification, or blocking) and available evidence or information
2 relating to the effectiveness of those measures;

3
4 4. All users whom Settling Defendants have reason to believe have used
5 or intended to use one or more Covered Reports for a Permissible Purpose, all actions
6 taken by Settling Defendants to permanently prevent each such user from accessing
7 Covered Reports, and the dates on which such actions were effective; and

8
9 5. Any evidence of or information about how users of Settling
10 Defendants' products or services use, intend to use, or expect to use those products or
11 services (including but not limited to consumer correspondence, consumer reviews,
12 consumer complaints, and consumer testimonials);

13
14 D. Design, implement, maintain, and document compliance with safeguards to
15 assure that the Settling Defendants do not sell, offer, or make available Covered Reports
16 for a Permissible Purpose, unless the requirements of this Order that would apply to a
17 Consumer Report are satisfied as to that product or service. Such safeguards must
18 include, at a minimum:

19
20 1. Training of all officers, employees, and advertising affiliates, and all
21 agents and independent contractors to the extent that their job duties are relevant to the
22 content of this Order, at onboarding and at least every twelve (12) months thereafter, on
23 this Order's requirements, activities that would violate those requirements, and relevant
24 specific job duties relating to compliance with this Order;
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1 2. Refraining from advertising, marketing, promoting, describing, or
2 offering for sale any product or service that involves Covered Reports as suitable or
3 appropriate for any Permissible Purpose, unless the requirements of this Order that would
4 apply to a Consumer Report are satisfied as to that product or service;
5

6 3. Reviewing, prior to their publication or implementation, of all
7 marketing and advertising materials used by Settling Defendants to offer, promote, or sell
8 those products and services (including but not limited to any advertisements, blog posts,
9 testimonials, published statements, customer service scripts, search engine advertising
10 keywords, push notifications, and any method or device used to direct Persons to a
11 website);
12

13 4. Requiring affiliate marketing partners by contract to obtain prior
14 written approval from the Settling Defendants for all unique advertising and marketing
15 copy used to offer, promote, or sell Covered Reports;
16

17 5. Clearly and Conspicuously disclosing permissible and impermissible
18 uses of any Covered Reports under this Order;
19

20 6. Clearly and Conspicuously requiring each user, before the purchase of
21 any product or service, prior to running any people search or background report search,
22 and annually thereafter, to certify:
23

24 i. that the user will not use Covered Reports to make decisions about or
25 in connection with hiring, promoting, reassigning, or continuing to employ any person,
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1 including current or potential volunteers and household employees such as childcare
2 workers, contractors, or home health aides;

3
4 ii. that the user will not use Covered Reports to make decisions about
5 or in connection with renting or selling a house, apartment, or other residential property
6 to any person;

7
8 iii. that the user will not use Covered Reports to make decisions about
9 or in connection with lending money or extending credit to any person;

10
11 iv. that the user will not use Covered Reports in connection with the
12 underwriting of insurance; and

13
14 v. that the user will not use Covered Reports for any purpose related to
15 any eligibility determination about a person.

16 7. Procedures to onboard users, including requiring users to agree to
17 contracts or terms and conditions prohibiting the use of Covered Reports provided by the
18 Settling Defendants for any Permissible Purpose and Clear and Conspicuous disclosure
19 of such terms and conditions;

20
21 8. Implementing user access controls, such as controls on the number of
22 Covered Reports obtained per day and investigation of accounts with excessive or
23 suspicious patterns of obtaining Covered Reports;

24
25 9. Conducting ongoing reviews, tests, or audits of:

26 i. the ways that users use or expect to use the Settling Defendants'
27 products or services;
28

1 ii. the extent to which each Settling Defendants’ officers,
2 employees, agents, advertising affiliates, and independent contractors have implemented
3 and are complying with the Monitoring Program; and
4

5 iii. the effectiveness of the Monitoring Program at detecting and
6 preventing use of Covered Reports for Permissible Purposes; and
7

8 10. Implementing and complying with procedures to actively identify and
9 investigate users who are using, have used, or likely intend to use Covered Reports for
10 one or more Permissible Purposes and to permanently prevent those users from accessing
11 Covered Reports within three (3) business days after a Settling Defendant becomes aware
12 of the user’s use of Covered Reports for a Permissible Purpose; and
13

14 E. Evaluate and adjust the Monitoring Program in light of any changes to a
15 Settling Defendant’s operations or business arrangements, or any other circumstance that
16 Settling Defendants know or have reason to know may materially affect the Monitoring
17 Program’s effectiveness. At a minimum, each Settling Defendant must evaluate the
18 Monitoring Program every twelve (12) months and implement modifications based on the
19 results; and
20

21 F. At least once every twelve (12) months, provide: (1) the written program
22 required by Subsection I.A and any evaluations thereof or updates thereto; and (2) the
23 assessments and documentation required by Subsection I.C to the Settling Defendants’
24 board of directors or governing body or, if no such board or equivalent governing body
25 exists, to a senior officer responsible for regulatory compliance.
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1 **II. PROHIBITED BUSINESS ACTIVITIES**

2 IT IS FURTHER ORDERED that Settling Defendants, their officers, agents,
3 employees, and all other Persons in active concert or participation with any of them, who
4 receive actual notice of this Order, whether acting directly or indirectly, in connection
5 with operating as a Consumer Reporting Agency, are hereby permanently restrained and
6 enjoined from:
7
8

9 A. Failing to maintain reasonable procedures designed to limit the furnishing of
10 Consumer Reports to Persons with Permissible Purposes to receive them. Such
11 reasonable procedures shall require that: (1) prospective users of the information identify
12 themselves, certify the purposes for which the information is sought, and certify that the
13 information will be used for no other purpose; and that (2) Settling Defendants make a
14 reasonable effort to verify the identity of a new prospective user and the uses certified by
15 such prospective user prior to furnishing such user a Consumer Report;
16
17

18 B. Failing to maintain reasonable procedures to assure the maximum possible
19 accuracy of the information concerning the individual about whom the report relates;
20

21 C. Failing to provide a FCRA notice to users of Consumer Reports (Attached
22 hereto as Attachment A to this Order) to any person to whom a Consumer Report is
23 provided by Settling Defendants;
24

25 D. In offering, selling, publishing, or making available Consumer Reports for
26 employment purposes, failing to:
27
28

1 1. obtain a certification that the user has complied with consumer notice
2 requirements, including: (i) that the user has provided a standalone written disclosure to
3 the consumer that a Consumer Report may be obtained, (ii) obtained the written consent
4 of the consumer to obtain a Consumer Report, and, (iii) prior to taking any adverse action
5 based in whole or in part on the report, will provide the consumer with a copy of the
6 Consumer Report and a written description of the consumer's rights under the FCRA
7 (Attached hereto as Attachment B to this Order);
8

9
10 2. obtain a certification that the user will not use the information from
11 the Consumer Report in violation of any applicable Federal or State equal employment
12 opportunity law or regulation; and
13

14 3. provide with the Consumer Report, unless it has been previously
15 provided, a summary of the consumer's rights under the FCRA (Attached hereto as
16 Attachment B to this Order).
17

18 E. Furnishing a Consumer Report to any Person whom Settling Defendants do
19 not have reason to believe has a Permissible Purpose to receive the Consumer Report;
20 and
21

22 F. Failing to conduct a reasonable reinvestigation, free of charge, if a consumer
23 disputes the completeness or accuracy of any item of information contained in a
24 Consumer Report about that consumer that is offered, sold, published, or made available
25 by Settling Defendants and record the current status of the disputed information in, or
26 delete the disputed information from, any Consumer Report that is offered, sold,
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1 published, or made available by Settling Defendants before the end of the 30-day period
2 beginning on the date on which the Settling Defendants receive notice of the dispute.

3
4 **III. PROHIBITION AGAINST MISREPRESENTATIONS TO CONSUMERS**
5 **REGARDING COVERED REPORTS**

6 IT IS FURTHER ORDERED that Settling Defendants, their officers, agents,
7 employees, and all other Persons in active concert or participation with any of them, who
8 receive actual notice of this Order, whether acting directly or indirectly, in connection
9 with advertising, marketing, promoting, or offering any product or service, are
10 permanently restrained and enjoined from misrepresenting, expressly or by implication:
11

12 A. The effect of utilizing any mechanism to remove or flag as inaccurate certain
13 items of information in Covered Reports;
14

15 B. The extent to which, or the probability that, any consumer has or may have
16 Covered Records, Settling Defendants have found Covered Records, or that there are
17 possible or probable Covered Records;
18

19 C. The accuracy or completeness of the information contained in the Covered
20 Reports;
21

22 D. That a traffic ticket or a traffic citation in a Covered Report is a criminal or
23 arrest record; or
24

25 E. Any other fact concerning Covered Records or Covered Reports or any of
26 the information therein, such as their accuracy, nature, characteristics, or content; or any
27 restrictions, limitations, or conditions on users' ability to access, alter, use, correct, or
28 delete them.

1 Proximity to that representation, any Unexpected Material Connection between such
2 reviewer or endorser and (1) Settling Defendants; or (2) any other individual or entity
3 affiliated with the good or service.
4

5 VI. MONITORING OF ENDORSERS

6 IT IS FURTHER ORDERED that within 90 days of the date of entry of this Order,
7 Settling Defendants, their officers, agents, employees, and attorneys, and all other
8 persons in active concert or participation with any of them, who receive actual notice of
9 this Order, whether acting directly or indirectly, in connection with promoting or offering
10 for sale any Covered Report or related good or service, must take steps sufficient to
11 ensure compliance with Subsection B of the Section of this Order titled Injunction
12 Concerning Misrepresentations in Violation of Section 5 of the FTC Act and the Section
13 of this Order titled Required Disclosures Of Unexpected Material Connections. Such
14 steps shall include, at a minimum:
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18 A. Providing each reviewer or endorser of any Covered Report or related good
19 or service with a clear statement of his or her responsibilities to disclose Clearly and
20 Conspicuously and in Close Proximity to the endorsement, in any review, online video,
21 social media posting, or other communication endorsing the good or service, the reviewer
22 or endorser's Unexpected Material Connection to Settling Defendants, or any other
23 individual or entity affiliated with the good or service; and obtaining from each such
24 reviewer or endorser a signed and dated statement acknowledging receipt of that
25 statement and expressly agreeing to comply with it. For the purpose of this subsection,
26
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1 the term “signed” may include a verifiable electronic or digital form of signature, to the
2 extent that such form of signature is recognized as a valid signature under applicable
3 Federal law or State contract law;
4

5 B. Establishing, implementing, and thereafter maintaining a system to monitor
6 and review the representations and disclosures of reviewers and endorsers with any
7 Unexpected Material Connection to Settling Defendants, or any other individual or entity
8 affiliated with the good or service to ensure compliance with the Subsection B of the
9 Section of this Order titled Injunction Concerning Misrepresentations in Violation of
10 Section 5 of the FTC Act and the Section of this Order titled Required Disclosures Of
11 Unexpected Material Connections. The system shall include, at a minimum, monitoring
12 and reviewing the endorsers’ reviews, online videos and social media postings;
13
14

15 C. In the event an Unexpected Material Connection is not disclosed, contacting
16 each reviewer or endorser to request such a disclosure. If such disclosure is not made or
17 the review or endorsement is not removed, Settling Defendants shall contact the platform
18 on which the review or endorsement appears requesting its removal; and
19
20

21 D. Creating reports showing the results of the monitoring required by
22 Subsections B. and C. of this Section.
23

24 **VII. MONETARY JUDGMENT FOR CIVIL PENALTY**

25 IT IS FURTHER ORDERED that:

26 A. Judgment in the amount of Five Million, Eight Hundred Thousand, Dollars
27 (\$5,800,000) is entered in favor of Plaintiff against Settling Defendants, jointly and
28

1 severally, as a civil penalty.

2 B. Settling Defendants are ordered to pay to Plaintiff, by making payment to
3 the Treasurer of the United States, Five Million, Eight Hundred Thousand, Dollars
4 (\$5,800,000), which, as Settling Defendants stipulate, their undersigned counsel holds in
5 escrow for no purpose other than payment to Plaintiff. Such payment must be made
6 within seven (7) days of entry of this Order by electronic fund transfer in accordance with
7 instructions previously provided by a representative of Plaintiff.
8

9
10 **VIII. ADDITIONAL MONETARY PROVISIONS**

11 A. Settling Defendants relinquish dominion and all legal and equitable right,
12 title, and interest in all assets transferred pursuant to this Order and may not seek the
13 return of any assets.
14

15 B. Settling Defendants acknowledge that their Taxpayer Identification Numbers
16 (Social Security Numbers or Employer Identification Numbers), which Settling
17 Defendants must submit to the Commission, may be used for collecting and reporting on
18 any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.
19

20 **IX. COOPERATION**

21 IT IS FURTHER ORDERED that Settling Defendants must fully cooperate with
22 representatives of Plaintiff and the Commission in this case and in any investigation
23 related to or associated with the transactions or the occurrences that are the subject of the
24 Complaint. Such Settling Defendants must provide truthful and complete information,
25 evidence, and testimony. Such Settling Defendants must cause Defendants' officers,
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1 employees, representatives, or agents to appear for interviews, discovery, hearings, trials,
2 and any other proceedings that a Plaintiff or Commission representative may reasonably
3 request upon 5 days written notice, or other reasonable notice, at such places and times as
4 a Plaintiff or Commission representative may designate, without the service of a
5 subpoena.
6

7 **X. ORDER ACKNOWLEDGMENTS**

8
9 IT IS FURTHER ORDERED that Settling Defendants obtain acknowledgments of
10 receipt of this Order:
11

12 A. Each Defendant, within seven (7) days of entry of this Order, must submit to
13 the Commission an acknowledgment of receipt of this Order sworn under penalty of
14 perjury.
15

16 B. For fifteen (15) years after entry of this Order, each Settling Defendant must
17 deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers
18 and members; (2) all employees having managerial responsibilities for conduct related to
19 the subject matter of the Order and all agents and representatives who participate in
20 conduct related to the subject matter of the Order; and (3) any business entity resulting
21 from any change in structure as set forth in the Section titled Compliance Reporting.
22 Delivery must occur within seven (7) days of entry of this Order for current personnel.
23 For all others, delivery must occur before they assume their responsibilities.
24

25 C. From each individual or entity to which a Settling Defendant delivered a
26 copy of this Order, that Defendant must obtain, within thirty (30) days, a signed and
27
28

1 dated acknowledgment of receipt of this Order.

2 **XI. COMPLIANCE REPORTING**

3
4 IT IS FURTHER ORDERED that Settling Defendants make timely submissions to
5 the Commission:

6 A. One year after entry of this Order, each Settling Defendant must submit a
7
8 compliance report, sworn under penalty of perjury:

9 1. Each Settling Defendant must: (a) identify the primary physical,
10 postal, and email address and telephone number, as designated points of contact, which
11 representatives of the Commission and Plaintiff may use to communicate with
12 Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone
13 numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of
14 each business, including the goods and services offered, the means of advertising,
15 marketing, and sales, and the involvement of any other Defendant; (d) describe in detail
16 whether and how that Defendant is in compliance with each Section of this Order; and (e)
17 provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless
18 previously submitted to the Commission.
19

20
21
22 B. For fifteen (15) years after entry of this Order, each Settling Defendant must
23 submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of
24 any change in the following:
25

26 1. Each Settling Defendant must report any change in: (a) any
27 designated point of contact; or (b) the structure of any Defendant or any entity that
28

1 Defendant has any ownership interest in or controls directly or indirectly that may affect
2 compliance obligations arising under this Order, including: creation, merger, sale, or
3 dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or
4 practices subject to this Order.
5

6 C. Each Settling Defendant must submit to the Commission notice of the filing
7 of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against
8 such Defendant within fourteen (14) days of its filing.
9

10 D. Any submission to the Commission required by this Order to be sworn under
11 penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as
12 by concluding: “I declare under penalty of perjury under the laws of the United States of
13 America that the foregoing is true and correct. Executed on: _____” and supplying the
14 date, signatory’s full name, title (if applicable), and signature.
15
16

17 E. Unless otherwise directed by a Commission representative in writing, all
18 submissions to the Commission pursuant to this Order must be emailed to
19 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate
20 Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission,
21 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin:
22 “*United States v. Instant Checkmate, LLC et al.*, Case No. XXXXX.”
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1 **XIII. COMPLIANCE MONITORING**

2 IT IS FURTHER ORDERED that, for the purpose of monitoring Settling
3 Defendants' compliance with this Order and any failure to transfer any assets as required
4 by this Order:
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6 A. Within fourteen (14) days of receipt of a written request from a
7 representative of the Commission or Plaintiff, each Settling Defendant must: submit
8 additional compliance reports or other requested information, which must be sworn under
9 penalty of perjury; appear for depositions; and produce documents for inspection and
10 copying. The Commission and Plaintiff are also authorized to obtain discovery, without
11 further leave of court, using any of the procedures prescribed by Federal Rules of Civil
12 Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
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15 B. For matters concerning this Order, the Commission and Plaintiff are
16 authorized to communicate directly with each Settling Defendant. Settling Defendants
17 must permit representatives of the Commission and Plaintiff to interview any employee
18 or other person affiliated with any Settling Defendant who has agreed to such an
19 interview. The person interviewed may have counsel present.
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22 C. The Commission and Plaintiff may use all other lawful means, including
23 posing, through its representatives as consumers, suppliers, or other individuals or
24 entities, to Settling Defendants or any individual or entity affiliated with Settling
25 Defendants, without the necessity of identification or prior notice. Nothing in this Order
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1 limits the Commission’s lawful use of compulsory process, pursuant to Sections 9 and 20
2 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

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4 **XIV. RETENTION OF JURISDICTION**

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

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8 **SO ORDERED** this ___ day of _____, 2023.

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12 UNITED STATES DISTRICT JUDGE
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