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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

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FEDERAL TRADE COMMISSION,)
11)
Plaintiff,)
12 v.)
13 GREGORY NAVONE,)
14 Defendant.)
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CV-S-
COMPLAINT FOR CIVIL PENALTIES,
INJUNCTION, AND OTHER
EQUITABLE RELIEF

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

18 1. Plaintiff brings this action under Sections 5(a), 13(b), and 16(a) of the Federal
19 Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), and 56(a), and Section 621(a) of
20 the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681s(a), to obtain monetary civil
21 penalties and permanent injunctive and other equitable relief from Defendant for engaging in
22 acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); Section 628 of
23 the FCRA, 15 U.S.C. § 1681w; and the rule regarding the Disposal of Consumer Report
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Information and Records (“Disposal Rule”), 16 C.F.R. § 682.1 et seq., issued pursuant to Section 628 of the FCRA, 15 U.S.C. § 1681w.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 53(b), 56(a), and 1681s(a).

3. Venue in the United States District Court for the District of Nevada is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b)-(c) and 1395(a).

THE PARTIES

4. Plaintiff, the FTC, is an independent agency of the United States Government created by the FTC Act, 15 U.S.C. §§ 41 - 58. The FTC is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce. The FTC is also charged with enforcement of the FCRA, 15 U.S.C. §§ 1681a - 1681x. Pursuant to the FCRA, the FTC promulgated and enforces the Disposal Rule, 16 C.F.R. Part 682, which requires proper disposal of consumer report information and records. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act, the FCRA, and the Disposal Rule, and to secure such equitable relief as may be appropriate in each case. 15 U.S.C. §§ 53(b), 1681s(a). The FTC is also authorized to initiate federal district court proceedings, by its own attorneys, to recover civil penalties for violations of the FCRA and the Disposal Rule, if the Attorney General fails to initiate such litigation within 45 days after receipt of notice from the FTC of its intention to initiate such litigation. 15 U.S.C. §§ 56(a), 1681s(a). With respect to the instant proceeding, the Attorney General received such notice from the FTC and declined to initiate the proceeding.

5. Defendant Gregory Navone is an individual residing in Las Vegas, Nevada. At all times relevant to this action, Defendant has resided in and transacted business in this district.

COMMERCE

6. The acts and practices of Defendant alleged in this Complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANT’S COURSE OF CONDUCT

7. Since 1987, Defendant has owned and/or directed numerous businesses, including, but not limited to, First Interstate Mortgage Corporation (“FIM”) and Nevada One Corporation (doing business as Nevada One Mortgage) (“Nevada One”). Defendant was the sole owner of FIM and its sole director, president, treasurer, and secretary from FIM’s incorporation in approximately April 2003 until its dissolution in approximately August 2008. Defendant owned and was president, treasurer, and secretary of Nevada One from approximately March 2000 until at least December 2003. During their periods of operation, FIM and Nevada One were mortgage brokerage companies that provided real estate financing services, including, but not limited to, assisting customers in locating mortgage lenders; accepting, receiving, and processing loan applications; and compiling documentation demonstrating customer creditworthiness. Individually, or in concert with others, Defendant formulated, directed, controlled, and participated in the policies, acts, or practices of FIM and Nevada One, including the acts or practices alleged in this Complaint.

8. Most of the companies that Defendant has owned or directed since 1987, including FIM and Nevada One, are no longer operational or are currently operated by someone other than Defendant; collectively, such companies are hereinafter referred to as “former companies.” In operating FIM, Nevada One, and several of his other former companies,

1 Defendant collected and maintained sensitive consumer information concerning the companies'
2 customers, including, but not limited to, consumer names, addresses, dates of birth, Social
3 Security numbers, bank and credit card account numbers, income histories, credit histories, and
4 mortgage information, as well as information contained in mortgage loan applications, tax
5 returns, bank statements, purchase contracts, and consumer reports, as defined in the FCRA.

6 9. In operating FIM and Nevada One, Defendant disseminated or caused to be
7 disseminated to consumers written statements regarding each company's privacy and data
8 security practices, including, but not limited to, the following statement:

9 We take our responsibility to protect the privacy and confidentiality of customer
10 information very seriously. We maintain physical, electronic, and procedural
11 safeguards that comply with federal standards to store and secure information
12 about you from unauthorized access, alteration and destruction. . . . From time to
13 time, we enter into agreements with other companies to provide services to us or
14 make products and services available to you. Under these agreements, the
15 company may receive information about you but they must safeguard this
16 information and they may not use it for any other purposes.

17 10. Contrary to these statements, Defendant engaged in a number of practices that,
18 taken together, failed to provide reasonable and appropriate security for sensitive consumer
19 information collected, handled and/or maintained by FIM and Nevada One.

20 11. Among other things, in connection with his operation of FIM and Nevada One,
21 Defendant failed to: 1) implement policies and procedures in key areas, including the physical
22 and electronic security of sensitive consumer information; the proper collection, handling, and
23 disposal of sensitive consumer information; and employee training regarding such matters; and
24 2) provide reasonable oversight of the handling of sensitive consumer information by service
25 providers, such as third parties contracted to process loan applications, including by

contractually requiring such service providers to maintain appropriate safeguards for such information.

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2 12. Defendant also has personally maintained sensitive consumer information
3 collected by Nevada One and his other former companies. Defendant has maintained this
4 sensitive consumer information, which includes consumer reports and information derived from
5 consumer reports, in an insecure manner in boxes in the garages of two successive residences
6 occupied by Defendant.

7 13. With respect to the sensitive consumer information that Defendant has maintained
8 in his garages, Defendant has engaged in a number of practices that, taken together, constitute
9 failures to take reasonable measures to protect consumer reports, or information derived from
10 consumer reports, against unauthorized access or use in connection with their disposal. Among
11 other things, Defendant has failed to 1) implement and monitor policies and procedures requiring
12 the information to be disposed of in a manner that ensures that the information cannot
13 practicably be read or reconstructed; 2) ensure that employees or third parties assigned to collect
14 or transport the information for disposal are qualified to do so and have received appropriate
15 guidance or training; 3) alert such employees or third parties to the sensitive nature of the
16 information, or instruct them to take precautions with respect to the information; and 4) oversee
17 the collection and transport of the information for disposal, or otherwise confirm that the
18 information is disposed of in a manner that ensures that the information cannot practicably be
19 read or reconstructed.
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22 14. On December 20, 2006, approximately forty boxes of intact documents that
23 Defendant had stored in his garage were found in a publicly-accessible dumpster outside of an
24 office building in Las Vegas, Nevada, which housed a company owned and operated by
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1 Defendant. These documents included tax returns, mortgage applications, bank statements,
2 photocopies of credit cards and drivers' licenses, at least 230 consumer reports, and other
3 documents containing sensitive consumer information that had been collected by Nevada One
4 and some of Defendant's other former companies.

5 **VIOLATIONS OF THE FTC ACT**

6 **COUNT I**

7 15. Through the means described in paragraph 8, Defendant, through FIM and
8 Nevada One, represented, expressly or by implication, that FIM and Nevada One implemented
9 reasonable and appropriate measures to protect sensitive consumer information from
10 unauthorized access.

11 16. In truth and in fact, as described in paragraphs 9-13, FIM and Nevada One did not
12 implement reasonable and appropriate measures to protect sensitive consumer information from
13 unauthorized access. Therefore, the representation set forth in paragraph 14 was false or
14 misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act,
15 15 U.S.C. § 45(a).

16 **COUNT II**

17 17. Through the means described in paragraph 8, Defendant, through FIM and
18 Nevada One, represented, expressly or by implication, that FIM and Nevada One had entered
19 into agreements with service providers that required such companies to safeguard information
20 received about FIM's and Nevada One's customers and to use it only for purposes of providing
21 services to FIM or Nevada One.

22 18. In truth and in fact, as described in paragraph 10, FIM and Nevada One did not
23 enter into agreements requiring service providers to safeguard information about FIM and
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1 Nevada One customers and to use such information only for purposes of providing services to
2 FIM or Nevada One. Therefore, the representation set forth in paragraph 16 was false or
3 misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act,
4 15 U.S.C. § 45(a).

5 **VIOLATIONS OF THE FCRA AND THE DISPOSAL RULE**

6 **COUNT III**

7 19. Section 628(a) of the FCRA, 15 U.S.C. § 1681w, requires the Commission to
8 issue regulations requiring “any person that maintains or otherwise possesses consumer
9 information, or any compilation of consumer information, derived from consumer reports for a
10 business purpose to properly dispose of any such information or compilation.” Pursuant to this
11 directive, the Commission promulgated the Disposal Rule, 16 C.F.R. § 682.1 et seq., which took
12 effect on June 1, 2005. The Disposal Rule requires any person that maintains or otherwise
13 possesses consumer information derived from consumer reports for a business purpose to take
14 reasonable measures to protect against unauthorized access to or use of the information in
15 connection with its disposal. 16 C.F.R. § 682.3.

16 20. Section 621 of the FCRA, 15 U.S.C. § 1681s, authorizes the Commission to use
17 all of its functions and powers under the FTC Act to enforce compliance with the FCRA by all
18 persons subject thereto except to the extent that enforcement specifically is committed to some
19 other governmental agency, irrespective of whether the person is engaged in commerce or meets
20 any other jurisdictional tests set forth by the FTC Act.

21 21. Defendant is a “person” as that term is defined in the FCRA, 15 U.S.C.
22 § 1681a(b), and the Disposal Rule, 16 C.F.R § 682.1.
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22. At all times relevant to this action, Defendant has maintained and possessed “consumer information” derived from “consumer reports,” as those terms are defined in the FCRA, 15 U.S.C. § 1681a(d), and the Disposal Rule, 16 C.F.R. § 682.1(b), for a business purpose.

23. Through the acts and practices described in paragraphs 9-13, Defendant has failed to take reasonable measures to protect against unauthorized access to or use of consumer information derived from consumer reports in connection with its disposal, in violation of Section 628 of the FCRA, 15 U.S.C. § 1681w, and Section 682.3(a) of the Disposal Rule, 16 C.F.R. § 682.3(a).

24. Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), Defendant’s violations of the FCRA and Disposal Rule constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

25. The acts and practices described in paragraphs 9-13 constitute a pattern or practice of knowing violations, as set forth in Section 621(a)(2)(A) of the FCRA, 15 U.S.C. § 1681s(a)(2)(A).

THIS COURT’S POWER TO GRANT RELIEF

26. Section 621(a)(2)(A) of the FCRA, 15 U.S.C. § 1681s(a)(2)(A), authorizes the Court to award monetary civil penalties of not more than \$2,500 for each knowing violation of the FCRA that constitutes a pattern or practice of violations of the statute.

27. Each instance in which Defendant has failed to comply with Section 628 of the FCRA, 15 U.S.C. § 1681w, and the Disposal Rule, 16 C.F.R. § 682.1 et seq., constitutes a separate violation of the FCRA for the purpose of assessing monetary civil penalties under Section 621(a)(2)(A) of the FCRA, 15 U.S.C. § 1681s(a)(2)(A).

28. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue injunctive and such other and further equitable and ancillary relief as it may deem appropriate in the enforcement of the FCRA and the FTC Act, to prevent and remedy any violation of any provision of law enforced by the Commission.

PRAYER FOR INJUNCTIVE AND MONETARY RELIEF

WHEREFORE, Plaintiff requests that this Court, pursuant to 15 U.S.C. §§ 45(a)(1), 53(b), and 1681s(a), and pursuant to the Court's own equitable powers:

(1) Enter judgment against Defendant and in favor of Plaintiff for each violation alleged in this Complaint;

(2) Enter a permanent injunction to prevent future violations of the FCRA, the Disposal Rule, and the FTC Act by Defendant;

(3) Award Plaintiff monetary civil penalties from Defendant for each violation of the FCRA alleged in this Complaint;

(4) Order Defendant to pay the costs of bringing this action; and

(5) Award Plaintiff such additional relief as the Court may deem just and proper.

Dated: December 29, 2008

Respectfully submitted,

WILLIAM BLUMENTHAL
General Counsel

_____/s/_____
LAURA B. STACK
Federal Trade Commission